

IN THE DISTRICT COURT OF CHERRY COUNTY, NEBRASKA

ROBERT M. MONZINGO, SR.,
Petitioner,

vs.

MILDRED E. MONZINGO,
Respondent.

Case No. 10531

ORDER MODIFYING DECREE

DATE OF HEARING: February 8, 2002.

DATE OF RENDITION: February 9, 2002.

DATE OF ENTRY: Clerk's file-stamp date per § 25-1301(3).

APPEARANCES:

For the petitioner: Warren R. Arganbright with petitioner.

For the respondent: No appearance.

SUBJECT OF HEARING: Petitioner's application for modification of decree.

FINDINGS: The court finds:

1. The stipulation of the parties received in evidence as Exhibit 21 is generally fair and reasonable, and is not unconscionable, and is hereby approved, and compliance therewith ordered, except that the calculation of child support under the guidelines recited therein is erroneous and should be partially disregarded, although the net result disclosed by the testimony is consistent with the stipulation. To the extent of the erroneous calculation, the stipulation is disapproved. Except as disapproved, the following findings and orders are pursuant to the stipulation.

2. There has been a material change of circumstances since the decree was entered or last modified.

3. The custody of the minor child, Rex Raus Monzingo, born October 30, 1996, should be changed to joint legal and physical custody, subject to holiday and extended summer visitation, with parenting time allowed as provided by the order below. What the parties refer to as "split" physical custody seems to this court more akin to joint custody. This case illustrates why the term now used by the statute of "custody arrangements and the time

to be spent with each parent” makes more sense than the legalistic terminology, and this court will rely on the statutory language. NEB. REV. STAT. § 42-364 (Reissue 1998).

4. The child support should be modified. This case presents a different twist on the interplay of the child support guidelines with Social Security disability payments. The parties’ guidelines calculations attached to their stipulation show monthly employment earnings of respondent of \$927.33. The evidence shows that the petitioner receives Social Security disability payments of \$1289 per month, and that in addition, disability payments on behalf of the child are paid of one-half of that amount, or \$644.50. At the moment, the child’s payments are presumably being paid to the respondent. The petitioner testified that after the modification, the parties intend to have the child’s payment paid one-half to petitioner and one-half to respondent.

5. The higher appellate courts have discussed the guidelines-disability relationship in several factual situations. In *Gress v. Gress*, 257 Neb. 112, 596 N.W.2d 8 (1999), the Nebraska Supreme Court discussed the general equity favoring allowing a noncustodial parent to utilize Social Security payments as a substitute for his or her income during the benefit-receiving period. In *Hartman v. Hartman*, 261 Neb. 359, 622 N.W.2d 871 (2001), the Supreme Court addressed the proper allocation of a custodial parent’s disability payments in the guidelines calculations. In *Ward v. Ward*, 7 Neb. App. 821, 585 N.W.2d 551 (1998), the Court of Appeals addressed proper guidelines calculations where Social Security benefits were received by the child pursuant to the earnings record of someone other than the present party parents.

6. This case does not fit neatly into any one of the categories because of the joint custody arrangement. This court determines that the general approach of *Gress*, adapted to the joint custody arrangement, properly applies the complicated law in this area. Conceptually, the support guidelines are applied by utilizing the respondent’s earnings as her income and by utilizing all Social Security disability payments, whether actually paid to the petitioner or to a child’s representative payee, as the petitioner’s income. Then the joint custody calculations are made based upon the number of days spent annually with each parent.

Finally, the Social Security disability payments to be disbursed to the respondent are credited against the petitioner's net joint custody support obligation.

7. Accordingly, on the Appendix "B" guidelines calculations, the court has inserted the respondent's (mother's) earnings from employment on Line 4 (salary income). The total of the father's Social Security and the child's Social Security based on the father's earnings, of \$1,933.50, are placed on Line 5 (fringe benefits) under the father's column. Although not strictly fringe benefits, this is a convenient place because it avoids including the amounts as amounts subject to federal or state income taxes or to employment taxes. Page 2 of Appendix "B" shows the joint custody allocation of the support amounts calculated on the first page. This court's calculation of the number of days to be spent with each parent differs slightly from the stipulation calculation, but does not materially affect the result. The net support obligation to be paid by the petitioner (father) is then offset by the credit for Social Security disability payments that would be paid to the mother after the equal division of the child's share is effectuated. The net result is that no payments remain to be paid by either parent, which seems consistent with the intent of the agreement as explained at the hearing.

8. The monthly net incomes of the parties are set forth on Appendix "B" attached hereto and incorporated by reference. The child support amounts determined pursuant to the Nebraska Child Support Guidelines are computed on Appendix "B."

9. This court does not consider that there is a deviation from the guidelines. Rather, after calculation of the support obligations under the guidelines for this joint custody arrangement and allowing credit to the petitioner for the Social Security disability payments to be received by the respondent, there is no net support payable.

ORDER: IT IS THEREFORE ORDERED, ADJUDGED, AND DECREEED that:

1. **RELIEF GRANTED/DENIED:** The application is granted to the extent of the relief set forth below and is otherwise denied.

2. **PRIOR DECREE OTHERWISE EFFECTIVE:** The decree previously entered in this case (and as previously modified, if applicable) shall remain in full force and effect except as expressly modified by this order.

3. **CHILD CUSTODY AND VISITATION:** The custody of the minor child, Rex Raus Monzingo, born October 30, 1996, is changed to joint legal custody in the petitioner and the respondent, with the time to be spent with each parent to be divided as follows:

a. The respondent shall have physical custody of said child on Monday, Tuesday, Wednesday and Thursday.

b. The petitioner shall have physical custody of said child commencing on Thursday evening, and continuing through Friday, Saturday and Sunday, until Monday morning. The petitioner shall transport the child to Valentine on Monday morning to commence school and shall pick the child up on Thursday evening after school.

c. The petitioner shall have a full eight (8) weeks visitation during the summer months and during that time, the respondent shall have visitation every other weekend.

d. Holidays and visitation shall be governed by Appendix "A" and Appendix "C," each of which are attached hereto and incorporated herein by this reference. To the extent of any conflict between Appendix "C" and the specific provisions of this order in paragraph 4 and its subparagraphs, the specific provisions of this order shall control.

e. The parties shall take all actions reasonably necessary to assure that all information and reports from school shall be provided both to the petitioner and the respondent.

f. Pursuant to the parties' agreement, each of the parties shall participate in parenting classes to provide for the best interests of said child.

4. **SUPPORT REDUCED:** The child support obligation of the petitioner is deemed to be satisfied by the Social Security disability payments remitted by the federal government directly to the parties on the child's behalf, and the amount of support payments required to be paid through the State Disbursement Unit is reduced to zero dollars (\$0.00) per month until further order.

5. **TERMINATION OF SUPPORT:** The support obligation for each child continues until such child reaches majority under Nebraska law (presently age 19), becomes emancipated, becomes self-supporting, marries, or dies, or until the further order of the court.

6. **INCOME TAX EXEMPTIONS:** The respondent shall be entitled to claim the minor child for state and federal income tax dependency exemptions until further order. The petitioner shall sign any documents required to effectuate such allocation from time to time.

7. **CHILD CARE:** Each party shall be responsible to pay for any child care expenses incurred by such party during the time spent by the child with such parent as provided above.

8. **PAYMENTS:** All payments of **child, medical, or spousal support** shall be paid to the **State Disbursement Unit** (except for Social Security disability payments discussed above) for disbursement to the person entitled thereto. All payments of **alimony, court costs, or attorneys' fees** shall be paid to the **Clerk of the District Court** for this county for disbursement to the person entitled thereto.

9. **INTEREST:** Delinquent support shall bear interest at the rate of 5.442% per annum from the time and in the manner provided by law.

10. **INFORMATION REPORTING:** Each party shall be required to furnish the clerk of this court, 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 the judgment is 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 order and payment of the judgment in full. Failure to comply with the provisions of this section shall be punishable by contempt.

11. **INCOME WITHHOLDING:** The income of the any party obligated to pay support through the State Disbursement Unit hereunder shall be subject to income withholding, which shall be implemented pursuant to the Income Withholding for Child Support Act.

12. **SUPPORT ENFORCEMENT:** In the event that any such party obligated to pay support 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.

13. **JUDGMENT:** Judgment is hereby rendered accordingly. Each party shall be required to pay their own respective costs and attorney fees.

Signed in chambers at **Ainsworth**, Nebraska, on **February 9, 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 "Order Modifying Decree" 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: