

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

IN THE MATTER OF)	
)	
T. C.)	Case No. OAH-07-0208-CSS
_____)	CSSD Case No. 001144539

DECISION & ORDER

I. Introduction

The obligor, T. C., appeals an Amended Administrative Child Support and Medical Support Order issued by the Child Support Services Division (CSSD) on March 12, 2007. Administrative Law Judge Dale Whitney of the Office of Administrative Hearings heard the appeal on May 8, 2007. Mr. C. appeared by telephone with counsel Heather Sia. The custodian of record, F. C., appeared by telephone with her attorney, Phyllis Shepherd. Andrew Rawls represented CSSD. The children are T. C. (DOB 00/00/95), M. C. (DOB 00/00/99) and D. C. (DOB 00/00/01). The administrative law judge affirms the amended order.

II. Facts

The only issue in this case is whether the parties exercised shared custody of the children during the period from September 1, 2006 through April 30, 2007. Both parties presented calendars they had prepared showing the times they recalled having the children. Both parties testified and were cross-examined. There is disagreement about some days, but for the most part the parties were able to agree on where the children were most of the time. Both parties were honest and truthful in their accounting of where the children had been. Ms. C. was slightly more accurate in her record keeping. There were a few times that Ms. C. was not sure about, and times when, on further consideration, Mr. C. agreed that Ms. C. was correct. Although there is uncertainty about some days, the testimony of the parties shows it would be more likely than not that the following schedule is accurate:

September, 2006: The parties agree that the children were with Mr. C. at least thirteen days. Mr. C. initially claimed they were with him for fifteen days, but it appears that he included the two days at the end of each of the two periods he had the children, and that the children actually stayed with Ms. C. those two nights. The children were thus with Mr. C. for thirteen days this month.

October, 2006: Mr. C. claims the children were with him for sixteen days while Ms. C. was traveling for work. Ms. C. agrees with all but the last two days of the period, the 18th and 19th. She asserts that she returned on the 18th and picked up the children on that day. Ms. C. also questions where the children were for three days Mr. C. was engaged in drill exercises with the National Guard. Mr. C. discussed the days he was engaged in drill. The children were essentially with him and his family on those days, but it does appear that Ms. C. picked up the children the day she returned, and that the children were thus with Mr. C. for fourteen days this month.

November, 2006: Mr. C. claimed ten days in four different visits. Ms. C. agrees the children were with him on the 1st but she asserts that she picked up the kids on the 2nd, which Mr. C. also claims. The parties agree that for four days from the 9th through the 12th D. was with Mr. C. but T. and M. were with Ms. C. shopping in Anchorage. For the next two weekends Mr. C. claims two days each weekend. Ms. C. does not directly dispute these two weekends, indicating that her notes and memory for those two weeks are not very clear. It is most likely that all of the children were with Mr. C. for five days this month, and that D. was with him for an additional four days.

December, 2006: Mr. C. asserts the children were with him for five days in two visits of two and three days, respectively. Ms. C. disputes that the children were with Mr. C. for more than one or possibly two days during this month. It is difficult to be certain, but most likely that the children were with Mr. C. for two days in December.

January, 2007: In the first week of this month, Mr. C. spent a great deal of time with the children during the days, but he did not have all of them overnight as planned because he was ill. Though one or two of the children may have been with Mr. C. overnight on some nights during this week, it is more likely than not they spent days with their father but nights with their mother. On the 12th and the 13th D. and M. were with Mr. C., but T. was not. All of the children were with Mr. C. on the 19th and 20th. Thus, all of the children were with Mr. C. for two days, and M. and D. were with him for four days.

February, 2007: In this month Mr. C. initially claimed six days with the children. Ms. C. agreed that he had all children for one day, and D. and M. only for an additional two days. For the remaining three days, it is difficult to be certain, but slightly more likely than not that the children were with Ms. C. on those days. Thus, Mr. C. had all children for one day and D. and M. for an additional two days.

March, 2007: Mr. C. had all of the children for two days on the 23rd and 24th. He also had D. for two additional days on the 9th and 10th, for a total of four days.

April, 2007: Mr. C. claims seven days. Ms. C. agrees with at least six of those days. It appears that on one of the days, the 7th, the children were not with Mr. C..

Totals: Adding up the days listed above shows that Mr. C. had all of the children for a total of 34 days during the four-month period in 2006, and that he had D. for an additional four days. In the four-month period in 2007, Mr. C. had all of the children for a total of 13 days, and he had D. and M. both for an additional six days.

III. Discussion

Shared and primary custody are defined in Civil Rule 90.3(f)(1) and (2), respectively. A parent has shared custody if the children reside with that parent at least thirty percent of the year. A parent has primary custody if the children reside with the other parent for less than thirty percent of the year.

Information is available in this case for exactly four months in both 2006 and 2007, or one-third of each year. One third of 365 days is 121.6 days. Thirty percent of that amount is 36.5 days. Thus, if Mr. C. had the children for more than 37 days in a third of a year, shared custody would be appropriate.

Mr. C. did not have any of the children for 37 days in 2007. In 2006, he had two of the children for 34 days, but he had D. for 38 days. It could be argued that in this situation, support should be calculated according to a hybrid custody formula. Hybrid custody under Civil Rule 90.3(f)(4) is when one parent has primary custody of at least one child, and the parents have shared custody of at least one child.

A hybrid custody calculation is not appropriate in this case for two reasons. First, Mr. C. had D. only one day over the primary amount in 2006, but it is just as logical to examine both the

period in 2006 and in 2007 as one period lasting two-thirds of a year. If the case were looked at this way, it would be clear that Mr. C. did not come close to exercising shared custody. Second, it appears that amount of time that Mr. C. had the children in 2006 does not represent a regular schedule. Mr. C. had the children for about five whole weeks during the last half of September and the first half of October. This was not part of a typical schedule, but rather an accommodation that Mr. C. made while Ms. C. was traveling for work. This travel appears to have been temporary and not likely to recur. Under these circumstances, the extra day beyond 30 percent that Mr. C. had D. in 2006 should not be regarded as constituting an exercise of shared custody.

IV. Conclusion

The parties did not exercise shared custody of the children in this case. CSSD has correctly calculated support based on primary custody. No other issues regarding the support amount have been raised. The amended order should be affirmed.

V. Order

IT IS HEREBY ORDERED that the Amended Administrative Child Support and Medical Support Order issued by the Child Support Services Division (CSSD) on March 12, 2007 be AFFIRMED.

DATED this 5th day of June, 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 22nd day of June, 2007.

By: Signed
Dale Whitney
Administrative Law Judge

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