

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

In the Matter of	)	
	)	
SIR B.C	)	OAH No. 21-2409-CSS
_____	)	

REVISED DECISION AND ORDER¹

I. Introduction

On September 8, 2021 the Child Support Services Division (Division) issued an Administrative Review Hearing Decision which amended a 2020 Administrative Child and Medical Support Order and established Sir B.C's child support obligation for E.C, the child he shares with custodial parent F.O. The Decision set his ongoing monthly obligation at \$457 based on a primary custody calculation. Mr. C appealed, asserting that he and Ms. O share equal custody of E.

The testimony and evidence introduced at the hearing did not prove by a preponderance of the evidence that Mr. C and Ms. O share equal custody of their daughter E. The Administrative Review Hearing Decision and Amended Administrative Child and Medical Support Order issued on September 8, 2021 remains the current order in this matter, and Mr. C's ongoing monthly support obligation is as set at \$457.00 for one child.

II. Facts

E.C was born on April 30, 2015 to F.O. In October 2019 Ms. O applied for a cash assistance grant under Tribal Temporary Assistance to Needy Families (NTANF), a relief program for qualifying low-income families.² She represented on her application that she was the primary custodian of E. The application for assistance automatically triggered an electronic request by the Division of Public Assistance (DPA) to the Division to establish a child support order.

On November 27, 2019 the Division issued to Mr. C by first class mail an Administrative Order for Genetic Testing, and an Administrative Order to Provide Financial and Medical Insurance Information.³ One explained to Mr. C he may be the father of E and set forth

¹ This Revised Proposed Decision corrects a typographical error at page 2 of the Proposed Decision issued on December 27, 2021; the substantive outcome is unchanged.

² Ex. 3., Ex. 5.

³ Ex. 1.

various ways he could respond to the order for genetic testing. The other explained that he was legally required to provide his income information to the Division within 20 days of receiving the notice. Mr. C did not respond.

On September 8, 2020 the Division issued an order establishing paternity by default and naming Mr. C as the father of E.⁴ Also included was an order establishing his support obligation based on his most recent wages as reported to the Department of Labor, \$62,799.36, augmented by a PFD in the amount of \$992 and \$1,450 in unemployment benefits (UIB), resulting in a gross annual income of \$65,241.36. After requisite deductions for federal income tax, Social Security and Medicare, his adjusted annual income came to \$52,779.24, resulting in an obligation of \$880 per month for one child under Civil Rule 90.3. These documents were served on Mr. C via a process server on May 13, 2021.⁵

On June 17, 2021 the Division received from Mr. C a request for an administrative review of the \$880 support obligation.⁶ He asserted the order was in error as he was making direct payments to Ms. O, and because the parties objected to the involvement of the Division. Mr. C did not mention sharing custody of E.

The Division did not address the issue of any financial support Mr. C may have been providing Ms. O, as it does not credit direct payments when one party is receiving public assistance for the benefit of the child.⁷ However, as the particular relief benefits Ms. O was receiving were administered by the Cook Inlet Tribal Council (CITC), Mr. C was advised to contact the Council directly to inquire about its policies regarding credit for prior financial assistance. The Division eventually contacted CITC, and CITY in turn discharged Mr. C of any child support arrears for the months of October 2019, February 2020 and March 2020.

The Division did recalculate Mr. C's support calculation for prior years due to the fluctuating nature of his annual income as a seasonal carpenter.⁸ In 2019 Mr. C's employer reported wages, augmented by his UIB and PFD, which resulted in a gross annual income of \$43,683.43, an adjusted annual income of \$37,145.47, and a 2019 support obligation for one child of \$619.00. In 2020 his wages, UIB and PFD, resulted in a gross annual income of

⁴ Ex. 2.

⁵ Ex. 3.

⁶ Ex. 4.

⁷ 15 AAC 125.470(b).

⁸ Ex. 5.

\$76,148.20, an adjusted annual income of \$61,847.80, and a 2020 support obligation for one child of \$1,031.00. For 2021 the Division relied on Mr. C's employer-reported wages for quarters one and two and imputed full-time hours paid at a minimum wage rate for the remainder of the year. The Division included UIB and the PFD, resulting in a gross annual income of \$31,320.01, an adjusted annual income of \$27,408.85, and a 2021 support obligation for one child of \$457.00.

On September 8, 2021 the Division issued an Administrative Review Hearing Decision amending the 2020 Administrative Child and Medical Support Order and establishing Sir B.C's monthly child support obligation for E.C as calculated above, based on a primary custody arrangement.⁹

In October 2021 the Division received a request for an administrative hearing from Mr. C, along with statements from both parties asserting for the first time that they share equal custody of E.¹⁰ A formal telephonic hearing was held over several dates, November 8, November 30, and December 21, 2021. Brandi Estes participated all three dates and represented the Division. Mr. C and Ms. O participated and represented themselves the first two dates. On December 21, however, both parties were called at their numbers of record several times, messages were left reminding them of the hearing, but they could not be reached. The record closed on at the end of the business day on December 21, 2021.

III. Discussion

Mr. C did not contest the Division's determination of his income for each year relevant to this case. The sole issue to be decided is whether Mr. C's support obligation should be calculated based on primary custody or shared custody. As the person who filed the appeal, Mr. C has the burden of proving by a preponderance of the evidence that the Division's support order is incorrect.¹¹

Civil Rule 90.3 provides the formula for calculating child support awards under different custody arrangements, including shared or primary. In general, a non-custodial parent's support obligation calculated under a primary custody arrangement is higher than the monthly support a parent owes in a shared custody situation.

⁹ *Id.*
¹⁰ Ex. 7.
¹¹ 15 AAC 05.030(h).

Civil Rule 90.3(f)(1) defines shared custody as follows:

A parent has shared physical custody (or shared custody) of children for purposes of this rule if the children reside with that parent for a period specified in writing in the custody order of at least 30, but not more than 70, percent of the year, regardless of the status of legal custody.

For a visitation day to count toward the required 30% of the year, the child normally must stay overnight with the respective parent.¹² Therefore, a day or an evening of visitation, by itself, does not count toward the total time necessary to establish shared custody. Visitation from Saturday morning through Sunday evening would count as one overnight.¹³

If there is no court order regarding custody, a finding of shared custody under Civil Rule 90.3(f)(1) should be based on a written agreement. However, the parties to child support actions often do not have one. In the absence of a written agreement, the parties' actual history regarding periods of overnight custody will determine whether shared custody exists and, if so, what percentage of shared custody each party exercises.

Mr. C and Ms. O do not have a written agreement for shared custody. As a result, Mr. C must prove that he has cared for E at least 30% of the time, on an ongoing basis, in order to meet the minimum requirements for a shared custody calculation. One year is equal to 365 days, so 30% of the year equals 110 overnights.¹⁴ This is the minimum number of overnights needed on an annual basis to reach the threshold definition of shared custody.

Mr. C's appeal statement reads, "The paper I submitted with the 50/50 custody. Thank you."¹⁵ He was seemingly referencing a note signed and submitted by him and Ms. O that stated,

To Whom It May Concerns,
Sir B and I F.O have set arrangements for monthly payments since 2017 once we were in two different households. We also been working through our days with E. Dad brings E to school and I (mom) pick her up. Weekends we take turns to see her while also keeping her on a schedule we created.

50-50 shared custody

Sincerely,

9/3/21 F.O

9/3/21 Sir B.C.

¹² Civil Rule 90.3, Commentary V.A.

¹³ *Id.*

¹⁴ $365 \times .30 = 109.5$ (rounded to 110). *See also* Civil Rule 90.3, Commentary V.A.

¹⁵ Exhibit 7.

At the November 30 hearing both parties maintained that when Ms. O applied for cash assistance with the DPA, she represented on her application that she and Mr. C shared equal custody of E. But this was not reflected in the DPA record.¹⁶ The parties were encouraged to follow up with the DPA or CITC if there was a misunderstanding. Additionally, a continued hearing date of December 21 was set to allow them time to prepare affidavits, letters, records, and secure witnesses who could testify about the custody arrangement with their daughter.

At 9:41 a.m. on December 21, Mr. C sent Ms. Estes an email of a signed and notarized affidavit stating,

I G.P would visit my friend B.C every other day and weekend. I
would see E.C from the dates of October 2019 through September
2021.
Thank you
G.P

Approximately one hour later, at 11:00 a.m., the hearing began as scheduled, but neither Mr. C nor Ms. O could be reached at their phone numbers of record. Messages were left, but neither called back.

In support of his argument that he has consistently shared equal custody of his daughter, Mr. C relies on the testimony of Ms. O and the affidavit of his friend Mr. P. Ms. O, however, is not a credible witness, as her statements at the hearing contradict what she asserted on her cash assistance application with the DPA. The affidavit from Mr. P is largely unhelpful as well, as no additional information was provided regarding the nature of this friendship, why Mr. P was visiting Mr. C every other day, or if he knew if E was spending overnights with Mr. C, or just visiting. Since the parties did not participate in the December 21, 2021 hearing, they were not able to clarify these details. In short, nothing presented at any of the hearing dates demonstrated that Mr. C has ever cared for E at least 30% of the time on an ongoing basis, or that she has spent 110 overnights a year with him.

IV. Conclusion

¹⁶ Test. Estes.

Mr. C did not meet his burden of proving by a preponderance of the evidence that he exercises shared custody of E either currently, nor has he at any point in the past. Therefore, he did not show that the Administrative Review Hearing Decision and Amended Administrative Child and Medical Support Order issued on September 8, 2021 is incorrect. Based on the evidence, the amended order correctly establishes Mr. C's monthly child support obligation under the primary custody formula at \$457 effective October 1, 2021 and ongoing. Additionally, as the calculations in the order were based on primary custody for all relevant periods, the Division's pre-order arrears also remain as calculated, notwithstanding any months that CITC confirms it will grant him direct credit payments despite the fact Ms. O was receiving public benefits. All calculations in the September 2021 Amended Administrative Child and Medical Support Order calculations were done pursuant to Civil Rule 90.3, without variation under Civil Rule 90.3(c), and should be adopted.

V. Child Support Order

1. Sir B.C is liable for child support in the amount of \$457 per month for one child effective October 1, 2021 and ongoing, based on primary custody exercised by Ms. O.
2. All other terms of Amended Administrative Child and Medical Support Order issued on September 8, 2021 remain in full force and effect.

Dated: December 29, 2021 nunc pro tunc December 27, 2021

Signed

For Danika B. Swanson
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 within 30 days after the date of this decision.

DATED this 18th day of January.

By: Signed
Lucinda Mahoney
Commissioner, Department of Revenue

[This document has been modified to conform to the technical standards for publication.
Names have been changed to protect privacy.]