

IN THE DISTRICT COURT OF HOLT COUNTY, NEBRASKA

MARY W. NEKOLITE,
Petitioner,

vs.

DENNIS L. NEKOLITE,
Respondent.

Case No. 19595

**ORDER OF DISMISSAL
WITHOUT PREJUDICE**

DATE OF HEARING: No hearing held.

APPEARANCES: None.

SUBJECT OF HEARING: Petitioner’s “Withdrawal of Application for Modification of Decree filed September 4, 2003.”

ORDER: IT IS ORDERED that:

1. The court construes the petitioner’s “withdrawal” as a motion to dismiss without prejudice under § 25-601. The petitioner is entitled to dismiss as a matter of right.

2. Although the petitioner is entitled to dismiss as a matter of right and is not required to state a reason, the motion did state a reason which appears to be erroneous. It is the law in Nebraska that “before a custodial parent can remove a child from the state, permission of the court is required, whether or not there is a travel restriction placed on the custodial parent.” *State ex rel. Reitz v. Ringer*, 244 Neb. 976, 984, 510 N.W.2d 294, ___ (1994). However, a dismissal made upon an erroneous assumption is nonetheless valid as a dismissal.

3. The petitioner’s application for modification is dismissed without prejudice at petitioner’s cost. The scheduled trial on December 3, 2003, is canceled and the matter is stricken from the trial list.

Signed in chambers at **Ainsworth**, Nebraska, on **October 29, 2003**;
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 of Dismissal Without Prejudice**” entered.
Done on _____, 20____ by _____.

Mailed to:

BY THE COURT:

William B. Cassel
District Judge