

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

In the Matter of)	
)	
K X. T)	OAH No. 18-0598-CSS
_____)	Agency No. 001187969

DECISION AND ORDER

I. Introduction

K T appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued on May 5, 2018. The modified order set his child support obligation for his son, H, at \$1,242 per month, effective February 1, 2018, based on primary custody with H’s mother, F L.

During the hearing process, Mr. T showed that his income has changed. He also showed that he and Ms. L began sharing equal physical custody of H in May 2018. After the hearing, CSSD submitted revised child support calculations that reflect this information. Under the primary custody formula, Mr. T’s income results in a \$752 monthly support amount for February through April 2018. Starting May 1, 2018, based on equal shared custody and each parent’s respective income, the revised calculation results in a support amount of \$322 per month, owed by Mr. T. These calculations are supported by the evidence and therefore are adopted.

II. Facts and Proceedings

A. Relevant factual background

K T and F L have one child, H, age 6, who will start first grade in the fall.¹

Mr. T lives in the City A area and works in the construction industry. His household includes another son from a prior relationship. That child is older than H.² Mr. T historically has worked on the North Slope, where he earned union wages and regular overtime pay. In 2017, this work resulted in gross wages of \$106,414.54.³ Due to a work slowdown, he was laid off from his job in March or April 2018. He started a new job in City A in April, earning \$31.55 per hour and typically working nine hours per day, five days per week.⁴ On an annual basis, this results in expected gross annual income of \$73,827.⁵ Including the 2018 Alaska PFD of \$1,600, Mr. T’s

¹ Exhibit 1; T testimony.

² T testimony; Exhibit 3, p. 3.

³ Exhibit 7.

⁴ T submission to record, 6/25/18; Exhibit 9.

⁵ \$31.55/hour x 45 hours/week x 52 weeks = \$73,827. This calculation does not apply an overtime rate to any hours, because Mr. T’s work schedule is variable. He may earn limited overtime pay in some weeks but work less than

expected gross income from all sources totals \$75,427.⁶ Mr. T's employer provides health insurance coverage for him at no out-of-pocket cost to Mr. T.⁷

On January 30, 2017, a superior court judge issued a Decree of Custody, ordering that Mr. T and Ms. L are to share legal and physical custody of H according to an agreement between them, which was described in the court's Findings of Fact and Conclusions of Law.⁸ Per that order, the parents agreed they would exercise shared legal and physical custody of H if Mr. T was not working on the North Slope and if he lived nearby.⁹ The agreement assumed Ms. L would live in Town B or the City C area. If Mr. T relocated to the area, H was to spend alternating two-week periods with each parent, resulting in 50/50 shared custody. If Mr. T did not relocate to the area, H would spend the school year with his mother and visit with Mr. T whenever he was available. Over summer school breaks, H is to spend three weeks at a time with his father, followed by two weeks with his mother.¹⁰

During the 2017-18 school year, both parents agree that H lived primarily with Ms. L. He did not spend at least ten overnights with his father in any month. Starting in May 2018, the parents began exercising equal physical custody. Over the summer, H spends more time with his father, but that is likely to even out during the school months.

Ms. L currently lives in Town D in a household that includes her boyfriend and his two teenage children. She is contemplating another move in the fall, depending on work opportunities that become available to her and her boyfriend. At present, she is not working and has no income. She has applied for a postmaster position in a village, where she would earn \$20 per hour and work twenty hours per week if she gets the job. At one time, she had plans to get her commercial driver's license and become a heavy equipment operator in City C, but those plans are on hold. She previously worked as a tribal clerk in Town B, earning \$29,457 in 2017.¹¹ She also has experience working as a personal care assistant. She agreed she can work and would have no significant problem arranging childcare.

B. Procedural history

40 hours in other weeks. By including 45 hours per week at regular pay, this calculation balances the uncertainty, while including some overtime income.

⁶ Exhibit 9, p. 1.

⁷ Exhibit 10; CSSD submission to record, 7/2/18.

⁸ Exhibit 6.

⁹ Exhibit 6, pp. 3-4.

¹⁰ Exhibit 6, pp. 3-4.

¹¹ L testimony; Exhibit 7.

CSSD last reviewed Mr. T’s child support obligation in 2012, when it set his ongoing support for H at \$570 per month.¹² Ms. L requested a modification review on January 30, 2018, and CSSD sent both parents notice of the petition the same day.¹³ Mr. T submitted his income information, including his 2017 federal income tax return, 2017 W-2 statements, and paystubs.¹⁴

On May 5, 2018, CSSD granted the modification review and issued the Modified Administrative Child Support and Medical Support Order that is the subject of this appeal.¹⁵ The modified order set his support amount at \$1,242 per month, effective February 1, 2018 and ongoing, based on Mr. T’s income from his North Slope work. Mr. T appealed, asserting that the modified amount was based on inaccurate income and custody information.¹⁶

The formal hearing took place by telephone on June 25, 2018. It was audio-recorded. Mr. T and Ms. L represented themselves. Child Support Specialist Brandi Estes represented CSSD. The record remained open after the hearing so Mr. T could submit additional paystubs from his new job, as well as information showing any out-of-pocket cost for his medical insurance coverage. CSSD then submitted updated child support calculations.¹⁷ The parents were afforded an additional opportunity to respond, but neither did so. All submitted documents were admitted to the record, which closed on July 10, 2018.

III. Discussion

As the person who filed the appeal, Mr. T has the burden of proving by a preponderance of the evidence that the Modified Administrative Child Support and Medical Support Order dated May 5, 2018 is incorrect.¹⁸ He met that 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. Mr. T’s former obligation was \$570 per month, so a change of \$85.50 or more per month satisfies this standard.²⁰

¹² Exhibit 1.
¹³ Exhibit 2; CSSD pre-hearing brief, p. 1.
¹⁴ Exhibit 3.
¹⁵ Exhibit 4.
¹⁶ Exhibit 5; T testimony.
¹⁷ Exhibit 9; CSSD submission, 7/2/18.
¹⁸ 15 AAC 05.030(h).
¹⁹ AS 25.27.190(e).
²⁰ $\$570 \times 15\% = \85.50 .

A modification is effective beginning the month after the parties are served with notice of the request for a modification review.²¹ Here, CSSD provided notice in January 2018. Therefore, the modification is effective as of February 1, 2018.

A. Custody

Mr. T argued that the modification was incorrectly based on primary custody with Ms. L because the Decree of Custody orders shared legal and physical custody. Ms. L argued that the modification should be based on primary custody because she may relocate in the coming months. She also believes Mr. T will find work on the North Slope again, and he will not be able to continue sharing equal physical custody.

The court's order is for shared legal and physical custody as stated in the parents' agreement. By the terms of their agreement, and as evidenced by the parents' conduct during the past year, there is flexibility and planning for different custody practices depending on each parent's place of residence and work location. The Decree of Custody does not order equal shared custody under all circumstances.

The parents agree that Ms. L exercised primary custody from February through April, due to Mr. T's work schedule. Starting in May, they began sharing custody more equally. As contemplated by their agreement, H spends more time with his father during the summer, and he is doing so currently. However, that imbalance is likely to even back to a 50/50 split once school is back in session.

While Mr. T works in City A and Ms. L lives in Town D, they can continue to share custody equally. Mr. T testified that he would make arrangements for H to get to and from school every day. While this commute will not be easy, it is not necessarily unreasonable or unworkable. Therefore, this decision concludes that the parents began exercising equal shared custody in May, and it will be the ongoing arrangement. If Ms. L moves or the shared custody plan changes, the parents can work with CSSD to determine whether another modification review is needed.

B. Child Support Calculation

Under the primary custody formula at Civil Rule 90.3(a), a noncustodial parent's child support amount is to be calculated based on his or her "total income from all sources," minus

²¹ 15 AAC 125.321(d).

specified deductions. In determining total income from all sources, the relevant time period is the period for which the support is being paid.²²

When parents share custody, each parent's total expected income is reduced by allowable deductions. Their respective adjusted annual incomes are then inserted into a shared custody formula.²³ This typically results in a support amount that is somewhat less than the primary custody calculation.

CSSD's post-hearing submission relied on Mr. T's actual income figures, which are supported by the evidence in the record. His expected annual wages are \$73,827.²⁴ Including the PFD, his total annual income is likely to be \$75,427. Civil Rule 90.3 entitles Mr. T to deductions from income for his union dues of \$274.56 per month, federal income taxes, and Social Security/Medicare withholding.²⁵ He is also entitled to a monthly deduction of \$940 for his obligation to support the older child living in his home.²⁶ After all appropriate deductions, Mr. T's expected income results in a child support amount of \$752 per month for H under the primary custody formula.²⁷ This is a material change from the prior support amount, and it should be adopted for the months of February 2018 through April 2018.

To calculate the shared custody obligation, it is necessary to determine Ms. L's expected gross income. She is not currently earning income, but she agreed she could be working. Her income should be based on the potential income she would earn if she worked a job that is compatible with her work history, qualifications and job opportunities.²⁸

The most reasonable determination of Ms. L's potential income is the amount she would earn if she worked full-time at minimum wage. This would result in annual gross wages of \$20,467.20.²⁹ This is similar to the income she would earn at the postmaster position she discussed during the hearing, for which she would work only 20 hours per week but earn \$20 per hour. Ms. L also will receive the PFD. After relevant deductions for matters such as federal income taxes and Social Security/Medicare, her adjusted annual income would be \$19,358.32.³⁰

²² 15 AAC 125.050(a); Civil Rule 90.3, Commentary III.E.

²³ See Civil Rule 90.3(b)(1).

²⁴ Exhibit 8, p. 1.

²⁵ Civil Rule 90.3(a)(1)(A); Exhibit 9; CSSD submission 7/2/18.

²⁶ Exhibit 9, pp. 1-2.

²⁷ Exhibit 9, p. 1.

²⁸ Civil Rule 90.3(a)(4); 15 AAC 125.060.

²⁹ 9.84/hour x 40 hours/week x 52 weeks = \$20,467.20.

³⁰ Exhibit 9, p. 3.

Under the shared custody formula and based on a 50/50 custody arrangement, the parents' respective incomes result in a \$322 obligation, owed by Mr. T.³¹ This amount should be adopted, effective May 1, 2018 and ongoing.

IV. Conclusion

Through the evidence presented in the hearing process, Mr. T showed that the Modified Administrative Child Support and Medical Support Order issued on May 5, 2018 should be adjusted. CSSD agreed. For February through April 2018, Mr. T's support obligation for H should be \$752, based on the primary custody formula at Civil Rule 90.3(a). Beginning May 1, 2018, the parties began sharing equal custody. The parents' respective incomes result in a child support obligation of \$322 per month, owed by Mr. T. No variance under Civil Rule 90.3(c) was requested or granted.

V. Child Support Order

- Mr. T is to pay child support of \$752 per month for H for the months of February 2018 through April 2018;
- Mr. T is to pay child support of \$322 per month for H based on equal shared custody, effective May 1, 2018 and ongoing;
- All other provisions of the Administrative Child Support and Medical Support Order dated May 5, 2018, remain in full force and effect.

DATED: July 30, 2018.

By: Signed
Signature
Kathryn A. Swiderski
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.]

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.

³¹ Exhibit 9, p. 4.

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 4th day of August, 2018.

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