

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

IN THE MATTER OF)	
)	
C W. L)	OAH No. 08-0089-CSS
_____)	CSSD No. 001147963

DECISION AND ORDER

I. Introduction

On March 20, 2008, a formal hearing was held to consider the child support obligation of C W. L (Obligor) for the support of his child, B (Obligee).¹ Mr. L participated in the hearing. The custodial parent of record, T O, also participated. Andrew Rawls, Child Support Services Specialist, represented the Child Support Service Division (Division). The hearing was audio-recorded. The record closed on April 11, 2008.

This case is Mr. L's appeal of the Division's order establishing his monthly child support obligation for his child, B. Mr. L's child support arrears for 2006 and 2008 should be set at the monthly amount in the Division's calculations at Exhibit 14 and 15 based on his income for 2006 and 2007. These calculations result in a monthly child support amount of \$347 for May 2006 through December of 2006. Because Mr. L has had custody of B since mid-March of 2007, Mr. L's child support for 2007 should be \$0 per month based on his having primary custody of B for 2007. Beginning in January of 2008 his monthly ongoing child support should be set at \$378 per month based on these calculations, but child support for 2008 and ongoing should be suspended while he has custody of B, or a new court order changes the current custody situation.

II. Facts

Ms. O requested public assistance medical for her child, B, beginning in May 2006.² Paternity is not in dispute.³ Mr. L is named as the child's father on her birth certificate.⁴

The Division served Mr. L with an Administrative Child and Medical Support Order on November 17, 2007.⁵ Mr. L requested an administrative review of that order.⁶

The Division issued an Amended Administrative Child and Medical Support Order on

¹ The hearing was held under Alaska Statute 25.27.170.
² Division's Pre Hearing Brief, page 1.
³ Division's Pre Hearing Brief, page 1. & Recording of Hearing.
⁴ Ex. 7 & Division's Pre Hearing Brief, page 1.
⁵ Ex. 3.

January 15, 2008.⁷ The Division set Mr. L's monthly ongoing child support for B at \$134. The order also established arrears in that monthly amount beginning in April of 2007. Ms. O requested a formal hearing.⁸

At the hearing, Mr. L and Ms. O provided information regarding their employment histories and custody of the children.⁹ After the hearing, as requested, Mr. L provided his 2006 and 2007 tax returns. Ms. O provided a copy of the Alaska Superior court's original interim custody order and the Division provided new calculations based on Mr. L's updated income information.¹⁰

Mr. L and Ms. O explained that Ms. O and B moved out of the home in Oklahoma that they had been living in with Mr. L and moved to Alaska in 2006. At some time in 2006, Ms. O filed for divorce in Alaska and was awarded interim custody of B. In March of 2007, the parties agreed that B would live with Mr. L in Oklahoma for awhile. The parties later disagreed about whether B should return to Alaska. Mr. L filed a custody action in an Oklahoma court and Ms. O sought custody through the Alaska court that had jurisdiction over the divorce action. The two courts are now in the process of determining which court should have jurisdiction over custody.¹¹

Based on the evidence in the record, I find that it is more likely than not that the Division's latest calculations at exhibit 14 & 15 and the information used in these calculations are correct and most accurately reflect Mr. L 2006 income and his current earning capacity.¹² I also find that Mr. L has had custody of B since March 15, 2007, but did not live with B between May of 2006 and March 15, 2007, when Ms. O had primary custody.

III. Discussion

In a child support hearing, the person who filed the appeal, in this case Mr. L, has the burden of proving by a preponderance of the evidence that the Division's order is incorrect.¹³

Mr. L does not live in Alaska. Mr. L showed that B has been in his custody since March 15, 2007, but he did not show that he lived with B and her mother between May of 2006 and July of 2006. Although he testified that his recollection was that the family was intact until June or

⁶ Ex. 4.

⁷ Ex. 6.

⁸ Ex. 8.

⁹ Recording of Hearing.

¹⁰ Recording of Hearing & Ex. 14 & 15.

¹¹ Recording of Hearing.

¹² Recording of Hearing & Ex. 14.

¹³ Alaska Regulation 15 AAC 05.030(h).

July of 2006, Mr. L's memory did not seem that clear, and was contradicted by Ms. O's testimony and the evidence that she had applied for public assistance in Alaska in May of 2006.

At the hearing, the Division argued that it might be better to charge Mr. L child support for the first two and one half months of 2007 since Ms. O does not qualify for a shared custody calculation for that year.

Child support is calculated using the shared custody formula when a child resides with a parent at least 30, but no more than 70 percent of the overnights.¹⁴ Under the shared custody formula, the annual amount each parent would pay to the other parent if that parent had sole custody is calculated. That support amount is then multiplied for each parent by the percentage of time the other parent will have physical custody of the children. The parent with the larger amount under this calculation is the obligor parent. The annual award from the obligor parent to the other parent is equal to the difference between the two figures multiplied by 1.5.

Ms. O admits that she had B only until March 15, 2007. This is less than 30 percent of the overnights in 2007. If the custody situation changes and the parties agree that Ms. O is going to have B at least 30% of the overnights per year, then they should request a modification. A written or court ordered custody agreement, or a carefully documented history of shared custody would help establish that a shared custody calculation is appropriate.

In this case, there was no shared custody in 2007. It is too late for Mr. L to request that the Division collect child support arrears for him for the months in 2007 when B was in his custody, because CSSD only establishes child support back to the date of the application for services or public assistance. Child support should be calculated on an annual basis. In this case it would clearly be unfair to Mr. L, in whose home B presently lives to charge him any child support arrears for 2007.¹⁵

IV. Conclusion

Mr. L's child support arrears should be set in the monthly child support amount of \$347 for May 2006 through December of 2006. Mr. L's child support for 2007 should be \$0 per month based on his having primary custody of B for 2007. Beginning in January of 2008 his monthly

¹⁴Alaska Civil Rule 90.3(f).

¹⁵ Setting 2007 child support on an annual rather than a month to month basis in this case is also more consistent with the direction of the Commentary to Civil Rule 90.3 which states that when establishing support retroactively, the amount calculated should be varied when it is necessary to do so in order to prevent unfairness that could result. *See* Civil Rule 90.3, Commentary VI, E.1.

ongoing child support should be \$378 per month, but child support for 2008 and ongoing should be suspended while he has custody of B, or a new court order changes the current custody situation.

V. CHILD SUPPORT ORDER

The Division’s Amended Administrative Child and Medical Support Order issued on January 15, 2008 is amended as follows, but all other provisions of that order remain in effect:

1. Mr. L’s ongoing child support for B is set in the monthly amount of \$378 effective January 1, 2008, but he owes no duty to pay while he has custody of B, or a new court order transfers primary custody of B to someone other than Mr. L.
2. Mr. L’s child support arrears for B are set in the monthly amount of \$347 for May through December of 2006, and \$0 per month based on his having primary custody of B for all of 2007.
3. The Division shall give parties the appropriate credit or debit for any out-of-pocket expenses for providing health insurance coverage for B.

DATED this 28th day of August, 2008.

By: Signed
Mark T. Handley
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 18th day of September, 2008.

By: Signed
Signature
Mark T. Handley
Name
Administrative Law Judge
Title

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