

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

IN THE MATTER OF )  
 )  
 D Z ) Case No. OAH-07-0015-CSS  
 ) CSSD Case No. 001135770

---

**DECISION & ORDER**

**I. Introduction**

The custodian of record, Y V T, appeals a Modified Administrative Child Support and Medical Support Order issued by the Child Support Services Division (CSSD) on December 6, 2006. Administrative Law Judge Dale Whitney of the Office of Administrative Hearings heard the appeal on January February 23, 2007. The obligor, D Z, appeared in person in Juneau. Ms. V T appeared by telephone. Andrew Rawls represented CSSD by telephone. The child is A Z (DOB 00/00/98). The administrative law judge issues a support order adopting revised calculations proposed by CSSD.

**II. Facts**

Mr. Z works as an aide to a state legislator. For many years he has unsuccessfully requested summers off. In 2006, Mr. Z asked to work through the summer, but only if he could have May and half of June off. Instead, the legislator did not ask Mr. Z to return to work during the interim at all. Mr. Z went to Anchorage, and worked in a number of theater jobs that he was able to obtain as a member of a theatrical stage employee's union. During 2005, Mr. Z reported income of \$43,549.<sup>1</sup> According to his 2006 tax return, Mr. Z earned gross income of \$51,340.<sup>2</sup> Mr. Z did not submit supporting forms with his taxes, such as W-2 and 1090 forms. His return declares wages, tips and salaries of \$31,573, and pension and annuity income of \$18,446, along with a PFD and unemployment compensation of \$214.

In 2006, A spent a considerable amount of time with Mr. Z. After the hearing Mr. Z submitted a copy of a calendar that apparently shows days A was with him in September through December of 2006. Mr. Z could not find such a calendar for August, and the remainder of the year A was not with Mr. Z for a significant amount of time because he was in Juneau during the legislative session. The number of days marked with an "A" on Mr. Z' calendar total 62 days for the entire period. Ms. V T testified that the reason for the amount of time that A was with Mr. Z

---

<sup>1</sup> Exhibit 3, page 4.

<sup>2</sup> Exhibit 11, page 2.

was because she was required to travel extensively for work in 2006. Because she is no longer subject to that requirement, Ms. V T expects to be spending more time with A in the future.

### **III. Discussion**

#### a. shared versus primary custody

Mr. Z argues that support should be calculated under a shared custody formula. According to Civil Rule 90.3(f), a parent has primary custody if the child resides with the other parent for less than 30 percent of the year. 30 percent of a year equals approximately 110 days. Even if Mr. Z had A with him for a full month in addition to the days noted in his calendar, he would not reach the 30 percent threshold. Support should be calculated on a primary custody basis. Mr. Z argues that because his job requires him to be in Juneau during session, he should not be “penalized” for time he was required to be away from A. Civil Rule 90.3 makes no provision for consideration of the reasons a parent was or was not with the child, and it is also true that the reason Ms. V T was away for a great deal of time was her employment obligation. No basis has been presented for variance from the direction of the civil rule.

#### b. imputed income

Ms. V T argues that income should be imputed to Mr. Z at the level he would earn had he worked for the legislature all year and not just during session. She asserts that he could have earned an annual amount of \$55,000 if he had worked for the legislature all year.<sup>3</sup> According to Civil Rule 90.3(a)(4), potential income may be imputed to a parent who is voluntarily and unreasonably underemployed or unemployed. This does not mean, however, that all obligors are required to produce the maximum level of income they are capable of.

It is likely that Mr. Z could have continued to work for the same legislator he had been working for year-round, or for another legislator, had he made a serious effort to do so. But to the extent Mr. Z earned less than he might have if he had spent the entire year working for the legislature, his choice was voluntary but not unreasonable. While he may have been relaxed, Mr. Z was not idle during the legislative interim. At \$51,340, Mr. Z’ actual income for 2006 was within a few thousand dollars of the \$55,000 that Ms. V T asserts should be imputed to him. This level is consistent with the amount of income Mr. Z has produced in the past, and with a middle-class lifestyle. While Mr. Z may have earned slightly less than he was capable of, Ms. V T has not demonstrated that his decision was unreasonable.

---

<sup>3</sup> Exhibit 7.

c. daycare expenses

Ms. V T has placed A in a gymnastics program, which the parties agree has been a healthy and positive experience for her. Ms. V T also employs the gymnastics program as a form of daycare while she is at work. The issue has been raised of whether Mr. Z should be required to pay part of the expenses for gymnastics.

According to Civil Rule 90.3(a)(1)(E), work-related childcare expenses are an allowable deduction from gross income when calculating adjusted gross income. If this case was one of shared custody, it would be necessary to calculate Ms. V T's proportionate support obligation based on her income, and she would be entitled to deduct childcare costs from her gross income. Because this case is a primary custody case and the only issue is Mr. Z' support obligation, work-related childcare expenses are not an appropriate element of a child support calculation. Mr. Z is correct that the cost of gymnastics falls within the category of expenses for the well-being of the child that parents must work out among themselves. This is not to say that these expenses are unnecessary, only that they fall beyond the scope of basic support that the government will enforce.

**IV. Conclusion**

Ms. V T has exercised primary custody of A and will continue to do so. Mr. Z' support obligation should be calculated based on his actual annual income of \$51,340. No adjustment for childcare expenses is appropriate in this case. CSSD has correctly calculated Mr. Z' support obligation to be \$733 for one child at Exhibit 13. Support should be set accordingly.

**V. Order**

IT IS HEREBY ORDERED that Mr. Z' support obligation for one child be set at \$733 per month, effective August 1, 2006.

DATED this 29<sup>th</sup> day of May, 2007.

By: Signed  
DALE WHITNEY  
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 June, 2007.

By: Signed  
Signature  
Jerry Burnett  
Name  
Deputy Commissioner  
Title

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