

IN THE DISTRICT COURT OF CHERRY COUNTY, NEBRASKA

PHILIP J. ROSFELD,
Petitioner,

vs.

**KARMA K. ROSFELD, now known as
KARMA K. TINANT,**
Respondent.

Case No. 10120

ORDER MODIFYING DECREE

DATE OF HEARING: November 1, 2000.

DATE OF RENDITION: November 6, 2000.

DATE OF ENTRY: Date of filing by court clerk (§ 25-1301).

APPEARANCES:

For the petitioner: Stephan T. Wall with petitioner.

For the respondent: Warren R. Arganbright with respondent.

SUBJECT OF HEARING: (1) Respondent's application to modify decree, and (2) Petitioner's counterclaim for modification.

DECREE INVOLVED:

Date of original decree: September 22, 1993 (filing).

Date last modified: Not applicable.

PROCEEDINGS:

There were no preliminary matters. Opening statements were waived by counsel for respondent and counsel for petitioner. The respondent presented evidence. Karma K. Tinant and Philip J. Rosfeld were sworn and testified. The respondent rested. The petitioner presented evidence. Karma K. Tinant, having been previously sworn, was recalled and testified further. The petitioner rested. There was no rebuttal evidence. After a brief recess, the parties entered into a partial stipulation on the record in open court. Closing arguments were presented by counsel for respondent and counsel for petitioner. The matter was taken under advisement.

FINDINGS: The court finds:

1. There has been a material change of circumstances since the decree was entered or last modified.

2. The child support should be modified retroactively to March 7, 2000, which was the date of application.

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 parties have demonstrated that a fixed, inflexible visitation order is required because of their inability to work together.

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

1. **RELIEF GRANTED/DENIED:** The respective applications are granted to the extent of the relief set forth below and are otherwise denied.

2. **PRIOR DECREE OTHERWISE EFFECTIVE:** 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.

3. **CHILD CUSTODY:** The custody of the minor child, Sunset Rose Rosfeld, born February 5, 1990, shall remain with the respondent, subject to the following:

A. The petitioner shall have specific rights of visitation and correspondence in the petitioner as set forth on Appendix "C" attached hereto, except that the following specific provisions shall apply to the extent of any conflict with Appendix "C":

(1) In substitution for every-other-weekend visitation, the petitioner shall have one weekend per month of regular weekend visitation, commencing on a Friday and ending on the following Sunday. The first such weekend shall commence on Friday, November 17, 2000. Thereafter, such visitation shall commence on the second Friday of each calendar month until further order.

(2) The petitioner shall provide all transportation at the beginning of each regular, holiday, or summer visitation. The petitioner shall meet the child on the public street at the respondent's place of residence. The respondent shall provide all transportation

at the end of each regular, holiday, or summer visitation. The respondent shall meet the child on the public street at the petitioner's place of residence.

(3) Each visitation (except Father's Day) shall commence at 8:00 p.m. CT (7:00 p.m. MT) and shall end at 7:00 p.m. CT (6:00 p.m. MT).

(4) The petitioner shall be entitled to telephone visitation on each Wednesday from 6:40 p.m. CT (5:40 p.m. MT) to 6:55 p.m. CT (5:55 p.m. MT). The petitioner shall place the call. The respondent shall provide the petitioner, at least 24 hours in advance of such time, with the phone number at which the child may be reached, and shall assure that the line is open at the scheduled time and that the child is present to receive the call. Not more than once per month, the respondent may cancel the telephone visitation by at least 48-hours advance notice if there is an actual conflict between the scheduled telephone visitation and the child's school activity or summer organized recreational activity.

(5) The petitioner shall be entitled to two one-week periods of extended summer visitation each summer. The first period shall commence on the Friday which next follows the last day of mandatory school attendance and shall end on the following Friday thereafter. The second period shall commence on the second Friday before the first day of mandatory school attendance and shall end on the Friday immediately preceding the first day of mandatory school attendance. The extended summer visitation period shall subsume any regular monthly weekend visitation period which would otherwise occur during the time of an extended summer visitation period, except that if the regular weekend visitation would otherwise commence on the Friday that the extended summer visitation would end the extended summer visitation shall extend to end on the following Sunday.

(6) The occurrence of holiday visitation shall not affect the schedule of regular monthly weekend visitation, except that if the scheduled regular monthly weekend occurs during any portion of a holiday to which the respondent is entitled under Appendix "C," that regular monthly weekend visitation shall be canceled and superseded to the extent of the conflicting holiday visitation.

(7) The petitioner shall be entitled to the remaining even-numbered holidays specified in Appendix "C" in this even-numbered year of 2000. Thereafter, the Appendix "C" holiday schedule shall apply as specified, such that petitioner receives the odd-

numbered holidays in odd-numbered years and the even-numbered holidays in even-numbered years.

B. The provisions of Appendix "A" attached hereto are incorporated herein and the parties ordered to comply therewith, except as otherwise provided above.

C. The authorization previously granted to the respondent to remove the child from the State of Nebraska for purposes of regular place of residence is terminated, and the child's regular place of residence shall not be changed from the State of Nebraska until further order.

4. **SUPPORT MODIFIED:** The petitioner shall be required to pay child support, effective as of the payment due on April 1, 2000, at the rate of \$441.00 per month. The arrearage occurring by reason of the retroactive effect of the order shall be paid at the rate of \$75.00 per month commencing on December 1, 2000, and on the first day of each month thereafter until paid current.

5. **TERMINATION OF SUPPORT:** 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. **PAYMENTS:** All payments of **child, medical, or spousal support** shall be paid to the **State Disbursement Unit** (and until the State Disbursement Unit is operative, to the Clerk of the District Court for this county) for disbursement to the person entitled thereto. All payments of **alimony, court costs, or attorneys' fees** shall be paid to the **Clerk of the District Court** for this county for disbursement to the person entitled thereto.

7. **INTEREST:** Delinquent support shall bear interest at the rate of 7.241% per annum from the time and in the manner provided by law.

8. **RETROACTIVE EFFECT:** The State Disbursement Unit (and until the State Disbursement Unit is operative, the court clerk) shall adjust the child support records accordingly to reflect the retroactive application of this order.

9. **HEALTH INSURANCE:**

A. The petitioner shall provide health insurance coverage on each 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, and the petitioner shall timely pay any portion of the premium not paid by the petitioner's employer.

B. Any reasonable and necessary health-care expenses (including medical, dental, and vision care) incurred for a minor child for whom the obligation of support has not terminated and which are not reimbursed by insurance, including any deductible, shall be paid as follows:

(1) When the full extent of insurance coverage required by paragraph A is actually provided, the amount of any such expenses not reimbursed by insurance because such expenses are not covered or the amount representing any deductible or co-insurance requirement shall be paid 54% by the petitioner and 46% by the respondent.

(2) If the petitioner fails to maintain the full extent of the insurance coverage required by paragraph A, the amount of any such expenses not reimbursed by insurance, including such amounts as would have been subject to a deductible or co-insurance, shall be paid by the petitioner.

(3) The petitioner shall remit his share of the unreimbursed health-care expenses to the health care provider within 14 days after the mailing or transmission to the petitioner of the Explanation of Benefits form by the insurance carrier or by the respondent.

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.

10. **CHILD-CARE EXPENSES:** Pursuant to guideline N, the petitioner shall also be required to pay 54% of the child-care expenses reasonably and necessarily incurred by the respondent due to the employment of the respondent, but shall not be required to pay any portion of any child-care expenses incurred due to the respondent's higher education attendance. The respondent shall submit an itemized statement of the hours and charges actually incurred for such employment-related child-care expenses to the petitioner within a reasonable time after the conclusion of each calendar month, and the petitioner shall reimburse the respondent for 54% of such amount within 10 days thereafter. In lieu thereof, the respondent may, at her option, arrange for any child-care provider(s) to submit a monthly, itemized billing directly to the petitioner showing the employment-related hours and charges for child-care services, such that the petitioner shall make payment of 54% thereof directly to the child-care provider within 10 days after each such billing.

11. **INCOME TAX EXEMPTION:** The respondent shall be entitled to claim the minor child as a dependent for purposes of federal and state income taxes.

12. **INFORMATION REPORTING:** 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.

13. **INCOME WITHHOLDING:** 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. The parties' social security numbers are: petitioner: 507-06-1712; respondent: 508-15-0033.

14. **SUPPORT ENFORCEMENT:** 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 State Disbursement Unit (and until the State Disbursement Unit is operative, 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.

15. **JUDGMENT:** Judgment is hereby rendered accordingly. Each party shall be required to pay their own respective costs and attorney fees.

Signed in chambers at Ainsworth, Nebraska, on November 6, 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 _____.
- 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 "Order Modifying Decree" entered.
Done on _____, 20____ by _____.

Mailed to:

BY THE COURT:

William B. Cassel
District Judge

SUPPLEMENTAL ORDER FOR CUSTODY, ETC.

Except as otherwise provided by any approved Parenting Plan, the provisions relating to custody, alimony, support, visitation and conduct of the parties, are subject to the following terms and conditions:

1. **Care and Supervision:** The party who has custody of the children, hereinafter referred to as the Custodian, shall:
 - a. provide the children with: (1) regular and nutritious food; (2) clean and appropriate clothing; (3) sanitary and reasonably private living and sleeping quarters; (4) appropriate medical examinations and treatments; and, (5) guidance and counsel in worldly and spiritual matters;
 - b. train the children to obey and respect their teachers and the law;
 - c. require the children to attend all regular sessions of school until graduation unless excused for medical reasons or by the school or by the Court;
 - d. personally supervise and control the conduct and activities of the children except when they are at school, or in known and usual recreational activities, or in the immediate care of another competent person;
 - e. not engage in, or permit in the presence of the children, any excessive drinking, immoral conduct, obscenities, violence, or disrespect for law and order;
 - f. advise persons entitled to visitation of: (1) all school or police disciplinary contacts; (2) all medical contacts or reports; and, (3) all other important developments in the children's lives and activities;
 - g. make emergency decisions affecting the health or safety of the child except during periods of visitation with the other parent, and shall communicate any such decisions to the person entitled to visitation as soon as reasonably practicable under the circumstances.

Each parent shall continue to have full and equal access to the education and medical records of the children unless the court orders to the contrary.

2. **Control of Visitation:** Unless otherwise provided, the person entitled to visitation may:
 - a. take the children to such reasonable places for such reasonable activities as such person may determine;
 - b. correspond with the children and the Custodian shall not censor such correspondence;
 - c. telephone each child for not to exceed 15 minutes between 7:00 P.M. and 9:00 P.M. on Wednesdays and Sundays, and at such other times as the parties may agree and the Custodian shall not participate in such calls;
 - d. while the child is visiting with such person, make emergency decisions affecting the health or safety of the child, and shall communicate any decisions to the Custodian as soon as reasonably practicable under the circumstances.

In connection with visitation, the Custodian shall:

- e. have the children ready and available promptly for all visits;
 - f. if advised in advance, provide the children with such special and additional clothing as may be appropriate for the planned activities;
 - g. in the event a child is invited or desires to participate in other activities which may interfere with a visit, not encourage, permit, or consent thereto without previous approval of the person whose visitation will be interfered with, and will not deprecate the denial of such approval;
 - h. not reduce or deny visitation for failure of support.
3. **Interference:** Neither parent will intrude upon the privacy of the other; nor falsely make or imply mean or nasty or derogatory or deprecatory statements about the other to anyone; nor prevent or restrict or in any way interfere with the other's rights granted by this Order.
4. **Injunction:** The Petitioner and Respondent and their agents and servants, and each of them, are enjoined and restrained from doing, attempting to do, or threatening to do, any act of injuring, maltreating, vilifying or molesting the adverse party, or any of the children or violating any of the terms of this decree or of Appendix "A."
5. **Contempt:** Willful violation of any of the orders or directives set forth above will be considered contempt of court. Punishment for contempt of court may be from one dollar to five hundred dollars or from one hour to six months in jail.

STANDARD VISITATION IN THE EIGHTH JUDICIAL DISTRICT

Except as otherwise provided by any approved Parenting Plan in this case, reasonable visitation rights of the non-custodial parent shall include but not be limited to the following:

A. **WEEKEND VISITATION:** Weekend visitation shall be every other weekend from Friday to Sunday, beginning on the second Friday following the date of this order, or if a schedule has been established, on the next date that would be provided by that schedule.

B. **HOLIDAY VISITATION:** In even numbered years, the non-custodial parent shall have the children on the following holidays that are numbered with an even number, and visitation shall be reversed for odd numbered years:

1. Easter: From the day school is dismissed for Easter vacation to the day before school resumes after that holiday.
2. Memorial Day: From the Friday before the nationally-recognized Memorial Day to Memorial Day.
3. Fourth of July: The day before the Fourth of July and the Fourth of July, but if the day falls on Friday through Monday, then it shall include the weekend and the day that the offices of the State of Nebraska are closed in honor of that day.
4. Labor Day: From the Friday before Labor Day through Labor Day.
5. Thanksgiving: From the day school is dismissed before Thanksgiving to the day before school resumes.
6. Christmas: From the day school is dismissed before Christmas to December 27.
7. New Year's: From December 27 to the day before school resumes after New Year's Day.

C. **SUMMER VISITATION:** The non-custodial parent shall have extended summer visitation consisting of a six-week continuous period that begins on the seventh Friday next preceding the date school is to commence, and ends on Friday six weeks later. During this period, the other parent shall have visitation every other weekend, commencing two weeks after the summer vacation begins.

D. **MOTHER'S AND FATHER'S DAY:** If the celebrating parent desires, the children shall spend Mother's Day with their mother, and Father's Day with their father. This visit shall start at 8 a.m. of the day and end at 8 p.m. of that day.

E. **GENERAL PROVISIONS:** Unless otherwise provided or agreed:

1. Time: All visitation shall begin and end at _____ p.m. (6:00 p.m. if left blank) on the day this order states as the start or end of a visitation period, as the case may be.
2. School's Commencement and End: School shall be deemed to start and end on the day the school attended by the children starts and ends; but if children do not attend school, the start and end of the public grade school in the community where the children live shall control.
3. Transportation: The party receiving visitation shall provide transportation at the beginning of that visitation. The other party shall provide transportation of the conclusion of that visitation. Driving may be done by any responsible adult who is related to the parties by blood or marriage.
4. Waiver: A parent entitled to visitation may waive the same by giving the other party three day's notice by telephone, or by agreement. Failure to exercise visitation without giving notice of waiver shall constitute a violation of this order.
5. Modification: As long as the parties agree, and continue to agree, they may modify this visitation schedule as they desire.

F. **APPEARANCE AND DAY-TO-DAY RULES:** The rules laid down by the custodial parent on matters concerning personal appearance (hair styles, etc.), and day-to-day rules, such as curfew and bedtime, shall also be enforced by the non-custodial parent as nearly as possible. The custodial parent shall supply clothing, including diapers, sufficient for each visitation.