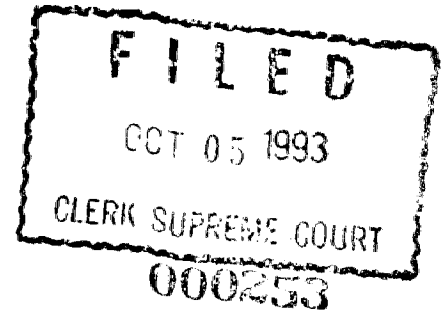


IN THE COURT OF APPEALS OF IOWA

No. 2-667 / 92-0455



IN RE THE MARRIAGE OF CHARLES L. KITCHEN AND
JOE ANNE KITCHEN

Upon the Petition of
CHARLES L. KITCHEN,

Appellant/Cross-Appellee,

And Concerning
JOE ANNE KITCHEN,

Appellee/Cross-Appellant.

Appeal from the Iowa District Court for Muscatine
County, David J. Sohr, Judge.

The husband appeals and the wife cross-appeals a
judgment of the district court modifying the alimony
provision of the parties' dissolution decree. **REVERSED.**

John E. Wunder, Muscatine, for appellant/
cross-appellee.

J. Michael Metcalf of Metcalf, Conlon, Siering & Poock,
Muscatine, for appellee/cross-appellant.

Considered by Oxberger, C.J., and Schlegel and Habhab,
JJ.

SCHLEGEL, J. 000254

Charles and Joe Anne Kitchen were divorced on August 25, 1987, after nearly thirty-seven years of marriage. At that time Charles was retired from the Army. He received social security disability benefits, Veterans' Administration disability benefits, and Army retirement benefits. His total annual income was about \$20,964. Joe Anne was employed as a cook with the Muscatine Community School District. Her annual income was about \$10,422.

The dissolution decree ordered Charles to pay Joe Anne \$400 per month in alimony. The decree provided the alimony would:

continue so long as the respondent remains unmarried or is not cohabiting with another in a manner akin to marriage or has become deceased, whichever event shall first occur.

Charles filed an application for modification on July 1, 1991, alleging Joe Anne was cohabiting with an adult male and asking that his alimony obligation be terminated. Joe Anne filed an application for modification on October 9, 1991, seeking an increase in her alimony.

Charles has remarried since the dissolution decree. He now lives in Lexington, Kentucky, and was sixty-one years old at the time of the modification hearing. Charles has the same sources of income and now has annual income of about \$24,600.

After the dissolution, Joe Anne moved to Springfield, Illinois, and worked as a cook for a school district

000255

there. Her income there was about \$9,876. In June 1991 Joe Anne moved to New York to live with Robert Flanagan. Joe Anne and Robert live together in a mobile home where they share expenses and have a sexual relationship. Joe Anne is presently working part-time and has income of about \$7,536. She was sixty years old at the time of the dissolution hearing. Robert's income is \$8,064.

The district court found Joe Anne's current financial situation was due entirely to her voluntary termination of stable employment in order to move to New York with Robert. The court also found Joe Anne was not receiving full support from Robert. The court reduced Charles's alimony obligation to \$200 per month while she cohabits. Charles appealed, and Joe Anne cross-appealed.

Our review of this equitable action is de novo. Iowa R. App. P. 4. We are not bound by the district court's findings of fact, but we do give them deference because the district court had an opportunity to view, firsthand, the demeanor of the witnesses when testifying. In re Marriage of Brown, 487 N.W.2d 331, 332 (Iowa 1992).

Charles contends his alimony obligation should be terminated due to Joe Anne's cohabitation with Robert. He argues the district court erred in continuing her alimony once it had determined she was cohabiting. Charles believes that under the terms of the parties' dissolution decree, the termination of alimony should be automatic once it is found Joe Anne is cohabiting with another in a manner akin to a marriage.

000256

The meaning of the term "cohabitation" must be derived by seeking out the intent of the trial court when the decree was entered. In re Marriage of Gibson, 320 N.W.2d 822, 823 (Iowa 1982). Cohabitation ordinarily involves a sexual relationship, but more is required: (1) an unrelated person of the opposite sex living or residing in the dwelling house of the former spouse; and (2) living together in the manner of husband and wife. In re Marriage of Harvey, 466 N.W.2d 916, 917 (Iowa 1991).

We need only consider whether cohabitation was established. Id. at 918. Where a dissolution decree terminates alimony on a specific event, the termination is automatic once that event occurs. Id. Extraordinary circumstances have no bearing on alimony which terminates on a specific event. Id.

The dissolution decree in this case terminated Joe Anne's alimony in the event she cohabited with another in a manner akin to a marriage. Thus, our only question is whether this event occurred. Joe Anne admitted that she lived with Robert in his mobile home, that they shared expenses, and that they had a personal and sexual relationship. We conclude Joe Anne was cohabiting with another in a manner akin to a marriage. We note Joe Anne's actions were voluntary, and because of the language of the dissolution decree Joe Anne should have known her actions would cause the termination of her alimony. We determine Charles's alimony obligation should be terminated.

Because we have found Joe Anne is not entitled to any alimony, we do not need to address Joe Anne's claim on cross-appeal that she is entitled to an increased amount of alimony.

We reverse the district court's modification of the parties' dissolution decree. We have applied the provisions of the parties' original dissolution decree to terminate Charles's obligation to pay alimony of Joe Anne. Costs of this appeal are assessed one-half to each party.

REVERSED.