

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

IN THE MATTER OF: )

N. T. H. )

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) OAH No. 06-0607-CSS

) CSSD No. 001141381

**DECISION AND ORDER**

**I. Introduction**

This matter involves the Obligor N. T. H.'s appeal of an Amended Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued on July 7, 2006. The Obligee child is R., DOB 00/00/00.

The formal hearing was held on October 2, 2006. Both Mr. H. and Ms. C. appeared in person. Andrew Rawls, Child Support Specialist, represented CSSD. The record closed on October 12, 2006.

Kay L. Howard, Administrative Law Judge, Alaska Office of Administrative Hearings, conducted the hearing. Based on the record as a whole, Mr. H.'s appeal should be granted; his child support obligation should be calculated based on shared custody, and it should reflect his estimated actual income, not the occupational statistics CSSD used.

**II. Facts**

**A. History**

Ms. C. applied for child support services in February 2006.<sup>1</sup> On May 17, 2006, CSSD served an Administrative Child and Medical Support Order on Mr. H.<sup>2</sup> He requested an administrative review.<sup>3</sup> Following the review, CSSD issued an Amended Administrative Child Support and Medical Support Order on July 7, 2006, that set Mr. H.'s ongoing child support at \$478 per month, based on primary custody, with arrears of \$2868 for the period from February 2006 through July 2006.<sup>4</sup> Mr. H. filed an appeal and provided income information on August 15, 2006.<sup>5</sup>

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<sup>1</sup> Exh. 4 at pg. 10.

<sup>2</sup> Exh. 1.

<sup>3</sup> Exh. 2.

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

<sup>5</sup> Exh. 7.

## **B. Material Facts**

Mr. H. and Ms. C. are the parents of R., DOB 00/00/00. The parties both live in the greater Anchorage area and exercise shared custody on a 60/40 basis, with Ms. C. having custody 60% of the time.<sup>6</sup>

Mr. H. is the sole proprietor of a small restaurant in Wasilla. The business was previously owned by a partnership, but it dissolved in May 2005 and Mr. H. took over operations at that time. He was an employee of the business prior to May 2005<sup>7</sup> and received wages in 2005 of \$20,875 before he assumed sole ownership.<sup>8</sup> The restaurant had total sales of \$196,335 in 2005, and gross income of \$136,521 after the cost of goods sold were subtracted.<sup>9</sup> Mr. H. reported business expenses of \$152,797, which results in a net loss reflected on his Schedule C of -\$16,276.<sup>10</sup>

Mr. H. lives with his parents and does not pay rent; his expenses are paid by the business and he also receives tips while at work.<sup>11</sup> Mr. H. pays his parents' cable and natural gas bills of \$55 and \$70 per month, respectively.<sup>12</sup> He has three credit cards with a total balance owing of approximately \$13,500, some of which comes from having to purchase items for the restaurant. His three credit card payments totaling roughly \$882 per month.<sup>13</sup> Mr. H.'s car and insurance payments total \$202 per month.<sup>14</sup> Including his parents' bills, the business pays expenses for Mr. H. of a minimum of \$1209 per month and he takes cash draws of \$300-\$400 per month. Mr. H. did not indicate how much he earns in tips, so the total amount is estimated at \$400 per month, which was calculated at \$20 per night times 20 nights per month.

Ms. C. is employed as a driver at a local copy business, where in 2006 she earned \$13 per hour for the first nine months, then got a raise to \$14 per hour at the beginning of October 2006.<sup>15</sup> Her total annual income for the year 2006 is estimated at \$27,560, which is the result of

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<sup>6</sup> The parties supplied these shared custody percentages. *See* letter filed by the parties on October 10, 2006.

<sup>7</sup> In 2004, Mr. H. worked at an Anchorage restaurant and earned wages of \$22,991. *See* Exh. 5 at pgs. 4-6.

<sup>8</sup> Exh. 2 at pg. 5.

<sup>9</sup> *Id.* at pg. 7.

<sup>10</sup> *Id.*

<sup>11</sup> Hearing record.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> Hearing record.

multiplying \$13 per hour times 1560 hours, which totals \$20,280, plus \$14 per hour times 520 hours, a total of \$7,280.<sup>16</sup>

### **III. Discussion**

In a shared custody scenario, the obligor parent's child support amount is calculated in a two-step process that first determines each party's income then applies the shared custody formula to those figures. Ms. C.'s estimated annual income was determined in the previous section; Mr. H.'s estimated annual income is discussed below.

#### **A. Mr. H.'s Income**

CSSD initially calculated Mr. H.'s child support at \$897 per month, based on annual income of \$71,011.20, which was calculated from "a mean hourly wage & the AK PFD."<sup>17</sup> CSSD did not specify the actual wage figure, but if one divides the total annual amount by 2080 hours, the result is \$34.14 per hour.<sup>18</sup>

After the administrative review, CSSD reduced the support amount to \$478 per month, based on annual income of \$34,278.40, which was calculated from "AK Occupational Stat for a food service mgr - \$16.48/hr."<sup>19</sup> This is the support amount Mr. H. appealed. Prior to the formal hearing, CSSD used Mr. H.'s early- 2005 income from wages of \$20,875 to calculate a child support amount of \$334 per month.<sup>20</sup>

At the hearing, Mr. H. said he would pay that amount, but at the same time, he said he wants to be able to move out of his parents' home. Apparently he does not believe he will be able to afford such a move if he has to pay child support of \$334 per month. Nevertheless, in spite of his agreement to pay that figure, it should be determined whether that figure is correct. The following analysis discusses Mr. H.'s income for child support purposes.

A parent is obligated both by statute and at common law to support his or her children.<sup>21</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", minus mandatory deductions. A federal tax return in most cases accurately reflects the parent's income. Mr. H.'s does not, however, because he

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<sup>16</sup> A standard work year for an hourly employee is 2080 hours (40 hours x 52 weeks). The employee would usually work 1560 hours in nine months' time (40 x 52 x 75%) and 520 hours in three months' time (40 x 52 x 25%).

<sup>17</sup> Exh. 1 at pg. 9.

<sup>18</sup> See *fn.* 16.

<sup>19</sup> Exh. 4 at pg. 11.

<sup>20</sup> Exh. 6.

admitted that other than his tip income, the restaurant pays his personal expenses and he also takes cash draws that have not been documented. Thus, Mr. H.'s 2005 tax return is not an accurate reflection of the actual income of the business because his personal expenses are included in the restaurant's Schedule C deductions. Therefore, Mr. H.'s actual income must be estimated from the available evidence and testimony in the record.

Mr. H.'s restaurant pays his three credit card bills that total approximately \$882 per month, his car payment and insurance of \$202 per month, his parents' cable and gas bills of \$125 per month, all of which total \$1209 per month. Mr. H. testified he takes cash draws of \$200-\$300 per month, plus he also has tip income that was estimated by the administrative law judge at \$400 per month.

Mr. H. indicated at the hearing that when he was paid wages for working at the restaurant earlier in 2005, the partnership was paying his bills and he received about \$2200-\$2300 per month. This figure seems somewhat low, however, in light of Mr. H.'s 2005 W-2, which shows he received wages of \$20,875 in 2005.<sup>22</sup> If he took over the business in May 2005, he would have earned wages for no more than five months, which means he was paid on the average \$4175 per month ( $\$20,875 \div \text{five months}$ ). This is almost a \$2000 per month discrepancy between Mr. H.'s testimony and his 2005 W-2 and tax return.

In order to resolve this discrepancy, Mr. H.'s income for child support purposes will be estimated at the mid point between \$4175 per month and \$2200 per month. The difference is \$1975, half of which is \$987.50. When this figure is added to \$2200 per month, the result is \$3187.50 per month, for a total of \$38,250 per year. This is a reasonable income figure for the Obligor, in light of the difficulty in determining his actual income from his testimony and income documents.

## **B. 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

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<sup>21</sup> *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

<sup>22</sup> Exh. 2 at pg. 4.

specified in writing of at least 30 percent of the year, regardless of the status of legal custody.<sup>[23]</sup>

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>24</sup>

There is no dispute that Mr. H. and Ms. C. exercise 60/40 shared custody of R. The parties testified they have shared custody and after the hearing they counted the number of days she stays with each of them, then filed a joint statement that concluded theirs is a 60/40 arrangement.

Shared custody child support is calculated by 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.

Mr. H.'s primary custody child support obligation, with income estimated at \$38,250, would be \$533 per month for 2006. If Mr. H. had primary custody of R., Ms. C.'s child support obligation would be \$396 per month. When Mr. H.'s and Ms. C.'s information is inserted into the shared custody calculation, it results in Mr. H. having a child support calculation of \$242 per month.

Based on the hearing testimony and the record as a whole, I find that Mr. H.'s child support obligation is now correctly calculated at \$242 per month, effective February 2006. This is a reasonable measure of his ability to pay support, and I conclude it should be adopted.

#### **IV. Conclusion**

Mr. H. met his burden of proving by a preponderance of the evidence that the Amended Administrative Child Support and Medical Support Order was incorrect. His child support obligation is now correctly calculated at \$242 per month, based on the shared custody calculation.

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<sup>23</sup> Civil Rule 90.3(f)(1).

<sup>24</sup> Civil Rule 90.3, Commentary V.A.

**V. Child Support Order**

1. Mr. H. is liable for child support in the amount of \$242 per month for the period from February 2006 through November 2006, and ongoing.

DATED this 1<sup>st</sup> day of November, 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 20<sup>th</sup> day of November, 2006.

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

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