

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

In the Matter of)	
)	
K S. C)	OAH No. 18-1062-CSS
_____)	Agency No. 001180291

DECISION AND ORDER

I. Introduction

K C appeals a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued on September 4, 2018. The modified order set Mr. C’s child support obligation for his son, L, at \$613 per month, effective May 1, 2018, based on primary physical custody with L’s mother, B L.

Through the evidence produced during the hearing process, Mr. C showed that he and Ms. L were exercising equal shared custody of L from May 2018 through August 2018. Under the shared custody formula, Mr. C showed that his support amount should be adjusted to \$194 per month, effective May 1, 2018 and ongoing. CSSD has initiated a separate administrative process to suspend Mr. C’s support obligation, effective September 1, 2018, when he began exercising primary custody of L.

II. Facts and Proceedings

A. Material Facts

K C and B L are the parents of L, age 7. Until September 30, 2017, Ms. L exercised primary physical custody. Starting October 1, 2017, the parents began sharing custody equally.¹ On March 13, 2018, Ms. L signed a statement confirming this arrangement.² In it, Ms. L and Mr. C both agreed that L began staying with each parent in October 2017 on a week-on/week-off basis.

On August 27, 2018, Ms. L executed a Power of Attorney delegating her parental authority to Mr. C.³ The delegation became effective on September 1, 2018. Around that time, Ms. L moved to Arizona. Beginning September 1, 2018, Mr. C began exercising primary physical custody of L.

¹ C Exhibit 1 (received at OAH on 10/24/18); C testimony.

² C Exhibit 1.

³ *Id.* (Power of Attorney Over a Minor by Parent or Guardian).

Mr. C and his girlfriend live in Anchorage. Mr. C is eligible for the PFD. He has worked for the same employer for several years, and his annual income is stable.⁴ According to the Alaska Department of Labor, his four most-recent quarters of employer-reported wages total \$42,255.04.⁵ This sum accurately reflects his likely 2018 gross wage income. Mr. C's wages during the first two quarters of 2018 were \$21,090, or very close to half of the expected \$42,255 annual total.

Mr. C testified that Ms. L is capable of working a full-time job but, as a lifestyle choice, she typically does not stay in jobs for very long. Her job experience includes work as an administrative assistant for Employer A, where she earned more than minimum wage. Department of Labor data available to CSSD is consistent with Mr. C's testimony. It shows that between 2015 and 2017, Ms. L worked for five different employers. Her employers reported paying gross wages totaling: \$28,349.75 (2015); \$25,568.04 (2016); and \$6,642.13 (2017).⁶

In part, Ms. L's employer-reported wages for 2017 are low because she started her own business that year. In September 2017, she became self-employed doing housekeeping work.⁷ This income is not included in the Department of Labor data. She apparently continued that work through August 2018 when she moved to Arizona; Ms. L also talked about starting a similar business in Arizona.⁸

After the hearing, CSSD submitted a child support calculation for Ms. L based on Occupational Employment Statistics (OES) for a housekeeper/cleaner earning at the 50th percentile.⁹ This results in a gross wage determination of \$22,860, and total wages of \$24,460 when the PFD is included.¹⁰ This income is slightly below Ms. L 2015 and 2016 income, but it can reasonably be adopted here since it provides some room for the uncertainties involved in starting a new business.

B. Procedural History

⁴ Exhibit 5.

⁵ *Id.*

⁶ Exhibit 7.

⁷ C testimony; L T testimony.

⁸ T testimony.

⁹ CSSD submission to record 11/8/18; Exhibit 7. The information was compiled by the Bureau of Labor Statistics. CSSD also submitted a calculation based on the income Ms. K would earn if she worked full-time at a minimum wage job. Based on Ms. K's prior-year earnings, however, that calculation understates Ms. K's likely income.

¹⁰ Exhibit 7, p. 4.

CSSD last reviewed Mr. C's child support obligation in 2012, when it set his ongoing amount for L at \$254 per month.¹¹ Ms. L requested a modification review on April 25, 2018, but she apparently failed to inform CSSD of the parties' shared custody arrangement. CSSD issued notice of the petition for modification the next day.¹² CSSD did not receive any income information from Mr. C. On September 4, 2018, it issued a decision granting the modification request. It also issued the Modified Administrative Child Support and Medical Support Order that is the subject of this appeal.¹³

The modified support order was based on primary physical custody with Ms. L. Mr. C's income resulted in a monthly support amount of \$613. Mr. C contested this calculation and requested a formal hearing.¹⁴ Before the hearing, he submitted the parents' March 13, 2018 agreement regarding equal shared custody and a letter dated September 21, 2018 from L's elementary school.¹⁵ The school letter affirms the week-on/week-off custody arrangement, stating that school staff observed the parents effectuating that schedule. Mr. C also submitted the Power of Attorney Ms. L signed on August 27, 2018.¹⁶

The formal hearing took place on November 8, 2018. Mr. C appeared in person and represented himself. He was assisted by his mother, L T, who also testified. Ms. L did not appear and could not be reached at her telephone number of record. A voice message was left at that number, but Ms. L did not respond. Notice of the hearing was sent to Ms. L's address of record. The undersigned therefore concluded that Ms. L received proper notice of the hearing, and it proceeded without her participation. Child Support Specialist Patrick Kase appeared in person and represented CSSD. The hearing was recorded. The record remained open until November 16, 2018, so CSSD could submit revised calculations based on shared custody and the parties had an opportunity to respond.

III. Discussion

In a child support matter, the person who files an appeal bears the burden of proof.¹⁷ Mr. C filed this appeal, so he must prove by a preponderance of the evidence that the Modified

¹¹ Exhibit 1.

¹² Exhibit 2; CSSD pre-hearing brief, p. 1.

¹³ Exhibit 3.

¹⁴ Exhibit 4.

¹⁵ C Exhibit 1.

¹⁶ *Id.*

¹⁷ 15 AAC 05.030(h).

Administrative Child Support and Medical Support Order was incorrect.¹⁸ Because of the additional evidence produced during the hearing process, he met his burden.

Child support orders may be modified upon a showing of “good cause and material change in circumstances.”¹⁹ If the newly calculated child support amount is more than a 15% change from the previous order, Civil Rule 90.3(h) assumes a “material change in circumstances” has been established and the order should be modified. Mr. C’s former obligation was \$254 per month, so a change of \$38.10 per month or more will satisfy this standard.²⁰

A modification is effective beginning the month after the parties are served with notice that a modification has been requested.²¹ In this case, CSSD issued notice of the petition for modification in April 2018. Therefore, the modification is effective as of May 1, 2018.

Under Civil Rule 90.3, a parent’s child support obligation is to be calculated based on the parent’s total income from all sources during the period for which the support is being paid.²² By its nature, this determination can be a somewhat uncertain endeavor, since the relevant calculation includes an assessment of expected future income.²³ Once a parent’s total income from all sources is determined, Civil Rule 90.3 allows deductions for matters like federal income taxes and Social Security/Medicare withholding. This results in the parent’s adjusted annual income.²⁴

When parents exercise shared custody, the child support amount is calculated differently than in primary custody cases. First, each parent’s support obligation is determined under the primary custody formula, based on the income figures for that parent for the year in question. The reciprocal primary custody obligations are then applied in the shared custody formula.²⁵ In general and depending on the percentage of time each parent has overnight visitation, the parent obligated to pay child support will have a somewhat lower monthly support amount than in a primary custody scenario.

In this case, CSSD correctly calculated Mr. C’s expected 2018 gross income and it applied appropriate deductions. Under the primary custody formula, this income results in a primary custody support amount of \$613 per month.

¹⁸ 2 AAC 64.290(e).

¹⁹ AS 25.27.190(e).

²⁰ $\$254 \times 15\% = \38.10 .

²¹ 15 AAC 125.321(d).

²² *See also* 15 AAC 125.020, 15 AAC 125.030.

²³ Civil Rule 90.3, Commentary III.E.

²⁴ Civil Rule 90.3(a)(1).

²⁵ Civil Rule 90.3(b)(1); *see also* Exhibit 7, p. 5.

The best available evidence of Ms. L's self-employment income from housekeeping shows that she likely will earn gross wages of \$22,860.²⁶ After including the PFD and applying appropriate deductions, this income results in a primary custody support amount of \$354 per month.²⁷

Under the shared custody formula and the parties' 50/50 custody arrangement, the parents' reciprocal obligations result in a support amount of \$194 per month, owed by Mr. C.²⁸ This calculation should be adopted, effective May 1, 2018 and ongoing.

CSSD is separately assessing Mr. C's request to suspend his support obligation, effective September 1, 2018, when he began exercising primary custody.²⁹ Once CSSD issues a decision on that issue, any party may request an administrative review.³⁰ That issue cannot be resolved in this appeal, however.

IV. Conclusion

Under the parties' equal shared custody agreement, their income differences result in a \$194 monthly support obligation, owed by Mr. C. This amount is effective May 1, 2018. It was calculated under Civil Rule 90.3(b)(1), without variation. CSSD is evaluating Mr. C's request to suspend the obligation, effective in September 2018. It must issue a determination on that question through a separate process.

V. Child Support Order

- Mr. C's child support amount for L is adjusted to \$194 per month, effective May 1, 2018 and ongoing;
- All other provisions of the Modified Administrative Child Support and Medical Support Order dated September 4, 2018, remain in full force and effect;

DATED: November 26, 2018.

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.]

²⁶ To the extent Ms. K will not earn at least this amount, she has been voluntarily and unreasonably underemployed. The above total reasonably reflects her potential income.

²⁷ Exhibit 7, p. 4.

²⁸ Exhibit 7, p. 5.

²⁹ See 15 AAC 125.870.

³⁰ 15 AAC 125.870(h). The outcome of such a review is appealable to superior court; an administrative appeal is not available.

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 13th day of December, 2018.

By: *Signed*

Name: Kathryn A. Swiderski

Title: Administrative Law Judge

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