

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

**SHELLY BABUTZKE, now known as  
SHELLY HOBBS,**

Petitioner,

vs.

**VICTOR BABUTZKE,**

Respondent.

Case No. 18310

**ORDER DECLINING TO ACT  
WITHOUT HEARING**

**SUBJECT OF ORDER:** Petitioner’s application for modification of decree.

**ORDER:** After examination of the files, the court finds, determines, and orders:

1. The petitioner has today filed an application for modification of decree, accompanied by a voluntary appearance of the respondent reserving the right to plead, and a proposed stipulation and agreement providing that “neither party shall pay child support effective January 1, 2001, . . .” The petitioner’s counsel has inquired of the court by letter regarding the necessity of a hearing on the application and stipulation.

2. The court does not consider counsel’s letter as an improper ex parte contact because it is evident from the stipulation that the matter might be submitted ex parte. However, the court responds formally rather than by a telephone call or other ex parte contact with petitioner’s counsel because: (a) the court doubts that the consent evidenced by the stipulation would extend to such contact, and (b) the court intends to publish this order for the future guidance of other counsel and parties.

3. All child support obligation orders, including modifications, require calculations under the Nebraska Child Support Guidelines. Guideline C. An order purporting to determine no current child support constitutes an “orde[r] for child support obligatio[n]” under the Guidelines. All orders for child support, including modifications, must include a basic income and support calculation worksheet. *Ebirim v. Ebirim*, 9 Neb. App. 740, \_\_\_ N.W.2d \_\_\_ (2000). This court will *never* consider any proposed modification order that does not properly attach and incorporate the required child support calculations.

4. The stipulation does not set forth or incorporate any child support calculation worksheet. Consequently, it is impossible to consider the matter without additional evidence. It may be theoretically possible for parties to include in their written stipulation a recitation of the truth and accuracy of child

support guideline calculations attached to and incorporated by reference in the stipulation, and where the requested modification adopted the stipulated calculations without deviation, it might be appropriate to enter the modification upon the stipulation without requirement of a formal hearing. However, by failing to include such calculations and failing to verify the truth and accuracy of such calculations, such procedure is not possible in this case.

5. Moreover, the substance of the agreement makes it highly likely that the parties are implicitly requesting a deviation from the child support guidelines. It is highly unlikely that this court would *ever* enter an order deviating from the child support guidelines without an evidentiary hearing at which sufficient evidence is adduced to support the specific findings required by Guideline C.

6. Further, the proposed agreement contemplates joint custody. NEB. REV. STAT. § 42-364(5) (Reissue 1998) expressly requires a hearing in open court before the court may consider joint custody. The parties cannot by agreement waive that statutory requirement.

7. In view of the foregoing, the court declines to act upon the petitioner's application and the proposed agreement without a hearing.

8. The respondent's voluntary appearance reserves the right to plead. After expiration of the time to plead, the court will rely upon counsel for petitioner to promptly notice the matter for hearing in compliance with Rule 8-3.

**IT IS SO ORDERED.**

Signed in chambers at O'Neill, Nebraska, on January 22, 2001.  
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 \_\_\_\_.
- 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 Declining to Act Without Hearing" entered.  
Done on \_\_\_\_\_, 20\_\_ by \_\_\_\_.

Mailed to:

BY THE COURT:

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