

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

**CHERYL RAE ROSBURG  
ARROWSMITH,**  
Petitioner,

vs.

**BRADLEY ALAN ARROWSMITH,**  
Respondent.

Case No. CI01-15

**SUPPLEMENTAL  
TEMPORARY ORDER**

**DATE OF HEARING:** August 28, 2001.

**DATE OF RENDITION:** August 29, 2001.

**DATE OF ENTRY:** See clerk's file stamp date (§ 25-1301(3)).

**TYPE OF HEARING:** Open court at Bassett, Rock County, Nebraska.

**APPEARANCES:**

For petitioner: Forrest F. Peetz with petitioner.  
For respondent: Warren R. Arganbright with respondent.

**SUBJECT OF HEARING:** Petitioner's motion for termination of visitation.

**PROCEEDINGS:** See journal entry rendered August 28, 2001.

**ORDER:** IT IS ORDERED that:

1. The motion is granted to the extent of the relief provided herein and is otherwise denied.  
2. The provisions of this order pertaining to child visitation shall supersede and replace those of the Temporary Order rendered and entered on August 3, 2001. All other provisions of the August 3 Temporary Order shall remain fully effective. The temporary order suspending visitation rendered on August 21, 2001, and entered on August 22, 2001, is superseded by the terms of this order.

3. The County Attorney of Rock County, Nebraska, is directed to investigate and, if appropriate, commence a criminal prosecution or criminal contempt proceeding against the respondent for violation of protection order. The Official Court Reporter is authorized to transcribe and release to the county attorney any testimony or portions of testimony of the respondent or any other witness that may be requested by the county attorney subject to the standard rules regarding payment therefor.

4. The respondent shall have specific rights of visitation with the minor child, [deleted], born [deleted], in accordance with Appendix "C" attached hereto and incorporated by reference, except as

modified by this order. The provisions of Appendix "A" attached hereto and incorporated by reference shall govern the parties' rights and responsibilities regarding visitation, except as modified by this order. To the extent of any conflict between Appendix "A" and/or Appendix "C" with the specific provisions of this order, the specific provisions shall control.

5. Throughout the pendency of this proceeding, and notwithstanding any other provision of Appendix "A" and/or Appendix "C":

- a. There shall be no extended summer visitation;
- b. The holiday visitations contemplated by Appendix "C" shall commence with the Thanksgiving visitation in the year 2001 and continue thereafter in accordance with Appendix "C;"
- c. The respondent shall not use physical discipline of the child;
- d. The respondent shall not use foul or abusive language in the presence of the child;
- e. The respondent shall not violate the terms of any protection order which may then be in effect;
- f. The petitioner shall not be personally present during any visitations between the respondent and the minor child, and,
- g. The temporary visitation is probationary and subject to ex parte revision without prior hearing upon showing of violation of conditions thereof by affidavit.

6. The respondent shall be limited to supervised visitation with the minor child for the next four every other weekend visitations, the first of which shall commence on the weekend of September 14, 2001. Such visitations shall be during daytimes only without overnight visitations. Such visitations shall be supervised by one of the following persons, in the following order of priority: (1) Robin [deleted], (2) Sandy [deleted], or, (3) Mary [deleted].

7. The supervisor shall be personally present at all times during such supervised visitations. Unless the supervisor believes that an activity poses an immediate health or safety risk to the minor child inappropriate to a child of that age, the supervisor's participation shall be limited to observation and reporting.

- a. If the supervisor believes that an observed activity constitutes an immediate health or safety risk to the minor child inappropriate to a child of that age, the supervisor shall so advise the respondent. If the respondent persists in allowing such activity thereafter, the supervisor shall: (1)

immediately terminate the visitation, (2) if necessary, summon law enforcement to assist in the cessation of such visitation, and, (3) promptly report such termination in writing to the court clerk and use reasonable efforts to notify counsel for petitioner and respondent of the circumstances thereof.

b. If the supervisor believes that a visitation place and/or activity is not reasonable, but does not constitute an immediate health or safety risk to the minor child inappropriate to a child of that age, the supervisor shall so advise the respondent. If the respondent persists, the supervisor shall report such place and/or activity in writing to the court clerk and use reasonable efforts to notify counsel for petitioner and respondent of the circumstances thereof, but shall not otherwise interfere during the visitation.

c. The court has used the term “immediate health or safety risk to the minor child inappropriate to a child of that age” because many life activities pose health or safety risks that reasonable persons do not deem inappropriate. For example, riding as a passenger in a properly equipped, modern motor vehicle using all available safety equipment and restraints nevertheless poses an immediate health or safety risk from a potential accident or collision. Because the utility of such transportation devices far exceeds the degree of risk under such circumstances, reasonable people uniformly do not deem that risk inappropriate. The supervisor’s analysis of a situation requires such a reasonable risk/utility comparison and no court order can contemplate every conceivable situation.

8. The respondent shall make telephone contact with the supervisor at least 72 hours before a regular every other weekend visitation to make arrangements for specific times of commencement and termination of visitation. The respondent shall consult the first priority supervisor, and if such person is not available, shall consult the second priority supervisor, and if such person is not available, shall consult the third priority supervisor. If none are available, counsel for respondent shall submit an ex parte motion with the names of at least two other persons as proposed supervisors who are not related to the petitioner or respondent within the second degree of consanguinity and shall use reasonable means to attempt to include counsel for petitioner in a telephonic hearing thereon at least 36 hours prior to the scheduled commencement time.

9. The supervisor shall pick up the child at the child’s place of residence and shall meet the respondent outside the Rock County Sheriff’s office at the rear of the Rock County Courthouse or other location mutually agreed upon by the supervisor and the respondent, except that such location shall not be at the petitioner’s place of residence. The respondent and supervisor shall return to such meeting location

at the conclusion of the visitation, and the supervisor shall return the child to the place of residence. The petitioner shall not accompany the supervisor or otherwise be present during such transitional processes.

10. When supervised visitations cease and unsupervised visitations commence, the petitioner shall take the child to the Rock County Sheriff's office at least fifteen minutes prior to the schedule commencement time and shall leave the child at such location in the supervision of a suitable person, which may include the dispatcher on duty or any other person arranged by the petitioner (except the petitioner herself), and shall depart therefrom so that the petitioner is not present at the time of pickup by the respondent. A reverse procedure shall be used at the end of the visitation period, such that the petitioner is not personally present for the return of the child until after the respondent's departure. This procedure shall apply to all unsupervised visitations, whether for every other weekend or for holidays.

11. The supervisors shall observe the interaction between the child and the respondent, and shall constitute potential witnesses regarding all observations made during such visitations.

12. The court clerk shall furnish a copy of this order to each supervisor named herein or hereafter designated. **Such supervisors are admonished that the supervisors act as the representatives of the court in the best interests of the minor child, and do not represent the interests of either the petitioner or the respondent.**

13. The court adheres to the findings and pronouncements made at the close of the hearing. The unfortunate events of August 11 were at least partially occasioned by the inadequate abilities and level of maturity and sophistication of the substitute supervisor. The petitioner's attempt to obtain a substitute supervisor was commendable, but the choice of supervisor turned out to be inappropriate. The respondent's proposed activities were not unreasonable or irresponsible, provided that appropriate measures were undertaken to provide for the safety of the child. The evidence shows a pattern of conduct by the respondent attempting to control and dominate the petitioner. Although nowhere near as serious, and not in any way comparable to the respondent's behavior, the petitioner attempted to personally control and monitor the visitations. That effort directly conflicts with the court's prescribed procedures designed to effectuate safe and appropriate reasonable visitation. The presence of the petitioner at the meeting place provided the "gasoline and oxygen mixture," but the respondent's conduct in proceeding to and entering the petitioner's vehicle constituted the "spark" that caused the "ignition" of the ugly events that followed. The specific provisions set forth above are intended to prevent any recurrence of such events and provide

for reasonable visitation in the child's best interests while providing for the health and safety of the child and the petitioner.

14. The respondent is admonished that the evidence adduced at the hearing provides substantial evidence that a violation of the protection order occurred. The consequences thereof, if any, will be determined by other proceedings, either in this case or in a separate proceeding. But the respondent must understand that subsequent violation of the provisions of this order, which incorporates the provisions of the protection order, would likely result in termination of all visitations.

Signed in chambers at Ainsworth, Nebraska, on August 29, 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 \_\_\_\_.
- Comply with paragraph 12 of the order.  
Done on \_\_\_\_\_, 20\_\_\_\_ by \_\_\_\_.
- Note the decision on the trial docket as: [date of filing] Signed  
"Supplemental Temporary Order" entered.  
Done on \_\_\_\_\_, 20\_\_\_\_ by \_\_\_\_.

Mailed to:

**BY THE COURT:**

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