

IN THE DISTRICT COURT OF ROCK COUNTY, NEBRASKA

**CHERYL RAE ROSBURG
ARROWSMITH,**

Petitioner,

vs.

BRADLEY ALAN ARROWSMITH,

Respondent.

Case No. CI01-15

**ORDER DENYING
APPROVAL**

DATE OF HEARING: September 28, 2001.
DATE OF RENDITION: October 11, 2001.
DATE OF ENTRY: Date of filing by court clerk (§ 25-1301(3)).
TYPE OF HEARING: In chambers at District Courtroom, Brown County Courthouse,
Ainsworth, Nebraska.
APPEARANCES:
For petitioner: Cheryl Rae Rosburg Arrowsmith pro se.
For respondent: Warren R. Arganbright with respondent.
SUBJECT OF ORDER: Consideration of property settlement agreement.
PROCEEDINGS: See journal entry filed October 1, 2001.
FINDINGS: The court finds and concludes that:

1. The court has reviewed the property settlement agreement and the evidence submitted at the final hearing. The record shows that, very shortly before the final hearing, the petitioner discharged her attorney and entered into an agreement directly with the respondent. The respondent was represented by counsel. The examination of the petitioner at the final hearing established that the petitioner entered into the agreement without the advice and guidance of qualified counsel, and under circumstances highly suggestive of overreaching by the respondent and acquiescence by the petitioner for reasons unrelated to reason and logic, and more indicative of fatigue than sound reasoning.

2. Under these difficult circumstances, the respondent's counsel has performed his obligations fully and professionally, and has not participated in any impropriety nor failed to make any required disclosures to the court.

3. Section 42-366 declares a settlement agreement binding unless the court finds the agreement is "unconscionable." NEB. REV. STAT. § 42-366 (Reissue 1998). That term means "manifestly unfair or inequitable." *Paxton v. Paxton*, 201 Neb. 545, 270 N.W.2d 900 (1978).

4. Because the only financial information provided was supplied by the respondent, the court lacks the balance that would be provided by capable counsel for the petitioner. The petitioner testified that she did not agree with the itemization of the property owned by the petitioner before marriage. That indicates that even the petitioner does not fully rely upon the information provided by the respondent.

5. The child support calculations presented by the respondent represent an income of \$2,161.96 per month for the respondent. The income amounts under the guidelines consider income of both parties derived from all sources. Guideline D. For a self-employed party, depreciation claimed on tax returns must be added back to income or loss from the business or farm. *Id.* Examination of the respondent's tax returns shows that proper attribution of all income to respondent would result in monthly gross income of the respondent in excess of \$4,000.00. The court has not determined how the respondent reached his calculation. But it evidently disregards one of the required factors. The capital gains income resulting from sales of raised cows clearly represents a source of income to the respondent that cannot be disregarded. Both the 1999 and 2000 tax returns show minimal farm income, but include Schedules F showing substantial depreciation that must be added back. The substantial understatement of income would clearly result in a child support amount that conflicts with and fails to meet the requirements of the guidelines. The evidence does not support any deviation, nor did the parties seek to claim any grounds for deviation.

6. The absence of a fully developed evidentiary record deprives the court of the means to fully analyze the property and debts of the parties, and the characterization of such property as premarital or marital. All of the circumstances, considered together, persuades the court that it is more likely than not that the settlement agreement proffered is manifestly unfair or inequitable, and thus not susceptible of being approved by this court.

7. While it may be possible for the parties to renegotiate a conscionable agreement, the likelihood of that development occurring while the petitioner remains unrepresented is unfavorable. Nonetheless, this court will not shirk its responsibility to impartially assess any proposed settlement. The parties will be allowed the opportunity to submit a revised agreement, and the matter will be set down for a final pretrial conference.

8. The petitioner is strongly urged to obtain competent counsel. Her testimony at the September 28 hearing provides little assurance that she has the ability to adequately represent herself.

ORDER: IT IS THEREFORE ORDERED that:

1. The court declines to approve the settlement agreement offered in evidence on September 28, 2001, and declares the same to be unconscionable.

2. The requirements of the progression order entered on September 14, 2001, are adopted and incorporated hereby by reference. Pursuant thereto, the final pretrial conference is rescheduled for **Friday, December 7, 2001, at 1:15 p.m.**, or as soon thereafter as possible in chambers at the Brown County Courthouse, **Ainsworth**, Nebraska.

3. The petitioner is admonished to obtain any successor counsel that she may choose to engage promptly, so that the proceedings may not be delayed by late entry of counsel. If petitioner elects to proceed without counsel, petitioner shall be prepared to perform all of the functions ordinarily done by competent counsel.

4. The court clerk is directed to mail to the petitioner personally a copy of the progression order with all attachments, so that she is properly apprised of the matters necessary to properly participate in a pretrial conference and to be prepared for trial.

5. The parties may negotiate and submit, at any regular time prior to the final pretrial conference, any further property settlement agreement that they may desire to submit for consideration.

Signed in chambers at Ainsworth, Nebraska, on October 11, 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 ____.
- Comply with paragraph 4 of order.
Done on _____, 20____ by ____.
- Note the decision on the trial docket as: [date of filing] Signed “Order Denying Approval” entered.
Done on _____, 20____ by ____.

Mailed to:

BY THE COURT:

William B. Cassel
District Judge