

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

In the Matter of:)
)
P T, JR.) OAH No. 13-1563-CSS
) CSSD No. 001162075
_____)

DECISION AND ORDER

I. Introduction

P T, Jr. appealed an Amended Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued on October 9, 2013. The obligee child is E, 4 years old. The other party to the case is G M. N.

The hearing was held on November 20, 2013. Both parties participated by telephone. Russell Crisp, Child Support Specialist, represented CSSD. The hearing was recorded.

Based on the record and after careful consideration, Mr. T's child support for E is set at \$387 per month from August 2012 through December 2012, and \$342 per month from January 2013 to the present, and ongoing.

II. Facts

A. Procedural History

Ms. N applied for child support services in September 2011.¹ CSSD initiated a child support action against Mr. T following the expiration in July 2012 of a long-term domestic violence order (DVO) issued by the court.² CSSD issued an Amended Administrative Child and Medical Support Order on October 9, 2013 that set Mr. T's ongoing child support at \$397 per month, with arrears of \$6175 going back to August 2012.³ Mr. T appealed on October 31, 2013.⁴

B. Material Facts

Mr. T is employed by the No Name of Alaska. The Alaska Department of Labor and Workforce Development (DOL) reported that he earned \$30,396.29 in 2012, and for the first three quarters of 2013 (January through September), Mr. T received wages of \$20,453.09.⁵ From those three quarters, CSSD estimated that his total 2013 income would be approximately

¹ Exh. 1.
² Exhs. 2-7.
³ Exh. 8.
⁴ Exh. 9.
⁵ Exh. 11.

\$27,496.47.⁶ Mr. T's 2012 and 2013 earnings, when inserted into CSSD's online child support calculator, yield child support amounts for one child in the amount of \$387 per month for 2012, and \$342 per month for 2013.⁷ These calculations include the PFD in the income sections, and the usual mandatory deductions for taxes and Social Security.⁸ In addition, the calculations include a deduction of \$273 per month for the support Mr. T pays for his older son, Z, who is 7 years of age. Mr. T has overnight visitations with Z 2-3 overnights per week, and Mr. T pays support of \$273 per month for Z through CSSD.

The evidence is insufficient to establish that the parties exercise shared custody of E at this time. Mr. T claimed that he has E several overnights per week, but Ms. N contested that testimony. Mr. T has not documented his overnights with E, and he acknowledged during the hearing that there is no other evidence of the parties exercising shared custody.

III. Discussion

The person who filed the appeal, in this case, Mr. T, has the burden of proving by a preponderance of the evidence that CSSD's support order is incorrect.⁹

A parent is obligated both by statute and at common law to support his or her children.¹⁰ In cases established by CSSD, the agency collects support from the date the custodial parent requests child support services, or the date public assistance or Medicaid benefits are initiated on behalf of the child.¹¹ In this case, Ms. N applied for child support services in September 2011. The Superior Court issued a DVO that expired at the end of July 2012, so CSSD established an administrative child support case as of August 2012. Therefore, that is the month during which Mr. T's obligation to support E through CSSD should begin.

A. CSSD Correctly Calculated Mr. T's Child Support

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 obtained Mr. T's income information for 2012 and 2013 from the Alaska Department of Labor and Workforce Development (DOL). Based on that information, Mr. T's child support obligation for E is correctly calculated at \$387

⁶ Exh. 8 at pg. 11.

⁷ Attachments A & B.

⁸ *Id.*

⁹ 15 AAC 05.030(h).

¹⁰ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

¹¹ 15 AAC 125.105(a)(1)-(2).

per month for 2012, beginning in August of that year.¹² For 2013, CSSD estimated Mr. T's income at \$27,496.47, based on three quarters of earnings information. From the total annual amount, Mr. T's 2013 child support for E is correctly calculated at \$342 per month for one child.¹³

B. The Parties Do Not Exercise Shared Custody

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. In general, and depending on the percentage of time each parent has overnight visitation, the parent obligated to pay child support in a shared custody situation would have a somewhat lower monthly support amount than where one parent exercises primary custody. The rule defines shared custody as follows:

A parent has shared physical custody of children for purposes of this rule if the children reside with that parent for a period specified in writing of at least 30 percent of the year, regardless of the status of legal custody.^{14]}

In order for a visitation day to count toward the required 30% of the year, the children must stay overnight with the respective parent.¹⁵ One year is equal to 365 days, so 30% of the year equals 110 overnights.¹⁶ This is the minimum number of overnights needed on an annual basis to reach the threshold definition of shared custody.

If there is no court order regarding custody, a finding of shared custody under Civil Rule 90.3(f)(1) should be based on a written agreement, but the parties to child support actions rarely have one. In the absence of a written agreement, the parties' actual periods of overnight custody determine whether shared custody exists and, if so, what percentage of shared custody each party exercises.

The parent asserting shared custody has the burden of proof by a preponderance of the evidence.¹⁷ Mr. T and Ms. N have not executed a written agreement for shared custody, so Mr. T must prove that he has had the child at least 30% of the time, and on an ongoing basis, in order to meet the minimum requirements for a shared custody calculation.

¹² Attachment A.

¹³ Attachment B.

¹⁴ Civil Rule 90.3(f)(1).

¹⁵ Civil Rule 90.3, Commentary V.A.

¹⁶ $365 \times .30 = 109.5$ (rounded to 110).

¹⁷ See 2 AAC 64.290(e).

Based on all of the evidence presented, Mr. T did not meet his burden of proving he exercises shared custody of E. Ms. N contested Mr. T's account of the number of overnights he has with E, so he was asked to submit any documentation he might have of the time E spends with him. Mr. T stated he does not have any documentation, so the evidence consists of Mr. T's and Ms. N's conflicting testimony. Under these circumstances, Mr. T cannot prove he exercised shared custody of E.

IV. Conclusion

Mr. T did not meet his burden of proving by a preponderance of the evidence that CSSD's Amended Administrative Child Support and Medical Support Order was incorrect. Mr. T's child support obligation for E is based on his income data provided by the Alaska Department of Labor and Workforce Development. The calculations of \$387 per month for 2012 and \$342 per month for 2013 (and ongoing) are correct and should be adopted. There has been no variance requested or granted under Civil Rule 90.3(c).

V. Child Support Order

- Mr. T is liable for child support for E in the amount of \$387 per month from August 2012 through December 2012, and \$342 per month from January 2013 to the present, and ongoing;
- All other provisions of the Amended Administrative Child Support and Medical Support Order dated October 9, 2013 remain in full force and effect.

DATED this 13th day of February, 2014.

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 3rd day of March, 2014.

By: Signed
Signature
Kay L. Howard
Name
Administrative Law Judge
Title

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