

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

IN THE MATTER OF:)

T. R. K.)

) OAH No. 07-0574-CSS

) CSSD No. 001147072

DECISION AND ORDER

I. Introduction

The Obligor, T. R. K., appeals an Amended Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD or Division) issued in his case on August 21, 2007. The Obligee children are D., DOB 00/00/91; M., DOB 00/00/95; and R., DOB 00/00/96.

The formal hearing was held on October 10, 2007. Mr. K. appeared with his attorney, Elizabeth N. Smith. Ms. K. did not participate. Andrew Rawls, Child Support Specialist, represented CSSD. The record closed on November 21, 2007. Kay L. Howard, Administrative Law Judge, presided. Based on a review of the entire record and after due deliberation, Mr. K.'s appeal is granted in part and denied in part, as discussed below.

II. Facts

A. History

Ms. K. began receiving Medicaid and/or public assistance benefits on behalf of the children on March 1, 2007.¹ On June 5, 2007, CSSD served an Administrative Child and Medical Support Order on Mr. K.² He requested an administrative review and provided income information.³ Following the review, CSSD issued an Amended Administrative Child Support and Medical Support Order on August 21, 2007, that set Mr. K.'s ongoing child support at \$1148 per month for three children, with arrears of \$8036 for the period from February 2007 through August 2007.⁴ Mr. K. filed an appeal on September 10, 2007.⁵

¹ Exh. 1 at pg. 10.

² Exh. 1 at pg. 11.

³ Exhs. 2-5.

⁴ Exh. 6 at pgs. 1-2.

⁵ Exh. 9.

B. Material Facts

The parties, T. and T. K., separated in February 18, 2007, after she filed a criminal complaint against him and he was arrested for domestic violence-related offenses.⁶ Ms. K. retained the family home and applied for public assistance benefits on behalf of the children on February 28, 2007.⁷ The oldest child, D., had been staying with his paternal grandparents since September 2006, but Ms. K. brought him home on March 2, 2007.⁸ He went back to his grandparents' residence on March 24, 2007, but his mother removed him again on April 27, 2007.⁹ D. entered the North Star Hospital for residential treatment on May 24, 2007, and was still there at the time of the child support hearing.

Mr. K. was slated to enter a residential drug treatment program on April 2, 2007, but a medical condition delayed his entry.¹⁰ He subsequently began the "Genesis" treatment program on April 2, 2007, and completed it on May 2, 2007. Mr. K. was off work from the date of his incarceration until approximately May 1, 2007.¹¹

On April 22, 2007, Ms. K. filed a domestic violence ("DV") action against Mr. K. and obtained a 20-day protective order that awarded her temporary custody of the parties' three children.¹² The court issued a one-year DV order on June 20, 2007, although it was silent on the issue of custody.¹³

Mr. K.'s parents, L. and M. K., contributed to the family financially during the obligor's period of unemployment. They paid \$2815.79 toward the parties' mortgage on March 5, 2007, and \$3520 on April 25, 2007, for a total of \$6335.79.¹⁴

On September 21, 2007, Superior Court Judge Eric Smith awarded the parties divided physical custody of the children. Custody of D. and M. was awarded to Mr. K.; custody of R.

⁶ The parties, T. and T. K., were in the midst of a hostile divorce at the time of the child support hearing. The record contains information about events that occurred during their marriage and separation that would be addressed in depth at a divorce or custody hearing, but which are not relevant to a child support proceeding. Thus, this decision and order purposefully does not discuss much of the information in the record about the parties' separation and divorce proceedings, except to the extent the information is relevant to this administrative child support action.

⁷ Exh. 1 at pg. 10; Ms. K. applied for services on February 28, 2007.

⁸ Testimony of M. K.

⁹ *Id.*

¹⁰ Testimony of T. K.

¹¹ *Id.*

¹² Obligor's Exh. 2 at pg. 1.

¹³ Obligor's Exh. 3 at pg. 1.

¹⁴ Testimony of L. K.

was awarded to Ms. K. Also, the court ordered that neither party would be liable to the other parent for child support for D. because of his placement in North Star Hospital.¹⁵ Finally, the court ordered Mr. K. to pay child support in the amount of \$359.71, minus a health insurance adjustment of \$40.50, , for a total monthly amount of \$319.21, effective July 1, 2007.¹⁶

At the time of the hearing, Mr. K.'s actual income for 2007 was unknown, so he and CSSD were asked to estimate his total income for the year. Mr. K. filed a printout of his actual income by pay period, through the end of October 2007.¹⁷ For the last four pay periods of the year, Mr. K. filed estimates of what he would be paid. He estimated his income for 2007 totaled \$42,232.15.¹⁸

CSSD filed a printout of Mr. K.'s income as reported to the Alaska Department of Labor from the fourth quarter of 2005 through the third quarter of 2007. In order to estimate his total income for 2007, CSSD used his income for the fourth quarter of 2006 in place of the fourth quarter of 2007, reasoning that since he had returned to full-time employment in May 2007, his income for the fourth quarter of each year would be about the same amount.¹⁹ Based on CSSD's figures, Mr. K.'s total income for 2007 is estimated at \$43,119.20, plus the PFD of \$1654, for a total of \$44,773.20.²⁰

III. Discussion

Ms. K. received public assistance benefits on behalf of the children beginning in March 2007.²¹ On September 21, 2007, Superior Court Judge Eric Smith awarded the parties divided physical custody of the children in this case and ordered Mr. K. to pay child support in the amount of \$359.71, minus a health insurance adjustment of \$40.50, for a total monthly amount of \$319.21, effective July 1, 2007.²² Therefore, in this administrative child support action, Mr. K. is liable for primary custody child support only for the period from March 2007 through June 2007. The court's order controls Mr. K.'s ongoing child support obligation as of July 1, 2007.

¹⁵ Exhs. A & B.

¹⁶ Exh. B at pg. 2.

¹⁷ Obligor's Exh. 1 at pg. 1.

¹⁸ *Id.*

¹⁹ Post-hearing brief at pg. 1.

²⁰ Exh. 9.

²¹ Exh. 6 at pg. 6.

²² Exh. B at pg. 2.

Civil Rule 90.3(a)(1) provides that an Obligor's child support amount is to be calculated based on his or her "total income from all sources", minus mandatory deductions. CSSD made a reasonable estimate that Mr. K.'s income for 2007 totaled \$43,119, plus the PFD, and from that figure calculated his child support obligation for three children at \$903 per month.²³ CSSD's estimate of Mr. K.'s total income for 2007 is more accurate than his because the agency's estimate for the year is based on his income for the same quarter the previous year. Thus, CSSD's income figure and child support calculation should be used.

Mr. K. claims that he is not obligated to pay the child support amount in full. He argues that he should not have to pay support for D. for the period of time his son was actually staying with his parents or was in treatment and was not Ms. K.'s home. Mr. K. also argues he is entitled to a credit for the mortgage payments his parents made for the family home while he was unemployed. Finally, Mr. K. asserts he should not be liable for support, at least in the full amount, during the time he was disabled from work and was unemployed, from February 8, 2007 through May 1, 2007.²⁴

All of Mr. K.'s claims for a credit against his child support obligation are without merit. As to the claim D. was not in Ms. K.'s home the entire time, public assistance benefits were paid on D.'s behalf from March 2007 through August 2007.²⁵ Under AS 25.27.120(a), Mr. K. is liable for paying child support in order to reimburse the State of Alaska for those benefits. The fact that D. stayed with his grandparents for a few weeks does not alleviate Mr. K. of his child support obligation to the State for that period, nor for the time D. was in treatment.²⁶

Mr. K. is likewise not entitled to a credit against his child support in return for the mortgage payments his parents made. His obligation to pay support is to the State, not to Ms. K., for the period of time she received public assistance benefits. Although she received a benefit from the mortgage payments his parents made, the family home is a marital asset and the financial issues related to it must be resolved in the parties' divorce action, not the child support proceeding.

²³ Exh. 9.

²⁴ Mr. K. did not explain why he was disabled from work beginning on February 8, 2007; the custodian did not file the complaint that sent him to jail until February 18, 2007.

²⁵ Exh. 6 at pg. 6.

²⁶ Mr. K.'s assertion he should be similarly credited for M. staying with his grandparents also fails; M. did not go to stay with them until August 4, 2007, after Mr. K. was awarded temporary custody of the child. Testimony of M. K.

Finally, Mr. K. is not entitled to a reduction in child support because he was unable to work for a period of time. Civil Rule 90.3(a) directs CSSD to calculate child support from an obligor parent's annual income. This method of calculation results in a consistent child support amount for each month at issue. In this case, Mr. K.'s monthly child support was calculated from his total estimated income in 2007. That income figure included the reduction to his total income due to his unemployment. It would constitute a multiple reduction to further lower the monthly amount for the time he was out of work. Moreover, the Alaska Supreme Court discourages adjustment of support amounts for Obligor's who are temporarily unemployed.²⁷

IV. Conclusion

Mr. K. met his burden of proving CSSD's Amended Administrative Child Support and Medical Support Order was incorrect. Mr. K.'s child support obligation in the administrative case before CSSD is now correctly calculated at \$903 per month for three children and should be adopted. This figure is based on Mr. K.'s estimated annual income and constitutes a reasonable child support figure.

V. Child Support Order

- Mr. K. is liable for child support in the amount of \$903 per month for the period from March 2007 through June 2007; ongoing child support effective July 1, 2007, has been addressed by the court.

DATED this 27th day of March, 2008.

By: Signed
Kay L. Howard
Administrative Law Judge

²⁷ *Patch v. Patch*, 760 P.2d 526 (Alaska 1988).

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 14th day of April, 2008.

By: Signed _____
Signature
Kay L. Howard _____
Name
Administrative Law Judge _____
Title

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