

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

IN THE MATTER OF: )  
 )  
 J. A. F. ) OAH No. 09-0126-CSS  
 ) CSSD No. 001155568  
\_\_\_\_\_ )

**DECISION AND ORDER**

**I. Introduction**

The obligor, J. A. F., appeals an Amended Administrative Child Support and Medical Support Order that the Child Support Services Division (“CSSD”) issued in his case on February 13, 2009. The obligee child is C., DOB 00/00/07.

The formal hearing was held on March 24, 2009 and April 8, 2009. Both Mr. F. and the custodian of record, A. R. B., participated in both proceedings. Andrew Rawls and Erinn Brian, Child Support Specialists, represented CSSD. The record closed on April 22, 2009.

Based upon the entire record and after careful consideration, Mr. F.’s child support obligation is set at \$523 per month for 2008 and \$609 per month for 2009 based on Ms. B. having primary custody.

**II. Facts**

**A. Procedural History**

Ms. B. applied for child support services on August 26, 2008.<sup>1</sup> On December 9, 2008, CSSD served an Administrative Child and Medical Support Order on Mr. F.<sup>2</sup> He requested an administrative review and provided income information.<sup>3</sup> On February 13, 2009, CSSD issued an Amended Administrative Child Support and Medical Support Order that set Mr. F.’s child support at \$590 per month, effective March 1, 2009, with arrears of \$3,050 for the period from August 2008 through February 2009.<sup>4</sup> Mr. F. filed an appeal on March 2, 2009, asserting he and

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<sup>1</sup> Exh. 1.  
<sup>2</sup> Exh. 2.  
<sup>3</sup> Exhs. 3-6.  
<sup>4</sup> Exh. 8.

Ms. B. had already started exercising shared custody of C. in a scenario that provides him 12 overnights per month with the child.<sup>5</sup>

**B. Material Facts**

The formal hearing in this case occurred on two separate days, March 24, 2009 and April 8, 2009. At the first hearing, the parties indicated they would be exercising shared custody of the child effective March 2009 and ongoing. They agreed she had primary custody through the end of February 2009.

Prior to the hearing, CSSD had prepared a revised calculation based on Mr. F.'s appeal asserting shared custody.<sup>6</sup> During the hearing, CSSD explained the methodology of a shared custody calculation and how it is prepared from each party's primary custody calculation. In this case, the parties' latest income information yielded a shared custody child support amount of \$163 per month, which would be effective March 2009.<sup>7</sup> It became apparent that this figure would change somewhat after Mr. F. testified he had received a raise in January 2009.

At the end of the first hearing, the parties had yet to resolve C.'s day care bill. Ms. B. agreed to the shared custody schedule and the as-yet-unknown adjustment to the \$163 per month child support amount, provided that Mr. F. would split the day care bill with her. He, in turn, wanted to see the new calculation before he would agree to the split. The first hearing session closed with the parties planning to discuss and hopefully resolve this issue.

At the second session of the formal hearing, Ms. B. testified she had abandoned the parties' shared custody agreement. In response, Mr. F. insisted the parties were still exercising the shared custody schedule they had agreed upon earlier, but he was concerned Ms. B. would change the agreement at any time. As a result, he said he had filed a custody action in court requesting a judicial order for shared custody in a schedule he asserted they were currently following. The administrative law judge informed the parties that the evidence does not support a shared custody situation so as a result Mr. F.'s child support would be determined based on primary custody and calculated from his actual income for 2008 and an estimate of his 2009 income.

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<sup>5</sup> Exh. 9.

<sup>6</sup> Exh. 12.

<sup>7</sup> Exh. 12 at pg. 2.

Mr. F. is employed by a local communications company. In 2008 he earned \$25.06 per hour and his employer reported total income paid to him for the year in the amount of \$49,161.29.<sup>8</sup> When this figure is inserted into CSSD's online child support calculator, it results in a child support amount for 2008 of \$523 per month.<sup>9</sup> In mid-January 2009, Mr. F. received a \$1 raise to \$26.06 per hour.<sup>10</sup> From this hourly wage his total 2009 income is estimated to be \$54,177.93.<sup>11</sup> This income figure, inserted into CSSD's calculator, results in a child support amount for 2009 of \$609 per month for one child.<sup>12</sup>

Mr. F. made direct payments to Ms. B. in the amount of \$700 in January 2009 and \$380 in February 2009.<sup>13</sup> Neither CSSD nor Ms. B. made an objection to the obligor receiving a credit for these payments in this order.

### **III. Discussion**

A parent is obligated both by statute and at common law to support his or her children.<sup>14</sup> 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." By regulation, CSSD collects support from the date the custodial parent requested child support services, or the date public assistance or foster care was initiated on behalf of the child(ren).<sup>15</sup> In this case, Ms. B. requested child support services in August 2008, so that is the first month Mr. F. is obligated to pay support in this administrative child support action.

The person requesting the hearing, in this case, Mr. F., has the burden of proving that CSSD's Amended Administrative Child Support and Medical Support Order is incorrect.<sup>16</sup>

Where parents exercise shared custody of their children, Civil Rule 90.3 provides that child support is to be calculated differently than in a situation in which one parent has primary custody. In general, and depending on the percentage of time each parent has overnight

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<sup>8</sup> Post-hearing brief at pg. 1.

<sup>9</sup> Mr. F. is entitled to a credit for supporting a prior child of \$622 per month, a combination of his shared custody calculation for the child and the time she actually spends with him. *See* Exh. 10 at pg. 14.

<sup>10</sup> *See* Exh. 6.

<sup>11</sup> Post-hearing brief at pg. 1.

<sup>12</sup> Exh. 19.

<sup>13</sup> Exh. 14 at pg. 1.

<sup>14</sup> *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

<sup>15</sup> 15 AAC 125.105(a)(1)-(2).

<sup>16</sup> 15 AAC 05.030(h).

visitation, the parent with the higher income will pay a somewhat lower amount of support than in a primary custody scenario. 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 specified in writing of at least 30 percent of the year, regardless of the status of legal custody.<sup>17]</sup>

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.<sup>18</sup> One year is equal to 365 days, so 30% of the overnights in one year equals 110 overnights.

Although Civil Rule 90.3(f)(1) indicates shared custody should be based on a written agreement, the parties to child support actions rarely have one. Thus, the administrative law judge must make findings of fact regarding whether shared custody exists and, if so, in what percentages. The party asserting shared custody, in this case, Mr. F., has the burden of proof by a preponderance of the evidence.<sup>19</sup>

The parties' testimony was diametrically opposed on the shared custody issue. Mr. F. testified at both hearings that the parties were sharing custody of C. and following the schedule Ms. B. proposed to him in an email message before the hearing.<sup>20</sup> Ms. B. testified she had abandoned the shared custody agreement.

Mr. F. did not meet his burden of proving shared custody is being exercised in this case. Even if the parties are sharing custody of C., Mr. F.'s statement that he had filed a custody action in court suggests he does not believe it is necessarily viable. Mr. F.'s child support should be based on primary custody in Ms. B. for all of the relevant time periods.

#### **IV. Conclusion**

Mr. F. did not meet his burden of proving he exercises shared custody of C. CSSD's calculations of his child support obligation for 2008 and 2009 are based on his actual and projected income and they are correct. Mr. F.'s child support is now correctly calculated at \$523 per month for 2008 and \$609 per month for 2009. These figures should be adopted.

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<sup>17</sup> Civil Rule 90.3(f)(1).

<sup>18</sup> Civil Rule 90.3, Commentary V.A.

<sup>19</sup> See 2 AAC 64.290(e).

<sup>20</sup> See Exh. 9 at pgs. 2-4.

**V. Child Support Order**

1. Mr. F. is liable for child support for C. in the amount of \$523 per month for the period from August 2008 through December 2008; and \$609 per month, effective January 2009 and ongoing;
2. Mr. F. is entitled to credit for direct payments made to Ms. B. in the amount of \$700 in January 2009 and \$380 in February 2009;
3. All other provisions of CSSD's February 13, 2009, Amended Administrative Child Support and Medical Support Order remain in full force and effect.

DATED this 4<sup>th</sup> day of June, 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 22nd day of June, 2009.

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

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