

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

IN THE MATTER OF)	
)	
C. K.)	Case No. OAH-07-0582-CSS
_____)	CSSD Case No. 001143949

DECISION & ORDER

I. Introduction

The obligor, C. K., appeals an Amended Administrative Child Support and Medical Support Order issued by the Child Support Services Division (CSSD) on August 20, 2007. Administrative Law Judge Dale Whitney of the Office of Administrative Hearings heard the appeal on October 31, 2007. Mr. K. appeared by telephone. The custodian, A. S., did not appear. Andrew Rawls represented CSSD by telephone. The child is E. K. (DOB 00/00/05). The administrative law judge issues a support order adopting a shared custody calculation.

II. Facts

In June of 2006 Ms. S. and Mr. K. had been living together with E. and Mr. K.'s two older children in a house owned by Mr. K. After a domestic dispute, Mr. K. was ordered out of the house, and Ms. S. began receiving public assistance on behalf of E. While he was living with his father, Mr. K. continued to make payments on the house, pay the utilities, and provide support for the children in the household, two of whom were Mr. K.'s older children from the previous relationship. By December, the domestic violence matter was resolved, the order was lifted and Mr. K. was back in the family home. According to information gathered by CSSD after the hearing, the entire family moved into a different apartment owned by Mr. K.'s father in February, 2007, where they lived together through June 2007. In July of 2007, Ms. S. moved out of this residence. Since then the parties have exercised shared custody, with Mr. K. having E. three nights per week and Ms. S. having custody four nights per week.

After CSSD prepared its initial child support calculation, Mr. K. provided court documents showing that he is subject to a child support order for his two older children of a previous relationship. CSSD had not taken these payments into account when preparing the calculations for this case. CSSD submitted a new calculation with deductions for payments

made to support the two older children.¹ These deductions changed the support amount from \$388 per month to \$284 per month in 2006 and \$285 per month for 2007 and ongoing.

At the hearing, Mr. K. established by a preponderance of the evidence that the parents now have shared custody with three nights and four nights of custody per week for Mr. K. and Ms. S., respectively. Based on this ratio of shared custody, CSSD has prepared support calculations showing that Mr. K.'s support obligation for E., with proper deductions for support of the older children, is \$156 per month for the months when Mr. K. was not in the same home as E.

Ms. S. has attempted to withdraw from services and made clear that she would prefer to work directly with Mr. K. on matters of support. Because E. receives public assistance, CSSD has continued to collect support.

III. Discussion

Under Civil Rule 90.3(a)(1)(C), support actually being for older children of a previous relationship is an appropriate deduction when calculating the obligor's adjusted annual income. CSSD does not dispute that Mr. K. is correct to claim the deduction for support of his older children.

In cases of shared custody, Civil Rule 90.3(b) provides that support is calculated by determining what the support obligation would be under part (a) of the rule for each parent if the other parent had primary custody, and then multiplying these figures by the amount of time the other parent has physical custody of the child. The smaller amount is then subtracted from the larger amount, and the resulting figure is multiplied by 1.5 to produce the monthly child support obligation. CSSD has performed this calculation in Exhibit 16 and found Mr. K.'s monthly support obligation to be \$156 per month for one child. There is no dispute that Exhibit 16 represents the correct amount of support for 2007 and ongoing. For the months of December, 2006, through June, 2007, Mr. K. was in the home supporting the child and CSSD should therefore not collect support for these months.

It remains to be determined what Mr. K.'s support obligation should be for the period from June through November of 2006. Although he was not in the home with the child during this period, the situation is unusual in that Mr. K. was providing a high level of direct support for E., his older two children, and the custodian, all of whom were living in a home for which Mr. K.

¹ Exhibit 10.

was largely paying, in addition to buying food and supplies. This situation constitutes clear and convincing that manifest injustice would result if Mr. K. were required to pay the full level of support for this period. While the situation does not call for a complete reduction of support to the minimal level, the amount of support calculated for the current shared custody arrangement also reflects a rough approximation of the amount that would be fair for that six-month period. Thus, support should be set at \$156 per month for one child for all periods covered by the order when Mr. K. was not in the home with the child.

Mr. K. claims credit for direct support he has paid to Ms. S. CSSD points out that these payments were made after CSSD notified Mr. K. that he should make all payment through CSSD. AS 25.27.103 provides that “an obligor shall make child support payments to the agency if the agency is enforcing a duty of child support....” CSSD’s regulations do provide a mechanism for an obligor to receive credit for direct payments, but only once after the obligor has been notified to make payments to CSSD. This procedure, contained in 15 AAC 125.470, requires the agreement of both parties. The decision is made by CSSD, and no administrative appeal is permitted; the decision may only be challenged by direct appeal to the superior court.

Mr. K. raised the issue of direct payments at the formal hearing, and CSSD has not made a decision on the matter. CSSD should consider Mr. K.’s claim and make a final decision.

IV. Conclusion

Support should be set at \$156 per month for one child, effective June 1, 2006. CSSD should not collect support for the months of December, 2006 through June, 2007, when Mr. K. was in the home with the child.

V. Order

The Amended Administrative Child Support and Medical Support Order issued by the Child Support Services Division (CSSD) on August 20, 2007, is further amended as follows:

1. Mr. K.’s monthly support obligation is set at \$156 per month, effective January 1, 2008.
2. Arrears are set at \$156 per month for the period from June 1, 2006, through December 31, 2007.
3. CSSD will not collect support for the months from December, 2006, through June, 2007.

4. CSSD will make a final decision regarding credit for any direct support that Mr. K. may have paid to Ms. S. for E.

DATED this 31st day of December, 2007.

By: Signed _____
DALE WHITNEY
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 notices, 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 R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 25th day of January, 2008.

By: Signed (Terry L. Thurbon) for _____
Signature
Dale Whitney _____
Name
Administrative Law Judge _____
Title

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