

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

IN THE MATTER OF: )

M. R. G. )

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) OAH No. 09-0551-CSS

) CSSD No. 001154832

**DECISION AND ORDER**

**I. Introduction**

The obligor, M. R. G., appealed a Notice of Denial of Modification Review that the Child Support Services Division (CSSD) issued in his case on September 28, 2009. The obligee child is H., who is nearly 2 years of age.

The hearing was held on November 2, 2009. Mr. G. appeared in person; the custodian of record, E. L. B., participated by telephone. Andrew Rawls, Child Support Specialist, appeared for CSSD. The hearing was recorded and the record closed on December 8, 2009.

Based on the record and after careful consideration, Mr. G.'s child support is modified to \$189 per month, effective April 1, 2009, based on the shared custody formula in Civil Rule 90.3(f)(1).

**II. Facts**

*A. History*

Mr. G.'s child support obligation for H. was previously established at \$458 per month in December 2008.<sup>1</sup> On March 3, 2009, Mr. G. initiated a modification review of the order.<sup>2</sup> On March 11, 2009, CSSD sent the parties a Notice of Petition for Modification of Administrative Support Order.<sup>3</sup> Mr. G. provided income information and an interim parenting order.<sup>4</sup> On September 28, 2009, CSSD issued a Notice of Denial of Modification Review on the basis that the parties are litigating custody and support issues in court.<sup>5</sup> Mr. G. filed an appeal on October

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<sup>1</sup> Exh. 1.

<sup>2</sup> Exh. 2.

<sup>3</sup> Exh. 3.

<sup>4</sup> Pre-hearing brief at pg. 1; Exh. 4.

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

8, 2009, asserting the parties share custody of H. and that their employment circumstances have changed.<sup>6</sup>

*B. Material Facts*

Mr. G. and Ms. B. are the parents of H., who is nearly, but not yet, 2 years old. The parties have exercised shared custody of H. since approximately February 2009. Pursuant to an Interim Parenting Order issued by the Superior Court on February 17, 2009, Ms. B. has H. for four overnights per week and Mr. G. has H. for three overnights per week.<sup>7</sup> The overnights exercised by the parties equal a 57/43 split, with Ms. B. having custody 57% of the time and Mr. G. having custody 43% of the time.<sup>8</sup>

Mr. G. previously worked for T. B. and as of September 1, 2009, his year-to-date income was \$14,295.<sup>9</sup> He is currently unemployed and is receiving unemployment insurance benefits (UIB). CSSD estimated he would receive UIB benefits totaling \$3,312 for 2009. These amounts, plus the PFD, result in total income for Mr. G. of \$18,912 in 2009.<sup>10</sup> If this were a primary custody case, his child support calculated from that income figure would be \$279 per month.<sup>11</sup>

Ms. B. has been minimally employed in 2009. She worked for T. B. I., a wholesale grocery store, and earned \$1,807.74.<sup>12</sup> In addition, she worked at G. W. P. from October 11, 2009, through November 4, 2009, a period of 18 days, and earned approximately \$1,872 during that time.<sup>13</sup> These amounts, plus the PFD, result in total income for Ms. B. of \$4,984.74 in 2009.<sup>14</sup> If this were a primary custody case, her child support calculated from that income amount would be \$78 per month.<sup>15</sup>

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

<sup>7</sup> Exh. 4 at pgs. 1-2.

<sup>8</sup> Ms. B.:  $4 \div 7 = 57$ ; Mr. G.:  $3 \div 7 = 43$ .

<sup>9</sup> Exh. 7 at pg. 2.

<sup>10</sup> See Exh. 12 at pg. 3.

<sup>11</sup> *Id.*

<sup>12</sup> See Pre-hearing brief at pg. 1.

<sup>13</sup> Ms. B. could not produce her last paystub, so CSSD estimated this figure from her wage of \$13 per hour for 8 hours, times 18 days. See Pre-hearing brief at pg. 2.

<sup>14</sup> See Exh. 12 at pg. 2.

<sup>15</sup> *Id.*

### III. Discussion

#### A. *Modification*

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." In a modification situation, if the child support amount calculated from an obligor's current income is more than a 15% change from the previous order, Civil Rule 90.3(h) assumes that "good cause and material change in circumstances" has occurred such that the order may be modified. Mr. G.'s child support was originally set at \$458 per month, so any change in excess of \$68.70 presumes that a modification may be made.<sup>16</sup> This modification is effective April 1, 2009.<sup>17</sup>

#### B. *Shared custody calculation*

When parents exercise shared custody of their children, Civil Rule 90.3 provides that child support is to be calculated differently than in the situation in which one parent has primary custody. 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>[18]</sup>

Thirty percent (30%) of the year is 110 days. 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>19</sup>

Shared custody child support is calculated by determining each parent's primary custody child support obligation to the other parent, as if each parent had primary custody of the child(ren). The figures are then inserted into a mathematical formula that calculates the paying parent's child support from a combination of both parents' primary custody support obligations and their individual shared custody percentages.

Mr. G.'s primary custody support amount for 2009, as discussed above, is \$279 per month. Ms. B.'s primary custody support amount for 2009 is \$78 per month. Inserting the

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<sup>16</sup> \$458 x 15% = \$68.70.

<sup>17</sup> A modification is effective beginning the month after the parties are served with notice that a modification has been requested. 15 AAC 125.321(d). CSSD sent the parties a notice of the modification on March 11, 2009, so the modification is effective March 1, 2009. See Exh. 3.

<sup>18</sup> Civil Rule 90.3(f)(1).

<sup>19</sup> Civil Rule 90.3, Commentary V.A.

parties' respective primary custody support amounts into the shared custody formula results in Mr. G. being obligated to pay \$189 per month.<sup>20</sup>

CSSD correctly pointed out that income may not be imputed to a custodial parent if the obligee child is younger than 2 years of age.<sup>21</sup> Since both parties are custodial parents and H. is not yet 2 years old, income may not be imputed either to Mr. G. or Ms. B. to calculate this modification. As a result, the child support amount must be based on their actual income figures for 2009. CSSD prepared a calculation for 2010 imputing income to Ms. B., but it should not be used because H. will just have turned 2 years old at the beginning of January 2010. However, future modifications of Mr. G.'s child support obligation will necessarily involve an analysis of both parties' employment histories and possibly a determination whether either of them is voluntarily unemployed or underemployed.

#### **IV. Conclusion**

Mr. G. met his burden of proving by a preponderance of the evidence that CSSD's Notice of Denial of Modification Review was incorrect, as required by 15 AAC 05.030(h). The parties are exercising 57/43 shared custody of H. Using their respective incomes and resulting primary custody calculations, Mr. G.'s modified ongoing child support obligation is now correctly calculated at \$189 per month, effective April 1, 2009. This amount should be adopted.

#### **V. Child Support Order**

- Mr. G.'s child support is modified to \$189 per month, effective April 1, 2009, and ongoing.

DATED this 28th day of December, 2009.

By: Signed  
Kay L. Howard  
Administrative Law Judge

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<sup>20</sup> Exh. 12 at pg. 1.

<sup>21</sup> See Civil Rule 90.3, Commentary III.C.

**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 15th day of January, 2010.

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

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