

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

IN THE MATTER OF:)

B. M. G.)

) OAH No. 08-0182-CSS

) CSSD No. 001144541

DECISION AND ORDER

I. Introduction

The Obligor, B. M. G., appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (“CSSD”) issued in his case on March 19, 2008. The Obligee child is E., DOB 0/00/06.

The formal hearing was held on April 24, 2008. Both Mr. G. and the custodian of record, H. C. P., appeared. Mr. G. was represented by Dan Allan. David Peltier, Child Support Specialist, appeared for CSSD. The hearing record closed on May 23, 2008.

Kay L. Howard, Administrative Law Judge, conducted the hearing. Based on the record and after due deliberation, Mr. G.’s modified child support is set at \$382 per month, effective January 1, 2008.

II. Facts

A. History

Mr. G.’s child support obligation for E. was set at \$208 per month in January 2007.¹ Ms. P. requested a modification on December 10, 2007.² On December 13, 2007, CSSD sent the parties a Notice of Petition for Modification of Administrative Support Order.³ Mr. G. provided income information.⁴

On March 19, 2008, CSSD issued a Modified Administrative Child Support and Medical Support Order that set Mr. G.’s modified child support at \$553 per month, effective January 1, 2008.⁵ Mr. G. filed an appeal and requested a hearing on April 3, 2008, asserting he cannot

¹ Exh. 1.

² Exh. 2.

³ Exh. 3.

⁴ Exh. 4.

⁵ Exh. 5.

afford the amount calculated because of his bills and attorney fees.⁶ Prior to the hearing, CSSD prepared a revised child support calculation of \$431 per month, based on the obligor's January 5, 2008, leave and earnings statement.⁷

B. Material Facts

The following facts have been established by a "preponderance of the evidence," meaning that they are more likely than not true:

1. Mr. G. has worked full-time for the FAA since 2007. His starting pay was \$8.98 per hour.

2. On August 13, 2007, Mr. G. went to Oklahoma for training and returned on October 10, 2007. Upon his return, he received a raise to \$15.48 per hour, his current pay level. He also pays union dues of \$24 in each of his 26 paychecks per year, and contributes to a mandatory retirement fund. He was required to file an Oklahoma state income tax return for the period of time he was there for training.

3. After returning from Oklahoma, Mr. G. began having E. overnight two times per week, and occasionally more often.

4. In November 2007, Mr. G. began having E. three overnights per week, from Friday at 3 p.m. until Monday at noon. During that period of time, Ms. P. usually had E. four overnights per week, from Monday night through Thursday night, and occasionally on weekends.

5. The parties occasionally have to make adjustments to this schedule, but on average, Mr. G. has E. three overnights per week and Ms. P. has E. four overnights per week. Dividing each of these numbers by seven overnights per week results in Mr. G. having shared custody 43% of the time and Ms. P. having custody 57% of the time.

6. Mr. G. has regular monthly expenses of \$680 for rent; \$250 for food; \$30 for electricity; \$12 for cable; \$80 for telephone; \$140 for gasoline; \$60 for vehicle maintenance; \$200 for vehicle insurance; \$350 for the payment onto credit cards; and \$220 for student loans. He has unpaid medical bills totaling \$160.

7. Mr. G. provided his most recent pay stubs after the formal hearing. CSSD used his pay stubs to estimate his annual wages are \$33,464.08, he receives cost-of-living allowance

⁶ Exh. 6.

⁷ Exh. 8.

in the total amount of \$7,917. When the PFD totaling \$1654 is added, CSSD calculated his total gross income at \$43,035.08.⁸ Theoretically, if Ms. P. had primary custody, these figures would result in Mr. G. owing child support of \$577 per month.

8. Ms. P. is also employed, although she only works usually 20 to 24 hours per week and occasionally up to 35 hours per week. She earns \$10.51 per hour and a childcare bill of \$250 per month is taken out of her check. Ms. G. is currently in school and is pursuing certification as a pharmacy technologist.

9. Ms. P. formerly lived with her mother, but recently moved into a new apartment. Her regular monthly expenses are \$750 for rent; \$400 for food; \$60 for electricity; \$65 for a cell phone; \$100 for gasoline; \$115 for vehicle insurance; \$85 for vehicle maintenance; and \$100-\$200 for the payments on two credit cards. She currently owes \$2,500 in student loans but they are being held in abeyance until she finishes school in 2009.

10. Ms. P. provided her most recent pay stubs after the formal hearing. CSSD used her pay stubs to estimate her annual wages are \$13,370.76, plus the PFD, for total gross income of \$15,024.76.⁹ Theoretically, if Mr. G. had primary custody of E., these figures would result in Ms. P. owing child support of \$172 per month.

III. Discussion

A. Shared custody

Civil Rule 90.3(a)(1) provides that an Obligor's child support is to be calculated based on his or her "total income from all sources." In a modification situation, if the support amount calculated from an obligor's current income is more than a 15% change from the previous order, Civil Rule 90.3(h) assumes that "good cause and material change in circumstances" has occurred and allows the modification to be made.

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

⁸ Exh. 12.

⁹ Exh. 13.

specified in writing of at least 30 percent of the year, regardless of the status of legal custody.^[10]

Thirty percent (30%) of the year is 110 days. In order for a visitation day to count toward the required 30% of the year, the child(ren) must stay overnight with the respective parent.¹¹

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 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.

Mr. G.'s primary custody child support obligation, with his gross income totaling \$43,035.08, would be \$577 per month. Ms. P.'s primary custody child support obligation, with her gross income totaling \$15,024.76, would be \$172 per month.

On an annual basis, a parent who has the children four overnights per week has custody 57.1% of the time; likewise, a parent who has possession of the children three overnights per week has custody 42.8% of the time. When rounded to the nearest percent for efficiency, these numbers result in 57% and 43% custody, respectively. These percentages should be used to determine Mr. G.'s child support obligation effective January 1, 2008.

When the parties' income information is inserted into the shared custody formula, it results in Mr. G. having a child support obligation of \$382 per month.¹² The calculation is based on a 57/43 percent shared custody scenario, with Mr. G. having custody of the children 43% of the time.

B. Financial hardship

The second issue in this appeal is whether Mr. G. is entitled to a "good cause" variance of the child support calculation, pursuant to Civil Rule 90.3(c). Child support amounts calculated under Civil Rule 90.3 from an obligor's actual income figures are presumed to be correct. The parent may obtain a reduction in the amount calculated, but only if he or she shows that "good cause" exists for the reduction. In order to establish good cause, the parent must prove by clear and convincing evidence that "manifest injustice would result if the support award were not

¹⁰ Civil Rule 90.3(f)(1).

¹¹ Civil Rule 90.3, Commentary V.A.

¹² Attachment A.

varied." Civil Rule 90.3(c). If there are "unusual circumstances" in a particular case, this may be sufficient to establish "good cause" for a variation in the support award:

Good cause may include a finding . . . that unusual circumstances exist which require variation of the award in order to award an amount of support which is just and proper for the parties to contribute toward the nurture and education of their children^[13]

It is necessary to consider all the relevant evidence in order to determine whether the support amount should be set at a different level than provided under the schedule in Civil Rule 90.3(a).¹⁴ Based on the evidence presented, this case does not present unusual circumstances of the type contemplated by Civil Rule 90.3. Mr. G. did not prove by clear and convincing evidence that manifest injustice will result if the child support amount calculated under Civil Rule 90.3 is not varied. Mr. G.'s financial situation is somewhat strained at this time, but overall, it does not constitute "unusual circumstances."

IV. Conclusion

Mr. G. met his burden of proving by a preponderance of the evidence that his child support obligation was calculated incorrectly. Mr. G. has shared custody of E. for 43% of the time, and on that basis, his child support is now correctly calculated at \$382 per month. This amount should be adopted, effective January 1, 2008.

V. Child Support Order

- Mr. G. is liable for modified ongoing child support in the amount of \$382 per month, effective January 1, 2008, per month and ongoing;
- All other provisions of CSSD's March 19, 2008, Modified 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

¹³ Civil Rule 90.3(c)(1).

¹⁴ See Civil Rule 90.3, Commentary VI.E.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 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.]

SHARED CUSTODY CHILD SUPPORT GUIDELINES WORKSHEET

CAS E NUMBER **001 13 8681**

CUSTODIAN

NON-CUSTODIAL PARENT **B**

YEAR **2008**

Use this form to determine the child support calculation defined by CR 90.3

A

CUSTODIAN

B

NON-CUSTODIAN

1 Monthly child support per Primary custody calculation **\$172.00** **\$577.00**

2 Percentage of time child(ren) will be with each parent. **57%** **43%**

3 Multiply line 1A times 2B **\$73.96**

4 Multiply line 1B times 2A **\$328.89**

5 the difference of lines 3 & 4 goes in the column that had the larger amount on lines 3 or 4 (one line is left blank) **\$0.00** **\$254.93**

6 Multiply line 5 by 1.5 (one line is left blank). **\$0.00** **\$382.40**

This amount is the **MONTHLY CHILD SUPPORT AMOUNT**

7 Monthly Medical Credit **\$0.00** **\$0.00**

7 Monthly Medical Debit **\$0.00** **\$0.00**

MONTHLY CHILD SUPPORT AMOUNT TO BE PAID AFTER CREDIT/DEBIT: **\$382**

MONTHLY CHILD SUPPORT TO BE PAID BY: **B. G.**