

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

In the Matter of:)
)
K J. D) OAH No. 14-0266-CSS
) CSSD No. 001130939
_____)

DECISION AND ORDER

I. Introduction

K D appeals an Amended Administrative Child and Medical Support Order issued by the Child Support Services Division (CSSD). The obligee child is B. The custodian of record is W H.

A hearing was held on April 29, 2014. Mr. D and Ms. H appeared in person. CSSD was represented by Child Support Specialist Andrew Rawls. This order determines the percentage of time that each parent had custody each year from December of 2003 through September of 2012, and establishes a child support obligation for Mr. D in 2005, 2007, and 2010, because he is deemed to be the obligor parent for those years pursuant to Civil Rule 90.3.

II. Facts

CSSD issued an Amended Administrative Child Support and Medical Support Order on September 13, 2004.¹ On September 21, 2012, the Superior Court entered a new support order.² The 2012 court order set support based on 50/50 shared custody.³ Mr. D's support obligation, however, was set at zero dollars per month⁴ based on the parties' agreement that they were splitting all costs and did not need a child support order.⁵

Mr. D asked CSSD to revise the September 2004 order to reflect that he was the primary custodial parent with custody at least 50% of the time.⁶ Ms. H agreed that since B was born in 2000, the parents had shared custody.⁷ Initially, CSSD determined that the 2004 order did not

¹ Exhibit 1.

² Exhibit 4.

³ Exhibit 4, page 2.

⁴ Exhibit 4, page 2

⁵ Exhibit 4, page 4. A modified order was issued in July of 2013, setting Mr. D's obligation at \$157 per month. Exhibit 5.

⁶ Exhibit 11, page 4.

⁷ Exhibit 11, page 3.

qualify for a default review, and denied the request to reopen that order.⁸ Subsequently, CSSD's director agreed to re-open the 2004 order pursuant to 15 AAC 125.125(e) so that new support calculations could be made from that time forward.⁹

CSSD issued an Amended Administrative Child and Medical Support Order on January 15, 2014.¹⁰ That order established arrears of \$18,004.¹¹ Mr. D appealed that order on January 30, 2014.¹²

III. Discussion

A. Introduction

Beginning with a child's birth, a parent is obligated both by statute and at common law to support his or her children.¹³ This obligation exists regardless of whether a child support order has been issued. 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." The person appealing CSSD's decision has the burden of demonstrating that the decision is incorrect.¹⁴

B. Issues in Dispute

There are two issues in dispute. First, on the same day as the September 21, 2012 Court order, the parties signed a parenting agreement that was also signed by the Court. The relevant provision of that agreement says:

Both parents have assumed B's support throughout his life so there is no request for back child support and both parents have assumed primary custody at different times in B's life. The parents are sharing custody 50/50 and would request that in lieu of any 90.3 child support order that they agree to share 50/50 all school related and after school related costs and the cost of any summer programs that B might attend.

If the judge does order the above paragraph in lieu of ordinary Rule 90.3 child support then we would request a hearing on child support and this section has no effect, however the remainder of this parenting agreement would remain in effect.^[15]

⁸ Exhibit 9.

⁹ Exhibit 12, page 2.

¹⁰ Exhibit 13.

¹¹ Exhibit 13, page 1.

¹² Exhibit 14.

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

¹⁴ 15 AAC 05.030(h).

¹⁵ Exhibit 3 C.

Mr. D argued that this agreement establishes that there were no arrears owed by either parent as of the date the Court adopted the order. Ms. H argued this agreement only applies to the time beginning shortly before the agreement was made, when the parties established a week on/week off schedule for B's visitation between the parents.

The second issue in dispute is only relevant if the first question is answered in Ms. H's favor. The parties dispute how much time each of them had custody of B. Mr. D testified that he has been the primary custodian since 2004, and that Ms. H had custody no more than three nights each week. Ms. H testified that the custody arrangement was about 50/50 over time, but that for some months she had primary custody and for other months Mr. D had primary custody.

There was originally a third issue – each parent's income for each of the relevant years. CSSD reviewed Department of Labor income information, and calculated the annual gross income for each parent for 2003 – 2012. CSSD then used that information to calculate child support based on a 50/50 custody arrangement between the parents. Some of the calculations used actual income and some used a combination of actual income and estimates based on minimum wage. At the hearing, both parents agreed that the total income figures used by CSSD in those calculations were acceptable, and could be relied on here. Those figures are shown in Exhibit 13, pages 17 – 26, for Ms. H, and in Exhibit 18 for Mr. D.

C. The Parenting Agreement Does Not Waive Arrears Accrued Prior to 2012

Both parents agreed that in 2004, shortly before the Amended Administrative Child Support Order was issued, Ms. H withdrew from CSSD's services.¹⁶ After that occurred, both parents were unaware that any child support obligation remained in effect. Significantly, they were unaware of any arrears from the 2004 order when they entered into their parenting agreement. When Mr. D applied for CSSD services in August of 2012, he did not check the box indicating that a prior order was in effect, and he did not provide any information about a prior order.¹⁷ It does not appear that the Court was aware of the prior administrative order when it adopted the parenting agreement.

The parenting agreement is a contract. For a contract to be enforceable, it must contain all of the essential terms of the agreement, and the parties must mutually agree to each of the

¹⁶ See Exhibit 2.

¹⁷ Exhibit 3.

terms.¹⁸ The term at issue in this case is whether the arrears that had accrued on the 2004 administrative order had been satisfied through the 50/50 sharing of custody as expressed in the parenting agreement. Since neither parent was aware of the arrears, they could not have mutually agreed that the arrears had been satisfied and that no unpaid child support was due. Therefore, this provision does not preclude either party from seeking to first vacate the 2004 order, and then seek to establish new child support obligations for each year up to the effective date of the September 2012 Superior Court order.

D. The Parents Did Not Share Custody 50/50 between 2004 and 2012

The parents agree that shortly before the 2012 Court order, they modified their custody agreement such that B would alternate between households one week at a time. The parties also agree that previously, B would spend weekends with his mother, and most weekdays with his father. They disagree as to when B would move between households, and the number of days each week he spent with each. This is important because with a shared custody arrangement, the child support calculation is based on the percentage of time the child is with each parent. In addition, if the child is with one parent at least 70% of the year, then child support is calculated based on that parent being the primary caretaker.¹⁹

Mr. D testified that beginning in 2004, B would stay with him four or five nights a week. He stated that in August of 2011 B started to stay with Ms. H an extra night on a regular basis, staying with her three nights a week. He further stated that in January of 2012, they began a 50/50 custody arrangement.

Ms. H testified that on October 2, 2008, she left for Texas, and returned six months later. During that time, B was staying with Mr. D. She further testified that for up to two years around that same time, B was with Mr. D up to 70% of the time.

For the remaining times, according to Ms. H, they shared custody. Some years B would be with her more than half of the time, and other years he would be with his father more than half of the time. According to Ms. H, this averaged out to a 50/50 split from 2004 through the end of 2011.

It is difficult to reconstruct a schedule several years after the events in question. Memories have faded, and neither party provided records from that time period that clearly show

¹⁸ *Colton v. Colton*, 244 P.3d 1121, 1127 – 1128 (Alaska 2010).

¹⁹ Civil Rule 90.3(f) (definitions of shared and primary custody).

what nights B stayed with each parent. In addition, because it is necessary to establish the child support obligation retroactively, each calendar year must be considered separately. It isn't enough to simply estimate what the average would be over the entire eight years.

Based on all of the evidence provided, it is more likely that B stayed with Mr. D four or five nights each week during 2003, 2004, 2005, 2006, and 2007. Assuming the extra night occurred half of the time, B was with him 4 ½ nights a week, which is equal to 64% of the time.²⁰

This schedule continued through October 2, 2008, when Mr. D assumed full time custody. For the first 40 weeks of the year, B would have been with Mr. D 4 ½ nights each week, or 180 nights. B stayed with Mr. D for the remaining 88 days of the year, which brings the total number of days to 268. This is 73% of the total number of days in the year.²¹ Accordingly, for 2008, Mr. D is considered to have full custody for purposes of calculating child support.

Ms. H indicated she was in Texas for six months, which means she would not have returned until the end of March. Thus, even if B's schedule immediately reverted to staying with his mother two or three days per week, his total time for that year spent with Mr. D would still be more than 70%. Accordingly, Mr. D is considered to have full custody for purposes of calculating child support during 2009.

It is more likely true that the parents returned to their prior schedule for 2010, with Mr. D having custody 64% of the time.

In 2011, Ms. H started asking for more time with B. It is more likely than not that during that year, B was with her three nights a week. Thus, he would have stayed with Mr. D four nights each week, or 57% of the time.

In 2012, the parties started a new schedule, with B staying with each parent half the time. This is most likely the time period referred to in the parenting agreement which was signed by both parents and adopted by the Court. For 2012, both parents agreed that no arrears would be owed. Accordingly, neither parent owes support to the other beginning on January 1, 2012, through the date of the Court's order of September 21, 2012.

²⁰ 4 ½ divided by 7 equals 64%.

²¹ 268 divided by 366 days; 2008 was a leap year.

E. Support Calculations

The parties agreed to use the income amounts for each parent calculated by CSSD to calculate child support if the parenting agreement did not preclude an award of child support. Calculating support based on shared custody is a multi-step process. The first step is to determine the amount each parent would pay to the other parent assuming the other parent had sole custody.²² This amount for each parent is then multiplied by the percentage of time the *other* parent will have custody.²³ Whichever parent has the larger amount under this formula becomes the obligor parent. The child support owed for that year is the difference between the two amounts multiplied by 1.5.²⁴

Child support calculations for each year assuming Ms. H was the obligor parent are shown in Attachment A. Calculations for each year assuming Mr. D was the obligor are shown in Attachment B. The adjusted income, by year, for each parent is shown in Attachment C. Attachment C shows the calculations used to determine which parent is the obligor, and the child support obligation for that year. Based on these calculations, Mr. D is the obligor parent in 2005, 2007, and 2010.

IV. Conclusion

Mr. D is the obligor parent in 2005, 2007, and 2010. In 2005, his child support obligation was \$39.11 per month for one child. In 2007, his obligation was \$23.07 per month for one child. In 2010, Mr. D's child support obligation was \$133.32 per month for one child.

This child support calculation was made pursuant to the guidelines in Civil Rule 90.3.

V. Child Support Order

- From January 1, 2005 through December 31, 2005, Mr. D's child support obligation is set at \$23.07 per month;
- From January 1, 2007 through December 31, 2007, Mr. D's child support obligation is set at \$39.11 per month;
- From January 1, 2010 through December 31, 2010, Mr. D's child support obligation is set at \$133.32 per month;
- Child Support Services Division shall recalculate the arrears owed by Mr. D in

²² Civil Rule 90.3(b)(1)(A).

²³ Civil Rule 90.3(b)(1)(B).

²⁴ Civil Rule 90.3(b)(1)(C).

accordance with the findings stated above;

- All other provisions of the January 15, 2014 Modified Administrative Child Support and Medical Support order remain in effect.

DATED this 6th day of May, 2014.

Signed

Jeffrey A. Friedman
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 2nd day of June, 2014.

By: *Signed*

Signature
Angela M. Rodell

Name
Commissioner

Title

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