

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

IN THE MATTER OF:)
)
E C. T) OAH No. 06-0071-CSS
) CSSD Case No. 001135380
_____)

DECISION AND ORDER

I. Introduction

This case concerns the obligation of E C. T for the support of S (X) G (DOB 00/00/01). The custodian of record is A X.

On December 23, 2005, the Child Support Services Division issued an amended administrative child support order establishing a support obligation in the amount of \$910 per month effective January 1, 2006, with arrears in the amount of \$10,920 for the period from January 1, 2005, through December 31, 2005.

Mr. T filed an appeal and requested an administrative hearing. The Office of Administrative Hearings conducted a telephonic hearing on February 15, 2006. Andrew Rawls, Child Support Specialist, represented the division. Mr. T and Ms. X participated.

Based on the testimony at the hearing and the evidence in the record, arrears are owed through December 31, 2005, at the rate of \$747 per month and arrears and ongoing child support at the rate of \$693 per month effective January 1, 2006.

II. Facts

E T works in No Name City 1 as a sales account manager for No Name Company. He earns a base salary of \$3,000 per month, plus commissions. Since 2004, he has been engaged in outside sales. Until the end of 2003, he sold from his employer's sales location. His total income in 2002 was about \$35,000, and in 2003 was about \$40,000. In 2004 Mr. T's total income was \$62,086, including wages and commissions (\$58,766), business income (\$2,400), and his Alaska Permanent Fund dividend (\$920).¹ In 2005, his total income was \$68,570, all but \$10 from his wages and commissions.²

¹ Ex. 10.

² 2005 tax return. Mr. T did not receive an Alaska Permanent Fund dividend in 2005, but is eligible to receive a dividend in 2006.

A major source of commissions for Mr. T in 2005 was sales for the construction of a new hospital on No Name City 2. With the completion of that project, Mr. T anticipates that his total income in 2006 will be less than in 2005, and will return to about the level he made in 2004.

Mr. T has two children: S and an older child, a daughter born in 1998. Mr. T was divorced in 2004. Under the divorce decree he has 50% shared custody of his daughter and he pays \$118.71 per month as child support to his former wife.

III. Discussion

The division establishes a child support obligation based upon “the expected actual annual income that the parent will earn or receive when the child support award is to be paid.”³ When adequate information is available, arrears may be based on the actual income received during the period for which arrears are due.⁴

In this case, Mr. T’s position in outside sales has resulted in a substantial increase in his earnings over what he earned prior to 2004. However, whether his 2006 earnings will continue at the pace established in 2005 is uncertain, both because of the relatively short period of time that Mr. T has been working in outside sales, and because a project that was a major source of income has been completed. Therefore, Mr. T’s income in 2004, rather than in 2005, represents the better indicator for his 2006 income. Although Mr. T’s income in 2004 included some self-employment earnings from a business that he has since abandoned, the total 2004 income is used because it may reasonably be anticipated that his ability to generate commissions in 2006 will increase to some extent over 2004, even if not approaching the level of 2005.

For one child, a parent’s presumptive support obligation is 20% of that parent’s adjusted annual income,⁵ that is, total income after allowable deductions for such things as taxes and support for a prior child.⁶

Civil Rule 90.3 contains two separate provisions allowing a deduction from total income for child support for children from prior relationships. Civil Rule 90.3(a)(1)(B) allows a deduction for “child support...arising from prior relationships which are

³ 15 AAC 125.030(a).

⁴ Duffus v. Duffus, 72 P.3rd 313, 321 (Alaska 2003); Spott v. Spott, 17 P.3rd 52, 56 (Alaska 2001).

⁵ 15 AAC 125.070(a); Civil Rule 90.3(a)(2)(A).

⁶ 15 AAC 125.070(a); -.065; Civil Rule 90.3(a)(1).

required by other court or administrative proceedings and actually paid.” Civil Rule 90.3(a)(1)(C) allows a deduction for “child support for children from prior relationships living with the parent, calculated by using the formula provided by this rule.” Neither provision expressly addresses shared custody situations.

Under the circumstances of this case, Civil Rule 90.3(a)(1)(B) provides for a deduction of \$119 per month, the amount that Mr. T currently pays as child support under the divorce decree. Civil Rule 90.3(a)(1)(C) could reasonably be interpreted to provide for: (1) no additional deduction, an additional deduction of (2) 50%⁷ or (3) 75%⁸ of the standard amount, or for an alternative deduction of (4) 100%⁹ or (5) 150%¹⁰ of the standard amount.

Given these five reasonable alternative interpretations of Civil Rule 90.3, the better approach is to treat shared custody of a prior child as an unusual circumstance within the meaning of Civil Rule 90.3(a)(1), and to select the alternative (or a combination) of deductions that seems most appropriate under the circumstances.¹¹ Treating shared custody of a prior child as an unusual circumstance would enable the agency to take heed of the premise of Civil Rule 90.3 “that the total funds necessary to support children will be substantially greater when custody is shared”¹² in light of the specific circumstances of the case.

In the absence of any showing of circumstances that would warrant the denial of any credit at all to Mr. T for the expenses that he incurs during the 50% of the time that he has custody of his prior child, alternative (1), which provides no credit at all for those expenses, would be manifestly unjust. Furthermore, notwithstanding the presumption of increased expenses in a shared custody situation, there is no specific evidence to that

⁷ The 50% figure reflects the percentage of time the prior child lives with Mr. T.

⁸ Because shared custody is presumed to impose greater costs on both parents, Civil Rule 90.3(b)(3) provides for a 50% increase in the amount of support owed. *See* Civil Rule 90.3, Commentary at V(B). A 50% increase to the deduction Mr. T would normally receive for the time his prior child lives with him (50%) would yield a support obligation that is 75% of the normal amount.

⁹ This approach provides for one full deduction, but rather than the “court ordered” support deduction, it offers a deduction for the presumed cost of the support of a prior child, without regard to shared custody.

¹⁰ This approach increases the amount of the deduction consistently with Civil Rule 90.3(b)(3), to reflect the presumption in Civil Rule 90.3 that shared custody means increased costs.

¹¹ This approach has been taken in prior cases of this nature. *See In Re H.J.M.*, CSSD No. 970835 (April 17, 2000); *In Re G*, OAH No. 05-0368 (Interim Order, September 21, 2005).

¹² Civil Rule 90.3, Commentary at V(B).

effect in this case, and therefore providing more than the standard deduction for the period during which Mr. T has custody, as in alternatives (4) and (5), has not been shown to be appropriate in this particular case. Of the two remaining alternatives, (2) more closely extrapolates from the rule, by incorporating both credits. Under these circumstances, the child support credit for the prior child in this case should be the full amount of the child support being paid under the court order (\$119), plus 50% of the standard deduction for a child living full time with the parent (\$856 in 2005; \$797 in 2006, as shown on Appendix A).

Applying these credits for the prior child, plus other standard deductions, and anticipating total income in 2006 equal to his 2004 earned income, plus an Alaska Permanent Fund dividend, Mr. T's arrears and ongoing support obligation is \$693 per month in 2006, as shown on Appendix B. Arrears for 2005 are owed at the rate of \$747 per month, based on his actual income in 2005, as shown on Appendix C.

IV. Conclusion

Mr. T's child support obligation for the period of arrears through December 31, 2005, should be set at \$747 per month and his arrears and ongoing support obligation should be set at \$693 per month, effective January 21, 2006.

ORDER

1. E C. T is liable for any arrears accrued from January 1, 2005, through December 31, 2005, at the rate of \$747 per month, and from January 1, 2006 through March 31, 2006, at the rate of \$693 per month.
2. E C. T's ongoing child support obligation is \$693 per month effective April 1, 2006.

DATED: 3/29/06

Signed _____
Andrew M. Hemenway
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 notices, 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 and Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 18 day of April, 2006.

By: Signed
Signature
Andrew M. Hemenway
Name
Administrative Law Judge
Title

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