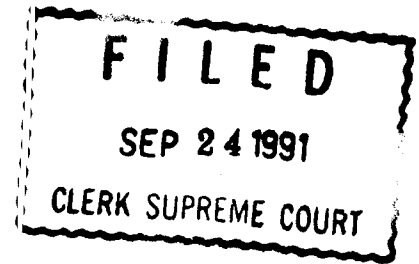


IN THE COURT OF APPEALS OF IOWA

No. 1-032 / 90-898



IN RE THE MARRIAGE OF CENA M. KOLPEK AND DAVID M. KOLPEK

Upon the Petition of

CENA M. KOLPEK,

Appellee/Cross-Appellant,

And Concerning

DAVID M. KOLPEK,

Appellant/Cross-Appellee.

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Appeal from the Iowa District Court for Black Hawk
County, Joseph C. Keefe, Judge.

The parties appeal the provisions of a dissolution
decree. **AFFIRMED AS MODIFIED.**

Terry D. Parsons of Olson, Parsons & Ament,
Cedar Falls, for the appellant/cross-appellee.

Michael M. Lindeman of Lindeman & Yagla, Waterloo, for
the appellee/cross-appellant.

Considered by Schlegel, P.J., and Sackett and Habhab,
JJ.

PER CURIAM

Cena and David Kolpek were married in 1978. Their marriage was dissolved by decree on May 8, 1990. They have no children. David, thirty-four years old at trial time, is employed as a commissioned route salesperson for Mid Continent Bottlers. His average monthly net income is \$1,126.50. Cena, thirty-one years old at trial time, suffered from childhood polio. During most of the marriage she was not employed outside the home.

Cena wears a brace on her left leg, has a weakened right leg as well, and usually relies on canes or crutches to walk. She has a high school education and no specialized training or experience. She believes herself to be employable. She is presently seeking employment. Due to her disability, she receives social security benefits of \$362 per month. She will lose this benefit if she earns more than \$500 per month.

The parties have little property, and its division is not challenged on appeal. The trial court directed David to pay Cena alimony of \$125 per week, terminable upon her death or remarriage. The trial court also provided if Cena obtains employment, then the amount of her net wages after the deduction of income taxes and FICA shall be deducted from alimony. The trial court further provided if Cena's gross employment income reaches the level of \$537.50 (apparently per month), then the alimony award will be terminated. There is an additional provision in the decree

that Cena "will actively seek employment Should she fail to do this, the Court would consider a reduction in the alimony in the future." The decree then provided each party's trial attorney would receive half of a \$1,000 joint income tax refund. The court directed each party to pay any remaining fee for his or her attorney.

David has appealed from the dissolution decree, contending the amount of his alimony obligation is excessive. Cena has cross-appealed, challenging the reduction of her alimony award if she obtains employment and the complete elimination of her alimony award if her employment income exceeds a certain level. In addition, she contends she should receive a larger award of trial attorney's fees. Finally, she requests attorney's fees on appeal.

In this equity action, our review is de novo. Iowa R. App. P. 4. We have a duty to examine the entire record and adjudicate anew rights on the issues properly presented. In re Marriage of Steenhoek, 305 N.W.2d 448, 452 (Iowa 1981). We give weight to the fact findings of the trial court, especially when considering the credibility of witnesses, but are not bound by them. Iowa R. App. P. 14(f)(7).

This is a difficult case because of Cena's permanent disability. It is clear the trial court labored long and assiduously in this matter. It fashioned a decree that allowed for a number of exigencies. In our de novo review,

it is our responsibility to examine the entire record and on those issues properly preserved to adjudicate anew the rights of the parties.

When we do so, we find under the decree the trial court has ordered a dollar reduction in alimony for every net dollar earned by Cena. In addition, all alimony will terminate once she has gross earnings of \$537.50 per month. At the same time, Cena will also be disqualified for social security benefits, as she will be earning more than \$500 per month. If she does not find gainful employment, she will receive 48% of David's net earnings computed annually.

Under the present decree, Cena's income without working is approximately \$862 per month, and after deducting alimony payments, David has remaining income of approximately \$585 per month. Her combined social security and alimony is set up to continue indefinitely, possibly for the rest of Cena's life. If Cena does go to work and earns more than \$537.50 per month, her income would immediately drop to the amount earned. She would lose both alimony and social security.

We determine a better method is to provide Cena both with an incentive to work, and a measure of income stability as she attempts to move back into the work force. The goal of such alimony should be rehabilitative. See In re Marriage of Francis, 442 N.W.2d 59, 63-64 (Iowa 1989).

Both parties should gain by this. Cena will keep all her earnings and alimony. She will have a definite cut-off date, so will have incentive to actually find work.

David, on the other hand, will also have a definite cut-off date for alimony payments. Both parties will benefit in that at the end of the alimony period, they will be free to proceed with their own individual lives without involvement with old problems and relations. They will essentially be starting anew.

We therefore modify the decree. David shall pay alimony for a period of five years from the date of the decree. The alimony payments shall be reduced to \$100 per week from the date of the filing of the decree.

We affirm the trial court in all other respects. The parties shall pay their own attorney fees on appeal. Costs of this appeal are taxed one-half to each party.

AFFIRMED AS MODIFIED.