

IN THE DISTRICT COURT OF HOLT COUNTY, NEBRASKA

GLEN FRANK MACKLEM,

Petitioner,

vs.

HATTIE ORA MARSHALL MACKLEM,

Respondent.

Case No. CI01-88

DECLARATION OF ANNULMENT

DATE OF TRIAL: January 7, 2002.

DATE OF RENDITION: January 23, 2002.

DATE OF ENTRY: Date of filing by court clerk.

This matter came on for trial. The petitioner appeared personally and was represented by James Widtfeldt. The respondent did not appear, either in person or by any counsel. A trial was had to the Court. The matter was taken under advisement.

NOW, effective upon the date of filing of this declaration by the court clerk (the date of "entry"), the Court, finds, orders, adjudges and declares as follows:

1. **JURISDICTION:** At filing, the petitioner resided in this county and now resides in this county. 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 entered into a ceremony of marriage on June 9, 2001, in the City of Atkinson, Holt County, Nebraska.

3. **ANNULMENT LAW:** An action to annul a marriage is equitable in nature. *Guggenmos v. Guggenmos*, 218 Neb. 746, 359 N.W.2d 87 (1984). An annulment will be granted only for one or more of the grounds enumerated in § 42-374. *Guggenmos v. Guggenmos*, *supra*. A marriage is presumed valid and the burden of proving otherwise is upon the party seeking the annulment. *Id.* However, the statement of a party in an operative pleading constitutes a judicial admission. *Sack Bros. v. Tri-Valley Coop., Inc.*, 260

Neb. 312, 616 N.W.2d 786 (2000). An admission made in a pleading on which trial is had is more than an ordinary admission; it is a judicial admission and constitutes a waiver of all controversies so far as an adverse party desires to take advantage of it, and therefore, it is a limitation of the issues. *Id.* Here, the petition alleges a statutory ground and the answer expressly alleges the same statutory ground. No third parties appear whose rights might be adversely affected by those allegations.

4. **DECLARATION:** The court declares the marriage to be a nullity.

5. **PROPERTY:** Both parties allege that they have not accumulated any property together, and that there is no property to be divided. The court so finds and accordingly makes no orders regarding property or debts.

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

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

8. **CHILDREN:** There are no children of the marriage.

9. **NAME CHANGE:** Pursuant to NEB. REV. STAT. § 42-380 and the request of such party, the name of the respondent is hereby changed from Hattie Ora Marshall Macklem, such party's former name, to Hattie Ora Marshall, the name of such party after entry of this declaration. The change of name shall be effective as of the date of entry of this declaration.

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 **January 23, 2002**; BY THE COURT:
DEEMED ENTERED upon file stamp date by court clerk.

If checked, the court clerk shall:

- Mail a copy of this order to all counsel of record and any pro se parties.
Done on _____, 20____ by _____.
- Note the decision on the trial docket as: [date of filing] **Signed "Declaration of Annulment" entered.**
Done on _____, 20____ by _____.
- Mail postcard/notice required by § 25-1301.01 within 3 days (Declaration of Annulment entered).
Done on _____, 20____ by _____.

William B. Cassel
District Judge

Mailed to: