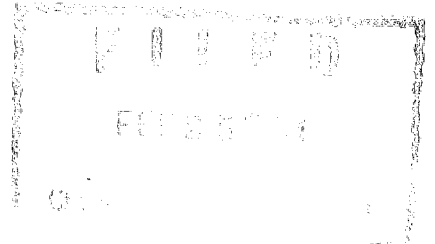


IN THE COURT OF APPEALS OF IOWA

No. 3-649 / 93-0398



IN RE THE MARRIAGE OF JAMES E. WAGNER AND
MARY M. WAGNER

Upon the Petition of
JAMES E. WAGNER,

Petitioner-Appellant/Cross-Appellee,

And Concerning
MARY M. WAGNER,

Respondent-Appellee/Cross-Appellant.

Appeal from the Iowa District Court for Des Moines
County, R. David Fahey, Judge.

Petitioner appeals, and respondent cross-appeals, from
various provisions of the parties' dissolution decree.
Petitioner argues that the district court erred in awarding
the respondent alimony. **AFFIRMED AS MODIFIED.**

William Bauer of Bauer, Schulte, Hahn & Swanson,
Burlington, for appellant.

Michael J. Schilling of Cahill, Dietrich & Schilling,
Burlington, for appellee.

Heard by Oxberger, C.J., Sackett, J., and Critelli,
S.J.*, but decided en banc.

Senior judge from the 5th Judicial District serving on
this court by order of the Iowa Supreme Court.

SACKETT, J.

This appeal addresses the economic provisions of a decree dissolving a twenty-eight year marriage. We affirm as modified.

Petitioner-appellant/cross-appellee James E. Wagner and respondent-appellee/cross-appellant Mary M. Wagner were married in October 1965. At the time of marriage, Mary had a three-year nursing degree and James was working for J.I. Case. The parties had four sons, now adults. The children are all self-supporting except for the youngest son, Aaron, who is a college student. The oldest son was born in the first year of marriage and the parties decided Mary would devote her full-time efforts to the home and children. However, after about four years of marriage, Mary began to use her nursing skills in various part-time jobs in the health care field which she pursued during the course of the marriage.

The parties separated in October 1991, and in January 1992, Mary took a job with the Des Moines County Health Department. Mary, who is fifty years old, currently has an annual wage of \$18,250, plus paid medical benefits. James has stayed working for J.I. Case during the marriage and, at the time of trial, had an annual income of \$44,000, plus medical and dental benefits.

The parties agreed the trial court arrived at a nearly equal division of the assets and liabilities. In doing so, the trial court allocated a pension with J.I. Case to

James. James began to accrue the pension in January 1962, some forty-five months before the parties were married. At the time of dissolution, the pension had a present value of \$66,251 to James. If the benefits were accrued at the same basis over all months of service, then the value of the current worth of the pension accrued during marriage would be \$58,150.

Mary and her employer have been contributing to IPERS since January 1992, but she will not be vested until January 1996. James, on retirement at age 65, will have a social security benefit of \$1085. At today's rate, Mary's benefit would be \$630 in her own right. Because this marriage lasted over ten years, she also would have the right to draw benefits on James's account rather than her own.

The trial court divided the property, ordered James to pay Mary alimony of \$650 a month to decrease to \$450 a month when James turns sixty-five. The trial court ordered the alimony to terminate on the death of either party. James and Mary were both ordered to pay \$1300 each toward Aaron's college expenses.

James challenged the alimony award to Mary. James argues alimony is not justified or, if it is justified, it should be reduced. James advances it is not fair to allocate the current value of his pension to him and still order him to pay alimony on his retirement that he will have to use his pension to pay. He points to the fact that

Mary, ten years his junior, is gainfully employed and will have a greater opportunity to accrue pension benefits. James points out the inequity in charging him with the value of his pension in the property division and then ordering him to pay alimony beyond retirement. James contends the trial court should have considered Mary's pension. Mary had contributed \$541 to her IPERS account at the time of dissolution. Mary's IPERS account was not considered in allocating the assets.

James also asks we consider that Mary is better educated than he. Mary took some classes in nursing to supplement her three-year degree after marriage. After marriage, James got his high school diploma and earned several credit hours from Southeastern Iowa Community College.

We consider alimony and property division together in assessing their individual sufficiency. They are neither made nor subject to evaluation in isolation from one another. In re Marriage of Griffin, 356 N.W.2d 606, 608 (Iowa App. 1984). We consider pension benefits. In re Marriage of Howell, 434 N.W.2d 629, 632 (Iowa 1989); In re Marriage of Huffman, 453 N.W.2d 246, 248 (Iowa App. 1990); In re Marriage of Mott, 444 N.W.2d 507, 510 (Iowa App. 1989).

Retirement plans should be considered in framing the financial clauses of a dissolution decree. See In re Marriage of Voss, 396 N.W.2d 801, 803 (Iowa App. 1986). We

look at the pension rights of both spouses. In re Marriage of Williams, 421 N.W.2d 160, 167 (Iowa App. 1988); In re Marriage of Byall, 353 N.W.2d 103, 106 (Iowa App. 1984).

We look at Mary's FICA accumulations as we do her IPERS. Her IPERS account was not vested at the time of the dissolution. The date of the dissolution is the only reasonable time when an assessment of the parties' net worth should be undertaken. Locke v. Locke, 246 N.W.2d 246, 252 (Iowa 1976); Schantz v. Schantz, 163 N.W.2d 398, 405 (Iowa 1968). We find no fault with the trial court's decision not to give Mary's IPERS account a value and include it in the property division. See In re Marriage of Miller, 475 N.W.2d 675, 678 (Iowa App. 1991). We do, however, look to the fact Mary has part of a pension plan in addition to social security in assessing her need for alimony. See In re Marriage of Schissel, 292 N.W.2d 421, 427 (Iowa 1980); In re Marriage of Earsa, 480 N.W.2d 84, 86 (Iowa App. 1991).

A value was put on James's retirement plan and then that value was given to James, and Mary was given offsetting property. This is one method for equitably allocating a pension plan. See In re Marriage of Jensen, 396 N.W.2d 367, 369 (Iowa App. 1986). In such an award, no future litigation is necessary to secure future payments, and the financial circumstances and life expectancy of the spouse owning the award cannot depreciate its value after the dissolution. See id. It does as it did here leave

James with few assets other than his future pension rights.

The preferred method of valuation is to divide the plan through a qualified dissolution which in essence separates the pension rights into two separate accounts. That did not happen here.

We agree with James that because the property division was accomplished by allocating all the pension to him and giving Mary an offsetting property, it is not equitable to consider his pension in awarding Mary alimony. James has accumulated greater social security benefits during the marriage and we look at this in considering the alimony award. We modify the alimony award to \$200 a month after James reaches the age of 65 years.

Mary has requested attorney fees on appeal. We assess no attorney fees on appeal. Costs on appeal are taxed one-half to each party.

AFFIRMED AS MODIFIED.

All judges concur, except Hayden, J., who specially concurs.

HAYDEN, P.J. (specially concurring)

I concur with the majority opinion in all respects. I specially concur with the majority on the alimony issue.

The trial court awarded alimony to Mary which was to terminate upon the death of either party. The court, however, made no provision in its dissolution decree the alimony award would terminate upon Mary's remarriage. The termination of the alimony award upon remarriage was not raised by either party and was not an issue on appeal. The majority properly did not address it on appeal.