

IN THE DISTRICT COURT OF HOLT COUNTY, NEBRASKA

HARLEY LEE EVERETT,

Petitioner,

vs.

KATHLEEN CLAIRE EVERETT,

Respondent.

Case No. CI01-48

**DECREE OF DISSOLUTION
OF MARRIAGE**

DATES OF FINAL HEARING: January 8, 2002, and February 6, 2002.

DATE OF RENDITION: February 6, 2002.

DATE OF ENTRY: Date of filing by court clerk.

This matter came on for final hearing on January 8, 2002. The petitioner appeared personally and was represented by Forrest F. Peetz, and the respondent appeared personally and was represented by Kathleen K. Rockey. A trial was begun. After closing arguments, on the petitioner's motion, the evidence was reopened and trial continued to Trial Session No. 2002-03.

The matter came on for further final hearing on February 6, 2002. Forrest F. Peetz appeared without the petitioner and there was no appearance for the respondent. A further written stipulation of the parties was received in evidence and all rests renewed and further closing arguments were waived. 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. 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 married on June 27, 1987, in the City of Atkinson, Holt County, Nebraska.

3. **DISSOLUTION:** All reasonable efforts to reconcile have been made and there is no reasonable possibility of reconciliation. The marriage is irretrievably broken and should be, and hereby is, dissolved. This decree becomes final and operative after 30 days from date of entry, except for purposes of appeal and except that neither party may remarry (other than to each other) for six months from date of entry and the parties are deemed as married for health insurance purposes during such six month period. If either party dies prior to expiration of such time periods, the decree becomes final as of the date of entry.

4. **ISSUES TRIED AND STIPULATED:** The parties were unable to agree as to certain issues and a trial was had on such issues. The stipulations made at the pretrial conference and incorporated in the pretrial order received as Exhibit 1, and the supplemental written stipulation filed February 4, 2002, received as Exhibit 22, 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 Holt County, Nebraska.

6. **PAYMENTS:**

A. All payments of premarital property, property settlement, 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. All payments of alimony (spousal support), 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. State Farm Life Insurance policy #[deleted].

C. 2000 Ford pickup truck, 1979 Ford pickup truck, and 1983 Jeep Wagoneer motor vehicle.

D. IH 1066 tractor, ½ interest in the JD 4630 tractor, ½ interest in the Kremer bale feeder, and wheel rake.

E. Two oak secretaries, ½ of the pots and pans, Hesston belt buckles, bottle collection, McDonald's toys, Roseville pottery, wild turkey collection, Bud bottle collection, part of gun collection, Harley Davidson Barbie dolls, Red Wing crock, shotgun shells, bullets and ammunition, and whiskey bottle collection.

F. Chadron Credit Union bank account.

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. Farmers New World Life insurance policy #[deleted], and Life of Boston insurance policy.

C. 1996 Chevrolet Suburban motor vehicle and 1997 Chevrolet Suburban motor vehicle.

D. Lambs and sheep, goats, horses, and cattle.

E. Any remaining inventory of hay.

F. Teapot collection, ½ of the pots and pans, angel collection, and part of gun collection.

G. Joint account at Chambers State Bank and “sheep” account at Chambers State Bank.

9. **GOOSENECK TRAILER:** The parties’ gooseneck trailer shall be sold and the net proceeds after reasonable expenses of sale shall be divided equally between the parties. The petitioner shall be responsible for delivery of the gooseneck trailer to Triple R Tire to accomplish such sale, and shall do so within 60 days from the date of entry of this decree at the petitioner’s own expense.

10. **COOKIE JARS:** The parties shall divide the cookie jars by physical division in kind in such manner as the parties agree. If the parties fail to agree and accomplish such division within 90 days from the date of entry of decree, the division shall be accomplished as follows: (a) the respondent shall marshal the items at a particular location and shall notify the petitioner in writing of the time and place for division at least 30 days prior to the date of division, which date of division shall be a date consistent with the petitioner’s work schedule; (b) the petitioner shall have the first choice of a single item among the available items, and the respondent shall have the second choice of a single item among the available items; (c) thereafter, the parties shall continue to select individual items in alternating choices, except that if there is an odd number of total items, the respondent shall receive the last two items.

11. **REAL ESTATE:** The parties’ real estate, legally described as the Southeast Quarter (SE¼) of Section 32, Township 27 North, Range 14 West of the 6th P.M. in Holt County, Nebraska, shall be partitioned in kind, and the ownership of the West Half of said Southeast Quarter of said Section 32 is set over to the petitioner and the ownership of the East Half of said Southeast Quarter of said Section 32 is set over to the respondent. (See “Documentation” paragraph below.) In the event that a division fence of the property becomes necessary, the petitioner shall be responsible for one-half of the reasonable and necessary expense thereof and the respondent shall be responsible for the other one-half of the reasonable and necessary expense thereof.

12. **TIER II RAILROAD RETIREMENT:** The respondent, Kathleen Claire Everett, is awarded, and the Railroad Retirement Board is directed to pay, an interest in

the portion of the petitioner's, Harley Lee Everett's, benefits under the Railroad Retirement Act (45 U.S.C. § 231 *et seq.*) which may be divided as provided by Section 14 of that act (45 U.S.C. § 231m). The respondent's, Kathleen Claire Everett's, share shall be computed by multiplying the divisible portion of the petitioner's, Harley Lee Everett's, monthly benefit by a fraction, the numerator of which is the number of years the petitioner, Harley Lee Everett, worked for the railroad employer during the period of the marriage, June 27, 1987, through January 6, 2002, and the denominator of which shall be the petitioner's, Harley Lee Everett's, total number of years employed by railroad employer at retirement, and then dividing the product by two.

13. **VANGUARD:**

A. Pursuant to §414 of the Internal Revenue Code ("the Code") and the Retirement Equity Act of 1984 ("the Act"), this decree constitutes a Qualified Domestic Relations Order ("QDRO").

B. This decree shall **not** be construed to:

- (1) Alter the amount or form of benefits under the Plan;
- (2) Require the Plan to provide any type or form of benefit or any option not otherwise provided under the Plan;
- (3) Require the Plan to provide increased benefits (determined on the basis of actuarial value); or,
- (4) Require the payment of benefits to the Alternate Payee which are required to be paid to another Alternate Payee under another Order previously determined to be a Qualified Domestic Relations Order.

C. The term "Participant" means the employee or former employee spouse who is or may become eligible to receive a benefit from the [deleted].

NAME OF PARTICIPANT:	Harley Lee Everett
Address of Participant:	[deleted]
Social Security number:	[deleted]
Date of birth:	[deleted]

D. The term "Alternate Payee" means the spouse or former spouse of the Participant, who is recognized by this domestic relations order as having a right to receive a portion of the benefits payable under the Plan with respect to such Participant.

NAME OF ALTERNATE PAYEE: Kathleen Claire Everett
Address of Alt. Payee: [deleted]
Social Security number: [deleted]
Date of birth: [deleted]

E. The Plan to which this decree applies is an ERISA employee benefit plan, more specifically a pension plan, in which the Participant and the Alternate Payee have an interest.

NAME OF PLAN: [deleted]
Plan Administrator: [deleted]
Address of Plan: Omaha, Nebraska

F. The parties were married on June 27, 1987, and divorced on February 6, 2002 (decree final for purposes of appeal on February 6, 2002). This decree shall constitute a QDRO and shall be administered in accordance with the Act.

G. The Alternate Payee is entitled to receive a benefit from the Plan with respect to Participant's interest therein in the amount of \$8,029.00. At such time as the Plan is eligible by its terms to provide benefits or payments to the Alternate Payee, \$8,029.00 together with earnings thereon accrued after February 6, 2002, shall be paid to the Alternate Payee.

H. It is the intention of the Court that this decree continue to qualify as a QDRO under § 414 of the Code, as it may be amended from time to time and that the Plan Administrator shall reserve the right to reconfirm the qualified status of the decree at the time benefits become payable hereunder.

I. This QDRO is in compliance with the laws of the State of Nebraska, specifically Neb. Rev. Stat. § 42-366(8) (Reissue 1998).

J. The court retains jurisdiction with respect to this decree to the extent required to maintain its qualified status and the original intent of the court as set forth herein.

14. PREMARITAL PROPERTY:

A. The respondent provided compelling evidence to trace \$20,000.00 of premarital property paid over into the possession of the petitioner. At the time of transfer, the transaction was intended as a loan and not as a gift. After the marriage, the property

was converted from a loan into an investment in cattle that were subsequently liquidated and the proceeds utilized in the purchase of real estate. The respondent's evidence as to the other \$10,000.00 that was placed into a certificate of deposit is wholly unsatisfactory as to the ultimate disposition thereof.

B. The petitioner's evidence as to his premarital property persuades the court that the petitioner brought at least \$5,000.00 of net equity in cattle ownership to the marriage. The petitioner's evidence otherwise fails to persuade the court of the proper value attributable to premarital property.

C. The respondent shall have a judgment against the petitioner for premarital property in the amount of \$15,000.00, with interest at 10% per annum on the unpaid balance from date of entry of decree until paid, and which shall be payable in monthly amortized installments of \$318.71 including both interest on the unpaid balance, the first installment due one month after date of entry of decree and a like installment on the same day of each consecutive month thereafter for 59 additional months until paid in full. Such amounts shall be paid to the court clerk for disbursement to respondent.

D. The petitioner shall have the right to prepay in full at any time without penalty, but shall not otherwise have the right to prepay.

E. In the event that any installment becomes delinquent for more than 25 days, the entire balance shall become due and payable in full without necessity of demand and shall draw interest at the rate of 12% per annum until paid in full.

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

A. Except as otherwise specifically provided below, each party shall pay the debts incurred by that party personally since the filing of the action on April 19, 2001.

B. The petitioner shall pay the following: pickup truck loan at Chambers State Bank, \$350.00 of balance owed to J.W. Alden, D.D.S., and \$268.52 of balance owed to West Holt Memorial Hospital.

C. The respondent shall pay the following: operating loan at Chambers State Bank, remainder of balance owed to J.W. Alden, D.D.S., and any other balance owed to West Holt Memorial Hospital.

D. 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.

16. PROPERTY SETTLEMENT:

A. The petitioner shall pay to the court clerk for disbursement to the respondent as marital property settlement the total sum of \$2,500.00, payable within one year after date of entry of decree.

B. The judgment shall bear interest at the judgment rate (see "JUDGMENT" paragraph below) from the date of entry until paid.

17. ALIMONY:

A. The petitioner shall pay alimony (spousal support) to the State Disbursement Unit for disbursement to the respondent in the total sum of \$400.00 per month, commencing on March 1, 2002, and on the first day of each month thereafter. Effective on June 1, 2009, the alimony installment amount shall increase to \$650.00 per month, and shall continue on the first day of each month thereafter until the alimony terminates as provided below or until further order of the court.

B. The alimony arrearage of \$379.37 as of February 5, 2002, together with accrued interest as of such date of \$0.92, with interest on the arrearage accruing thereafter at the judgment rate, is preserved in this decree and shall be paid to the State Disbursement Unit forthwith.

C. Such alimony is subject to termination on the death of either party, the remarriage of the respondent, the normal (and not early) retirement of the petitioner from railroad employment, or the total and permanent disability of the petitioner.

D. There shall be no interest upon any installment paid on or before the due date thereof, but any delinquent installment shall bear interest at the judgment rate (see "JUDGMENT" paragraph below) from due date until paid.

18. COSTS AND ATTORNEYS' FEES: The petitioner shall pay the taxable costs of this action. In addition thereto, the court taxes as additional costs an attorney fee for the benefit of respondent's attorney in the sum of \$500.00, to be paid by the petitioner to the court clerk within 30 days after entry of decree. If not timely paid, such amount shall

bear interest from the date of entry at the judgment rate until paid. The court finds that the respondent failed to introduce evidence sufficient to support more than a nominal fee. *Boamah-Wiafe v. Rashleigh*, 9 Neb. App. 503, 614 N.W.2d 778 (2000).

19. **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 children of the parties to this action, as follows:

- (1) Samantha Jo Everett, SSN [deleted], born on [deleted];
- (2) Margaret Kay Everett, SSN [deleted], born on [deleted]; and,
- (3) April Marie Everett, SSN [deleted], born on [deleted].

B. The respondent is awarded the care, custody and control of the minor children of the parties, subject to reasonable rights of reasonable visitation and correspondence in the petitioner, and the respondent shall consider the petitioner's work schedule in determining reasonable visitation.

C. Appendix "A," Supplemental Order for Custody, etc., attached is incorporated into this Decree, and the parties are directed to comply therewith.

20. **CHILD SUPPORT:**

A. The petitioner is ordered to pay child support to the State Disbursement Unit, for distribution to the respondent, at the rate of \$1,323.00 per month when there are three children subject to the order, \$1,107.00 per month when there are two children subject to the order, and \$772.00 per month when there is one child subject to the order. Such payments shall commence on March 1, 2002, 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 \$1,320.00 is preserved herein, and ordered paid by the petitioner through the State Disbursement Unit in accordance with the implemented income withholding.

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.

21. WITHHOLDING & ENFORCEMENT (MANDATORY):

A. The petitioner'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 State Disbursement Unit, 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.

22. INCOME TAX EXEMPTION: The petitioner, if such party pays child support as ordered herein, shall be entitled to claim the minor children for dependency exemption purposes for federal and state income taxes. The respondent is ordered to sign a written relinquishment of the respondent's claim to the dependency exemption separately for each child for each year including tax year 2001 and following tax years until the obligation of support for such child terminates. The respondent is ordered to deliver such relinquishment to the petitioner for the next preceding calendar year on or before January 31 of each year, but only if all child support payments due are paid as of such date except any delinquency occurring solely by reason of timing of otherwise sufficient income withholding. The petitioner 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, except any delinquency occurring solely by reason of timing of otherwise sufficient income withholding. In the event that the respondent has already filed any tax return for tax year 2001 claiming a child exemption, the respondent shall file an amended tax return within 30 days from the date of entry of this decree removing such claim of exemption. 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.

23. HEALTH INSURANCE:

A. The petitioner shall provide health insurance coverage, including any available dental, vision, or any other supplemental coverage equivalent to that provided to the petitioner, on the respondent for a period of six months after the date of entry of this decree, so long as such coverage is provided through such party's employment.

B. The petitioner shall provide health insurance coverage, including any available dental, vision, or any other supplemental coverage equivalent to that provided to the petitioner, on each minor child until the obligation of support terminates as above set forth, so long as such coverage is provided through such party's employment.

C. Any reasonable and necessary health-care expenses, including medical, hospital, dental, vision, ophthalmic, or orthodontic expenses, incurred for a minor child for whom the obligation of support has not terminated and which are not reimbursed by insurance shall be paid by the petitioner.

D. 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.

E. 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.

F. 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.

24. **REPORTS:** Each party shall be required to furnish the Clerk of the District Court of Holt 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.

25. **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.

26. **JUDGMENT:**

A. Judgment is hereby entered against petitioner and in favor of respondent for child support, spousal support, premarital property, property settlement, and attorneys' fees taxed as costs 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 at **O'Neill**, Nebraska, on **February 6, 2002**;
DEEMED ENTERED upon file stamp date by court clerk.
If checked, the court clerk shall:

BY THE COURT:

- : 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 "Decree of Dissolution of Marriage" entered.**
Done on _____, 20____ by _____.
- : Mail postcard/notice required by § 25-1301.01 within 3 days.
Done on _____, 20____ by _____.
- : Enter judgment on the judgment record.
Done on _____, 20____ by _____.

William B. Cassel
District Judge

Mailed to: