

IN THE COURT OF APPEALS OF IOWA

FILED

MAY 31 1988

IN RE THE MARRIAGE OF MICHAEL K. HARVEY AND KRISTINA K. HARVEY

CLERK SUPREME COURT

Upon the Petition of)

MICHAEL K. HARVEY,)

Filed May 31, 1988

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Petitioner-Appellant,)

And Concerning)

KRISTINA K. HARVEY,)

8-239
87-1381

Respondent-Appellee.)

Appeal from the Iowa District Court for Polk County (CD 54-32151),
Jerrold W. Jordan, Judge.

Petitioner appeals from the economic provisions of the dissolution decree.
AFFIRMED AND MODIFIED.

William L. Kutmus of Kutmus & Pennington; Roger J. Hudson and Steven
H. Shindler of Wimer, Hudson, Flynn & Neugent, Des Moines; for petitioner-
appellant.

Michael J. Galligan and Dennis P. Ogden of James, Galligan & Conlin,
Des Moines, for respondent-appellee.

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

HAYDEN, J.

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This is a ten-year marriage. The parties have two children: a son, seven years old, and a daughter, five years old. Respondent, Kristina, was awarded physical care of the children in a joint legal custody placement.

Michael is an osteopathic physician with his own practice. In 1985 and 1986 his gross earnings exceeded \$90,000 per year. Kristina has a bachelor's degree in biology and is employed as a medical receptionist at a salary of \$15,000 per year.

The trial court awarded Kristina the parties' house, valued at \$70,000, subject to a mortgage debt of \$56,000. The trial court also ordered Michael to pay Kristina an additional property award of \$60,000. Also, Kristina received furniture and a car. Michael was awarded his medical practice and its assets, as well as other personal property, including a car. He was directed to assume the debts arising from his medical education and the purchase of his medical practice; these debts are approximately \$50,000.

The trial court ordered Michael to pay Kristina child support of \$600 per month per child for a period of three years and \$800 per month per child thereafter. The decree provided for automatic cost-of-living adjustments in the child support award; the decree also provided when only one of the two children remains eligible for support, the amount of the support will be two-thirds of the support previously paid for both children.

Michael was ordered to pay Kristina alimony of \$1,000 per month for three years and \$1,500 per month thereafter, until such time as neither child remains entitled to child support. The decree also directed Michael to pay up to \$5,000 toward Kristina's educational expenses, if Kristina seeks further education within the next five years. In addition, the decree directed Michael

to pay \$2,500 toward Kristina's attorney's fees and \$4,000 toward her other litigation expenses.

Michael contests the property division, the child support, and alimony awarded to Kristina.

In our de novo review of the entire record, we affirm the trial court on all contested issues except for the amount and term of alimony.

The parties' situation here is not unlike In re Marriage of Janssen, 348 N.W.2d 251, 255 (Iowa 1984). We determine Michael is required to pay Kristina \$1,000 per month for four years from the date of the decree and \$500 per month for the next four years. The alimony payments shall terminate sooner upon the death of either Michael or Kristina or upon Kristina's remarriage or cohabitation with another person.

Each party shall pay his or her own attorney fees on appeal. Costs of appeal are assessed to Michael.

AFFIRMED AND MODIFIED.

Sackett, J., and Habhab, J., concur in part and dissent in part.

SACKETT, J. (concurring in part and dissenting in part)

I concur with the majority in all respects except that I would not order the alimony to terminate upon Kristina's remarriage or cohabitation with another person. See In re Sturtz, 415 N.W.2d 173, 176-77 (Iowa App. 1987) (Sackett, J., dissenting).

HABHAB, J. (specially concurring)

I would affirm the trial court in all respects except I would not enhance the alimony payments to \$1,500, but would require alimony at the \$1,000 a month level for a period of ten years with the provision that alimony would terminate sooner upon Kristina's death, remarriage, or her cohabitation with another person.

I believe this result is more equitable. It is not likely that Kristina's earning capacity will, as compared to Michael's, ever be substantial. I believe the following statement from In re Marriage of Janssen should apply here:

Other things being equal and a lump sum being inappropriate here, substantial periodic alimony payments would be in order in this case over a considerable period of time, in view of the parties' sixteen-year marriage and Susan's contributions toward Gary's advancement.

In re Marriage of Janssen, 134 N.W.2d 251 (Iowa 1984).

Therefore, I concur with the majority in all respects except as I have stated above.