

DISTRICT COURT, JEFFERSON COUNTY, COLORADO Court Address: 100 Jefferson County Parkway Golden, CO 80401	
In re the Marriage of: ANNE E. SMITH, Petitioner, And THOMAS M. SMITH, Respondent.	<p style="text-align: center;">▲ COURT USE ONLY ▲</p> <hr/> Case Number: 95 DR 2748 Division: O/5
<p style="text-align: center;">ORDER RE: RESPONDENT'S MOTION TO VACATE AND/OR MODIFY ORDER OF AUGUST 11, 1999</p>	

THIS MATTER coming before the Court on June 2, 2006, on the Respondent's Motion to Vacate and/or Modify Order of August 11, 1999, and the Court having reviewed the same, and the court file, and thereby becoming fully advised in the premises, now FINDS AND ORDERS:

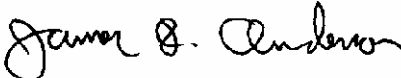
1. The Court finds that it has jurisdiction over the subject matter and personal jurisdiction over the parties.
2. On August 11, 1999, the Court held a status conference hearing due to concerns raised by the Special Advocate and issued an order which restricted the Respondent's contact with the minor children.
3. The Respondent never appealed this order.
4. On April 27, 2006, the Respondent filed the current motion seeking that the August 11, 1999 order be vacated or modified.
5. The Court finds that the Respondent's failure to appeal the original order or seek relief pursuant to C.R.C.P. 59 or 60 within the designated time periods renders this court without authority to vacate the order of August 11, 2006.
6. WHEREFORE the Respondent's motion to vacate the order of August 11, 1999 is DENIED.
7. The Respondent has also requested modification of the August 11, 1999 order.

8. In several places in his motion, the Respondent alleges that his parental rights were “terminated” by the Court in the August 11, 1999 order.
9. The Court finds that this characterization of the proceedings and order of August 11, 1999 is incorrect. The Court did not terminate the parental rights of the Respondent. For instance, the children can still inherit from the Respondent and the Respondent still has a duty and obligation to support the children. However, the Court did issue an order affecting the Respondent’s right to exercise parenting time with the children.
10. The Court finds that the Respondent has failed to submit affidavits setting forth facts supporting the requested modification as required by section 14-10-132, C.R.S.
11. The Court finds that the Respondent has failed to incorporate legal authority into his motion which would support the relief requested as required by C.R.C.P. 121, Section 1-16.
12. The Court finds that the only factual allegation made by the Respondent to support his motion is that the Respondent “is under no legal restraint of any kind that would even hint to a threat to himself, the public or his children... [and] has no pending criminal charges and has never been convicted of any felonies.”
13. The Court finds that the bulk of the Respondent’s motion is couched in broad, speculative terms of the possible effect of the past seven years upon the children.
14. The Court finds that the Respondent fails to address the issues raised by the Special Advocates report and testimony from the 1999 hearing.
15. The Court finds that the child, Robin, is now emancipated by age and that the issue of allocation of parental responsibility is now moot as to this child.
16. The Court finds, based upon the pleadings and the record before the Court at this time, that the Respondent has failed to comply with procedural requirements and has failed to demonstrate that he is entitled to modification of the Court’s order of August 11, 1999.
17. WHEREFORE the Respondent’s motion to modify the order of August 11, 1999 is DENIED.
18. The Court has considered the Petitioner’s request for an award of attorney fees. The Court orders that each party shall bear their own attorney fees regarding this motion.
19. This order was issued in a proceeding where consent was unnecessary and any appeal

must be taken within 15 days pursuant to C.R.M. 7(a).

DONE and signed this 2nd day of June, 2006.

BY THE COURT:

A handwritten signature in black ink, reading "James S. Anderson". The signature is written in a cursive style with a large initial "J".

District Court Magistrate