

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

IN THE MATTER OF)	OAH No. 06-0843-CSS
D. J. E.)	CSSD No. 001117631
)	
_____)	

CHILD SUPPORT DECISION AND ORDER ON REMAND

I. Introduction

On January 9, 2007, a formal hearing was held to consider the child support obligation of D. J. E. (Obligor) for the support of his child, J. (Obligee).¹ Mr. E. did not participate. The Custodian, A. F., participated. Andrew Rawls, Child Support Services Specialist, represented the Child Support Services Division (Division). The hearing was audio-recorded. The record closed on February 9, 2007.

A proposed order was issued on April 20, 2007. Mr. E. filed a proposed action providing additional income information. The proposed order was remanded to take additional evidence regarding Mr. E.'s income. A second hearing was held, and both Mr. E. and Ms. F. participated. The record closed again on June 22, 2006.

This case is Ms. F.'s appeal of the Division's decision not to increase Mr. E.'s monthly ongoing child support for J. Having reviewed the record in this case and after due deliberation, I concluded the Division's Denial of Modification Review issued on October 23, 2006, should be overturned and Mr. E.'s modified ongoing child support should be set at \$616 per month, effective August 1, 2006, and \$545 per month, effective January 1, 2007.

II. Facts

A. History

Mr. E.'s ongoing child support obligation was \$383 per month.² The Division reviewed

¹ The hearing was held under Alaska Statute 25.27.190.

² Division's Pre Hearing Brief.

his child support order at Ms. F.'s request.³ The Division issued a Notice of Petition for Modification on July 24, 2006.⁴

Mr. E. did not provide his income information as ordered.⁵ The Division issued a Denial of Modification Review on October 23, 2006.⁶ The Division determined that Mr. E.'s ongoing monthly child support should remain at \$383 per month.⁷ The Division based its calculation of Mr. E.'s ongoing monthly child support on his late 2005 and early 2006 earnings, as reported by his employers.⁸ These calculations resulted in a monthly support amount of \$401, which was not a 15% change from his current amount \$383 per month.⁹ The Division denied the petition for modification.¹⁰ Ms. F. requested a formal hearing.¹¹

Prior to the first hearing, the Division determined that Mr. E. had a new job that paid significantly more than the earnings the Division had used in its earlier calculations. After the hearing, the Division provided new calculations based on Mr. E.'s income in his new job.¹² A proposed order was issued based on these calculations, but the case was remanded to make additional findings.

Prior to the second hearing the Division provided new calculations based on updated income information provided by Mr. E.. These calculations result in a monthly child support amount of \$616 per month for 2006, and \$545 per month for 2007 and ongoing.¹³

³ Ex. 1.

⁴ Ex. 2.

⁵ Division's Pre Hearing Brief.

⁶ Ex. 3.

⁷ Ex. 3.

⁸ Ex. 3.

⁹ Ex. 3.

¹⁰ Ex. 3.

¹¹ Ex. 4.

¹² Ex. 8, 9 & 10.

¹³ Ex. 12.

B. Findings

Based on the evidence in the record, I find that it is more likely than not that the Division's latest calculations at Exhibit 12, are correct. I find that it is more likely than not that the incomes that the Division used to calculate Mr. E.'s 2006 and 2007 modified child support at Exhibit 12 are the best estimate of his annual incomes.¹⁴ I find that a court order in effect at the time at the second hearing awarded primary custody of J. to Ms. F., with visitation for Mr. E. of less than 30 percent of the overnights.¹⁵

III. Discussion

In a child support hearing, the person who filed the appeal, in this case, Ms. F., has the burden of proving by a preponderance of the evidence that the Division's order is incorrect.¹⁶

At the first hearing, Ms. F. explained that the Division had failed to take Mr. E.'s higher income from his new job into account when it denied her request for a modification. The Division admitted that Ms. F. was correct. The Division provided updated income information provided by Mr. E.'s employer for his new job with the X Corporation.¹⁷ After the first hearing, the Division contacted Mr. E.'s employer, Mr. E.'s employer provided some income information, and the Division provided new calculations for Mr. E.'s child support, and a proposed order was issued based on those calculations.

This case was remanded to consider new income information provided by Mr. E. after the proposed order was issued. Mr. E. showed that this information would result in a more accurate estimate of his income than the information used to set the child support amounts in the proposed order. Mr. E. also requested that the custody arrangement be taken into account in setting his child support, but the evidence shows that Ms. F. has primary custody.

Custody

Shared custody exists when a child resides with a parent at least 30, but no more than 70

¹⁴ Recording of Hearing & Ex. 12.

¹⁵ Recording of Hearing.

¹⁶ Alaska Regulation 15 AAC 05.030(h).

¹⁷ Recording of Hearing & Ex. 8.

percent of the overnights.¹⁸ Under the shared custody formula, the annual amount each parent would pay to the other parent if that parent had sole custody is calculated.¹⁹ That support amount is then multiplied for each parent by the percentage of time the other parent will have physical custody of the children.²⁰ The parent with the larger amount under this calculation is the obligor parent. The annual award from the obligor parent to the other parent is equal to the difference between the two figures multiplied by 1.5.²¹

Based on the information provided by Mr. E. at the hearing Mr. E. is not entitled to a reduction of his support due to the current custody arrangement. Mr. E. has J. up to four nights per week when he is not working, but this results in his having custody only about eight nights per month.²²

Updated Income Information

Mr. E. provided updated income information from his employer, which included an explanation of why his last quarter earnings for 2006 were unusually high and would result in an inaccurate estimate of future earnings if they were used to project his 2007 income.²³ Ongoing child support should be calculated based on the best estimate of Mr. E.'s income unless good cause exists to raise child support above or reduce it below the amounts calculated using the income formula in Civil Rule 90.3(a). Mr. E.'s estimated income based on the updated income information results in lower monthly child support amounts than those set in the proposed order. His modified child support should be based on this updated more accurate information.

Modification

Civil Rule 90.3 allows a child support amount to be modified if the party requesting the change shows that a material change of circumstances has occurred.²⁴ The rule states that a

¹⁸ Alaska Civil Rule 90.3(f).

¹⁹ Alaska Civil Rule 90.3(f).

²⁰ Alaska Civil Rule 90.3(f).

²¹ Alaska Civil Rule 90.3(f).

²² Recording of Hearing.

²³ Ex. B.

²⁴ Alaska Civil Rule 90.3(h)(1).

material change of circumstances "will be presumed" if the modified support amount would alter the outstanding support order by 15 percent.²⁵ Monthly child support of either \$616 or \$545 would be more than a 15 percent increase from the current order of \$383 per month.

Effective Dates

A support order cannot be modified retroactively.²⁶ The effective date of a modification cannot predate the service of the petition for modification, even when a delay in processing a modification request occurred.²⁷ Generally, a new monthly child support amount in a modification action should be effective the month after the parties are served with the petition. This modification should be effective August 1, 2006, because the petition was served in July of 2006.²⁸

While a modification cannot be effective before the petition is served, it can be moved forward if there is good cause to do so.²⁹ There is good cause to set different monthly amounts for Mr. E.'s 2006 ongoing child support and for after 2006 based on the difference between the income he made in 2006 and the income he has made since the beginning of this year in his new job. Mr. E. did not get this new job until a few months after the petition for modification was issued, and his annual income was less before his new job. Because of an unusual work schedule, his third quarter earnings in 2006 were so much higher than what his quarterly income will be in 2007, his 2006 income is actually higher than his estimated 2007 income. Mr. E.'s modified child support should be set at two different monthly amounts. For the period from the service of the petition for modification through the end of 2006, monthly ongoing child support should be set at \$616, based on Mr. E.'s income for 2006. Beginning January 1, 2007, monthly ongoing child support should be set at \$545, based on an estimate of Mr. E.'s current and future income, that is, his projected 2007 earnings, plus a PFD.

Costs of Health Insurance

At the hearings, the parties were concerned about allocation of the costs of health

²⁵ Alaska Civil Rule 90.3, Commentary X.

²⁶ Alaska Civil Rule 90.3(h)(2).

²⁷ *State, Dept. of Revenue, Child Support Enforcement Div. v. Schofield*, 993 P2d 405, (Alaska 1999).

²⁸ Alaska Regulation 15 AAC 125.321.

insurance coverage and health costs for J. As discussed at the hearing, the Division must give parties the appropriate credit or debit for their out-of-pocket expenses for providing health insurance coverage for J. The Division will adjust the credit whenever documentation is provided by the parties, which shows that these out-of-pocket expenses have changed.³⁰

IV. Conclusion

I conclude that Mr. E.'s ongoing child support should be in accordance with the Division's latest calculations.

V. Child Support Order

1. The Division's Denial of Modification Review issued on October 23, 2006, is overturned.
2. The Petition for Modification of Administrative Support Order is GRANTED.
3. Mr. E.'s modified ongoing child support amount is set at \$617 per month, effective August 1, 2006, and \$545 per month, effective January 1, 2007.
4. The Division should give the parties the appropriate debit or credit for their out-of-pocket expenses for providing health insurance coverage for J.

DATED this 14th day of September, 2007.

By: Signed

Mark T. Handley

Administrative Law Judge

²⁹ Alaska Dept. of Revenue, CSED v. Kevin Lyn Dillon 977 P 2d 118, (Alaska 1999).

³⁰ Recording of Hearing.

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 Alaska Rule of Appellate Procedure 602(a)(2) within 30 days after the date of this decision.

DATED this 20th day of September, 2007.

By: Signed _____
Jerry Burnett
Director, Administrative Services

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