

IN THE DISTRICT COURT OF HOLT COUNTY, NEBRASKA

DOUGLAS D. JOHNSON,
Petitioner,

vs.

MICHELE M. JOHNSON,
Respondent.

Case No. 20549

ORDER DENYING MOTION

DATE OF HEARING: March 5, 2001.

APPEARANCES:

For petitioner: None.

For respondent: None.

SUBJECT OF HEARING: Respondent's affidavit and motion for contempt citation.

ORDER: The motion is denied without prejudice because:

1. This court will not issue a contempt citation except upon affidavit.
2. The purported affidavit is, in reality, only a verification. It reads: "Michele M. Johnson, being first duly sworn on oath, deposes and says that she has read the above and foregoing Affidavit and Motion, that she knows the contents thereof and that the facts set forth therein are true *as she verily believes.*" (Emphasis supplied.)
3. The statement upon belief constitutes a mere verification. Had the italicized language been omitted, i.e. if the verification had ended with the word "true," it would have constituted a positive verification, which is the equivalent of an affidavit. Or the traditional form for an affidavit could have been used.
4. It has become the modern tendency to blur the distinction between an affidavit and a mere verification, and courts and lawyers are not always as careful as they should be in this regard. There remains an important distinction in form and law, and this court will not participate in any decline in the precision required.
5. Of course, the problem can be cured with a proper affidavit or a positively verified motion.

Signed in chambers at O'Neill, Nebraska, on March 5, 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 Denying Motion" entered denying [subject, from order].
Done on _____, 20__ by ____.

Mailed to:

BY THE COURT:

William B. Cassel
District Judge