

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

IN THE MATTER OF: )

N G. O )

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OAH No. 13-0685-CSS

CSSD No. 001188820

**DECISION AND ORDER**

**I. Introduction**

This case involves the obligor N G. O's appeal of an Amended Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued on March 19, 2013. The obligee children are E, 15; N, 12; and Z, 10. The custodian is L D. O.

The hearing was convened on June 19, 2013. Mr. O appeared by telephone; Ms. O could not be reached, so she did not participate. Erinn Brian, Child Support Specialist, represented CSSD. The hearing was recorded.

Based on the record and after careful consideration, CSSD's Amended Administrative Child Support and Medical Support Order is affirmed. Mr. O's child support is set at \$1,973 per month for three children (\$1,614 for two children; \$1,196 for one child), effective December 2012, and ongoing.

**II. Facts**

Ms. O applied for public assistance for E, N and Z in December 2012.<sup>1</sup> CSSD initiated a child support action and subsequently issued an Amended Administrative Child Support and Medical Support Order that set Mr. O's ongoing child support at \$1,973 per month, with arrears of \$7,892 for the period from December 2012 through March 2013.<sup>2</sup> Mr. O filed an appeal, asserting the calculations are incorrect; he has shared custody of the children; and there has been an absence of due process.<sup>3</sup>

Mr. and Mrs. O are married, but living separately. The children are currently living with Mrs. O. During the hearing, Mr. O raised several complaints regarding his wife's management of their joint financial liabilities, such as not paying the mortgage on the marital home, but these issues cannot be considered in the child support action. Rather, they should be addressed by the

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<sup>1</sup> Exh. 2 at pg. 10.

<sup>2</sup> Exh. 5.

<sup>3</sup> Exh. 6.

court in a divorce or dissolution proceeding because they concern the parties' marital estate, not Mr. O's child support obligation.

Mr. O testified that he is a construction manager. He works in the "wind industries" all over the country and has had several jobs recently – from approximately October 16, 2012 through May 10, 2013, he worked for No Name in No Name. He said he earned \$40.00 per hour, which equaled about \$1,600 per week. Prior to working for No Name in 2012, he said he worked for a company called No Name, and had been with that company for four years prior to 2012.

At the time of the hearing, Mr. O said he had recently become employed by a company called No Name, also known as No Name,<sup>4</sup> and that his work site is in No Name. He works four-weeks-on, and one-week-off, and receives \$2,700 per week while he is on site. However, a CSSD inquiry to No Name indicates he is paid \$3,000 per week while he is in No Name.<sup>5</sup> Mr. O said he first arrived in No Name on March 4, 2013. He has apparently had overlapping employment for No Name and No Name, because his start date with the latter was not specified in its response to CSSD's inquiry, and Mr. O's testimony on this issue has been confusing and contradictory.<sup>6</sup>

When he is home from his work assignment, Mr. O spends time with the parties' children, but the amount of time does not equal shared custody. His work schedule – being on site for four weeks, then home for only one week – does not allow him that amount of time. For example, in April 2013, he testified he had the children every evening, but he acknowledged that they returned to the custodian every night at bedtime. Mr. O may spend significant amounts of time with the children when he is home from his work assignment, but shared custody requires that E, N and Z spend at least 30% of their overnights with him in his home.<sup>7</sup> There is insufficient evidence that the time he has shared custody, so his implied request to calculate child support based on shared custody is denied.

At the close of the hearing, Mr. O was directed to provide a copy of his 2012 federal income tax return, as proof of his 2012 income, and to document his year-to-date income from

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<sup>4</sup> See Exh. 7.

<sup>5</sup> *Id.*

<sup>6</sup> Mr. O testified he worked for No Name through May 10, 2013, but he also stated he arrived in No Name on March 4, 2013. To confound the matter even more, Mr. O later testified that he had been working for No Name since June 12, 2013. There is no clear evidence on this issue in the record.

<sup>7</sup> See Civil Rule 90.3(f)(1).

No Name. His documents were due one month after the hearing, which was no later than July 19, 2013. Mr. O provided only three paystubs. The last, dated February 23, 2013, showed he had gross pay as of that date of \$13,840 from No Name Construction.<sup>8</sup> When considered with his statement that he started in No Name on March 4, 2013, this paystub might show his year-to-date income from No Name. However, he also stated he worked for the company through May 10, 2013, so his paystubs are not a reliable indicator of his total income from No Name in 2013.

Mr. O also did not provide any income documents from No Name, his current employer, nor did he submit his 2012 tax return. CSSD's representative sent him an email to ask if he was going to provide the other documentation, but he replied that he was still on assignment in No Name and had not located the information.<sup>9</sup>

The only documentary evidence of Mr. O's income is three paystubs from his former employer, and a printout from the Alaska Department of Labor and Workforce Development (DOL) that shows No Name paid him \$8,786.25 during the first quarter of 2013.<sup>10</sup> Other than that one quarter, none of Mr. O's employers have reported his earnings to the DOL, and he has not submitted his 2012 tax return, so it is impossible to know what his 2012 income was. Likewise, since he did not provide his paystubs from No Name, Mr. O's year-to-date income is impossible to determine.

### **III. Discussion**

Mr. O requested the hearing in this matter. As the party who filed the appeal, he has the burden under 15 AAC 05.030(h) of proving by a preponderance of the evidence that CSSD's Amended Administrative Child Support and Medical Support Order is incorrect.

A parent is obligated both by statute and at common law to support his or her children.<sup>11</sup> By regulation, CSSD collects support from the date the custodial parent requested child support services, or the date public assistance or foster care was initiated on behalf of the children.<sup>12</sup> In this case, Ms. O applied for public assistance for the children in December 2012, so that is the first month in which Mr. O is obligated to pay support through CSSD.<sup>13</sup>

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<sup>8</sup> Exh. 9 at pg. 1.

<sup>9</sup> Exh. 10.

<sup>10</sup> Exh. 8.

<sup>11</sup> *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

<sup>12</sup> 15 AAC 125.105(a)(1)-(2).

<sup>13</sup> See Exh. 2 at pg. 10.

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." CSSD's amended order set Mr. O's 2012 child support at \$1,973 per month. CSSD used an income amount of \$93,900 per year for him.<sup>14</sup> It was taken from information provided by the Alaska Department of Labor and Workforce Development – the Occupational Employment Statistics (OES) for a construction manager.<sup>15</sup> Mr. O challenged the calculation but did not provide income documentation sufficient to meet his burden of proof. He provided *some* information from his *past* employer, but he did not document his 2012 income, nor did he provide any proof of his current income, even though he was working for his current employer at the time. CSSD's use of the annual income statistics for a construction manager is the best evidence of Mr. O's income. Absent evidence that is sufficient to prove CSSD's calculation was incorrect, Mr. O has not met his burden of proof and the agency's amended order should be affirmed.

#### **IV. Conclusion**

Mr. O did not meet his burden of proving by a preponderance of the evidence that CSSD's calculations were incorrect, as required by 15 AAC 05.030(h). The calculation is based on information provided by the Alaska Department of Labor and Workforce Development for construction managers, and until Mr. O adequately documents his income, the calculation should remain. CSSD's order should be affirmed.

#### **V. Child Support Order**

- CSSD's Amended Administrative Child Support and Medical Support Order dated March 19, 2013, is affirmed – Mr. O's child support is set at \$1,973 per month for three children (\$1,614 for two children; \$1,196 for one child), effective December 2012, and ongoing.

DATED this 20<sup>th</sup> day of August, 2013.

Signed \_\_\_\_\_

Kay L. Howard  
Administrative Law Judge

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<sup>14</sup> Exh. 5 at pg. 9.

<sup>15</sup> See Exh. 5 at pg. 6.

**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 30<sup>th</sup> day of September, 2013.

By: Signed  
Signature  
Angela M. Rodell  
Name  
Acting Commissioner  
Title

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