

IN THE COURT OF APPEALS OF IOWA
IN RE MARRIAGE OF KATHLEEN E. CARNICLE
AND ROGER G. CARNICLE

FILED

SEP 28 1988

CLERK SUPREME COURT

Upon the Petition of)

KATHLEEN E. CARNICLE,)

Petitioner-Appellee,)

85

And Concerning)

ROGER G. CARNICLE,)

8-463
87-1122

Respondent-Appellant.)

Appeal from the Iowa District Court for Linn County (DM
14355), L. Vern Robinson, Judge.

Respondent husband appeals from the decree of
dissolution of marriage. **AFFIRMED AS MODIFIED.**

Robert F. Wilson, Cedar Rapids, for appellant.

Stanley A. Roush, Cedar Rapids, for appellee.

Considered by Oxberger, C.J., and Schlegel and Hayden,
JJ., but considered en banc.

PER CURIAM

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Respondent husband, Roger Carnicle, claims on appeal that petitioner wife, Kathleen's, alimony award is excessive in amount and duration.

The parties were married in 1971 and their marriage was dissolved in 1987. Their two children were born in 1973 and 1977, respectively. Kathleen is 37 years old and Roger is 36. Throughout the marriage Kathleen was a homemaker. Roger earns \$320 per week from employment as a laborer and, in addition, he operates a tavern. There is evidence the tavern had a loss of \$2,344 in 1985 and profit of \$8,768 in 1986.

The trial court awarded Kathleen alimony in the sum of \$300 per month until she should remarry or die, at which time the alimony obligations would end.

I.

In our de novo review of the entire record, we conclude the alimony in the amount of \$300 per month is fair and equitable. However, we determine the alimony shall terminate upon Kathleen's earning \$125 per week, in addition to the contingencies of her remarriage or death. The decree is modified accordingly.

II.

Three judges voted to terminate alimony upon Kathleen cohabiting with another man and three judges voted that alimony should not be terminated upon that contingency.

Accordingly, the trial court is affirmed by operation of law in not ordering alimony be terminated in the event Kathleen should cohabit with another person.

In considering Kathleen's request for attorney fees on appeal, we determine her request should be allowed. Roger shall pay Kathleen \$500 to apply upon her appellate attorney fees. Costs of this appeal are taxed to Roger.

AFFIRMED AS MODIFIED.