BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS
ON REFERRAL BY THE COMMISSIONER OFREVENUE

IN THE MATTER OF:	)	
	)	OAH No. 07-0479-CSS
C. J. W.	)	CSSD No. 001146189
	)	

DECISION AND ORDER

I. Introduction

This case involves the Obligor C. J. W.'s appeal of an Amended Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in her case on July 9, 2007. The Obligee child is J., DOB 00/00/90.

The formal hearing was held on September 25, 2007. Ms. W. appeared in person with counsel, Lanae R. Austin. The Custodian of record, B. G. K., also appeared in person. Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was recorded. The record closed on October 31, 2007.

Kay L. Howard, Administrative Law Judge, Alaska Office of Administrative Hearings, presided at the hearing. Based on the record as a whole and after due deliberation, Ms. W. is not liable for child support payable to Mr. K. while J. stayed with him.

II. Facts

A. History

Mr. K. applied for child support from CSSD on November 22, 2006, and again on February 5. 2007.[1] On April 30, 2007, CSSD served an Administrative Child Support and Medical Support Order on Ms. W.[2] She requested an administrative review.[3] Following the review, CSSD issued an Amended Administrative Child and Medical Support Order on July 9, 2007, that set Ms. W.'s child support at $341 per month, with arrears of $2046 for the period from February 1, 2007, through July 31, 2007.[4] Ms. W. appealed and requested a formal hearing on July 24, 2007.[5]

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[1] Exhs. 8 & 9.
[2] Exh. 2.
[3] Exh. 3.
[4] Exh. 6 at pgs. 1-2.
[5] Exh. 7.

B. Facts

Ms. W. and Mr. K. were married in 1993 and divorced in 2001.[6] They have one child, a son named X., DOB 00/00/94. They share physical custody of him on a 50/50 basis, even though they have an extremely acrimonious relationship.[7] In addition to X., Ms. W. has two older children from a prior relationship: J., DOB 00/00/90, and M., DOB 00/00/91. Mr. K. has no parental or custodial rights regarding J. and M. M. lives with Ms. W. in the home; J. ran away from home on October 23, 2006, and at the time of the hearing had not returned.

This child support action arose after J. ran away from home. Ms. W. thought he was with his friends and would return soon, but he actually went to Mr. K.'s and asked if he could stay there. Mr. K. consented, but he made no effort to contact Ms. W. and tell her that J. was safe at his house or to discuss J.'s continued residency with him. Because the parties had raised custody issues in the past, Ms. W. thought J. might have gone to Mr. K.'s when he ran away. On October 26, 2006, she reported J. as a runaway to the Alaska State Troopers; apparently, they took no action regarding J.'s disappearance at that time.[8]

On November 12, 2006, the parties' son X., upon returning from visitation at Mr. K.'s residence, confirmed that J. was indeed staying there. Ms. W. immediately passed that information on to Trooper Lawson, who went to Mr. K.'s home and contacted J. Rather than removing J., the trooper reported back to Ms. W. that J. was "being taken care of and in good health" and that he did not remove J. on the assumption the boy would simply run away again if he was taken to Ms. W.'s home.[9] For unknown reasons, Ms. W. allowed her son to remain at Mr. K.'s. She did not contact Mr. K. to discuss her son remaining with her ex-husband. At the hearing, she testified this was because she did not have the funds to consult an attorney regarding her parental rights and didn't otherwise know what to do.

While J. was staying in his home, Mr. K. fed and housed him, purchased necessary school supplies for him and made it possible for J. to attend his school prom. Mr. K. applied for

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[6] The facts are taken from Ms. W.'s hearing testimony, unless otherwise stated.

[7] Ms. W. and Mr. K. continue, even to the present, to make allegations of drug and alcohol abuse, child abuse and domestic violence against each other. *See, for example*, Exhs. 10-13.

[8] *See* Exh. 5 at pg. 5.

[9] Exh. 5 at pg. 1.

Medicaid benefits for J. on November 22, 2006,[10] and he applied for child support services from CSSD on February 1, 2007.[11]

CSSD served an Administrative Child Support and Medical Support Order on Ms. W. on April 30, 2007. She consulted an attorney and subsequently, on the advice of counsel, had J. removed from Mr. K.'s home on May 26, 2007. Fearing J. would run away again, Ms. W. had him admitted to the Dorothy Saxton Youth Shelter. On May 30, 2007, Ms. W. sent a certified letter to Mr. K. that informed him she would have criminal charges filed against him if he made any further attempts to harbor J. The letter also said that if J. ever returned to his home, Mr. K. was to send him back to the youth shelter or to Ms. W.[12] Mr. K. received this letter on June 2, 2007.[13]

While at the Dorothy Saxton Youth Shelter, J. was evaluated and then placed, with his agreement, in the North Star Residential Treatment Center on June 14, 2007. His social worker indicated the following in J.'s discharge summary:

> While residing at the shelter J. completed his assessment and treatment plan. He worked towards reunification with his mother and [had] several [visitations] with her. His mother's ex-husband continued to communicate with J. through his brother which placed J. in the middle of their conflict.
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> J. worked with his mother to establish a relationship and was successful except in matters concerning [Mr. K.]. [J.] remained in contact with her on almost a daily basis. He verbalized that he felt torn between the two and that he wanted to continue a relationship with [Mr. K.] despite the allegations that he had been abused by him in the past. J. problem-solved various placement options and decided he wanted to go to North Star to address his issues and gain some insight into his feelings.
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> J. should complete the RTC program to address his unresolved issues of abuse and trust. He should continue contact with his mother and brother. He should explore why his relationship with [Mr. K.] is so important to him based on the abuse that was

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[10] Exh. 8.
[11] Exh. 9.
[12] Exh. 7 at pg. 14.
[13] *Id.*

> inflicted on him and which he witnessed against his mother by [Mr. K.] when his mom was married to [Mr. K.].[14]

On June 26, 2007, J. ran away from North Star with two other residents and they were picked up the next morning by the Palmer Police. Rather than returning J. to North Star with his companions, the police allowed him one telephone call, which he made to Mr. K. Mr. K. picked up J. but instead of taking the boy home or to Ms. W.'s, he claims that he dropped J. off "at the Holiday gas station on the corner of Parks Hwy and Pittman Road."[15] J. has been "on the streets" since then and at the time of the hearing had not returned home.

When she learned that Mr. K. had picked J. up at the police station and then let him go off on his own, Ms. W. filed a domestic violence petition against Mr. K. on J.'s behalf, requesting that the court order Mr. K. to stay away from her son. The basis of her petition was that Mr. K.'s continued contact with J. interferes with her son's recovery.[16] Her petition alleges:

> J. has been physically, mentally & emotionally abused by my ex-husband who is not J.'s biological father. J. has been in mental health treatment since 2003 when he initiated a bomb threat at Houston Middle School. J. has been diagnosed with P.T.S.D., depressive disorder, adjustment disorder, physical abuse of child, sexual abuse of child, severely emotionally disturbed, oppositional defiance disorder . . . .[17]

Ms. W.'s request for an emergency domestic violence order was denied. At a hearing which both parties attended on July 13, 2007, Judge Wolf granted Ms. W.'s underlying petition and entered a one-year Domestic Violence Protective Order that ordered Mr. K. not to have any contact with J.[18] Since J. was still a runaway at the time of the child support hearing, it is not known whether Mr. K. has obeyed Judge Wolf's protective order.

The child support action against Ms. W. continued. CSSD's Administrative Child Support and Medical Support Order set Ms. W.'s child support at $577 per month, effective February 1, 2007. This figure was calculated from imputed income of $20.24 per hour

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[14] Exh. 5 at pgs. 9-10.
[15] Exh. 5 at pg. 2.
[16] Exh. 7 at pg. 10.
[17] Exh. 7 at pg. 11.
[18] Exh. 7 at pg. 4.

($42,099.20 annually), which CSSD determined is earned by individuals in Ms. W.'s field of architectural and civil drafting.[19]

At Ms. W.'s request, CSSD conducted an administrative review. CSSD made a finding that Ms. W. was voluntarily and unreasonably unemployed or underemployed because her 2006 and 2007 income "amounted to less than a full-time minimum wage job."[20] Based on that finding, CSSD imputed income of $17.31 per hour ($36,004.80 annually) to Ms. W. based on Alaska Department of Labor and Workforce Development records that indicated she worked as a CAD Tech from 2000 through 2005.[21] Using the third party child support formula, CSSD calculated Ms. W.'s child support at $341 per month.[22] It is from this calculation that Ms. W. appeals.

CSSD's calculation was based on Ms. W.'s 2004 income as a draftperson. She was laid off from her job at the beginning of 2005 and was unemployed most of 2005 due to problems with J., but she did conduct a job search that was sufficient to meet the minimum requirements for unemployment benefits. She worked for Great Northern Engineering from May 2006 through October 2006, at which time she became self-employed on a contract basis. Her husband went to work on the North Slope and she stopped working in mid-2007 because she wasn't earning enough money doing contract drafting. Her husband was subsequently laid off; at the time of the hearing they were self-employed doing contract work.

III. Discussion

The primary issue in this child support appeal is whether Ms. W. is obligated to pay child support to Mr. K. for the period of time J. was staying in his home. The prerequisite to resolving that issue is to determine whether Mr. K. is entitled to receive child support for that period of time. If he is entitled to support, secondary issues arise; specifically, whether, for the purpose of calculating a child support obligation, Ms. W. was voluntarily and unreasonably unemployed or underemployed and whether CSSD used the correct income figure in Ms. W.'s child support calculation.

[19] Exh. 2 at pgs. 4 & 8.
[20] Exh. 6 at pg. 4.
[21] *Id.*
[22] Exh. 6 at pg. 10.

A parent is obligated both by statute and at common law to support his or her children.[23] This duty encompasses the obligation to reimburse others who support their children.[24] CSSD is obligated to provide services "to any person due child support under the laws of this state upon application."[25]

Mr. K. is not J.'s biological father; he is J.'s former stepfather. Because Mr. K. is not one of J.'s parents, he is a "third party custodian" under Civil Rule 90.3(i). Ms. W. claims that certain language in Civil Rule 90.3(i) suggests a third party custodian must be entitled to receive child support, which would logically mean that in certain situations a third party custodian might not be entitled to receive child support for an unrelated child living in his or her home. The language Ms. W. bases her argument on is in Civil Rule 90.3(i)(1), which states:

> When the state, or another third party entitled to child support, has custody of all children of a parent, the parent's support obligation to the third party is an amount equal to the adjusted annual income of the parent multiplied by the percentage specified in subparagraph (a)(2).[26]

Neither Civil Rule 90.3 nor the commentary to the rule explain what is meant by the language of section (i) containing the phrase "entitled to child support." Likewise, the Alaska Supreme Court has not construed the phrase "entitled to support" as it is used in the rule.

To illustrate her argument, Ms. W. proposes that in general there are only three situations in which third party custodian of a child might be entitled to child support reimbursement: 1) a court's custody order; 2) the State of Alaska assuming jurisdiction of the child; and 3) agreement of and/or arrangement by the parents. Mr. K.'s situation with J. does not fit into any of these categories. As J.'s former stepfather, he has no custodial rights to the child. In fact, the court has ordered him to stay away from J. for at least one year. J. was not in Mr. K.'s home pursuant to any agreement with or arrangement by Ms. W., the child's mother, nor has the State taken custody of J.

Relying on the language in Civil Rule 90.3(i), Ms. W. asserts Mr. K. is not entitled to child support because he was harboring J. as a runaway and did nothing to inform her that J. was

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[23] *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.
[24] *Id.*
[25] AS 25.27.100.
[26] Civil Rule 90.3(i)(1) (emphasis added).

safe and staying at his home and not out on the streets. Ms. W. argues Mr. K.'s actions constitute a crime and therefore defeat his eligibility for child support reimbursement. In response, Mr. K. claims J. came to stay with him voluntarily and that he incurred the cost of supporting J. and of purchasing school items for J., even going so far as to provide him with a tuxedo for his prom.

CSSD did not state a position as to whether Mr. K. is entitled to child support for the period of time J. stayed with Mr. K. The agency did say, however, that it must process Mr. K.'s application and proceed with establishing Ms. W.'s support obligation. CSSD's position is that it is not allowed to reject an application for child support services, citing AS 25.27.100, which states "[t]he agency shall provide aid to any person due child support under the laws of this state upon application."[27]

This administrative hearing is not a criminal court and Mr. K.'s criminal culpability is not being adjudicated. All the same, Ms. W.'s claim that Mr. K. is guilty of a crime and is therefore not eligible for child support must be considered in light of the criminal code because that is the context within which her argument is based.

There is no offense in Alaska's criminal code that is specifically identified as "harboring a runaway."[28] However, AS 11.51.130(a)(4), "Contributing to the delinquency of a minor," bears further scrutiny.[29] The relevant portions of the statute read as follows:

> (a) A person commits the crime of contributing to the delinquency of a minor if, being 19 years of age or older . . . , the person aids, induces, causes, or encourages a child
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> (4) under 18 years of age to be absent from the custody of a parent, guardian, or custodian without the permission of the parent, guardian, or custodian or without the knowledge of the parent, guardian, or custodian, unless the child's disabilities of minority have been removed . . . .;

[27] The language of this statute also suggests that in certain circumstances an applicant might not be "due child support." Thus, CSSD's assertion that it must serve every applicant is not necessarily true.
[28] The criminal code does list four crimes that might be related to "harboring a runaway," such as Custodial interference in the first degree (AS 11.41.320); Custodial interference in the second degree (AS 11.41.330); Kidnapping (AS 11.41.300); and Failure to permit visitation with a minor (AS 11.51.125). However, the circumstances of this case and Mr. K.'s actions do not fit any one of these crimes.
[29] Contributing to the delinquency of a minor is a Class A misdemeanor. AS 11.51.130(b).

The statute says that there is an affirmative defense to this misdemeanor if the person believes the minor is in danger of physical injury or in need of temporary shelter.[30] To prevail on the affirmative defense claim, the statute indicates a person taking in a runaway minor must inform the police, troopers or the Department of Health and Social Services within 12 hours of assisting the child.[31] There is no evidence in the record that Mr. K. informed anyone that he was taking J. in. Rather, he justified allowing J. to stay with him because the boy wanted to and because Mr. K. believes, as the boy's former stepfather, that they have a parent and child bond. Mr. K. provided copies of some of J.'s school work, apparently as proof that he sent the boy to school while J. was staying with him. In addition, Mr. K. submitted copies of letters from J. that purport to show J. was very critical of Ms. W. at times and did not want to live with her. Mr. K. also submitted copies of police records and other negative information about Ms. W. He did not explain the reason he filed these documents, but this evidence appears to have been meant to establish Mr. K. was justified in taking J. in and letting the boy stay with him.

A claim that J. needed temporary shelter longer than overnight would not have been very credible, given the fact that Mr. K. is in regular contact with Ms. W. due to their shared custody of J., and because he has ready access to her contact information.[32] Similarly, Mr. K. did not appear to harbor a belief that J. was in danger of physical injury in Ms. W.'s home, although the record indicates he has been concerned for his son J. in the past.[33]

By aiding J. and allowing the boy to stay with him without Ms. W.'s initial knowledge or permission, it appears likely that Mr. K.'s actions were akin to "contributing to the delinquency of a minor." When it passed AS 11.51.130(a)(4) into law, the Alaska legislature determined that aiding a runaway minor (absent an affirmative defense) is at least contrary to social norms, and at most is potentially criminal behavior which may result in criminal prosecution.[34] To award

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[30] AS 11.51.130(a)(4)(A).

[31] AS 11.51.130(a)(4)(B).

[32] One can only conclude that after J. was at his home for more than a short period of time that Mr. K.'s failure to contact Ms. W. was intentional. He did not explain why he kept J.'s location from her.

[33] On July 13, 2005, Mr. K. obtained a DV order against Ms. W.'s husband, D. P., after the latter was alleged to have beaten X. Exh. 11. Apparently custody of X. then became an issue and on Feb. 27, 2006, Ms. W. filed a DV petition against Mr. K. on behalf of herself and all three of her children – J., M. and X. Exh. 13. The emergency petition was denied and the matter was referred to the parties' divorce and custody case. Exh. 13 at pg. 1. According to Mr. K., he subsequently obtained sole legal custody of their son X. and the parties continue to share physical custody of him.

[34] The statutes are silent as to the result of a conviction for this offense other than the standard fine and possible jail time for a Class A misdemeanor.

child support under these circumstances would be counter productive, at best, since the statute appears to be an attempt to discourage an individual from taking custodial-type actions when he or she is not in a legally recognized custodial relationship with a minor. In this case, requiring Ms. W. to pay child support to Mr. K. would reward him for ostensibly criminal behavior. Also, it would punish her for not being able to remove J. from Mr. K.'s home sooner and reduce her ability to provide the shelter and counseling services J. appears to need.

Requiring Ms. W. to pay child support is manifestly unjust, even when considered in light of an obligor parent's obligation to reimburse third parties for the cost of supporting their children.[35] Two of the essential purposes of Civil Rule 90.3 are to "ensure that child support orders are adequate to meet the needs of children," and to "promote consistent child support awards among families with similar circumstances."[36] These goals are much less imperative under the facts of this case. There is no benefit to J. in awarding Mr. K. the arrears for February through May of 2007 because the child was in Mr. K.'s home for such a short period of time and was removed from there just as this case was established. Further, there is no reason to believe that collecting child support from Ms. W. would fulfill the second purpose of Civil Rule 90.3, given the unusual nature of this case.

Therefore, based on the record as a whole, Mr. K. is not entitled to receive child support for the period of time J. was staying in his home and Ms. W. is not obligated to pay the child support CSSD has assessed against her for February 2007 through May 2007. However, this decision only relates to Ms. W.'s liability to pay support to Mr. K. CSSD is not precluded from collecting child support from Ms. W. in the event another third party such as the State of Alaska becomes J.'s custodian before he reaches the age of majority and emancipates.[37]

Finally, because the decision in this appeal is based solely on the question whether Mr. K. is entitled to child support for the period of time he allowed J. to stay with him, and consequently whether Ms. W. is liable for support for that period of time, her other issues on appeal – specifically, whether Civil Rule 90.3(c) controls, whether Ms. W. is entitled to an offset, and whether CSSD impermissibly imputed income to her – are deemed moot and will not be addressed.

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[35] *See Matthews v. Matthews* at 1299.

[36] Civil Rule 90.3, Commentary I.B.

[37] It is highly unlikely J.'s biological father would become his son's custodian because his current location is unknown.

IV. Conclusion

Ms. W. met her burden of proving the Amended Administrative Child Support and Medical Support Order was incorrect. Because Mr. K. aided the obligee J. in being absent from the custody of Ms. W. without her knowledge or consent, Mr. K. is not entitled to receive child support for the period of time J. stayed in his home. Thus, Ms. W. is not obligated to pay support for J.'s benefit during that time.

V. Child Support Order

- Ms. W. is not liable to pay child support to Mr. K. for the period of time J. was staying in his home; namely, February 2007 through May 2007.

DATED this 30th day of January, 2008.

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 and Alaska Rule of Appellate Procedure 602(a)(2) within 30 days after the date of this decision.

DATED this 19th day of February, 2008.

By: *Signed*
Signature
Christopher Kennedy
Name
Deputy Chief Administrative Law Judge
Title

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