

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

IN THE MATTER OF:)

R. A. III)

) OAH No. 04-0019-CSS
) CSSD NO. 001123665
) DOR NO. 040273
)

DECISION AND ORDER

I. Introduction

This case involves the Obligor R. A. III's appeal of an Amended Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued on March 1, 2004. The Obligee children are Y., DOB 00/00/02, and K., DOB 00/00/03.

The formal hearing was held on September 21, 2004. Mr. A. appeared in person; the Custodian, D. K. B., appeared telephonically. Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was tape-recorded. The record closed on October 5, 2004.

Kay L. Howard, Administrative Law Judge for the Alaska Office of Administrative Hearings, was appointed to hear this appeal by the Chief Administrative Law Judge, Terry L. Thurbon. Having reviewed the record in this case and after due deliberation, I have concluded Mr. A.'s appeal should be granted; he should not be liable for support from July 2003 through November 2003 when he lived in the home with Ms. B. and the children. Also, Mr. A. is entitled to credits totaling \$1600 for direct payments he made to Ms. B.

II. Facts

A. History

On December 11, 2003, CSSD issued an Administrative Child and Medical Support Order in Mr. A.'s case.¹ He requested an administrative review on January 5, 2004.² Following the review, CSSD issued an Amended Administrative Child and Medical Support Order on March 1, 2004, that set ongoing support at \$50 per month, with arrears of \$1866 for the period from July 2003 through March 2004.³ CSSD subsequently issued a Notice of Adjustment on March 10, 2004, that removed Mr. A.'s arrears for the period from July 2003 through November

¹ Exh. 2.

² Exh. 3.

³ Exh. 4.

2003 because Mr. A. had filed several affidavits to show that he lived in the home for that period of time.⁴

Mr. A. filed an appeal on March 30, 2004.⁵ CSSD filed a Motion for Dismissal on April 9, 2004, stating that all of Mr. A.'s appeal issues had already been addressed by CSSD. Neither Mr. A. nor Ms. B. responded to the motion, so it was granted on August 4, 2004. Ms. B. filed a Motion for Reconsideration on August 23, 2004, claiming Mr. A. should have to pay more than \$50 per month ongoing support, since he received approximately \$10,000 in Native corporation dividends in 2004. On August 28, 2004, Deputy Commissioner of Revenue Tom Boutin denied the motion as premature because more evidence was needed regarding Mr. A.'s income. He remanded the appeal for a formal hearing.

At the formal hearing, Mr. A. testified he lived in the home with Ms. B. and the children from July 2003 through December 14, 2003, when he was incarcerated. Mr. A. stated he was in jail until April 2004, at which time he bailed himself out. After he left jail, Mr. A. said he spent three weeks with Y. and K. in No Name City, then he enrolled in the Anchorage Salvation Army rehabilitation program on June 8, 2004. At the time of the hearing, Mr. A. said he was still participating in the rehabilitation program and planned to finish in a total of nine months.

Mr. A. said he had not been able to work outside of the rehabilitation program because he works in the Salvation Army warehouse for eight hours per day as part of his rehabilitation. After the workday, Mr. A. said he has to attend classes and AA meetings. He said he receives a stipend of \$10 per week from the Salvation Army.

Mr. A. further stated when he completed the program, he hoped to return home with Ms. B. and the children, and to get his former job back. Mr. A. testified before he went to jail, he was employed by the No Name Corp., where he worked on a five-year project that involved building a hostel for the No Name hospital.

Even though he has not been working consistently, Mr. A. acknowledged receiving dividends in 2003 and 2004 from Cook Inlet Region, Inc. (CIRI), his Native corporation. He said he used his \$8000 CIRI dividend in 2004 to bail himself out of jail and also to send Ms. B. money for support in 2004. Mr. A. said he sent Ms. B. \$700 while he was in jail and \$900

⁴ Exh. 6.

⁵ Exh. 7.

between July 2004 and September 2004. He said he also bought items for the children after he left jail, and he provided copies of receipts from a local Wal-Mart store.⁶

Ms. B. also presented testimony at the hearing. She confirmed that Mr. A. lived in the home from April 2003 through mid-December 2003, except for a short time when he worked in No Name City. However, Ms. B. stated she considered Mr. A. a member of the household when he was in No Name City because he sent her items to help support the children. Ms. B. also confirmed Mr. A. sent her money for child support of \$700 while he was incarcerated and \$900 after he was released, and that the children were with him for two to three weeks in June 2004 after he left jail.

At the close of testimony, CSSD stated it had changed its position in Mr. A.'s case. CSSD said Mr. A., with Ms. B.'s confirmation, presented sufficient testimony to establish he was in the home for the period from July 2003 through mid-December 2003, and as a result, CSSD stated it would not charge Mr. A. child support from July 2003 through November 2003. CSSD requested that support begin as of December 2003 because Mr. A. was out of the home more than half of the month.

CSSD also stated Mr. A. should be entitled to credits for direct payments made to Ms. B. of \$700 while he was incarcerated from December 2003 through April 2004, and \$900 from July 2004 through September 2004. Finally, CSSD agreed to recalculate Mr. A.'s child support for the period from December 2003 forward, based on his earnings and Native corporation dividends.

CSSD filed a Post Hearing Brief on September 22, 2004. It states CSSD obtained Mr. A.'s earnings from the Alaska Department of Labor and his dividend information from CIRI, his Native corporation. For the year 2003, CSSD determined Mr. A. received wages of \$12,118.25, a PFD, unemployment benefits of \$1204 and Native corporation dividends of \$8,100, for total income of \$22,529.81.⁷ From this figure, CSSD calculated Mr. A.'s child support at \$443 per month for two children.⁸

⁶ Obligor's Exh. A.

⁷ Exh. 9 at pgs. 1-3.

⁸ Exh. 9 at pg. 1.

For the year 2004, CSSD determined Mr. A. received wages of \$184, a PFD, and Native corporation dividends of \$10,800, for total income of \$12,091.56.⁹ This income figure resulted in a child support amount of \$262 per month for two children.¹⁰

B. Findings

Based on the evidence in the record and after due consideration, I hereby find:

1. As required by 15 AAC 05.030(h), Mr. A. met his burden of proving by a preponderance of the evidence that CSSD's Amended Administrative Child Support and Medical Support Order is incorrect;
2. Ms. B. applied for child support services in July 2003;
3. Mr. A. lived in the home with Ms. B. and Y. and K. from July 2003 through December 14, 2003, at which point Mr. A. was incarcerated;
4. Mr. A. is not liable for support from July 2003 through November 2003;
5. Mr. A. is liable for support from December 2003 forward because he was out of the home more than half the month;
6. Mr. A. made direct payments of \$700 to Ms. B. between January 2004 and April 2004;
7. Mr. A. made direct payments of \$900 to Ms. B. between July 2004 and September 2004;
8. CSSD correctly calculated Mr. A.'s child support at \$443 for December 2003 and \$262 per month for January 2004 and ongoing.

III. Discussion

A. Mr. A.'s Residence

A parent is obligated both by statute and at common law to support his or her children.¹¹ This obligation begins when the child is born.¹² 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 child(ren), up to six years prior to service on the Obligor parent of notice of the action.¹³

⁹ Exh. 10 at pgs. 1-2.

¹⁰ Exh. 10 at pg. 2.

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

¹² *CSSD v. Kovac*, 984 P.2d 1109 (Alaska 1999).

¹³ 15 AAC 125.105(a)(1)-(2).

The primary issue in this appeal is whether Mr. A. lived in the home with Ms. B. and the children during any of the time for which he is being charged child support. CSSD established his support obligation as of July 2003. At the formal hearing, Mr. A. testified he was in the home from July 2003 through December 14, 2003, at which time he was incarcerated. Ms. B. confirmed Mr. A. lived in the home from July 2003 through mid December 2003. CSSD accepted the parties' testimony and removed Mr. A.'s child support assessment from July 2003 through November 2003.

Mr. A. met his burden of proving by a preponderance of the evidence that he lived with Ms. B. from July 2003 through December 14, 2003. Mr. A.'s testimony was consistent and credible, and it was confirmed by Ms. B. and accepted by CSSD. Because he was a member of the household, he was therefore a custodial parent during the period from July 2003 through December 14, 2003, and is not liable for support during that period. Mr. A. is liable for supporting Y. and K. as of December 2003 because he left the home during that month and was out of the home more than half of the month.

B. Direct Payment Credit

Mr. A. testified he used his Native corporation dividend to give money to Ms. B. for child support. He said he gave her \$700 between January 2004 and April 2004, and \$900 between July 2004 and September 2004. Again, Ms. B. confirmed Mr. A.'s statements. CSSD accepted their testimony and indicated Mr. A. is entitled to the direct payment credits of \$700 and \$900 in the months indicated.

Mr. A. met his burden of proving by a preponderance of the evidence that he gave Ms. B. direct payments of \$700 and \$900 in 2004. Mr. A.'s testimony was consistent and credible, and it was confirmed by Ms. B. and accepted by CSSD. He is entitled to credit for those direct payments.¹⁴

IV. Conclusion

Mr. A. met his burden of proving by a preponderance of the evidence that he lived with Ms. B. and the children from July 2003 through December 14, 2003, and that he made direct payments to Ms. B. of \$700 and \$900 in 2004. As a result, Mr. A. is not liable for support from July 2003 through November 2003 and he is entitled to credit for the direct payments he made to

¹⁴ AS 25.27.020(b).

Ms. B. CSSD correctly calculated Mr. A.'s support amount for 2003 and 2004 from his actual income, so those calculations should be adopted as of December 2003.

Accordingly, I issue the following child support order:

V. Child Support Order

1. Mr. A. is liable for child support in the amount of \$443 for December 2003;
2. Mr. A. is liable for child support of \$262 per month for the period from January 2004 through April 2005, and ongoing;
3. Mr. A. is entitled to a direct payment credit of \$700, which should be credited to him in April 2004;
4. Mr. A. is entitled to a direct payment credit of \$900, which should be credited to him in September 2004.

DATED this 21st day of April, 2005.

By: 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. I, Terry L. Thurbon, Chief Administrative Law Judge, on behalf of the Commissioner of Revenue, order that this decision and order concerning the child support obligation of R. A. III be adopted as of this date and entered in his file as the final administrative determination in this appeal.

Under AS 25.27.062 and AS 25.27.250 the Obligor's income and property are subject to an order to withhold. Without further notice, a withholding order may be served on any person, political subdivision, department of the State or other entity.

Reconsideration of this decision may be obtained by filing a written motion for reconsideration within 10 days after the adoption of this decision, pursuant to 15 AAC 05.035(a). The motion must state specific grounds for relief, and, if mailed, be addressed: Commissioner's Office Appeals (Reconsideration), Alaska Department of Revenue, P.O. Box 110400, Juneau, Alaska 99811-0400.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with AS 25.27.210 within 30 days of the date of this decision.

DATED this 21st day of April, 2005.

By: Signed _____
Terry L. Thurbon
Chief Administrative Law Judge

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