

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

IN THE MATTER OF:)	
)	OAH No. 08-0070-CSS
D. C. B.)	CSSD No. 001148987
_____)	

DECISION AND ORDER

I. Introduction

The Obligor, D. C. B., has appealed an Amended Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on January 10, 2008. The Obligee child is C., DOB 00/00/06.

The formal hearing was held on February 28, 2008. Mr. B. appeared in person; the Custodian of record, S. M. R., did not participate. David Peltier, Child Support Specialist, represented CSSD.

Kay L. Howard, Administrative Law Judge, Office of Administrative Hearings (OAH), conducted the hearing. Based upon the entire record case and after due deliberation, Mr. B.'s appeal is granted. He had primary custody of C. through May 2007 and started exercising shared custody just before the court's custody and support order was issued on June 8, 2007, so he is not liable for support in this administrative child support action from January 2007 through June 2007.

II. Facts

A. Procedural History

Ms. R. applied for Medicaid benefits in January 2007.¹ On October 23, 2007, CSSD served an Administrative Child and Medical Support Order on Mr. B.² Mr. B. requested and received an administrative review.³ On January 10, 2008, CSSD issued an Amended Administrative Child Support and Medical Support Order that set Mr. B.'s ongoing child support at \$355 per month, effective February 1, 2008, and arrears of \$4615 for the period from January

¹ Pre-Hearing Brief at pg. 1.

² Exh. 3.

³ Exh. 4.

2007 through January 2008.⁴ Mr. B. filed an appeal on February 13, 2008, claiming he currently had shared custody and that before the parties' court hearing he had primary custody of C. in his home. Mr. B. provided a copy of a court order granting the parties 50/50 shared custody of C. on June 8, 2007, and ordering Mr. B. to pay child support based on shared custody, effective July 1, 2007.⁵

B. Findings of Fact

The person requesting the hearing, in this case, Mr. B., has the burden of proving that CSSD's Amended Administrative Child Support and Medical Support Order is incorrect.⁶ The following facts have been established by a preponderance of the evidence, meaning they are more likely than not true:⁷

1. Mr. B. and Ms. R. lived together after C. was born until about mid- November 2006.⁸ After that, the parties exchanged C. back and forth occasionally. Ms. R. did not keep Mr. B. apprised of her contact information or where she was staying, so sometime in December 2006, Mr. B. refused to let Ms. R. take the child for any more visitation. Mr. B. then had primary custody of C. from January 2007 through sometime in mid to late May 2007.

2. In mid to late May 2007, primarily as the result of Ms. R. coming to his home with police officers, Mr. B. agreed to a shared custody arrangement in which he would thereafter have custody of C. three nights per week and she would have the child four nights per week. The parties exercised shared custody based on their arrangement for about three weeks, up until June 8, 2007.

3. On June 8, 2007, Mr. B. and Ms. R. attended a custody hearing which the court awarded custody and entered a child support order. The court awarded each parent 50/50 shared custody and ordered Mr. B. to pay child support in the amount of \$19.29 per month, effective July 1, 2007.⁹

⁴ Exh. 7.

⁵ Exh. 10.

⁶ 15 AAC 05.030(h).

⁷ See 2 AAC 64.290(e).

⁸ The facts are taken from Mr. B.'s hearing testimony, unless otherwise stated.

⁹ Exh. 10 at pg. 3.

4. The parties exercised shared custody of C. after their custody hearing and the court order of June 8, 2007. At the hearing, Mr. B. testified that Ms. R. was contemplating a several month-long trip out of state and that he would have C. full-time during her absence.

5. After the hearing and at the request of the administrative law judge, Mr. B. filed affidavits from three individuals attesting to the fact that he had primary custody of C. beginning in January 2007. Ms. M., C.'s babysitter, stated Mr. B.'s primary custody lasted "until around April 2007."¹⁰ Ms. D. O. indicated she met Mr. B. through her daughter, his coworker, about three years ago and that he and C. had been in her home on numerous occasions.¹¹ Ms. O. stated that Mr. B.'s primary custody of C. lasted "to around June of 2007." Similarly, K. S., Mr. B.'s long-time friend, stated that C. was in his father's care from "January 07 to the date of June 07."¹²

6. Based on the three affidavits Mr. B. filed after the hearing, CSSD stated that in the agency's opinion Mr. B. should not be charged child support for the period from January 1, 2007, to June 30, 2007.¹³

III. Discussion

A parent is obligated both by statute and at common law to support his or her children.¹⁴ 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. Where parents exercise shared custody of their children, Civil Rule 90.3 utilizes a different calculation formula that in general, results in the parent with the higher income paying a somewhat lower amount of support than in a primary custody scenario.¹⁵

In this case, Mr. B. has met his burden of proving that he is not liable for paying support for C. for the period from January 2007 through June 2007 because he had primary physical custody of C. during that period of time. His testimony was credible and uncontested. Also, it was corroborated by his witnesses and CSSD agreed Mr. B. met his burden on this issue. The parties exercised shared custody of C. on a three night/ four night schedule in mid to late May

¹⁰ Exh. 13.

¹¹ Exh. 14.

¹² Exh. 15.

¹³ Post-Hearing Brief at pg. 1.

¹⁴ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

¹⁵ See Civil Rule 90.3(f)(1).

2007, but the court asserted its authority over the child support issue on June 8, 2007. As a result, there is no specifically identifiable period of time within which to establish an order for Mr. B. to pay child support based on shared custody.

IV. Conclusion

Mr. B. met his burden of proving that he is not liable for support in this administrative child support action for the months of January 2007 through June 2007. As of June 8, 2007, the court's custody and support order controls Mr. B.'s ongoing child support obligation.

V. Child Support Order

1. Mr. B. is not liable for child support in this administrative child support case for the months of January 2007 through June 2007;
2. Ongoing child support as of June 8, 2007, has been determined by the Superior Court in the parties' custody litigation.

DATED this 24 day of April, 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 12th day of May, 2008.

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

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