

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

IN THE MATTER OF:)

O. B. E.)

) OAH No. 06-0433-CSS

) CSSD No. 001138125

DECISION AND ORDER

I. Introduction

This matter involves an appeal by the Obligor, O. B. E., of an Amended Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on April 6, 2006. The Obligee children are A., DOB 00/00/02, and B., DOB 00/00/03.

The formal hearing was held on July 13, 2006. Mr. E. appeared telephonically; the custodian of record, B. E. E., did not participate. David Peltier, Child Support Specialist, represented CSSD. The record closed on August 4, 2006.

The hearing was presided over by Administrative Law Judge David G. Stebing of the Office of Administrative Hearings. Following the departure of Judge Stebing from the Office of Administrative Hearings, the appeal was assigned to Kay L. Howard, Administrative Law Judge, for the preparation of the decision. Judge Howard reviewed the entire record, including the audio recording of the hearing. Based on the record as a whole and after due deliberation, Mr. E.' child support should be set at \$370.50 per month, based on the shared custody calculation.

II. Facts

A. History

Ms. E. began receiving public assistance benefits on behalf of the children in August 2005.¹ On January 10, 2006, CSSD served an Administrative Child and Medical Support Order on Mr. E.² He requested an administrative review.³ Following the review, CSSD issued an Amended Administrative Child Support and Medical Support Order on April 6, 2006, that set Mr. E.' ongoing child support at \$560 per month, based on Ms. E. having primary custody, with

¹ Exh. 8.

² Exh. 3.

³ Exh. 4.

arrears of \$4480 for the period from August 2005 through April 2006.⁴ Mr. E. filed an appeal and requested a formal hearing on June 13, 2006, claiming he has the children 50% of the time, and that having to pay \$560 per month would constitute manifest injustice.⁵

B. Material Facts

Mr. E. and Ms. E. have two children, A., DOB 00/00/02, and B., DOB 00/00/03. At the time of the hearing, the parties were in the process of obtaining a divorce.

The parties exercise 50/50 shared custody of the children. After the hearing, Mr. E. provided three witness statements – one of them from Ms. E. herself – that they exercise shared custody of the children.⁶ Mr. E.’ mother wrote that the parties had exercised 50% custody since June 2005, when they broke up.⁷ His sister wrote that Mr. E. has had the children at least every other day, if not more.⁸ Ms. E.’ statement confirmed 50/50 custody, as of January 1, 2006. Regarding 2005, she stated the parties had “shared visitation prior [to 2006], but no set schedule.”⁹

Mr. E.’ estimated income for 2005 is \$36,348, plus the PFD.¹⁰ Based on this income figure, he would be obligated to pay support of \$681 per month for two children in a primary custody child support calculation.¹¹ Ms. E.’ 2005 income totaled \$9055.35, which includes wages, unemployment benefits and the PFD.¹² If she were paying child support in a primary custody scenario, her obligation would be \$187 per month for two children.¹³

⁴ Exh. 7.

⁵ Exh. 9.

⁶ Exh. 11 at pgs. 1-3.

⁷ *Id.* at pg. 1.

⁸ *Id.* at pg. 3.

⁹ *Id.* at pg. 2.

¹⁰ Exh. 12 at pg. 3.

¹¹ *Id.*

¹² *Id.* at pg. 2.

¹³ *Id.*

III. Discussion

A. Shared custody child support calculation

A parent is obligated both by statute and at common law to support his or her children.¹⁴ 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. Where 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 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.¹⁵

There is no dispute that the parties have been exercising 50/50 shared custody of A. and B. since January 2006. Ms. E.' statement raises the question whether the parties shared custody of the children on a 50/50 basis in 2005. She did not specifically state custody was anything other than 50/50, but she did indicate they had no set schedule. Because at least one other witness statement, specifically the one written by Mr. E.' mother, said it was 50% custody, that ratio will be adopted. There is no evidence in the record upon which to base a finding of any other percentage.

Shared custody child support is calculated in a two-step process by first determining each parent's primary custody child support obligation to the other parent, as if each parent had primary custody of the child(ren). The figures are then inserted into a shared custody mathematical formula that calculates the paying parent's child support from a combination of both parents' primary custody support obligations and their individual shared custody percentages.

¹⁴ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

¹⁵ Civil Rule 90.3, Commentary V.A.

According to this procedure, Mr. E.' primary custody child support obligation would be \$681 per month, as discussed above. If Mr. E. had primary custody of A. and B., Ms. E.' child support obligation would be \$187 per month. When Mr. E.' and Ms. E.' financial information is inserted into the shared custody calculation, it results in Mr. E. having a child support obligation of \$370.50 per month.¹⁶

B. Financial hardship

Mr. E. requested a reduction in his child support obligation based on a financial hardship. Child support determinations calculated under Civil Rule 90.3 from an obligor's actual income figures are presumed to be correct. The parent may obtain a reduction in the amount calculated, but only if he or she shows that "good cause" exists for the reduction. In order to establish good cause, the parent must prove by clear and convincing evidence that "manifest injustice would result if the support award were not varied." Civil Rule 90.3(c). A finding that "unusual circumstances" exist in a particular case may be sufficient to establish "good cause" for a variation in the support award:

Good cause may include a finding . . . that unusual circumstances exist which require variation of the award in order to award an amount of support which is just and proper for the parties to contribute toward the nurture and education of their children^[17]

It is appropriate to consider all relevant evidence to determine if the support amount should be set at a different level than provided under the schedule in Civil Rule 90.3(a).¹⁸

Based on the evidence presented, I find that this case does not present unusual circumstances of the type contemplated by Civil Rule 90.3. Mr. E. did not prove by clear and convincing evidence that manifest injustice will result if the child support amount calculated under Civil Rule 90.3 is not varied. Mr. E.' financial situation may be difficult because the parties are divorcing, but there are no "unusual circumstances" present to warrant varying his child support calculated under Civil Rule 90.3 for A. and B. Mr. E. seemed to believe that since he and Ms. E. are sharing custody of the children on a 50/50 basis, he should not have to pay support. But child support obligations are determined according to a mathematical formula that compares the parties' respective incomes and their obligations to pay support in a primary

¹⁶ Exh. 12 at pg. 1.

¹⁷ Civil Rule 90.3(c)(1).

¹⁸ See Civil Rule 90.3, Commentary VI.E.1.

custody situation. Simply sharing custodial time equally does not eliminate Mr. E.' child support obligation.

Based on the hearing testimony and the record as a whole, I find that CSSD's post-hearing calculations correctly determined Mr. E.' child support obligation based on shared custody, and I conclude the division's calculation should be adopted.¹⁹

IV. Conclusion

Mr. E. met his burden of proving by a preponderance of the evidence that the Amended Administrative Child Support and Medical Support Order was incorrect because the parties exercise 50/50 shared custody of their two children.

V. Child Support Order

1. Mr. E. is liable for child support in the amount of \$370.50 per month for the period from August 2005 through December 2006, and ongoing.

DATED this 19th day of December, 2006.

By: Signed
Kay L. Howard
Administrative Law Judge

¹⁹ Mr. E. also claimed that he pays child care, but he did not adequately document his ongoing expenses. See Exh. 11 at pgs. 4-5.

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 5th day of January, 2007.

By: Signed
Signature
Kay L. Howard
Name
Administrative Law Judge
Title

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