

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

IN THE MATTER OF: )

K. R. S. )

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OAH No. 07-0055-CSS

CSSD No. 001041386

**DECISION AND ORDER**

**I. Introduction**

The Obligor, K. R. S., appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on January 16, 2007. The Obligee child is K., DOB 00/00/92.

The formal hearing was held on February 28, 2007. Mr. S. appeared by telephone; the Custodian of record, K. G. M., did not participate. Andrew Rawls, Child Support Specialist, appeared for CSSD. The hearing was recorded; the record closed March 2, 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, I have concluded Mr. S. should prevail on the income issue, but not on the issue of shared custody.

**II. Facts**

**A. History**

Mr. S.'s child support obligation for K. was previously established at \$588 per month. On November 6, 2006, Ms. M. initiated a modification review of the order.<sup>1</sup> On November 7, 2006, CSSD sent the parties a Notice of Petition for Modification of Administrative Support Order.<sup>2</sup> Mr. S. provided income information for 2004 and 2005.<sup>3</sup> On January 16, 2007, CSSD issued a Modified Administrative Child Support and Medical Support Order that set Mr. S.'s modified ongoing child support at \$719 per month, effective December 1, 2006.<sup>4</sup> Mr. S. filed an appeal on January 31, 2007.<sup>5</sup>

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

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

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

<sup>4</sup> Exhs. 4 & 5.

<sup>5</sup> Exh. 6.

### III. Material Facts

Mr. S. resides in Fairbanks. He has worked for L. F., an armored truck company, for 23 years. He is currently the branch manager of the Fairbanks location. Mr. S. earned \$56,793.48 in 2006.<sup>6</sup> He paid \$2906.72 into retirement for the year,<sup>7</sup> which equals \$242.22 per month. CSSD inserted these figures, plus the deductions for taxes, Social Security and Medicaid, into its online child support calculator at [www.childsupport.alaska.gov](http://www.childsupport.alaska.gov), and the results were a child support figure of \$693 per month for one child.<sup>8</sup>

The Obligee in this case, K., is now 14 years of age. She resides primarily with Ms. M. in Anchorage and has visitation with Mr. S. in Fairbanks. On July 7, 2000, the Honorable Sen K. Tan of the Alaska Superior Court signed a Decree of Custody in Case No. 3AN-00-0000CI that granted sole legal and physical custody of K. to Ms. M. and set up a schedule of gradually increasing visitation times between Mr. S. and K. at his home in Kenai, Alaska.<sup>9</sup>

The court order states that K. had a severe anxiety disorder that concerned Judge Tan. As a result, he ordered that Mr. S.'s visitation with K. would begin gently, with a shorter period of time at first, so that Mr. S. would experience success in building his relationship with her. Beginning in 2000, Mr. S. was to have visitation with K. for a total of one month to six weeks during the school year, taken in 3-day periods on alternating weekends. The summer of 2000 was to include three weeks total, taken in two sessions, plus seven days during the Christmas holiday, ten days for spring break (in even years), Mr. S.'s birthday and Father's Day. That equals approximately 82 overnights, to which would be added unspecified alternating holidays or school recesses.<sup>10</sup> In 2001, Mr. S.'s summer visitation with K. was to increase to six weeks, making the total approximately 95 overnights, plus alternating holidays or school recesses.<sup>11</sup> Beginning in 2002, assuming the success of the 2000 and 2001 visitation periods, Mr. S.'s visitation was to increase to about 110 overnights, plus alternating holidays or school recesses.<sup>12</sup>

The last paragraph of the court's order contained the following language:

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<sup>6</sup> W-2 received from Mr. S. by facsimile on March 10, 2007.

<sup>7</sup> Exh. 6 at pg. 2.

<sup>8</sup> Exh. 7.

<sup>9</sup> Decree of Custody received from Mr. S. by facsimile on March 10, 2007.

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

<sup>11</sup> *Id.*

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

17. The State of Alaska, Child Support Enforcement Division (CSED) is presently administering child support obligation of Defendant [Mr. S.]. At some point in time, Defendant will have K. enough overnights to warrant having his child support obligation set according to CR 90.3(b) shared custody. Defendant shall notify CSED when he has K. a sufficient number of overnights per year to warrant his child support being set according to CR 90.3(b). CSED shall then set Defendant's child support. Plaintiff shall cooperate with CSED and supply her income information in a timely manner.<sup>[13]</sup>

There is no evidence in the record regarding the relative success or failure of Mr. S.'s visitations with K. after the court issued its Decree of Custody in the year 2000. Regardless, the visitation has not gone as set out in the court's order within the last couple of years. Mr. S. moved to Fairbanks in approximately 2005 and K. does not like to go there for visitation, but he does get to see her when he is in Anchorage occasionally.<sup>14</sup>

#### **IV. Discussion**

##### **A. Income**

A parent is obligated both by statute and at common law to support his or her children.<sup>15</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." Modification of child support orders may be made upon a showing of "good cause and material change in circumstances."<sup>16</sup> If the newly calculated child support amount is more than a 15% change from the previous order, Civil Rule 90.3(h) assumes that "good cause and material change in circumstances" has occurred.

Mr. S.'s child support previously was set at \$588 per month. CSSD calculated his modified child support at \$719 per month, based on an estimate his 2006 income would total \$59,176.08.<sup>17</sup> When he filed the appeal, Mr. S. provided his 2006 W-2, and after the hearing he submitted his 2006 tax return. These documents verify Mr. S.'s 2006 earnings totaled \$56,793.48.<sup>18</sup> CSSD inserted this figure into a child support calculation, added the PFD, and subtracted Mr. S.'s deductions for taxes, Social Security and Medicaid, and his retirement, all of

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

<sup>14</sup> Testimony of K. R. S.

<sup>15</sup> *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

<sup>16</sup> AS 25.27.190(e).

<sup>17</sup> Exh. 5.

<sup>18</sup> Exh. 6.

which resulted in a revised child support calculation of \$693 per month, without the medical credit.<sup>19</sup>

Based on the testimony presented at the hearing and all of the evidence in the record, I find that the child support figure of \$693 per month is a correct calculation of Mr. S.'s obligation to pay support on a primary custody basis. Whether this is Mr. S.'s final child support amount turns on whether he and Ms. M. exercise shared custody, which is addressed in the following section.

### **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 specified in writing of at least 30 percent of the year, regardless of the status of legal custody.

Civil Rule 90.3(f)(1). Thirty percent (30%) of the year is 110 days. 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>20</sup>

In a shared custody scenario, CSSD must calculate support according to the shared custody percentage the court awards each party, regardless of the visitation schedule they actually follow.<sup>21</sup> This prevents either of them from causing a change to the support calculation by manipulating the custody schedule or withholding the child from visitation. Thus, when Mr. S. revealed at the hearing that the court had previously issued a court order regarding K.'s custody and visitation, it was necessary to obtain a copy of that order to ascertain the nature and substance of the shared custody award. If Mr. S. was awarded shared custody, then his child support must be calculated using the shared custody formula, based on the schedule in the court order.

The Decree of Custody, however, is a unique document. The shared custody provisions are not set in stone. Rather, the order does not provide for visitation totaling 110 overnights until

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<sup>19</sup> Exh. 7.

<sup>20</sup> Civil Rule 90.3, Commentary V.A.

<sup>21</sup> *Turinsky v. Long*, 910 P.2d 590 (Alaska 1996).

at least 2002, and then only after the successful completion of a series of gradually increasing visitation periods between Mr. S. and K. in 2000 and 2001. Neither does the court order enter a definite child support amount or a shared custody schedule upon which to calculate child support. The order merely states that upon Mr. S. reaching the point at which he was exercising actual shared physical custody, he was to contact CSSD for an appropriate child support calculation.

There is no dispute that the parties do not exercise shared physical custody in this case. Mr. S. acknowledged K. does not like to go to Fairbanks, so he does not see her very much. Thus, according to the terms of the 2000 court order, Mr. S. has not achieved shared custody, and as a result, he is not entitled to a shared custody calculation.<sup>22</sup>

#### **V. Conclusion**

Mr. S. met his burden of proving by a preponderance of the evidence that his child support obligation was calculated incorrectly. His child support is now correctly calculated at \$693 per month, without any medical insurance credit. Mr. S. did not prove by a preponderance of the evidence that he exercises shared custody of K. Thus, he is not entitled to having his child support calculated using the shared custody formula. Accordingly, I conclude the modified ongoing child support calculation of \$693 per month should be adopted, effective December 1, 2006.

#### **VI. Child Support Order**

- Mr. S. is liable for modified ongoing child support in the amount of \$693 per month, effective December 1, 2006, and ongoing;
- The child support figure entered above does not include any medical insurance credit to which Mr. S. may be entitled;

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<sup>22</sup> It should be noted that the substance of the July 2000 court order was a surprise to the administrative law judge. It was assumed, based on Mr. S.'s testimony, that the court had simply awarded the parties shared custody and Mr. S. would be entitled to the shared custody calculation. However, on its face, the language of the court order is clear and uncompromising: it is not until Mr. S. reaches the point of actual shared physical custody with K. that he is entitled to the shared custody child support calculation.

- CSSD is authorized to make the current and future adjustments to Mr. S.'s child support amount made necessary by the payment of medical insurance premiums on K.'s behalf.

DATED this 22nd day of March, 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 within 30 days after the date of this decision.

DATED this 10th day of April, 2007.

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

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