FILED
SEP 25 1984
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF MICHAEL JOSEPH GERAGHTY AND KAREN JOY GERAGHTY

53

UPON THE PETITION OF
**MICHAEL JOSEPH GERAGHTY,**

Petitioner-Appellant,

AND CONCERNING
**KAREN JOY GERAGHTY,**

Respondent-Appellee.

Filed September 25, 1984

4-310
84-254

Appeal from the Iowa District Court for Clayton County, L. John Degnan, Judge.

The petitioner-husband appeals from a dissolution decree. He challenges the child support award, the alimony award, and the award to the wife of a portion of his U.S. Navy pension rights. AFFIRMED AS MODIFIED.

James R. Bowers of Brick, Seckington, Bowers, Swartz & Gentry, P.C., Des Moines, for petitioner-appellant.

Stephen D. Saunders of Clefisch & Saunders, Elkader, for respondent-appellee.

Considered by Oxberger, C.J., Schlegel, and Sackett, JJ.

The economic provisions of a decree dissolving the marriage of the parties is challenged by the petitioner-husband. He asserts child support and alimony awards are excessive and that respondent-wife should not be awarded amounts reflecting his future military retirement pay. We affirm as modified.

The petitioner here, Michael Geraghty, has been employed by the Navy for nearly eighteen years and is currently a Chief Petty Officer. He earns $25,953.60 per year while living on ship. He is thirty-seven years old, has a high school education, one and two-thirds years of college, and three years of electronic school. Respondent, Karen Geraghty, is thirty-five years old, a high school graduate, and has completed a 14-week course of medical assistance training. She remained at home to maintain the household and care for the couple's two minor children during the marriage except for a period of one year and ten months when she worked as an accounts receivable clerk. Shortly before trial she obtained a full-time position as a medical assistant, earning $560 per month. She has indicated she hopes to eventually become a registered nurse. They have two minor children.

In its decree the court awarded each party the small amount of property in their possession, gave Karen custody, and ordered Michael to pay $550 per month in child support and $100 per month in alimony for five years. It also ordered him to pay Karen 3/8 or 37 percent of his military retirement pay in the event he became eligible for the benefits.

Michael says the child support is unreasonable and excessive. His expenses now total $1193 while he lives on ship. He will be eligible to live on land in two and one-half years, when his expenses will increase by $850 because of rent, utilities, and other needs. After paying child support and alimony, Michael says he will be left with $45 per month if he does not live on the ship. He claims this

results in "civil incarceration," forcing him to endure the hardships of living on ship in order to have more money left over. Michael also points out Karen's plans to become a nurse and says the court should have considered her increased income that will result if she becomes a nurse. He refers the court to In re Marriage of Heineman, 309 N.W.2d 151 (Iowa Ct. App. 1981), which indicates the court should consider the amount the spouse expects to earn when awarding support, but should not consider any income which is speculative in nature. Id. at 152. Michael also asks this court to change the trial court's order that child support increase as he receives increases in pay, and says he should not have to pay one-half of eye and dental expenses of the children.

Karen elaborates on Michael's financial situation in her argument. She points out that part of the expenses Michael has included is an advance pay deduction of $298 which ended June 1984. He is eligible for a promotion to a higher rank, with a pay increase of $200 per month. He also receives $329 more per month from the government than he would otherwise receive because he has two daughters. This, Karen says, shows the Navy is paying for part of the child support. Her debts include $4258 for loans, insurance, and other items, along with monthly expenses of $1056. She manages to keep her expenses down by renting a flat from her sister, not paying for daycare and instead having her sister babysit, and doing without a car.

We agree with Michael that each spouse's potential income should be considered, but speculative potential income should not be considered. It would be illiberal to consider the speculative possibility that Karen may go to school and become a registered nurse, ignore the amount that Michael currently is earning and consider only the future earnings he may receive when transferred to duty on land. Michael has claimed he has not been able to advance in his career to the degree he would have been able to if not married. With the divorce, promotions

and increases in pay are more likely. The termination of the advance pay deduction alone will result in nearly $300 more left over for Michael per month after expenses. While Karen may obtain an R.N. degree someday, that will require schooling, time away from work, and money.

Considering the economic situation of the parties, the best interests of the children, and the other factors set out at section 598.21(4) of the Code, we decline to disturb the trial court's child support award.

Michael also says Karen should not have received alimony, noting that Karen has obtained employment, and claiming her contributions to the marriage have been "questionable." He says he sacrificed career advances during the marriage in order to preserve harmony and that Karen did not support his Navy career.

As the wife of a career Navy man, Karen moved thirteen times in thirteen years during the marriage. Her work has been in the home, caring for the children and maintaining the household. She worked outside the home for two brief periods when the couple needed extra money. These are all contributions which this court will not ignore merely because the bulk of the income was provided by the other spouse. In re Marriage of Ralston, 242 N.W. 2d 269, 271 (Iowa 1976). Considering these factors along with those discussed above, we affirm the trial court alimony award.

We also affirm the award to Karen of an amount of money equivalent to 3/8 or 37 percent of Michael's retirement pay. Michael says this should not have been awarded because Karen was living with him twelve of the nearly eighteen years he was in the service. The marriage lasted fourteen years, but the couple separated during the last two years. He says the twelve years she spent with him are only two more than the minimum ten years necessary if the pension is to be taken into consideration. 10 U.S.C. 1408 (1983). He also claims the court in effect awarded Karen a portion of the pension, and instead it should only have been a

consideration in awarding alimony. The pay is not vested yet and Michael says this also makes the award improper. Even if the award could have been made, he says, it should not have been made, saying Karen did not support his career. Further, he asks this court to clarify the lower court decision to provide that the award is alimony, that an adjustment be included so that Karen gets a percent of only what he is actually paid, and that the payments to her should end if either he or Karen remarries.

We believe the court properly considered the pension as a factor in making an award, since the couple was married during all but three and one-half years of his Navy career. Karen suffered the dislocations and hardships of a Navy wife. Even though the pension is not yet vested, it can be considered. See In re Marriage of Schissel, 292 N.W.2d 421, 427 (Iowa 1980); In re Marriage of Jones, 309 N.W.2d 457, 460 (Iowa 1981). While an outright award of a portion of such pensions is prohibited, our courts have upheld awards of an amount of money equivalent to a portion of the pay. In re Marriage of Jones, 309 N.W.2d at 459. In Jones the wife had been married to the husband for fourteen of his eighteen years in the Navy, as Karen has. Id. The court required the husband pay an amount equivalent to 7/19 or 37 percent of his pension. Id. The award defined the payments as alimony and, since it was alimony, it would not change if the husband received less from his pension because of any adjustments or reductions. Id. at 461. As alimony, it also ended with the wife's remarriage or either party's death. Id.

The situation in Jones is factually similar to that here. We believe the same considerations apply. We affirm the award to Karen but modify the trial court decree to indicate the payments are alimony and will not be reduced if Michael's pension payments are reduced from the total original sum. The award will end

upon Karen's remarriage, cohabitation with an adult male, or her death. It will end if Michael dies but not if he remarries. We have held that a spouse who supports a second family cannot avoid by remarriage the financial duty to the first family. Bixby v. Bixby, 253 Iowa 1172, 1176, 115 N.W.2d 852, 855 (1962).

AFFIRMED AS MODIFIED.