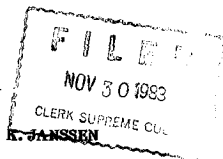


IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF GARY W. JANSSEN AND SUSAN K. JANSSEN



Upon the Petition of	)	
GARY W. JANSSEN,	)	Filed November 30, 1983
Petitioner-Appellee,	)	
And Concerning	)	
SUSAN K. JANSSEN,	)	<u>3-173</u>
Respondent-Appellant	)	<u>2-68917</u>

Appeal from Madison District Court - M. C. Herrick, Judge.

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

Anna I. Shinkle and David Shinkle of Shinkle & Shinkle, Des Moines, for respondent-appellant.

Jerrold B. Oliver and G. Stephen Walters of Webster, Jordan, Oliver & Walters, Winterset, for petitioner-appellee.

Heard by Donielson, P. J., Snell, Schlegel, Hayden, and Sackett, JJ.
Oxberger takes no part.

SACKETT, J.

Respondent wife appeals from the economic provisions of the parties' dissolution decree. She claims the property division, alimony, child support, and attorney fees provisions are inadequate. She also requests an award of attorney fees for this appeal. We affirm as modified.

Gary and Susan Janssen were married in 1966. During the marriage Gary completed work leading to a pharmacy degree in 1968, worked five years as a pharmacist, went to osteopathic school and graduated in 1976, spent a year as an intern, spent three years in the Air Force, and finally, in 1980, began medical practice in Winterset. In 1981 he bought a quarter interest in a medical partnership in which he now holds a one-third interest. He projected a 1982 gross income of approximately \$90,000. While in school he held some part-time jobs and throughout the marriage he contributed significantly to household duties and the raising of the parties' two adopted children, now aged thirteen and four. Susan had a degree in biology and chemistry at the time of the marriage and worked as a medical technologist until Gary began his internship in 1976. Since then she worked only briefly outside the home but expected to enter law school shortly under a scholarship providing her \$4,400 for her first year renewable for the second and third years if she stays in the top third of her class.

Each party was awarded certain personal property; Gary was ordered to pay all of the parties' considerable debts except those incurred by Susan after this action was commenced. Gary was awarded all his interest in the medical partnership and the parties' home, in which they had little or no equity. He was ordered to pay \$2,000 toward Susan's attorney fees and additional costs of \$1,308.15. Susan was awarded custody of the two children, child support of \$300 per month per child, and alimony of \$600 per month through September, 1985, the projected date of her graduation from law school, terminable earlier upon her

remarriage, death or cohabitation with an adult male. Gary was required to maintain health and dental insurance on the children. Susan brought this appeal.

I.

Susan's primary complaint is that the economic provisions of the decree as a whole are inequitable, specifically with regard to the property division, alimony, and child support. In considering the fairness of such provisions, we view them as an integrated whole. In re Marriage of Castle, 312 N.W. 2d 147, 149 (Iowa Ct. App. 1981). We examine the facts of this case in light of the factors listed in Iowa Code sections 598.21(1) (property division), 598.21(3) (alimony), and 598.21(4) (child support).

In general, we believe the provisions of the decree are equitable. We will not disturb either the property division or the child support award. We do, however, believe that Susan is entitled to an increased alimony award.

II.

The trial court found that In re Marriage of Horstmann, 263 N.W. 2d. 885 (Iowa 1979), was inapplicable to the facts of this case. We disagree. That case held that "a trial court . . . may consider the future earning capacities of both parties and in determining those capacities it may consider the education, skill or talent of both parties." Id. at 891. The court may also consider whether one spouse aids the other in obtaining the education leading to the increased future earning capacity. Id.

Gary argues that Horstmann is inapplicable here because he has already reached his maximum earning potential as a general practitioner and that therefore there is no potential for increased future earning upon which a Horstmann award could be based. Gary argues further that, unlike the husband in Horstmann, he was able to finance his medical education almost entirely on his own. His argument is that since Susan made no financial or educational sacrifices on Gary's behalf, Horstmann is inapplicable. We disagree.

The purpose of the doctrine enunciated in Horstmann is to provide to the contributing spouse some compensation for his or her support of the other spouse so that he or she could receive the education or skills to increase his or her earning capacity. In this case, the fact that Gary's future income may be predicted with relative certainty is not dispositive under Horstmann. Furthermore, Gary's argument that Horstmann should not apply because Susan did not contribute to his education is not supported by the record. While Gary was able to pay most of his educational expenses, Susan's income was relied upon for family living expenses. Shortly after Gary finally began to reap the benefits of their combined effort, after sixteen years of marriage, the parties' marriage was dissolved. Susan had no opportunity to share in any benefits from Gary's increased earning capacity, and the record clearly reflects substantial contributions on her part which made Gary's career enhancement possible. It would seem from the record that most of Susan's married life was spent accommodating and furthering Gary's education. This is borne out by the fact that, after sixteen years of marriage, the family had no significant accumulation of assets. It is precisely this sort of situation to which the supreme court in Horstmann addressed itself.

We need not, however, rely solely upon the Horstmann decision in reaching our result. We would arrive at the same conclusion upon consideration of the factors enunciated in Iowa Code section 598.21(3). Under that section we are bound to consider the educational level of each party at the time of the marriage and at the time the action is commenced, as well as the earning capacity of the party seeking maintenance. We are also to consider the distribution of marital assets and the feasibility of the party seeking maintenance becoming self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage. Upon our examination of these and other factors set forth in section 598.21(3), we find the trial court's alimony award to be inadequate under the circumstances.

Because we believe that the alimony awarded Susan by the trial court is inadequate, we award Susan \$1,000 per month in alimony for a period of eleven years. The alimony award will not terminate upon Susan's remarriage, but will terminate on her death.

III.

With the exception of the modifications regarding the duration and amount of alimony, the provisions of the decree are affirmed. Each party shall pay his or her own attorney fees.

AFFIRMED AS MODIFIED.

DONIELSON, J. (dissenting)

I would affirm the provisions of the decree altogether. I therefore dissent.

The majority bases its decision to increase the alimony award on its conclusion that such an increase is mandated by In re Marriage of Horstmann, 263 N.W.2d 885 (Iowa 1978). I believe the facts of this case are such that the Horstmann principles are inapplicable.

A Horstmann award would not be appropriate in this case since Gary was able to finance his medical education almost entirely on his own; in Horstmann, a significant factor in the court's decision was the fact that the wife's family made substantial financial contributions toward the husband's legal education. In addition, it is important to note that Susan, unlike the wife in Horstmann, did not forsake her own education and self-enhancement for Gary--she obtained a college degree in biology before the marriage and became a competent medical technologist. Thus, Susan made little, if any, sacrifice either financially (since Gary was able to finance his own education) or educationally (since she previously went to college) in order to allow Gary to pursue a medical education. 263 N.W.2d at 886. Unlike the Horstmann situation, Susan was not required to cancel or postpone her education or career plans so that Gary could pursue his professional education. During the entire time he was in osteopath school, financed entirely by a government scholarship program, Susan was able to maintain nearly full-time employment as a medical technologist in Des Moines. Finally, it should be noted that Susan's award, along with her scholarship, will enable her to obtain legal education, thus increasing her own future earning capacity.

In addition, despite the majority's argument to the contrary, I believe it is important to note that Horstmann was specifically concerned about the increased future earnings as a marital asset. There, the husband had just graduated from law school and was employed as a law clerk; as stated by the trial court, he "had not begun to reach his full potential for earnings." This case presents a far

different situation—Gary testified in effect that he had already reached his maximum earning potential as a general practitioner. Thus, there is here no potential for increased future earnings that could serve as the kind of divisible marital property contemplated in Horstmann.

I would, therefore, affirm the alimony provisions ordered by the trial court or, at most, lengthen the duration of alimony payments as proposed in Judge Hayden's dissent in this case.

HAYDEN, J. (dissenting in part)

I am of the opinion the governing principles relied upon in In re Marriage of Horstmann, 263 N.W.2d 885 (Iowa 1978), are not controlling here. However, the merits and equities of this case dictate that the trial court's alimony award of \$600 per month to Susan should be extended to a 121 months' duration instead of terminating in September, 1985, or earlier in the event of her remarriage, death, or cohabitation with an adult male. Except for this, I would affirm the trial court.