

IN THE DISTRICT COURT OF CHERRY COUNTY, NEBRASKA

NANCY JEAN BOHMAN,

Petitioner,

vs.

CURTIS GALE BOHMAN,

Respondent.

Case No. CI00-103

**DECREE OF
LEGAL SEPARATION**

DATE OF FINAL HEARING: July 24, 2001.

DATE OF RENDITION: July 25, 2001.

DATE OF ENTRY: Date of filing by court clerk (see file stamp).

This matter came on for final hearing. The petitioner appeared personally and was represented by Todd Flynn, and the respondent appeared personally and was represented by James J. Orr. A trial was had to the Court. The matter was taken under advisement.

NOW, effective upon the date of filing of this decree by the court clerk (the date of "entry" of decree), the Court, being fully advised in the premises, hereby finds, orders, adjudges and decrees as follows:

1. **JURISDICTION:** At filing, the petitioner resided in this county and now resides in this county. Although not required for a legal separation, the petitioner resided in Nebraska for more than one year prior to filing. More than 60 days have passed since personal service was perfected or a voluntary appearance was entered. Neither party is now a party to any other pending action in any court for divorce, legal separation, or dissolution of marriage. Neither party is a member of the Armed Forces of the United States or any of its allies. The Court has jurisdiction of both parties and the subject matter of this action.

2. **MARRIAGE:** The petitioner and the respondent were most recently married on November 10, 1979, in the City of Valentine, Cherry County, Nebraska.

3. **LEGAL SEPARATION:** All reasonable efforts to reconcile have been made and there is no reasonable possibility of reconciliation. The marriage is irretrievably

broken. The petitioner and the respondent shall live separate and apart. This decree provides for the necessary adjustments of property, support, and custody rights with regard thereto. This decree becomes final and operative upon the date of entry.

4. **ISSUES TRIED AND ORALLY STIPULATED:** The parties were unable to agree as to certain issues and a trial was had on such issues. The parties stipulated in open court regarding certain issues, which supplemented the stipulations made at the pretrial conference and included in the pretrial order. The stipulations are fair and reasonable in all respects and are not unconscionable, and are hereby approved, and compliance therewith ordered, and the findings and orders hereinafter made incorporate such stipulations insofar as they go, and the Court determines the other issues upon the evidence presented.

5. **NO CREDIT:** Credit shall **NOT BE ALLOWED** for any payments required to be paid to the Clerk of the District Court or to the State Disbursement Unit and which are not paid to the proper officer. All references to the court clerk or Clerk of the District Court shall mean the Clerk of the District Court of Cherry County, Nebraska.

6. **PAYMENTS:**

A. All payments of attorneys fees and/or costs ordered in this decree shall be paid to the Clerk of the District Court for disbursement to the person entitled to receive the same.

B. Until the State Disbursement Unit becomes operative, all payments of alimony, child support, and/or medical support ordered in this decree shall be paid to the Clerk of the District Court for disbursement to the person entitled to receive the same. When the State Disbursement Unit becomes operative, all payments of alimony, child support, and/or medical support ordered in this decree shall be paid to the State Disbursement Unit for disbursement to the person entitled to receive the same.

7. **PETITIONER'S PROPERTY:** The petitioner's sole and separate property, subject to encumbrances unless otherwise provided herein, shall consist of:

A. All of the property now in the petitioner's possession except as specifically awarded to the respondent herein.

B. The real estate commonly described as 221 North Howe Street, Valentine, Nebraska, and legally described as [deleted] (the "Valentine house"), subject to the first mortgage or deed of trust to Union Bank, but free and clear of the second mortgage or deed of trust to Union Bank as more specifically described below.

C. The 1990 Chevrolet van, VIN [deleted], with all keys and the certificate of title to be duly endorsed to the petitioner.

D. The 1983 Oldsmobile automobile, VIN [deleted], with all keys and the certificate of title to be duly endorsed to the petitioner.

E. The following items of tangible personal property now in the petitioner's possession: stove, refrigerator, table & chairs, china cupboard, living room set, tv and stand, king-size bedroom set, Levi's bedroom set, movie camera, computer & stand, washer, and dryer.

F. The following items of tangible personal property now in the respondent's possession: Levi's fishing pole & tackle box, Levi's basketball & hoop, Levi's \$2 bill collection, all documents concerning the Herbalife business, all records from the safe, petitioner's birth certificate, petitioner's high school diploma, petitioner's nursing diploma, petitioner's family history, petitioner's father's will and personal representative papers, petitioner's life insurance policy documents, petitioner's home mortgage documents on the Valentine house, petitioner's bank statements, petitioner's copies of the VISA statements, all Herbalife statements, and the petitioner's address book. The respondent shall marshal such items and deliver them into the possession of the petitioner within 30 days from the date of entry of decree.

G. One-half of the proceeds from negotiation of the 2000 federal and state income tax refund checks of [deleted] and [deleted] respectively.

H. All life insurance policies insuring the life of the petitioner, which shall be transferred to the ownership of the petitioner, and the beneficiary of such policies may be changed at the petitioner's discretion.

I. One half of any refund or advance refund attributable to the Economic Growth and Tax Relief Reconciliation Act of 2001.

8. **RESPONDENT'S PROPERTY:** The respondent's sole and separate property, subject to encumbrances unless otherwise provided herein, shall consist of:

A. All of the property now in the respondent's possession except as specifically awarded to the petitioner herein.

B. The real estate legally described as [deleted] (the "Crookston house").

C. The antique tractor.

D. The John Deere Model M tractor.

E. The 1979 Lincoln Continental automobile, VIN [deleted], with all keys and the certificate of title to be duly endorsed to the respondent.

F. The 1983 Ford Ranger pickup truck, VIN [deleted], with all keys and the certificate of title to be duly endorsed to the respondent.

G. The 1972 Ford Courier motor vehicle, VIN [deleted], with all keys and the certificate of title to be duly endorsed to the respondent.

H. The following items of tangible personal property now in the respondent's possession: one wedding ring, cellular phone antenna, barbeque grill, two freezers, snow blower, lawn mower, and 14 foot Lund rowboat.

I. The following items of tangible personal property now in the petitioner's possession: one wedding ring, picture of Jesus, and Strong concordance book. The petitioner shall marshal such items and deliver them into the possession of the respondent within 30 days from the date of entry of decree.

J. One-half of the proceeds from negotiation of the 2000 federal and state income tax refund checks of [deleted] and [deleted] respectively.

K. All life insurance policies insuring the life of the respondent, which shall be transferred to the ownership of the respondent, and the beneficiary of such policies may be changed at the respondent's discretion.

L. One half of any refund or advance refund attributable to the Economic Growth and Tax Relief Reconciliation Act of 2001.

9. **DEBTS:** The indebtedness of the parties shall be paid as follows:

A. Each party shall pay the debts incurred by that party personally since the separation on or about October 26, 2000.

B. The petitioner shall pay the following: (1) first mortgage or deed of trust indebtedness on Valentine house to Union Bank, and, (2) one-half (\$[deleted]) of the \$[deleted] indebtedness to petitioner's father, Clyde Grooms.

C. The respondent shall pay the following: (1) second mortgage or deed of trust indebtedness on Valentine house to Union Bank, (2) one-half (\$[deleted]) of the \$[deleted] indebtedness to petitioner's father, Clyde Grooms, and, (3) the VISA debt through Union Bank in the approximate amount of \$[deleted].

D. The respondent's share of the Clyde Grooms indebtedness shall be paid (either by funds otherwise available to the respondent or refinancing of such debt) within 90 days from the date of entry of decree.

E. The respondent shall, within one year from the date of entry of this decree, pay or refinance with other security the second mortgage or deed of trust indebtedness on Valentine house to Union Bank, such that the Valentine house is released and discharged from any lien with regard thereto and the petitioner is discharged from any liability or indebtedness with regard thereto.

F. The petitioner shall assume any liability regarding the insurance on the Valentine house and the respondent shall assume any liability regarding the insurance on the Crookston house.

G. Each party shall indemnify and hold the other party harmless of all liabilities such party is required to pay and of all debts encumbering property such party receives.

10. **ALIMONY:** Neither party shall pay any alimony to the other party.

11. **COSTS AND ATTORNEYS' FEES:** Each party shall pay such party's own final costs, including attorneys' fees.

12. **CHILDREN:**

A. There is no entry concerning any minor child affected by this action in the Nebraska Child Custody Jurisdiction Act Registry of the Court, and this Court has jurisdiction of the minor child of the parties to this action, as follows:

Levi Curtis Bohman, SSN [deleted], born on May 1, 1993.

B. The petitioner is awarded the care, custody and control of the minor child of the parties, subject to the specific rights of visitation and correspondence in the respondent set forth below.

C. Appendix "A," Supplemental Order for Custody, etc., attached is incorporated into this Decree, and the parties are directed to comply therewith, except to the extent of any conflict with the specific provisions of this "CHILDREN" section or any paragraph or subparagraph hereof.

D. The respondent shall be entitled to only supervised visitation with the minor child for the remainder of this calendar year and throughout the year of 2002. Effective on January 1, 2003, unless subsequently modified by the court, the respondent shall be entitled to specific rights of visitation and correspondence as specified in Appendix "C" attached hereto and incorporated by reference. All such visitations, supervised or unsupervised, except as expressly noted otherwise, are subject to the following requirements and conditions:

(1) All supervised visitations shall be supervised by any one or more of the following individuals: [deleted]. This requirement pertains only to supervised visitations.

(2) The respondent shall be responsible to assure that direct supervision of each supervised visitation is provided by one of the designated supervisors. This requirement pertains only to supervised visitations.

(3) During any period of supervised visitation, the respondent shall comply with any reasonable direction of the supervisor relating to the physical and mental health and safety of the minor child. This requirement pertains only to supervised visitations.

(4) The supervised visitations shall continue to include the Wednesday night visitations initiated by the respondent relating to attendance at respondent's church services and the every other Sunday visitations initiated by the respondent relating to attendance at respondent's Sunday school and church services. This requirement pertains only to supervised visitations.

(5) The petitioner shall use her best efforts to initiate and make arrangements for at least two other extended periods of supervised visitation each month, and shall propose meaningful and sincere opportunities for such periods of extended visitation, which may involve educational or recreational activities, or any other appropriate visitation activities, including overnight supervised visitation wherever feasible. The petitioner shall make and retain appropriate written records regarding her efforts, and shall file a written report with the court clerk supported by oath or affirmation regarding such efforts and the results thereof on or before the first day of each calendar quarter until further order. The first quarterly report shall be filed on or before October 1, 2001. Failure to report or to make reasonable efforts to accomplish additional supervised visitation shall constitute a material change in circumstances. These requirements pertain only to supervised visitations.

(6) The respondent shall, within 30 days from the date of entry of this decree, commence and implement an appropriate program of therapy and counseling with a certified professional counselor as defined by § 71-1,302, a psychologist as defined by § 71-1,206.09, and/or a medical doctor engaged in the practice of medicine as defined by § 71-1,102 specializing in psychiatry.

(a) Such therapy and counseling shall be directed to achieve the respondent's awareness and understanding of the requirements of an appropriate, safe, and healthy relationship with his child, to develop life skills sufficient to achieve such relationship, and to address any physical or mental health conditions of the respondent which might interfere therewith.

(b) The scope and duration of treatment, therapy, and counseling shall be all such treatment, therapy, and counseling reasonably necessary to achieve the goals described above. Such program of therapy and counseling shall continue until the counselor, psychologist, or psychiatrist determines that the goals have been accomplished.

(c) The respondent shall give his express written waiver of any privilege under § 27-504 for any communications with such professional, and shall

notify the professional at the beginning of the relationship of the requirements of this decree and the express waiver of privilege required by this decree.

(d) At the beginning of each calendar quarter, the respondent shall obtain a written report of such professional regarding the progress of therapy and counseling, and shall provide a copy thereof to the petitioner's counsel of record and shall file a copy with the court clerk. The copy filed with the clerk shall be placed in the file in a sealed envelope bearing the notation that the same may not be opened or inspected by anyone except as expressly authorized by a written order of this court or upon the order or direction of any higher appellate court. The content and substance of the report shall not be revealed by the petitioner or the petitioner's counsel to any other person or entity except as expressly authorized by a written order of this court or upon the order or direction of any higher appellate court.

(e) This program of therapy and counseling shall be in addition to any other religious or spiritual counseling that the respondent may elect to initiate or continue. However, the respondent shall not allow such religious or spiritual counseling to interfere with the therapy and counseling required by this decree.

(f) The respondent shall be responsible for the payment of all costs and expenses associated with such program of therapy and counseling. Financial means (including any available insurance) may justify a less-than-optimal program, but shall not be used to and will not justify a total failure to undertake such program of therapy and counseling.

(g) Failure to continue such therapy and counseling so long as professionally appropriate, or to perform any act or omission reasonably necessary for the accomplishment of the therapeutic goals, shall constitute a material change in circumstances.

(7) During any time when the minor child is in the presence of the respondent and for a period of 24 hours before and after any visitation between the respondent and the child, the respondent shall not have in his possession or upon the premises of his house and its curtilage or within his access at any other location at which the respondent or the child may be present during such periods, any firearm as defined by

§ 28-1201(1). If the respondent is legally authorized and chooses to retain ownership or possession of any such firearm at other times, the respondent shall make arrangements with an appropriate responsible adult to maintain possession and control of such firearms during the prohibited periods described above, and such other responsible adult shall possess and control such firearms to the exclusion of the respondent during such periods. The respondent shall provide any such responsible adult with a copy of this decree, and shall obtain the written promise of such person supported by oath or affirmation to comply with these requirements of exclusion of the respondent from possession or control of such firearms during the prohibited times and submitting to the jurisdiction of this court for any proceeding to enforce the requirements of this order or to coerce or compel compliance therewith. Such written promise and undertaking shall be obtained and filed with the court clerk before such responsible adult undertakes to comply with the requirements of this paragraph.

(8) The respondent shall not, directly or indirectly, by words or acts, harm, threaten, intimidate, or attempt to harm, threaten, or intimidate the petitioner or the child. This requirement applies at all times, within or without any time of visitation.

(9) The respondent shall consent to any reasonable search or seizure of person, premises, or vehicle, with or without probable cause, obtained by the petitioner at any time and performed by any law enforcement officer to assure compliance with the requirements of this decree. This provision does not require any law enforcement officer to take any action requested by the petitioner; it does require the respondent to consent to any such action that any law enforcement officer agrees to undertake at the petitioner's request.

(10) Any failure to comply with any requirement of this visitation order shall be enforceable by contempt and shall constitute a material change of circumstances sufficient to support a modification of decree.

13. VISITATION FINDINGS AND CONCLUSIONS:

A. The paramount consideration in determining appropriate visitation is the best interests of the child.

B. The record in this case shows a history of physical, mental, and emotional abuse by the respondent of the petitioner and children nearly unparalleled outside of this court's criminal docket. The unchallenged and undisputed testimony demonstrates a long history of serious abuse, including injuries to children and serious threats of death or serious bodily injury. On the other hand, the record also demonstrates a sincere love and affection by the respondent of his son, which is clearly reciprocated. This challenging situation requires this court to utilize extraordinary measures for the protection of the health and safety of the child. In so doing, this court does not hesitate to utilize the broad equitable powers vested in the court.

C. The respondent testified with evident, sincere emotion to changes in his life attained through religious and spiritual counseling and the intervention of Jesus Christ. However, he also demonstrated the continuing lack of understanding of the nature of his problem. That demonstration occurred in his testimony attempting to justify the use of guns to threaten and intimidate his wife and child, and failing to repudiate the improper and harmful derogatory statements to his child comparing the child to his mother, which were made during a supervised visitation.

D. That lack of understanding requires lengthy counseling and education of the respondent. This court entertains no illusions that results will occur overnight. It also requires clear and sufficient rules and guidelines for the implementation of continued visitation.

E. The respondent must understand that these are serious matters requiring his attention and cooperation, and that failing a devotion toward achieving a genuine change, and full and enthusiastic compliance with the visitation orders and requirements, he is in jeopardy of losing all visitation rights.

F. The petitioner acknowledges the mutual love and affection between the father and son. She must understand that the child's best interests require the development of a healthy and safe relationship with his father. While much of the required change rests primarily on the respondent, the petitioner must devote more effort to developing that relationship. The petitioner testified regarding the respondent's failure to make more arrangements for supervised visitation. For the *child's* benefit, the petitioner must take a

more proactive approach to arranging, encouraging, and implementing visitations with the respondent. The testimony shows that she recognizes that visitations centered around Sunday and Wednesday church services are beneficial but not alone sufficient to restore and redevelop that healthy parent-child relationship. But that testimony also shows that she has not increased her efforts to make that improvement a reality where the respondent has failed to carry through on such visitations.

14. CHILD SUPPORT:

A. The respondent is ordered to pay child support to the court clerk until the State Distribution Unit becomes operative, and thereafter to the State Distribution Unit, for distribution to the petitioner, at the rate of \$281.00 per month. Such payments shall commence on August 1, 2001, and continue in a like amount on the first day of each month thereafter until each child reaches majority under Nebraska law, becomes emancipated, becomes self-supporting, marries, or dies, or until the further order of the Court.

B. The amount of delinquent temporary support of \$20.00 (as of the date of trial) is preserved herein, and ordered paid by the respondent forthwith.

C. Delinquent child support installments shall bear simple interest at the judgment rate (see "JUDGMENT" paragraph below) from thirty (30) days after date of delinquency until paid.

D. The child support amount has been determined pursuant to the Nebraska Child Support Guidelines, and the findings of the parties' incomes and calculations under the guidelines used in determining the amount of support are set forth on Appendix "B" attached hereto. The court has calculated the deductions for income taxes allocating one-half of the annual exemption for Levi to each parent, although the petitioner will actually receive the tax benefit thereof in odd-numbered tax years and the respondent will actually receive the tax benefit thereof in even-numbered tax years.

15. WITHHOLDING & ENFORCEMENT (MANDATORY):

A. The respondent's income shall be subject to income withholding, which shall be implemented pursuant to the Income Withholding for Child Support Act.

B. The parties' social security numbers are:

(a) petitioner: [deleted];

(b) respondent: [deleted].

C. In the event that such party fails to pay any child, medical, or spousal support payments, as such failure is certified each month by the District Court Clerk prior to the date the State Disbursement Unit becomes operative, and/or, the State Disbursement Unit after the date that it becomes operative, 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 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. **INCOME TAX EXEMPTION:** The petitioner shall be entitled to claim the minor child for dependency exemption purposes for federal and state income taxes for tax year 2001 and for each odd-numbered tax year thereafter. The respondent, if such party pays child support as ordered herein, shall be entitled to claim the minor child for dependency exemption purposes for federal and state income taxes for tax year 2002 and for each even-numbered tax year thereafter. The petitioner is ordered to sign a written relinquishment of the petitioner's claim to the dependency exemption separately for each child for each even-numbered year following the date of the decree until the obligation of support for such child terminates. The petitioner is ordered to deliver such relinquishment to the respondent for the next preceding even-numbered calendar year on or before January 31 of each odd-numbered year, but only if all child support payments due are paid as of such date. The respondent is ordered not to claim any dependency exemption at any time when such party has not paid all child support payments which have become due. The Court retains jurisdiction to enter such orders as may be necessary, including contempt proceedings or modification of support, in the event such party claims a dependency exemption at a time when such party has not paid all child support payments which have become due.

17. HEALTH INSURANCE:

A. There is no health insurance for the minor child presently provided through the employment of either party, but it appears likely that the respondent will qualify for such employment-related health insurance in the near future. At the present time, insurance coverage is provided for the minor child through the Kids Connection program.

B. Within 14 days after attaining eligibility therefor, the respondent shall obtain and shall thereafter provide health insurance coverage on the minor child until the obligation of support terminates as above set forth, so long as such coverage is provided through such party's employment. Until the respondent files a certificate of his employer that such coverage is in effect, on or before the first day of each calendar quarter the respondent shall file a certificate of the respondent's employer verifying that the minor child is not eligible for health insurance coverage through the respondent's employment.

C. Any reasonable and necessary medical expenses incurred for a minor child for whom the obligation of support has not terminated and which are not reimbursed by insurance, whether by reason of any deductible, co-insurance requirement, or lack of coverage, shall be paid 49% by the petitioner and 51% by the respondent, unless the respondent fails to obtain or maintain the required employment-related insurance.

D. If the respondent fails to obtain or maintain the full extent of the insurance coverage when available through his employment, the amount of any such expenses not reimbursed by insurance, whether by reason of any deductible, co-insurance requirement, or lack of coverage, shall be paid by the respondent.

E. The health insurance policy information necessary to comply with the reporting requirement hereinafter set forth shall include, at a minimum, the following: (1) insurance company name and address; (2) policy number (for group policy, both group number and individual identifying number); (3) policy holder name (for group policy, both group name and individual name); (4) policy holder's social security number; and, (5) name, address, and telephone number of any person or entity (such as an employer) with which claims are to be filed or reported.

F. Once the employment-related insurance is implemented, and if the custodial parent files a written request with the Clerk, the party required to provide insurance shall file with the Court, at least annually, a certificate of the insurance company documenting that the required health insurance is currently in effect.

G. The party required to provide insurance shall fully cooperate with any health care provider to facilitate availability of prompt medical care, attention, and treatment to any minor child of the parties.

18. **REPORTS:** Each party shall be required to furnish the Clerk of the District Court of Cherry County, Nebraska, 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 any judgment for alimony, child support, property settlement, attorneys fees, and/or costs, herein made are 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 Decree and payment of the judgment in full, within ten (10) days after the effective date of such change. Failure to comply with the provisions of this section shall be punishable by contempt.

19. **DOCUMENTATION:** Each party is ordered to execute and deliver to the other party such documents as will be necessary to transfer all of the interest of the party not receiving the property to the party who shall receive the particular property under this Decree. In the event that any party fails to execute and deliver such documents within thirty (30) days of this Decree, this Decree shall have the effect of a conveyance and/or release under NEB. REV. STAT. § 25-1304, as amended, with the same effect as though the appropriate documents of conveyance or release had been executed and delivered in conformity with this Decree.

20. **JUDGMENT:**

A. Judgment is hereby entered against respondent and in favor of petitioner for child support as above set forth.

B. The judgment rate applicable as of the date of entry of this decree is 5.442% per annum.

IT IS THEREFORE ORDERED that the parties to this action shall fully comply with the above findings and orders.

Signed in chambers at Ainsworth, Nebraska, on July 25, 2001.
DEEMED ENTERED as of date of filing by court clerk.

If checked, the Court Clerk shall:

- : Mail copy of decree 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 _____.
- : Note the decision on the trial docket as: [date of filing] Signed "Decree of Dissolution of Marriage" entered; judgment entered accordingly.
Done on _____, 20____ by _____.

Mailed to:

BY THE COURT:

William B. Cassel
District Judge