

IN THE COURT OF APPEALS OF IOWA

No. 3-611 / 12-1354
Filed August 21, 2013

**IN RE THE MARRIAGE OF AMAL AL-JURF
AND ADEL AL-JURF**

**Upon the Petition of
AMAL AL-JURF,**
Petitioner-Appellee,

**And Concerning
ADEL AL-JURF,**
Respondent-Appellant.

Appeal from the Iowa District Court for Johnson County, Denver D. Dillard,
Judge.

A husband appeals from adverse rulings and orders entered in a
dissolution proceeding. **AFFIRMED AS MODIFIED.**

Adel Al-Jurf, Iowa City, appellant pro se.

Joseph C. Pavelich and Sharon A. Mellon of Mellon & Spies, Iowa City, for
appellee.

Considered by Doyle, P.J., and Mullins, J., and Goodhue, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2013).

GOODHUE, S.J.

Adel Al-Jurf appeals from all adverse rulings and orders entered in the dissolution proceeding in which he was the respondent and Amal Al-Jurf was the petitioner.

I. Background Facts and Proceedings

The parties were married October 18, 1967, and both were sixty-nine years of age in May 2012 when the matter was tried. The parties have children, but they are all adults. Both parties were born in Palestine, but immigrated as adults to the United States. The appellant pursued a medical degree specializing in surgery, and obtained a license to practice in Iowa. In 1977 he became a faculty member at the University of Iowa Medical School where he taught and continued to practice medicine until 2005. In his last year of employment he was paid \$300,000 and in addition was provided substantial fringe benefits. For all practical purposes, Amal has not been employed outside the home since their marriage.

In 2005 Adel was terminated as a professor at the University of Iowa. He attempted to reverse his termination by legal means and later brought suit against the University of Iowa and former colleagues for damages resulting from the termination. He was unsuccessful in both endeavors at the trial court level. He appealed both losses and was again unsuccessful in the Iowa Court of Appeals. He sought further review by the Iowa Supreme Court, which was denied, and again sought further review by way of the certiorari with the United States Supreme Court, which was also denied. See *Al-Jurf v. Bd. of Regents*, No. 06-1621, 2007 WL 2004461 (Iowa Ct. App. July 12, 2007); *Al-Jurf v. Scott-*

Conner, No. 10-1227, 2011 WL 1584366 (Iowa Ct. App. April 27, 2011). The Iowa Board of Medicine sought revocation of Adel's license to practice medicine soon after he filed the damage suit. His license was suspended for ethical or technical violations, but not for incompetence or negligence in the treatment of patients. That decision was also appealed to the court system by Adel. See *Al-Jurf v. Iowa Bd. of Medicine*, No. 12-0293, 2013 WL 3830159 (Iowa Ct. App. July 24, 2013). He employed counsel to fight his employment termination, to pursue his damage claims, to fight the license suspension, and to initially represent him in the dissolution matter. Eventually he ended up by acting pro se in the dissolution. His legal fees incurred in all proceedings, including the dissolution, added together totaled \$252,416.86.

The parties accumulated significant assets during the marriage. There is no contention that either party brought significant assets into the marriage, but both parties inherited money at approximately the same time. Adel inherited \$84,790. Amal inherited a total of \$33,984. These funds have not been commingled. As of the date of trial neither party was gainfully employed and their only income was from social security, retirement accounts, and investments.

The decree awarded Amal alimony of \$1408.62 until the residence was sold, and then permanent alimony of \$427.50 per month. The residence of the parties was valued at \$725,000 with a first lien mortgage of \$336,427, leaving equity of \$388,753. Adel was awarded immediate possession of the residence, but could sell it under certain conditions, which included Amal receiving one-half of the net proceeds in excess of the equity. If no sale had been consummated by November 1, 2012, Adel was ordered to pay Amal \$194,376.50, which was equal

to one-half of the equity at the time of dissolution trial. Adel was to pay all interest, upkeep, and repairs in the interim. Adel could sell the residence under certain conditions, but Amal was to receive one-half of any net proceeds over the computed equity of \$388,753. Each party was set off their respective inheritances. Adel was ordered to pay one-half of Amal's attorney fees which accrued during the dissolution. Adel was considered to have dissipated marital assets by paying attorney fees in his attempt to save his medical license. All attorney fees paid after June 3, 2010, the day the dissolution was filed, were assumed to have been expended for that purpose. Those fees totaled \$48,649.82. The accumulated retirement accounts were divided between the parties in a manner they both found acceptable.

Adel requests that Amal's share of the marital assets be reduced by Amal's travel costs expended during the marriage, which he considers to have been unreasonably expensive, and also by amounts which he believes Amal secreted with her sister in Jordan. He also considers that the fees incurred by Amal in obtaining an injunction to restrain Adel from disposing of property and the legal efforts resisting it were unnecessary and should be charged solely to Amal as dissipated marital assets. He also contends that the interest accrued on his inheritance should be added on to the inherited property set off.

II. Standard of Review

Dissolution proceedings are equitable matters and therefore our review is de novo. Iowa R. App. P. 6.907. We give weight to the factual finding of the district court, especially in assessment of credibility. Iowa R. App. P. 6.904(3)(g).

III. Discussion

There was little dispute with that part of the decree that initially makes an equal division of the parties' marital assets. Adel's appeal is targeted to the adjustment made in Amal's favor and the lack of adjustments in his favor that he had requested.

A. Dissipation of Marital Assets

Dissipation of marital assets is a matter to consider in dividing marital property. Whether dissipation is a factor depends on "(1) whether the alleged purpose of the expenditure is supported by the evidence, and if so, (2) whether the purpose amounts to dissipation under the circumstances." *In re Marriage of Fennelly*, 737 N.W.2d 97, 104 (Iowa 2007). The *Fennelly* court goes ahead to state that the first issue is an evidentiary issue, but the second is more subjective and requires consideration of many factors including:

- (1) the proximity of the expenditure to the parties' separation,
- (2) whether the expenditure was typical of expenditures made by the parties prior to the breakdown of the marriage,
- (3) whether the expenditure benefitted the "joint" marital enterprise or was for the benefit of one spouse to the exclusion of the other, and
- (4) the need for, and the amount of, the expenditure.

Id. at 104-05.

1. Amal's Alleged Dissipation of Marital Assets

Adel contends that Amal dissipated money by travelling frequently to the Middle East and secreting money on the trips allegedly with her sister. The expenditures that Adel contends were excessive and the trips on which they were based go back to 1999 and ended in 2009. Expenditures that far removed from the separation of the parties would generally not be, if ever, considered

dissipation of marital assets. Furthermore, given the family income and the value of the marital residence, it is unlikely Amal would have traveled in a Spartan-like atmosphere or been expected to. There is no specific proof of secretion, only Adel's contention that excessive funds were taken on the trips. She was most likely generous in gift giving and there is little evidence that Adel objected to the gifts at that time they were made. There is no convincing evidence to support Adel's accusation that Amal dissipated marital assets by secretion or excessive expenditures.

Adel also raised the issue of Amal's temporary injunction restricting his right to make expenditures without Amal's consent. The order was obtained ex parte and was eventually modified. Adel contends it was a dissipation of assets since it resulted in unnecessary attorney fees. Attorney fees can be awarded in a dissolution matter and that issue will be dealt with in that context.

2. Adel's Dissipation of Assets

The decree provided that sums Adel expended in maintaining his medical license were to vindicate his reputation and ego. Those sums were characterized as a waste of resources, and therefore, a dissipation of marital assets. This determination was based on the testimony of Adel that he did not intend to continue in the practice of medicine. In his pro se brief filed with this court Adel seems to argue his intent was to the contrary, but the trial court record is the applicable evidence to be considered on appeal, and the determination of the trial court is supported by the record. Furthermore, it appears that Adel's medical license could be reestablished, but he has not done so and has not

practiced medicine in any manner since 2005, which supports the determination made by the trial court.

It was determined on the other hand that Adel's challenge to his termination as well as the suit for damages, if successful, would have materially benefitted the parties and that, therefore, legal fees involved in the pursuits were proper expenditures of marital assets. That analysis is consistent with *Fennelly*, 737 N.W.2d at 104-05.

The trial court then proceeded to attribute all charges paid after June 3, 2010, to Adel's counsel Martin Diaz as having been expended in the effort to retain Adel's medical license. June 3, 2010 was the day Amal filed her dissolution petition. There is only a partial record of what services were included in the legal fees Adel paid after June 3, 2010, but the invoices provided reflect substantial sums were billed by Diaz for the appeal of the damage claim after the June 3 date. It is also reasonable to assume that a major portion of the fees outstanding as of June 3, 2010, related to the six-day jury trial which had concluded only a few days before. The first element of dissipation as required by *Fennelly* is evidence that the expenditure was made for the forbidden purpose. 737 N.W.2d at 104-05.

It follows that only those sums fairly charged to maintaining Adel's medical license should be considered dissipated marital assets. A review of the available invoices reflects the following charges made for representation of the license issue:

- (1) Diaz invoice #10832 all charges made April 18, 2011, from 1-20-2011 through 2-7-2011 and charge of \$75.00 made April 5 for a total of \$1937.50

- (2) Diaz invoice #10861 charge made April 18, 2011, of \$75.00
- (3) Diaz invoice #10882 charge made 2-8-2012 of \$250.00 and charge made 2-10-2012 of \$37.50 for a total of \$287.50
- (4) Diaz invoice #10894 dated May 15, 2011, for a total charge of \$3776.02, which includes costs related to the license retention issue

These sums total \$6076.02.

Nevertheless, at the hearing held December 10, 2010, which modified the temporary restraining order it was ordered that \$26,000 of the fees due attorney Martin Diaz could be paid, but would be used to reduce Adel's share of the marital assets. The order also reflects that Adel consented to the reduction. That amount far exceeds the legal fees attributable to the effort to retain the medical license. Based on his consent it is appropriate and equitable to offset the agreed amount of \$26,000 as marital assets already received by Adel even though it exceeds the legal fees established as having been expended on the licensing issue. There is no factual basis for the assumption that \$48,649.82 was dedicated to the licensing issue. The dissipation of marital assets due to Adel's challenge to the licensing issue is accordingly reduced from \$24,324.91 to one-half of \$26,000 or \$13,000.

B. Inheritance

Property inherited by either party during the marriage and not commingled is generally not subject to property division. Iowa Code § 598.21(6) (2009). The decree properly subtracted the property inherited by each of the parties from the marital assets, and awarded it to the initial recipient. It is appropriate to consider the income or appreciation of marital property during the marriage as marital property. *In re Marriage of White*, 537 N.W.2d 744, 746 (Iowa 1995).

C. Residence Issues

The provision of the decree relative to the disposition of the parties' residence is fair and equitable, and will not be disturbed. Neither party objected to the \$725,000 value set by the decree. Adel can refinance or sell at his option on payment of the sums due to Amal.

D. Attorney Fees on Dissolution

Amal incurred attorney fees during the dissolution of \$24,750. Adel was ordered to pay one-half of those fees. Trial courts have discretion in awarding attorney fees. *In re Marriage of Fynaardt*, 545 N.W.2d 890, 894 (Iowa Ct. App. 1996). Adel contends that the fees resulting from the temporary injunction were unnecessary and should be charged to Amal. The litigation costs surrounding the injunction become rather insignificant when viewing the difficulties Amal's counsel had in discovery and preparing this matter for trial and the trial itself, which can be considered in assessing fees. *See Seymour v. Hunter*, 603 N.W.2d 625, 627 (Iowa 1999). Ordinarily an assessment of attorney fees will not be disturbed on appeal. *In re Marriage of Francis*, 442 N.W.2d 59, 67 (Iowa 1989). Amal's fees were \$24,750, but she had paid a retainer of \$5000 and another amount of \$1928 in response to a billing. She had no source of funds except her inheritance, which has been set aside to her, and what was to be considered marital property. Adel has in effect already paid one-half of the \$6928, and shall be required to pay only one-half of the remaining \$17,822, or \$8911.

E. Alimony

In awarding alimony the decree equated the alimony between the parties by adding the payments each party received, dividing by two, and then requiring Adel to pay to Amal the difference between one-half of the total and the social security she was receiving. In determining alimony as well as in determining property settlements, the difference in social security benefits of the parties can be taken into consideration. See generally *In re Marriage of Miller*, 475 N.W.2d 675, 678 (Iowa Ct. App. 1991); *In re Marriage of Hogeland*, 448 N.W.2d 678, 682 (Iowa Ct. App. 1989). In keeping with the equal division of the marital assets, the allowance of temporary alimony to Amal of \$1408.62 until she receives the benefit of her interest in the residence and \$427.50 per month permanent alimony in equalization of the combined social security benefit thereafter appears appropriate. To the extent that Adel requests that his alimony be reduced because of the loss of household services performed by Amal, it is an interesting request, but has no legal support in Iowa law.

We affirm with modification of the sums payable from Adel to Amal for dissipation of marital assets, and for Amal's attorney fees as set out above. Costs of this appeal are assessed one-half to each party.

AFFIRMED AS MODIFIED.