

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

IN THE MATTER OF:)

F E. D)

) OAH No. 12-0238-CSS

) CSSD No. 001180255

DECISION AND ORDER

I. Introduction

F E. D has appealed an Amended Administrative Child and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on June 26, 2012. The obligee children are J and D. The other party to the case is W F. D.

The formal hearing was held on August 20, 2012. Mr. D appeared in person with counsel; Ms. D did not participate, but submitted evidence after the hearing. Mr. D was given an opportunity to respond, which he did on October 11, 2012. Erinn Brian, Child Support Specialist, represented CSSD. The hearing was recorded.

Based upon the record and after careful consideration, Mr. D's child support is set at \$1,115 per month for two children for November and December 2012; and \$1,045 per month for two children for January through April 2012. The parties are involved in divorce litigation and the court issued an interim custody and child support order for Mr. D effective May 1, 2012, so the court order replaces this administrative order as of that date regarding his ongoing support obligation.

II. Facts

A. Procedural History

Ms. D applied for public assistance for J and D in November 2011.¹ CSSD thereafter initiated an administrative child support action against Mr. D.²

The parties were married and are currently involved in divorce litigation. On April 12, 2012, the court issued an interim custody and support order that awarded Ms. D primary custody

¹ CSSD Pre-Hearing Brief at pg. 1.

² Exh. 1.

of the children and ordered Mr. D to pay child support of \$1,271.17 per month, effective May 1, 2012.³

On June 26, 2012, CSSD issued an Amended Administrative Child Support and Medical Support Order that set Mr. D's child support arrears for the period from November 2011 through April 2012 at \$7,206, based on the court's monthly support amount of \$1,272.17 per month.⁴ Mr. D appealed.⁵

B. Material Facts

Mr. D and Ms. D separated at the end of September 2011.⁶ Mr. D remained in the family home. His mother, E N, moved in to help with the children and household chores.⁷ Mr. D provided her room and board during that time. It appears she may have lived with the family before the parties' separation for other lengthy periods of time.⁸

When Mr. D and Ms. D separated, Ms. D moved into a friend's home with the children and agreed to pay her friend \$500 per month rent.⁹ Soon after that, the parties began sharing custody of the children on a 50/50 basis, with the exchanges taking place each Friday via the school bus because the parties' residences were relatively close to each other.¹⁰

After the parties separated, Mr. D paid Ms. D's monthly car payment of \$343.09 and her car insurance bill of \$91.50, for a total of \$434.59 per month.¹¹ He also began paying the regular payments on a \$5,000 charge that Ms. D made on a marital credit card for attorney fees in their divorce litigation.¹² In its interim child support order, the court credited those payments to Mr. D as against his interim spousal support obligation and ordered him to keep making the payments on Ms. D's behalf.¹³

³ Exh. 7.

⁴ *Id.*

⁵ Exh. 10.

⁶ Exh. 8 at pg. 8.

⁷ Exh. C, attached to Obligor's August 17, 2012 Hearing Brief on Appeal from Administrative Child Support Order (hereinafter, "Obligor's Hearing Brief").

⁸ *See* Exh. 1A at pg. 2.

⁹ Exh. 8 at pg. 4.

¹⁰ Exh. 8 at pg. 8.

¹¹ Obligor's Hearing Brief, Exh. F.

¹² Obligor's Hearing Brief, Exh. G.

¹³ Exh. 6 at pg. 3.

Mr. D has been employed by No Name Plumbing for several years. In 2011, he earned \$89,353.99.¹⁴ When the \$1,174 PFD is added, it results in total gross income for the year of \$90,527.99. A primary custody child support amount calculated from that gross income figure is \$1,549 per month for two children (\$1,148 for one child).¹⁵

Ms. D did not have any earnings reported to the Alaska Department of Labor and Workforce Development for 2011.¹⁶ An affidavit she filed in the parties' court litigation states that she was self-employed on a part-time basis as a housekeeper, having started that work with the obligor's niece in 2010.¹⁷ At the time Ms. D signed the affidavit in late November 2011, she stated she was still doing the housekeeping for three hours every other week by herself.¹⁸ Three hours of work every other week paid at \$20 per hour equals \$1,560 in gross annual income.¹⁹ However, Ms. D reported gross self-employment receipts of \$2,550 and expenses of \$370, which yields net income of \$2,180 for 2011.²⁰ Since this figure is higher than the estimate calculated above, Ms. D's figures should be used. When the \$1,174 PFD is added to her net business income, it results in total gross income for the year of \$3,354.²¹ A primary custody child support amount calculated from that gross income figure is \$66 per month for two children (\$50 for one child).²²

Inserting the parties' respective 2011 primary custody child support amounts into a shared custody calculation yields a child support calculation for Mr. D of \$1,115 per month for two children for November and December 2011.²³

In 2012, Ms. D began working for No Name Services for Children & Adults, Inc, where she earns \$12 per hour.²⁴ Her estimated annual income for the year is \$24,960.²⁵ A primary

14 Exh. 11 at pg. 1.

15 Attachment A.

16 See Exh. 11 at pg. 1.

17 Exh. 8 at pg. 9.

18 Exh. 8 at pg. 4.

19 3 hrs. x 26 weeks = 78 total hours x \$20 per hour = \$1,560.

20 Exh. 4 at pg. 4.

21 Exh. 9 at pg. 10.

22 Exh. 9 at pg. 10.

23 Attachment B.

24 Exh. 1A at pg. 5.

25 \$12 per hour x 2080 hours = \$24,960. See also CSSD's Exh. 12 at pg. 1.

custody child support amount calculated from that gross income figure is \$506 per month for two children (\$375 for one child).²⁶

CSSD estimated Mr. D's 2012 annual income at \$112,353.42.²⁷ CSSD arrived at that figure by adding the four quarters of income he earned from the third quarter of 2011 through the second quarter of 2012, as reported to the Alaska Department of Labor and Workforce Development.²⁸ While the agency's estimate is somewhat lower than a simple doubling of his income for the first half of 2012, it is a reasonable method of obtaining annual income from partial year data. A primary custody child support amount calculated from this estimate of Mr. D's gross income for 2012 is \$1,900 per month for two children (\$1,407 for one child).²⁹

Inserting the parties' respective 2012 primary custody child support amounts into a shared custody calculation yields a child support calculation for Mr. D of \$1,045 per month for two children for January through April 2012.³⁰

III. Discussion

A. *The Parties' Actual Incomes Should be used in the Child Support Calculations*

Mr. D first objected to having to pay support through CSSD because he claims he offered to pay Ms. D child support after they separated, but she refused to accept it and then went on public assistance.

A parent is obligated both by statute and at common law to support his or her children.³¹ In general, this obligation begins when the child is born.³² In administrative child support cases, CSSD's regulations require the agency to collect support from the date the custodial parent requested child support services, or the date public assistance or foster care was initiated on behalf of the child(ren).³³ In this case, Ms. D applied for public assistance in November 2011, so Mr. D is thus obligated to pay support through CSSD as of that date.

²⁶ Exh. 12 at pg. 1.

²⁷ Exh. 12 at pg. 2.

²⁸ Exh. 11 at pg. 1.

²⁹ Exh. 12 at pg. 2.

³⁰ Exh. 13. Because the court's interim custody order did not award Ms. D primary custody and set up a visitation schedule until mid-April 2012, CSSD conceded at the hearing that the April 2012 support amount should remain the same as the earlier months. Mr. D did not object.

³¹ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

³² *CSSD v. Kovac*, 984 P.2d 1109 (Alaska 1999).

³³ 15 AAC 125.105(a)(1)-(2).

As soon as Mr. D stopped living with the children, regardless of the reason, he became obligated to pay support on their behalf, either to Ms. D directly, or through CSSD. The support obligation exists regardless of whether the custodial parent receives public assistance on behalf of the children and refuses to accept direct payments from the other party.

Mr. D also challenged the income figures CSSD used for Ms. D and himself. He claims Ms. D's income should be higher, for several reasons, and his should be lower.

Based on the record as a whole, both parties' actual incomes should be used in the child support calculations. Civil Rule 90.3(a)(1) provides that an Obligor's child support amount is to be calculated from his or her "total income from all sources," minus mandatory deductions such as taxes and Social Security. Contrary to Mr. D's argument, income should not be imputed to Ms. D based on the car and insurance payments he made for her. In general, income is only imputed for employer-provided expenses, commonly called "in-kind compensation," and only to the extent that it is "significant and reduce[s] living expenses" ³⁴ Civil Rule 90.3 simply does not contemplate this kind of income treatment as between *wives*. This is because as a married couple, the parties have a joint marital estate that the court will divide in their divorce litigation. The obligor's payments of his wife's car and attorney expenses should be taken up in that litigation. This is exactly what the court did in the order dated April 12, 2012. That order gave Mr. D credit for the expense payments he made for the custodian as against his interim spousal support obligation. ³⁵ He cannot also get credit for the payments he made on Ms. D's behalf in his child support calculation. Even if it were an appropriate credit to consider in Mr. D's child support appeal, getting it in addition to the credit against his spousal support obligation would constitute a double credit and there is no authority for it in the law.

The record as a whole shows that Ms. D deferred employment throughout the parties' marriage as the result of a joint marital decision made by them together. Ms. D transitioned into full-time employment in 2012, but there is no evidence she was voluntarily and unreasonably unemployed or underemployed in 2012. ³⁶ The court's award of interim spousal support to her supports this conclusion. ³⁷

³⁴ Civil Rule 90.3, Commentary III.19.

³⁵ Exh. 6 at pg. 3.

³⁶ See Civil Rule 90.3(a)(4).

³⁷ See Exh. 6.

Mr. D also claimed he is entitled to a credit for work-related child care expenses because he supports his mother in the home and she provides care for the children. Work-related child care expenses are an allowed deduction from income under Civil Rule 90.3(a)(1)(E). However, Mr. D has not shown he has separate and distinct work-related child care expenses for the children due to his mother's residence in the home. He is required to pay the mortgage and utilities, regardless of who lives there, so those cannot be considered work-related child care expenses. Similarly, he did not provide sufficient evidence of any other expenses he incurs specifically as work-related child care costs. Moreover, it was not established by a preponderance of the evidence that Ms. N was living in the home to provide work-related child care. Ms. D suggested Ms. N had lived with them for two of the three years prior to the parties' separation, so it is just as likely that Ms. N joined the obligor's household as a result of her need for his assistance with housing, rather than his need for help with child care.

B. Shared Custody Calculation

Mr. D and Ms. D agree that they exercised 50/50 shared physical custody of the children from November 2011 through April 2012. Thus, Mr. D met his burden on the shared custody issue for that period of time. Where parents exercise shared custody of their children, Civil Rule 90.3 provides that child support is to be calculated differently than where one parent has primary custody. Each parent's primary custody support obligation to the other is determined based on the income figures for that parent for the year in question. The resulting figure is then inserted into the shared custody formula.

For 2011, Mr. D's total income from all sources was \$90,527.99. A primary custody child support amount calculated from that gross income figure is \$1,549 per month for two children (\$1,148 for one child).³⁸ Ms. D's total income from all sources for 2011 was \$3,354.³⁹ A primary custody child support amount calculated from that gross income figure is \$66 per month for two children (\$50 for one child).⁴⁰

³⁸ Attachment A.
³⁹ Exh. 9 at pg. 10.
⁴⁰ Exh. 9 at pg. 10.

When the parties' primary custody support amounts and shared custody percentages for 2011 are inserted into the shared custody calculation, it yields a child support calculation for Mr. D of \$1,115 per month for two children for November and December 2011.⁴¹

For 2012, CSSD estimated Mr. D's annual income at \$112,353.42.⁴² A primary custody child support amount calculated from this estimate of Mr. D's gross income is \$1,900 per month for two children (\$1,407 for one child).⁴³ In 2012, Ms. D began working for No Name Services for Children & Adults, Inc, where she earns \$12 per hour.⁴⁴ Her estimated annual income for the year is \$24,960.⁴⁵ A primary custody child support amount calculated from that gross income figure is \$506 per month for two children (\$375 for one child).⁴⁶

Inserting the parties' respective income and primary custody child support amounts into a shared custody calculation yields a child support calculation for Mr. D of \$1,045 per month for two children for January through April 2012.⁴⁷

The court order for interim child support took effect as of May 1, 2012, so Mr. D's ongoing child support obligation will continue to be addressed by the court in the future.

IV. Conclusion

Mr. D met his burden of proving by a preponderance of the evidence that CSSD's Amended Administrative Child Support and Medical Support Order was incorrect. The parties exercised shared custody of the children for the entire time period at issue in this appeal. The parties' incomes have been adjusted and Mr. D's child support obligation is now correctly calculated at \$1,115 per month for two children for November and December 2011; and \$1,045 per month for two children for January through April 2012. These amounts should be adopted.

Mr. D is not entitled to any adjustments to his income based on expenses he pays for the custodian or for work-related child care expenses, nor should income be imputed to Ms. D. There was no request for a variance under Civil Rule 90.3(c). Ongoing child support has been set by the court as of May 1, 2012.

41 Attachment B.

42 Exh. 12 at pg. 2.

43 Exh. 12 at pg. 2.

44 Exh. 1A at pg. 5.

45 \$12 per hour x 2080 hours = \$24,960. *See also* CSSD's Exh. 12 at pg. 1.

46 Exh. 12 at pg. 1.

47 Exh. 13.

V. Child Support Order

1. Mr. D is liable for child support for J and D in the amount of \$1,115 per month for two children for November and December 2011; and \$1,045 per month for two children for January through April 2012;
2. The Superior Court issued a child support order to take effect as of May 1, 2012, so ongoing support has been addressed by the court;
3. All other provisions of the Amended Administrative Child Support and Medical Support Order dated June 26, 2012 remain in full force and effect.

DATED this 31st day of October, 2012.

Signed

Kay L. Howard
Administrative Law Judge

Adoption

This Order is issued under the authority of AS 43.05.010 and AS 44.17.010. The undersigned, on behalf of the Commissioner of Revenue and in accordance with AS 44.64.060, adopts this Decision and Order as the final administrative determination in this matter.

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 19th day of November, 2012.

By: *Signed*

Signature
Kay L. Howard

Name
Administrative Law Judge

Title

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