

IN THE DISTRICT COURT OF HOLT COUNTY, NEBRASKA

RAYMOND J. WIERCINSKI,
Petitioner,

vs.

DEBORAH DEMMERS, f/n/a DEBORAH J. WIERCINSKI,
Respondent.

Case No. CI00-81

ORDER MODIFYING DECREE

DATE OF HEARING: November 29, 2000.

DATE OF RENDITION: November 29, 2000.

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

APPEARANCES:

For the petitioner: James D. Gotschall with petitioner.

For the respondent: Forrest F. Peetz with respondent.

SUBJECT OF HEARING: Respondent's application for modification of decree.

DECREE INVOLVED:

Date of original decree: August 9, 1994 (filing date).

Issuing court: Second Judicial District Court, County of Bernalillo, State of New Mexico.

Case number: DR 94 04103.

FINDINGS: The court finds:

1. Certain findings were pronounced orally from the bench and are preserved in this decree.

2. At the time of the original decree, both parents and the children were residents of the State of New Mexico. The Second Judicial District Court, County of Bernalillo, State of New Mexico, then had continuing, exclusive jurisdiction of the parties and the minor children of the parties. Although the respondent is the moving party in this court, the parties are designated in accordance with their original party designations in the New Mexico dissolution proceeding.

3. The respondent, Deborah J. Wiercinski, now known as Deborah J. Demmers, and the minor children of the parties now reside in the State of Nebraska, and have resided in the State of Nebraska for more than six months prior to the date of the filing of the application for modification with this court.

4. The petitioner, Raymond J. Wiercinski, is a member of the military service of the United States, stationed in the State of Alaska, and has resided in that state for more than 30 days prior to the date of the filing of the application with this court.

5. The petitioner and the respondent, through their respective pleadings in writing, have filed their written consent to this court's continuing, exclusive jurisdiction.

6. This court now has continuing, exclusive jurisdiction of the subject matter and has personal jurisdiction of the parties to the proceeding.

7. There has been a material change of circumstances since the decree was entered.

8. Because the original decree was entered upon a settlement agreement and without a trial, this court may consider matters occurring before the entry of the original decree in determining the best interests of the minor children.

9. The custody of the minor child(ren), Melody Wiercinski, born October 7, 1987, Joshua Wiercinski, born August 10, 1989, and Jacob Wiercinski, born June 5, 1991, should be changed from the joint custody arrangement to the sole care, custody, and control of the respondent, subject to reasonable rights of visitation and correspondence in the petitioner. Such reasonable rights of visitation shall include, at a minimum, the visitation and correspondence rights specified below.

10. The child support should be modified.

11. 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."

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

1. **RELIEF GRANTED/DENIED:** The application is granted to the extent of the relief set forth below and is 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(ren), Melody Wiercinski, born October 7, 1987, Joshua Wiercinski, born August 10, 1989, and Jacob Wiercinski, born June 5, 1991, is changed from joint custody to the care, custody, and control of the respondent, subject to reasonable rights of visitation and correspondence in the petitioner. Such reasonable rights of visitation shall include, at a minimum, the visitation and correspondence rights specified below. The provisions of Appendix "A" attached hereto are incorporated herein and the parties ordered to comply therewith.

4. **CHILD VISITATION:** The reasonable rights of visitation and correspondence in the petitioner shall include, but shall not be limited to, the following:

a. During the summer of 2001, extended summer visitation consisting of a four-week continuous period that begins on the fifth Friday next preceding the date school is to commence, and ends on Friday four weeks later.

b. During the summer of 2002 and in subsequent years, extended summer visitation consisting of an eight-week continuous period that begins on the ninth Friday next preceding the date school is to commence, and ends on Friday eight weeks later.

c. Christmas holiday visitation in each odd-numbered year commencing the day after the day that school is dismissed before Christmas and ending on that day which is two days before school resumes after New Year's Day.

d. Unmonitored and uncensored telephone visitation with each child for not more than 30 minutes per child each Saturday morning between the hours of 10:00 a.m. and 12:00 noon (CT). Upon advance notice given by 8:00 p.m. on the Friday immediately preceding such Saturday visitation, which notice may be by any reasonable means, the petitioner may elect to change the weekly telephone visitation to the period on Sunday (the next day after the normal contemplated Saturday telephone visitation) between the hours of 1:00 p.m. and 3:00 p.m. (CT). Unless the respondent gives reasonable advance notice by mail, telephone, or e-mail to petitioner of a conflict in the children's schedule for the designated time, the respondent shall assure that the children are present and available to

receive the petitioner's telephone call. Schedule conflicts shall not be encouraged by the respondent, and shall be avoided to the extent that it is practical to do so. If the respondent notifies the petitioner of a schedule conflict, the respondent shall make a good-faith effort to reschedule the telephone visitation to a timely reasonably convenient to the petitioner.

e. Unmonitored and uncensored telephone visitation initiated by a child to the petitioner's toll-free number at any other reasonable time, not to exceed 30 minutes per child per week. The respondent is **not** required to allow the child to initiate such telephone visitation where such telephone visitation would constitute an intentional violation of other neutral family and household rules (e.g., after regular bedtime or in violation of disciplinary sanctions).

f. 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.

g. 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, except in case of emergency or military deployment requiring secrecy, shall constitute a violation of this order. As long as the parties agree, and continue to agree, they may modify this visitation schedule as they desire.

5. **SUPPORT MODIFIED:** The petitioner shall be required to pay child support, effective as of the payment due on December 1, 2000, of:

- a. \$796.00 per month when there are three children to be supported;
- b. \$665.00 per month when there are two children to be supported;
- c. \$463.00 per month when there is only one child to be supported.

6. **VISITATION ABATEMENT:** Pursuant to Guideline J:

- a. Child support for the month of July, 2001, shall be reduced by 50%;
- b. Child support for the months of July and August of 2002, and each year thereafter until further order, shall be reduced by 50%; and,
- c. The petitioner is cautioned that failure to exercise the extended summer visitation may constitute a material change of circumstances sufficient to eliminate the visitation adjustment.

7. **TRANSPORTATION COST-SHARING:** The respondent's request to modify the cost-sharing requirement of the original order is denied, except that if the petitioner fails to timely return any child or children the petitioner shall bear the full transportation cost for such child or children.

8. **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.

9. **TAX EXEMPTIONS:** The provision of the original decree allocating the income tax exemptions for the children to the respondent shall remain effective.

10. **UNREIMBURSED MEDICAL EXPENSES:** The provision of the original decree requiring the parties to equally share any expenses for medical, dental or eye care not covered by the military medical benefits shall remain effective.

11. **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.

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

13. **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.

14. **INCOME WITHHOLDING:** The petitioner's income shall not be initially subject to income withholding, because the parties originally entered into a written agreement

providing an acceptable alternative arrangement consisting of the voluntary allotment of petitioner's military pay for child support payable to the respondent (through the State Disbursement Unit or district court clerk).

15. **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 shall be subject to income withholding and 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.

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

17. **AUTHENTICATED COPY:** The clerk of this court shall transmit an authenticated copy of this order to the Clerk of the Second Judicial District Court, County of Bernalillo, State of New Mexico, which shall constitute notice to such court of the modification of the judgment previously entered therein and the assumption of this court of continuing, exclusive jurisdiction of the subject matter of child custody, visitation, support, and related matters.

Signed in chambers at O'Neill, Nebraska, on November 29, 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 _____.
- Comply with paragraph 17 of order.
Done on _____, 20____ by _____.
- Note the decision on the trial docket as: [date of filing] Signed "Order Modifying Decree" entered.
Done on _____, 20____ by _____.

BY THE COURT:

William B. Cassel
District Judge

Mailed to:

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.