

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

IN THE MATTER OF )  
 )  
 T L ) OAH No. 08-0443-CSS  
 ) CSSD No. 001151865  
\_\_\_\_\_)

**DECISION & ORDER**

**I. Introduction**

The obligor, T L, appeals an Amended Administrative Child Support and Medical Support Order issued by the Child Support Services Division (CSSD) on August 1, 2008. Administrative Law Judge Dale Whitney of the Office of Administrative Hearings heard the appeal on September 8, 2008. Mr. L appeared by telephone. The custodian of record, N F, did not appear. Andrew Rawls represented CSSD. The child is S L (DOB 00/00/07). The administrative law judge issues a support order adopting revised calculations proposed by CSSD.

**II. Facts**

The child support order in this case is effective as of the first day of December 2007. From that day up until the day of the hearing, the custody arrangement for S has been inconsistent as the parents continue to work on developing a regular custody schedule. In March of 2008, Mr. L only had custody of S for three days, but he had exclusive custody for the entire month of July 2008, and varying amounts of custody for the other months up to the time of the hearing. If the months covered by the order up to the time of the hearing are considered cumulatively, Mr. L has had custody of S thirty-eight percent of the time and Ms. F has had custody sixty-two percent of the time.

Mr. L testified that he has sought a custody order that would divide custody evenly between the parties, and that he expects a decision from the court around February of 2009. In the meantime, he testified that he and Ms. F have informally agreed on shared custody on an approximately even basis, but they have not put this agreement in writing.

**III. Discussion**

The method of calculating child support depends on whether one parent has custody of the child for more than seventy percent of the time, in which case the primary custody calculation of Civil Rule 90.3(a) is used. If the parents each have physical custody more than thirty and less than seventy percent of the time, then the shared custody calculation of Civil Rule 90.3(b) is applied.

Mr. L and CSSD are correct that, if the entire period covered by the order is considered as a whole, a shared custody calculation is appropriate. While the custody arrangement has not been consistent throughout the period, it would be difficult to establish the points at which primary custody shifted back and forth between the parents. In June of 2008, for example, Ms. F had custody of S for the first eleven days of the month, and Mr. L had custody the remaining nineteen days, while in other months custody alternated throughout the month with no apparent pattern. Under these circumstances, the best approach is to regard the entire period as a single period of shared custody, and to assume that it will roughly predict the future amount of respective custody the parties will exercise.

As S grows older and the parents establish a steadier and more consistent pattern of custody or obtain a custody order, it may be necessary to modify the order to reflect the newer custody schedule. CSSD has not found reported income for Ms. F in Department of Labor records, and Mr. L testified that he did not believe that Ms. F had steady employment. CSSD's shared custody calculation is therefore based on zero income for Ms. F. Civil Rule 90.3(a)(4) and Civil Rule 90.3 Commentary §III.C state that potential income may be imputed for parents who are voluntarily and unreasonably unemployed, but not if they are caring for a child of both parties that is under two year of age. When S reaches the age of two, it may also be necessary to reexamine Ms. F's income or potential earning capacity. At this time, the entire period of the order and ongoing support should be based on shared custody, with Mr. L having custody thirty-eight percent of the time and Ms. F having custody sixty-two percent of the time. Based on this schedule of custody, CSSD has correctly calculated Mr. L's support obligation to be \$490 per month.<sup>1</sup>

#### **IV. Conclusion**

Mr. L has demonstrated that the parties exercise share custody, with Mr. L having custody thirty-eight percent of the time; Mr. L is correct that support should be calculated based on shared not primary custody. CSSD has correctly calculated Mr. L's shared custody support obligation to be \$490 per month for one child.

#### **V. Order**

IT IS HEREBY ORDERED that Mr. L's ongoing support obligation be set at \$490 per month for one child, effective November 1, 2008. Arrears are set at the amount of \$490 per

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<sup>1</sup> Exhibit 7.

month for the period from December 1, 2007, through October 31, 2008. All other terms of the Amended Administrative Child Support and Medical Support Order issued by the Child Support Services Division (CSSD) on August 1, 2008, shall remain in effect.

DATED this 30<sup>th</sup> day of October, 2008.

By: Signed  
DALE WHITNEY  
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 notices, 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 R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 18<sup>th</sup> day of November, 2008.

By: Signed  
Signature  
Dale Whitney  
Name  
Administrative Law Judge  
Title

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