

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

In the Matter of:	)	
	)	OAH No. 13-0611-CSS
E A. D	)	CSSD No. 001186328
_____	)	

**DECISION AND ORDER**

**I. Introduction**

E A. D appealed an Amended Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued on April 15, 2013. The obligee child is O, 1 year old. The other party to the case is T M. U.

The hearing was held on May 23<sup>rd</sup> and July 2<sup>nd</sup> of 2013. Both parties participated by telephone. Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was recorded.

Based on the record and after careful consideration, Mr. D's child support is set at \$136 per month from July 2012 through May 2013; and \$51 per month, effective June 2013 and ongoing.

**II. Facts**

Ms. U began receiving public assistance for O in July 2012.<sup>1</sup> The custodian then applied for child support services in August 2012.<sup>2</sup> CSSD initiated a child support action against Mr. D and established his paternity through genetic testing.<sup>3</sup> CSSD subsequently issued an Amended Administrative Child and Medical Support Order on April 15, 2013 that set his ongoing child support at \$261 per month, with arrears of \$1,860 going back to July 2012.<sup>4</sup> Mr. D appealed on April 30, 2013.<sup>5</sup>

At the hearing, both parties testified that they had recently begun exercising shared custody of O. Ms. U, who previously received a cash public assistance grant, is currently working at a fast food restaurant. She earned \$7,322.16 in 2012.<sup>6</sup> Ms. U does not receive daycare assistance, and she needed help taking care of O, so the parties entered into a written agreement to share custody of O on a 4 night/3 night split. Both Ms. U and Mr. D confirmed the

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<sup>1</sup> Exh. 13 at pg. 7.  
<sup>2</sup> Exh. 1.  
<sup>3</sup> Exhs. 9-10.  
<sup>4</sup> Exh. 13.  
<sup>5</sup> Exh. 14.  
<sup>6</sup> Exh. 16.

arrangement. Ms. U stated their arrangement actually works out to be closer to 50/50, but since they have a written agreement, its provisions should be followed in determining Mr. D's child support obligation. When converted into a percentage figure, the parties share custody on a 53/47 percent basis.

Mr. D is currently going to school to obtain an Associate's Degree in Computer and Networking Technology. In September 2012, he quit his last job at a fast food restaurant where he was earning \$8 per hour. He explained he left his employment there because he had a disagreement with management, but also because he wanted to start school.

Mr. D received \$7,588.49 in 2012.<sup>7</sup> His third quarter earnings were \$3,132.64.<sup>8</sup> He has been receiving unemployment benefits in 2013.<sup>9</sup> Had he continued to work, he more likely than not would have received an amount similar to the last quarter, so his income would have been approximately \$10,721.13.<sup>10</sup>

When the parties' incomes are inserted into a 53/47 shared custody calculation, it results in Mr. D owing Ms. U monthly child support of \$50.55, which, when rounded to the nearest dollar, equals \$51 per month.<sup>11</sup>

### **III. Discussion**

The issues presented for resolution in this appeal are not complicated. The parties both have minimal incomes for the calculation, and they both agreed they exercise shared custody of O. CSSD abandoned its argument that Mr. D is voluntarily unemployed, so it was not necessary to calculate his support obligation based on his \$8 per hour earnings for full-time work consisting of 2,080 hours per year. That would have resulted in income of over \$16,000 being attributed to him. The actual calculation uses a more reasonable estimate of his income, had he continued working for the remainder of 2012.

The person who filed the appeal, in this case, Mr. D, has the burden of proving by a preponderance of the evidence that CSSD's support order is incorrect.<sup>12</sup>

A parent is obligated both by statute and at common law to support his or her children.<sup>13</sup> In cases established by CSSD, the agency collects support from the date the custodial parent

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<sup>7</sup> Exh. 15.

<sup>8</sup> *Id.*

<sup>9</sup> Exh. 15 at pg. 2.

<sup>10</sup> \$7,588.49 + \$3,132.64 = \$10,721.13.

<sup>11</sup> *See* Attachments A, B & C.

<sup>12</sup> 15 AAC 05.030(h).

requests child support services, or the date public assistance or Medicaid benefits are initiated on behalf of the child.<sup>14</sup> Ms. U began receiving public assistance for O in July 2012, so that is the month in which Mr. D's obligation to support O through CSSD should begin.

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." There is no dispute that Mr. D and Ms. U share custody of O on a 53/47 percentage basis. Thus, Mr. D met his burden on the shared custody issue.

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>15</sup> In a shared custody calculation, each parent's income information is put into one mathematical formula and compared to the other's income. The parent with the higher result will have the child support obligation.

Inserting the parties' respective 2012 figures (Attachments A & B) into a shared custody calculation (Attachment C) yields a child support amount for Mr. D to pay child support of \$51 per month to Ms. U. This figure is in addition to the overnight custody Mr. D exercises – his child support amount is a combination of the overnights O spends with him and the comparison of the parties' respective incomes.

At the hearing on May 23<sup>rd</sup>, Ms. U stated the shared custody had just recently begun, so the shared custody support amount should take effect as of June 2013.

CSSD was directed at the end of the hearing to submit a shared custody calculation for this case, but it failed to do so. The record was reopened on August 7, 2013 and CSSD was ordered to prepare a shared custody calculation. CSSD did not respond to the order. As a result, the administrative law judge prepared the calculations used in this decision.

#### **IV. Conclusion**

Mr. D met his burden of proving by a preponderance of the evidence that CSSD's Amended Administrative Child Support and Medical Support Order was incorrect. The parties exercise shared custody of O on a 53/47 percent basis, so Mr. D's ongoing child support as of June 2013 is now correctly calculated at \$51 per month using the shared custody formula. This figure was calculated pursuant to Civil Rule 90.3, without variation, and it should be adopted.

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<sup>13</sup> *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

<sup>14</sup> 15 AAC 125.105(a)(1)-(2).

<sup>15</sup> Civil Rule 90.3(b)(1).

CSSD calculated Mr. D's arrears at \$136 per month. That figure is correct and should remain in effect from July 2012, when this obligation began, to May 2013, the last month Ms. U had primary custody of O.

**V. Child Support Order**

- Mr. D is liable for child support for O in the amount of \$136 per month from July 2012 through May 2013, and \$51 per month, effective June 2013, and ongoing;
- All other provisions of the Amended Administrative Child Support and Medical Support Order dated April 15, 2013 remain in full force and effect.

DATED this 28<sup>th</sup> day of August, 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 16<sup>th</sup> day of September, 2013.

By: Signed  
\_\_\_\_\_  
Signature  
Christopher Kennedy  
\_\_\_\_\_  
Name  
Administrative Law Judge  
\_\_\_\_\_  
Title

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