

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

IN THE MATTER OF:	)	
	)	OAH No. 04-0039-CSS
D. B. W.	)	CSSD NO. 001115982
_____	)	DOR NO. 040450

**DECISION AND ORDER**

**I. Introduction**

This case involves the Obligor D. B. W.’ appeal of an Amended Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued on May 26, 2004. The Obligee child is N., DOB 00/00/01.

The formal hearing was held on August 12, 2004. Both Mr. W. and the Custodian, O. T. D., appeared in person. David Peltier, Child Support Specialist, represented CSSD. The hearing was tape-recorded. The record closed on September 27, 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. W.’ appeal should be granted; he should not be liable for support for the periods of time he lived in the home with the Obligee N.

**II. Facts**

**A. History**

On February 6, 2004, CSSD issued an Administrative Child and Medical Support Order in Mr. W.’ case.<sup>1</sup> He requested an administrative review on February 26, 2004.<sup>2</sup> Following the review, CSSD issued an Amended Administrative Child and Medical Support Order on May 26, 2004, that set ongoing support at \$305 per month, with arrears of \$7204 for the period from August 2001 through May 2004.<sup>3</sup> Mr. W. filed an appeal on June 21, 2004.<sup>4</sup>

At the formal hearing, Mr. W. did not challenge CSSD’s calculations of his support amount. Rather, he testified he lived in the home with Ms. D. continuously from 1999 until

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<sup>1</sup> Exh. 1.  
<sup>2</sup> Exh. 3.  
<sup>3</sup> Exh. 5.  
<sup>4</sup> Exh. 10.

November 15, 2003. He said he was arrested for assault on Ms. D. and incarcerated on that date and has not returned to the home since then. Mr. W. said he and Ms. D. had a relationship that last four years from 1999 until the date of his incarceration in 2003. He said during their four years together they lived in two apartments, one at No Name Street., and the second at No Name #A.<sup>5</sup> Mr. W. said he lived in each home and contributed to household bills. He acknowledged he knew Ms. D. was receiving public assistance, but he said he thought it was just for her daughter from a prior relationship, not for their son N., who was born on 00/00/01.

Mr. W. said he had not had a chance to gather documents such as bills to corroborate his testimony, but he filed a written statement from his adult daughter. She wrote that her father lived at No Name Street #A from about the end of 2000 until his arrest and incarceration in November 2003. She said she often babysat for her father and Ms. D., and that she had keys to their home. She also said that she and her family visited Mr. W. and Ms. D. on many occasions. Mr. W.' daughter added that both her mother, Mr. W.' ex-wife, and her grandmother visited Mr. W. and Ms. D. in their home. The reason for the visit was that the grandmother wanted to see Mr. W.' house, his girlfriend and their new son, N.

Mr. W. also provided a copy of the police report that documents his arrest for domestic violence assault on Ms. D. on November 15, 2003. According to the report, Ms. D. described Mr. W. as her boyfriend "who she lives with . . . ."<sup>6</sup> The report listed Mr. W.' address as No Name #A, which information was given to the police by Ms. D.<sup>7</sup>

Ms. D. also presented testimony at the hearing. She stated she has had "full custody" of N. since his birth, and that there have been only three individuals in her household: Ms. D., her daughter and N. Ms. D. said she applied for public assistance in 2001. She acknowledged Mr. W. lived in the home at the time, but she testified she did not report him to public assistance because he was not working or providing any support. Ms. D. later said he did pay for small things such as diapers and food, but that Mr. W. never paid the big bills such as rent and utilities.

Ms. D. testified Mr. W. lived with her from August 2001 until she moved into her Alaska Housing apartment later that year. She said he did not move into Alaska Housing with her. Ms. D. said he "stayed there" a few times, and when asked what she meant by that, she said he would

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<sup>5</sup> Neither Mr. W. nor Ms. D. currently lives at either address.

<sup>6</sup> Exh. 11 at pg. 8.

<sup>7</sup> Exh. 11 at pg. 10.

stay for a few weeks to a few months at a time. Ms. D. repeated she did not report Mr. W. in the home because he was not a part of her household, he was a guest.

In response to Ms. D.' testimony, Mr. W. stated he gave her more support than just diapers. He testified he would keep about \$50 from his paychecks and give Ms. D. the rest of the money in order to pay bills. Mr. W. said he considered himself to have contributed to car costs, insurance and clothing, as well as diapers and food. Mr. W. also filed a copy of an insurance statement in his name that lists his address as No Name Street #A, which was Ms. D.' address.<sup>8</sup>

Ms. D. stated she paid the rent and utilities from her public assistance benefits and used food stamps for food. She said she consented to Mr. W. using her address because he was staying with his friend R. and did not have an address of his own.

At the close of testimony, both Mr. W. and Ms. D. agreed to submit either witness statements or copies of old bills that would substantiate their testimony no later than September 13, 2004. On September 23, 2004, CSSD filed a Post Hearing Brief that said neither party filed any documents after the hearing. CSSD also stated that a review of public assistance records back to August 2001 indicated Ms. D. never listed Mr. W. as a member of the household, and she specifically told a public assistance caseworker that Mr. W. was not a member of her household.

## **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. W. 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. D. received public assistance benefits for the child N. beginning in August 2001;
3. Mr. W. lived in the home with Ms. D. and N. from the child's date of birth until November 15, 2003, when Mr. W. was arrested and removed from the home for domestic violence assault;
4. Mr. W. is not liable for support from August 2001 through November 2003;
5. Mr. W. is liable for support from December 2003 forward;
6. Mr. W. did not contest CSSD's calculations for 2003 and 2004;

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<sup>8</sup> Exh. 11 at pg. 6.

7. CSSD correctly calculated Mr. W.' child support at \$117 for December 2003 and \$305 per month for January 2004 and ongoing.

### **III. Analysis**

A parent is obligated both by statute and at common law to support his or her children.<sup>9</sup> This obligation begins when the child is born.<sup>10</sup> 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.<sup>11</sup>

The primary issue in this appeal is whether Mr. W. lived in the home with Ms. D. and N. during any of the time for which he is being charged child support. At the formal hearing, Mr. W. testified he and Ms. D. were in a relationship for four years and that they lived together continuously during the time they were together. Mr. W. testified he and Ms. D. lived in two residences, first at No Name Street, and then at No Name #A, where Ms. D. rented an apartment provided by Alaska Housing. Mr. W. said they were together from 1999 until he was incarcerated on November 15, 2003.

Mr. W. provided documentary evidence from his adult daughter. She stated in a letter that her father and Ms. D. lived together until he was arrested in November 2003 and that her family spent time at her father's and Ms. D.' home on numerous occasions. Mr. W.' daughter also said that she often babysat N. for them on weekends and that Mr. W.' ex-wife and prior children visited his and Ms. D.' home on at least two occasions.

Ms. D. admitted Mr. W. was living in the home when she applied for public assistance for N. in 2001, but she argued he was not working or providing support, so she did not report him to public assistance. Ms. D. stated Mr. W. did not move from No Name Street with her when she moved into Alaska Housing. She acknowledged Mr. W. helped out with diapers and food, but claimed she was the one who paid the big bills such as the rent and utilities. When asked about Mr. W.' status in her home, Ms. D. replied that he "stayed there" a few times, and when asked how long he stayed, she said from a few weeks to a few months at a time.<sup>12</sup>

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<sup>9</sup> *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

<sup>10</sup> *CSSD v. Kovac*, 984 P.2d 1109 (Alaska 1999).

<sup>11</sup> 15 AAC 125.105(a)(1)-(2).

<sup>12</sup> Tape of hearing.

Ms. D. filed copies of two Alaska Housing rental contracts to try to show Mr. W. was not a member of her household. The first contract, signed on September 19, 2001, lists Ms. D. and her daughter as the members of the household.<sup>13</sup> The second contract is dated June 26, 2003, and lists Ms. D., her daughter and N. as members of the household.<sup>14</sup> Mr. W. is not mentioned on either form.

After reviewing the record in its entirety, I have determined Mr. W. met his burden of proving by a preponderance of the evidence that he lived with Ms. D. from August 2001 through November 2003. Mr. W.' evidence was consistent and credible, in particular, the police report of the incident between the parties on November 15, 2003. The report states Ms. D. told the police Mr. W. was her boyfriend and they lived together.<sup>15</sup> This evidence directly contradicts Ms. D.' hearing testimony that she and Mr. W. did not live together. The police report is more credible than Ms. D.' hearing testimony because it was prepared soon after the assault on November 15, 2003, and Ms. D. would have not had any reason at the time to lie about her relationship with Mr. W. or whether they lived together. At the child support hearing, though, Ms. D. would have had ample motivation because of the possibility she might be subject to welfare fraud charges.

In addition to the police report, Mr. W. filed a copy of a notarized letter from his daughter, who stated the parties lived together until Mr. W. was arrested on November 15, 2003. His daughter's letter provides a significant amount of detail about her activities with Mr. W. and Ms. D., and the relationship between Mr. W.' extended family and the D. family.

Ms. D.' testimony was inconsistent and not credible. She stated Mr. W. lived in the home when N. was born and he did not move with her to No Name #A. Yet when Mr. W. assaulted her, she told the police he was her boyfriend and they lived together at No Name #A. Also, Ms. D. said on the one hand that Mr. W. did not help with support, but she also admitted in the hearing he helped with expenses. Finally, Ms. D. said Mr. W. stayed with her for a few weeks at a time to a few months, but she insisted he was a guest. Ms. D.' description of Mr. W. aside, the evidence as a whole leads to the conclusion Mr. W. was a member of Ms. D.' household and he was therefore one of N.'s custodial parents. As such, he is not liable for child

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<sup>13</sup> Exh. 10 at pg. 1.

<sup>14</sup> Exh. 10 at pg. 4.

<sup>15</sup> Exh. 11 at pgs. 7-11.

support from August 2001 through November 2003. Mr. W. is liable for supporting N. as of December 2003.

**IV. Conclusion**

Mr. W. met his burden of proving by a preponderance of the evidence that he lived with Ms. D. and N. from August 2001 through November 2003, and that as a result, he was a custodial parent and is not liable for support for that period of time. He is liable for support as of December 2003. Mr. W. did not challenge CSSD's calculation of his 2003 and 2004 child support amounts, so those should be adopted as of December 2003. Accordingly, I issue the following child support order:

**V. Child Support Order**

1. Mr. W. is liable for child support in the amount of \$117 for December 2003;
2. Mr. W. is liable for child support of \$305 per month for the period from January 2004 through April 2005, and ongoing.

DATED this 14th 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 D. B. W. 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 19th 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.]