

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

IN THE MATTER OF)	OAH No. 07-0562-CSS
K. R. M.)	CSSD No. 001116825
)	
_____)	

DECISION AND ORDER

I. Introduction

On October 8, 2007, a formal hearing was held to consider the child support obligation of K. R. M. (Obligor) for the support of his children, A. and K. (Obligees).¹ The Custodian, A. T., did not participate. Mr. M. appeared. David Peltier, Child Support Services Specialist, represented the Child Support Services Division (Division). The hearing was audio-recorded. The record closed on October 11, 2007.

This case is Mr. M.'s appeal of the Division's order modifying his child support obligation. I conclude that Mr. M.'s monthly ongoing child support should be set in accordance with the Division's latest calculations. Mr. M.'s modified ongoing child support should be set at \$573 per month for two children for the months of February 2007 to July 31, 2007, and \$131 per month for A. using a divided custody calculation effective August 1, 2007.

II. Facts

This case is an "add-a-kid" modification action.² Mr. M.'s existing child support for his son, K., was previously set at \$305 per month.³ The Division initiated the modification process to add Mr. M.'s other son, A., to his child support order. Paternity is not now in dispute. Mr. M.'s paternity of A. was established in an administrative order after genetic testing.⁴

The Division issued a Modified Administrative Child Support and Medical Support Order on May 22, 2007. With the additional child, Mr. M.'s modified ongoing child support was

¹ The hearing was held under Alaska Statute 25.27.170 & Alaska Statute 25.27.190.

² Alaska Civil Rule 90.3(h) & 15 AAC 125.340.

³ Division's Pre Hearing Brief.

⁴ Ex. 7 & Division's Pre Hearing Brief.

set at \$547 per month, effective February 1, 2007.⁵ Mr. M. requested a formal hearing.⁶

At the formal hearing, Mr. M. explained that he had custody of K. and Ms. T. had custody of A. beginning in late July of 2007.⁷

After the hearing, the Division contacted Ms. T. who provided her income information and confirmed the information that Mr. M. provided at the hearing regarding the custody situation.⁸ Ms. T. is unsure, however, that Mr. M. will continue to provide a home for K..⁹ The Division filed new calculations based on the updated income and custody information from Mr. M. and Ms. T..¹⁰ These calculations result in a monthly ongoing child support obligation of \$131 for Mr. M. while one boy is in Ms. T.'s custody and one is in his.¹¹

Both parents' households are under financial stress. A. has special needs and Mr. M. owes child support arrears on an order for his adult children. Ms. T. is disabled and receives Social Security disability payments for herself and A.. Mr. M. earns \$14 per hour.¹²

Based on the evidence in the record, I find that the Division correctly calculated Mr. M.'s monthly child support obligation at \$131 for divided custody based on his and Ms. T.'s current income at Ex. 17. I also find that Mr. M. and Ms. T. have exercised divided custody of their children since August 1, 2007 and that setting ongoing child support at \$131 while divided custody is being exercised is just and proper in this case.¹³

III. Discussion

Civil Rule 90.3 allows a child support amount to be modified if a material change of

⁵ Ex. 13.

⁶ Ex. 15.

⁷ Recording of Hearing.

⁸ Division's Post Hearing Brief.

⁹ Division's Post Hearing Brief.

¹⁰ Ex. 16 & 17 & Division's Post Hearing Brief.

¹¹ Ex. 17 & Division's Post Hearing Brief.

¹² Recording of Hearing & Division's Post Hearing Brief.

¹³ Recording of Hearing.

circumstances has occurred.¹⁴ Adding a new child to an existing child support order is a change of circumstance that requires a modification.¹⁵

Civil Rule 90.3 provides that an obligor's child support is to be calculated based on his or her "total income from all sources."¹⁶ A child support award may be varied only "for good cause upon proof by clear and convincing evidence that manifest injustice would result if the support award were not varied."¹⁷

Mr. M.'s modified ongoing child support based on his current income is \$573 per month, for two children.¹⁸ This is the amount that should be set for the month of February, 2007, the effective date of the modification, to August of 2007 the first full month of divided custody.

Divided custody exists when parents each have primary custody of different children.¹⁹ In this case the parents exercise divided custody.²⁰

The commentary to Civil Rule 90.3 explains that setting child support for divided custody situations is a two step process. First, support must be calculated using the formula found in Civil Rule 90.3(b)(6), as CSSD did in its Post-Hearing Brief. This formula offsets the amounts each parent would pay the other for the children in the other parent's custody.²¹

The second step in determining divided custody support is for the court to carefully consider whether the support amount should be varied under paragraph (c)(1)(A). Divided custody should be treated as an unusual circumstance under which support will be varied if such a variation is "just and proper."²²

The Division's latest child support calculations are based on both the parents' incomes

¹⁴ Alaska Civil Rule 90.3(h)(1).

¹⁵ 15 AAC 125.340(c).

¹⁶ Alaska Civil Rule 90.3(a) (1).

¹⁷ Alaska Civil Rule 90.3(c).

¹⁸ Ex. 17, page 2.

¹⁹ Alaska Civil Rule 90.3, Commentary V.D.

²⁰ Alaska Civil Rule 90.3, Commentary V.D.

²¹ Alaska Civil Rule 90.3, Commentary V.D.

and should be used in this case to set ongoing modified child support. From February 2007 to August of 2007 Mr. M.'s child support obligation should be set at \$573 per month, for two children. Effective August 1, 2007, Mr. M.'s ongoing child support obligation should be set at \$131 per month based on divided custody. The parties should inform their child support caseworker as soon as possible if custody of the children changes.

CHILD SUPPORT ORDER

The Division's Modified Administrative Child Support and Medical Support Order, issued on May 22, 2007, is amended as follows, all other provisions of that order remain in effect:

1. Mr. M.'s modified ongoing child support amount for two children with both A. and K. in the primary custody of Ms. T. is set at \$573 per month effective February 1, 2007.
2. Mr. M.'s modified ongoing child support amount for A. and K. in divided custody is set at \$131 per month effective August 1, 2007.
3. The Division shall give parties the appropriate credit or debit for any out-of-pocket expenses for providing health insurance coverage for A. or K..

DATED this 3rd day of January, 2008.

By: _____ *Signed*

Mark T. Handley

Administrative Law Judge

²² Alaska Civil Rule 90.3, Commentary V.D.

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 24th day of January, 2008.

By: *Signed*
Mark T. Handley
Administrative Law Judge

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