

IN THE DISTRICT COURT OF HOLT COUNTY, NEBRASKA

JAMES LEE WETZLER,

Petitioner,

vs.

CAROL JEAN WETZLER,

Respondent.

Case No. 18893

**JUDGMENT ON THE
PLEADINGS**

DATE OF HEARING: No hearing held.

DATE OF RENDITION: June 4, 2001.

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

APPEARANCES:

For petitioner: None.

For respondent: None.

SUBJECT OF ORDER: Judgment on the pleadings entered on the court's own motion regarding the petitioner's application for modification of decree.

FINDINGS: The court finds and concludes that:

1. This is an unusual situation. The petitioner seeks modification of the decree to terminate his child support obligation effective as of the date of filing of the application (May 29, 2001). He claims that the minor child is emancipated and self-supporting, and that the child has enlisted in, and entered active duty service with, the United States Air Force.

2. The respondent filed a general denial, but admitted the child enlisted in the Air Force as of May 30, 2001. The respondent's answer alleges that the respondent is paying for bills previously accrued and outstanding for the child, and regarding circumstances pertaining to another earlier child.

3. Current child support is legally applicable to the support of the child for the current period. In other words, the support payable on the first of the month is generally applicable as support attributable to that calendar month. A child support order is the legal measure of the noncustodial parent's duty of support. *National Acct. Sys. of Lincoln v. Vergith*, 246 Neb. 604, 521 N.W.2d 910 (1994). The

support paid or payable for the periods representing the installments due on May 1, 2001, and prior, fully satisfy the petitioner's duty of support for such prior periods.

4. The admitted entry of the child into the military service constitutes emancipation as a matter of law. Because it is immaterial to the outcome whether the child entered the military on May 29 or May 30, as the May 1 installment covers the entire month of May and is not prorated, there is no factual issue requiring a hearing.

5. The existence of prior obligations of the respondent pertaining to the child have no legal relationship to the existence of a continuing duty of support.

6. In short, nothing pleaded in the respondent's answer raises an issue of fact. The admission regarding the child's entry into the military, coupled with the limited nature of the relief sought, show that the petitioner is entitled to the relief sought as a matter of law, and that the petitioner is entitled to judgment on the pleadings.

ORDER: IT IS THEREFORE ORDERED that:

1. Judgment is hereby entered on the pleadings granting the petitioner's application for termination of his support obligation for Pamela Diane Wetzler effective upon her entry into the military service of the United States on May 30, 2001.

2. Each party shall bear his or her own respective costs and attorneys' fees.

Signed at O'Neill, Nebraska, on June 4, 2001.
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.
Done on _____, 20__ by ____.
- : Enter **the termination of** 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 "Judgment on the Pleadings" entered.
Done on _____, 20__ by ____.

Mailed to:

BY THE COURT:

William B. Cassel
District Judge