

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

**DENNIS D. HOLMBERG,**

Petitioner,

vs.

**SANDRA K. HOLMBERG,**

Respondent.

Case No. CI00-1

**DECREE OF DISSOLUTION  
OF MARRIAGE**

**DATE OF FINAL HEARING:** May 10, 2000.

**DATE OF RENDITION:** May 11, 2000.

**DATE OF ENTRY:** Date of file stamping by court clerk.

This matter came on for final hearing. The petitioner appeared personally and was represented by James D. Gotschall, and the respondent appeared personally and was represented by Theresa McGahan. A trial was had to the Court.

The respondent's counsel advised the court that the motion for continuance filed shortly before trial and overruled by the court without opportunity for hearing was moot, and that the respondent did not desire to renew the motion. There were no other preliminary matters. Opening statements were waived.

Evidence was adduced for the petitioner. During the course thereof, without objection, the petitioner was granted leave to amend the petition by interlineation to correct the child's name. The petitioner rested.

Evidence was adduced for the respondent. The respondent moved for an in camera interview by the court of the minor child on the record, but in the absence of the parties and their counsel. The petitioner joined in the motion. The motion was granted, with the interview to be conducted at the conclusion of the trial. The respondent rested subject to the interview.

Rebuttal evidence was adduced for the petitioner. The petitioner rested on rebuttal subject to the interview.

Closing arguments were presented by counsel for both parties. Thereafter, the interview of the child was conducted in chambers on the record. The matter was taken under advisement.

NOW, effective upon the date of filing of this decree by the court clerk (the date of "entry" of decree), the Court, being fully advised in the premises, hereby finds, orders, adjudges and decrees as follows:

1. **JURISDICTION:** At filing, the petitioner resided in this county and now resides in this county. The petitioner resided in Nebraska for more than one year prior to filing. More than 60 days have passed since personal service was perfected or a voluntary appearance was entered. Neither party is now a party to any other pending action in any court for divorce, legal separation, or dissolution of marriage. Neither party is a member of the Armed Forces of the United States or any of its allies. The Court has jurisdiction of both parties and the subject matter of this action.

2. **MARRIAGE:** The petitioner and the respondent were married on August 14, 1970, in the City of Gregory, Gregory County, South Dakota.

3. **DISSOLUTION:** All reasonable efforts to reconcile have been made and there is no reasonable possibility of reconciliation. The marriage is irretrievably broken and should be, and hereby is, dissolved. This decree becomes final and operative after 30 days from date of entry, except for purposes of appeal and except that neither party may remarry (other than to each other) for six months from date of entry and the parties are deemed as married for health insurance purposes during such six month period. If either party dies prior to expiration of such time periods, the decree becomes final as of the date of entry.

4. **ISSUES TRIED AND ORALLY STIPULATED:** The parties were unable to agree as to certain issues and a trial was had on such issues. The parties stipulated in open court regarding division of property and debts, partial subordination of respondent's judgment liens, property settlement judgment, division of assets and debts relating to Kevin's estate, health insurance on the minor child, attorneys' fees and costs, earnings of the petitioner for support calculations, child custody, and 1999 tax returns. The stipulations

are fair and reasonable in all respects and are not unconscionable, and are hereby approved, and compliance therewith ordered, and the findings and orders hereinafter made incorporate such stipulations insofar as they go, and the Court determines the other issues, being child visitation, child support, and spousal support, upon the evidence presented.

5. **PAYMENTS:** All payments of child support, alimony, and property settlement ordered in this decree shall be paid to the Clerk of the District Court of Holt County, Nebraska, for disbursement to the person entitled to receive the same. NO CREDIT MAY BE ALLOWED FOR ANY PAYMENT NOT PAID THROUGH THE CLERK OF THIS COURT.

6. **PETITIONER'S PROPERTY:** The petitioner's sole and separate property, subject to encumbrances unless otherwise provided herein, shall consist of:

a. All of the property now in the petitioner's possession except as specifically awarded to the respondent herein.

b. The items of personal property itemized on page 1 and the top half of page 2 of trial exhibit No. 1, a copy of which is attached hereto and incorporated by reference.

c. The house, garage, and land in Stuart, Nebraska, legally described as: Lot Four (4), Block Eleven (11), Hallock's Second Addition to the Village of Stuart, Holt County, Nebraska.

d. The "financial assets" itemized on the bottom of page 3 and the top of page 4 of trial exhibit No. 1, as attached and incorporated by reference.

7. **RESPONDENT'S PROPERTY:** The respondent's sole and separate property, subject to encumbrances unless otherwise provided herein, shall consist of:

a. All of the property now in the respondent's possession except as specifically awarded to the petitioner herein.

b. The items of personal property itemized on the bottom half of page 2 and the top two-thirds of page 3 of trial exhibit No. 1, as attached and incorporated by reference.

c. As custodian on behalf of the minor child, Bobbi Jo Holmberg, the items of personal property belonging to the child itemized on the middle of page 4 of trial exhibit No. 1, as attached and incorporated by reference.

8. **DEBTS:** The indebtedness of the parties shall be paid as follows:

a. Except to the extent of those debts specified on trial exhibit No. 2, a copy of which is attached hereto and incorporated by reference, each party shall pay the debts incurred by such party personally since their separation on November 7, 1999.

b. The petitioner shall pay all of the debts specified on trial exhibit No. 2, as attached and incorporated by reference, on or before July 1, 2000.

c. No debts are allocated to be paid by the respondent except as provided in paragraph a. above.

d. Each party shall indemnify and hold the other party harmless of all liabilities such party is required to pay and of all debts encumbering property such party receives.

9. **PROPERTY SETTLEMENT:** The petitioner shall pay to the court clerk for disbursement to the respondent as property settlement the total sum of \$17,000.00, payable as follows:

a. \$4,500.00 within 30 days after the date of entry of this decree;

b. \$4,500.00 within one year after the date of entry of this decree;

c. \$4,000.00 within two years after the date of entry of this decree; and,

d. \$4,000.00 within three years after the date of entry of this decree.

e. There shall be no interest upon any installment paid on or before the due date thereof, but any delinquent installment shall bear interest at the rate of 7.197% per annum (the judgment rate as of the date of entry) from due date until paid.

10. **ALIMONY:**

a. The petitioner shall pay alimony to the court clerk for disbursement to the respondent at the rate of \$550.00 per month, commencing on June 1, 2000, and on the first day of each month thereafter until the support obligation terminates as provided herein.

b. Such alimony is subject to termination on the first to occur of the following:

- (1) the death of either party;
- (2) the remarriage of the respondent;
- (3) the official determination that the respondent is eligible for Social Security disability benefits; or,
- (4) on December 31, 2007.

c. There shall be no interest upon any installment paid on or before the due date thereof, but any delinquent installment shall bear interest at the rate of 7.197% per annum from due date until paid.

d. In addition, the indemnities as to debts and encumbrances are provided in partial substitution for alimony payments, and any such indemnity obligation shall be considered to be "in the nature of support," for the benefit of the party to whom the particular indemnity obligation runs.

e. The determination regarding a termination date for the support obligation is premised upon the respondent now having or shortly attaining the physical ability to obtain further education or vocational training. A subsequent determination that the respondent no longer has, or because of changes in her physical condition becomes unable to attain, such physical ability shall constitute a material change in circumstances which may justify the extension or elimination of the termination date.

11. **INCOME TAX:** The parties shall file joint income tax returns for tax year 1999, and each shall be responsible for the portion of any tax liability due, and shall be entitled to any refund, in equal shares (50/50). If any separate returns have been previously filed, the parties shall file amended returns in compliance with this paragraph.

12. **COSTS AND ATTORNEYS' FEES:** Each party shall pay such party's own final costs, including attorneys' fees.

13. **DECEASED CHILD:**

a. The parties were the parents of Kevin Holmberg, their adult child, who died apparently intestate on March 20, 2000. The parties stipulated that there have been no probate proceedings with respect to the estate of such child.

b. The parties agreed that any assets or receivables attributable to the death of Kevin Holmberg or pertaining to his estate, whether previously or hereafter received, shall be divided equally between the parties (i.e., 50% to petitioner and 50% to respondent). The parties further agreed that any debts or obligations previously or hereafter incurred with regard to Kevin Holmberg, his death, or any proceedings related to his death, shall be borne equally between the parties (i.e., 50% to petitioner and 50% to respondent). The parties further agreed that neither party shall apply to become, or accept appointment as, the personal representative or special administrator of Kevin's estate.

c. The agreements are approved and the parties are ordered to comply therewith. Such agreement shall be deemed to constitute a private agreement under NEB. REV. STAT. § 30-24,110 (Reissue 1995). See *In re Estate of Mithofer*, 243 Neb. 722, 502 N.W.2d 454 (1993).

d. The parties are further ordered, pursuant to their express waiver and agreement, not to seek or accept any appointment as personal representative or special administrator in any proceedings relating to the estate of Kevin Holmberg, deceased.

e. This decree does not purport to control, limit, or affect any order or exercise of jurisdiction of any county court in Nebraska, or equivalent court in any other state, having jurisdiction over any probate or other related proceedings with regard to said decedent. Similarly, the order relating to allocation of debts or obligations shall not be deemed to create, establish, or confirm any right or benefit in any third-party as against either of the parties to this decree. This order merely approves and effectuates the parties' private agreements relating to such matters.

14. **CHILDREN:**

a. There is no entry concerning any minor child affected by this action in the Nebraska Child Custody Jurisdiction Act Registry of the Court, and this Court has jurisdiction of the minor child of the parties to this action, as follows:

Bobbi Jo Holmberg, born on April 19, 1985.

b. The respondent is awarded the care, custody and control of the minor child of the parties, subject to specific rights of visitation and correspondence in the petitioner as follows:

(1) Appendix "A," Supplemental Order for Custody, etc., attached is incorporated into this Decree, and the parties are directed to comply therewith, except as otherwise specifically provided in this decree or to the extent inconsistent with any of the express provisions of this decree set forth below.

(2) At all times, the petitioner shall be entitled to the telephone visitation specified in Appendix "A," and to unlimited and uncensored written communication by mail with the child.

(3) For the first four months from the date of entry of this decree (May, June, July, and August), the petitioner shall be entitled to one day per month of visitation between the hours of 9:00 a.m. and 9:00 p.m. on one Saturday of each month to be designated by the petitioner at least 7 days prior to the date of such visitation.

(4) For the next four months (September, October, November, and December), the petitioner shall be entitled to one weekend per month commencing at 7:00 p.m. on the second or third Friday of the month, as designated by the petitioner at least 7 days prior to the date of such visitation, and ending at 7:00 p.m. on the following Sunday, except that the petitioner shall make arrangements for the child to stay overnight during such visitation in the home of a suitable third person or persons acceptable to the child. In addition thereto, the petitioner shall be entitled to:

(A) Two days of visitation during the Labor Day holiday weekend, commencing at 9:00 a.m. on either Saturday or Sunday, and ending the following day at 9:00 p.m., but not later than 7:00 p.m. on Monday, subject to the requirement that the petitioner shall make arrangements for the child to stay overnight during such visitation in the home of a suitable third person or persons acceptable to the child; and,

(B) Christmas visitation from the day school is dismissed before Christmas at 7:00 p.m. to December 27, 2000, at 7:00 p.m., subject to the requirement that the petitioner shall make arrangements for the child to stay overnight during such visitation in the home of a suitable third person or persons acceptable to the child, unless the child elects to stay in the petitioner's home overnight for any one or more nights during such period.

(5) Commencing in January, 2001, the petitioner shall be entitled to the regular weekend visitation, holiday visitation, and Father's Day visitation as set forth in Appendix "C" attached hereto and incorporated by reference, subject to the limitations and requirements set forth below.

(6) Commencing with the summer of 2001, the petitioner shall be entitled to two weeks of extended summer visitation each year, to be designated by the petitioner on or before May 31 of each year, and to commence no earlier than June 12 and to end no later than August 15.

(7) During all visitations, the petitioner shall not physically touch the child unless spontaneously initiated or requested by the child.

(8) During all visitations, the petitioner shall not view or display any sexually explicit or suggestive movies, videos, television programs, photographs, or any similar device or material.

(9) During all visitations, the child shall have the right to terminate the visitation at any time and for any reason, and upon being notified of such termination, the petitioner shall immediately deliver the child to the respondent or to a responsible third party acceptable to the child until such time as suitable arrangements can be made for return of the child to the respondent. The respondent shall not instruct or require the child to exercise such right, and shall not suggest or imply that the child should do so for any reason other than an immediate and imminent danger to the physical safety of the child.

(10) During all visitations after December 31, 2000, the child may request that any particular overnight stay during visitations be in the home of a suitable third person or persons acceptable to the child, and the petitioner shall comply with any such request. The child must make such request individually as to any particular visitation at or near the time of such visitation, and no "blanket" or general request shall be deemed to be effective as to any future visitation.

(11) These visitation provisions are intended to rebuild a relationship of love, trust, and confidence between the petitioner and the child. All parties shall conduct themselves in accordance with the purpose of such requirements, in addition to compliance with the literal terms of each requirement. Failure of the petitioner to so

conduct himself may result in reduction or elimination of visitation rights. Failure of the respondent to so conduct herself may result in modification of the decree to enlarge visitation rights, or if ultimately proving the respondent unfit to continue as the custodial parent by wilful violation of the decree, may result in a change of custody.

**15. CHILD SUPPORT:**

a. The petitioner is ordered to pay child support to the court clerk for distribution to the respondent at the rate of \$539.00 per month. Such payments shall commence on June 1, 2000, and continue in a like amount on the first day of each month thereafter until the child reaches majority under Nebraska law, becomes emancipated, becomes self-supporting, marries, or dies, or until the further order of the Court.

b. Delinquent child support installments shall bear simple interest from thirty (30) days after date of delinquency until paid at the rate of 7.197% per annum.

c. The child support amount has been determined pursuant to the Nebraska Child Support Guidelines, and the findings of the parties' incomes and calculations under the guidelines used in determining the amount of support are set forth on Appendix "B" attached hereto.

**16. WITHHOLDING & ENFORCEMENT (MANDATORY):**

a. The petitioner's income 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 decree, 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.

b. In the event that such party 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.

17. **INCOME TAX EXEMPTION:** The petitioner, if such party pays child support as ordered herein, shall be entitled to claim the minor child for dependency exemption purposes for federal and state income taxes. The respondent is ordered to sign a written relinquishment of the respondent's claim to the dependency exemption separately for the child for each year including and following the date of the decree until the obligation of support for such child terminates. The respondent is ordered to deliver such relinquishment to the petitioner for the next preceding calendar year on or before January 31 of each year, but only if all child support payments due are paid as of such date. The petitioner is ordered not to claim any dependency exemption at any time when such party has not paid all child support payments which have become due. The Court retains jurisdiction to enter such orders as may be necessary, including contempt proceedings or modification of support, in the event such party claims a dependency exemption at a time when such party has not paid all child support payments which have become due.

18. **HEALTH INSURANCE:**

a. The petitioner shall provide the existing or equivalent health insurance coverage on the minor child until the obligation of support terminates as above set forth, so long as such coverage is provided or available through such party's employment, without regard to the cost thereof to the petitioner.

b. Any reasonable and necessary medical expenses incurred for a minor child for whom the obligation of support has not terminated and which are not reimbursed by insurance, including any deductible or co-insurance requirement, shall be paid as follows:

(1) The first \$1,000.00 per calendar year of the amount of any deductible, co-insurance, or uncovered expenses for the child shall be paid 50% by the petitioner and 50% by the respondent.

(2) All amounts of any such deductible, co-insurance, or uncovered expenses in excess of \$1,000.00 per calendar year shall be paid 100% by the petitioner.

c. The health insurance policy information necessary to comply with the reporting requirement hereinafter set forth shall include, at a minimum, the following: (1) insurance company name and address; (2) policy number (for group policy, both group number and individual identifying number); (3) policy holder name (for group policy, both group name and individual name); (4) policy holder's social security number; and, (5) name, address, and telephone number of any person or entity (such as an employer) with which claims are to be filed or reported.

d. If the custodial parent files a written request with the Clerk, the party required to provide insurance shall file with the Court, at least annually, a certificate of the insurance company documenting that the required health insurance is currently in effect.

e. The party required to provide insurance shall fully cooperate with any health care provider to facilitate availability of prompt medical care, attention, and treatment to any minor child of the parties.

19. **REPORTS:** Each party shall be required to furnish the Clerk of the District Court of Holt County, Nebraska, 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 any judgment for alimony, child support, property settlement, attorneys fees, and/or costs, herein made are 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 Decree and payment of the judgment in full, within ten (10) days after the effective date of such change. Failure to comply with the provisions of this section shall be punishable by contempt.

20. **DOCUMENTATION:** Each party is ordered to execute and deliver to the other party such documents as will be necessary to transfer all of the interest of the party not receiving the property to the party who shall receive the particular property under this Decree. In the event that any party fails to execute and deliver such documents within thirty (30) days of this Decree, this Decree shall have the effect of a conveyance and/or release

under NEB. REV. STAT. § 25-1304, as amended, with the same effect as though the appropriate documents of conveyance or release had been executed and delivered in conformity with this Decree.

21. **JUDGMENT:** Judgment is hereby entered against petitioner and in favor of respondent for child support, alimony, and property settlement as above set forth.

22. **SUBORDINATION OF JUDGMENT LIEN:** Pursuant to the agreement of the parties, the petitioner shall be entitled to subordination of all judgment liens arising by operation of law from this decree against the real estate above described to enable the petitioner to obtain a first mortgage loan secured by such real estate in an amount not exceeding \$8,000.00. The respondent shall execute and deliver to the petitioner any documents reasonably requested by the petitioner to accomplish such subordination. If the respondent fails or refuses to execute and deliver such documents, in addition to any other relief which may be appropriate, the petitioner shall be entitled to request a order of this court accomplishing such subordination without notice to respondent or necessity of hearing thereon.

IT IS THEREFORE ORDERED that the parties to this action shall fully comply with the above findings and orders.

Signed in chambers at O'Neill, Nebraska, on May 11, 2000.  
DEEMED ENTERED as of date of filing by court clerk.

If checked, the Court Clerk shall:

- : Mail copy of decree to all counsel of record and to any pro se parties.  
Done on \_\_\_\_\_, 20\_\_\_\_ by \_\_\_\_\_.
- : Enter judgment on the judgment record.  
Done on \_\_\_\_\_, 20\_\_\_\_ by \_\_\_\_\_.
- : Mail postcard/notice required by § 25-1301.01 within 3 days.  
Done on \_\_\_\_\_, 20\_\_\_\_ by \_\_\_\_\_.
- : Note the decision on the trial docket as: [date of filing] Signed "Decree of Dissolution of Marriage" entered; judgment entered accordingly.  
Done on \_\_\_\_\_, 20\_\_\_\_ by \_\_\_\_\_.

Mailed to:

BY THE COURT:

\_\_\_\_\_  
William B. Cassel  
District Judge