

IN THE COURT OF APPEALS OF IOWA

No. 5-272 / 94-915

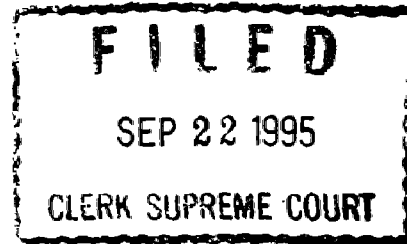
**IN RE THE MARRIAGE OF LINDA J. KLINE
AND SCOTT H. KLINE**

Upon the Petition of
LINDA J. KLINE,

Petitioner-Appellee,

And Concerning
SCOTT H. KLINE,

Respondent-Appellant.



Appeal from the Iowa District Court for Black Hawk County, George L. Stigler, Judge.

Respondent appeals from various economic provisions of the parties' dissolution decree. **AFFIRMED AS MODIFIED.**

Robert D. Fulton of Fulton, Frerichs, Martin & Andres, P.C., Waterloo, for appellant.

Curtis J. Klatt of the Klatt Law Firm, Waterloo, for appellee.

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

PER CURIAM

Respondent-appellant Scott H. Kline appeals the economic provisions of a decree dissolving his four-year marriage. Scott contends it was not equitable to order him to pay petitioner-appellee Linda J. Kline \$600 per month in alimony and \$580 per month toward her house payment. We affirm as modified.

Scott and Linda were married in August 1989, and separated in July 1993. This was not a first marriage for either party. At the time of the dissolution, May 9, 1994, Scott was forty-nine and Linda was forty-seven. She had a job with GMAC and he with John Deere. No children were born to this marriage. Both Scott and Linda had children from prior marriages. Linda's children were twenty-three and twenty-four and Scott's children were seventeen and eighteen.

The only issues presented to the trial court were financial. The trial court awarded Linda her home in Waterloo, Iowa, a 1989 Chevrolet van, all personal property in her possession, and her retirement and other financial accounts.¹

The trial court awarded Scott a 1978 Suburban, a twenty-three foot Midas camper, a sixteen foot boat, motor, and trailer, and any debt thereon, all personal property in his possession, and his retirement and other financial accounts.²

¹ The record does not reflect the value of Linda's financial and retirement accounts and it does not appear the trial court considered them. We do note Linda's long-time employment and ability to take early retirement.

² The record does not reflect the value of Scott's financial and retirement accounts and it does not appear the trial court considered them.

Scott was ordered to pay Linda alimony in the amount of \$600 per month and she was authorized to take a wage assignment to ensure timely payment of the alimony. Additionally, Scott was ordered to pay \$580 per month on a mortgage on Linda's home. Linda was ordered to pay \$10,400 on the mortgage. The court further provided, should Scott file bankruptcy and his obligation to pay the monthly mortgage be discharged, his alimony obligation should increase to \$1180. Scott was required to pay attorney fees to Linda's attorney in the amount of \$1487 and expert witness fees in the amount of \$400 and the costs of the action.

Scott contends the alimony and mortgage payments he is required to pay are excessive.

At the time of marriage, Linda, who had a high school education and two years of business college, worked for GMAC Mortgage Company in Waterloo. She started working for GMAC's successor in 1973 as a commercial loan officer and has had continuous employment since then. At the time of the dissolution, because of a back problem caused by a fall and depression, she was only working part-time.

Scott works at John Deere in Waterloo. In 1992, Scott earned an annual wage of \$40,507.64. Scott has some overtime, but it is not predictable.

At the time of marriage, both Linda and Scott had homes. Scott's home was sold. The home set aside to Linda in the dissolution was the one she had at the time of marriage. Linda did not have any mortgages or encumbrances on her home at the

time of marriage. The record is not clear regarding the situation with reference to Scott's home, where they initially moved. When Scott's home was sold, Scott bought a boat and testified they paid off other bills. Scott and Linda moved into Linda's home and took out a mortgage on the home for \$40,000. The proceeds were used: \$14,700 for the purchase of a 1989 van awarded to Linda; \$5700 to pay off a child support obligation of Scott's; \$3400 to pay off the balance on the boat; \$1050 to pay off the debt on the 1978 Suburban station wagon awarded to Scott; and \$3680 as a down payment on the camper awarded to Scott. At the time of the dissolution, \$10,400 of the proceeds from the loan were in a bank account in Linda's name and it was this amount the trial court ordered Linda to pay on the mortgage. At the time of trial, without the \$10,400, the balance on the mortgage was about \$36,000.

We determine it is equitable to order Scott to pay \$13,800 to Linda to compensate her for the monies he received from the mortgage together with interest at the rate of seven percent from May 9, 1994, the date of the dissolution decree. We modify the decree accordingly.

Scott contends the alimony award is not equitable. Linda introduced medical evidence of back problems which she claims will make it difficult to remain employed on a full-time basis. At the time of trial, she was working part-time. Scott points out Linda accompanied him on a twelve-hour car trip to Canada where they fished twelve hours per day. Scott contends her back problems are temporary. Her job is available to her.

We agree, considering the short term of the marriage, the availability of employment to Linda, and her qualification for an early retirement, we modify to strike the requirement Scott pay Linda alimony.

We deny Linda's request for attorney fees. Costs on appeal are assessed one-half to Linda and one-half to Scott.

AFFIRMED AS MODIFIED.