

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

IN THE MATTER OF:)
)
G C)
)
) OAH No. 08-0247-CSS
) CSSD No. 001052900
_____)

DECISION AND ORDER

I. Introduction

This case concerns the obligation of G C for the support of G C (DOB 00/00/04) and J C (DOB 00/00/96). The custodian of record is Z C.

On April 14, 2008, the Child Support Services Division issued an amended administrative order based on shared custody setting ongoing support at the rate of \$509 per month effective May 1, 2008, and arrears at the rate of \$752 per month in 2007 and \$509 per month in 2008.

Mr. C filed an appeal and requested an administrative hearing, which was conducted on June 5, 2008. Both Mr. C and Ms. C participated; Andrew Rawls represented the division.

Based on the testimony at the hearing and the evidence in the record, arrears are set at \$90 per month for 2007, \$89 per month through June, 2008, and arrears and ongoing support are set at \$65 per month beginning July, 2008.

II. Facts

G and Z C have two children from their marriage, G and J. When they separated in July, 2007, the couple agreed to share custody of their children and have continued that arrangement. In addition, Ms. C has two older children from a prior relationship, both of whom were in her custody until the elder child emancipated in June, 2008.

Mr. C was employed full time at the no name mine in no name until July, 2007, when he returned to no name and the couple separated. Mr. C found work at no name as a school bus driver, starting in August, 2007, earning \$14.30 per hour for 32-36 hours per week of work. Mr. C earned wages of \$65,931 in 2007; he also received unemployment compensation (\$640) and his Alaska Permanent Fund dividend (\$1,654), for total 2007

income of \$68,225. In 2008, Mr. C was laid off from his position at no name for the summer and will receive unemployment compensation until he is rehired when school starts again in the fall. His annual earning capacity in his current employment is approximately \$18,961.80 in wages. With unemployment compensation (approximately \$3,224) and an Alaska Permanent Fund dividend (\$1,654), his actual and anticipated total annual income beginning in July, 2007, has been and will continue to be approximately \$23,839.80.

Before the couple separated in July, 2007, Z C was unemployed. After the couple separated in July, 2007, Ms. C went to work as a cashier at a service station. She earns \$10.25 per hour for full time work (40 hours per week). Since she became employed in July, 2007, Ms. C's annual earning capacity is approximately \$22,974. With her Alaska Permanent Fund dividend, her actual and anticipated total annual income beginning in July, 2007, has been and will continue to be approximately \$24,628.

III. Discussion

The parties agree that since the date of separation in July, 2007, they have shared custody on a 50%-50% basis. The parties also agree that since they separated, Ms. C has worked full time as a cashier earning \$10.25 per hour; Mr. C was worked full time on a seasonal basis as a school bus driver, earning \$14.30 per hour and collecting unemployment compensation during periods of unemployment.

Based on the uncontested facts, Mr. C's actual monthly income since the date of separation is substantially less than the total annual income he earned in the calendar year. Because arrears accruing prior to the entry of a final order should be determined based on actual income, his actual monthly income since July, 2007, rather than his total income in the calendar year 2007, should be used as the basis for calculating arrears accruing beginning in July, 2007. Similarly, Ms. C's actual monthly income after the date of separation is substantially greater than her monthly income as derived from her total income during the 2007 calendar year. Her actual monthly income since July, 2007, should be used as the basis for calculating arrears accruing beginning in July, 2007.

The uncontested evidence regarding actual income beginning in July, 2007, is that Ms. C has been earning \$10.25 per hour for a 40 hour work week on a regular basis, while Mr. C has been earning \$14.30 per hour for a 32-26 hour work week on a seasonal

basis, with unemployment compensation during the summer. Based on that information, Ms. C's actual and anticipated earnings beginning July 1, 2007, are \$22,974 (\$10.25 x 2080 [50 weeks at 40 hours]). Mr. C's actual and anticipated annual earnings beginning July 1, 2007, assuming a three month summer break are \$18,961.80 (\$14.30 x 1326 [39 weeks at 34 hours]), and his actual and anticipated annual unemployment compensation is \$3,224 (\$248 x 11 [assumes a two week waiting period]). Ms. C is entitled to a credit for two prior children until July, 2008, and one prior child thereafter. Mr. C's resulting child support obligation is \$90 per month in 2007, as shown on Appendix A, \$89 per month until July, 2008, as shown on Appendix B, and \$65 per month beginning July, 2008, as shown on Appendix C.

IV. Conclusion

The parties share custody on an equal basis, and the evidence as to actual income is uncontested. Because neither party established by clear and convincing evidence that the presumptive amount is manifestly unjust, the presumptive obligation should be imposed.

CHILD SUPPORT ORDER

The Amended Administrative Child Support and Medical Support Order dated April 14, 2008, is **AMENDED** as follows; in all other respects, the Amended Administrative Child Support and Medical Support Order dated April 22, 2008, is **AFFIRMED**:

1. Mr. C's arrears are set at \$90 per month from January-December, 2007, at \$89 per month from January-June, 2008, and \$65 for July, 2008.
2. Amended ongoing child support is set at \$65 per month, effective August 1, 2008.

DATED: July 18, 2008.

Signed

Andrew M. Hemenway
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 11th day of August, 2008.

By: Signed _____
Signature
Andrew M. Hemenway _____
Name
Administrative Law Judge _____
Title

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