

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

IN THE MATTER OF: )  
 )  
E. D. K. )  
 )  
\_\_\_\_\_ ) OAH No. 08-0630-CSS  
CSSD Case No. 001127519

**DECISION**

**I. Introduction**

This case concerns the obligation of E. D. K. for the support of N. K. (DOB 00/00/99) and F. K. (DOB 00/00/01). Mr. K. shares custody with L. C., the children’s mother.

On July 13, 2005, the Child Support Services Division (Division) issued a final administrative child support order establishing an ongoing support obligation of \$11.25 per month, based on shared custody.<sup>1</sup> Ms. C. submitted a request for modification and on October 28, 2008, the Division issued a modified support order in the amount of \$365 per month, again based on shared custody.

Mr. K. appealed and requested a formal hearing. The case was referred to the Office of Administrative Hearings and the assigned administrative law judge conducted a telephonic hearing on December 10, 2008. Mr. K. and Ms. C. participated. Andrew Rawls represented the Division.

Mr. K. argues that Ms. C. was voluntarily unemployed and that the support order should have been based upon her potential income. Because Ms. C. was only temporarily unemployed, her actual income should be used as the basis for calculating her support obligation. Modified ongoing child support is set at \$231.

**II. Facts**

E. K. and L. C. live in No Name City, where they share custody of their two children.

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<sup>1</sup> Ex. 1 (OAH No. 04-0140-CSS).

E. K. is employed by No Name Air as a station manager. He earns \$3,693 per month (\$44,320 per year).<sup>2</sup> His household consists of himself, his wife, her three children, and (sharing custody with Ms. C.) his two children. His wife is employed and earns about \$2,491 per month.<sup>3</sup> Their combined monthly after tax take home pay is around \$5,050.<sup>4</sup> The monthly household expenses total at least \$3,616, including a home mortgage (\$1,600), food (\$600), heating oil (\$600),<sup>5</sup> electricity (\$80-100), telephone and internet (\$93-\$98), a vehicle (\$543),<sup>6</sup> and personal care (\$100).

L. C. had irregular and limited earnings in most of 2004, but in the fourth quarter of that year she started working regularly.<sup>7</sup> At the time the prior order was set, her income was substantially equal to Mr. K.'s.<sup>8</sup> Ms. C. at that time was working at the No Name Health Center. She remained at that job for about six months, and then went to work at S.'s as an office clerk, earning \$11.50 per hour. Ms. C. kept that job until sometime in 2007. That year, she earned about \$8,491; she also received unemployment compensation of \$2,588.<sup>9</sup> Ms. C. returned to work at the No Name Health Corporation in March, 2008, where she earned \$21.50 per hour.<sup>10</sup> Ms. C. left that job voluntarily in September, 2008, and in November Ms. C. began working full time for A. C. C. as an administrative assistant, earning \$12.50 per hour.<sup>11</sup>

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<sup>2</sup> Ex. 6, p. 5; Ex. 7, p. 4; E. K. testimony.

<sup>3</sup> Mr. K. testified his wife earns \$1,100-\$1,200 every two weeks. This is equivalent to annual income of about \$29,900 ( $\$1,150 \times 26 = \$29,900$ ).

<sup>4</sup> Mr. K.'s monthly take home pay may be calculated based on his biweekly paystub. See Ex. 4, p. 3. The paystub shows year-to-date total income of \$25,050, with total year-to-date tax deductions of \$4,651.58, which is 18.57% of his total income. Applying that percentage to his monthly income yields monthly tax deductions of \$685, for monthly take home pay of \$3,008. His wife's monthly deductions for taxes are estimated as \$449, using the child support calculator for an individual with her income. The total deduction is \$1,134.

<sup>5</sup> Mr. K. testified that monthly heating oil expenses are \$600-\$1,200 per month. In light of recent declines in the price of oil, the lower figure is used.

<sup>6</sup> Mr. K. testified that he owns a 1999 GMC Jimmy, on which his monthly expenses include a car loan (\$163), gasoline (\$240), insurance (\$100), and maintenance (\$40).

<sup>7</sup> See In Re E.K., OAH No. 04-0140-CSS (January 13, 2005).

<sup>8</sup> The prior decision in this matter did not state the parties' income. However, in light of the fact that the support obligation was only \$11.25, their incomes must have been substantially equal at the time.

<sup>9</sup> Ex. 5, pp. 1, 11-12, 14-15.

<sup>10</sup> Ex. 5, pp. 3-9; L. C. testimony.

<sup>11</sup> L. C. testimony.

## II. Discussion

Mr. K. did not dispute the Division's attribution of income to him. However, he argued that the Division understated Ms. C.'s income and that the amount ordered would cause a hardship to his family.

### A. Presumptive Support Obligation

Ms. C., at the time of the hearing, had a full time, permanent position earning \$12.50 per hour. The record shows that she had previously been employed in similar positions for similar wages, but that at times she has earned substantially higher wages. The Division, rather than projecting income at Ms. C.'s current earnings, used her actual income in 2007, a year in which Ms. C. was apparently unemployed for a lengthy period of time. Ms. C. has shown the ability to find work at or around her current wages on more than one occasion. Furthermore, she has at times worked at substantially greater wages. For these reasons, it is reasonable to project that she will continue to earn at least as much as her present job pays. Full time employment at the rate of \$12.50 per hour is equivalent to annual wages of \$26,000.

In a shared custody situation, child support is determined by first calculating the basic child support obligation of both parents (treating both as if the other parent were the sole custodian), next offsetting the basic obligations to reflect the percentage of time that the child spends with each parent, and finally increasing the resulting amount by 50% to reflect the increased costs associated with shared custody.<sup>12</sup>

Both parties should be provided applicable deductions from income in accordance with the standard child support calculator. After application of the standard deductions, the basic support obligation (that is, the obligation if the other parent was the sole custodian) for Mr. K. is \$836,<sup>13</sup> and for Ms. C. is \$528.<sup>14</sup> Adjusted to reflect equally shared custody (50-50), the presumptive support obligation for Mr. K. is \$231.<sup>15</sup>

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<sup>12</sup> 15 AAC 125.070(b); Civil Rule 90.3(b)(1)-(3) and Commentary at V(B).

<sup>13</sup> Ex. 7, p. 4.

<sup>14</sup> Appendix A.

<sup>15</sup> Appendix B.

B. Adjustment

Mr. K. argued that imposition of the amount ordered by the Division (\$365 per month) would cause a hardship to his family. The evidence indicates that because he lives in a two-income household, the household finances can accommodate a support obligation of \$231 per month. However, because Ms. C. was voluntarily unemployed from the time she left her job in September, 2008, until she obtained a new job in November, income should be attributed to her at her prior rate of pay until she obtained a new job. Thus, there is good cause to move the effective date of the modified order forward to December 1, 2008, the first day of the month after Ms. C. obtained full time work in another position.<sup>16</sup>

**IV. Conclusion**

Because the support obligation has changed by greater than 15% from the existing support order, a material change of circumstances is presumed. The support order should be modified accordingly, with the effective date advanced.

**CHILD SUPPORT ORDER**

The Modified Administrative Child Support and Medical Support Order dated October 28, 2008, is **AMENDED** as follows; in all other respects, the Amended Administrative Child Support and Medical Support Order dated October 28, 2008, is **AFFIRMED**:

1. Amended modified ongoing child support is set at \$231 per month, effective December 1, 2008.

DATED: January 21, 2009.

*Signed* \_\_\_\_\_  
Andrew M. Hemenway  
Administrative Law Judge

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<sup>16</sup> The effective date of a modified order may be moved ahead for good cause. See State, Child Support Enforcement Division v. Dillon, 977 P.2d 118 (Alaska 1999); Boone v. Boone, 960 P.2d 1579 (Alaska 1998).

### 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 10th day of February, 2009.

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

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