



423

IN THE COURT OF APPEALS OF

IN RE THE MARRIAGE OF CEMAL M. ADLI and SANDRA MAE ADLI

Upon the Petition of	)	
CEMAL M. ADLI,	)	Filed April 28, 1978
	)	
Appellant,	)	
	)	
And Concerning	)	473
	)	<u>2-69583</u>
SANDRA MAE ADLI,	)	
	)	
Appellee.	)	

Appeal from Pottawattamie District Court - Harold Martin, Judge.

Petitioner appeals and respondent cross-appeals from economic provisions of a dissolution decree. Affirmed as modified.

Philip Willson, of Council Bluffs, for appellant.

Kenneth Sacks, of Council Bluffs, for appellee.

Submitted to Allbee, C.J., Donielson, Snell, Oxberger and Carter, JJ.

PER CURIAM

Petitioner, Cemal Adli, appeals and respondent, Sandra Adli, cross-appeals from the economic provisions of the March 16, 1977, decree dissolving their marriage of eight years. Our review is de novo. Rule 4, Rules of Appellate Procedure. We give weight to the findings of the trial court but are not bound by them. Rule 14(f)(7), R. App. P.

The parties were married in 1968. At the time of trial Cemal, an orthopedic surgeon, was 48 years old; Sandra, a modeling instructor, who was a nurse prior to the marriage, was 32. The two children born of the marriage, Omer and Safiye, were ages seven and two respectively. Sandra was awarded custody of both children.

The parties had accumulated substantial wealth. The trial court ordered that the home of the parties remain the sole property of Cemal but gave Sandra possession, conditioned upon payments of mortgage, taxes and insurance, until she dies, remarries, cohabits with any other adult male, ceases to occupy the residence as a home, or the youngest child reaches 22 years of age. Upon the occurrence of any of the above conditions the house is to be sold, costs of sale paid, Sandra reimbursed for principal and interest payments and the remaining sale proceeds split equally.

Both parties were awarded their personal belongings and certain household goods. Sandra was further awarded a tract referred to as the Madison Avenue property, valued at \$25,000, previously owned solely by Cemal, a BMW automobile valued at \$10,000, and an undivided half interest in a farm. Cemal was awarded the other undivided half interest in the farm, thus continuing the ownership status of the farm as it was during the marriage. Cemal was given the right to choose a manager for the farm, participate in management decisions and bind Sandra to make financial contributions to the farming operation equal to his own. The net value of the farm is approximately \$215,000.

Cemal was also awarded a Mercedes-Benz automobile valued at \$12,000, complete interest in Council Bluffs Orthopedic Associates, P.C., valued at about \$100,000, and all interest in his pension and profit sharing plans, valued at between \$100,000 and \$130,000. Cemal's child support obligation was set at \$500 per month per child until a child attains twenty-two years, marries, dies, becomes self-supporting or ceases to live with Sandra. Sandra was awarded alimony from Cemal of \$1500 per month payable until Cemal or Sandra dies, Sandra remarries or cohabits with another adult male. Additionally Cemal was ordered to pay \$45,000 lump sum alimony in 12

annual installments of \$3750, together with 7% annual interest on the balance. Cemal was granted the personal exemptions for income tax purposes attributable to the children if his child support payments are current, was ordered to pay certain debts totalling about \$4000, to pay court costs, and to pay \$5000 toward attorney fees incurred by Sandra up to the time of the decree.

Cemal's appeal challenges both the amount and term of the child support and alimony obligations, and the property settlement claiming Sandra was awarded more than one half of the net assets. On Sandra's appeal, she argues that the decreed alimony and child support payments are insufficient to support her and the children in the manner which they have become accustomed. She also seeks a voice in the management of the farm, an increase of \$10,000 in the attorney fees awarded for services prior to appeal, and an additional award of \$25,000 for attorney fees incurred on appeal.

In reviewing dispositions of marital assets we are guided by the criteria listed in *Schantz v. Schantz*, 163 N.W.2d 398, 405 (Iowa 1968). However, we do not consider fault. In *re Marriage of Williams*, 199 N.W.2d 339 (Iowa 1972). Our object is to make an equitable division. In *re Marriage of Matson*, 215 N.W.2d 358 (Iowa 1974); In *re Marriage of Beeh*, 214 N.W.2d 170 (Iowa 1974).

This case involves a marriage of eight years. Cemal is 48 years old and is entering his peak earning years as a surgeon; his gross income in 1975 exceeded \$150,000. Sandra, age 32, at Cemal's urging quit nursing when married. She became active in civil affairs and cared for the children and home. The parties have become accustomed to a lifestyle allowed by Cemal's income, an expensive home, other extensive real estate holdings and frequent travel. There is evidence that Sandra's gross income, if she returned to nursing, would be approximately \$900 a month.

We conclude that the trial court's decree should be modified in the following respects:

(1) The duration of Cemal's child support obligation should terminate with respect to each child at age 18, unless statutory conditions relating to education are met, in which event the obligation shall continue for such child during the period specified in § 598.1 (2), The Code. See *In re Marriage of McFarland*, 239 N.W.2d 175 (Iowa 1976). During the time two children are entitled to support under the decree the monthly child support payments shall total \$870; when only one child is entitled to support under the decree this sum shall be reduced to \$500.

(2) With respect to the farm, the parties shall, consistent with their joint ownership as tenants in common, share equally in all farm management decisions. Each party is granted a right of partition by sale which may be exercised without cause.

(3) We decline to label the \$45,000 award to Sandra, payable in installments, as alimony. We deem it more properly characterized as a property settlement between the parties. As such it is affirmed, as is the balance of the property settlement.

(4) The \$1500 monthly alimony payments are not disturbed except that we direct they terminate when the youngest child attains 18 years of age, if not sooner terminated as a result of those conditions specified in the trial court's decree.

(5) We have considered the other issues and contentions advanced by both parties and except as herein provided the decree of the trial court is affirmed. Without fixing the extent of Sandra's obligation to her attorney we order that Cemal pay the sum of \$2000 to apply upon her attorney fees incurred on this appeal, in addition to the fees he was required to pay at the trial court level. Costs on appeal are assessed one-half to each party.

AFFIRMED AS MODIFIED.

OXBERGER, J., dissents.

OXBERGER, J., (dissenting)

I dissent from the disposition of the family residence. Sandra should be reimbursed from the proceeds of the sale of the house for all principal payments she makes during her occupancy. She should not be allowed to recoup the amounts of mortgage interest paid during that interim. She enjoys full use and occupancy of the home for a significant number of years with alimony provided at a level to include the cost of housing for the family. The award of mortgage interest substantially enlarges her share of the marital assets while concomitantly reducing Cemal's share. Cemal is entitled to share equally in the equity jointly acquired in the home. This court should so decree.

Further, I think the occupancy of the family residence awarded to Sandra should not extend beyond the youngest child's eighteenth birthday.