

STATE OF MICHIGAN
COURT OF APPEALS

JESSIE M. PHELPS-ORR,

Plaintiff-Appellee,

v

HOWARD A. ORR,

Defendant-Appellant.

UNPUBLISHED
October 15, 1996

No. 181547
LC No. 94-420305

Before: Griffin, P.J., and Bandstra and M. Warshawsky,* JJ.

BANDSTRA, J. (concurring in part and dissenting part).

I concur with the majority opinion, except with regard to the property division issue.

I do not find the property division to be fair and equitable. The lower court stated at the hearing that defendant's interests in the marital home were being extinguished and that plaintiff would take the home subject to "a lot" of debts associated with the home. The settlement itself, however, gave plaintiff the home free from any liability and ordered defendant to pay the debts that encumbered the home. This settlement order was patently unfair and inequitable. After ten years of marriage, during which defendant had contributed equally with plaintiff to the acquisition or improvement of the marital property, *Leverich v Leverich*, 340 Mich 133, 137; 64 NW2d 567 (1954), defendant was left with nothing but liability for the debts. Recognizing that numerous debts encumbered the marital home and that defendant had failed to pay the house-related expenses while he lived in the home after the parties' separation, the lower court properly extinguished defendant's interest in the marital home. However, to extinguish defendant's interest in the home because of these obligations while, at the same time, making defendant liable for the obligations was unfair and inequitable. *Ianitelli v Ianitelli*, 199 Mich App 641, 642; 502 NW2d 691 (1993); *Steckley v Steckley*, 185 Mich App 19, 23-24; 460 NW2d 255 (1990). Plaintiff should have been awarded the home subject to the debts that had been incurred because it was these debts that justified extinguishing defendant's undisputed interest in the marital home.

* Circuit judge, sitting on the Court of Appeals by assignment.

Accordingly, I would reverse that part of the property settlement that awarded plaintiff the marital home free from any encumbrances and made defendant liable for these encumbrances. Defendant's interest in the marital home would be extinguished, but he would not be liable for the encumbrances on the house. Plaintiff would take the home subject to the debts. I find the remainder of the property settlement to be fair and equitable.

/s/ Richard A. Bandstra