

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

IN THE MATTER OF:)

N. G. R.)

) OAH No. 07-0624-CSS
) CSSD No. 001117099
)

DECISION AND ORDER

I. Introduction

This case involves the Obligor N. G. R.'s appeal of a Denial of Modification that the Child Support Services Division (CSSD) issued in his case on September 12, 2007. The Obligee child is C., DOB 00/00/99.

The formal hearing was held on November 14, 2007 and January 7, 2008. Mr. R. appeared in person; the Custodian of record, C. R. J., appeared telephonically. Andrew Rawls, Child Support Specialist, represented CSSD. Kay L. Howard, Administrative Law Judge, conducted the hearing. The proceeding was recorded.

Based on the record in this case and after due deliberation, Mr. R.'s child support obligation should be modified to \$698 per month for August 2007 and September 2007, based on Ms. J. exercising primary custody, then further modified to \$633 per month, effective October 1, 2007, based on shared custody.

II. Facts

A. History

Mr. R.'s child support order previously was set at \$565 per month.¹ On July 17, 2007, Mr. R. requested modification of the order.² On July 23, 2007, CSSD issued a Notice of Petition for Modification of Administrative Support Order.³ Mr. R. did not provide income information, so on September 12, 2007, CSSD issued the Notice of Denial of Modification Review.⁴ Mr. R. filed an appeal and requested a formal hearing on October 12, 2007.⁵

¹ Pre-hearing brief at pg. 1.

² Exh. 1.

³ Exh. 2.

⁴ Exh. 3.

⁵ Exh. 4.

B. Material Facts

Mr. R. and Ms. J. are the parents of C., DOB 00/00/99. Ms. J. previously had primary custody of the child. The parties have recently been involved in custody litigation. On September 28, 2007, they entered into a custody settlement that the court adopted on October 2, 2007, and memorialized in a written order dated November 19, 2007.⁶

The settlement negotiated by Mr. R. and Ms. J. provides that they will exercise joint legal and shared physical custody of C., with Ms. J. having approximately 70% physical custody and Mr. R. having about 30% physical custody.⁷ A 70/30 custody split constitutes shared physical custody under Civil Rule 90.3(f)(1).

Mr. R.'s 2007 income was approximately \$51,963.88, according to his year-to-date paystub issued on December 28, 2007.⁸ A primary custody calculation using this income information results in a child support amount of \$698 per month.⁹

Ms. J.'s 2007 income was estimated to be \$14,960, including the PFD, based on her hearing testimony of working 26 hours per week at \$7.15 per hour and in addition receiving around \$70 per week in tips. These income figures result in a primary custody calculation of \$221 per month.¹⁰

Inserting the parties' respective primary custody figures into a 70/30 shared custody calculation results in a child support amount of \$633 per month, to be paid by Mr. R.¹¹

III. Discussion

A. Primary custody

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." Modification of child support orders may be made upon a showing of "good cause and material change in circumstances."¹² If the child support amount calculated from an obligor's current income is more than a 15% change from the

⁶ Exh. 9. Ms. J. subsequently filed a motion to strike the parties' mediation agreement, but the status of her motion is unknown. For child support purposes, the court's November 19, 2007, order must be complied with until such time as the court issues another one.

⁷ Exh. 8.

⁸ Exh. 10.

⁹ Exh. 11.

¹⁰ Exh. 12 at pg. 2.

¹¹ Exh. 12 at pg. 1.

¹² AS 25.27.190(e).

previous order, Civil Rule 90.3(h) assumes that “good cause and material change in circumstances” has been established and allows the modification to be made.

Mr. R.’s child support previously was set at \$565 per month. CSSD initially denied his request for modification for the reason that he did not provide his income information, but he subsequently provided copies of his tax returns for several years, so the calculations were able to be completed after the hearing.

Utilizing Mr. R.’s 2007 income, CSSD calculated his modified child support at \$698 per month.¹³ This figure is more than a 15% increase from \$565 per month, so modification is permitted under Civil Rule 90.3(h). The modified support amount should be effective as of August 1, 2007, the first month after CSSD issued the notice that a petition for modification had been filed.¹⁴

B. Shared custody

When parents exercise shared custody of their children, Civil Rule 90.3 provides that child support is to be calculated differently than in the situation in which one parent has primary custody. The rule defines shared custody as follows:

A parent has shared physical custody of children for purposes of this rule if the children reside with that parent for a period specified in writing of at least 30 percent of the year, regardless of the status of legal custody.^[15]

The parties entered into a shared custody settlement agreement on September 28, 2007,¹⁶ which was subsequently adopted by the trial court.¹⁷ Therefore, the shared custody calculation should be effective as of October 1, 2007.

Shared custody child support is calculated by determining each parent’s primary custody child support obligation to the other parent, as if each parent had primary custody of the child(ren). The figures are then inserted into a shared custody mathematical formula that calculates the paying parent’s child support from a combination of both parents’ primary custody support obligations and their individual shared custody percentages.¹⁸

¹³ Exh. 11.

¹⁴ 15 AAC 125.321(d).

¹⁵ Civil Rule 90.3(f)(1).

¹⁶ Exh. 8.

¹⁷ Exh. 9.

¹⁸ See Exh. 12 at pg. 1.

Mr. R.'s 2007 income was approximately \$51,963.88, according to his year-to-date paystub issued on December 28, 2007.¹⁹ A primary custody calculation using this income information results in a child support amount of \$698 per month.²⁰ Ms. J.'s 2007 income was estimated to be \$14,960, including the PFD, based on her testimony that she works 26 hours per week at \$7.15 per hour and in addition receives around \$70 per week in tips. These income figures result in a primary custody child calculation of \$221 per month.²¹ Inserting the parties' respective primary custody figures into a 70/30 shared custody calculation results in a child support amount of \$633 per month, to be paid by Mr. R.²²

IV. Conclusion

Mr. R. met his burden of proving by a preponderance of the evidence that CSSD's denial of modification was incorrect. Mr. R.'s increased income warrants modification of his child support order to \$698 per month, effective August 1, 2007. His child support should be further modified because the parties entered into a 70/30 shared custody agreement on September 28, 2007, which was later adopted by the court. According to the shared custody formula, Mr. R.'s child support is correctly calculated at \$633 per month, effective October 1, 2007.

V. Child Support Order

1. Mr. R. is liable for modified child support in the amount of \$698 per month, effective August 1, 2007;
2. Mr. R. is liable for modified ongoing child support in the amount of \$633 per month, effective October 1, 2007.

DATED this 25th day of March, 2008.

By: Signed
Kay L. Howard
Administrative Law Judge

¹⁹ Exh. 10.

²⁰ Exh. 11.

²¹ Exh. 12 at pg. 2.

²² Exh. 12 at pg. 1.

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 11th 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.]