

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

In the Matter of	)	
	)	
D J	)	OAH No. 19-0268-CSS
_____	)	Agency No. 001228397

**DECISION AND ORDER**

**I. Introduction**

On March 14, 2019, the Child Support Services Division (CSSD) issued an Amended Administrative Child and Medical Support Order that established D J's child support obligation for her son, O. The amended order set the ongoing obligation and pre-order arrears at \$260 per month based on shared custody with custodian of record E J. CSSD's calculation assumed a custody practice of 33% (mother), 67% (father). Mr. J appealed, principally arguing that CSSD should have applied the primary custody formula.

Though Mr. J showed he has actually been exercising primary custody during the relevant period, CSSD must apply the shared custody arrangement that was incorporated in a 2017 Maryland court order. The evidence supports CSSD's income determinations for each parent and resulting child support calculations. No errors were shown. Accordingly, the Amended Administrative Child Support and Medical Support Order dated March 14, 2019 is affirmed.

**II. Facts**

*A. Material Facts*<sup>1</sup>

D J and E J are the parents of three children. The two oldest have emancipated. The youngest, O, is 16 years old. O lives primarily with Mr. J in Maryland. During 2018, O spent approximately 64 overnights with his mother.<sup>2</sup> This constitutes 17.5% of the total nights in the year.

Ms. J lived in Maryland until August 2018, when she accepted a job working Employer A and moved to No Name, Alaska. She returned to Maryland over the school winter holiday and spent three days with O during that time. She did not have any overnight visits with him from January 2019 through mid-March 2019.

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<sup>1</sup> The material facts are taken from the hearing testimony and all offered exhibits, including three exhibits received from Ms. J on 4/17/19.

<sup>2</sup> Exhibit 8.

Ms. J was diagnosed with cancer some years ago. Since at least the third quarter of 2017, she has balanced her health needs, medical treatment, and her work life. Her wage history shows employment income in every quarter since the third quarter of 2017.<sup>3</sup> Over the course of 2018, Ms. J worked for three different employers and earned gross wages totaling \$55,016.32.<sup>4</sup>

In mid-March 2019, Ms. J required hospitalization in Anchorage for severe chronic neutropenia. The treating doctor advised her to leave her job, effective immediately, because her immune system was so suppressed that working with children placed her at risk of a life-threatening infection.<sup>5</sup> The doctor also advised that she required multiple tests and subspecialty care from an oncologist. Since that testing and care is not available in a rural location like No Name, Ms. J had to leave the village.<sup>6</sup>

After her discharge from the hospital, Ms. J did not return to No Name. She officially resigned from her job on March 17, 2019.<sup>7</sup> She returned to Maryland, where she is receiving treatment.<sup>8</sup> At the time of the hearing, her treatment was being done on an outpatient basis. She had recently undergone testing and expected to have the results soon. She is not yet looking for a new job, since she needs to know her test results before she can develop plans for future employment. Ms. J intends to remain in Maryland. She has no plans to work in Alaska in the foreseeable future.

Mr. J and O have lived in Maryland at all relevant times. Mr. J's employment and income are stable. In 2018, he earned gross wages totaling \$66,411.00.<sup>9</sup> He expects to earn the same amount in 2019.

*B. Procedural Background*

On May 19, 2017, Mr. J and Ms. J entered into a Separation and Property Settlement Agreement.<sup>10</sup> Article 4 sets out the parents' agreement regarding custody of O in specific terms.

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<sup>3</sup> Exhibit 9, p. 1.

<sup>4</sup> Exhibit 9, p. 1.

<sup>5</sup> D J exhibit received 4/17/19 (letter dated 3/14/19 from Dr. B U, MD, hospitalist at Providence Alaska Medical Center).

<sup>6</sup> *Id.*; D J testimony.

<sup>7</sup> D J exhibit received 4/17/19 (resignation letter).

<sup>8</sup> There was some discussion during the hearing about whether Ms. J was medically evacuated from Alaska to Maryland. Ms. J agreed she flew by commercial airliner.

<sup>9</sup> Exhibit 9, p. 2.

<sup>10</sup> Exhibit 6, pp. 3-14. The signed copy of the agreement in Exhibit 6 is partially blurred. However, it appears Ms. J did not sign the agreement until July 6, 2017. Exhibit 6, p. 14.

On July 11, 2017, a Maryland Circuit Court judge issued a consent order that incorporated Article 4 of the Separation and Property Agreement.<sup>11</sup> It then became the governing custody order.

In August 2018, Mr. J requested services from the Maryland child support services agency.<sup>12</sup> Because Ms. J was at that time living in Alaska, the Maryland agency sent a transmittal request to CSSD, instructing it to establish Ms. J's support obligation for O. CSSD sent both parents an order to provide their financial information, and both parents responded with financial documentation.<sup>13</sup>

On January 20, 2019, CSSD issued an Administrative Child Support and Medical Support Order that set Ms. J's support obligation based on primary custody with Mr. J.<sup>14</sup> Ms. J requested an administrative review hearing and provided the Separation and Property Settlement Agreement, which CSSD had not previously seen.<sup>15</sup>

The administrative review hearing took place on February 19, 2019. On March 14, 2019, CSSD issued the administrative review hearing decision and Amended Administrative Child and Medical Support Order at issue in this appeal.<sup>16</sup> The amended order calculated the support obligation based on the shared custody formula and a 33% (mother), 67% (father) arrangement. It assessed each parent's 2018 and expected 2019 income and allowable deductions, which resulted in a monthly support obligation of \$260, owed by Ms. J. CSSD applied this amount as the ongoing obligation, effective April 1, 2019, as well as for Ms. J's pre-order arrears for the months of August 2018 through March 2019.<sup>17</sup>

Mr. J requested a formal hearing.<sup>18</sup> The hearing took place by telephone on April 17, 2019. The parents represented themselves and testified. Ms. J was assisted by her Maryland attorney, Angela Furman, who also participated. Child Support Specialist Brandi Estes represented CSSD. The hearing was recorded. All offered exhibits were admitted to the record, which closed on April 17, 2019.<sup>19</sup>

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11 Exhibit 6, p. 2.

12 E J testimony; Exhibit 7, p. 18;

13 Exhibits 1, 2, 3.

14 Exhibit 4.

15 Exhibit 5.

16 Exhibit 7.

17 *Id.*

18 Exhibit 8.

19 One of Ms. J's exhibits is a letter dated 3/14/19 from Dr. B U, M.D. The first submission was not readable. Ms. J summarized the letter during the hearing and re-submitted it later that day. It is admitted along with all other

### III. Discussion

As the person who filed the appeal, Mr. J bears the burden to show by a preponderance of the evidence that CSSD's amended child support order requires adjustment.

A parent is obligated both by statute and at common law to support his or her children.<sup>20</sup> In cases where support is determined by CSSD, the agency collects from the date a parent requests child support services or the date public assistance is initiated on behalf of the child.<sup>21</sup> Because Mr. J requested services from the Maryland child support agency in August 2018, Ms. J's pre-order arrears start with that month.

#### A. Jurisdiction

At the outset of the hearing, Ms. J expressed a desire to transfer this case back to Maryland since both parents and the child are living there. As the CSSD hearing representative explained, a transfer will be possible through a separate administrative process once CSSD's child support order is final. However, CSSD appropriately exercised jurisdiction to establish the order based on Mr. J's application for services, the request from its counterpart agency in Maryland, and Ms. J's physical residence in Alaska. When CSSD initiated this matter, Ms. J was living and working in Alaska. She responded to CSSD's order to provide financial information, and she has been participating in the administrative process since October 2018 without expressing any jurisdictional objections.

Ms. J acknowledged this history. She expressed her intention to seek a modification review in Maryland once this matter is final and the case has been transferred to Maryland for enforcement.

#### B. Custody arrangement

Mr. J's primary argument on appeal is that CSSD should have calculated Ms. J's support amount under the primary custody formula. There is no dispute that the parents' actual practices in 2018 and to-date in 2019 reflect a primary custody arrangement.

Despite this, the Maryland court order dated July 11, 2017 adopted a very different custody plan. It incorporated Article 4 of the parents' Separation and Property Settlement Agreement, which contemplates shared custody of 33% mother, 67% father. CSSD made this determination

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offered exhibits.

<sup>20</sup> *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987); A.S. 25.20.030.

<sup>21</sup> 15 AAC 125.105(a)(1)-(2).

after carefully reviewing the provisions of Article 4, calculating that it included 119 overnight stays with Ms. J each year, and 246 overnights with Mr. J. Neither parent contested this finding.

The Alaska Supreme Court has held that the percentage of time each parent exercises custody must be determined by reference to the child custody order, not the parties' actual conduct.<sup>22</sup> As a result, CSSD is obligated to apply the custody agreement adopted in the Maryland court order. There is no error on this issue.

*C. Income determination and child support calculation*

Mr. J questioned the accuracy of the income determination for Ms. J, stating that she earned higher wages in Alaska than he did in Maryland. He acknowledged that her medical status and recent return to Maryland lessened this concern. However, he also expressed doubts about her motivations for leaving the Alaska job, since she resigned just days after CSSD issued the amended child support order at issue here.

When it calculates pre-order arrears, CSSD is required to rely on a parent's actual income information unless it finds that the parent was voluntarily and unreasonably unemployed or underemployed during the relevant period.<sup>23</sup> There is no evidence of voluntary and unreasonable underemployment in this case. Therefore, CSSD appropriately calculated Ms. J's 2018 support obligation based on her actual total income of \$55,016.32. This is the amount reported by her employers to the Department of Labor.<sup>24</sup>

To calculate the ongoing support amount, CSSD must determine each parent's expected 2019 total income. This can be a somewhat uncertain endeavor since it includes an assessment of projected future income.<sup>25</sup> CSSD's regulations instruct it to use the best available information for this task, including the parent's current income and/or his or her actual income from the immediately preceding year.<sup>26</sup> By the time of the formal hearing in this case, Ms. J was no longer working; she has no current wage income. Based on the evidence in the record, this was not the result of a voluntary or unreasonable choice. She is in transition between jobs, and her uncertain medical status makes it difficult to determine when she is likely to be reemployed.

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<sup>22</sup> See *Branlund v. Holmes*, 414 P.3d 662, 668 (Alaska 2018); *Rowen v. Rowen*, 963 P.2d 249, 254 (Alaska 1998); *Turinsky v. Long*, 910 P.2d 590, 595 (Alaska 1996).

<sup>23</sup> 15 AAC 125.050(b).

<sup>24</sup> Exhibit 9, p. 1.

<sup>25</sup> Civil Rule 90.3, Commentary III.E.

<sup>26</sup> 15 AAC 125.050(c)(1), (2).

Due to her temporary unemployment, CSSD appropriately adopted Ms. J's 2018 income as the best evidence of her expected 2019 income. This accounts for partial-year Alaska wages and contemplates substantial earnings from other employment during the year.

When parents exercise shared custody, each parent's adjusted annual income and resulting child support obligation is first determined under the primary custody formula, based on the income figures and allowable deductions for that parent. The parents' reciprocal primary custody obligations are then used in the shared custody formula.<sup>27</sup>

Under a 33% - 67% shared custody arrangement, Mr. J's and Ms. J's reciprocal child support obligations for 2018 result in an obligation of \$260 per month, owed by Ms. J.<sup>28</sup> This amount applies to August 2018 through December 2018. The 2019 and ongoing calculation adopted the same income figures, but it resulted in slightly different reciprocal child support amounts.<sup>29</sup> This is due to a change in the deduction for federal income taxes. The shared custody formula also resulted in a slightly different support obligation, \$261 per month.<sup>30</sup> This amount does not reflect a material change of circumstances, and CSSD properly carried the 2018 obligation forward. CSSD did not err in determining Ms. J's income or in calculating her child support amount for O.

*D. Other issues*

Mr. J argued that Ms. J's child support amount is too low and does not adequately provide for O's many expenses. He mentioned significant costs for items such as clothing, sports fees and equipment, extra-curricular activities, AP classes, and car insurance. He also asked for a medical debit, since he pays for O's health insurance coverage, and for an order requiring Ms. J to pay her share of O's uncovered health care expenses.

The significant expenses associated with raising teenagers are not disputed. However, based on the evidence in the record, the support amount has been correctly calculated under the Civil Rule 90.3(b) shared custody formula. This case does not involve a request for a hardship variance, so this decision does not evaluate each party's living expenses or consider the relative financial circumstances of the two households.

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<sup>27</sup> Civil Rule 90.3(b)(1); *see also* Exhibit 7, pp. 14, 17.

<sup>28</sup> Exhibit 7, p. 17.

<sup>29</sup> Exhibit 7, pp. 12-13.

<sup>30</sup> Exhibit 7, p. 14.

The CSSD hearing representative explained the separate process that is required for determination of a medical credit or debit, and for payment of uncovered health care expenses. Mr. J can follow up on those issues by contacting his CSSD caseworker. They are outside the scope of this appeal.

#### **IV. Conclusion**

CSSD correctly calculated Ms. J's child support obligation under the Civil Rule 90.3(b) shared custody formula, without variation. As required by the existing custody order, it did the calculation based on a 33% (mother), 67% (father) arrangement. The 2018 and 2019 income determinations for each parent are supported by the evidence. No errors have been shown.

The Amended Administrative Child and Medical Support Order dated March 14, 2019 is affirmed.

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

- The Amended Administrative Child and Medical Support Order dated March 14, 2019, is affirmed and remains in full force and effect.

DATED: April 22, 2019.

By: Signed  
Name: Kathryn A. Swiderski  
Title: Administrative Law Judge

[This document has been modified to conform to the technical standards for publication. Names may have been changed to protect privacy.]

### **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 8<sup>th</sup> day of May, 2019.

By: Signed  
Signature  
Cheryl Mandala  
Name  
Administrative Law Judge  
Title

[This document has been modified to conform to the technical standards for publication. Names may have been changed to protect privacy.]