

**IN THE DISTRICT COURT OF BROWN COUNTY, NEBRASKA**

**NADINE M. BAXTER,**

Petitioner,

vs.

**BOBBY G. BAXTER,**

Respondent.

Case No. 6438

**ORDER MODIFYING DECREE**

**DATE OF HEARING:** October 13, 1999.

**DATE OF DECISION:** October 14, 1999.

**APPEARANCES:**

For the petitioner: James D. Gotschall with petitioner.

For the respondent: respondent pro se.

**SUBJECT OF HEARING:** (1) respondent's application for modification of decree, and, (2) petitioner's cross-petition for modification.

**DECREE INVOLVED:**

Date of original decree: January 12, 1994.

Date last modified: not applicable.

**FINDINGS:** The court finds:

1. During closing argument, the respondent seemed to abandon his request for custody change, which was based in part upon allegations that petitioner failed to comply with provisions of the decree, specifically Appendix "A." However, the decree does not request relief other than a change of custody and decrease of child support. This court does not have jurisdiction to grant relief not requested by the pleadings, except in circumstances not applicable in this case.

2. The respondent failed to meet his burden to show a material change of circumstances regarding his application for change of child custody.

a. Exhibit 20, which was received without objection, shows only two convictions for misuse of a school permit.

b. Exhibit 19 was not received because the respondent fails to adduce evidence of foundation for admission of the exhibit. Thus, the court is required to disregard Exhibit 19.

c. While two convictions for misuse of a school permit have some significance, they do not rise to the level to show that the best interests of the child require a change of custody. Both convictions occurred in 1996, and in view of the evidence of the age of the child and child's honor roll school success, the school permit misuse convictions do not meet the burden of proof.

d. Although not adduced in the respondent's case-in-chief, during the petitioner's case, evidence was adduced that the petitioner has not exactly been a fount of information for the respondent about the child. However, given other evidence of the difficult relationship between these two parties, petitioner's reticence is hardly surprising.

e. Generally, matters of failure to perform the requirements of a decree should be enforced by contempt proceedings and do not automatically support the modification of a decree.

3. The respondent failed to meet his burden of proof to show a material change of circumstances for change of custody. He did not otherwise attempt to meet his burden of proof regarding a material change of circumstances concerning child support.

4. However, the petitioner did adduce evidence on her cross-petition regarding child support.

a. The petitioner produced undisputed evidence of petitioner's gross monthly earnings of \$2,000.00 and the respondent's admission in Exhibit 21 regarding his gross monthly income of \$1,800.00. This information is sufficient to produce a calculation under the child support guidelines of \$339.00 per month.

b. This amount represents an increase of more than 10% over the existing support order, and raises a rebuttable presumption of a change of circumstances under the guidelines. The respondent did not adduce evidence to rebut the presumption.

c. Accordingly, the court concludes that there has been a material change of circumstances regarding child support since the decree was entered or last modified.

5. 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."

6. Considering the relative incomes of the parties, the petitioner's request for attorney fees should be denied.

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

1. The respondent's application is denied.  
2. The petitioner's cross-petition is granted to the extent of the relief set forth below and is otherwise denied.

3. 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.

4. The respondent shall be required to pay child support to the court clerk for distribution to the petitioner, effective as of the payment due on November 1, 1999, to \$339.00 per month for the one child remaining subject to the obligation of support.

5. 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.

6. Delinquent support shall bear interest at the rate of 6.285% per annum from the time and in the manner provided by law.

7. 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.

8. 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.

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

ENTERED: October 14, 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: 10/14/99 Signed "Order Modifying Decree" entered; judgment entered accordingly.  
Done on \_\_\_\_\_, 19\_\_ by \_\_\_\_\_.

Mailed to:

BY THE COURT:

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William B. Cassel  
District Judge