

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

IN THE MATTER OF: )

F. E. R. )

OAH No. 07-0037-CSS

CSSD No. 001113024

**DECISION AND ORDER**

**I. Introduction**

This matter involves the Obligor F. E. R.'s appeal of a revised Administrative Child Support and Medical Support Order that the Child Support Services Division ("CSSD" or "Division") issued in his case on December 13, 2006. The Obligee children are F., DOB 00/00/92, and C., DOB 00/00/99.

Mr. R. filed his appeal on December 27, 2006. CSSD referred the case to the Office of Administrative Hearings ("OAH") on January 20, 2007. The appeal originally was assigned to Administrative Law Judge Dale Whitney in Juneau, but subsequently reassigned to Administrative Law Judge Kay L. Howard in Anchorage in order to facilitate the parties' desire to appear at the hearing in person. After two calendaring delays to accommodate the Custodian of record, J. M., the formal hearing was held on May 24, 2007. Mr. R. appeared in person; Ms. M. participated by telephone. Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was recorded. The record closed on June 14, 2007, but the parties submitted evidence up until July 16, 2007.

Kay L. Howard, Administrative Law Judge, Alaska Office of Administrative Hearings, conducted the hearing. Having reviewed the record in this case and after due deliberation, Mr. R.'s child support obligation is set forth below.

**II. Facts**

**A. History and Proceedings**

On June 28, 2002, CSSD issued an Administrative Child Support and Medical Support Order establishing Mr. R.'s child support obligation for C., DOB 00/00/99.<sup>1</sup> The order set his ongoing child support at \$229 per month, and charged him arrears totaling \$6311 for the period

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<sup>1</sup> Exh. 1 at pg. 8.

beginning on May 1, 2000, for Medicaid reimbursement.<sup>2</sup> Mr. R. requested an administrative review, claiming that he and Ms. M. were still together and he was in the home through July 2002.<sup>3</sup> On November 4, 2002, CSSD issued an Amended Administrative Child Support and Medical Support Order that was only slightly different than the original order: it set Mr. R.'s ongoing child support at \$211 per month, and assessed the arrears back to June 1, 2000, in the total amount of \$6006.<sup>4</sup> The calculations for those three years – 2000, 2001 and 2002 – were all based on Mr. R.'s actual income.<sup>5</sup> Apparently, neither party appealed CSSD's order.

Before 2003, Mr. R.'s paternity of the parties' older child, F., DOB 00/00/92, apparently had not been resolved. Ms. M. was still married to A. M., whom CSSD had always considered to be F.'s father due to his marriage to Ms. M. Mr. M. denied paternity in the divorce proceedings. In a hearing in the M. divorce action on March 27, 2003, Mr. R. acknowledged paternity of F.<sup>6</sup> On March 28, 2003, Judge Rindner ordered Ms. M. either to sign a three-party affidavit of paternity with Mr. R. and Mr. M., or to state in writing to the court the name of another man whom she believed to be F.'s biological father.<sup>7</sup>

It is not known whether Ms. M. executed the three-party paternity affidavit, but Mr. R.'s paternity of F. eventually was established, because on April 13, 2004, CSSD issued a Modified Administrative Child Support and Medical Support Order to add F. to Mr. R.'s order for C. and to modify the ongoing child support amount for both children. The modified order added arrears for F. to Mr. R.'s child support order in the total amount of \$28,952 for the period from July 1, 1992 through March 31, 2004.<sup>8</sup> The monthly calculations were made as follows:

- for 1992 through 1995, the calculations used Mr. R.'s actual income as reported to the Alaska Department of Labor and Workforce Development;<sup>9</sup>
- for 1996 through 1999, the calculations were made from the average annual income for Alaskan males in Mr. R.'s age group;<sup>10</sup>

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<sup>2</sup> Exh. 1 at pg. 9; Exh. 2 at pg. 4.

<sup>3</sup> Exh. 2 at pg. 1.

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

<sup>5</sup> See Exh. 2 at pgs. 8, 9 & 10.

<sup>6</sup> Exh. A at pg. 1.

<sup>7</sup> During the administrative hearing Mr. R. stated he believed paternity of F., Jr. was resolved in court on March 27, 2003. See Exh. A at pg. 2.

<sup>8</sup> Exh. 3 at pg. 2.

<sup>9</sup> Exh. 4 at pgs. 1 – 4.

<sup>10</sup> Exh. 4 at pgs. 5 – 8.

- for 2000 through 2004, the calculations were based on the child support order issued in 2002 on behalf of C. and merely added to the monthly support figure the next higher percentage amount from one child to two children;<sup>11</sup>
- for 2004 and ongoing (effective April 1, 2004), Mr. R.'s monthly child support was based on the average wage for Alaskan males in his age group.<sup>12</sup>

In 2005, Mr. R. requested a modification. CSSD issued a Modified Administrative Child Support and Medical Support Order on August 24, 2005, setting modified ongoing child support as of July 1, 2005.<sup>13</sup> After a hearing, the parties agreed that Mr. R.'s child support would be correctly calculated at \$412 per month for two children, but that he had had custody of both children during all the time periods covered by the modification, that is, at least since July 1, 2005.<sup>14</sup> CSSD agreed to suspend ongoing child support as of July 1, 2005.<sup>15</sup>

On May 31, 2005, Mr. R. filed a Motion to Vacate Default Order and provided financial information.<sup>16</sup> CSSD granted the motion and on December 13, 2006, issued a revised Administrative Child Support and Medical Support Order that adjusted Mr. R.'s arrears to \$21,959.50 for the period from July 1, 1992 through June 30, 2005.<sup>17</sup> Mr. R. filed an appeal and requested a formal hearing on December 27, 2006.<sup>18</sup>

At the hearing, Mr. R. testified that he has been in the home with the children for most of the time since F. Jr. was born in July 1992. Mr. R. testified the family was together in Homer, Alaska at the time F. Jr. was born. He said they lived in Homer in 1992, and Kenai in 1993 and 1994, then in August 1994, Mr. R. moved to Seward for employment, but he insists the family was still together. He testified he went to Kenai to be with the family on his days off, which were approximately once per week. Mr. R. added that in December 1994, his employer asked him to go to Washington to help open a restaurant. He said after he went to Washington, Ms. M. moved to Seattle in April 1995 as the family was still together at that time. After living in

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<sup>11</sup> Exh. 4 at pgs. 9 – 11. The 2003 calculation page is missing from the record, but Exhibit 4 at pg. 15 shows the same treatment for that year as for 2000 through 2002.

<sup>12</sup> Exh. 4 at pg. 12.

<sup>13</sup> See Exh. 5 at pg. 1.

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

<sup>15</sup> *Id.*

<sup>16</sup> Exhs. 6 & 8.

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

<sup>18</sup> Exh. 12.

Washington for five years, Mr. R. testified that the family moved back to Seward in March of 2000 and remained together until August 2002 when he and Ms. M. separated.

Mr. R. stated that after he and Ms. M. separated in August 2002, the children lived with him from May 2003 through April 2004 in Kenai. He said the children went to stay with Ms. M. for less than two months, probably closer to 1½ months, in April and May 2004, but they were with him from May 2004 through June 2005, when he was awarded custody. Mr. R. acknowledged he sent F. Jr. to a treatment facility/school in Utah for nine months in 2004.

Ms. J. M., the Custodian of record, also presented testimony during the hearing. She stated that in July 1992, about the time of F. Jr.'s birth, she lived in Homer, Alaska. Mr. R. lived in another apartment, but then he moved in with her when F. Jr. was born. Ms. M.' testimony generally followed Mr. R.'s testimony, in that she agreed the parties moved around a lot, in Homer, Kenai, Washington state and Seward. The primary difference between Mr. R.'s and Ms. M.' hearing testimony is that Ms. M. indicated she did not consider Mr. R. to be a member of her household during the periods of time he traveled to Mexico for 2-3 months to be with his extended family. She explained she was still married at the time and never knew for sure whether Mr. R. was going to stay with her because of her marriage and the fact that she had children.

Ms. M. confirmed she lived with Mr. R. in Washington during 1994 and 1995, but said they lived together only five to six months, then they got separate apartments. She said when she told Mr. R. she was pregnant with C., they got back together and C. was born in 1999. At that point they moved back to Seward and were together in 2000, their relationship was on and off in 2001 and they separated in May or June of 2002.

Ms. M. stated she had the children in 2002, then they went to stay with Mr. R. after school was out in June 2003. Ms. M. confirmed Mr. R. sent F. Jr. to Utah for nine months, but she said it was a joint decision they made because their son needed treatment. She added Mr. R. apparently also sent F. Jr. to Mexico for 10 months to live with his grandparents within two weeks of having returned from Utah. Finally, Ms. M. testified F. Jr. had been with her since May of 2007 through the end of the 2006-2007 school year.

After the hearing Ms. M. submitted a timeline for the parties' relationship and periods of time she had the children, but it is very difficult to read and confusing to understand.<sup>19</sup> Mr. R. also filed 1½ inches of supplemental documents after the hearing to support his testimony. For example, one of the documents is an affidavit from a former co-worker who indicated Mr. R. and Ms. M. were both employed at the same restaurant in Homer from 1992 until July 1993, and were openly a couple and lived together with F. Jr. and Ms. M.' two older children.<sup>20</sup> Also, there is an affidavit from Mr. J. R. C. (who stated he is no relation to the obligor), who said he worked with the parties at a restaurant in Richland, Washington, from December 1994 to March 2000, and that they lived together until they moved back to Alaska in 2000.<sup>21</sup>

### **III. Discussion**

#### **A. Introduction**

A parent is obligated both by statute and at common law to support his or her children.<sup>22</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."

When an obligor parent requests that CSSD conduct a default review of a child support order, he or she must provide all the information necessary to determine the child support obligation for each year at issue.<sup>23</sup> The person who filed the appeal, in this case, Mr. R., has the burden of proving by a preponderance of the evidence that the agency's revised Administrative Child Support and Medical Support Order is incorrect.<sup>24</sup> Mr. R. has met that burden, as will be discussed below. As a result, in summary, Mr. R. is liable for support for F. Jr. and C. for the period from September 2002 through May 2003. Mr. R. is not liable for support for F. Jr. for the period prior to March 1998 due to the statutory limitations period found in 09.10.120(a).<sup>25</sup>

This child support case represents a "perfect storm," in that it is a perfect example of all of the confusion and resulting turmoil that can occur when the paternity of a child is not established in a timely manner. This is not an indication of fault on the part of either party to this

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<sup>19</sup> Exh. 13.

<sup>20</sup> Mr. R.'s post hearing document will be referred to as Exh. F, but the pages are not individually numbered.

<sup>21</sup> *Id.*

<sup>22</sup> *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

<sup>23</sup> 15 AAC 125.121(b).

<sup>24</sup> 15 AAC 05.030(h).

<sup>25</sup> *See also Agen v. State, CSED*, 945 P.2d 1215, 1219 (Alaska 1997).

child support action, but paternity of F., Jr., who was born in July 1992, was not resolved until Mr. R. acknowledged paternity in a court hearing held during the divorce action involving Ms. M. and her first husband, A. M., on March 27, 2003.<sup>26</sup> For the 11 years prior to that time, the parties lived in multiple locations in Alaska and Washington, and it was difficult for both of them to accurately reconstruct their history, and for that history to be interpreted and analyzed. Mr. R.'s testimony and documents are found to be the most credible. He filed affidavits, billing statements, rent receipts and lease agreements, employment records and medical records that confirmed the bulk of his testimony, and for the most part it will be adopted. Ms. M.' testimony, on the other hand, was often vague and nonspecific, and with the exception of a confusing timeline filed after the hearing, she did not supplement the record with any additional documentation.

**B. Mr. R. is not liable for support prior to March 1998**

CSSD originally charged Mr. R. with child support for public assistance reimbursement for F. Jr. for the periods from July 1992 through January 1993; June 1993 through December 1994; and December 1995 through January 1997.<sup>27</sup> CSSD also assessed child support for both F. Jr. and C. from May 2000 through March 2002; September 2002 through July 2003; and September 2004 through June 2005, at which time Mr. R. was awarded custody of both children.<sup>28</sup> CSSD subsequently acknowledged, based on its review of the parties' testimony and post hearing documents that Mr. R. more likely than not was in the home from July 1992 through July 1993; and from December 1994 through July 2002.<sup>29</sup> As a result, CSSD abandoned most of the charges against Mr. R. except for the period from August 1993 through December 1994 (which would apply to child support for F. Jr. only), the period from September 2002 through May 2003 (which applies to both F. Jr. and C.), and the period from September 2004 through

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<sup>26</sup> Although the court did not issue an order establishing Mr. R.'s paternity of F. Jr. at that time, the court indicated Mr. M. had denied paternity and Mr. R. had acknowledged paternity. As a result, the court ordered Ms. M. to either complete a third-party paternity affidavit with both men or to name another individual whom she believed was F. Jr.'s father. Subsequently, either Ms. M. completed the third-party affidavit or paternity tests confirmed Mr. R.'s paternity of F. Jr. In 2004, CSSD initiated an action adding F. to Mr. R.'s child support order for C. Mr. R. stated at the hearing that he believed his paternity of F. Jr. was resolved on March 27, 2003.

<sup>27</sup> CSSD Post hearing brief at 1.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

May 2005.<sup>30</sup> CSSD requests that these periods of time be addressed and ruled on by the administrative law judge.

Mr. R. is not liable for public assistance reimbursement for F. Jr. for any time period prior to March 1998. According to the Alaska statutes, an action initiated on behalf of the state may be commenced only within six years of the date the action accrued.<sup>31</sup> In child support cases, this statute means that whenever CSSD initiates a child support action against an obligor parent for past public assistance, the agency may not assess child support for any time period more than six years prior to serving the obligor parent with notice of paternity or notice of a child support action. In this case, Mr. R. considered his paternity of F. Jr. to have been resolved on March 27, 2003. However, the record in this appeal indicates that CSSD did not serve him with any notice of his obligation to pay support for F. Jr. prior to issuing the Modified Administrative Child Support and Medical Support Order on April 13, 2004.<sup>32</sup> Thus, under 09.10.120(a), CSSD may not assess arrears against Mr. R. prior to March 1998, six years prior to service of the modification order.

### **C. Time periods after March 1998**

CSSD also charged Mr. R. with child support arrears for the period from September 2002 through May 2003 for both F. Jr. and C. Because Mr. R. acknowledged in the hearing that both children were in the custody of Ms. M. from the time of their separation in July 2002 through June 2003, Mr. R. is liable for child support during this period of time. CSSD calculated child support for this period of time at \$220 per month for two children in 2002 and \$326 per month for two children in 2003.<sup>33</sup> According to CSSD's worksheets, these calculations are based on Mr. R.'s actual income for those years and as a result, these calculations should be adopted. Thus, Mr. R. is liable for child support in the amount of \$220 per month for two children for the months of August 2002 through December 2002, and \$326 per month for the months of January 2003 through May 2003.

Finally, CSSD charged Mr. R. with child support from September 2004 through May 2005 for both children. Mr. R. asserts the children were with him or in his custody for this entire

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<sup>30</sup> *Id.*

<sup>31</sup> AS 09.10.120(a).

<sup>32</sup> Exh. 3.

<sup>33</sup> Exh. 10 at pgs. 11-12.

period of time. Ms. M. testified the children spent the summer of 2004 with her prior to Mr. R. sending F. Jr. to Utah. Her written timeline suggests she had the children from December 2003 until March 2004<sup>34</sup>, but it does not specifically address the time period from September 2004 through May 2005.<sup>35</sup> As a result, Mr. R.' testimony is deemed uncontested and he is not liable for support for that period of time.

#### **IV. Conclusion**

Based on the record as a whole, Mr. R. met his burden of proving CSSD's revised Administrative Child Support and Medical Support Order was incorrect. He is not liable for child support prior to March 1998 because it would exceed the six-year statute of limitations applying to actions initiated on behalf of the state, pursuant to AS 09.10.120(a).

Mr. R. is liable for child support for both F. Jr. and C. for the period from August 2002 through December 2002 in the amount of \$220 per month, and \$326 per month for the period from January 2003 through May 2003. Finally, Mr. R. is not liable for support for the period from September 2004 through May 2005 because he had custody of the children in his home at the time. Mr. R. has had court-ordered custody since June 2005.

On October 20, 2005, the Office of Administrative Hearings issued a child support order in Mr. R.' case setting ongoing child support at \$412 per month for two children, but which also recognized that Mr. R. has had custody of the children for the entire time period covered by the modified order. That decision and order remains in force and is unaffected by this decision.

#### **V. Child Support Order**

- Mr. R. is not liable for child support prior to March 1998;
- Mr. R. is liable for child support for two children in the amount of \$220 per month for August 2002 through December 2002, and \$326 per month for two children for the period of January 2003 through May 2003;
- Mr. R.' ongoing child support has been suspended effective June 2005 pursuant to a court order.

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<sup>34</sup> Exh. 13 at pg. 3.

<sup>35</sup> Exh. 13 at pgs. 3 & 5.



- The Decision & Order issued on October 20, 2005, In the Matter of F. R., OAH No. 05-0679-CSS, remains in effect.

DATED this 11th day of December, 2007.

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

DATED this 28th day of December, 2007.

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

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