

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

In the matter of:)	
)	OAH No. 06-0364-CSS
K R. A)	CSSD No. 001131108
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DECISION AND ORDER

K A appealed an Amended Administrative Child and Medical Support Order and Administrative Review Decision that the Child Support Services Division (CSSD) issued on April 10, 2006, setting a child support obligation of \$785 per month based on sole custody with the putative custodial parent, E C. R. The support amount was effective September 1, 2005, and the order found that Mr. A was already in arrears by \$6,280. The obligee child is T R, born 00/00/03.

The formal hearing was convened on June 12, 2006, with a supplemental session on June 29, 2006.¹ Mr. A participated in both sessions; Ms. R participated in neither. A.J. Rawls, Child Support Specialist, represented CSSD at both sessions. The hearing was recorded.

Because Mr. A established that he has shared physical custody of the child, his monthly child support is established at \$382, a reduction of approximately 51 percent.

I. Facts

A. Custody

Mr. A and Ms. R have been separated since September of 2005 or earlier, and were divorced on May 12, 2006.² Beginning in September of 2005, they have shared physical custody on a 50-50 basis, with each parent having T seven out of fourteen nights in each two-week period. This arrangement was established by a signed agreement between the parties,³ later formalized by Superior Court order.⁴

B. Income

In a shared physical custody case, it is necessary to ascertain the income of both parents.

¹ Although the written record reflects that the second session was initially scheduled for July 27, this was subsequently accelerated because of Mr. A's imminent deployment to Iraq. The OAH clerk attempted to notify both parties at the telephone numbers provided. Ms. R's number was not in service.

² Exhibit 6, p. 10; Exhibit 7, p. 7.

³ Exhibit 6, p. 10.

⁴ Exhibit 7, p. 4.

Mr. A had income in 2005 of \$59,489 in wages and \$846 as a permanent fund dividend. The total is \$60,335. He works full-time. It is not disputed that this is a fair measure of both his income and his earning capacity. Allowable deductions for federal income tax, Social Security, and retirement yield an adjustable income of \$47,111.⁵

Ms. R earns \$8.90 per hour and works 32 hours per week, according to Department of Labor records. Reportedly, she acknowledged to Judge Tan at the divorce hearing that she works less than full time as a matter of convenience rather than necessity. In this hearing, the reasons for her part-time employment could not be explored directly with Ms. R because of her absence from the hearing. On July 7, 2006, the administrative law judge issued an interim order notifying Ms. R that unless, by July 24, “she files an affidavit, documentation, or other satisfactory evidence showing otherwise, the administrative law judge will conclude that she is able to work full-time but has voluntarily decided, as a matter of convenience, to work part-time.” Ms. R submitted nothing in response. Accordingly, the administrative law judge finds that that Ms. R is able to work full-time but has voluntarily decided, as a matter of convenience, to work part-time. Her potential wage income, if she worked full time, is \$8.90 per hour times 2080 hours, or \$18,512, together with a permanent fund dividend of \$846, for a total of \$19,358.

II. Discussion

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 threshold for shared physical custody is that each parent have the children overnight for at least 30 percent of the time.⁶ In this case, the division of custody meets that threshold.

The formula for calculating support in shared custody situations is a complicated one devised by the Alaska Supreme Court, but it is carefully designed to produce a fair result in most cases. One begins by calculating the child support amount each parent would pay to the other if the other parent had primary custody.⁷ This is calculated from the adjusted annual incomes of the parents, except that if a parent is voluntarily and unreasonably unemployed or underemployed, that parent’s “potential income” may be used instead.⁸ In this case, based on the record developed

⁵ *E.g.*, Exhibit 14, p. 3.

⁶ Civil Rule 90.3(f)(1); Civil Rule 90.3, Commentary V.A.

⁷ Civil Rule 90.3(b)(1)(A).

⁸ Civil Rule 90.3(a)(4).

at the hearing and in response to the July 7 interim order, I find that Ms. R is voluntarily and unreasonably underemployed, and that her potential income is \$19,358.

The calculation of what Mr. A would pay if Ms. R had primary physical custody is found at Exhibit 14, page 3 in the record. If this were the case, Mr. A would owe Ms. R child support of \$785 per month.⁹ If Mr. A had primary physical custody, Ms. R would owe him child support of \$276 per month, as shown in more detail in Attachment A to this decision.¹⁰

The next step is to multiply the basic support amount for each parent by the percentage of time the *other* parent has the children, and thus needs support.¹¹ For Mr. A., the result is \$785 times 50% (Ms. R's custody percentage), or \$392.50. For Ms. R, the result is \$276 times 50%, or \$138. The parent with the higher result is the one who has to pay support. In this case, that is Mr. A.

The support amount is "the difference between the two figures multiplied by 1.5."¹² The difference between \$392.50 and \$138 is \$254.50. One point five times \$254.50 is \$381.75, which rounds to \$382. That is the monthly support amount that Mr. A owes to assist Ms. R in raising T.

Because this amount is much lower than the support amount in effect under CSSD's Administrative Review Decision, and because that order had been in effect for eleven months, there will be a dramatic effect on the calculation of arrears. Mr. A should work closely with his child support representative to develop a revised accounting of amounts owed and amounts collected to date. Mr. Rawls indicated that a credit may be due for the medical coverage Mr. A provides, and this should be discussed with the child support representative as well.

III. Child Support Order

1. K R. A is liable for child support in the amount of \$382 per month, effective September 1, 2005, and ongoing.

DATED this 28th day of July, 2006.

By: Signed
Christopher Kennedy
Administrative Law Judge

⁹ Exhibit A. The amount is 20% of Mr. A's adjusted annual income. Adjusted annual income is derived by taking his gross income of \$60,335, found above, and deducting taxes and unemployment insurance. *See generally* Civil Rule 90.3(a).

¹⁰ Again, the amount is 20% of adjusted potential annual income.

¹¹ Civil Rule 90.3(b)(1)(B).

¹² Civil Rule 90.3(b)(1)(C).

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 8th day of August, 2006.

By: Signed
Signature
Christopher Kennedy
Name
Administrative Law Judge
Title

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