

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

IN THE MATTER OF: )

R. A. B. )

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) OAH No. 05-0615-CSS

) CSSD No. 001135770

**DECISION AND ORDER**

**I. Introduction**

This matter involves R. A. B.' appeal of an Amended Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued on June 28, 2005. The Obligee child is A., DOB 00/00/98. The Custodian of record is T. V.

The formal hearing was held on August 29, 2005. Both Mr. B. and Ms. V. appeared in person. David Peltier, Child Support Specialist, represented CSSD. The hearing was recorded. The record closed on September 16, 2005.

Kay L. Howard, Administrative Law Judge with the Alaska Office of Administrative Hearings, conducted the hearing. Having reviewed the record in this case and after due deliberation, I have concluded Mr. B.' appeal should be granted in part and denied in part. His child support should be calculated based on him exercising 30% shared custody of the child, and he should receive a \$400 per month deduction for a portion of his dependent care costs. His third issue, medical insurance credits, is being handled separately by his caseworker at CSSD.

**II. Facts**

**A. Procedural History**

Ms. V. applied for child support services on A.'s behalf in February 2005.<sup>1</sup> On May 3, 2005, CSSD served an Administrative Child and Medical Support Order on Mr. B.<sup>2</sup> He requested an administrative review and provided income information.<sup>3</sup> Following the review, CSSD issued an Amended Administrative Child and Medical Support Order on June 28, 2005,

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<sup>1</sup> Pre-Hearing Brief at pg. 1.

<sup>2</sup> Exhs. 3, 6 & 7.

<sup>3</sup> Exh. 4.

that set Mr. B.' ongoing child support at \$527 per month, with arrears of \$2635 for the period from February 2005 through June 2005.<sup>4</sup> Mr. B. filed an appeal on July 26, 2005.<sup>5</sup>

## **B. Material Facts**

Mr. B. and Ms. V. are the parents of A., DOB 00/00/98. Mr. B. is a legislative aide and works in Juneau for five months per year, from January through May, during the legislative session. Ms. V. sells construction equipment.

The parties separated when A. was about two years old. Since that time, Ms. V. has had primary physical custody when Mr. B. has been in Juneau, but they share custody of her on a much more even basis during the seven months of the year when he is in Anchorage. Mr. B. submitted a calendar that identifies 47 overnights A. spent with him from May 23, 2005, through August 27, 2005.<sup>6</sup> In addition, the parties agreed he would have A. an additional 2-3 overnights per week during the period from October 1, 2005 through December 31, 2005. It appears Mr. B. occasionally has A. for visits in Juneau, as well.<sup>7</sup> From the testimony and documents filed on this issue, CSSD estimated Mr. B. has custody of A. for 108 days, or 29% of the time. The agency reported in its post-hearing brief that Ms. V. stipulated that Mr. B. has 30% shared physical custody of A..

Mr. B. is enrolled in the state's dependent day care reimbursement program. His employer deducts \$400 per month from his pre-tax earnings and deposits those funds into an account from which he is entitled to submit day care receipts for reimbursement.<sup>8</sup> The checks go to the day care provider or one of the parties. A. attends a gymnastics program three days per week, for which Ms. V. pays \$950 every ten weeks, or \$95 per week.<sup>9</sup>

## **II. Discussion**

Mr. B. raised three issues in his appeal: shared custody, dependent care reimbursement and medical insurance. The issue of medical insurance is being addressed by his caseworker at CSSD, so only the shared custody and dependent day care issues will be addressed here.

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<sup>4</sup> Exh. 8.

<sup>5</sup> Exh. 10.

<sup>6</sup> Obligor's Exh. A at pg. 5.

<sup>7</sup> Obligor's Exh. A at pg. 12.

<sup>8</sup> Obligor's Exh. A at pg. 3.

### **A. Shared Custody**

When parents exercise shared custody of their children, Civil Rule 90.3 provides that child support is to be calculated differently from 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.<sup>10</sup> CSSD estimated Mr. B. has 29% custody of A., but Ms. V. stipulated to him having 30% custody of A., which equals shared custody, as defined by Civil Rule 90.3. Therefore, I find Mr. B. is entitled to have his child support calculated pursuant to a 70/30 shared custody formula, as set forth in Civil Rule 90.3(b).

### **B. Dependent Day Care Reimbursement**

Mr. B. requested consideration for the \$400 dependent day care payment that is taken out of his check on a monthly basis. Mr. B. asserts the payment is not being taken into account. He claims that for practical purposes, he is paying \$927 per month for child support – the \$527 monthly support amount, plus the \$400 per month for the dependent day care reimbursement program. Mr. B.' argument is well taken.

A parent is obligated both by statute and at common law to support his or her children.<sup>11</sup> 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." The Rule allows a deduction for an obligor's work related dependent day care expenses for a child who is the subject of a support order.<sup>12</sup>

Ms. V. pays \$950 every ten weeks for A.'s day care/ gymnastics program. This day care is work-related. This equals \$95 per week, or \$411 per month ( $\$95 \times 52 \div 12$ ). She pays this figure in advance, but Mr. B. reimburses her for those costs from his dependent day care

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<sup>9</sup> CSSD indicated in its post-hearing brief that the cost is \$650 every ten weeks, but this figure is apparently a mistake, as Ms. V. testified it is \$950 every ten weeks.

<sup>10</sup> Civil Rule 90.3, Commentary V.A.

<sup>11</sup> *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

<sup>12</sup> Civil Rule 90.3(a)(1)(D).

deduction. In its post-hearing brief, CSSD apportioned the day care costs to the parties according to their respective shared custody percentages. However, other than Ms. V.'s testimony that Mr. B. did not pay her for one month recently, the record indicates Mr. B. pays the full amount. He testified he pays \$400 per month and Ms. V. did not dispute Mr. B.' testimony on the issue. Thus, based on the record as a whole, I find Mr. B. is entitled to a \$400 deduction from his gross income for dependent day care costs.

### **C. Child Support Calculation**

Child support in shared custody situations is done in a two-step process. First, the parties' respective support obligations are calculated as though the other parent had primary physical custody of the child. These child support amounts are then inserted into a shared custody formula that calculates the parties' obligations based on their different shared custody percentages.

Restoring Mr. B.' \$400 dependent day care deduction results in him having a primary custody child support obligation of \$527 per month.<sup>13</sup> Ms. V.'s income information results in her having a primary custody support obligation to Mr. B. of \$570 per month.<sup>14</sup> When these figures are inserted into the shared custody calculation, it results in Mr. B. having a child support calculation of \$297 per month.<sup>15</sup> It should be noted, however, that this figure is based on Mr. B. paying \$400 per month for dependent day care. In the event he misses more monthly payments, Ms. V. may want to consider requesting a modification to have that deduction reviewed.

### **III. Conclusion**

Mr. B. met his burden of proving by a preponderance of the evidence that CSSD's Amended Administrative Child Support and Medical Support Order was incorrect. Mr. B. and Ms. V. share custody of A. on a 30/70 basis, respectively, and Mr. B. is entitled to a \$400 per month deduction for dependent day care costs. Using the shared custody formula, Mr. B.' child support obligation for A. is correctly calculated at \$297 per month, and I conclude this figure should be adopted.

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<sup>13</sup> *See* Exh. 9 at pg. 2.

<sup>14</sup> Based on CSSD's calculation, Exh. 13 at pg. 3, but without the work related child care deduction.

<sup>15</sup> Attachment A.

**V. Child Support Order**

- Mr. B. is liable for child support in the amount of \$297 per month for February 2005 through January 2006, and ongoing.

DATED this 25<sup>th</sup> day of January, 2006.

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. The undersigned, on behalf of the Commissioner of Revenue and in accordance with AS 44.64.060, adopts this Decision and Order as the final administrative determination in this matter.

Under AS 25.27.062 and AS 25.27.250, the obligor's income and property are subject to withholding. Without further notice, a withholding order may be served on any person, political subdivision, department of the State, or other entity.

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 after the date of this decision.

DATED this 17<sup>th</sup> day of February, 2006.

By: Signed  
Signature  
Tom Boutin  
Name  
Deputy Commissioner  
Title

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