

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

IN THE MATTER OF)	
J. E. B., JR.)	OAH No. 09-0570-CSS
)	
_____)	CSSD No. 001156884

DECISION AND ORDER

I. Introduction

On November 12, 2009 and November 23, 2009 a formal hearing was held to consider the child support obligation of J. E. B., Jr. (Obligor) for the support of his child, C.¹ Mr. B. participated at the hearings by phone. C.'s mother, T.L. F., did not participate.² Andrew Rawls, Child Support Services Specialist, represented the Child Support Service Division (CSSD). The hearing was audio-recorded. The record closed on December 18, 2009.

This case is Mr. B.'s appeal of CSSD's order establishing child support for C. Having reviewed the record in this case and after due deliberation, I conclude that Mr. B.'s arrears should be set at; \$920 per month for the months of January 2009 through May 2009 based on Ms. F. having primary custody of C.; \$151 per month for the months of June 2009 through November 2009 based on shared custody with Ms. F. having custody of C. only 37% of the overnights during this period; and \$404 per month for the months of December 2009 through February 2010 and ongoing based on shared custody under the new custody agreement which directs that each parent will have C. live with them 50% of the overnights.

I also conclude that Mr. B. should receive a credit of \$800 for direct payments of child support to Ms. F.

¹ The hearing was held under Alaska Statute 25.27.170.

² Ms. F. did not appear or provide a phone number as directed by the notice sent to her at her addresses of record for the hearing. The ALJ was unable to contact her at either of her phone numbers of record for hearing.

II. Facts

A. History

CSSD established this order because Ms. F. requested CSSD's services in January of 2009.³

Paternity is not in dispute.⁴ Mr. B. is named as the father on C.'s birth certificate.⁵

CSSD served Mr. B. with an Administrative Child and Medical Support Order on July 21, 2009.⁶ Mr. B. requested an administrative review.⁷

CSSD issued an Amended Administrative Child and Medical Support Order on September 22, 2009.⁸ Mr. B. requested a formal hearing.⁹

Prior to the hearing, CSSD had agreed that Mr. B. should receive a credit of \$800 for the direct payments of child support he made to Ms. F. before he was served with the child support order directing him to make payments through CSSD.

At the November 12, 2009 portion of evidentiary hearing in this appeal, Mr. B. explained that Ms. F. had primary custody of C. from January 2009, when the family separated, through May of 2009. Mr. B. explained that from June of 2009 through the date of the hearing, he had custody 63% of the overnights, with his parents helping him with C.'s care, in part because Ms. F. had been helping care for her mother, who had recently passed away.

After the November 12, 2009 portion of evidentiary hearing in this appeal, a post hearing order was issued. This order set a date for the Child Support Services Division to submit a shared custody calculation based on C. spending 63% of his nights in Mr. B.'s custody, beginning in June of 2009. The post hearing order gave the parties two weeks to respond to the Division's calculations, before the record in this case was scheduled to close, because Ms. F. had not participated in the first hearing. The Division provided the calculations that had been requested.

On November 18, 2009, Ms. F. filed a letter explaining her failure to participate in the hearing and her plans to have C. live with her more in the future. The Alaska Office of Administrative Hearings contacted Ms. F. to clarify whether or not she was requesting that the

³ Exhibit 1.

⁴ Recording of Hearing.

⁵ Division's Pr-Hearing Brief, page1.

⁶ Exhibit 2.

⁷ Exhibit 3.

⁸ Exhibit 6.

hearing be rescheduled. Ms. F. indicated that she did want a second chance to participate in the hearing and agreed to November 23, 2009 as the date for the second hearing. A notice regarding this second hearing was sent to the parties. However, Ms. F. did not participate in the second hearing.

At the November 23, 2009 portion of evidentiary hearing in this appeal, Mr. B. explained that he had recently spoken with Ms. F. regarding custody. Mr. B. explained that Ms. F. and he planned to get together with an attorney to make a written custody agreement. Mr. B. indicated that he thought they were headed toward an agreement to share custody by alternating weeks, with each parent having the child, C., live with them 50% of the overnights beginning in December of 2009.

At the November 23, 2009 portion of evidentiary hearing in this appeal, the participating parties tentatively agreed to have child support set using CSSD's primary custody calculation before June of 2009; using CSSD's 63/27 percent shared custody calculations for the period of June through November 2009; and using CSSD's 50/50 percent shared custody calculations for ongoing child support beginning December 1, 2009.

After the November 23, 2009 portion of evidentiary hearing in this appeal, a second post hearing order was issued setting a date for the Child Support Services Division to submit a shared custody calculation based on the child, C., spending 50% of his nights in Mr. B.'s custody, beginning in December of 2009. This order also explained the primary custody period and the shared custody ratios that CSSD and Mr. B. had tentatively agreed to use to set child support. The order gave both parents an opportunity to respond to CSSD's calculations and proposed monthly child support amounts before the record was scheduled to close. Neither party filed a response to CSSD's calculations or CSSD's position in its post hearing submission to record.

B. Findings

Based on the evidence in the record, I find that it is more likely than not that:

1. Mr. B. lived with C. until January 2009.¹⁰

⁹ Exhibit 7.

¹⁰ Recording of Hearing.

2. From January 2009 through May 2009 Ms. F. had primary custody of C.¹¹
3. From June 2009 through November 2009 Ms. F. had custody of C. only 37% of the overnights.¹²
4. The parents agreed that, beginning in December 2009, they would share custody by alternating weeks, with each parent having the child, C., live with them 50% of the overnights.¹³
5. CSSD's latest calculations of Mr. B.'s arrears and ongoing child support are correct.¹⁴

Furthermore, Mr. B. showed by clear and convincing evidence that he made a total of \$800 in direct payments of child support to Ms. F. from January 2009 through June 2009.¹⁵

III. Discussion

Mr. B. was a very credible witness. At the hearing, Mr. B. explained when he was living with C. and how custody was shared.

Shared custody exists when a child resides with a parent at least 30, but no more than 70, percent of the overnights.¹⁶ Under the shared custody formula, the annual amount each parent would pay to the other parent if that parent had sole custody is calculated. That support amount is then multiplied for each parent by the percentage of time the other parent will have physical custody of the child. The parent with the larger amount under this calculation is the obligor parent. The annual award from the obligor parent to the other parent is equal to the difference between the two figures multiplied by 1.5.¹⁷

Mr. B.'s arrears should be set at \$920 per month for the months of January 2009 through May 2009 in accordance with CSSD's primary custody calculation using CSSD's estimate of Mr. B.'s 2009 income based on 2008 income information, because Ms. F. had primary custody of C. during this time.

Mr. B.'s arrears for the months of June 2009 through November 2009 should be set at \$151 per month because Mr. B. showed that the parents exercised shared custody with Ms. F. having custody of C. only 37% of the overnights during this period.

¹¹ Recording of Hearing.

¹² Recording of Hearing & Ex. A, Mr. B.'s calendar.

¹³ Recording of Hearing.

¹⁴ Recording of Hearing & Ex. 8 & 9.

¹⁵ Recording of Hearing & Ex. 6 page 7.

¹⁶ Alaska Civil Rule 90.3(f).

Mr. B.'s arrears for the months of December 2009 through February 2010 and his ongoing monthly child support for C. should be set at \$404 per month because the new custody arrangement provides for shared custody with both parents having C. stay with them for half of the overnights.

Credits for direct payments of child support are allowed even after an obligor has a child support order and has been notified that he should pay through CSSD, as long as the payments are not for a period when the children were receiving public assistance and the obligor provides clear and convincing evidence that the payments were made.¹⁸ These strict rules that apply to credits for direct and in-kind payments of child support do not apply to payments made prior to the establishment of a child support order.¹⁹

CSSD served Mr. B. with an Administrative Child and Medical Support Order on July 21, 2009. Prior to that time, Mr. B. made \$800 in total direct payments of child support. The prohibition on credits for direct payments of child support for periods of public assistance does not apply to pre-order child support arrears.²⁰

IV. Child Support Order

1. Mr. B.'s ongoing child support for C. is set in the monthly amount of \$404, effective March 1, 2010.
2. Mr. B.'s child support arrears for C. are set in the monthly amounts of \$920 per month for the months of January 2009 through May 2009; \$151 per month for the months of June 2009 through November 2009; and \$404 per month for the months of December 2009 through February 2010.
3. The Division shall give the parties the appropriate credit or debit for any out-of-pocket expenses for providing health insurance coverage for C.

¹⁷ Alaska Civil Rule 90.3(f).

¹⁸ Alaska Regulation 15AAC 125.465.

¹⁹ *Ogard v. Ogard*, 808 P.2d 815, 817 (Alaska 1991) & Alaska Regulation 15AAC 125.105(b) & (c).

²⁰ Alaska Regulation 15AAC 125.105 (b). See in contrast Alaska Regulation 15AAC 125.105 (d).

4. All other provisions of the Amended Administrative Child and Medical Support Order issued on July 21, 2009 remain in effect.

DATED this 25th day of January, 2009.

By: Signed
Mark T. Handley
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 12th day of February, 2010

By: Signed
Signature
Mark T. Handley
Name
Administrative Law Judge
Title

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