

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PASCO COUNTY, FLORIDA
CASE NO: 98-537CA
511998DR005375xxxxWS

IN RE: THE MARRIAGE OF:

MICHAEL J. KANTARAS,

Petitioner/Husband,

And

LINDA G. KANTARAS,

Respondent/Wife.

_____ /

FINAL JUDGMENT OF DISSOLUTION OF MARRIAGE

This cause having come before the Court on the husband's petition for dissolution of marriage, custody of the children, and division of marital assets, the wife, respondent, having answered and filed an amended counter-petition for dissolution, custody of the children and division of marital property, the court having heard testimony of the Petitioner, witnesses called by Petitioner, medical experts, and testimony of the Respondent and witnesses called by Respondent, oral argument of counsel, legal briefs filed by counsel, and there having been due proof and corroboration of residence, on the evidence presented the Court finds:

1. Petition. The Petition for Dissolution was filed by the Petitioner/Husband on September 9, 1998.

2. Marriage. The parties were married on July 18, 1989, in Sanford, Seminole County, Florida.

3. Residence. The Petitioner has been a bonafide resident of Pasco County, Florida, for more than six months before the commencement of this action.

4. Irretrievably Broken. The marriage of the parties is irretrievably broken and should be dissolved.

5. Minor Children. There are two children born of the marriage, namely Mathew T. Kantaras (male) age 13, born Jun 3, 1989, in Rockledge, Florida, and Irina L. Kantaras (female) age 10, born January 23, 1992, in Fort Walton Beach, Florida.

6. Petitioner filed a Declaration under Uniform Custody of Minors Act.

7. Parental Responsibility. Petitioner requested with respect to the children that the parties have “shared” parental responsibility. The Respondent also requested in her counter-petition that the parties have “shared” parental responsibility. Accordingly, the court grants the respective requests and the parties shall have “shared” parental responsibility.

8. Child Custody. Petitioner alleged in his Petition it was in the “best interest” of the children that he be given “primary” physical custody of the children and that Respondent be accorded visitation. The Court agrees that the preponderance or overwhelming weight of the evidence supports the request. The Court does grant the primary physical custody of both children, Mathew and Irina, to Petitioner, with liberal visitation rights to the Respondent.

9. Current Custody. The Court, after the close of the trial in this case, conducted an Emergency hearing on May 1 and May 14, 2002, concerning the interference with and

disruptive conduct by Respondent of Petitioner's visitation schedule. Following that hearing the Court by Order dated June 7, 2002, transferred temporary primary residential custody of the children to Petitioner beginning on May 24, 2002, subject to the following:

a. Because the children were beginning their summer school vacation, Petitioner was to have primary residential custody from May 24 through July 17, 2002.

During that period, Respondent would have visitation with the children but not on a scheduled basis, but open and liberal visitation with reasonable phone contact.

b. Next, on July 17, 2002, through August 11, 2002, the parties reversed positions and Respondent would then have custody of the children and Petitioner likewise would assume visitation but not on a scheduled basis, but open and liberal visitation with reasonable phone contact.

c. On August 12, 2002, the Petitioner was to resume primary physical custody pending the issuance of a Final Order in this action.

d. Respondent was granted scheduled visitation with the children of one evening per week from 4:00 p.m. to 7:00 p.m., (the day to be selected by mutual agreement of the parties) and visitation every other weekend beginning after school on Friday until Sunday at 5:00 p.m.

e. Respondent was not required to pay child support to Petitioner during the period from August 12, 2002, until the Final Order.

10. Collateral DVI Case. The parties were involved in another Domestic Violence Injunction case (Case No. 511998LDR 00 5375 – WS – F) running parallel to this action and which impinged on these proceedings. Petitioner had pursued an injunction against Respondent which was issued on a temporary basis and when it came

to hearing before this Judge, a compromise was suggested to the Court that Petitioner would move to dismiss the injunction upon Respondent being ordered to attend anger management counseling. The Court thereafter entered an Order Granting the modification of the custody/visitation Order of June 7, 2002, and the following was entered by Order on September 27, 2002:

a. Respondent was ordered to attend and successfully complete a court-approved anger management program.

b. Overnight visitation with Respondent by the children was suspended temporarily until such time as Respondent has successfully completed the anger management program. In the mean time, Respondent was allowed visitation as follows:

(1) Alternating weekends, Saturday from 9:00 a.m. to 8:00 p.m.;

(2) Friday 5:30 p.m. to 8:00 p.m.;

(3) Sunday 7:30 a.m. to 8:00 p.m.

c. Upon filing a Certificate of Completion of the Anger Management Program, Respondent will then be allowed overnight visitation.

d. The Order further provided the parties shall not enter the residence of the other without express permission. There shall be curbside exchange of the children with advance notice of arrival.

The parties shall not make negative comments about the other in front of the children, their school classmates or in public areas.

11. Continuing Order. The Court does readopt the above Orders of June 7, 2002 and September 27, 2002, and all their conditions and they remain in full force and effect.

12. Child Support. The Orders of June 7, 2002, stated Respondent was not required to pay child support to Petitioner during the period from August 12, 2002, until the Final Order is issued.

a. Respondent filed her Financial Affidavit (short form) during the trial. It was received in evidence as Respondent's Exhibit #2. She reports her employment as Substitute Teacher, employed at Gulfside Elementary School and the Place Program, 2329 Anclote Blvd., Holiday, Florida. She reports her regular pay is \$462.00 payable bi-weekly. Her monthly gross income from all sources is \$1,001.00, with deductions of \$76.57, having a net balance of \$924.43. She reports her expenses total \$1,173.30 and her deficit per month is \$248.87. The allocation for monthly expenses appears reasonable.

b. Respondent does not have sufficient income to currently pay child support. No support will be awarded Petitioner. Respondent was seeking a supplemental job in addition to being a Substitute Teacher and working in the Place Program of the school system. The supplemental job was at her church, Calvary Chapel Worship Center, New Port Richey, Florida, working twenty (20) hours per week and at minimum wage. The job was tentative.

Therefore the Court reserves jurisdiction to award support under the guidelines to Petitioner, in the event, Respondent's financial condition should improve. Respondent is directed to file three (3) months from the date of this order an updated financial affidavit.

13. Possession of Marital Home. The parties purchased a marital home located at 3525 Umber Road, Holiday, Florida. The parties hold title as husband and wife or as tenants by the entirety.

Respondent moved out of the house recently giving possession to Petitioner and the children.

Respondent is presently residing with a female friend, who is a member of the church.

Petitioner is awarded temporary possession of the home, so long as he is awarded permanent residential custody of the children.

14. Furniture and furnishings. The furniture and furnishings will remain in the marital home. The parties may mutually agree to allow Respondent the use of any furnishings she may need for her relocation.

15. Sale of Marital Home. Respondent in her Counter-Petition, requested that the marital home be sold and the net proceeds of the sale be divided between Respondent and Petitioner. The marital home is not to be sold while the children have need for shelter. However, when the youngest child, Irina, reaches majority of age eighteen (18), the marital home shall be sold and the net sale proceeds after sale expenses shall be equally divided between Respondent and Petitioner.

16. Alimony. Respondent, in her initial pleadings filed in this action, requested temporary rehabilitative and permanent alimony. The request for alimony was dropped in her later pleadings, namely, the Amended Counter-Petition.

In any event, the request for alimony is denied. No evidence was taken regarding alimony during the trial and in her pre-trial memorandum no mention was made of alimony.

17. Mortgages and Maintenance. Petitioner initially paid the down payment on the purchase of the marital home from his savings and several thousand dollars advanced

by his parents. All during the course of this ten (10) year marriage, he has paid the two mortgages on the house plus the expense of any maintenance. Petitioner recently painted the interior walls of the children's bedrooms.

Petitioner shall continue to make the mortgage payments and maintenance costs on the marital house.

18. Insurance. Petitioner shall maintain health insurance for both children. Respondent will be required to pay 50% of any medical costs not covered by insurance.

19. Attorney Fees. Petitioner and Respondent both requested attorney fees in their pleadings.

Petitioner has been represented by three attorneys, namely: Collin D. Vause, Esquire, of Clearwater, Florida; Robert Minton, Esquire, of San Francisco, California; and Karen M. Doering, Esquire, of the National Center for Lesbian Rights, of Tampa, Florida.

Respondent has been represented by four attorneys, namely: Peter O. Brick, Esquire, of New Port Richey, Florida; Theodore I. Reckel, Esquire, of Tampa, Florida; M. Katherine Ramers, Esquire, of Dunedin, Florida; and Claudia Jean Wheeler, Esquire, of New Port Richey, Florida.

It is the Court's understanding from remarks by the attorneys that their professional services are essentially *pro-bono*. Although the evidence does indicated Linda Kantaras may have paid some amount in the beginning of her case for attorney fees and that Michael Kantaras may have likewise paid something toward attorney fees or that both parties only paid something on court costs.

The cost of the transcript of this trial is not certain which took weeks to prepare and may have reached in the area of \$16,000 approximately.

For these reasons, the Court reserves jurisdiction on the request for attorney fees, but if those fees of both parties are “*pro bono*,” then the Court will deny an attorney fee contribution, pending clarification on the issue.

20. Counseling Fees. The evidence indicates that Petitioner has volunteered to underwrite the professional counseling fees incurred by Drs. Davenport, Shelef, Boone and Dies. Dr. Dies testified that Linda Kantaras has not paid him on a \$2,000 billing, or that she contributed any money for the other professionals.

The pleadings filed by the parties are silent on any request for a contribution toward these fees so the Court reserves jurisdiction on that issue pending clarification.

The Court does take note of the fact Michael Kantaras testified that his child support, mortgage costs and general household expenses for the years 1998 through 2001 came to a total of \$66,811.27. (See Pet. Ex. #8, 13, 15 and 16)

21. Assets and Liabilities. Respondent requested in her pleadings, and Petitioner, likewise, that the assets and liabilities of the parties during the marriage shall be divided between the parties. They are as follows:

a. Respondent’s financial affidavit (Resp. Ex. #2) discloses assets of \$40,000 for the marital home (presumably market value divided by 50%) and \$700 for the value of her 1990 Oldsmobile. She shows total assets of \$40,700. Liabilities of two mortgages at \$44,000; a gold Visa card debt of \$600 and Capital One Master Card debt of \$800. The total liabilities are \$45,400, leaving a minus net worth of <\$4,700>.

b. Petitioner filed a financial affidavit (short form) reporting he is a baker employed at Sam's Club, in Tampa, Florida, and has monthly wages of \$2,882.00. His deductions are \$363.91, leaving a net monthly income of \$2,518.09. He claims expenses of \$1,857 per month leaving a net monthly income of \$661.09. His assets are \$240 cash and a 1991 Ford Ranger at a value of \$1,000. A total asset listing of \$1,240 does not mention the marital home market value. He does disclose mortgage liability of \$35,000.

c. Petitioner has a 401(k) valued at \$3,463.96 and Profit Sharing at \$12,432.07.

The pleadings of Respondent did not refer to or make any claim on the Petitioner's 401(k) or Profit Sharing Plan. No testimony was heard with respect to these assets. Therefore, the Court reserves jurisdiction on the allocation of these assets, whether they be marital, or subject to any distribution. In the meantime, those are the assets or property of Petitioner.

d. The Court finds the primary asset of the parties is the marital home. The home shall not be presently sold, but temporary possession has been turned over to Petitioner for purposes of providing a home for the children while he has primary residential custody.

The parties shall be liable for their own credit card debts or any other debts created individually by them. Each shall have title to and possession of their own automobiles.

22. Legality of Marriage. The Court has carefully reviewed all the pleadings, record evidence, expert medical testimony, lay witness testimony and the appropriate statutory authority for marriage in Florida and concludes the overwhelming weight of the

evidence favors declaring the marriage valid as entered into on July 18, 1989, at Sanford, Seminole County, Florida.

23. Adoption and Artificial Insemination. The evidence in this case reported that the son, Mathew T. Kantaras, was adopted by Michael Kantaras, Petitioner, following his marriage to Linda Kantaras who told the judge at the adoption hearing that Michael Kantaras was the only father of Mathew she had in mind. The adoption was the inducement to the marriage, in order to provide Mathew with a father, who was born out of wedlock and to make the boy legitimate in the eyes of the law. The marriage being valid, despite the position of Linda Kantaras, who's legal position withdraws the mantle of legitimacy from her own children, is declared legal.

The daughter, Irina L. Kantaras, was conceived by artificial insemination with Michael's brother, Thomas, being the sperm donor. The birth certificate reflects the marriage status of Michael and his legal position as husband to Linda Kantaras.

Similarly to Mathew, if Michael Kantaras as husband is declared invalid then Irina's birth certificate and Mathew's birth certificate listing parents would be in error, Irina would have no father and she would be conceived out of wedlock and not legitimate at law.

These consequential calamities are avoided through having Michael Kantaras legally husband of Linda Kantaras and father of Irina. The birth of Irina is declared legal and legitimate within the law. The adoption of Mathew is declared legal and legitimate within the law. It is, therefore,

ORDERED AND ADJUDGED:

1. Dissolution of Marriage. The marriage between Linda J. Kantaras and Michael J. Kantaras is irretrievably broken and therefore dissolved.

2. Legality of Marriage. The marriage of the parties on July 18, 1989, at Sanford Seminole County, Florida, is valid.

3. Parental Responsibility and Custody. The parents, Linda Kantaras and Michael Kantaras shall have joint parental responsibility over their children, with the father, Michael J. Kantaras having primary residential custody and the mother, Linda G. Kantaras, having visitation rights consonant with the Orders of the Court rendered on June 7, 2002, and September 27, 2002, and under the terms and conditions set forth in said orders and this order.

4. Child Support and Residence. The father, Michael J. Kantaras, having been designated the primary residential custodian of the children, is granted temporary possession of the marital home furniture and furnishings, for the benefit of the children.

The mother, Linda G. Kantaras, shall not be required to pay presently child support, but she will be ordered to contribute fifty percent (50%) of any medical costs incurred on behalf of the children not covered by medical insurance; and to file an updated financial affidavit three (3) months from the date of this order.

The father is directed to provide medical insurance coverage for the children.

The Court reserves jurisdiction to consider imposing some child support on the mother if, and in the event, her employment level should increase. She will be required to pay support under the Florida Guidelines.

5. Attorneys Fees. Michael J. Kantaras is not required to contribute to the financial fees payable by Linda G. Kantaras, to her attorney, Claudia Jean Wheeler, Esquire, or her prior attorneys, Peter O. Brick, Esquire, Theodore Rechel, Esquire, or M. Katherine Ramers, Esquire.

6. Marital Home. The major asset of this marriage is the residence located at 3525 Umber Road, Holiday, Florida. Title is held jointly, by the entireties. Michael J. Kantaras will be required to maintain the two mortgages on the property. He shall have temporary possession of the residence for the benefit of the children. When the youngest of the children, Irina, reaches majority of 18 years, the residence shall be sold and the proceeds of the sale divided between the parties, less any costs of sale.

7. Adoption and Artificial Insemination. The adoption of Mathew T. Kantaras by Michael J. Kantaras is confirmed as legal.

The parentage of Irina, with Michael J. Kantaras as father through artificial insemination is confirmed as legal.

8. Reserves Jurisdiction. The Court reserves jurisdiction to enforce the executory provisions of this judgment.

DONE AND ORDERED at Clearwater, Pinellas County, Florida, this ____ day of February, 2003.

GERARD J. O'BRIEN
CIRCUIT COURT JUDGE

Cc:
Claudia Jean Wheeler, Esquire
Karen M. Doering, Esquire