

IN THE DISTRICT COURT OF BROWN COUNTY, NEBRASKA

MICHAEL L. WELLS,

Petitioner,

vs.

LINDA J. WELLS,

Respondent.

Case No. 6720

ORDER MODIFYING DECREE

DATE OF HEARING: September 15, 1999.

DATE OF DECISION: September 15, 1999.

APPEARANCES:

For the petitioner: petitioner pro se.

For the respondent: respondent pro se.

SUBJECT OF HEARING: joint application for modification of decree to decrease child support.

DECREE INVOLVED:

Date of original decree: March 27, 1998.

Date last modified: not applicable.

FINDINGS: The court finds:

1. The joint application of the parties, construed as a stipulation of the parties, is fair and reasonable, and is not unconscionable, and is hereby approved, and compliance therewith ordered. The following findings and orders are pursuant to the stipulation.

2. The first issue is whether there has been a material change in circumstances.

a. Guideline Q states:

Application of the child support guidelines which would result in a variation by 10 percent or more, upward or downward, of the current child support obligation, due to financial circumstances which have lasted 3 months and can reasonably be expected to last for an additional 6 months, establishes a rebuttable presumption of a material change in circumstances.

b. The petitioner adduced evidence of the current incomes of the parties and the support calculations under the guidelines for such numbers. The evidence shows that

the reduced income of the petitioner has existed for three months and appears likely to continue for the foreseeable future. The petitioner met his burden to produce evidence of the change contemplated by Guideline Q.

c. The respondent produced some evidence tending to contradict the petitioner's evidence. However, the greater weight of the evidence shows a material change in circumstances.

3. The monthly net incomes of the parties are set forth on Appendix "B" attached hereto and incorporated by reference. The child support amounts determined pursuant to the Nebraska Child Support Guidelines are computed on Appendix "B."

4. The only remaining issue is the petitioner's request for retroactive application.

a. Where the requisite change in circumstances is established, the general rule in Nebraska has been to allow a modification of a child support order prospectively from the time of the modification order itself or, under some circumstances, retroactive to the filing date of the application for modification. *Truman v. Truman*, 256 Neb. 628, ___ N.W.2d ___ (1999).

b. Child support payments become vested in the payee as they accrue, and generally, courts are without authority to reduce the amounts of such accrued installments. *Id.*

c. The application was filed August 30, 1999. The joint application does not expressly request or provide for retroactive application. This case does not present circumstances to require retroactive application of this order. The change in support should operate prospectively from the date of the order.

ORDER: IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that:

1. The joint application is granted to the extent of the relief set forth below and is otherwise denied. The decree previously entered in this case (and as previously modified, if applicable) shall remain in full force and effect except as expressly modified by this order.

2. The petitioner shall be required to pay child support to the court clerk for distribution to the respondent, effective as of the payment due on October 1, 1999, to:

- a. \$298.00 per month when there is only one child to be supported; and,
- b. \$428.00 per month when there are two children to be supported.

3. The support obligation for each child continues until such child reaches majority under Nebraska law (presently age 19), becomes emancipated, becomes self-supporting, marries, or dies, or until the further order of the court.

4. Delinquent support accruing after the date of this order shall bear interest at the rate of 6.224% per annum from the time and in the manner provided by law.

5. Each party shall be required to furnish the clerk of this court, in writing, with such party's address (including specific street address or other physical location, in addition to mailing address), telephone number, and social security number, the name and address of such party's employer, whether or not such person has access to employer-related health insurance coverage and, if so, the health insurance policy information, and any other information that the Court shall deem relevant until the judgment is paid in full. Each party shall also be required to advise the Clerk of any changes in such information between the time of entry of this order and payment of the judgment in full. Failure to comply with the provisions of this section shall be punishable by contempt.

6. The income of the any party obligated to pay support hereunder shall be subject to income withholding, which shall be implemented pursuant to the Income Withholding for Child Support Act. Within thirty (30) days after the date of entry of this order, any such party shall accurately prepare and sign a Notice to Withhold Income (Form DC-005), and deliver the notice to such party's current employer and provide a copy of such notice to the court clerk. Within thirty (30) days after any change of employment, a new Notice to Withhold Income shall be prepared, signed, and delivered, and a copy provided to the court clerk in the same manner. In the event that any such party obligated to pay support fails to pay any child, medical, or spousal support payments, as such failure is certified each month by the District Court Clerk in cases where court-ordered support is delinquent in an amount equal to the support due and payable for a one-month period of time, such party may be required to appear before this Court on a date to be determined by the Court and show cause why such payment was not made. In the event such party fails to pay and appear as so ordered, a warrant shall be issued for such party's arrest.

7. Judgment is hereby entered accordingly. Each party shall be required to pay their own respective costs and attorney fees.

ENTERED: September 15, 1999.

If checked, the Court Clerk shall:

- : Mail a copy of this order to all counsel of record and to any pro se parties.
Done on _____, 19__ by _____.
- : Enter judgment on the judgment record.
Done on _____, 19__ by _____.
- : Mail postcard/notice required by § 25-1301.01 within 3 days.
Done on _____, 19__ by _____.
- : Note the decision on the trial docket as: 9/15/99 Signed "Order Modifying Decree" entered; judgment entered accordingly.
Done on _____, 19__ by _____.

Mailed to:

BY THE COURT:

William B. Cassel
District Judge