

IN THE DISTRICT COURT OF BROWN COUNTY, NEBRASKA

PHYLLIS I. WITT and GARY R. WITT,
Plaintiffs,

vs.

**HOME HEALTH MEDICAL
EQUIPMENT, INC.; ISLAND SUPPLY
WELDING CO.; VICTOR EQUIPMENT
COMPANY, a subsidiary of Thermadyne
Holdings Corporation; B&F MEDICAL
PRODUCTS, INCORPORATED, a division
of Allied Health Care Products,
Incorporated; and HARSCO
CORPORATION,**

Defendants.

reentitled,

**GARY R. WITT, Personal Representative
of the Estate of PHYLLIS I. WITT,
Deceased, and GARY R. WITT,**
Plaintiffs,

vs.

**HOME HEALTH MEDICAL
EQUIPMENT, INC.; ISLAND SUPPLY
WELDING CO.; VICTOR EQUIPMENT
COMPANY, a subsidiary of Thermadyne
Holdings Corporation; B&F MEDICAL
PRODUCTS, INCORPORATED, a division
of Allied Health Care Products,
Incorporated; and HARSCO
CORPORATION,**

Defendants.

Case No. CI00-16

ORDER ON DEMURRERS

DATE OF HEARING: September 20, 2000.

DATE OF RENDITION: October 25, 2000.

DATE OF ENTRY: Date of filing by court clerk per § 25-1301(3).
TYPE OF HEARING: Telephone (per Rule 8-4, evidence & record waived).

APPEARANCES:
For plaintiff(s): Michael V. Smith.
For defendant(s):
Home Health: James D. Gotschall.
Island Supply: D. Steven Leininger
Victor: Terrance O. Waite.
Allied: Kelly K. Brandon.
Harsco: Michael G. Mullin.

SUBJECT OF HEARING: Demurrers of each defendant and verbal motion to revive.

PROCEEDINGS: See order rendered on September 20, 2000.

ORDER: IT IS ORDERED THAT:

1. The demurrer of defendant Home Health is denied.
2. The respective demurrers of the other defendants are sustained.
3. The plaintiff is allowed 20 days from the date of entry of this order to file a second amended petition, or upon failure to do so, shall be deemed to have elected to stand upon the amended petition filed on August 11, 2000.
4. The defendants shall have 10 days from the filing of a second amended petition to plead or 20 days to answer, or in the event of the failure of the plaintiff to file a second amended petition within the allowed time, the defendant Home Health shall have 20 days from the expiration of time for filing of a second amended petition to file an answer to the amended petition.
5. This order is interlocutory in character, and does not constitute a final order.
6. Upon the plaintiff's election to stand upon the amended petition, the court does not intend to enter final orders of dismissal as to the other defendants until the proceedings against the defendant Home Health are finally determined, unless the plaintiff expressly requests the court to do so to permit an appeal supported by a showing that there is no just reason for delay of entry of judgment as to the other defendants.

Signed at Ainsworth, Nebraska, on October 25, 2000.
DEEMED ENTERED upon the date of filing by the court clerk.

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 _____, 20__ by ____.
- Note the decision on the trial docket as: [date of filing] Signed "Order on Demurrers" entered.
Done on _____, 20__ by ____.

Mailed to:

BY THE COURT:

William B. Cassel
District Judge