

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

In The Matter of: )  
 )  
 F R. D D ) OAH No. 13-0238-CSS  
 ) CSSD No. 001185376  
 )  
\_\_\_\_\_ )

**DECISION AND ORDER**

**I. Introduction**

This case involves obligor F R. D D's appeal of an Amended Administrative Child Support and Medical Support Order issued by the Child Support Services Division (CSSD) on January 17, 2013. The children in this case are F, age two, and O, age one. The custodian of record is L S. A.

The formal hearing was held on March 18, 2013. Mr. D D and Ms. A participated by telephone, represented themselves, and testified. E F testified on behalf of Ms. A. Andrew Rawls, Child Support Specialist, participated by telephone and represented CSSD. The record was originally left open through April 9, 2013 for post-hearing filings, but was subsequently re-opened on April 29 to allow the filing of additional documentation. The record closed on May 20. Based on the record, and after careful consideration, CSSD's child support calculations of January 17, 2013 are adopted. Mr. D D's child support obligation for two children, based on divided custody, is set at \$283.56 per month, effective February 1, 2013.

**II. Facts**

*A. Relevant Procedural History*

Ms. A applied for Temporary Assistance for Needy Families (TANF) benefits for O, and Medicaid benefits for O and F, prompting CSSD to initiate proceedings to establish child support for the two children.<sup>1</sup> On October 2, 2012, CSSD issued an Administrative Child Support and Medical Support Order, apparently based on a finding that Ms. A had physical custody of both O and F, that required Mr. D D to pay child support in the amount of \$343 per month.<sup>2</sup> On November 9, 2012, Mr. D D requested an administrative review of CSSD's initial determination and provided additional information, including evidence that he had physical custody of F since March 2012.<sup>3</sup>

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<sup>1</sup> Andrew Rawls hearing testimony.  
<sup>2</sup> Ex. 1 p. 1.  
<sup>3</sup> Ex. 2.

On January 17, 2013, CSSD issued an Administrative Review Decision (ARD) and an Amended Administrative Child and Medical Support Order.<sup>4</sup> That decision stated in relevant part:<sup>5</sup>

Mr. D D said he had no income. [CSSD] based his child support calculation on the amount he said he spends each month to maintain himself. Ms. A's child support calculation [is] based on her receiving an Alaska Permanent Fund Dividend only as she is disabled and receives [Adult Public Assistance] and needs based [Supplemental Security Income]. The child support is based on . . . divided custody . . . as Mr. D D has primary custody of F and Ms. A has primary custody of O.

The ARD concluded that Mr. D D owed arrears of \$2,268.48 for the period June 1, 2012 through January 31, 2013,<sup>6</sup> and ongoing child support of \$283.56 per month beginning February 1, 2013.<sup>7</sup> CSSD's support order was based on Mr. D D receiving adjusted income in the amount of \$20,013.56 per year, or \$1,667.80 per month, and on Ms. A receiving adjusted income in the amount of \$878 per year, or \$73.17 per month.<sup>8</sup>

Mr. D D appealed CSSD's Administrative Review Decision on February 20, 2013.<sup>9</sup> The stated basis for his appeal was that the support award was excessive given that he had no job or income, and given that each parent was taking care of one of the children.<sup>10</sup>

*B. Material Facts*<sup>11</sup>

Mr. D D and Ms. A are the parents of F, age two, and O, age one.<sup>12</sup> Ms. A has physical custody of O and Mr. D D has physical custody of F. Ms. A also has two other children (M, age 13, and J, age 9) from a prior relationship.<sup>13</sup> Ms. A is physically disabled, does not work, and receives Supplemental Security Income and Adult Public Assistance totaling about \$1,000 per month.<sup>14</sup> She also receives public assistance for her children, and \$319.00 per month in child support for the two older children.<sup>15</sup>

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<sup>4</sup> Exs. 3, 4.

<sup>5</sup> Ex. 3 pp. 1 - 2.

<sup>6</sup> Ex. 3, p. 1.

<sup>7</sup> Ex. 3 p. 1; Ex. 4 p. 1.

<sup>8</sup> Ex. 4, p. 8.

<sup>9</sup> Ex. 5, p. 1.

<sup>10</sup> Ex. 5.

<sup>11</sup> All information in this section is taken from Mr. D D's hearing testimony unless otherwise noted.

<sup>12</sup> Undisputed hearing testimony.

<sup>13</sup> L A hearing testimony.

<sup>14</sup> L A hearing testimony.

<sup>15</sup> L A hearing testimony.

When Ms. A was pregnant with F the parties signed a contract in which they agreed that Mr. D D would have custody of F and would not have to pay child support.<sup>16</sup> Mr. D D has had custody of F since just after he was born. Ms. A has had custody of O at all times since June 2012.

Mr. D D has previously worked as an oil field roustabout, construction worker, and mechanic. When he last worked his wages were \$18 - \$20 per hour. However, he has not worked for about three years, since he first had children. He is not currently working.

Mr. D D owns a 4-plex apartment building. He lives in one unit of the apartment building and rents the other three units. However, only one of his tenants is current in payment of rent; the other two are in arrears.

At hearing Mr. D D confirmed that his monthly living expenses are as set forth in Exhibit 4, page 10. Mr. D D spends about \$750 for housing, \$350 for food, \$300.00 on gas for his car, \$120 for electricity, \$100 for gas for heating, \$100 for car insurance, and \$125 for personal care items. Mr. D D's expenses thus total about \$1,845.00 per month or \$22,140 per year.

Mr. D D testified that he has made voluntary child support payments directly to Ms. A of \$100 - \$150 per month. Ms. A acknowledged that Mr. D D had made payments to her, but stated that only some of the payments were for child support. Bank statements provided by Mr. D D after the hearing indicate that he paid Ms. A a total of \$435.00 during the period from July - September 2012.<sup>17</sup>

A summary from Mr. D D's 2011 tax return (form 1040) indicates that he had gross income of \$16,809 in 2008, \$12,215 in 2009, \$12,374 in 2010, and \$10,841 in 2011.<sup>18</sup>

### **III. Discussion**

#### *A. Mr. D D has the Burden of Proof*

Mr. D D appeals CSSD's Administrative Review Decision dated February 20, 2013 on the basis that CSSD's child support award of \$283.56 per month is excessive. As the person who filed the appeal in this case, Mr. D D has the burden of proving, by a preponderance of the evidence, that the child support amount established in CSSD's Administrative Review Decision is incorrect.<sup>19</sup>

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<sup>16</sup> L A hearing testimony. This agreement was not introduced into the hearing record. In any event, the agreement would not supersede the parties' obligation to pay child support under Alaska law.

<sup>17</sup> Ex. 7, pp. 1 - 7.

<sup>18</sup> Ex. 7, p. 40.

<sup>19</sup> 15 AAC 05.030(h).

*B. The Legal Basis of Mr. D D's Child Support Obligation*

A parent is obligated both by statute and at common law to support his or her children.<sup>20</sup> A parent's duty of support begins on the child's date of birth.<sup>21</sup> In those cases in which the child support obligation is determined by CSSD, the agency collects support from the date a parent requests child support services, or the date public assistance or Medicaid benefits are initiated on behalf of the child.<sup>22</sup>

In Alaska, the rules for calculating child support are contained in Civil Rule 90.3. How support is calculated depends upon the type of custody exercised by the parents of the children.<sup>23</sup> Divided custody exists when, as here, the parents each have primary custody of different children.<sup>24</sup>

Calculating child support in divided custody situations is a three step process. First, each parent's child support obligation is separately calculated as if the case involved a primary custody situation.<sup>25</sup> Second, the parents' respective child support obligations are "netted out" by subtracting the lower-earning parent's obligation from the higher-earning parent's obligation.<sup>26</sup> This formula is designed to offset the amount of support which each parent would pay the other parent for the children in the other parent's custody.<sup>27</sup> Third, because divided custody is considered an "unusual circumstance," the tribunal must consider whether the support amount calculated under the first two steps should be varied under Civil Rule 90.3(c)(1).<sup>28</sup>

*C. What is the Correct Amount of Child Support to be Paid?*

Applying the child support formula to this case, the first step is to determine each parent's income. There was no dispute concerning the amount of Ms. A's annual income. Accordingly, the annual income figure determined by CSSD (\$878) is adopted.

Mr. D D's current income was disputed. In 2011 Mr. D D's tax preparer estimated that his 2012 income would be \$10,841.<sup>29</sup> However, Mr. D D agreed at the hearing that his current annual living expenses total \$22,140, and he did not testify that he was relying on savings, loans, or gifts to

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<sup>20</sup> *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987); A.S. 25.20.030.

<sup>21</sup> *State of Alaska, Department of Revenue, Child Support Enforcement Division ex rel. Hawthorne v. Rios*, 938 P.2d 1013, 1015 (Alaska 1997).

<sup>22</sup> 15 AAC 125.105(a)(1)-(2).

<sup>23</sup> Civil Rule 90.3(a), (b) (recognizing four types of custody [primary, shared, divided, and hybrid] and identifying a calculation for each type). See also Civil Rule 90.3(f) (defining types of custody).

<sup>24</sup> Civil Rule 90.3(f).

<sup>25</sup> Civil Rule 90.3(b)(2); Ex. 4, p. 8.

<sup>26</sup> Civil Rule 90.3(b)(2); Ex. 4, p. 8.

<sup>27</sup> Civil Rule 90.3(b)(2); Civil Rule 90.3, Commentary V(D); *Bunn v. House*, 934 P.2d 753, 755-58 (Alaska 1997).

<sup>28</sup> Civil Rule 90.3(b)(2).

<sup>29</sup> Ex. 7, p. 40.

pay any portion of those expenses. Accordingly, math and logic dictate that Mr. D D's current income must be at least equal to his expenses. Accordingly, the annual income figure determined by CSSD (\$22,140) is correct and is adopted.

The next step is to calculate each parent's respective child support obligation and net-out the two figures. The parties did not dispute that CSSD did this correctly, and that the agency's \$283.56 figure, payable by Mr. D D,<sup>30</sup> is correct.

The third and final step is to determine whether the \$283.56 figure should be increased or decreased based on the presence of unusual circumstances. However, in order to vary the support award from \$283.56, Mr. D D must prove, by clear and convincing evidence, that manifest injustice will result if the support award is not varied. The facts of this case indicate that both parties are equally stretched financially. Accordingly, there is no basis on which to increase or decrease the \$283.56 figure under Civil Rule 90.3(b)(2) and Civil Rule 90.3(c)(1).

*D. Credit for Direct Payments*

Bank statements provided by Mr. D D after the hearing indicate that he paid Ms. A a total of \$435 during the period from July - September 2012.<sup>31</sup> Ms. A testified that some portion of these payments represented repayment of a debt and were not related to child support. However, Ms. A did not present specific evidence on this issue. Accordingly, the preponderance of the evidence indicates that Mr. D D should be given credit for \$435 in direct payments; these payments will be deducted from his child support arrears.

**IV. Conclusion**

Mr. D D failed to prove by a preponderance of the evidence that CSSD's Amended Administrative Child Support and Medical Support Order of January 17, 2013, was incorrect. Mr. D D's child support obligation was correctly set at \$283.56 per month from June 1, 2012 through January 31, 2013 and ongoing, beginning February 1, 2013.

Accordingly CSSD's order should be affirmed. There was an implicit request for a variance under Civil Rule 90.3(c) in this appeal, but that request was not granted. Mr. D D did, however, prove by a preponderance of the evidence that he should be given credit for \$435 in direct payments previously made to Ms. A.

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<sup>30</sup> Ex. 4, p. 8.

<sup>31</sup> Ex. 7, pp. 1 - 7.

**V. Child Support Order**

- CSSD’s Amended Administrative Child and Medical Support Order is affirmed -- Mr. D D is liable for child support for O and F in the amount of \$283.56 per month from June 1, 2012 through January 31, 2013 and ongoing;
- Mr. D D must be given credit toward his arrears for \$435 in direct payments previously made to Ms. A from July 2012 through September 2012;
- All other provisions of the Amended Administrative Child and Medical Support Order dated January 17, 2013 remain in full force and effect.

DATED this 10th day of June, 2013.

*Signed* \_\_\_\_\_  
Jay D. Durych  
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 9<sup>th</sup> day of July, 2013.

By: *Signed* \_\_\_\_\_  
Signature  
Angela M. Rodell  
Name  
Deputy Commissioner  
Title

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