

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

IN THE MATTER OF:)	
)	OAH No. 09-0042-CSS
D. M. M.)	CSSD No. 001154434
_____)	

**CORRECTED ORDER GRANTING CSSD MOTION
TO VACATE CHILD SUPPORT ORDER¹**

I. Introduction

This case involves the Obligor D. M. M.'s appeal of an Amended Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in her case on December 18, 2008. The Obligee child is J., DOB 00/00/90.

The formal hearing was held on February 18, 2009. Ms. M. appeared in person with counsel, Jon Buchholdt. The Custodian of record, S. A. R., appeared by telephone. Andrew Rawls, Child Support Specialist, represented CSSD.

The hearing did not finish in the time allotted on February 19th, so it was continued until March 10, 2009. On February 23, 2009, CSSD filed a Motion to Vacate Ms. M.'s child support order, asserting that Ms. R. is not entitled to receive child support for J. from Ms. M. Neither Ms. M. nor Ms. R. responded to the motion. Based on the record as a whole and after careful deliberation, Ms. M. is not liable for child support payable to Ms. R. while J. was in the Military Youth Academy.

II. Facts

A. History

Ms. R. applied for child support from CSSD on June 30, 2008.² On October 8, 2008, CSSD served an Administrative Child Support and Medical Support Order on Ms. M.³ She requested an administrative review and provided income and other information.⁴ Following the review, CSSD issued an Amended Administrative Child and Medical Support Order on December 18, 2008, that set Ms. M.'s child support at \$554 per month, with arrears of \$3,878 for

¹ This order is being issued to correct a date on page 2, line 2 and a typographical error on page 5, line 8.

² Exh. 1.

³ Exh. 2.

⁴ Exhs. 3, 4, 7.

the period from June 2008 through December 2008.⁵ Ms. M. appealed and requested a formal hearing on January 16, 2009, asserting she does not owe Ms. R. child support for J.⁶

B. Facts

Ms. M. and S. W. are the parents of J., DOB 00/00/90. Ms. M. and Mr. W. were divorced several years ago.⁷ They were awarded joint custody of J. and shared physical custody on a 50-50 basis.

In late 2005, by agreement with Mr. W., J. began living with Ms. M. on a full-time basis. J. and Ms. M. disagreed on the conditions under which he could live with her, so after a few months, she gave him an ultimatum and he chose to go live with his father. Similarly, after a few months at Mr. W.'s home, J. rebelled against the rules and left Mr. W.'s home, also. J. was taken in by S. A. R., the mother of his girlfriend. With Mr. W.'s permission, J. moved into Ms. R.'s house in December 2006.⁸

On March 19, 2007, Mr. W. executed a document naming Ms. R. his power of attorney regarding J.⁹ This allowed Ms. R. to supervise J.' driving, obtain vehicle insurance for him and to keep check on his grades. Ms. M. was not aware of this agreement, nor did she give her consent for it.¹⁰ J. continued to live in Ms. R.'s home and she provided for his basic support.

In 2008, Mr. W. and Ms. R. agreed that J. would enter the Military Youth Academy, a live-in program for teenagers located at Fort Richardson outside of Anchorage. J. entered the academy on April 1, 2008. While he was there, his room and board were provided by the program, but Ms. R. purchased his clothing and personal care items, which totaled approximately \$500. Also, Ms. R. obtained auto insurance for J. that cost approximately \$1,000 for six months,¹¹ and paid other expenses for J., including court hearing costs and other miscellaneous expenses.

J. graduated from the academy on August 29, 2008, and soon thereafter, on September 6, 2008, he turned 18 years of age and became emancipated. Upon his graduation, J. returned to

⁵ Exh. 8 at pgs. 1-2.

⁶ Exh. 7.

⁷ Testimony of Ms. M. The factual findings are based on the hearing testimony, unless another source is cited.

⁸ J. and Ms. R.'s daughter have a child who was born in November 2006, just prior to J. moving into Ms. R.'s home.

⁹ Exh. 9 at pg. 7.

¹⁰ Ms. M. and Ms. R. are not friends and they do not speak to each other. Their animosity likely originated in 2006 because of the relationship between their children.

¹¹ Ms. M. had previously had J.' driver's license revoked, but Mr. W. arranged to have it reinstated.

Ms. R.'s house, where he lived with his girlfriend and their son, who was born in November 2006. In November 2008, they moved out of Ms. R.'s house and into their own apartment.

At some point in 2008, CSSD had questions about J.' location and contacted Mr. W. for information. He directed the agency to Ms. R. because J. was living in her house at the time. CSSD suggested to Ms. R. that she might be eligible for child support, so Ms. R. filled out and submitted an application for CSSD services on June 30, 2008.¹² Her application for services specifically requested that CSSD not charge Mr. W. with child support. CSSD initiated a child support action against Ms. M. and this appeal resulted.

III. Discussion

The primary issue in this child support appeal is whether Ms. M. is obligated to pay child support to Ms. R. for the period of time J. was staying in her home or she provided support for him. The prerequisite to resolving that issue is to determine whether Ms. R. is entitled to receive child support for that period of time. If she is entitled to support, secondary issues arise; specifically, what period of time Ms. M. is obligated to pay support and whether her support obligation was correctly calculated.

A parent is obligated both by statute and at common law to support his or her children.¹³ This duty encompasses the obligation to reimburse others who support their children.¹⁴ CSSD is obligated to provide services “to any person due child support under the laws of this state upon application.”¹⁵ CSSD’s regulations provide that:

The agency will provide complete child support services to a minor child, to the custodian of the minor child, to the noncustodial parent of the minor child, or to a child support agency of another state¹⁶

Ms. R. is not related to J.; she is the grandmother of J.’ son and J. lived in her home for about 1½ years. Because Ms. R. is not one of J.’ parents, she is a “third party custodian” under Civil Rule 90.3(i). Certain language in Civil Rule 90.3(i) suggests a third party custodian must be entitled to receive child support, so logically, in certain situations a third party custodian

¹² Exh. 1.

¹³ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

¹⁴ *Id.*

¹⁵ AS 25.27.100.

¹⁶ 15 AAC 125.800(a).

might not be entitled to receive child support for an unrelated child living in his or her home.

Civil Rule 90.3(i)(1) states:

When the state, or another third party entitled to child support, has custody of all children of a parent, the parent's support obligation to the third party is an amount equal to the adjusted annual income of the parent multiplied by the percentage specified in subparagraph (a)(2).^[17]

Neither Civil Rule 90.3 nor the commentary to the rule explain what is meant by the language of section (i) containing the phrase “entitled to child support.” Likewise, the Alaska Supreme Court has not construed the phrase “entitled to support” as it is used in the rule.

CSSD’s motion asserts that based on the evidence and hearing testimony, Ms. R. is not entitled to CSSD services because she was not J.’ custodian at the time of her June 30, 2008, application for child support.¹⁸ CSSD is correct.

On March 19, 2007, Mr. W. executed a power of attorney in Ms. R.’s name so she could provide for J. in her home.¹⁹ The question whether that document was legally effective in relationship to Ms. M.’s child support obligation is not at issue here. Even if Mr. W.’s power of attorney was binding on Ms. M., the document was only effective for one year and it expired on March 19, 2008. Thus, the document Ms. R. claims gave her a legal basis upon which to apply for support for J. had expired by the time she applied for child support.

Even though Mr. W.’s power-of-attorney expired on March 19, 2008, Ms. R. was arguably J.’ custodian because he lived in her home from December 2006 until April 1, 2008. However, Ms. R. did not apply for child support services until June 30, 2008, while he was not in her home. At that time, J. was living at the military youth academy at the expense of that program, not at Ms. R.’s expense. Although she did pay for some of J.’ basics, the record, including Ms. R.’s testimony, establishes that she was not his custodian at the time of her application, so she is not entitled to support as his custodian.

Ms. R. also is not entitled for child support when J. stayed with her after leaving the academy. Upon his completion of the program on August 29, 2008, J. was a high school graduate and he turned 18 years of age eight days later, on September 6, 2008. Accordingly,

¹⁷ Civil Rule 90.3(i)(1) (emphasis added).

¹⁸ In cases not involving public assistance, CSSD is prohibited from establishing arrears for any time period prior to a custodian’s application for services. 15 AAC 125.102(c).

¹⁹ Exh. 9 at pg. 7.

there was insufficient time for Ms. R. to become entitled to receive child support as J.' custodian before he emancipated. For these reasons, Ms. R.'s application for child support services should be denied.

IV. Conclusion

Ms. M. met her burden of proving the Amended Administrative Child Support and Medical Support Order was incorrect. Because Ms. R. was not J.' custodian at the time she applied for CSSD services, and because J. graduated from high school on August 29, 2008, and then turned 18 years of age eight days later, on September 6, 2008, Ms. R. is not entitled to receive child support for the period of time J. was in her home. Thus, Ms. M. is not obligated to pay support for J.' benefit during that time.

V. Child Support Order

- Ms. M. is not liable to pay child support to Ms. R. for the period of time J. was staying in Ms. R.'s home; namely, from June 2008 forward;
- CSSD's October 2, 2008, Administrative Child Support and Medical Support Order and its December 18, 2008, Amended Administrative Child Support and Medical Support Order are vacated;
- The second formal hearing calendared for March 10, 2009, is vacated and will not take place.

DATED this 10th day of March, 2009.

By: Signed _____

Kay L. Howard
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 27th day of March, 2009.

By: Signed
Signature
Kay L. Howard
Name
Administrative Law Judge
Title

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