

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

In the Matter of:)
)
 Q V. C) OAH No. 14-0446-CSS
) CSSD No. 001190166
_____)

DECISION AND ORDER

I. Introduction

Q V. C appealed an Amended Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in her case February 26, 2014. The obligee child is S, 11 years old. The other party to the case is B W. T.

The hearing was held on May 1, 2014. Ms. C appeared in person with counsel, Jeff Carney; Mr. T participated by telephone. Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was recorded.

Based on the record and after careful consideration, Ms. C's child support arrears for S total \$395 for February and March 2013. The Superior Court has assumed jurisdiction of the child support issue as of September 2013 and ordered that ongoing support for both parties is \$0 because they share 50/50 custody of S and have the same income earning capacity.

II. Facts

Ms. C and Mr. T are the parents of S, who currently is in the custody of each parent on a 50/50 basis. Although they were not married, the parties were together for a period of about 11 years before they split up. Ms. C filed a custody action in the Superior Court, and the court's September 24, 2013 order awarded the parties 50/50 custody of S and set child support for both parents at \$0 because they share custody and have the same income earning capacity.¹

The arrears in this case go back to February and March of 2013, a two-month period of time when Mr. T received public assistance on S's behalf. Mr. T has since withdrawn from services, which caused CSSD to suspend Ms. C's arrears from April 2013 through the date of the court order. As a result, CSSD charged Ms. C with arrears of \$281 per month for February and March 2013, for total arrears of \$562.²

At the hearing, both parties presented testimony regarding the amount of overnights S spent with each one in February and March of 2013. Based on their testimony, it is this

¹ Exh. 5.
² See Exh. 9 at pg. 8.

tribunal's finding that Mr. T had primary custody of S during February 2013. Ms. C acknowledged that, although she had S during most of each day through dinnertime, he did not stay overnight with her most days that month. At most, he spent up to six overnights with her. This number of overnights does not equal shared custody.³

In March 2013, Ms. C had custody of S for approximately 9-10 overnights. This is sufficient to establish 30% shared custody, the minimum amount under Alaska law.⁴ Mr. T had custody of S for the remainder of the overnights in the month, for 70% shared custody. Soon thereafter, the parties began sharing custody of S on a 50/50 basis.

Ms. C is employed at No Name in No Name. According to the Alaska Department of Labor and Workforce Development, her gross income was \$18,415.21 in 2013.⁵ When this income figure is inserted into CSSD's online child support calculator, Ms. C's adjusted annual income is revealed to be \$16,279.45.⁶

Mr. T has not been employed for several years. He is primarily self-employed, but he acknowledged that he sold a tractor from the parties' joint farming activities for \$7,500. The parties disagree as to how those sale proceeds should have been split. CSSD used Mr. T's self-employment income to estimate that his adjusted annual income for 2013 was \$21,411.28.⁷

CSSD used the parties' respective adjusted annual income figures to calculate a shared custody child support amount for Ms. C of \$124.31 for the month of March 2013.⁸

III. Discussion

The person who filed the appeal, in this case, Ms. C, 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, Mr. T received public assistance for S in February and March

³ See Civil Rule 90.3(f)(1).

⁴ *Id.*

⁵ Exh. 12.

⁶ Exh. 11.

⁷ Exh. 13.

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).

2013, then withdrew from services as of April 2013, so February and March are the only months for which Ms. C has an obligation to support S through CSSD.

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 used Ms. C's actual gross income for 2013, as provided by her employer to the Alaska Department of Labor, to determine her adjusted annual income for the child support calculations.¹² The February 2013 calculation is based on Mr. T having primary custody, so that monthly amount is correctly calculated at \$271.¹³

For March 2013, Ms. C exercised 30% shared custody of S and Mr. T had 70% custody. After the hearing, CSSD was directed to calculate Ms. C's support obligation based on the shared custody finding, and also upon Mr. T's testimony regarding his 2013 income. CSSD correctly calculated Ms. C's child support obligation at \$124.31 for March 2013, which should be rounded to the nearest dollar. The result is \$124 for that month, and Ms. C's total arrears due for those two months is \$395.¹⁴

One final matter should be mentioned: Ms. C testified that she provided medical insurance for S during 2013. This matter is being addressed separately by CSSD, which will apply the appropriate credit or debit to her account based on the information she provides regarding her coverage for S.

IV. Conclusion

Ms. C met her burden of proving by a preponderance of the evidence that CSSD's Amended Administrative Child Support and Medical Support Order was incorrect. Based on the parties' incomes, her child support obligation for S has been correctly calculated at \$271 for February 2013 and \$124 for March 2013, making her total arrears \$395. These calculations should be adopted. Mr. T has withdrawn from services effective April 2013, and the court has assumed jurisdiction over the child support issue as of September 2013. There has been no variance granted under Civil Rule 90.3(c).

V. Child Support Order

- Ms. C is liable for child support for S in the amount of \$271 for February 2013, and \$124 for March 2013;
- The arrears from April 2013 through September 2013 are suspended;

¹² Exh. 12.

¹³ Exh. 11.

¹⁴ \$271 + \$124 = \$395

- Ongoing child support has been addressed by the court, effective September 24, 2013, and ongoing;
- All other provisions of the Amended Administrative Child Support and Medical Support Order dated February 26, 2013 remain in full force and effect.

DATED this 28th day of May, 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 16th day of June, 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.]