

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

IN THE MATTER OF)
)
 D. D.) Case No. OAH-09-0359-CSS
) CSSD Case No. 001155706
_____)

DECISION & ORDER

I. Introduction

The obligor, D. D., appeals an Amended Administrative Child Support and Medical Support Order issued by the Child Support Services Division (CSSD) on June 24, 2009. Mr. D. and the custodian, C. D., both appeared by telephone at hearings held on July 29, 2009, and on August 12, 2009. Erinn Brian represented CSSD by telephone. The children are L. D. (DOB 00/00/96), A. D., (DOB 00/00/98), and C D. 00/00/04).

Mr. D.' child support obligation is set at \$735 per month for three children for the period from August 1, 2008, through July 31, 2009. Ongoing support after that period has been set by the Superior Court.

II. Facts

Mr. and Ms. D. shared a home until around July or August of 2008, when Mr. D. moved out. The three children remained with Ms. D., and in August of 2008 Ms. D. applied for CSSD services. The parties eventually filed for divorce, and the Superior Court issued a child support order August 12, 2009. This order stated that primary custody would be with Ms. D., and it set Mr. D.' child support obligation at \$541 per month for three children, effective August 1, 2009. Thus, the administrative order in this case only covers a twelve-month period from August 1, 2008, until July 31, 2009.

The principal dispute in this case regards rental income that Mr. D. received for part of 2008. Before the couple separated, income from a rental property they owned had been going to Ms. D. Effective August 1, 2008, Mr. D. managed the property and received all income from it. CSSD reviewed receipts from the property and then annualized the rental income, attributing \$14,618.16 to Mr. D. in rental income per year.¹

Ms. D. testified that she felt that \$735 was an excessive amount for Mr. D. to pay. She felt that \$450 to \$500 per month would be a fair amount, but she wanted assistance in setting the precise amount.

¹ This amount, plus the 2008 \$1,200 energy rebate for PFD recipients, makes up the \$15,818.16 in "Other Taxable Income" in Exhibit 11, page 7.

III. Discussion

In a primary custody situation, child support is calculated according to Civil Rule 90.3(a). The rule provides that for three children, the correct amount of support is 33 percent of the obligor's adjusted annual income. "Adjusted annual income" means the person's total income from all sources, minus various deductions such as tax, union dues, and retirement contributions.

Mr. D. argues that, because he only received rental income from August 2008 on, the amount of rental income should not be annualized. Mr. D. correctly points out that CSSD has attributed \$14,618.16 in rental income to him for 2008, whereas the amount he actually received was approximately \$6,090.90 (for August through December, $5/12 \times \$14,618.16$).

Mr. D. overlooks the fact that while he only received rental income for the last five months of the year, he also is only paying child support for the last five months of the year. If Mr. D. were paying support over the course of the entire year, his argument that only the actual rental income for the entire year should be included would be correct. If he were only paying support for the first seven months of the year there would be a strong argument that the rental income should not be included at all.

In this case, support is properly calculated based on the amount Mr. D. was earning during the period he is paying support. For purposes of calculating the support amount, the monthly income for the support period is annualized. Although this shows Mr. D. earning more in 2008 than he really did, Mr. D. is not being unfairly penalized because he is not paying any support at all for the months when his income was actually lower. If this method of calculating support appears objectionable, an alternative method would be to calculate support based on just the period covered by this order, which, conveniently, is a twelve-month period, during which time Mr. D. was receiving the rental income every month.

On an annualized basis, CSSD has correctly calculated support according to the amount Mr. D. was actually earning during the period for which support is owed.

IV. Conclusion

CSSD has correctly calculated Mr. D.' support obligation to be \$735 per month for three children during the period from August 1, 2008, through July 31, 2009. The ongoing support amount has been set by the Superior Court.

V. Order

IT IS HEREBY ORDERED that Mr. D.’ support obligation be set at \$735 per month for three children during the period from August 1, 2008, through July 31, 2009. The ongoing support amount has been set by the Superior Court.

DATED this 11th day of September, 2009.

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 29th day of September, 2009.

By: Signed
Signature
Dale Whitney
Name
Administrative Law Judge
Title

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