

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS
ON REFERRAL BY THE COMMISSIONER OF REVENUE**

In the matter of:)

T T. X)

OAH No. 12-0176-CSS

CSSD Case No. 001061714

DECISION AND ORDER

I. Introduction

This case concerns the obligation of T T. X for the support of S and A X. The custodian of record is U J.

On January 4, 2000, the Child Support Services Division issued a modified administrative child support order setting Mr. X's ongoing support obligation at the amount of \$422 per month for two children.¹ Mr. X filed a request to modify the order on April 4, 2012.² The division issued a modified order in the amount of \$694 per month effective May 1.³

Mr. X filed an appeal and requested an administrative hearing. The Office of Administrative Hearings conducted telephonic hearings on July 30 and August 28, 2012. At both hearings, Mr. X participated and Erinn Brian represented the division. Ms. J was not available at her telephone number of record on either occasion and did not participate.

The only issue in dispute at the hearing was the status of physical custody. Mr. X established, through his own testimony and that of both children, that he had custody of both S and A beginning in May, 2012. Accordingly, modified ongoing support is set at \$0 effective June 1, 2012.

II. Facts⁴

T X and U J are the parents of two children, S and A X. The couple has never been married, and there has never been a child custody order for the children. Beginning not long after the couple separated in about 2001, and for about six years thereafter, the

¹ Exhibit 1.

² Exhibit 3.

³ Exhibit 5.

⁴ The facts as stated are based on the testimony of T, A, and S X at the hearing, and Mr. X's statements at Exhibit 3, p. 2, and Exhibit 6, p. 2.

children lived with Mr. X.⁵ However, beginning in 2007, the couple shared custody on a more or less equal basis. More recently, beginning in August, 2011, A and S moved in to their mother's home, visiting their father on occasion. However, at the end of the 2011-2012 school year, in late May, both A and S moved back into Mr. X's home. A no longer visited his mother, but S occasionally stayed at his mother's home until July, when the power at that residence was shut off.

III. Discussion

The administrative support order that is at issue in this case was issued on January 4, 2000, at a time when Ms. J had custody of both children. At the request of the Division of Public Assistance, the division has not been enforcing that order since June, 2009. In January, 2012, Ms. J filed an application for services and the case was reopened.⁶ Mr. X contacted the division and, because the parties at that time were sharing custody on a more or less equal basis, he was advised to file a request for modification, since the prior order had been based on primary custody with Ms. J. Mr. X filed the request for modification, but he failed to follow up by providing evidence to establish the status of custody. Therefore, when the division issued a modified order it was again based on primary custody with Ms. J, and it resulted in a substantial increase in the amount of his support order.

On appeal, Mr. X and his children provided testimony regarding the status of custody, which established that he has had primary custody since late May. Since the effective date of the modified order is May 1, 2012, he is technically liable for support for a portion of May, but because the Division of Public Assistance has not withdrawn its request that the support order not be enforced, the division will not collect on the order for that month.

Generally, a modification is effective on the first day of the month after service of the petition for modification.⁷ However, the effective date may be advanced upon a showing of good cause.⁸ In this case, because Mr. X currently has custody and the

⁵ See Exhibit 6, p. 2.

⁶ Exhibit 2.

⁷ 15 AAC 125.321(d).

⁸ State, Child Support Enforcement Division v. Dillon, 977 P.2d 118 (Alaska 1999); Boone v. Boone, 960 P.2d 1579 (Alaska 1998).

Division of Public Assistance has maintained its request that the existing order not be enforced, there is good cause to move the effective date forward to June 1, 2012.

IV. Conclusion

The presumptive support obligation as calculated pursuant to Civil Rule 90.3(a) has changed by 15% or more. The support order should be modified to reflect that Mr. X has had sole custody of the children beginning in May, 2012. Mr. X may, at his discretion, file an application for services in order to obtain support owed to him.

CHILD SUPPORT ORDER

The Modified Administrative Child Support and Medical Support Order dated January 4, 2000, is **AMENDED** as follows; in all other respects, the Amended Administrative Child Support and Medical Support Order dated January 4, 2000, is **AFFIRMED**:

Modified ongoing child support is set at \$0 per month, effective June 1, 2012.

DATED: September 11, 2012.

Signed _____
Andrew M. Hemenway
Administrative Law Judge

Non-Adoption Options

B. The undersigned, on behalf of the Commissioner of Revenue and in accordance with AS 44.64.060 (e)(3), revises the enforcement action, determination of best interest, order, award, remedy, sanction, penalty, or other disposition of the case as set forth below, and adopts the proposed decision as revised::

Modified ongoing child support in the amount of \$694 per month is suspended effective June 1, 2012.

Under AS 25.27.062 and AS 25.27.250, the obligor's income and property are subject to withholding. Without further notice, a withholding order may be served on any person, political subdivision, department of the State, or other entity.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with AS 25.27.210 and Alaska Rule of Appellate Procedure 602(a)(2) within 30 days after the date of this decision.

DATED this 9th day of October, 2012.

By: Signed _____
Signature
Angela M. Rodell _____
Name
Deputy Commissioner _____
Title

[This document has been modified to conform to the technical standards for publication.]