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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF LILA JEAN IDDINGS AND ADRIAN JOLIFFE IDDINGS

Upon the Petition of)
LILA JEAN IDDINGS,) Filed April 8, 1983
Petitioner-Appellee,)
And Concerning)
ADRIAN JOLIFFE IDDINGS,) 2-507 / 2-68684
Respondent-Appellant.)

Appeal from Polk District Court - Ray A. Fenton, Judge.

Respondent-husband appeals from the economic provisions of the parties' dissolution decree. AFFIRMED WITH MODIFICATION.

Donald G. Beattie of Skinner & Beattie, Altoona, Iowa, for respondent-appellant.

Paul E. Huscher, Waukee, Iowa, for petitioner-appellee.

Considered by Oxberger, Chief Judge, Donielson and Schlegel, JJ.

PER CURIAM

Respondent-husband appeals from the economic provisions of the parties' dissolution decree. He claims that certain provisions of the property division are inequitable and that petitioner-wife should not have been granted an award of permanent alimony. She requests an award of attorney fees incurred in this appeal. We affirm with modification.

Adrian and Lila Iddings were married in 1958. Shortly thereafter Adrian inherited 27 acres of real property which increased in value from $3,033 to $33,500 in 1982. During the marriage he derived his income from farming and operation of a dry wall business which showed a loss of $491 in 1981. Lila operated an unprofitable greenhouse business during the latter years of the marriage and at the time of trial was employed as a florist part-time at a salary of $3.75 per hour. In the dissolution decree dated June 9, 1982, Lila was awarded the three acres (valued at $88,000) containing the home and greenhouse and other buildings and properties subject to a lien in Adrian's favor of $30,000 with 5% annual interest payable when she remarries, dies, cohabits with an adult male, or sells the residence. She was also awarded alimony of $1 per year, two vehicles, her life insurance policies, attorney's fees of $400, assets from the greenhouse operation and various items of personal property.

Adrian was awarded various other real property, including the property he inherited, a rental house valued at $27,000, a lot valued at $18,000, and four other lots valued at $6,000 or less each. He was also awarded a motorcycle, numerous trucks and antique vehicles, his life insurance policies and various business and farm equipment. He was ordered to assume indebtedness of approximately $99,000 and was granted the right to use a warehouse portion of the greenhouse building for five years. He then instituted this appeal.

Adrian's primary complaint in this appeal centers around the division of property and debts ordered by the trial court. In considering whether a particular division of property is equitable, we examine the factors listed in Iowa Code § 598.21(1). In this case, we are reluctant to disturb the division of assets ordered

by the trial court because Adrian himself suggested at trial a property division almost identical to that ordered by the court. The only difference between Adrian's recommendation and the court's result is in the allocation of the parties' indebtedness. Even there, however, Adrian proposed to assume the great majority (70%) of their debts while the court ordered him to assume all debts except those incurred by Lila after October 14, 1981. The court properly found that Adrian should assume the debts because Lila had no income with which to satisfy those obligations. In any event, we see no reason to disturb the allocation made by the court.

Adrian also contends that the lien awarded him against the homestead is inadequate. Specifically, he claims that the court should have set a more definite date for payment of the lien and a higher rate of interest to be earned on the unpaid balance thereon. With regard to the date of payment, the trial court indicated that it was not made specific because it is not known for certain when the mortgage on the homestead will be paid off. We believe the payment terms are equitable. We agree with Adrian, however, that the interest rate on his lien should be raised to the statutory rate of 10% from the 5% ordered by the trial court. See Iowa Code § 535.3.

II. Adrian also claims that Lila should not have been awarded any alimony. The nominal award of $1 per year was obviously made by the trial court in order to keep the issue of alimony open for possible future modification if Lila's needs and Adrian's ability to pay so indicate. We believe this award is justified.

III. Lila requests attorney fees incurred in this appeal. Such an award is based on the parties' relative financial circumstances. In re Marriage of Burham, 283 N.W.2d 269, 278 (Iowa 1979). Without setting what Lila's attorney may charge, we order Adrian to pay $500 toward that obligation.

We increase the interest rate on Adrian's lien to 10%. In all other respects the decree is affirmed. Costs are taxed to Adrian.

AFFIRMED WITH MODIFICATION.

Donielson, J., dissents.

DONIELSON, J. (dissenting)

I respectfully dissent.

The majority refuses to disturb the property division "because Adrian himself suggested at trial a property division almost identical to that ordered by the court." However, since Adrian also proposed to pay "the great majority (70%) of [the parties'] debts" the majority also refused to disturb the 90% allocation to him of those debts. I believe this reasoning is faulty; if the majority wishes to accept Adrian's proposal, it should do so in full. The debts totaled approximately $99,000, 20% of which is $19,800. Obviously, this is not a small sum of money. I believe Adrian should be assigned to pay only 70% of the parties' debts or be awarded a greater percentage of the property in order to make the division equitable. Under the circumstances of this case, I would modify the decree to provide that Adrian be responsible for 70% and Lila 30% of the parties' debts. In every other respect I agree with the majority opinion.