

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

| | | |
|------------------|---|---------------------|
| In the Matter of |) | |
| |) | |
| K A. L |) | OAH No. 12-0936-CSS |
| _____ |) | CSSD No. 001166500 |

DECISION AND ORDER

I. Introduction

This case is K A. L's appeal of the modification of his existing child support order for his children, N and J. The Child Support Service Division (Division) issued this order and Mr. L requested a modification.

The modification order increased Mr. L's ongoing child support obligation, setting it at \$1,025 per month based on his estimated income and the assumption that Ms. L has primary custody of the children.

Mr. L requested a formal hearing. This request was referred to the Alaska Office of Administrative Hearings. Administrative Law Judge Mark T. Handley was assigned to conduct the formal hearing, which was held on January 7, 2013. Mr. L participated. Ms. L did not participate.¹ Erinn Brian, Child Support Services Specialist, represented the Division. The hearing was audio-recorded. The record closed at the end of the hearing.

At the hearing, Mr. L explained that he and Ms. L had shared custody of the children, with each of the parents having the children 50% of the nights until a court order was issued in on November 28, 2012, giving him primary custody of the children and giving Ms. L two nights of visitation every weekend. At the hearing, the Division argued that modified child support should be set at \$493.06, based on its new shared custody calculations for the months of October and November, the two months between the effective date of the modification and the first month that Mr. L was awarded primary custody.

Having review the record, the administrative Law Judge, concludes that modified child support should be set at \$493.06, for the months of October and November 2012, based on shared custody the 50/50 shared custody arrangement the parents followed during those months,

¹ Ms. J did not provide a phone number for the hearing as instructed on the notice sent to her and she was not available at any of her phone numbers of record when she was called at the time set for the hearing.

and then set at \$0 per month beginning in December of 2012, based on the effective date of the court award of primary custody to Mr. L.

II. Facts

This case is a modification action.² Mr. L's ongoing child support for his child, N and J was previously set in 2010 at \$691 per month.³ This order was based on the assumption that Mr. L was exercising primary custody of the children. Although Mr. L explained at the hearing that the parents exercised 50/50 shared custody, he did not appeal that order or ask for a modification until September 10, 2012.⁴

After Ms. L filed this request for modification, the Division issued notice of the petition for modification on September 19, 2012.⁵

The Division issued a Modified Administrative Child and Medical Support Order on November 19, 2012.⁶ The Division's order set Mr. L's ongoing child support obligation at \$1025 per month, effective October 1, 2012.⁷ The month obligation in this order was also calculated based on the assumption that Ms. L has primary custody of the both of the children.

Mr. L requested a formal hearing. Mr. L provided a copy of a court order was issued in on November 28, 2012 in case number 3XX-11-XXXXCI.⁸ This order awards primary custody of the children to Mr. L, and allows Ms. L two nights of visitation every weekend.⁹

Prior to the hearing, the Division provided two new calculations for ongoing child support. One of these calculations was a 50/50 shared custody calculation.¹⁰ This calculation resulted in ongoing child support obligation at \$493.06 per month. At the hearing, the Division reported that its records indicated that grants of public assistance were paid to Ms. L for the children for the months of October and November of 2012.

Based on the evidence in the record, I find that it is more likely than not that the Division's latest calculation for 50/50 custody is correct and are based on the best estimate of the

² Alaska Civil Rule 90.3(h) governs modification actions.

³ Exhibit 1.

⁴ Exhibit 1 & Recording of Hearing.

⁵ Exhibit 2 & 3.

⁶ Exhibit 7.

⁷ Exhibit 7.

⁸ Exhibit 9.

⁹ Mr. J's appeal is found at Exhibit 8.

¹⁰ Exhibit 13.

parents' income and the custody situation that existed during the months of October and November of 2012, the two months between the effective date of this modification and the effective date of the court order granting primary custody to Mr. L. ¹¹

III. Discussion

In a child support hearing, the person who filed the appeal, in this case, Mr. L, has the burden of proving by a preponderance of the evidence that the Division's order is incorrect.¹² The evidence provided by the Division and Mr. L did show that the Division's order was incorrect. Based on updated custody information, the Division's filed new calculations.¹³

Civil Rule 90.3 allows a child support amount to be modified if the party requesting the change shows that a material change of circumstances has occurred.¹⁴ The rule states that a material change of circumstances "will be presumed" if the modified support amount would alter the outstanding support order by 15 percent.¹⁵ The monthly child support amounts of both \$493.06 and \$0 are more than a 15 percent decrease from the current order of \$691 per month. Furthermore, either of the two changes in the custody situation, the first to shared custody and the second to primary custody with Mr. L, are material changes of circumstances that would justify a modification, even without a 15% change in the monthly amount.

Shared custody exists when a child resides with a parent at least 30, but no more than 70 percent of the overnights.¹⁶ Under the shared custody formula, the annual amount each parent would pay to the other parent if that parent had sole custody is calculated. That support amount is then multiplied for each parent by the percentage of time the other parent will have physical custody of the children. The parent with the larger amount under this calculation is the obligor parent. The annual award from the obligor parent to the other parent is equal to the difference between the two figures multiplied by 1.5.

Generally, a new monthly child support amount in a modification action should be effective the month after the parties are served with the petition. Following this general rule, the modification would be effective October 1, 2012, because the petition was issued in September

¹¹ Recording of Hearing & Exhibits 9 & 13.

¹² Alaska Regulation 15 AAC 05.030(h).

¹³ Alaska Regulation 15 AAC 125.340.

¹⁴ Alaska Civil Rule 90.3(h)(1).

¹⁵ Alaska Civil Rule 90.3, Commentary X.

¹⁶ Alaska Civil Rule 90.3(f).

of 2012.

Ongoing child support should be calculated based on shared custody for the months of October and November of 2012 because each parent had the children 50% of the overnights during those months and there was no custody order in effect. The Division has a right to collect child support from Mr. L and seek reimbursement for the public assistance paid to support his children the months of October and November 2012.¹⁷

For the months beginning after the court custody order went into effect, beginning with the month of December of 2012, the child support order should be consistent with the custody arrangement set out in the order. Mr. L does not have an ongoing child support obligation after the effective date of the court order because he is the custodial parent under that order. Ms. L is not entitled to have child support set based on shared custody based on her visitation rights in that order. Ms. L's visitation rights under that order provide that the children will spend less than 30% of the nights with her.

IV. Conclusion

Modified child support should be set at \$493.06, for the months of October and November 2012, based on shared custody the 50/50 shared custody arrangement the parents followed during those months. Modified ongoing child support should be set at set at \$0 per month beginning in December of 2012, based on the effective date of the court award of primary custody to Mr. L. This child support amount was calculated using the primary custody formula in Civil Rule 90.3(a).

V. Child Support Order

1. Mr. L's modified ongoing child support for N and J is set in the monthly amount of \$493.06, for the months of October and November 2012, and is set at \$0 per month beginning in December of 2012 in conformance with the court custody order.
2. The Division will give the parties the appropriate debit or credit for their out-of-pocket expenses for providing health insurance coverage for N and J.

¹⁷ Alaska Statute 25.27.130.

All other provisions of the Division's Modified Administrative Child and Medical Support Order issued on November 19, 2012 remain in effect.

DATED this 10th day of January, 2013.

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 31st day of January, 2013

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

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