

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

IN THE MATTER OF:)

N D. D)

) OAH No. 13-0546-CSS

) CSSD No. 001101760

DECISION AND ORDER

I. Introduction

The obligor, N D. D, appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on March 20, 2013. The obligee children are A, 16, and O, 14. The custodial parent is N Z. H.

The hearing was held on June 26, 2013. Both parties appeared in person. Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was recorded.

Based on the evidence and after careful consideration, CSSD's Modified Administrative Child Support and Medical Support Order is affirmed. Mr. D's child support is modified to \$1,611 per month for two children (\$1,193 for one child), effective February 1, 2013, and ongoing.

II. Facts

Mr. D and Ms. H are the parents of A and O. The parties were never married and they separated when the children were young, although it appears their relationship has been amicable over the years. They did not obtain a court order regarding custody when they separated, although Mr. D has recently filed a custody action in Superior Court that he hopes they can successfully resolve.

Ms. H, A, and O have lived in the home of the custodian's parents, B and E H, for many years. The home was purchased by Ms. H's brother so all the family members could live together and E H could help with child care. Ms. H's sister also lives there.

Over the years, the girls have freely gone back and forth between their home and the obligor's residence, but not so often as to constitute shared custody. In addition to child support, Mr. D has paid for additional items, such as the girls' soccer expenses and cell phones, and has taken them to the doctor when necessary. Mr. D began a new relationship in the past year, which has created some difficulties between him and A and O. They have not stayed overnight at Mr.

D's house since the fall of 2012. Ms. H believes that since A and O are teenagers, she is not going to force them to have overnight visitation with their father.

In 2012, Ms. H began spending significant periods of time in No Name, where her boyfriend lives and works. She does work for his business and travels back and forth to No Name regularly. When she is gone, E H provides day care when necessary and Ms. H gives her mother the child support money she receives from Mr. D. There have been times A and O also have gone to No Name, or have traveled with Ms. H on vacation. At those times, Ms. H and her mother have an agreement that Ms. H will keep the child support funds so she can pay for A's and O's expenses while they are gone from the H family home.

III. Discussion

Child support orders may be modified upon a showing of "good cause and material change in circumstances."¹ If the newly calculated child support amount is more than a 15% change from the previous order, Civil Rule 90.3(h) assumes "material change in circumstances" has been established and the order may be modified. Mr. D's child support has been \$568 per month since February 2001. Thus, a child support calculation of \$653.20 or more would be sufficient to warrant modification in this case.²

A modification is effective beginning the month after the parties are served with notice that a modification has been requested, so this modification is effective as of February 1, 2013.³ In a child support matter, the person who files the appeal, in this case, Mr. D, has the burden of proving by a preponderance of the evidence that CSSD's Modified Administrative Child Support and Medical Support Order was incorrect.⁴

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," minus mandatory deductions such as taxes and Social Security. In this case, CSSD modified Mr. D's child support to \$1,611 per month for two children (\$1,193 for one child), based on his 2012 income that totaled \$94,547.62, including the PFD.⁵ Mr. D agreed the monthly support amount is correct and does not object to it.

¹ AS 25.27.190(e).

² \$568 x 115% = \$653.20.

³ 15 AAC 125.321(d). In this case, the notice was issued on January 29, 2013. Exh. 3.

⁴ 15 AAC 05.030(h); 2 AAC 64.290(e).

⁵ Exh. 5 at pg. 8.

Mr. D's primary argument in response to CSSD's modification of his child support order is that Ms. H did not have A and O in her custody at all times during the previous few months. He provided copies of bank statements with deductions he claims are expenditures he made on behalf of the children over and above his child support obligation. But he did not state what should happen with the child support modification, given Ms. H's travels to No Name.

Based on all of the evidence presented, Mr. D did not meet his burden of proving by a preponderance of the evidence that CSSD's Modified Administrative Child Support and Medical Support Order was incorrect. His child support was correctly modified to \$1,611 per month for two children (\$1,193 for one child), based on his 2012 income and he does not object to this figure.

Ms. H remains the custodian in this child support matter. Her mother, E H, provides child care while Ms. H is traveling out of town and the two of them have a financial arrangement regarding the girls' care that is acceptable to both the custodian and her mother. Absent a legally significant event, such as a change in custody or an application for services from E or B H, there is no reason Mr. D's child support should not continue to be paid to Ms. H.

Finally, it is not clear whether Mr. D is requesting credit against his child support for the money funds he pays for A's and O's sports activities and cell phones.

CSSD may give the obligor credit for direct child support payments made "before the time the obligor is ordered to make payments through the agency."⁶ Mr. D has been paying support through CSSD for several years, so any money he pays for expenses for A and O does not constitute child support for purposes of seeking a credit. Even if his request was timely, he would not be entitled to a direct credit against his support obligation. Child support is intended to be paid to the custodial parent, who makes use of the funds as necessary to support the children. The Alaska Supreme Court generally does not allow an obligor parent to designate specific items purchased for the children as child support because it takes the decision-making authority away from the custodial parent, who is in the best position to know the children's needs. The court has indicated specific items purchased for the children usually should be considered gifts, not child support, and should not be credited as direct child support payments.⁷

⁶ AS 25.27.020(b).

⁷ *CSED v. Campbell*, 931 P.2d 416 (Alaska 1997).

Therefore, Mr. D is not entitled to a credit against his child support obligation for the soccer expenses and cell phones he pays for the children.

IV. Conclusion

Mr. D's child support obligation for A and O was set at \$568 in 2001. CSSD's Modified Administrative Child Support and Medical Support Order correctly modified his child support to \$1,611 per month for two children (\$1,193 for one child), based on his 2012 income. Although she travels away from home on a regular basis, Ms. H remains the custodian in this matter – there has been no court order regarding custody of the children or an application for services from her parents. CSSD's modification order should be affirmed.

V. Child Support Order

- The Modified Administrative Child Support and Medical Support Order CSSD issued on March 20, 2013, is affirmed;
- Mr. D is liable for modified ongoing child support for A and O in the amount of \$1,611 per month for two children (\$1,193 for one child), effective February 1, 2013, and ongoing.

DATED this 18th day of July, 2013.

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 5th day of August, 2013.

By: Signed
Signature
Lawrence A. Pederson
Name
Administrative Law Judge
Title

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