

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

**LYNDA L. BUOY,**

Petitioner,

vs.

**LARRY E. BUOY,**

Respondent.

Case No. 4874

**ORDER ON MOTIONS**

**DATE OF HEARING:** November 13, 2000.

**DATE OF RENDITION:** November 15, 2000.

**DATE OF ENTRY:** Date of filing by court clerk (§ 25-1301(3)).

**TYPE OF HEARING:** Telephone (per Rule 8-4, no evidence or record).

**APPEARANCES:**

For petitioner: James D. Gotschall without petitioner.

For respondent: John R. Brownell without respondent.

For master commissioner: No appearance.

**SUBJECT OF ORDER:** (1) petitioner’s motion for judgment notwithstanding the verdict, or in the alternative, motion for new trial, and, (2) master commissioner’s motion for instructions.

**PROCEEDINGS:** At the hearing, these proceedings occurred:

Counsel appeared by telephone by agreement of counsel, acknowledging that pursuant to Rule 8-4, there is no record made nor evidence permitted at a telephonic hearing. Arguments of counsel were heard. The respondent’s counsel acknowledged that the relief sought by paragraph 1b) of the petitioner’s motion should be granted, even if the evidence did not correctly reflect the true name of the brand. The matter was taken under advisement.

**FINDINGS:** The court finds and concludes that:

1. Paragraph 1a) of the petitioner’s motion mixes apples and oranges. The credit for payment against the debt received full consideration in the division of marital property and debts. The date of trial is the appropriate time for valuation. The provision for rent recognizes that post-trial possession of the real

estate to be sold has a value in which the respondent is entitled to share. That paragraph of the motion lacks merit and should be denied.

2. Paragraph 1b) of the motion constitutes a motion to modify the decree, notwithstanding the title of the pleadings. NEB. REV. STAT. § 25-1912(3)(b) (Cum. Supp. 2000). The respondent's counsel conceded that the reference should be changed. The motion to modify should be granted.

3. Paragraph 1c) addresses a matter that is apparently ambiguous, although the court did not so recognize the ambiguity prior to the motion. Paragraph 7 of the decree, including the subparagraphs thereunder, applies only to the real estate described therein, i.e., the East Half (E½) of Section 20, Township 29 North, Range 19 West of the 6th P.M. in Rock County, Nebraska, except 2 acres in the northeast corner thereof. The "other real estate indebtedness" referred to therein was intended to apply only to the said East Half of Section 20, and not to other property divided between the parties in-kind. The motion should be granted to the extent of the relief set forth below, and otherwise denied.

4. The master commissioner's motion for instructions addresses two matters, the omission of property insurance premiums from the hierarchy of authorized expenses and the timing of payments. Construed as a motion to modify, the motion should be granted to the extent of the relief below, and otherwise denied.

**ORDER:** IT IS THEREFORE ORDERED that:

1. Paragraph 1a) of the petitioner's motion is denied.
2. Paragraph 1b) of the petitioner's motion is granted, and all references in the decree to the "Lazy B" brand are modified to refer to the "Lazy LB" brand.
3. Paragraph 1c) of the petitioner's motion is granted to the extent that the court expressly modifies paragraph 7 of the decree by adding at the end of paragraph 7G(1) the following: "All of such amounts of such disbursements shall pertain only amounts resulting from or applicable to the said East Half of Section 20." Except to such extent, paragraph 1c) of the petitioner's motion is denied.
4. The master commissioner's motion for instructions is granted to the extent that:
  - a. There is added to paragraph 7G(1) an additional item of authorized expenditure, between subparagraphs (a) and (b), and having priority over items (b) through (d), stating "property and

casualty insurance premiums covering the said East Half of Section 20 and any improvements erected thereon, and liability insurance premiums applicable to the ownership of said East Half of Section 20.”

b. There is added to paragraph 7G(4) the following: “The determination of the timing of any disbursements between the date of appointment and the final distribution of sale proceeds following confirmation of sale by the court shall be made at the discretion of the master commissioner.”

5. The master commissioner’s motion is otherwise denied without prejudice to further motions for instructions from time to time.

Signed in chambers at Ainsworth, Nebraska, on November 15, 2000.

DEEMED ENTERED upon filing by 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 **and to the master commissioner.**

9 Done on \_\_\_\_\_, 20\_\_ by \_\_\_\_.

9 Enter judgment on the judgment record.

9 Done on \_\_\_\_\_, 20\_\_ by \_\_\_\_.

9 Mail postcard/notice required by § 25-1301.01 within 3 days.

9 Done on \_\_\_\_\_, 20\_\_ by \_\_\_\_.

• Note the decision on the trial docket as: [date of filing] Signed “Order on Motions” entered.

9 Done on \_\_\_\_\_, 20\_\_ by \_\_\_\_.

Mailed to:

BY THE COURT:

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