DOMESTIC LAW

SUPREME COURT REVIEW

The Nebraska Supreme Court faced many cases in the domestic law area during the survey term. Among the issues resolved were those involving the rights of various parties in domestic relations cases, modifiability of alimony in gross, and the effect of an antenuptial agreement. In addition, the court also discussed the effects of the mother's resources and her removal of the children from the jurisdiction of the court on the father's liability for child support. In the area of child custody, the court restated rules for allowing a change of custody and semantically rejected the preference for custody in the mother in cases involving young children. These and other issues before the court are discussed in this section of the summary of the court's term.

RIGHTS OF PARTIES IN DOMESTIC RELATIONS CASES

Rights of a child to a guardian ad litem

The Nebraska Legislature has provided, in the statutes on divorce and annulment actions, for the appointment of a guardian ad litem for minor children.[1] During the survey term the court discussed the limits of discretion that the trial judge has in such matters. The court pointed out that the limits of this discretion must evolve on a case by case basis[2] and indicated that the guardian may be appointed sua sponte or on motion of the parties.[3] In deciding limits of discretion, the court held that the trial court had abused its discretion in denying the appointment of a guardian ad litem for minor children in a custody dispute involving the rights of the mother to remove the children from Nebraska, particularly where the judge had refused to receive any evidence from the father.[4] Similarly, the court held that a guardian ad litem should have been

1. NEB. REV. STAT. § 42-358 (Cum. Supp. 1972) states:
The court may appoint an attorney to protect the interests of any minor children of the parties. Such attorney shall be empowered to make independent investigations and to cause witnesses to appear and testify on matters pertinent to the welfare of the children. The court shall by order fix the fee, including disbursements for such attorney, which amount shall be taxed as costs and paid by the parties as ordered, unless the court finds the party responsible is indigent and orders the county to pay.
See also NEB. REV. STAT. § 43-209 (Reissue 1974).
2. Pieck v. Pieck, 190 Neb. 419, 420, 209 N.W.2d 191, 192 (1973).
3. Ford v. Ford, 191 Neb. 548, 549, 216 N.W.2d 176, 177 (1974).
4. Pieck v. Pieck, 190 Neb. 419, 420, 209 N.W.2d 191, 192 (1973).

appointed in a divorce action where the paternity of the children was at issue.[5] The adverse interests of children and parent require the protection of the children's interests.[6] The court also directed appointment of a guardian ad litem for children in a case where the parental rights of the mother were being terminated.[7]

Section 42-358 of the state statutes provides for costs of the appointment to be borne by the parties according to the order of the court, and it allows the court to order the county to pay where the "responsible party" is indigent.[8] The court stated it was the "undisputed" liability of the father to pay such costs in one case.[9] However, the court did not elaborate on the basis for such liability. In the case involved, the appeal as to custody and the request for appointment of the guardian both came from the father, but the court did not specify whether the father's liability stemmed from those actions or from his liability for costs of the original divorce action, as provided for in Nebraska statute Section 42-367.[10] This issue as to the "party responsible"[11] may require additional clarification by the court.

Rights of Parent to Appointed Counsel in Hearing to Terminate Parental Rights

Citing the United States Supreme Court and several other jurisdictions,[12] the Nebraska court held that an indigent parent is entitled to appointed counsel in the protection of the parent's "fundamental interest" in the care and control of his child.[13] The court noted that due process requires appointed counsel to overcome the gross imbalance of expertise and experience between the parent

5. Ford v. Ford, 191 Neb. 548, 549, 216 N.W.2d 176, 177 (1974).
6. *Id.*
7. State v. Caha, 190 Neb. 347, 351, 208 N.W.2d 259, 260-61 (1973).
8. NEB. REV. STAT. § 42-358. *See* note 1 *supra* for the text of the statute.
9. Pieck v. Pieck, 190 Neb. 419, 420, 209 N.W.2d 191, 192 (1973).
10. NEB. REV. STAT. § 42-367 states:
In every action for dissolution of marriage or legal separation, the court may require the husband to pay any sum necessary to enable the wife to maintain the action during the pendency. When dissolution of marriage or a legal separation is decreed, the court may decree costs against either party and award execution for the same. or it may direct such costs to be paid out of any property sequestered, or in the power of the court, or in the hands of a receiver.
11. NEB. REV. STAT. § 42-358 (Cum. Supp. 1972). *See* note 1 *supra.*
12. State v. Caha, 190 Neb. 347, 350, 208 N.W.2d 259, 260-61 (1973), *citing inter alia* Stanley v. Illinois, 405 U.S. 645 (1972); Cleaver v. Wilcox, 40 U.S.L.W. 2658 (Mar. 22, 1972); State v. Jamison, 251 Ore. 114, 444 P.2d 15 (1968).
13. State v. Caha, 190 Neb. 347, 350, 208 N.W.2d 259, 261 (1973).

and the adversary state. In the case before the court, the mother had appealed permanent termination of her parental rights.[14] However, the court did not appear to limit the holding to cases in which permanent termination of parental rights was at stake.

Rights of Spouse to Require Conciliation Proceeding

The Nebraska Supreme Court upheld a dissolution of marriage granted to the wife under the no-fault divorce statute[15] despite the claims of the husband that the marriage was not irretrievably broken and despite his request for conciliation proceedings.[16] The court looked to the facts of the case to find evidence that the marriage was irretrievably broken. At the time of the action the husband was serving a sentence in the Nebraska Penal and Correctional Complex on a plea of assult with intent to commit great bodily injury. He had also been charged with rape, sodomy, kidnapping, and assault.[17] The court found in such facts objective evidence that the marriage was irretrievably broken and upheld the decree of the district court. Where there is no reasonable possibility of reconciliation, conciliation court is not required.[18]

Grandparents' Rights to Visitation

In *Brisby v. Whitted*,[19] a father who had experienced difficulty in arranging visitation times, asked the court to set definite times for visitation. The facts indicated that normally visitation was done by the child's paternal grandparents, rather than the father. Attempting to establish equitable arrangements for transportation of the child at visitation, the trial court held that during half the year, the child should be delivered to the grandparents' home and that during the other half of the year, the grandparents were to pick up the child at the home of the mother.

On review, the Nebraska Supreme Court held that the trial court could not order the grandparents to pick up the child since they were not subject to the jurisdiction of the court nor parties to

14. *Id.* at 348, 208 N.W.2d at 260.
15. NEB. REV. STAT. §§ 42-347 *et seq.* (Cum. Supp. 1972).
16. Condreay v. Condreay, 190 Neb. 513, 209 N.W.2d 357 (1973).
17. *Id.* at 514, 209 N.W.2d at 357-58.
18. *Id.* at 515, 209 N.W.2d at 358. The court also noted that the county in which the decree was rendered had not made provision for conciliation court. Therefore, the discretion questioned was that of the district court, rather than conciliation court. *Id.*
19. 190 Neb. 309, 207 N.W.2d 696 (1973).

the action.[20] The modified decree also greatly diminished the visitation times awarded to the father.[21] Although the rights of grandparents to secure visitation privileges is not faced directly in the case, the court appeared unwilling to grant such rights at the request of the parent who did not have custody. Whether grandparents may obtain such rights by bringing suit in their own name was unanswered by the case.

ALIMONY AND PROPERTY SETTLEMENT

In the area of alimony and property settlement, the supreme court again expressed the general rule that such decrees will generally not be disturbed on appeal.[22]

In one case a slight alteration was made in the property award. The court reviewed a division of farmland and modified the decree so that the husband received contiguous tracts in order to enable him to meet his support obligations.[23]

A case involving alimony pointed out the court's adherence to the guidelines set this term in *Magruder v. Magruder*,[24] which limited alimony to a maximum period of 121 months.[25] However, unlike the *Magruder* case, the monthly amount was not increased to reflect the shorter period of time.

The court also reviewed two cases involving alimony in gross. Prior to passage of Section 42-365,[26] alimony awarded in gross was not modifiable.[27] Alimony in gross is that which is a set amount, either specified in a lump sum or by a set sum for a specified period,[28] if the amount is not terminable on specified contingencies, such as remarriage of the receiving spouse. In *Karrer v. Karrer*,[29] the court held that a decree of alimony in gross, awarded prior to July 6, 1972, was not made modifiable despite clear intention of

20. *Id.* at 312, 207 N.W.2d at 698.

21. *Id.* This modification is not explained by the court. Perhaps they were considering the fact that the grandparents, rather than the father usually visited the child. *Id.* at 310, 207 N.W.2d at 698.

22. Miller v. Miller, 190 Neb. 816, 817, 212 N.W.2d 646, 647 (1973). *See also* Sommers v. Sommers, 191 Neb. 361, 363, 215 N.W.2d 84, 84-85 (1974).

23. Snow v. Snow, 190 Neb. 655, 657, 211 N.W.2d 719, 721 (1973).

24. 190 Neb. 573, 209 N.W.2d 585 (1973). For a thorough discussion of *Magruder v. Magruder*, see the casenote at 7 CREIGHTON L. REV. 369 (1974).

25. Snow v. Snow, 190 Neb. 655, 658, 211 N.W.2d 719, 721 (1974).

26. NEB. REV. STAT. § 42-365 (Cum. Supp. 1972).

27. Ziegenbein v. Damme, 138 Neb. 320, 292 N.W. 921 (1940).

28. Bryant v. Bryant, 191 Neb. 539, 216 N.W.2d 162 (1974), holding that $150 a month for 8 years was alimony in gross.

29. 190 Neb. 610, 211 N.W.2d 116 (1973).

the legislature to make it so. As a vested property right, it could not be altered by legislative action.[30]

The court also noted that the trial court's power to modify a decree within six months after rendering it[31] rested on a showing of good cause. The district court should not grant a modification simply because a party presented newly-discovered evidence which could have been presented at trial.[32] The court seemed to rely also on the fact that valuations being challenged on the motion for a new trial had been stipulated by the parties in the original action.[33]

The effect of an antenuptial agreement was considered by the court in *Krejci v. Krejci*.[34] The agreement provided that if the wife survived her husband, she would receive only $10,000 and support; no provision in case of divorce was included. On the basis of the antenuptial agreement, the trial court granted no alimony. The supreme court reversed, noting that a minimal alimony award was proper and that the antenuptial agreement was not binding, but was to be considered along with other pertinent evidence.[35]

CHILD SUPPORT

The court this term restated the general rule that support is the primary responsibility of the father.[36] However, unlike earlier cases[37] employing this rule, the cases this term held that the resources of the mother should also be considered in setting the amount of child support required of the father.[38] The basis for the change in policy was the court's interpretation of the no-fault divorce provisions as requiring the court to adjust the equities between the parties.[39]

Also considered was the issue of whether removing a child from the jurisdiction of the court without permission could be pe-

30. *Id.* at 613-14, 211 N.W.2d at 118-119.
31. NEB. REV. STAT. § 42-372 (Cum. Supp. 1972).
32. Miller v. Miller, 190 Neb. 816, 817, 212 N.W.2d 646, 647 (1973).
33. *Id.*
34. 191 Neb. 698, 217 N.W.2d 470 (1974).
35. *Id.* at 701, 217 N.W.2d at 472.
36. Kockrow v. Kockrow, 191 Neb. 657, 662, 217 N.W.2d 89, 92 (1974).
37. As late as 1972, the court had stressed that the father's liability for child support should be determined independent of the mother's assets. Schneider v. Schneider, 188 Neb. 80, 82, 195 N.W.2d 227, 229 (1972). *See also* Benton v. Benton, 187 Neb. 205, 188 N.W.2d 685, 686 (1971); Trautman v. Trautman, 184 Neb. 202, 204, 166 N.W.2d 415, 417 (1969).
38. Kockrow v. Kockrow, 191 Neb. 657, 662, 217 N.W.2d 89, 92 (1974).
39. *Id.*

nalized by cutting off support payments. The two cases presenting this issue appear to have conflicting holdings.

In *McGee v. McGee*,[40] the supreme court reversed the trial court's modification of support from $135 to $130 per month and held that the stronger sanction of total suspension of payment was the proper remedy. In that case, the father alleged that the mother had moved the children to another state and that this prevented the father from exercising his visitation rights; these allegations had been unanswered by the mother who did not appear.[41]

Similarly in *Bisecker v. Bisecker*,[42] the mother had removed the children from Nebraska and the father alleged that he had not seen them since their removal.[43] However, the court affirmed the trial court's denial of his application for suspension noting that the allegations did not show whether the father had requested the child's return to Nebraska.[44] However, the "last resort remedy" of suspension seems entirely in keeping with guidelines which had been established in *McGee*. The only reasonable explanation for the different result is the fact that Bisecker had been remiss in his support obligation before the mother removed the child to Hawaii. In addition, no evidence showed his prior exercise of visitation rights. It is very likely that the court saw the father's suit not as a protest against his lack of parental contact, but merely as an excuse for avoiding an unwanted obligation. Although the two cases provide no firm rules, they do suggest pleading and proof recommendation for counsel of a father in a similar situation.

Child Custody

Numerous cases before the Nebraska Supreme Court during the survey period challenged decisions as to child custody. This summary will discuss first the appeals of original custody decrees, and then the appeals of suit for a change of custody.

In cases of original custody decrees, the court noted its reluctance to disturb the decision of the trial judge unless that decision revealed a clear abuse of discretion.[45] The court listed several factors which may be considered in deciding custody issues,[46] and

40. 190 Neb. 415, 209 N.W.2d 339 (1973).
41. *Id.* at 416, 209 N.W.2d at 340.
42. 190 Neb. 808, 212 N.W.2d 576 (1973).
43. *Id.* at 808-09, 212 N.W.2d at 577.
44. *Id.*
45. Kockrow v. Kockrow, 191 Neb. 657, 660, 217 N.W.2d 89, 92 (1974).
46. Christensen v. Christensen, 191 Neb. 355, 358, 215 N.W.2d 111, 114 (1974) lists these factors:
moral fitness of parents; the respective environments offered by

stressed that the best welfare of the child was the aim of the court.[47] The court noted the indefinite plans of the mother as to location and employment as one reason for granting custody to the father.[48] Another case stressed the poor housekeeping habits of the mother and her working the night shift at a factory.[49] In a third case, the immorality of persons living in the home combined with physical danger as a basis for removing custody from the parents in a finding of neglect.[50]

The cases involving a suit for change of custody noted that stability was the prime consideration unless the parent to whom custody had been granted had become unfit.[51] Where an original finding of unfitness had been made, rehabilitation of that parent was insufficient to disturb the custody.[52] This rule was applied particularly where the rehabilitation was seriously doubted because of the immorality of the parent deprived of custody.[53]

Where neither parent had originally been found unfit, the court was more willing to change custody based on a change of circumstances. Such a change was found in the divorced mother's relationships with numerous men, despite the fact that there was no finding that she was unfit.[54] In another case the court allowed a change of custody because the mother's home situation was preferable.[55] The court noted that the children's custody had been largely shared by both the mother and father so that the change would not be unsettling to roots the children had established since the first custody decree.[56]

The supreme court stated again that there was no presumption

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each parent; the emotional relationship between the children and their parents; their age, sex, and health; the effect on the children of continuing or disrupting an existing relationship; the attitude and stability of character of each parent; and the capacity to furnish the physical care and education and needs of the children.

L.B. 1015, § 4(1), [1974] Laws of Neb. 1041-42, *amending* NEB. REV. STAT. § 42-364 (Cum. Supp. 1972) directs the court to consider the child's relationship to each parent, reasonable desires of children old enough to comprehend, and the child's general health, welfare and social behavior. *Id.*

47. 191 Neb. at 358, 215 N.W.2d at 114. *See also* NEB. REV. STAT. § 42-364 (Cum. Supp. 1972).

48. 191 Neb. at 356, 215 N.W.2d at 113.

49. Schuller v. Schuller, 191 Neb. 266, 269, 214 N.W.2d 617, 620 (1974).

50. *In re* Karen Vogt, 190 Neb. 205, 207, 206 N.W.2d 849, 850 (1973).

51. Gilman v. Reis, 190 Neb. 409, 411, 209 N.W.2d 173, 177 (1973).

52. Scripter v. Scripter, 190 Neb. 317, 318, 208 N.W.2d 85, 86 (1973).

53. Adamson v. Adamson, 190 Neb. 716, 717, 211 N.W.2d 895, 896 (1973); Gilman v. Reis, 190 Neb. 409, 411, 209 N.W.2d 173, 175 (1973).

54. Petersen v. Petersen, 190 Neb. 805, 807, 212 N.W.2d 580, 581 (1973).

55. Erks v. Erks, 191 Neb. 603, 605, 216 N.W.2d 742, 743 (1974).

56. *Id.* at 605, 216 N.W.2d at 743.

as to the preference for mother or father in a custody case,[57] but application of that general rule leaves room for doubt as to its validity. In *Broadstone v. Broadstone*, the court denied the presumption as to custody preference, but went on to state that young children will usually be awarded to the mother unless she is unfit.[58] The court cited two cases which state the general "tender years" presumption, but ignored the fact that both cases actually granted custody to the father.[59] The court also disregarded a 1972 case, *Gydessen v. Gydessen*,[60] in which it had stated that no presumption favoring the mother or father existed.[61] However, the *Gydessen* decision relied on the statute denying a preference for the mother.[62] The statute was repealed by the no-fault divorce provisions enacted in 1972.[63] This term the court in *Kockrow v. Kockrow* indicated that such a result is required also by the no-fault system.[64] This view is strengthened by the re-enactment of the no-preference statute into the no-fault chapter.[65] Whether this new legislative action will affect the court's renewed willingness in *Broadstone* to favor custody of young children in the mother remains to be seen.

The court again this term stressed that investigatory reports

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57. Kockrow v. Kockrow, 191 Neb. 657, 662, 217 N.W.2d 89, 92 (1974); Broadstone v. Broadstone, 190 Neb. 299, 301, 207 N.W.2d 682, 684 (1973).

58. *Id.* at 301, 207 N.W.2d at 684. Legal custody was actually awarded to the county welfare director, but physical custody was granted to the mother.

59. Bolles v. Bolles, 182 Neb. 798, 800, 157 N.W.2d 410, 412 (1968); Smallcomb v. Smallcomb, 165 Neb. 191, 197, 84 N.W.2d 217, 220 (1957). Other cases expressing this general presumption are Fisher v. Fisher, 185 Neb. 469, 472, 176 N.W.2d 667, 670 (1970); Bauer v. Bauer, 184 Neb. 777, 781, 172 N.W.2d 231, 234 (1969); Hausman v. Shields, 184 Neb. 88, 90, 165 N.W.2d 581, 583 (1969).

60. 188 Neb. 538, 198 N.W.2d 67 (1972).

61. *Id.* at 542, 198 N.W.2d at 69.

62. L.B. 506, § 1, [1974] Laws of Neb., added the following provisions to NEB. REV. STAT. §§ 42-310 and -311 (Reissue 1968):

> 42-310. No presumption shall exist that the mother of such children is more fit to take custody than the father.
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> 42-311. No presumption shall exist that the mother of such children is more fit to take custody than the father. There shall exist no presumption that the welfare of the children is better served by custody with their mother than with their father, or that the mother has any stronger right to custody than the father.

63. L.B. 820, § 35, [1972] Laws of Neb., repealed prior §§ 42-310 to -311.

64. 191 Neb. 657, 662, 217 N.W.2d 89, 92 (1974).

65. L.B. 1015, § 4(2), [1974] Laws of Neb. 1042, *amending* NEB. REV. STAT. § 42-364 (Cum. Supp. 1972), provides:

> In determining with which of the parents the children, or any of them, shall remain, the court shall not give preference to either parent based on the sex of the parent and no presumption shall exist that either parent is more fit to have custody of the children than the other.

upon which the court relies in determining custody must be submitted for examination to parents' counsels.[66] However, even where the report contains inadmissible sections, the custody decree will be upheld on the presumption that the trial court ignored irrelevant or incompetent matters.[67]

JUVENILE LAW

Motion for New Trial

In *State v. Belding*,[68] the Nebraska Supreme Court stressed the therapeutic goals of the juvenile court system in granting a new trial to a youth who had been adjudicated delinquent in the county court. The high court noted that the youth's motion for new trial should have been granted by the county court for several reasons. The adjudication of delinquency had been reached on admissions of the youth that he had been trespassing on school property. On motion for a new trial, the young man stated that he had discovered new evidence that the school board had not prohibited use of the school grounds and that, therefore, he had not been trespassing. In sustaining the motion for a new trial, the supreme court looked to affidavits that had been filed in the transcript on appeal, but had not been filed in the original motion for a new trial. This lenient approach seemed to rely on the fact that no juvenile court proceeding transcript was available and that the adjudication had been based on the youth's admission, rather than evidence produced by the prosecutor; but the major emphasis was that procedures in juvenile court do not require the rigid rules that obtain in criminal proceedings.[69]

LEGISLATION

Among the significant legislation relating to domestic relations passed by the Unicameral during its 1974 session was the enactment of the Interstate Compact on the Placement of Children.[1] If met

66. Schuller v. Schuller, 191 Neb. 266, 268-69, 214 N.W.2d 617, 619 (1974).

67. *Id.*, Christensen v. Christensen, 191 Neb. 355, 359-60, 215 N.W.2d 111, 115 (1974).

68. 190 Neb. 646, 211 N.W.2d 715 (1973).

69. *Id.* at 651-52, 211 N.W.2d at 719.

1. L.B. 909, [1974] Laws of Neb. 856.

with enthusiasm and cooperation from other states, the Compact should attain its primary stated goal: that children requiring placement "shall receive the maximum opportunity to be placed in a suitable environment and with persons or institutions having appropriate qualifications and facilities to provide a necessary and desirable degree and type of care."[2]

The Compact basically provides procedures under which the placement of children among participating states may be effectuated. The sending agency[3] desiring to make an interstate placement must furnish the appropriate public authorities in the receiving state with written notice of the intention to place a child in the receiving state.[4] The notice must include the following information: the name and birth date of the child, the identity of the child's parents or guardian, the identity of the person or agency with which the sending agency proposes to place the child, and a statement of the reasons for the proposed placement.[5] The appropriate public authorities in the receiving state must then notify the sending agency, in writing, that the proposed placement does not appear to be contrary to the interests of the child,[6] after which the placement may be made.

The sending agency retains jurisdiction over the child (including financial responsibility for his support and maintenance) to determine "all matters" relating to the custody, supervision, and treatment of the child which it would have had if the child had remained in the sending agency's state.[7] The receiving state, however, has jurisdiction to deal with any act of delinquency or crime committed by the child in that state.[8] The provision for the retention of jurisdiction might hamper the effectiveness of the Compact, since it apparently means that any decisions relating to the supervision of the child must be made by, or at least with the permission of, the sending agency. This would severely restrict the flexibility with which a person or agency in the receiving state might deal with the particular problems and needs of a child.

2. *Id.*, art. I(a).
3. "Sending Agency" as defined in the Compact, means any participating state or employee thereof, any subdivision of a participating state or employee thereof, any court of a participating state, or any person, corporation, association or other entity, which sends a child to another participating state. *Id.*, art. II(b), at 856-57.
4. *Id.*, art. III(b), at 857. The Department of Public Welfare was designated as the "appropriate public authority" in Nebraska. *Id.*, art. X(c), at 860.
5. *Id.*, art. III(b)(1)-(4), at 857.
6. *Id.*, art. III(d), at 858.
7. *Id.*, art. V(a).
8. *Id.*

Article VI of the Compact provides specifically that delinquent children may be placed in an institution in another state pursuant to the Compact.[9] However, the child must be given a court hearing[10] and the court must find that equivalent facilities for the child are not available in the sending state, and that the institutional care in the receiving state is in the best interests of the child.[11]

One final note with regard to this new interstate Compact should be made. A person subject to placement under the Compact is a "child," defined as follows:

> Child means a person who, by reason of minority, is legally subject to parental, guardianship or similar control.[12]

In Nebraska, a person is a minor if he is under nineteen years of age.[13] But in Iowa, Kansas and South Dakota, a person is a minor if he is under eighteen years of age.[14] Also, in Nebraska and Iowa a person loses his status as a minor if he marries prior to reaching the age of majority,[15] whereas Kansas and South Dakota have no such statutory provisions.[16] It is apparent, therefore, that a person might fit the Compact's definition of a "child" in one state but not in another. A person eighteen years of age, for example, is a "child" subject to the provisions of the Compact in Nebraska, but would not be a "child" subject to the provisions of the Compact in Iowa. It is at present unclear whether a person must meet the definition of a "child" in both the sending state *and* the receiving state in order to obtain the placement benefits of the Compact.

Very important legislation with regard to divorce and alimony was enacted in L.B. 1015.[17] The final date that a responsive pleading in a divorce action may be filed was changed in Section 1 of L.B. 1015. Under the prior law, a responsive pleading was required to be filed within thirty days of the date of service upon the respond-

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9. *Id.*, art. VI, at 859.

10. The language is unclear as to whether a separate court hearing is always required for placement under this Compact or whether the dispositional hearing which normally follows an adjudication of delinquency will suffice.

11. L.B. 909, art. VI, [1974] Laws of Neb. 859.

12. *Id.*, art. II(a), at 856.

13. NEB. REV. STAT. § 38-101 (Cum. Supp. 1972).

14. IOWA CODE ANN. § 599.1 (Cum. Pamphlet 1974-75); KAN. STAT. ANN. § 38-101 (Supp. 1972); S.D. COMPILED LAWS ANN. § 26-1-1 (Pocket Supp. 1974).

15. NEB. REV. STAT. § 38-101 (Cum. Supp. 1972); IOWA CODE ANN. § 599.1 (Cum. Pamphlet 1974-75).

16. *See* KAN. STAT. ANN. § 38-101 (Supp. 1972); S.D. COMPILED LAWS ANN. § 26-1-1 (Pocket Supp. 1974).

17. L.B. 1015, [1974] Laws of Neb. 1040.

ent.[18] This was amended to require that the pleading be filed "on or before the third Monday after the return day of the summons or service by publication."[19]

The statutory provision relating to the waiting period was also significantly amended. The gist of the amendment is that a mandatory sixty days was added to the six-month period which must elapse before a decree dissolving a marriage becomes final.[20] Also, the amendment eliminated the provision which allowed the court to waive the waiting period under certain circumstances.[21]

Section 4 of L.B. 1015 adds several factors which must be considered by a court when determining which of the parents shall have custody of the children following a dissolution of marriage or legal separation.[22] Perhaps the most important of these requires that the court shall not give preference to either parent based on the sex of the parent and that no presumption exists that either parent is more fit to have custody of the children than the other.[23]

The final eleven sections of L.B. 1015 comprise a new enactment by the Unicameral establishing a distinct method for collecting arrearage in child support payments. The act provides that in any proceeding where a district, county or juvenile court has ordered a parent to make child support payments, that court may order the employer of such parent to withhold any of the parent's disposable earnings[24] in order to satisfy delinquent child support payments.[25] To obtain such an order, an application must be filed with the court by a parent or legal guardian of the child, by a person with custody of the child under court order, by a county attorney or deputy county attorney, or by an employee of a county welfare office.[26] Upon receiving the application, the court will set a date for a hearing.[27] The applicant must then serve the employer with a copy of the application, a notice of hearing and interrogatories soliciting information regarding the employment and financial status of the parent-employee.[28] The applicant must also serve the parent-em-

18. NEB. REV. STAT. § 42-354 (Cum. Supp. 1972), *as amended* L.B. 1015, [1974] Laws of Neb. 1040.
19. L.B. 1015, § 1, [1974] Laws of Neb. 1040.
20. *Id.*, § 3, at 1041.
21. *Id.*
22. *Id.*, § 4(1)-(3), at 1041-42.
23. *Id.*, § 4(2), at 1042.
24. Basically, "disposable earnings" means any compensation paid for personal services, minus the deductions required by law to be withheld from those earnings. *Id.*, § 16(2), at 1046.
25. *Id.*, § 6, at 1042-43.
26. *Id.*, § 7, at 1043-44.
27. *Id.*, § 8, at 1044.
28. *Id.*

ployee with a copy of the application and a notice of hearing.[29]

At the hearing on the application, the court will determine whether it has jurisdiction over the employer and the earnings of the parent-employee,[30] and whether the parent-employee has failed to comply with a previous order to pay for the support of a child.[31] The court may then fix the amount to be collected from the parent-employee's earnings,[32] and issue an order to the employer (1) to withhold the amount fixed from the parent-employee's disposable earnings and remit such amount each month to the clerk of the court, (2) to pay the parent-employee any earnings not ordered withheld, (3) to deduct from the amount withheld a sum not to exceed five dollars per month as compensation for the employer's costs, (4) to refrain from disciplining the parent-employee on account of the order, and (5) to notify in writing the clerk of the court in the event that the parent-employee terminates his employment.[33]

The act appears to establish a workable method for collecting overdue child support payments. There is, however, a jurisdictional limitation which should be noted. In order for a court to issue an order to withhold earnings pursuant to this act, it must have jurisdiction over *both* the employer and the earnings of the parent-employee. Therefore, if the employer's place of business is in some state other than Nebraska and he does not transact any business within Nebraska, then a court has no jurisdiction to issue an order to withhold earnings, *even though* the parent-employee might be a resident of Nebraska.[34]

Another alternative method for enforcing the collecting of delinquent child support payments, which was enacted in L.B. 961,[35] has sparked a great deal of controversy. The new provision requires the clerks of the district courts to maintain records of overdue child support payments in every case where child support is fixed by court order.[36] Each month the clerk must certify, to the judge presiding over domestic relations actions, all cases in which

29. *Id.*
30. Section 10 of the act lists specifically the circumstances under which the court will have jurisdiction over the employer and the earnings of the parent-employee. *Id.*, § 10, at 1044-45.
31. *Id.*, § 11, at 1045.
32. *Id.* The amount fixed by the court to be withheld may include reasonable attorney's fees incurred by the applicant. *Id.*
33. *Id.*, § 6(1)-(6), at 1043.
34. *See* note 30 *supra.*
35. L.B. 961, [1974] Laws of Neb. 930.
36. *Id.*, § 1.

child support payments are more than thirty days delinquent.[37] In each case certified, the court is required to appoint an attorney to initiate contempt of court proceedings, so long as no other proceeding for collection of the support payments is pending.[38]

This measure has been criticized on a variety of grounds. Some have suggested that the law is an unconstitutional violation of the doctrine of separation of powers, because the legislature has required courts to act in matters which should be governed by judicial discreton.[39] Others have suggested that the law might be invalid because it allows for a person to be accused of violating a court order without regard to whether or not the violation was "willful."[40] Finally, it has been argued that the current backlog of cases in the district courts makes the new law administratively unworkable, particularly in Douglas and Lancaster Counties.[41]

In other legislation pertaining to domestic relations, the Unicameral lowered the age for release from the Youth Development Center at Kearney from twenty-one to nineteen years of age,[42] and increased the maximum payments for aid to dependent children from twenty-four to seventy-five dollars per month.[43]

37. *Id.*
38. *Id.*
39. Omaha World-Hearld, July 21, 1974, § B, at 22, col. 1.
40. *Id.*
41. *Id.* at col. 3-4.
42. L.B. 992, [1974] Laws of Neb. 962.
43. L.B. 834, [1974] Laws of Neb. 772.