

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

IN THE MATTER OF: )  
 )  
J C. H )  
 )  
 ) OAH No. 04-0476-CSS  
 ) CSSD Case No. 001124871  
\_\_\_\_\_ )

**DECISION AND ORDER**

**I. Introduction**

This case concerns the obligation of J C. H (Obligor) for the support of J A. H (DOB 00/00/96) and M A. H (DOB 00/00/98). The custodian of record is K F.

The Child Support Services Division issued an administrative child support order on February 10, 2004 establishing support at the amount of \$475 per month. Following an administrative review initiated at Mr. H's request, the division amended the order and set support at \$137 per month. Ms. F appealed and requested a formal hearing. Kay Howard, at the time a Hearing Examiner in the Department of Revenue, was appointed to act as the hearing officer.

On August 17, 2004, the hearing officer conducted a telephonic hearing under AS 25.27.170 and 15 AAC 05.030.<sup>1</sup> The hearing was recorded. Mr. H and Ms. F participated. David Peltier, Child Support Specialist, represented the division. The matter was reassigned to Andrew M. Hemenway, a hearing officer in the Office of Administrative Hearings, as the hearing officer to issue a written decision based on the record.

I have reviewed the record and listened to the tape recording of the hearing. I conclude that child support should be set at \$378 per month for 2002, \$470 per month for 2003, and \$418 per month for 2004 and ongoing.

**II. Facts**

J C. H and K L. F are the parents of two children, J and M. Prior to July 29, 2002, the couple lived with their children in a house in Anchorage that was purchased in 2000. Title to the property was in Mr. H's name. Both Mr. H and Ms. F contributed funds to the acquisition and maintenance of the property.

The couple separated on July 29, 2002, when Mr. H moved out of the residence. At the time they separated, the parties executed a written agreement to share custody on a 50-50 basis. Actual custody has not been 50-50. Initially, Mr. H moved into a friend's apartment. He had custody every other weekend and for one week of the 2002 summer vacation. In September, 2002, Mr. H found his own apartment and began having custody of the children every weekend, routinely picking them up on Friday after school and returning them to Ms. F's custody on Sunday evening. He continued to exercise visitation on a weekly basis for two nights a week throughout 2003 and 2004 until the weekend of July 23-24, 2004, when Ms. F unilaterally decided to no longer permit Mr. H to take the children. In addition to weekends, during summer vacation the children stayed with Mr. H for one week in 2002, four weeks in 2003 and two weeks in 2004. A custody action is pending in the superior court.

Mr. H's annual income in 2002 was \$32,794.33, in 2003 was \$34,908.09, and in 2004 was \$30,288.48. Ms. F's annual income in 2002 was \$25,530.58, in 2003 was \$23,989.96, and in 2004 was \$19,738.64.

At the time the parties separated, Mr. H agreed to make the monthly house payment of \$720 on the residence to provide housing for the children; Ms. F paid utilities. Mr. H took out a home equity loan in the amount of \$13,000 in 2002, using some of the funds to pay off personal debts and some for jointly incurred obligations. He ceased making payments on the residence in September, 2003, and transferred title to a third party effective September 30, 2003. From August, 2002, through September, 2003, Mr. H made 13 monthly house payments (not always in the amount due of \$720) totaling \$9,342.50. These payments increased his equity in the residence by \$2,717.22.

### **III. Discussion**

Ms. F's appeal asserted that the child support calculation was in error because it was based on shared custody with each party having custody 50% of the time, when the actual custody arrangement was less. At the hearing, the parties did not dispute the division's income calculations and Mr. H did not dispute that his actual custody was less than 50%. After the hearing, the division submitted a revised calculation on the basis of

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<sup>1</sup> See 15 AAC 125.118(f).

shared custody with Ms. F having custody about 70% of the time and Mr. H about 30% of the time.

The evidence did not precisely establish the amount of visitation, but the preponderance of the evidence supports the conclusion that the division's calculation is substantially correct and that from the date of separation in 2002 through the date of the hearing in 2004 Mr. H had custody for close to, but no less than, 30% of the time.<sup>2</sup> Given these facts, under the actual custody arrangement<sup>3</sup> Ms. F is considered the primary physical custodian. Mr. H is considered to have shared custody and his child support obligation is determined under the shared custody formula set out in Civil Rule 90.3(b).<sup>4</sup> I conclude that the division's calculation of support as set forth in the posthearing brief is substantially correct.

At the hearing, in addition to addressing the shared custody calculation, the parties addressed the impact of their financial arrangements on the child support calculation. Mr. H argued that his contribution to the house payment should be credited against his child support obligation and Ms. F asserted that the home loan Mr. H had taken out should be included as income to Mr. H.

Based on the testimony and evidence, I conclude that the amount of support due in this case should be adjusted to reflect Mr. H's prior contribution to the support of his children. Mr. H paid the monthly house payment, which contributed to the support of the children by providing them with housing. Because \$2,717.22 of the monthly payments contributed to his equity, that amount should not be counted as a contribution to the support of the children. Deducting that amount from his total monthly payments leaves a

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<sup>2</sup> The division calculated Mr. H's custody as 32% in 2002, and 30% in 2003 and 2004. The facts as found in this decision indicate a slightly different calculation of the custody percentages, with Mr. H having custody for 30% of the time in 2002 from the date of separation to the end of the year, 34% in 2003, and 31% in 2004 through the date of the hearing.

The actual arrangement was for weekends and summer visitation. Effective July 23, 2004, Ms. F unilaterally denied visitation, contrary to the prior actual arrangement, but the denial of visitation is not grounds for varying the support obligation from the actual arrangement that had been in effect for two years. *See*, 15 AAC 125.075(c)(1).

<sup>3</sup> At the time of the hearing, no custody order had been entered, and therefore the support calculation is based on the actual custody arrangement. 15 AAC 125.070(d). However, if a custody order has been entered since the date of the hearing, either party may request review of the administrative support order.

<sup>4</sup> 15 AAC 125.070(b).

credit of \$6,624.28.<sup>5</sup> No basis exists for adjusting the child support obligation to reflect the home equity loan of \$13,000. That loan was not income: it was a debt incurred by Mr. H.

#### **IV. Conclusion**

Mr. H had shared custody of the children in 2002, 2003, and 2004. Child support should be calculated on the basis of the adjusted annual income of the parties according to the formula set out in Civil Rule 90.3(b). Mr. H is entitled to a credit in the amount of \$6,624.28 for arrears from August, 2002 through September, 2003.

#### **CHILD SUPPORT ORDER**

1. Mr. H's ongoing child support is set at the rate of \$418 per month effective April 1, 2005.
2. Mr. H owes arrears at the rate of \$378 per month beginning July, 2002 through December, 2002; \$470 per month beginning January, 2003 through December, 2003; \$418 per month beginning January, 2004 through December, 2004; and \$418 per month beginning January, 2005 through March, 2005.
3. Mr. H is entitled to a credit against his arrears (not to exceed the amount of his child support obligation) in the amount of \$6,624.28 for the period from August, 2002 through September, 2003.

DATED: March 18, 2005

Signed \_\_\_\_\_  
Andrew M. Hemenway  
Hearing Officer

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<sup>5</sup> These amounts are derived from Exhibit B. In addition to the monthly amount, Mr. H paid \$3,000 on the mortgage on October 28, 2002. That amount is not considered a contribution for the support of the children: it was in excess of the monthly payment, was not mentioned in the written agreement at the time of separation, and primarily went to an increase in Mr. H's equity.

## ADOPTION

This Order is issued under the authority of AS 43.05.010 and AS 44.17.010. I, Terry Thurbon, Chief Administrative Law Judge, on behalf of the Commissioner of Revenue, order that this decision and order concerning the child support obligation of J C. H 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 ten (10) days after adoption of the written decision of the hearing officer, pursuant to 15 AAC 05.035(a). The motion must state specific grounds for relief and, if mailed, must be addressed to: 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 thirty (30) days of the date of this decision.

DATED this 21<sup>st</sup> day of March, 2005.

By: Signed  
Terry Thurbon  
Chief Administrative Law Judge

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