

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

IN THE MATTER OF: )

K A. T )

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) OAH No. 12-0437-CSS

) CSSD No. 001165116

**DECISION AND ORDER**

**I. Introduction**

This case involves the obligor K A. T's appeal of an Amended Administrative Child and Medical Support Order that the Child Support Services Division (CSSD) issued on August 29, 2012. The child in this case is D, 2. The custodial parent is J L. S.

The formal hearing was held on October 8, 2012. Mr. T did not participate.<sup>1</sup> Ms. S appeared by telephone with counsel. Erinn Brian, Child Support Specialist, represented CSSD. The hearing was recorded.

Based on the record and after careful consideration, CSSD's Amended Administrative Child Support and Medical Support Order dated August 29, 2012, is affirmed, with one caveat: the Superior Court issued a custody order that took effect as of August 1, 2012, so the court has jurisdiction over the ongoing child support amount as of that date.

**II. Facts**

*A. Procedural History*

Public assistance benefits on behalf of D began to be paid in July 2011.<sup>2</sup> CSSD issued an administrative child support order on March 22, 2012, that established Mr. T's child support obligation.<sup>3</sup> The Superior Court issued a Long Term Domestic Violence Order (DVO) on July 30, 2012, which is set to expire on July 30, 2013.<sup>4</sup> Based on that court order, CSSD issued an Amended Administrative Child and Medical Support Order on August 29, 2012, which set Mr. T's total arrears at \$2,310 for the period from July 2011 through August 2012.<sup>5</sup> Mr. T appealed on September 11, 2012, asserting he had 52% custody of D from July 2011 through June 2012,

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<sup>1</sup> Telephone calls were made to Mr. T's two contact numbers prior to the hearing, but he could not be reached. A message was left at the first telephone number for Mr. T to call the Office of Administrative Hearings (OAH); the second number was busy, so no message was left for him. As of the date of this decision, he has not returned the calls.

<sup>2</sup> Exh. 3 at pg. 13.

<sup>3</sup> Exh. 1.

<sup>4</sup> Exh. 2.

<sup>5</sup> Exh. 3.

and that CSSD had used incorrect income information.<sup>6</sup> Ms. S filed an appeal on September 17, 2012, but she withdrew it at the hearing.<sup>7</sup>

*B. Material Facts*

The parties separated in March 2010, when Ms. S moved out of their joint living situation.<sup>8</sup> She had primary custody of D and Mr. T exercised some visitation. In July 2011, Ms. S and Mr. T entered into a written 50/50 custody agreement so that Mr. T could spend more time with D. After about three months, they encountered problems with custody and worked out another 50/50 custody agreement. This next agreement also had to be renegotiated, but again, the parties renewed it. At some point in 2012, the parties' 50/50 shared custody agreement failed and Ms. S resumed primary custody of D.

The relationship between Mr. T and Ms. S had deteriorated. On July 30, 2012, the Anchorage Superior Court issued a long-term domestic violence order (DVO) against Mr. T, which is set to expire on July 30, 2013.<sup>9</sup> Ms. S was granted temporary primary custody of D.<sup>10</sup>

Mr. T's actual income from all sources in 2011 consisted of \$16,133.25 in wages from No Name, LLC;<sup>11</sup> and the PFD of \$1,174; for total income from all sources in the amount of \$17,307.25.<sup>12</sup> A primary custody child support amount calculated from that gross income figure is \$258 per month for one child.<sup>13</sup>

In 2012, Mr. T had received unemployment benefits (UIB) in the amount of \$4,787.20 through the end of September.<sup>14</sup> CSSD imputed income to him for the full year by adding his UIB through September and income from wages that the agency extrapolated for the last three months of the year paid at \$15 per hour (\$10,200 total).<sup>15</sup> The combination of UIB, imputed wages and the PFD equals total annual income of \$14,638.<sup>16</sup> A primary custody child support amount calculated from that gross income figure is \$225 per month for one child.<sup>17</sup>

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<sup>6</sup> Exh. 4.

<sup>7</sup> Exh. 5.

<sup>8</sup> Testimony of Ms. S. Unless where indicated in reference to documentary evidence, the facts are taken from her testimony.

<sup>9</sup> Exh. 2 at pg. 1.

<sup>10</sup> Exh. 2 at pg. 5.

<sup>11</sup> Affidavit of Child Support Specialist Russell L. Crisp, at pg. 1, received on October 23, 2012.

<sup>12</sup> See Exh. 3 at pg. 6.

<sup>13</sup> *Id.*

<sup>14</sup> Affidavit of Mr. Crisp at pg. 1.

<sup>15</sup> Exh. 3 at pg. 9.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

Ms. S is currently unemployed; the last time wages were reported to her was in 2009.<sup>18</sup> She receives Supplemental Security Income (SSI) and Alaska Temporary Assistance (ATAP). Neither SSI nor ATAP are considered income for child support purposes.<sup>19</sup> Her total income from all sources in both 2011 and 2012 consisted of the PFD of \$1,174. A primary custody child support amount calculated from that gross income figure is \$50 per month for one child.<sup>20</sup>

### III. Discussion

Mr. T filed an appeal and requested a formal hearing, but he did not participate in the hearing. Other than his appeal statement, he provided no evidence regarding his current financial circumstances or the custody arrangement between himself and Ms. S.<sup>21</sup> Therefore, this decision is issued under the authority of 15 AAC 05.030(j), which authorizes the entry of a child support decision if the person requesting the hearing fails to appear. The person who filed the appeal, in this case, Mr. T, has the burden of proving by a preponderance of the evidence that CSSD's support order is incorrect.<sup>22</sup>

A parent is obligated both by statute and at common law to support his or her children.<sup>23</sup> In cases established by CSSD, the agency collects support from the date one of the parents requests child support services, or the date public assistance or Medicaid benefits are initiated on behalf of the child.<sup>24</sup> D began receiving public assistance benefits in July 2011, so that is the month CSSD must begin charging support.

Ms. S testified that it was Mr. T who received public assistance benefits on D's behalf, not herself. CSSD explained during the hearing that after public assistance began to be paid to Mr. T, a child support case was opened against Ms. S. However, the parties had an agreement for shared custody, so the shared custody calculation was used to determine support rather than the primary custody calculation.<sup>25</sup> The mathematical formula in the shared custody calculations for both 2011 and 2012 resulted in Mr. T having the obligation to pay support. As a result, CSSD closed the case against Ms. S and opened this case in which Mr. T is the paying parent.

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<sup>18</sup> Affidavit of Mr. Crisp at pg. 2.

<sup>19</sup> Civil Rule 90.3, Commentary III.A.

<sup>20</sup> Exh. 1 at pgs. 8 & 11.

<sup>21</sup> See Exh. 4.

<sup>22</sup> 15 AAC 05.030(h).

<sup>23</sup> *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

<sup>24</sup> 15 AAC 125.105(a)(1)-(2).

<sup>25</sup> Compare Civil Rule 90.3(a) and Civil Rule 90.3(b)(1).

Civil Rule 90.3(a)(1) provides that an obligor's child support amount is to be calculated based on his or her "total income from all sources." CSSD used actual income figures for both Mr. T and Ms. S for all of 2011 and for part of 2012. Since 2012 is not yet completed, CSSD made its best estimate of Mr. T's annual income earning ability. CSSD's research indicates that Mr. T was receiving Medicaid benefits for the second half of 2011, and he was on ATAP from July 2011 through November 2011, and again from January 2012 through June 2012.<sup>26</sup>

Based on Ms. S's testimony, there is no dispute that she and Mr. T shared custody of D on a 50/50 basis for the majority of the time from July 2011 through July 2012. They agreed in writing on three separate occasions that they would share custody of D. Ms. S testified that primary custody eventually returned to her, but the record is not clear as to when that occurred. Thus, shared custody should remain the basis of the child support calculations through July 2012, the last month support is being charged through this administrative child support action. As of August 2012, when the court's long-term DVO took effect and Ms. S was awarded temporary primary custody of D, the court has jurisdiction over the child support obligation.

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.<sup>27</sup> 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 put into the shared custody formula.<sup>28</sup>

The parties' primary custody obligations have been determined in the facts section, above. Inserting their respective 2011 primary custody child support amounts into a shared custody calculation yields a child support amount for Mr. T to pay in the amount of \$156.33 per month for one child.<sup>29</sup> For 2012, beginning in January, inserting the parties' respective 2012 primary custody child support amounts into a shared custody calculation yields a child support amount for Mr. T to pay in the amount of \$130.92 per month for one child.<sup>30</sup> That amount is effective for the period from January 2012 through July 2012; as of August 1, 2012, the court's order awarding Ms. S primary custody went into effect. The court has authority over the support amount as of that date.

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<sup>26</sup> Affidavit of Mr. Crisp at pg. 3.

<sup>27</sup> Civil Rule 90.3(b)(1).

<sup>28</sup> *Id.*

<sup>29</sup> Exh. 3 at pg. 8. CSSD has rounded this number down to \$156 per month. *See* Exh. 3 at pg. 13.

<sup>30</sup> Exh. 3 at pg. 11. CSSD has rounded this number up to \$131 per month. Exh. 3 at pg. 13.

Mr. T asserted in his appeal that CSSD used incorrect income figures for both parties, but he did not appear and present evidence on these issues. Thus, in the absence of any additional evidence, Mr. T did not meet his burden of proof in this appeal.

#### **IV. Conclusion**

Mr. T did not appear at the hearing, so he did not meet his burden of proving by a preponderance of the evidence that CSSD's Amended Administrative Child Support and Medical Support Order was incorrect. His child support was correctly calculated by CSSD at \$156 per month for July 2011 through December 2011; and \$131 per month for January 2012 through July 2012, based on the parties' agreement to exercise 50/50 shared custody. The court order took effect as of August 1, 2012, so the court has jurisdiction over the child support obligation as of that date.

There was no variance under Civil Rule 90.3(c) requested or granted in this appeal.

#### **V. Child Support Order**

- The Amended Administrative Child Support and Medical Support Order dated August 29, 2012, is affirmed: Mr. T is liable for child support for D in the amount of \$156 per month for July 2011 through December 2011; and \$131 per month for January 2012 through July 2012;
- The court has jurisdiction over the ongoing support amount as of August 1, 2012.

DATED this 19<sup>th</sup> day of November, 2012.

*Signed*

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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 7<sup>th</sup> day of December, 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.]