

IN THE DISTRICT COURT OF BROWN COUNTY, NEBRASKA

**THE STATE OF NEBRASKA o/b/o A[.] M.
D[.]; THE STATE OF NEBRASKA o/b/o
B[.] J. H[.]; and THE STATE OF
NEBRASKA, in its own right,**
Petitioner,

vs.

HOMER R. McPHERSON,
Respondent.

Case No. 6772

**ORDER ON JURISDICTION
AND PLEADING**

DATE OF HEARING: No hearing held.

APPEARANCES:

For petitioner: None.

For respondent: None.

SUBJECT OF HEARING: Consideration of jurisdiction and sufficiency of pleadings on the court's own motion.

FINDINGS: The court finds:

1. The respondent has filed an application purporting to seek a decrease in child support, change of child custody, and change of visitation.

2. The respondent filed his application without assistance of counsel. The child's mother has filed an answer without assistance of counsel. It is obvious from the pleading that neither one of them has the slightest understanding of the legal principles involved. Nevertheless, the court is required by applicable precedent to treat these pro se litigants no differently than if they were represented by counsel. They are held responsible in law for their own mistakes in the proceeding.

3. This is a filiation proceeding originally commenced by the state to determine paternity and obtain child support. A decree determining paternity and ordering support followed. At the time of the original proceeding, with the assistance of counsel the respondent began an attempt to litigate custody or visitation issues. However, his counsel withdrew and the respondent's third party petition against the mother was dismissed for lack of prosecution, and the judgment and decree of paternity and support became a final judgment. Thus, there were no initial orders in this court in this action regarding any matters

involving custody or visitation.

4. This court cannot “modify” something that was never litigated in the first instance. Matters of custody and visitation do not automatically attach to a paternity proceedings. This court lacks subject matter jurisdiction *in this case* regarding custody or visitation matters. The respondent must proceed to litigate custody or visitation, if at all, in a separate action for that purpose. That may or may not be possible in this court. But it is not possible in this case. A court has the duty to consider its jurisdiction on its own motion. Here, this court lacks such jurisdiction in this case as to custody or visitation matters, and no amendment to the pleadings will cure that defect. As to custody and visitation issues, the respondent’s application must be dismissed for lack of subject matter jurisdiction without leave to amend.

5. As to the matter of child support, this court retains jurisdiction. However, the respondent’s application wholly fails to allege **facts** to support the respondent’s claim for reduction of child support. No judgment could be entered or withstand review upon such a pleading. That situation does not change merely because the mother, for whatever reason, fails to raise the issue of the deficient pleading. There is a possibility that the respondent may be able to file an amended application to cure the defect. The likelihood of his doing so without legal assistance is probably slim, but he is entitled to that opportunity.

ORDER: IT IS THEREFORE ORDERED that:

1. As to all issues relating to custody or visitation of the child, the respondent’s application is dismissed for lack of subject matter jurisdiction.

2. As to the issue of child support, the respondent is allowed 20 days from the date of entry of this order to file an amended application for modification stating facts sufficient to state a claim, and upon failure to do so, the application or amended application shall be subject to dismissal for failure to state a cause of action.

3. The petitioner, B[.] J. H[.], is allowed 10 days from the filing of the amended application to plead or 20 days to answer, and upon failure to do so shall be deemed to have elected to have the answer filed on November 5, 2001, stand as the answer to the amended application.

Signed at Ainsworth, Nebraska, on November 8, 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 on Jurisdiction and Pleading” entered.
Done on _____, 20__ by ____.

Mailed to:

BY THE COURT:

William B. Cassel
District Judge