



IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF LYNN ALLAN SMAHA AND SANDRA LEE SMAHA

Upon the Petition of

LYNN ALLAN SMAHA,

)

Filed June 30, 1981

Petitioner-Appellant,
Cross-Appellee,

)

1-77
2-65307

)

And Concerning

)

SANDRA LEE SMAHA,

)

Respondent-Appellee,
Cross-Appellant.

)

Appeal from Tama District Court. John J. Hyland, Judge.

Both parties appeal from the trial court order awarding the wife lump sum alimony.

AFFIRMED.

Patrick W. Brooks, of Mowry, Irvine, Brooks & Ward, Marshalltown, Ia., for respondent-appellee.

James R. Moore, of Mote, Wilson & Welp, Marshalltown, Ia., for petitioner-appellant.

Heard by Oxberger, C. J., and Donielson, Snell, Carter and Johnson, JJ.

PER CURIAM

Petitioner, Lynn Smaha, appeals and respondent, Sandra Smaha, cross-appeals a lump-sum alimony award. We affirm. Our review is de novo. Iowa R. App. P. 4.

The parties were married in 1966. Two children were born of the marriage. A decree of dissolution was filed on September 29, 1976. The court in this decree was unable to determine the permanent awards concerning custody and support and retained jurisdiction of these matters. Either party could apply for further appropriate orders subsequent to petitioner's completion of a medical fellowship and obtaining employment. Sandra filed such application in June 1978. The matter came for hearing in June 1980. The parties' resolved the child custody and child support issues prior to trial. Sandra asked for lump-sum alimony in the amount of \$165,000 to reflect the acquisition of Lynn's medical degree and training during the marriage. Lynn argued that Sandra was not entitled to any award. The trial court awarded Sandra \$25,000 to be paid in five annual installments with interest.

Lynn asserts on appeal this award constituted a division of property and the court was without power to so award as it had not retained jurisdiction of the property division. The trial court designated the award as alimony. We find this award of lump-sum alimony was justified. Although alimony and property awards are distinguishable and serve different purposes in marriage dissolution proceedings, they are closely related in the matter of determining the amount of an award. In re Marriage of Novak, 220 N.W.2d 592 (Iowa 1974). Lump-sum alimony may be appropriate in cases without which the result would be clearly inequitable. In re Marriage of Gudenkauf, 204 N.W.2d 586 (Iowa 1973); 24 Am. Jur. 2d Divorce and Separation, § 616.

We find the circumstances in this case warrant an award of lump-sum alimony. Furthermore we do not find the award is foreclosed by Sandra's remarriage. 24 Am. Jur. 2d Divorce and Separation, § 614. The marriage lasted over ten years. The majority of that time Lynn spent in school or furthering his medical training. Very little property was accumulated other than personal or household goods. Sandra worked and contributed those earnings for the family support. She did not continue her own education, nor was she able to develop her career potential in any one area as Lynn's training and military service required relocations. At this point in time, Lynn has the present earning capacity of over \$60,000 per year; whereas, Sandra can earn up to

\$15,000. Sandra is in much the same circumstances as when she entered the marriage. Lynn is in a much better position. Furthermore, Lynn's earning opportunities will advance at a greater proportion than Sandra's. Sandra now has a health disability which could affect her earning potential. Although this ailment occurred after dissolution, it is a factor to consider in the balancing of the parties' potential. It is the increase in Lynn's potential earning capacity to which Sandra contributed and for which she sacrificed that warrants an award for the equitable resolution of this matter. See In re Marriage of Horstmann, 263 N.W.2d 885 (Iowa 1978). See also Schantz v. Schantz, 163 N.W.2d 398, 405 (Iowa 1968).

The parties dispute the amount of the award. Lynn argues the evidence presented under the Horstmann case would entitle Sandra to nothing or a vastly smaller amount. Sandra argues in her cross-appeal she is entitled to a share in Lynn's future earnings calculated much the same as in a situation for wrongful death damages. In the Horstmann case the court was only presented with evidence of financial contribution during the marriage. We do not find this to be the exclusive criteria to determine the amount of a lump-sum alimony award. Neither do we find Sandra's request for a share in Lynn's entire future earnings and acquisitions to be the proper measure. The amount of support is determined using the guidelines set forth in In re Marriage of Zoellner, 219 N.W.2d 517, 525 (Iowa 1974). Relying on those factors, we increase the trial court's award to \$50,000 finding it to be equitable and justified under the circumstances. Payments shall be made in five annual installments of \$10,000 plus 7% interest on unpaid balance.

Sandra asked for an award for attorney fees on appeal. Such an award is dependant upon the needs and abilities of the parties and the necessity to defend and instigate an appeal. Zoellner, supra, at 526. After examination of the record and itemization of expenses provided, we award \$1,000 to Sandra for legal services performed in this appeal. Costs are assessed to Lynn.

AFFIRMED.