

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

IN THE MATTER OF:	)	
	)	OAH No. 04-0081-CSS
G. A. A. II	)	CSSD NO. 001123742
_____	)	DOR NO. 040614

**DECISION AND ORDER**

**I. Introduction**

This case involves the Obligor G. A. A. II's appeal of an Amended Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued on August 27, 2004. The Obligee child is T., DOB 00/00/02.

The formal hearing was held on October 21, 2004, and a supplemental hearing was held on November 23, 2004. Neither Mr. A. nor the Custodian of record, N. D. P., appeared at the first hearing; Mr. A. appeared in person at the second hearing. David Peltier and Andrew Rawls, Child Support Specialists, represented CSSD. Both hearings were tape-recorded. The record closed on January 21, 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. A.'s appeal should be granted; he should not be liable for support for the periods of time he lived in the home with Ms. P. and the Obligee T.

**II. Facts**

**A. History**

Mr. A. was awarded custody of T. by the Alaska Superior Court on June 2, 2004, so ongoing child support has been suspended.<sup>1</sup> This appeal involves Mr. A.'s arrears for public assistance reimbursement from July 2003 through May 2004.

On June 25, 2004, CSSD served an Administrative Child and Medical Support Order on Mr. A.<sup>2</sup> He requested an administrative review. Following the review, CSSD issued an Amended Administrative Child and Medical Support Order on August 27, 2004, that charged

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<sup>1</sup> Exh. 1.

<sup>2</sup> Exh. 2.

Mr. A. with arrears of \$4740 for the period from July 2003 through May 2004.<sup>3</sup> Mr. A. filed an appeal on September 13, 2004.<sup>4</sup>

At the formal hearing, Mr. A. testified the child support order is incorrect because he and Ms. P. and T. lived together from July 2003 through mid-April 2004. He said they lived together at an address on No Name Street in Anchorage from July 2003 through March 2004, when he purchased a home on Blank Street, and they moved there. Mr. A. said he left the relationship and the home in mid-April 2004, and moved to Eagle River. He said Ms. P. stayed at the Blank Street home, and they started exercising 50/50 custody of T. and S., Ms. P.'s child from another relationship. Mr. A. said he was awarded custody of T. by the court on June 2, 2004.

Mr. A. further testified when he and Ms. P. lived together, he supported the family on his income and he did not realize Ms. P. was receiving public assistance until she made a purchase with the Quest card that is provided to benefit recipients. Mr. A. said he asked Ms. P. why she had the card, and she replied she had been approved for benefits. Mr. A. said he thought it was strange that Ms. P. had a Quest card because both he and Ms. P. had applied for public assistance benefits two months earlier, but they were denied.

Mr. A. said after he saw that Ms. P. had a Quest card, he reported the case to the Division of Public Assistance (DPA) fraud unit. He said when the investigator came to his home, Ms. P. answered the door in her bathrobe, which Mr. A. believes proves she was living there. However, he said he was never informed of the outcome of the investigation. Mr. A. said he continued to live with Ms. P. in spite of the public assistance and fraud issues because he did not want to lose T., nor did he want to move out of the home.

Mr. A. submitted several documents in support of his claim that he and Ms. P. lived together. The first is an affidavit from a friend, R. R., who stated he met Mr. A. through work, then the two became friends, visiting each other's houses and participating in activities with their children. He said he even helped Mr. A. and Ms. P. move from their No Name Street residence to the Blank Street location.<sup>5</sup>

The second exhibit is a notarized letter from Mr. A.'s mother, R. A., who lives in Waterloo, Iowa. Mrs. A. wrote that she visited Anchorage for two weeks in September 2003,

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<sup>3</sup> Exh. 5.

<sup>4</sup> Exh. 6.

<sup>5</sup> Exh. A.

and that her son and Ms. P. lived in an apartment on No Name Street. Mrs. A. also stated that at the end of October 2003, Mr. A. flew back to Indiana for a funeral, and brought T. with him.<sup>6</sup>

Mr. A.'s third exhibit is a copy of the lease agreement Mr. A. and Ms. P. signed on November 15, 2001, for the No Name Street apartment. The lease lists them as the two adults living in the home.<sup>7</sup>

The fourth exhibit is a letter Mr. A. wrote on January 14, 2004. It informed the manager of the No Name Street apartment that "we have purchased a house and are giving you this letter of formal notice. It is our intent to vacate on February 15, 2004."<sup>8</sup> Mr. A. did not mention Ms. P. by name, but he referred to "our approximately two and one half year stay in this complex."<sup>9</sup> Also, Mr. A. told the manager that if he had any questions, he could "contact us via letter."<sup>10</sup>

Another exhibit is a Petition for Protective Order that Mr. A. and Ms. P. prepared against a person who apparently was their roommate at one time. The petition, which Mr. A. and Ms. P. signed on July 29, 2003, describes events that occurred in June and July 2003, and states their address is on No Name Street.<sup>11</sup> Mr. A. explained during the hearing that he and Ms. P. prepared the petition, but they did not file it with the court.

At the close of testimony, CSSD requested that Mr. A. be ordered to provide affidavits from two additional individuals not related to Mr. A. He agreed, but according to CSSD, did not file any documents with the agency after the hearing.<sup>12</sup>

## **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. P. received public assistance benefits for the child T. beginning in July 2003;
3. Mr. A. lived in the home with Ms. P. and T. from July 2003 through mid-April 2004;

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<sup>6</sup> Exh. B.

<sup>7</sup> Exh. C.

<sup>8</sup> Exh. C at pg. 4 (emphasis added).

<sup>9</sup> *Id* (emphasis added).

<sup>10</sup> *Id* (emphasis added).

<sup>11</sup> Exh. G.

<sup>12</sup> Post-Hearing Brief.

4. Mr. A. and Ms. P. exercised 50/50 shared custody of T. from mid-April 2004 through the end of May 2004;

5. Mr. A. is not liable for support in this administrative action from July 2003 through mid-April 2004;

6. Mr. A. is liable for child support based on 50/50 shared custody for May 2004;

7. Mr. A. was awarded custody of T. as of June 2004, so ongoing child support should be suspended as of that date.

### **III. Discussion**

A parent is obligated both by statute and at common law to support his or her children.<sup>13</sup> This obligation begins when the child is born.<sup>14</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>15</sup>

The primary issue in this appeal is whether Mr. A. lived in the home with Ms. P. and T. during any of the time for which he is being charged child support. At the formal hearing, Mr. A. testified he and Ms. P. lived together from July 2003 through mid-April 2004. He said they lived in two residences, first on No Name Street, and then as of March 2004, in a home he purchased on Blank Street. Mr. A. said he moved out of the home in mid-April 2004, but Ms. P. continued to live there, and they shared custody of T. on a 50/50 shared custody basis.

Mr. A. provided affidavits from his mother and a family friend, R. R. Both confirmed he and Ms. P. lived together during the period of time at issue. Also, Mr. R. stated he and his son participated in recreational activities with Mr. A. and T., and he even helped them move from the No Name Street residence to the home on Blank Street.

Mr. A. also submitted a copy of the lease agreement he and Ms. P. signed in 2001 for the apartment on No Name Street, and a copy of the letter he sent to the apartment manager in January 2004 notifying him they were moving to Blank Street. Finally, Mr. A. filed a copy of the paperwork he and Ms. P. prepared on July 29, 2003, in anticipation of filing a petition for protective order against a former roommate.

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<sup>13</sup> *Mathews v. Mathews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

<sup>14</sup> *CSSD v. Kovac*, 984 P.2d 1109 (Alaska 1999).

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

After reviewing the record in its entirety, I have determined Mr. A. met his burden of proving by a preponderance of the evidence that he lived with Ms. P. from July 2003 through mid-April 2004. Mr. A.'s testimony was consistent throughout, and it was supported by the affidavits and other documents he provided. After Mr. A. presented his testimony at the hearing, CSSD requested additional affidavits, which Mr. A. agreed to provide, but did not. Given the other documents he provided, I have determined additional evidence from him is not necessary.

Ms. P. did not attend or otherwise participate in the formal hearing. It is not known whether CSSD considered requesting that she be subpoenaed, but her appearance might have provided crucial evidence in this child support appeal involving public assistance reimbursement.

Therefore, the evidence as a whole leads to the conclusion Mr. A. and Ms. P. lived together with T. during the time at issue, and that Mr. A. was one of T.'s custodial parents. As such, he is not liable for child support from July 2003 through April 2004. However, Mr. A. stated he and Ms. P. exercised 50/50 shared custody of T. from mid-April 2004 through May 2004, so he is liable for support for the month of May 2004.

The method of determining Mr. A.'s support obligation for May 2004 is to prepare a child support calculation using the shared custody formula in Civil Rule 90.3(b)(1). Mr. A.'s monthly child support obligation for 2004 has already been determined by CSSD to be \$408 per month.<sup>16</sup> Since Ms. P. was receiving public assistance benefits at the time, her monthly child support obligation is \$50 per month.<sup>17</sup> When these figures are inserted into the shared custody calculation, the resulting figure of \$269 per month is Mr. A.'s child support amount for May 2004, which should be adopted.

#### **IV. Conclusion**

Mr. A. met his burden of proving by a preponderance of the evidence that he lived with Ms. P. and T. during the time period at issue, so as a result, he is not liable for support from July 2003 through April 2004. He is liable for support of \$269 per month for May 2004. Ongoing child support has been suspended as of June 2004, pursuant to a court order.

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<sup>16</sup> Exh. 5 at pg. 11.

<sup>17</sup> Ms. P. only income for 2004 was \$919.84, from the PFD. When inserted into CSSD's online child support calculator, this figure yields a support amount of \$15 per month, but Civil Rule 90.3(c)(3) states that \$50 per month is the minimum monthly child support amount that may be ordered.

**V. Child Support Order**

1. Mr. A. is not liable in this administrative child support action for child support for T. from July 2003 through April 2004;
2. Mr. A. is liable for child support in the amount of \$269 per month for May 2004, and ongoing;
3. Ongoing child support has been suspended as of June 2004, pursuant to a court order awarding Mr. A. custody of T.

DATED this 15th day of June, 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 G. A. A. II 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 15th day of June, 2005.

By: Signed \_\_\_\_\_

Terry L. Thurbon  
Chief Administrative Law Judge

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