

IN THE DISTRICT COURT OF HOLT COUNTY, NEBRASKA

**TRACY LEA ALDER, now known as
TRACY LEA HOCK,**
Petitioner,

vs.

DEAN WILLIAM ALDER,
Respondent.

Case No. 20333

**ORDER DENYING
MODIFICATION**

DATE OF HEARING: November 9, 2000.

DATE OF RENDITION: November 9, 2000.

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

APPEARANCES:

For the petitioner: Petitioner pro se.

For the respondent: Respondent pro se.

SUBJECT OF HEARING: Respondent's application for modification (9/18/00).

DECREE INVOLVED:

Date of original decree: May 1, 1997.

Date last modified: August 31, 1998 (filing).

PROCEEDINGS:

The matter came on for a pretrial conference. After discussion regarding pleadings, witnesses, exhibits, and issues lists, both parties request to proceed to immediate trial. Opening statements were presented by respondent and by petitioner. Evidence was adduced for respondent. Evidence was adduced for petitioner. No rebuttal evidence. Closing arguments were presented by respondent and by petitioner. The matter was taken under advisement.

FINDINGS: The court finds:

1. The respondent's application seeks only reduction of child support.
2. The respondent failed to adduce evidence to show that there has been a material change of circumstances since the decree was entered or last modified.

3. The respondent asserts that he is earning less money than at the time of the divorce. The relevant comparison is to the last modification of support. At the time of the last support modification, the child support worksheet shows gross monthly earnings of \$1,184.80, which is \$14,217.60 per year. The respondent's 1998 and 1999 income tax returns both show considerably higher annual income. Although the respondent is presently unemployed, he admitted on cross examination that he has the ability to resume his auto repair career, and earn more than his most recent employment. Even his most recent employment discloses annualized gross income of \$1,584.07 per month (Exhibit 6 earnings excluding first three pay periods, then annualized).

4. The respondent failed to adduce any testimony regarding the petitioner's present earnings or earning capacity. Without such information, it is impossible to calculate the current proper amount under the child support guidelines. Even assuming that the petitioner's income is the same as at the time of the most recent modification, the pro forma Appendix "B" attached shows that the current support calculation would be \$304.00. This is only \$10.00 less than the current support order in effect, far short of the Guideline Q threshold of 10% (\$31.40) required to raise a rebuttable presumption of a material change of circumstances.

5. The application must be dismissed with prejudice at respondent's cost.

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

1. **RELIEF DENIED:** The application is dismissed with prejudice at respondent's cost.

Signed in chambers at O'Neill, Nebraska, on November 9, 2000.
DEEMED ENTERED upon the date of filing by the court clerk.

If checked, the Court Clerk shall:

BY THE COURT:

- : Mail a copy of this order to all counsel of record and to any pro se parties.

Done on _____, 20____ by _____.

- 9 Enter judgment on the judgment record.

Done on _____, 20____ by _____.

- 9 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 Denying Modification" entered.

Done on _____, 20____ by _____.

Mailed to:

William B. Cassel
District Judge