

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

IN THE MATTER OF:)

W. W. L.)

) OAH No. 08-0212-CSS
) CSSD No. 001068431
)

DECISION AND ORDER

I. Introduction

The Obligor, W. W. L., appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on February 25, 2008. The Obligee children are O., DOB 00/00/97; and C., DOB 00/00/99.

The formal hearing was held on May 22, 2008. Mr. L. appeared by telephone; the custodian, C. R. B., appeared in person. David Peltier, Child Support Specialist, appeared for CSSD. The hearing was recorded and the record closed on May 30, 2008.

Kay L. Howard, Administrative Law Judge, conducted the hearing. Based on the record and after due deliberation, the following decision is issued.

II. Facts

A. History

Mr. L.'s child support obligation for O. and C. was previously established at \$50 per month by an administrative law judge after a hearing in 2002.¹ On November 27, 2007, Ms. B. initiated a modification review of the order.² On November 30, 2007, CSSD sent the parties a Notice of Petition for Modification of Administrative Support Order.³ Mr. L. did not provide income information.⁴ On February 25, 2008, CSSD issued a Modified Administrative Child Support and Medical Support Order that set Mr. L.'s modified ongoing child support at \$820 per month, effective December 1, 2007, based on his current income information.⁵ Mr. L. filed an appeal and requested a hearing on April 28, 2008.⁶

¹ Exh. 1.

² Exh. 2.

³ Exh. 3.

⁴ Pre-hearing brief at pg. 1.

⁵ Exh. 4.

⁶ Exh. 5.

B. Material Facts

Mr. L. was incarcerated for most of the 2007 calendar year, and was released on September 24, 2007. He began working for his current employer in October 2007 as a laborer, and in 2007, earned \$3,338.⁷ He works on the North Slope, usually from three to five weeks at a time, followed by a period of two to four weeks off work. He indicated there is a window washing service in Anchorage for whom he can work during his weeks off. The obligor usually makes \$22 per hour, but he is currently working on a job that requires him to pay union dues of \$.95 per hour, so he is being paid \$23.60 per hour to compensate for the union dues. He works 70 hours per week and his Alaska Department of Labor earnings history indicates he received \$15,224 during the first quarter of 2008.⁸

Ms. B. is a student at the University of Alaska Anchorage, where she is studying Early Childhood Development and plans to graduate in the spring of 2009. In 2006, she earned approximately \$16,800 plus the PFD.⁹ In 2007 she earned on the average \$1083.63 per month,¹⁰ which totals \$13,003.56 for the year. Ms. B. acknowledged the obligor had given her cash in 2008, but asserted the total is closer to \$650 than the \$1,000 he claimed. She said it was for car repair and O.'s piano lessons, not child support. She claimed she has had to pay some of Mr. L.'s expenses, such as the costs of him calling collect to speak with the children.

In anticipation of custody litigation in early 2007, the parties executed a 70/30 shared custody agreement wherein the obligor would exercise physical custody of the children at least 30% of the year. This plan had not yet been put in place at the time of the hearing, but the parties intend to follow it in the near future because Mr. L.'s work situation appears to have stabilized. The custodian agreed to a shared custody calculation using the shared custody formula in Civil Rule 90.3(f)(1).

III. Discussion

A. Obligor's income

The obligor claimed at the hearing that CSSD did not adopt his and the custodian's agreement that they would exercise shared custody of the children. He also claimed he has given

⁷ Exh. 8.

⁸ Exh. 8.

⁹ Exh. 9 at pg. 19.

¹⁰ Exh. 9 at pg. 1.

the custodian a significant amount of money over the past few years. He estimated the total be in the approximate amount of \$1,000.

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." In a modification situation, if the child 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.

Since Mr. L. was incarcerated for most of 2007, he earned only \$3,338 at the end of the year. This modification is effective December 1, 2007, so the first month of his modified child support amount is based on that income. Calculated according to Civil Rule 90.3, it is \$69 for that one month.¹¹

Effective January 1, 2008, Mr. L.'s 2008 estimated earnings should be used as the basis for the child support calculation. CSSD's Modified Administrative Child Support and Medical Support Order estimated Mr. L.'s income at \$45,760, based on an hourly wage of \$22 per hour, multiplied times 2080 hours, the average number of hours an employee works in a 40-hour per week job.¹² However, it is now known that Mr. L. works on the North Slope and receives a significant amount of overtime. In just the first quarter alone, he earned \$15,224.¹³ It is more accurate, therefore, to estimate Mr. L.'s total annual income by multiplying his first quarter earnings times four quarters to determine his estimated annual income. This yields a total estimated income amount of \$60,896, which is the figure that should be used in the shared custody child support calculation, as discussed below.

B. Shared custody calculation

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

¹¹ Attachment A. Mr. L. is not entitled to a PFD, due to his incarceration. *See* AS 43.23.005(d).

¹² *See* Exh. 4 at pg. 6.

¹³ Exh. 8.

specified in writing of at least 30 percent of the year, regardless of the status of legal custody.^[14]

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.¹⁵

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. L.'s primary custody child support obligation, with his annual income estimated at \$60,896, would be \$1,052 per month for two children.¹⁶ Ms. B.'s primary custody child support obligation, with annual income estimated at \$13,003.56, would be \$293 per month.¹⁷ When Mr. L.'s and Ms. B.'s information is inserted into the shared custody calculation, it results in Mr. L. having a child support obligation of \$973 per month for two children.¹⁸ The calculation is based on 70/30 shared custody, with Mr. L. having custody of the children 30% of the time.

C. Credit for direct payments

CSSD may give the obligor credit for direct child support payments made "before the time the obligor is ordered to make payments through the agency."¹⁹ Credit is generally not given for gifts made to the child(ren) by the obligor.²⁰

Mr. L. is requesting a credit for giving Ms. B. what he estimated to be about \$1,000. She acknowledged Mr. L. has given her some cash money, but claims the total was actually \$650, broken up into three amounts: \$200 for car repair, received on February 2, 2008; \$150 for O.'s piano lessons and books, received on February 15, 2008; and \$300 for car repair, received on

¹⁴ Civil Rule 90.3(f)(1).

¹⁵ Civil Rule 90.3, Commentary V.A.

¹⁶ Attachment B.

¹⁷ Attachment C.

¹⁸ Attachment D.

¹⁹ AS 25.27.020(b).

²⁰ *CSSD v. Campbell*, 931 P.2d 416 (Alaska 1997).

March 2, 2008. She provided copies of the parties' joint bank account that reflect deposits in those amounts on the days she indicated.²¹

Mr. L. is not entitled to a credit for the money he gave Ms. B. for car repair. The direct credit is for child support funds an obligor gives to a custodian, not for other expenses. Similarly, Mr. L. is not entitled to a direct credit for paying for O.'s piano lessons. These are considered gifts to the child and are thus not reimbursable.

IV. Conclusion

The parties have entered into a 70/30 shared custody agreement wherein Mr. L. will have physical custody of the children 30% of the time. Using their respective incomes and resulting primary custody calculations, Mr. L.'s modified ongoing child support obligation is now correctly calculated at \$973 per month. This figure should be adopted, effective January 1, 2008. Since the modification is effective as of December 1, 2007, Mr. L.'s child support is \$69 for that month, based on his actual 2007 income. These figures should be adopted. Mr. L. is not entitled to a credit for direct payments based on the money he gave to the custodian for car repair and piano lessons.

V. Child Support Order

- Mr. L. is liable for modified child support in the amount of \$69 for the month of December 2007;
- Mr. L. is further liable for modified child support in the amount of \$973 per month, effective January 1, 2008, per month and ongoing;
- All other provisions of CSSD's February 25, 2008, Modified Administrative Child Support and Medical Support Order remain in full force and effect.

DATED this 24th day of June, 2008.

By: Signed
Kay L. Howard
Administrative Law Judge

²¹ Exh. 7.

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 11th day of July, 2008.

By: Signed
Signature
Christopher Kennedy
Name
Deputy Chief ALJ
Title

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