

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

IN THE MATTER OF:)	
)	OAH No. 04-0063-CSS
R. A. G.)	CSSD NO. 001126734
_____)	DOR NO. 040549

DECISION AND ORDER

I. Introduction

This matter involves the Obligor R. A. G.’ appeal of an Amended Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued on July 26, 2004. The Obligee children are T., DOB 00/00/96, and H., DOB 00/00/99. The Custodian of record is P. F. M.

The formal hearing was held in three sessions, the last on January 24, 2005. Mr. G. appeared all three times in person with counsel, Hal P. Gazaway; Ms. M. appeared telephonically during the first and third proceedings. David Peltier, Child Support Specialist, represented CSSD. The hearing was recorded. The record closed on January 24, 2005.

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. G.’ appeal should be granted in part and denied in part. His child support should be calculated based on him exercising 43% physical custody of the children from October 2002 through December 2003, not 50% physical custody, and he should receive credit for paying child support directly to Ms. M. in the amount of \$1900 during the period from October 2002 through December 2003.

II. Facts

A. Procedural History

The Obligees T. and H. became eligible for and began receiving Medicaid benefits in July 2002.¹ On January 28, 2004, the court awarded the parties shared physical custody of the children, with Mr. G. having them each Thursday through Saturday night.² On April 13, 2004,

¹ Pre-Hearing Brief at pg. 1.

² Exh. 11 at pg. 1.

the court awarded primary custody of the children to Ms. M. and ordered Mr. G. to pay child support as of May 1, 2004.³

On March 17, 2004, CSSD served an Administrative Child and Medical Support Order on Mr. G.⁴ He requested an administrative review.⁵ Following the review, CSSD issued an Amended Administrative Child and Medical Support Order on July 26, 2004, that set Mr. G.'s arrears at \$9914 for the period from July 2002 through April 2004.⁶ Mr. G. filed an appeal on August 9, 2004.⁷ CSSD subsequently abandoned its claim for child support for July 2002 through September 2002, so this case now involves arrears only for the period from October 2002 through April 2004.

B. Material Facts

Mr. G. and Ms. M. are the parents of T., DOB 00/00/96, and H., DOB 00/00/99. The parties formerly lived together with the children in an apartment in Anchorage on No Name Avenue. They separated initially in July 2002, but apparently their separation was not final at that time. On October 3, 2002, Ms. M. notified her caseworker at the Division of Public Assistance (DPA) that she was no longer living in the home and had changed her address.⁸ Mr. G. remained in the apartment on No Name Avenue. After she left Mr. G.'s home, Ms. M. lived for awhile with a friend on No Name Drive and she also occasionally stayed in an efficiency unit at the motel where she was employed. In January 2003, Ms. M. leased an apartment on No Name Street, and began living there full-time. In June 2004, Ms. M. moved out of state.

When they separated in October 2002, Mr. G. and Ms. M. began exercising shared physical custody of the children. In general, Mr. G. had the children three nights and four days per week, from Thursday afternoon through Sunday afternoon. Mr. G. usually transferred the children to Ms. M. on Sunday afternoon. Occasionally, Mr. G. had custody of the children more or less often, depending on Ms. M.'s work schedule. Also, the children stayed overnight at times with J. M., their paternal grandmother, on Saturday night and attended church with her on Sunday morning.

³ Exh. 1.

⁴ Exh. 4.

⁵ Exh. 5.

⁶ Exh. 8.

⁷ Exh. 10.

⁸ Tape of hearing.

On March 3, 2003, Mr. G. obtained a 20-day domestic violence order against Ms. M.⁹ The order adopted the parties' pre-existing shared physical custody arrangement. It granted Mr. G. and Ms. M. shared physical custody of T. and H., with Mr. G. having custody each Thursday from 3:30 p.m. through Sunday at 2:30 p.m.¹⁰ This arrangement continued even after the domestic violence order expired.

During the period from October 2002 through December 2003, Mr. G. gave child support totaling \$1900 directly to Ms. M. He bought groceries and helped her pay the rent, utilities and phone bill at her apartment, and occasionally gave her cash. Ms. M. also gave Ms. M. about \$800 to help with household bills, and in December 2003, Ms. M. paid the balance of \$300 on clothes for the children that Ms. M. had placed on layaway. Ms. M. used the clothes for Christmas gifts for T. and H. that year.

Mr. G. also gave Ms. M. \$2500 in July 2002 that she used to purchase a 1996 Geo Prism from Fairview Auto. He also paid the insurance on the car in 2002 and had some mechanical work done on it in 2002 and 2003. Ms. M. subsequently reimbursed Mr. G. \$1500 of the purchase price in three \$500 money orders, and later sold the car back to Fairview Auto. Mr. G. also purchased a minivan in late October 2003. Both parties drove it, but Ms. M. used it more than Mr. G. did. In January 2004, Ms. M. asked Mr. G. to pick up the minivan and she stopped using it.

Mr. G. and Ms. M. maintained a joint bank account through early 2004 and they both used it. The children's PFD's were placed in the account. Also, Ms. M. did not have a debit card for her personal account, so she would transfer funds to the joint account so she could use her debit card from the joint account to withdraw cash.

Sometime in 2003, Ms. M. filed an action for custody of the children in the Alaska Superior Court. On January 28, 2004, the court awarded the parties interim shared physical custody of the children, with Mr. G. having them each Thursday through Saturday night.¹¹ On April 13, 2004, the court issued a final child custody and support order that awarded primary custody to Ms. M. and ordered Mr. G. to pay child support as of May 1, 2004.¹²

⁹ Exh. 10.

¹⁰ Exh. 10 at pg. 12.

¹¹ Exh. 11.

¹² Exh. 1.

III. Discussion

A. Income

A parent is obligated both by statute and at common law to support his or her children.¹³ 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 may impute income to a parent who receives in-kind compensation such as employer-provided housing.¹⁴

Both Mr. G. and Ms. M. provided their income figures to CSSD, which the agency used in the shared custody calculations.¹⁵ These were the correct figures to use. Mr. G. suggested income should be imputed to Ms. M. for the period of time she stayed at the motel after leaving the family home, but there is no evidence in the record that staying at the motel amounted to compensation for Ms. M.'s work there. Therefore, income will not be imputed to Ms. M. for employer-provided housing.

B. Shared Custody

When parents exercise shared custody of their children, Civil Rule 90.3 provides that child support is to be calculated differently than in the situation in which one parent has primary custody. The rule defines shared custody as follows:

A parent has shared physical custody of children for purposes of this rule if the children reside with that parent for a period specified in writing of at least 30 percent of the year, regardless of the status of legal custody.

Civil Rule 90.3(f)(1).

In order for a visitation day to count toward the required 30% of the year, the child(ren) must stay overnight with the respective parent.¹⁶ Both Mr. G. and Ms. M. consistently referred to their custody arrangement as being 50/50 shared custody. Mr. G. also claimed he often had the children more than 50% of the time, however, and Ms. M. testified there were periods of time when Mr. G. did not have them even three nights per week. But the bulk of the parties' testimony and all the other evidence indicates Mr. G. had the children most often from Thursday afternoon through Sunday afternoon, which includes three overnights: Thursday, Friday and

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

¹⁴ Civil Rule 90.3, Commentary III.A.

¹⁵ See Exhs. 13 & 14.

Saturday. Mr. G. may have had the children for a portion of four different days of the week, but three overnights per week does not equal 50/50 shared custody. It equals 43% physical custody pursuant to Civil Rule 90.3, Commentary V.A. Thus, I find the parties exercised 57/43 shared physical custody, with Mr. G. having the children 43% of the time.

After the second session of the formal hearing, I directed CSSD to revise the 2002 and 2003 child support calculations based on the parties' testimony that they shared custody on a 50/50 basis.¹⁷ Given the record in its entirety, however, I find those calculations, along with the one for 2004, should be corrected to reflect the actual 57/43 shared custody scenario. The income amounts CSSD used in the revised 2002-2003 calculations should be employed for the updated 2002-2003 calculations, and the parties' 2004 income amounts from CSSD's earlier calculation should be used for the updated 2004 calculation.¹⁸

The correction results in child support calculations of \$231 per month for October 2002 through December 2002, \$273 per month for 2003, and \$230 per month for January 2004 through April 2004.¹⁹ I find these calculations are now correct.

C. Credit for Direct Payments

Mr. G. requested credit against his child support obligation for financial contributions he made to Ms. M.'s household in 2002 and 2003, for purchasing two vehicles for her, and for making deposits to the parties' joint account, which Ms. M. withdrew for her use. Ms. M. conceded Mr. G. gave her approximately \$1900 in direct support.

CSSD's regulations state that the agency will give credit for direct payments against a child support obligation only if the Obligor provides "clear and convincing evidence" that the payment was made to the custodial parent.²⁰ Evidence of direct payments must include items such as copies of canceled checks, bank statements showing deposits and receipts signed by the custodial parent.²¹

Mr. G. testified he provided Ms. M. with financial support totaling \$10,000-\$12,000 in 2002 and 2003. He stated he often paid Ms. M.'s regular monthly expenses of rent, telephone,

¹⁶ Civil Rule 90.3, Commentary V.A.

¹⁷ See Exh. 14.

¹⁸ See Exh. 9 at pgs. 6 & 7.

¹⁹ Attachments A-C.

²⁰ 15 AAC 125.465(a).

²¹ *Id.*

cable and gas, in addition to at least \$300 per month for food. Mr. G. said he also purchased a 1996 Geo Prism and a minivan for Ms. M. Mr. G. said he did not keep receipts of his purchases. He claimed the statements from the joint account would confirm his testimony, but he did not file copies of the statements so as to supplement the record.

Ms. M. acknowledged Mr. G. and his family provided financial assistance to her of approximately \$3000 to help pay her household bills and to buy groceries. She said that Mr. G. provided about \$1900 of the total \$3000, and the rest was provided by Mr. G.' mother, J. M. Ms. M. agreed that Mr. G. purchased the 1996 Geo Prism, but she claimed she reimbursed him a total of \$1500 of the purchase price in three \$500 money orders. As to the minivan, Ms. M. asserted they both drove it, and after only three months, she asked Mr. G. to take it back.

Mr. G. is entitled to a credit for providing direct child support to Ms. M. in the amount of \$1900 for the period from October 2002 through December 2003. Ms. M. verified he gave her the funds, and I find this constitutes "clear and convincing evidence" of direct support under amount 15 AAC 125.465(a). However, in the absence of receipts or other types of documentation, Mr. G. is not entitled to a credit for any additional funds he claims to have given Ms. M..

The money his mother gave to Ms. M. also cannot be attributed to Mr. G. for direct child support. Ms. M., as the children's grandmother, would have her own ties to the children and independent motives for helping Ms. M. support them. The money she gave Ms. M. was separate from the money Mr. G. gave Ms. M., so he cannot be given credit toward his child support obligation for Ms. M.'s assistance. Similarly, Mr. G.' purchase of the vehicles does not constitute child support. Unlike groceries and other forms of direct household expenses, neither vehicle contributed to the children's support.

III. Conclusion

Ms. M. and Mr. G. shared custody of the children on a 57/43 basis, respectively, after Ms. M. left the home in early October 2002, and through April 2004. Mr. G. provided \$1900 in direct child support, for which he is entitled to a credit against his support obligation. Using the shared custody formula, Mr. G.' child support obligation for T. and H. is correctly calculated at \$231 per month for October 2002 through December 2002, \$273 per month for 2003, and \$230 per month for January 2004 through April 2004, and I conclude these figures should be adopted.

V. Child Support Order

1. Mr. G. is liable for child support in the amount of \$231 per month for October 2002 through December 2002, \$273 per month for 2003, and \$230 per month for January 2004 through April 2004;
2. Ongoing child support as of May 2004 has been set in Alaska Superior Court Case No. 3AN-00-00000CI.

DATED this 11th day of July, 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. G. be adopted as of this date and entered in the 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 11th day of July, 2005.

By: Signed _____

Terry L. Thurbon
Chief Administrative Law Judge

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