

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

IN THE MATTER OF:)

A. M. S.)

OAH No. 06-0188-CSS

CSSD No. 001138681

DECISION AND ORDER

I. Introduction

This matter involves the Obligor A. M. S.'s appeal of an Amended Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued on January 6, 2006. The Obligee child is K., DOB 00/00/03.

The formal hearing was held on March 24, 2006. Mr. S. was represented by his mother and power-of-attorney, T. S.; the Custodian of record, K. C. L., did not participate. Andrew Rawls, Child Support Specialist, represented CSSD. The record closed on April 7, 2006.

Kay L. Howard, Administrative Law Judge in the Alaska Office of Administrative Hearings, conducted the hearing. Having reviewed the record in this case and after due deliberation, I have concluded Mr. S.'s appeal should be granted and the shared custody child support calculation should be adjusted based on his most current income information.

II. Facts

A. History

Ms. L. applied for child support services in August 2005. On November 22, 2005, CSSD served an Administrative Child and Medical Support Order on Mr. S.¹ He requested an administrative review.² Following the review, CSSD issued an Amended Administrative Child Support and Medical Support Order on January 6, 2006, that set Mr. S.'s ongoing child support at \$62 per month, based on the shared custody formula, with arrears of \$372 for the period from August 2005 through January 2006.³ Mr. S. filed an appeal and requested a formal hearing on March 2, 2006, claiming that his deductions for union dues, retirement and medical insurance

¹ Exh. 3.

² Exh. 4.

³ Exh. 7.

premiums were not included in the Amended Administrative Child Support and Medical Support Order.⁴

B. Material Facts

Mr. S. and Ms. L. are the parents of K., DOB 00/00/03. The parties separated in 2004, but they have an amicable ongoing relationship and share custody of K. on a 50/50 basis. They had a child custody hearing in March 2006, in which they agreed they would continue with their 50/50 shared custody arrangement.

Mr. S. is an apprentice pipefitter. He usually works approximately nine months of the year, but he hesitates to take a part-time job during the months he is unemployed because he must accept any offer of work that comes from the union hall when it is time to return to work. In 2005, he worked primarily for one employer. For the year, he received wages of \$31,276.13; unemployment benefits of \$2,992, and the PFD of \$845.76, for total taxable income of \$35,113.89.⁵ Mr. S. paid \$167.47 per month in union dues and \$249.38 per month for childcare.⁶ Mr. S. owns and lives in a duplex and rents out one half of the property. In 2005, he had a net loss on the property of \$5,619.03.⁷

Ms. L. works at a local insurance company, where in 2005 she earned wages of \$23,100.54 and the PFD of \$845.76, for total taxable income of \$23,946.30.⁸ In addition to the usual deductions for taxes and social security, Ms. L. contributes \$36.96 per month to a retirement fund and pays \$130 per month for childcare.⁹

III. Discussion

A. Shared Custody

When parents exercise shared custody of their children, Civil Rule 90.3 provides that child support is to be calculated differently than in 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

⁴ Exh. 7.

⁵ Exh. 17.

⁶ *Id.* Mr. S. usually works only nine months per year, so his monthly childcare payment of \$332.50 was averaged to \$249.38 per month for twelve months.

⁷ Exh. 12 at pg. 5.

⁸ Exhs. 18 & 19.

⁹ Exh. 19.

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.¹⁰ There is no dispute that Mr. S. and Ms. L. exercise 50/50 shared custody of K. Mr. S.'s mother testified the parties have had shared custody of the child "for a long time," and it is their intention to continue with that arrangement.

B. Income

A parent is obligated both by statute and at common law to support his or her children.¹¹ 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", minus mandatory deductions.

After the hearing, CSSD revised the child support calculation to \$50 per month using the parties' most recent income information and deductions.¹² This figure is incorrect, however, because CSSD deducted from Mr. S.'s 2005 income the net loss of \$5,619.03, he reported on his tax return.¹³ In a case called Gallant v. Gallant, the Alaska Supreme Court held that for a parent who has income from both wages and self-employment, his or her business expenses cannot be deducted from income unless the business serves as an "income source" for the parent.¹⁴ In Gallant, the obligor parent derived most of his income from state employment, but he also had a corporation that operated at a net loss. In that case, the court looked at whether the corporation provided an "income stream" for the obligor. Since the business regularly operated at a loss, the court held that Mr. Gallant could not deduct his business expenses from the income he received from his employment.¹⁵

The Gallant case applies here. In the three years since he purchased the duplex in late 2002, Mr. S. has had a net loss for two of those years. In 2003, he had a net profit of \$1,205.¹⁶

¹⁰ Civil Rule 90.3, Commentary V.A.

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

¹² Exh. 20.

¹³ Exh. 17.

¹⁴ *Gallant v. Gallant*, 945 P.2d 795 (Alaska 1997).

¹⁵ *Id.* at 799.

¹⁶ Exh. 12.

However, in 2004, he had a net loss of \$2,052.50, and in 2005, a loss of \$5,619.03.¹⁷ Mr. S.'s primary source of income in all of these years was derived from wage-paying employers, so his rental loss should not be considered in the child support calculation.

Removing Mr. S.'s rental loss from his income, but leaving all the other deductions in place, results in a primary custody child support calculation of \$460 per month.¹⁸ When this figure is inserted into the shared custody child support calculation, it results in a child support obligation for Mr. S. in the amount of \$120 per month.¹⁹ This figure is higher than the \$62 per month figure CSSD originally calculated, but his obligation is now correct. His mother stated at the hearing that Mr. S. was hoping he and Ms. L. would have approximately equal child support obligations, but this hope was somewhat unrealistic, given that Mr. S. earned \$11,167 more in 2005 more than Ms. L. earned.

Based on the hearing testimony and the record as a whole, I find that Mr. S.'s child support obligation is now correctly calculated at \$120 per month, effective August 1, 2005. This is a reasonable measure of his ability to pay support, and I conclude it should be adopted.

IV. Conclusion

Mr. S. met his burden of proving by a preponderance of the evidence that the Amended Administrative Child Support and Medical Support Order was incorrect. Thus, his child support obligation is now correctly calculated at \$120 per month, based on the shared custody calculation.

V. Child Support Order

1. Mr. S. is liable for child support in the amount of \$120 per month for the period from August 2005 through April 2006, and ongoing.

DATED this 27th day of April, 2006.

By: Signed
Kay L. Howard
Administrative Law Judge

¹⁷ *Id.*

¹⁸ Attachment A.

¹⁹ Attachment B.

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 17th day of May, 2006.

By: Signed
Signature
Tom Boutin
Name
Deputy Commissioner, Department of Revenue
Title

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