

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

IN THE MATTER OF)	OAH No. 12-0476-CSS
E A. F)	CSSD No. 001129974
)	
_____)	

DECISION AND ORDER

I. Introduction

This case is B K. L’s appeal of decision issued by the Child Support Services Division (Division), which denied Ms. L’s request to start E A. F’s monthly child support obligation beginning in February of 2012. The order being appealed is the Division’s Administrative Review Decision that was issued on which vacated Mr. F’s administrative child support order for their children, X, Y, and Z. This decision had the effect of removing child support for the months of February 2012 through May of 2012 based on The Division’s determination that the children were in the primary custody of Mr. F during those months. Ongoing child support is covered by a court order effective June of 2012.

On October 17, 2012, a hearing was held to consider Ms. L’s appeal. Ms. L, the custodial parent in this case, participated. Mr. F also participated. The Child Support Services Division (Division) was represented by Russell Crisp, Child Support Services Specialist. The record closed at the end of the hearing.

Having reviewed the record in this case and after due deliberation, I conclude that the Division’s order should be overturned. Mr. F’s child support obligation for X, Y, and Z should not be vacated. The evidence in the record shows that the children were in the primary custody of Ms. L during the months of February 2012 through May of 2012.

II. Facts

Ms. L filed a request for the Division’s services in February of 2012.¹ The Division issued an administrative order establishing Mr. F’s monthly child support obligation based on Mr. F’s income. This order is the Division’s Administrative Child and Medical Support order

¹ Exhibit 1.

that was issued on June 14, 2012. Mr. F's child support was set at \$758 per month in that order effective beginning the month of February 2012.²

A court order was issued in case 3XX-12-00000-CI granting primary custody of the children to Ms. L. Child support was also set at \$758 per month in the court order effective beginning the month of June 2012.³ The court order superseded the Division's administrative order for the months beginning of June 2012.⁴

Mr. F requested an administrative review of the Division's child support order asserting that he had custody of the children during the period covered by the administrative child support order, that is, February 2012 through May of 2012. Mr. F provided letters in support of his claim.⁵

The Division issued an Administrative Review Decision having determined that the Mr. F had custody of the children during the period covered by its order based on the letters and his assertion. The Division issued an order vacating or, or setting aside its child support order covering the period of February 2012 through May of 2012.⁶

Ms. L requested a formal hearing. In her request for a formal hearing, Ms. L explained that she had the children during February 2012 through May of 2012 and provided school record and letters.⁷

At the hearing, Ms. L testified that the children stayed with her all of the nights in the months of February 2012 through May of 2012. Mr. F explained that he had regular visitation with the children for two nights over the weekends during the February and March of 2012 but had not exercised visitation one weekend in February and two weekends in March. Mr. F admitted that he did not have visitation any nights in April or May of 2012.⁸

² Exhibit 3.
³ Exhibit 2.
⁴ Exhibit 2, page 2.
⁵ Exhibit 4.
⁶ Exhibits 7 & 8.
⁷ Exhibit 9.
⁸ Recording of Hearing.

III. Discussion

In a child support hearing, the person who filed the appeal, in this case Ms. L, has the burden of proving by a preponderance of the evidence that the Division's order is incorrect.⁹ At the hearing, Ms. L showed that the Division's determination that Mr. F was a custodial parent for the period covered by the administrative child support order was incorrect.¹⁰ Ms. L is entitled to child support for X, Y, and Z for the months of February 2012 through May of 2012 because she had primary custody of the children during those months.

Shared custody exists when a child resides with a parent at least 30, but no more than 70, percent of the overnights.¹¹ Mr. F did not have shared custody of the children during the period covered by the order because he did not live with the children for 30% of the overnights during that period.

An obligor may be allowed a temporary reduction of child support of as much as 75% for a month during which the child stays with the obligor.¹² This reduction is called a visitation credit. In order to qualify for visitation credit, visitation must last for at least 27 consecutive days.¹³ Mr. F is not entitled to a visitation credit for the period covered by the administrative child support order because the children did not live with him 27 consecutive days from February 2012 through May of 2012.

IV. Conclusion

Ms. L should receive child support for X, Y, and Z of \$758 per month for the months of February 2012 through May of 2012 in accordance with the Division's Administrative Child and Medical Support Order because she had primary custody of the children during those months and Mr. F did not qualify for a visitation credit. The child support amounts in that order were calculated using the primary custody formula in Civil Rule 90.3(a).

V. Child Support Order

1. The Administrative Review Decision Administrative Child and the Vacate

⁹ Alaska Regulation 15 AAC 05.030(h).

¹⁰ Recording of Hearing & Exhibit A.

¹¹ Alaska Civil Rule 90.3(f).

¹² Alaska Civil Rule 90.3(a)(3).

¹³ This requirement is found in Alaska Civil Rule 90.3(a)(3).

Administrative Child and Medical Support Order that the Division issued on September 18, 2012, are overturned.

2. The Division's Administrative Child and Medical Support Order issued on June 14, 2012 is now in effect.
3. Mr. F's child support obligation for his children, X, Y, and Z arrears are set at \$758 per month for the months of in accordance with that order for the months of February 2012 through May of 2012.
4. Arrears and ongoing child support are set by the court in case 3XX-12-00000-CI.

DATED this 23rd day of October 2012.

By: Signed
Mark T. Handley
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 13th day of November, 2012

By: Signed
Signature
Mark T. Handley
Name
Administrative Law Judge
Title

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