

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

In the Matter of	)	
	)	
B T	)	OAH No. 17-0513-CSS
_____	)	Agency No. 001218229

**DECISION AND ORDER**

**I. Introduction**

B T appeals a Corrected Administrative Review Hearing Decision and Amended Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued on April 14, 2017. The amended child support order set Mr. T’s obligation for his son Z at \$887 per month, based on primary custody with Z’s mother, K T. Mr. T argued that he exercises shared custody. He also challenged CSSD’s assessment of his expected 2017 income, and he requested a reduction of his support obligation for unusual circumstances, since he incurs significant travel expenses to get to and from his job on the North Slope.

Based on the record and after careful consideration, Mr. T met his burden to show that his child support obligation should be based on shared custody, beginning March 2017. He also showed that his 2017 wage income is likely to be less than the calculation on which CSSD relied. However, Mr. T did not show that his support amount, as calculated under Civil Rule 90.3(a) and (b), is manifestly unjust. Therefore, the request for a variance based on unusual circumstances is denied.

**II. Facts**

*A. Material Facts*

B T and K T are the parents of Z, who will be 16 in September. Mr. T works for No Name Corporation as a diesel mechanic at the No Name oilfield on the North Slope. He commutes from No Name State to Alaska for each of his work shifts, for which he works a two-weeks-on, two-weeks-off schedule. He currently earns \$27.00 per hour.<sup>1</sup> In 2016, however, his hourly rate varied from \$26.50 to \$29 per hour.<sup>2</sup> Including overtime hours, Mr. T’s 2016 gross wages totaled \$70,746.36.<sup>3</sup> This includes wages for some additional days or shifts that Mr. T

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<sup>1</sup> B. T paystub dated 5/26/17 (submitted to record 5/30/17).

<sup>2</sup> In early 2016, Mr. T earned \$29 per hour. Exhibit 5, p. 1. Due to cut-backs in the oil industry, his wages were reduced to \$26.50 in March 2016 and through the rest of the year. See Exhibit 5, pp. 3 - 16.

<sup>3</sup> Exhibit 9, p. 4.

covered for other workers.<sup>4</sup> Mr. T contributes 4% of his gross wages to a retirement plan. He also provides medical coverage for Z, and CSSD agrees he should receive a monthly \$20 credit to his child support obligation for his share of Z's medical insurance.<sup>5</sup>

Mr. T and Ms. T were living in No Name State when they separated in July 2016, and the parties' divorce is currently pending. After the separation, Mr. T identified his address as No Name City, Alaska, where his parents live.<sup>6</sup> However, in December 2016, Mr. T leased an apartment in No Name State that he shares with his adult daughter, son-in-law, and young grandchild. When he is not working on the North Slope, he actually resides in No Name State, where Z and Ms. T also continue to live.

The parties do not have a custody order. They agree that Z will stay overnight with his father when Mr. T is off work and in No Name State. If Mr. T's schedule is consistent, which it typically has not been, this would be approximately 12 of every 28 nights or roughly 40% of each month. From September 2016 through February 2017, Mr. T did not exercise shared custody of Z. With one exception, Z did not spend more than ten nights per month with his father during this period.<sup>7</sup> Ms. T exercised primary custody during these months. Beginning in March 2017, Z has stayed with Mr. T more than ten nights in each month, and Mr. T expects this practice to continue.<sup>8</sup> Because the parties' actual practice since March has been one of shared custody, with Mr. T exercising custody 40% of the time, his support obligation should reflect this arrangement going forward.

Most recently, Ms. T worked in the sales field, and she was paid by commission. She lost her job in February 2017, and she is currently looking for work. Prior to her sales position, she was a stay-at-home parent and a homeschooling parent. Many years ago, she did some work in computer networking and graphic design, but given the passage of time, she likely could not get

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<sup>4</sup> Mr. T did not explain how many extra days or shifts he covered for other workers in 2016, and the amount of his additional 2016 income from this work is not clear.

<sup>5</sup> At present, Mr. T pays for medical insurance for three children, so his insurance expense for additional dependents is divided three ways. He indicated that B will soon be the only dependent for whom he provides medical insurance. At that time, Mr. T should contact CSSD, so it can adjust his medical credit calculation.

<sup>6</sup> See e.g., Exhibit 7, pp. 13-14; Exhibit 9, p. 4. Mr. T's paystubs still identify a No Name City address as his home. B. T paystub submitted 5/30/17.

<sup>7</sup> Exhibit 13, pp. 72-73 (calendars for Jan-Feb 2017), pp. 84-87 (calendars for Sept – Dec 2016). The exception is December 2016, when B spent 11 nights with Mr. T. Exhibit 13, p. 87. During this period of time, however, the parties' typical arrangement was one of primary custody. For November and part of December 2016, Mr. T had not yet established a residence in No Name State. For January and February 2017, he was away from No Name State more than usual, tending to personal business in California and resolving property issues relevant to the parties' divorce. See Exhibit 13, pp. 72-73.

<sup>8</sup> B. T testimony; See also Exhibit 13, pp. 74-83 (2017 calendars).

jobs in those fields today. She is currently looking at jobs working as a dental assistant, for which she would earn \$11 per hour.

*B. Procedural History*

In November 2016, CSSD received a transmittal request from the State of No Name State to establish Mr. T's support obligation for Z.<sup>9</sup> On November 16, 2016, CSSD served the parties with an administrative order to provide financial and medical insurance information.<sup>10</sup> Both parents provided responsive information.<sup>11</sup> CSSD issued an administrative child support order in February 2017, setting Mr. T's ongoing obligation at \$713 per month, based on primary custody with Ms. T and assuming Mr. T's gross wages totaled \$55,120.<sup>12</sup>

Ms. T requested an administrative review hearing and disputed the gross income figure on which CSSD relied.<sup>13</sup> After the review hearing, CSSD issued a decision and amended child support order on April 12, 2017.<sup>14</sup> On April 14, 2017, it issued a Notice of Correction that eliminated the PFD income it had incorrectly attributed to Mr. T.<sup>15</sup> The same day, CSSD issued a corrected administrative review hearing decision and the corrected Amended Administrative Child Support and Medical Support Order that is the subject of this appeal.<sup>16</sup>

The April 14<sup>th</sup> amended child support order calculated Mr. T's 2016 support obligation based on his 2016 gross income of \$70,746.36.<sup>17</sup> After deductions for matters such as federal taxes and Social Security, and including a deduction for contributions to a retirement plan, this income resulted in a primary custody support amount of \$887 per month for one child (\$867 per month after application of the \$20 medical credit). For 2017 and ongoing, CSSD calculated Mr. T's expected income based on his \$26.50 hourly rate, working 12 hours a day during each of his two-week work stints. This resulted in gross annual income of \$72,345 and a \$906 monthly support amount after applicable deductions (\$886 per month after the \$20 medical credit).<sup>18</sup> Because there was no material change between the 2016 and 2017 calculations, CSSD applied the

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<sup>9</sup> Exhibit 1.

<sup>10</sup> Exhibit 2.

<sup>11</sup> Exhibits 3-6.

<sup>12</sup> Exhibit 7. After application of an \$18 medical credit, the monthly obligation was \$695.

<sup>13</sup> Exhibit 8.

<sup>14</sup> Exhibit 10.

<sup>15</sup> Exhibit 11, p. 1.

<sup>16</sup> Exhibit 11.

<sup>17</sup> See Exhibit 9, p. 4; Exhibit 11.

<sup>18</sup> See Exhibit 11, p. 14.

2016 support amount for both years.<sup>19</sup> It also credited Mr. T for direct child support payments of \$750 per month for the four months from November 2016 through February 2017.<sup>20</sup>

Mr. T appealed.<sup>21</sup> He asserted that he shares custody of Z, and he cannot afford the \$887 monthly support amount in addition to his other living expenses. Specifically, he requested a reduction of his support amount due to his significant travel expenses to get to and from his job in Alaska.

The formal hearing took place on May 30, 2017. Mr. T and Ms. T appeared telephonically, represented themselves and testified on their own behalf. Child Support Specialist Joseph West also appeared telephonically and represented CSSD. All submitted documents were admitted to the record. The record closed on May 30, 2017.

### **III. Discussion**

As the person who filed the appeal, Mr. T has the burden of proving by a preponderance of the evidence that CSSD's Amended Administrative Child Support and Medical Support Order is incorrect.<sup>22</sup> For the reasons discussed below, he met that burden.

A parent is obligated both by statute and at common law to support his or her children.<sup>23</sup> When CSSD establishes a support obligation, it collects support from the date the custodial parent requested child support services, or the date public assistance or Medicaid benefits were provided on the child's behalf.<sup>24</sup> In this case, Ms. T applied for child support services in November 2016, so that is the first month in which CSSD's child support order will assess a support obligation for Z.

#### *A. Custody Determination*

The amended child support order calculated Mr. T's support obligation based on a primary custody arrangement. As discussed previously, this accurately reflected the parties' actual practice from November 2016 through February 2017. Starting in March 2017 and continuing through the May 30<sup>th</sup> hearing date, Z has been spending 40% of his overnights with his father. Mr. T expects this schedule to continue, so his support obligation from March forward should be based on shared custody, 40% (father), 60% (mother). Ms. T expressed significant doubts that this shared custody schedule will last through the year,

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<sup>19</sup> Exhibit 11; *Duffus v. Duffus*, 72 P.3d 313 (Alaska 2003).

<sup>20</sup> Exhibit 11, p. 15.

<sup>21</sup> Exhibit 6.

<sup>22</sup> 15 AAC 05.030(h).

<sup>23</sup> *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

<sup>24</sup> 15 AAC 125.105(a)(1)-(2).

since Mr. T has a history of taking on extra work shifts and being away from home for extended time periods. If Mr. T does not actually exercise custody as anticipated, she may request a modification review.

*B. Overview of Civil Rule 90.3 Calculations*

Under Civil Rule 90.3, a parent's child support obligation is to be calculated based on the parent's total income from all sources during the period for which the support is being paid.<sup>25</sup> For past time periods, this calculation can be done based on actual income. For the current year and ongoing obligation, this determination is necessarily a somewhat uncertain endeavor, since the relevant calculation includes an assessment of expected future income.<sup>26</sup> Where a parent's income is relatively stable from year to year, however, it is reasonable to rely on prior year wage information. If the parties' financial situations significantly differ from the expectations on which this decision is based, either party may request a modification review.

In primary custody cases, the non-custodial parent's support obligation for one child is 20% of that parent's adjusted annual income.<sup>27</sup> Adjusted annual income is calculated by determining total income from all sources, and then subtracting specified allowable deductions, such as income taxes, Social Security taxes, and mandatory or voluntary contributions to a retirement or pension plan.<sup>28</sup>

When parents exercise shared custody, Civil Rule 90.3 requires a different calculation. Each parent's support obligation to the other is first determined under the primary custody formula, based on the income figures for that parent for the year in question. The reciprocal primary custody calculations are then placed into a shared custody formula.<sup>29</sup> In general, and depending on the percentage of time each parent has overnight visitation, the parent obligated to pay child support will have a somewhat lower monthly support amount than in a primary custody scenario.

*C. Child Support Calculation*

1. 2016 support amount

Based on the evidence in the record, CSSD correctly determined Mr. T's 2016 support obligation under the primary custody formula, and Mr. T has not shown any error in these

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<sup>25</sup> Civil Rule 90.3(a)(1). *See also* 15 AAC 125.020, 15 AAC 125.030.

<sup>26</sup> Civil Rule 90.3, Commentary III.E.

<sup>27</sup> Civil Rule 90.3(a)(2).

<sup>28</sup> Civil Rule 90.3(a)(1). Contributions to a retirement plan may not exceed 7.5% of gross income.

<sup>29</sup> *See* Attachment C (shared custody calculation).

calculations. CSSD relied on the gross wage figure from Mr. T's 2016 W-2 Form and applied appropriate deductions. This resulted in a support obligation of \$887 per month, effective November 1, 2016, or \$867 after application of the \$20 monthly medical credit.

## 2. 2017 and ongoing support amount

Mr. T argues that his 2017 gross wages will be less than he earned in 2016, because he does not plan to cover extra shifts for other workers, as he has done in the past. He also indicated that he already missed one of his own scheduled work shifts this year, while he resolved some sleep disorder issues. He estimated that his 2017 gross wages will be \$60,000 to \$65,000.<sup>30</sup> Ms. T argued that Mr. T's 2017 wages are likely to be the same as his 2016 wages because of his past work patterns and his significant debts.

Mr. T submitted his most recent paystub for the week ending May 21, 2017.<sup>31</sup> Based on his current pay rate of \$27 per hour, working two-week shifts, 12 hours per day, Mr. T will earn approximately \$68,688 if he misses one two-week shift and does not take on additional work.<sup>32</sup> Based on this expected 2017 gross income figure, and a primary custody calculation for January and February 2017, this income results in a child support obligation of \$836 per month after appropriate deductions, including a 4% contribution of gross wages to a retirement plan.<sup>33</sup> This amount is not a 15% change from the prior support amount, so the prior \$887 monthly obligation should not change for January and February 2017.

For the shared custody calculation, it is necessary to determine Ms. T's expected income from all sources, in order to determine the child support she would owe if Mr. T exercised primary custody. Her 2017 gross annual wage income is uncertain, because she has been unemployed and looking for work for several months. She hopes to find a job paying \$11 per hour, but she agreed she can find work paying No Name State's minimum wage of \$9.25 per hour. Assuming full-time employment over the course of a year, she would earn \$19,240 per year.<sup>34</sup> This results in adjusted annual income of \$16,879.12 and a primary custody calculation of \$281 per month.<sup>35</sup>

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<sup>30</sup> B. T testimony.

<sup>31</sup> B. T submission dated 5/30/17.

<sup>32</sup>  $(\$27/\text{hour} \times 40 \text{ reg. hours}) + (\$27/\text{hour} \times 1.5 \text{ overtime pay} \times 44 \text{ weekly overtime hours}) = \$2,862$  gross income per week.  $\$2,862/\text{week} \times 24 \text{ weeks} = \$68,688$  per year.

<sup>33</sup> See Attachment A (primary custody calculation from CSSD online calculator at: <https://webapp.state.ak.us/cssd/guidelinecalc/form>). This calculation does not adjust for any No Name State state taxes.

<sup>34</sup>  $\$9.25/\text{hour} \times 40 \text{ hours/week} \times 52 \text{ weeks} = \$19,240$ .

<sup>35</sup> See Attachment B (primary custody calculation from <https://webapp.state.ak.us/cssd/guidelinecalc/form>). This calculation does not adjust for any No Name State state taxes.

Starting in March 2017, when the parties began exercising a 40% (father), 60% (mother) custody arrangement, the shared custody formula results in \$583 monthly support obligation, owed by Mr. T.<sup>36</sup>

*D. Civil Rule 90.3(c) Unusual Circumstances*

In his appeal statement, Mr. T argued that his support amount should be reduced due to unusual circumstances, because he incurs significant travel expenses commuting to and from work. These expenses are necessary in order to spend time with his son.

Child support determinations calculated under Civil Rule 90.3 from a non-custodial parent's actual income figures are presumed to be correct. The parent may obtain a reduction in the amount calculated pursuant to Civil Rule 90.3(c), but only if he or she shows that "good cause" exists for the reduction. To establish good cause, the parent must prove by clear and convincing evidence that "manifest injustice would result if the support award were not varied."<sup>37</sup> This is a high standard, and reductions based on hardship are reserved for cases involving unusual circumstances. In making this determination, it is appropriate to consider all relevant evidence, including the circumstances of the custodial parent and the child.

After a discussion during the hearing about the parties' current shared custody arrangement and associated shared custody calculations, Mr. T expressed less concern about the impact of his travel expenses and child support obligation on his overall budget. His ongoing support obligation, as re-calculated in this decision, is substantially reduced due to the shared custody arrangement. Further, the evidence in the record indicates that Mr. T's adjusted annual income is sufficient to provide for his living expenses, including commuting costs, payment toward his debts, and his child support obligation as calculated under Civil Rule 90.3(a) and (b). In addition, Mr. T is comparatively much more financially secure than Ms. T, who currently receives Food Stamp assistance.<sup>38</sup> Mr. T therefore has not met his burden on the issue of financial hardship or unusual circumstances.

**IV. Conclusion**

Mr. T met his burden to show that the April 14, 2017 Amended Administrative Child Support and Medical Support Order should be adjusted. The order correctly set Mr. T's child support obligation at \$887 per month, effective November 2016, based on primary custody with

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<sup>36</sup> Attachment C (shared custody calculation).

<sup>37</sup> Civil Rule 90.3(c); *See also* 15 AAC 12.075.

<sup>38</sup> J. T testimony.

Ms. T. However, the parties began exercising shared custody in March 2017. Their reciprocal child support obligations for 2017 and ongoing were calculated based on the evidence produced in the formal hearing process. Based on a 40% (father), 60% (mother) custody arrangement, their income differences result in a \$583 monthly support obligation for one child, owed by Mr. T. No variance was granted under Civil Rule 90.3(c).

**V. Child Support Order**

- Mr. T's child support obligation for Z is set at \$887 per month based on primary custody, effective November 1, 2016;
- Mr. T's child support obligation is set at \$583 per month, effective March 1, 2017 and ongoing, based on shared custody, 40% (father), 60% (mother);
- All other provisions of the Amended Administrative Child Support and Medical Support Order dated April 14, 2017 remain in full force and effect.

DATED: June 8, 2017.

By: Signed  
Kathryn Swiderski  
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 23<sup>rd</sup> day of June, 2017.

By: Signed  
Signature  
Kathleen A. Frederick  
Name  
Administrative Law Judge  
Title

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