

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

IN THE MATTER OF:)

M. E. C.)

) OAH No. 04-0143-CSS
) CSSD NO. 001120513
) DOR NO. 040740
)

DECISION AND ORDER

I. Introduction

This case involves the Obligor M. E. C.'s appeal of a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued on October 20, 2004. The Obligee children are E., DOB 00/00/87, and A., DOB 00/00/89.

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 Ms. C.'s appeal should be granted; her child support should be calculated using her actual income and the third party custody formula.

II. Facts

A. History

Ms. C. has five children, E., A., B., D. and L., who range in age from seventeen down to five years of age, respectively. Ms. C.'s child support obligation for the children is divided between three cases; this particular case involves the two oldest children, E. and A.

The State of Alaska took custody of all five children on February 23, 2004.¹ Ms. C. had a prior child support order for E. in the amount of \$231 per month, which was set in September 2003.² That order was not being enforced in February 2004 because E. was in Ms. C.'s custody at the time. On April 14, 2004, CSSD served a Notice of Petition for Modification of Administrative Support Order on Ms. C. She submitted financial information.³ On October 20, 2004, CSSD issued a Modified Administrative Child Support and Medical Support Order that

¹ Tape of hearing.

² Motion at pg. 1.

³ Exh. 2.

added A. to Ms. C.'s previous order for E., and set modified ongoing support at \$50 per month for both children, effective May 1, 2004.⁴ Ms. C. filed an appeal on October 26, 2004.⁵

On November 18, 2004, CSSD filed a Motion for Summary Adjudication, which was assigned to Administrative Law Judge Mark T. Handley. Ms. C. responded on November 22, 2004.⁶ During the pendency of the Motion for Summary Adjudication, a formal hearing was held in Ms. C.'s two other cases for B., D. and L. on January 27, 2005. Ms. C. appeared in person with Ms. Nina Lopez, her advocate from the Alaska Native Justice Center. Andrew Rawls, Child Support Specialist, represented CSSD. During the hearing, the parties discussed the appeal in this case. Ms. C. requested that all of her cases be decided together, so the parties discussed the available options. The parties agreed that CSSD would withdraw its Motion for Summary Adjudication, and this appeal involving E. and A. would be transferred to the undersigned Administrative Law Judge Howard for a child support decision on the merits of the case based on the testimony from the formal hearing in Ms. C.'s other two appeals.

On February 1, 2005, Administrative Law Judge Handley issued an order transferring the case to the undersigned. Thus, under the authority in 15 AAC 05.030(b)(8), and with the parties' consent, I hereby take judicial notice of the record and child support decisions in Ms. C.'s two other cases, and incorporate herein a portion of those decisions, as the basis for the results here.

B. Formal Hearing

At the formal hearing, Ms. C. testified her child support obligation arose when the State of Alaska took custody of all five of her children on February 23, 2004. B. and one other child returned to the home on August 9, 2004, and the other three children returned on August 27, 2004. The record does not indicate specifically when E. and A. returned, but CSSD should have that information from the Division of Family and Youth Services (DFYS).

Ms. C. said she does not think she should be liable for child support for two reasons. First, she believes the person who reported her to DFYS was motivated by revenge, not concern for the children. Ms. C. said her cousin and his girlfriend had been staying in Ms. C.'s home, but she said they were drinking a lot, so she asked them to leave. Soon thereafter, Ms. C. said DFYS

⁴ Exh. 3.

⁵ Exh. 4.

⁶ Obligor's Exh. A.

was contacted and asked to do a welfare check at her home. Ms. C. believes her cousin's girlfriend called DFYS out of revenge for being asked to leave Ms. C.'s home.

The second reason Ms. C. believes she should not be liable for child support is because the children were receiving adequate care in the home at the time the welfare check occurred. Ms. C. acknowledged she had been drinking, but she said her mother was at home taking care of the children when the social worker arrived to check on them.

Ms. C. further testified that if she is liable for support for the period of time her children were in state custody, she should not have to pay the amounts CSSD calculated. She said she is a single mother, with all five children now back in the home. E. and A.'s younger sister, B., is autistic, so she requires constant one-on-one care. In addition, B. was severely burned in an accident two years ago and had to be hospitalized in Seattle for three months. Ms. C. accompanied B. to Seattle, so Ms. C.'s mother had to fly to Anchorage from their village of No Name to care for the four remaining children, E., A., D. and L. Ms. C. said the family has had to deal with a lot of stress during the last two years.

Ms. C. testified CSSD's finding that she was voluntarily unemployed while the children were gone from the home is in error. She stated after the children were removed, she spent seven months in residential and outpatient treatment. After that, the children were returned to the home, so she did not have the opportunity to find work while they were gone. Since then, Ms. C. said she has started working as an administrative assistant at the South Central Foundation, which also provides her with childcare. In addition, Ms. C. said her niece is living in the home temporarily in order to take care of the children when the childcare services of South Central Foundation are not available.

Ms. C. requested that her three cases be combined so she would not have to pay child support for her children separately, which increases the total amount considerably, and that the month of August be prorated to reflect the specific date when E. and A. returned home. Ms. C. was informed that because the children have different fathers, the cases have to be kept separate. However, CSSD said it had revised the original child support calculations because they were incorrect. CSSD explained that Ms. C.'s child support should be based on her total income for 2004 of \$2,647.72, which includes her earnings, the PFD and a small amount of unemployment

benefits.⁷ This figure results in a child support calculation of \$82.85 per month for all five children, which equals \$16.57 per month per child according to the third party custody provisions of Civil Rule 90.3(i).⁸ CSSD acknowledged its finding that Ms. C. was voluntarily unemployed was made in error because she was hospitalized during the time her children were out of the home. CSSD also stated it had no objection to prorating Ms. C.'s support obligation for August 2004 where necessary.

C. Findings

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

1. As required by 15 AAC 05.030(h), Ms. C. met her burden of proving by a preponderance of the evidence that CSSD's Modified Administrative Child Support and Medical Support Order is incorrect;
2. DFYS took custody of Ms. C.'s five children on February 23, 2004;
3. B. and one other child returned to the home on August 9, 2004, and the other three returned on August 27, 2004;
4. Ms. C.'s 2004 total income from all sources was \$2,647.72, which results in a child support amount of \$16.57 per month per child.

III. Analysis

A parent is obligated both by statute and at common law to support his or her children.⁹ 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." Modification of child support orders may be made upon a showing of "good cause and material change in circumstances."¹⁰

Ms. C.'s child support obligation for E. was set at \$231 per month in 2003, during a time when Ms. C. accompanied E.'s younger sister, B., out of state for medical care.¹¹ After DFYS took custody of the children in February 2004, CSSD modified Ms. C.'s support order for E. by adding A. to the order and setting modified ongoing child support at \$50 per month for both children.¹²

⁷ Exh. 8 at pg. 2.

⁸ Exh. 8 at pg. 1.

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

¹⁰ AS 25.27.190(e).

¹¹ Tape of hearing.

¹² Exh. 3.

DFYS removed Ms. C.'s children from the home on February 23, 2004. Ms. C. does not believe she should have to pay support for the children because her cousin's girlfriend reported her to DFYS out of revenge. It may be true, as Ms. C. testified, that the referral to DFYS was not necessary, but CSSD cannot change the fact that DFYS removed the children from Ms. C.'s home and provided for their day-to-day care until they were returned six months later. Ms. C.'s child support obligation cannot be removed, and she is therefore liable for reimbursing the state for E. and A.'s care during the time period the children were out of the home.

The question of Ms. C.'s income was not an issue at the hearing. She presented testimony about her income, but CSSD had already determined her income and recalculated her support amounts for all of the children prior to the hearing. Ms. C. did not object to CSSD's child support calculation of \$16.57 per month per child, so the calculation of \$33.14 per month should be adopted for E. and A.

IV. Conclusion

Ms. C. met her burden of proving by a preponderance of the evidence that the Modified Administrative Child Support and Medical Support Order was incorrect because CSSD overestimated her income for 2004 and failed to perform the third party child support calculation pursuant to Civil Rule 90.3(i). Ms. C.'s child support obligation is \$16.57 per month per child, so in E. and A.'s case, Ms. C. is liable for modified child support of \$33.14 per month, effective May 2004. E. and A. returned to Ms. C.'s home either on August 9, 2004, or August 27, 2004. CSSD should prorate the child support charge for August 2004 where necessary.

V. Child Support Order

1. Ms. C. is liable for modified child support in the amount of \$33.14 per month for E. and A., effective May 2004;
2. Ongoing child support is suspended as of September 2004, and shall remain suspended so long as Ms. C. remains E. and A.'s custodial parent;

3. CSSD is directed to prorate the month of August 2004 to reflect the specific dates E. and A. returned to the home.

DATED this 13th day of May, 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 M. E. C. 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 13th day of May, 2005.

By: Signed
Terry L. Thurbon
Chief Administrative Law Judge

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