

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

IN THE MATTER OF: )

G. T. E. )

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OAH No. 08-0154-CSS

CSSD No. 001036855

**DECISION AND ORDER**

**I. Introduction**

This Obligor, G. T. E., appeals an Amended Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued on February 11, 2008. The Obligee children are J., DOB 0/00/90; V., DOB 00/00/93; and C., DOB 0/00/95.

The formal hearing was held on May 21, 2008. Mr. E. appeared in person; the custodian of record, J. E. E., participated by telephone. David Peltier, Child Support Specialist, represented CSSD. The hearing was recorded. The record closed on May 21, 2008.

Kay L. Howard, Administrative Law Judge, conducted the hearing. Based on the record as a whole and after careful consideration, Mr. E.'s ongoing child support is set at \$1,728 per month for three children.

**II. Facts**

**A. History**

Ms. E. applied for child support services on behalf of the parties' three children on August 20, 2007.<sup>1</sup> On December 26, 2007, CSSD served an Administrative Child and Medical Support Order on Mr. E..<sup>2</sup> He requested an administrative review.<sup>3</sup> Following the review, CSSD issued an Amended Administrative Child Support and Medical Support Order on February 11, 2008, that set Mr. E.'s ongoing support at \$2,021 per month, with arrears of \$10,706 for the period from August 2007 through February 2008.<sup>4</sup> Mr. E. filed an appeal and requested a formal hearing on March 19, 2008.<sup>5</sup>

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<sup>1</sup> Exh. 1.

<sup>2</sup> Exhs. 2-4.

<sup>3</sup> Exhs. 6 & 7.

<sup>4</sup> Exhs. 8 & 9.

<sup>5</sup> Exh. 10.

## **B. Material Facts**

Mr. E. and Ms. E. are married and have three children, J., DOB 0/00/90; V., DOB 00/00/93; and C., DOB 0/00/95. They separated in June 2007 and are currently in the process of getting a divorce. Ms. E. requested child support services from CSSD on August 20, 2007, for all three of the parties' children.

Mr. E. is currently employed on the North Slope and has worked for several different employers during each year. In 2005, he earned \$92,423.17; in 2006, he earned \$121,654.79; and in 2007 he earned \$80,385.45, plus unemployment benefits of \$2,480, for a total gross income figure of \$82,865.45.<sup>6</sup> The reduction in earnings in 2007 is based primarily on Mr. E. going to work for a single employer in mid-2007.

The parties previously lived in Ashland, Oregon, with all three children. When they separated in June 2007, Mr. E. moved to Alaska and Ms. E. remained in Ashland with the children. Sometime after the 2007 – 2008 school year began, the custodian and the two younger children moved away from Ashland, but J., the parties' oldest child, remained there in order to finish his senior year in high school. He was living with another family and the custodian was paying them \$500 per month for his support. J. reached 18 years of age on March 26, 2008, and was scheduled to graduate from high school on June 6, 2008.

On January 2, 2008, Ms. E. filed for and was granted a 20-day domestic violence protective order (DVO).<sup>7</sup> The order awarded her temporary custody of the children and ordered the obligor to pay child support of \$2,750 per month while the order was in effect.<sup>8</sup> It is not known whether the court issued a one-year order in the parties' case at the follow-up hearing scheduled for January 17, 2008.<sup>9</sup>

## **III. Discussion**

A parent is obligated both by statute and at common law to support his or her children.<sup>10</sup> Civil Rule 90.3(a)(1) provides that an obligor's child support is to be calculated from his or her "total income from all sources."

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<sup>6</sup> Exh. 12.

<sup>7</sup> Exh. 5.

<sup>8</sup> Exh. 5 at pg. 4.

<sup>9</sup> *Id.*

<sup>10</sup> *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

In this action establishing a child support amount on behalf of J., V., and C., CSSD initially calculated Mr. E.'s 2007 child support at \$1,820 per month for three children, based on the earnings his employers reported to the Alaska Department of Labor and Workforce Development for the prior four quarters.<sup>11</sup> The obligor requested an administrative review, after which CSSD calculated his 2007 child support at \$1,737 per month for three children, based on his total earnings from 2007.<sup>12</sup> For 2008 and ongoing, CSSD calculated Mr. E.'s child support at \$2,021 per month for three children.<sup>13</sup> CSSD stated in its order that since his income had varied widely from year to year, the agency averaged his earnings from the prior three years (2005, 2006, and 2007), which resulted in an income figure of \$98,154.47, plus the PFD and a small amount of unemployment benefits, to yield total gross income of \$100,875.14.<sup>14</sup> Mr. E. challenged this figure, asserting his income was significantly lower in 2007, when this obligation began.

CSSD averaged the obligor's income pursuant to Civil Rule 90.3, Commentary III.A., which states:

Time Period for Calculating Income. Child support is calculated as a certain percentage of the income which will be earned when the support is to be paid. This determination will necessarily be somewhat speculative because the relevant income figure is expected future income. The court must examine all available evidence to make the best possible calculation.

The determination of future income may be especially difficult when the obligor has had very erratic income in the past. In such a situation, the court may choose to average the obligor's past income over several years . . . .

CSSD's use of an average income figure is not the best method of determining Mr. E.'s 2008 and ongoing child support amount. Although Civil Rule 90.3 allows income figures to be averaged for the purpose of making child support calculations, it is not necessary to do so in this case. The obligor's income has varied somewhat during the last few years, but it has not been so "erratic" such that his income should be averaged. Also, Mr. E. has been with his current

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<sup>11</sup> Exh. 2; Exh. 3 at pg. 2.

<sup>12</sup> Exh. 9 at pg. 2.

<sup>13</sup> Exh. 9 at pg. 3.

<sup>14</sup> *Id.*

employer since mid-2007, so it is reasonable to expect that his 2008 income will be commensurate with his 2007 income. Using an average income figure of approximately \$100,000 is an increase of nearly \$18,000 over Mr. E.'s 2007 income, and it is not a fair basis upon which to calculate his child support obligation. The obligor's 2007 income is the correct income figure to use for both his 2007 and 2008 child support calculations.

One correction, apparently a typographical error, should be made to CSSD's 2007 calculation at Exhibit 9, page 2. In the income section, CSSD's calculation has an entry of \$2,880 for unemployment benefits, but the wage data reported by the Alaska Department of Labor and Workforce Development indicates that Mr. E. actually received \$2,480 (10 payments of \$248), which is \$400 lower than the number CSSD used. When that number is corrected and the \$1,654 PFD is added, it results in total gross income for Mr. E. of \$84,519.45 in 2007.<sup>15</sup> Inserting that figure into CSSD's online child support calculator<sup>16</sup> yields a child support amount of \$1,728 per month for three children.<sup>17</sup> This figure should be used for both 2007 and 2008.

Finally, the issue of support for J., the parties' oldest child, should be addressed. Mr. E. asserted he should not have to pay support to Ms. E. for J. after Ms. E. and the two younger children moved away from Ashland and J. remained there. Essentially, the obligor's argument is that since J. was not living with Ms. E., she should not be able to collect child support on J.'s behalf.

Mr. E.'s argument he shouldn't be liable for J.'s support after Ms. E. left Ashland cannot succeed. Ms. E. was J.'s guardian and as such made decisions about his schooling and living situation. The fact that J. was not living with her does not eliminate Mr. E.'s obligation. So long as he was a non-custodial parent during that time, he must provide his portion of J.'s support, as determined pursuant to Civil Rule 90.3. Also, even though J. turned 18 on March 26, 2008, Mr. E. remained liable for J.'s support until he graduated from high school.<sup>18</sup>

#### **IV. Conclusion**

Mr. E. met his burden of proving by a preponderance of the evidence that the Amended Administrative Child Support and Medical Support Order was incorrect. His child support

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<sup>15</sup> See Attachment A.

<sup>16</sup> CSSD's website is located at <http://www.childsupport.alaska.gov/> and a link to the child support calculator is on the top of the page and also on the right-hand side of the page.

<sup>17</sup> *Id.*

<sup>18</sup> See AS 25.27.061.

obligation is now correctly calculated at \$1,728 per month. This figure should be adopted, effective August 2007, and it applies to all the time periods in this administrative child support case, except for January 2008. For that month, the child support order issued by the court in its Ex Parte Protective Order dated January 2, 2008, in Case No. 3KN-00-0000CI, should be applied.

**V. Child Support Order**

- Mr. E. is liable for child support for J., V., and C., in the amount of \$1,728 per month for the period from August 2007 through August 2008, and ongoing, with the exception of January 2008;
- For January 2008, Mr. E. is liable for support as set forth in the court's Ex Parte Protective Order dated January 2, 2008, in Case No. 3KN-08-0000CI.
- All other provisions of the February 11, 2008, Amended Administrative Child Support and Medical Support Order remain in full force and effect.

DATED this 14th day of August, 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 2nd day of September, 2008.

By: Signed \_\_\_\_\_  
Kay L. Howard  
Administrative Law Judge

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