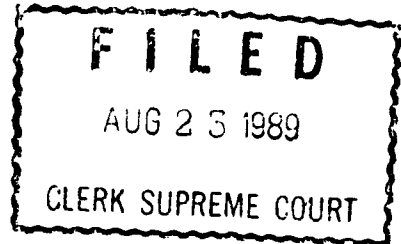


IN THE COURT OF APPEALS OF IOWA

No. 9-167 / 88-978



IN RE THE MARRIAGE OF JEAN KATHRYN WASCHKAT
AND HAROLD LOUIS WASCHKAT

Upon the Petition of

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JEAN KATHRYN WASCHKAT,

Appellee,

And Concerning

HAROLD LOUIS WASCHKAT,

Appellant.

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

Appellant has appealed from a dissolution decree,
challenging the division of property. **AFFIRMED.**

John W. Holmes of Beecher, Beecher, Holmes & Rathert,
Waterloo, for appellant.

Jay A. Nardini of Ball, Kirk, Holm & Nardini, Waterloo,
for appellee.

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

SCHLEGEL, J.

Respondent husband appeals the decree of dissolution entered by the district court. He challenges the decree's division of assets, debts, and pension benefits. We affirm.

The parties, Jean and Harold Waschkat, were married in 1961. They have four children, two of whom are now adults. The custody of the minor children is not in issue here.

Harold is a plumber. During most of the marriage he has worked as a union plumber. In the 1980's he earned gross incomes ranging from around \$30,000 per year to over \$45,000 per year. However, in late 1987 he took a salaried non-union job as a city plumbing inspector; in this work he earns a gross salary of \$1,766 per month.

Jean is a part-time secretary and nurse's aide at a hospital. Her gross earnings are \$1,130 per month or about \$13,500 per year.

In addition to their other employment, the parties operated a small farm. However, in 1987 they sold most of their farmland for \$66,000. They kept only their house and a small acreage.

The decree awarded appellee no alimony, providing instead that her property award was augmented in lieu of alimony. The decree awarded Jean the parties' house and acreage, valued at \$35,000. The decree also awarded Jean

savings of about \$55,000 derived from the sale of the farmland, plus a \$5,000 IRA account and her modest pension plan. The decree awarded Harold savings of about \$9,000, IRA accounts of about \$9,600, and all of his farm machinery, plumbing tools, and crops on hand. Each party was awarded a vehicle and various personal effects. The decree directed Harold to assume debts of around \$16,000, including a \$2,000 arrearage in temporary child support. Jean was ordered to assume debts of \$8,050.

During his years of union work Harold had accumulated two substantial union pensions, described as a local pension and a national pension. The district court awarded Harold all his rights under the local plan, which currently holds an account of over \$41,000 in contributions. The trial court found that the total assets in the national plan could not be determined. The trial court provided that upon Harold's retirement, Jean is to receive one-half of his benefits under the national union's pension plan.

Appellant's first contention is that it was inequitable to award petitioner all of her pension, the \$35,000 lump-sum alimony and one-half of his national pension plan's defined benefits. An exact percentage division of the assets is not required, nor is a precisely equal division of marital property. In re Marriage of Lattig, 318 N.W.2d 811, 814 (Iowa App. 1982). The controlling mandate is that this court should achieve an equitable and

just award under the circumstances. In re Marriage of Wallace, 315 N.W.2d 827, 830 (Iowa App. 1981). Under the circumstances of this case there was an equitable division of the other property without considering the national pension plan. Therefore, it makes no difference that the court divided the national pension plan without determining its exact value. This is not a case where a piece of property is being divided without any valuation whatsoever. Locke v. Locke, 246 N.W.2d 246, 253 (Iowa 1976). A division cannot be equitable if a completely unvalued piece of property is given to one party or another, because if the court's own valuation is incorrect somebody will get more or less than they deserve. However, the pension plan in this case can be split exactly down the middle, and as long as the division of the rest of the property was equitable the division will remain equitable.

Appellant next contends that the trial court failed to consider the tax consequences of granting the majority of the nontaxable supersaver account to Jean and granting the taxable local pension to Harold. A court should consider the tax consequences when making a property division. In re Marriage of Byall, 353 N.W.2d 103, 106 (Iowa App. 1984). However, in this case the tax consequences do not render the property division inequitable. Harold will not pay any taxes until he begins to draw from the pension fund. Jean will have to pay taxes on the interest from her

fund as it accumulates. The differences in tax consequences between the property awarded to each are not so great as Harold would have this court believe and are certainly not inequitable.

Appellant next challenges the award of \$2,000 in delinquent temporary child support. He argues that it was unfair for the trial court to continue the child support while he was unemployed. There was ample evidence that Harold could afford to pay the child support regardless of his state of employment. There are also several factors that indicate any delay causing an increase in the amount owed was caused by Harold, either through his failure to file a financial statement or through his failure to provide information concerning his national pension fund. It was certainly not inequitable or unfair to require the payments.

Finally, appellant urges that there is no evidence to show he spent \$7,504 on himself, causing the trial court to allot him payment of certain debts. This finding was clearly supported by the evidence.

Appellee requests that attorney fees be awarded on this appeal. An award of attorney fees is not a matter of right, but rests within the court's discretion and the parties' financial positions. In re Marriage of Kern, 318 N.W.2d 387, 390 (Iowa App. 1987). We are to consider the needs of the party making the request, the ability of the

other party to pay, and whether the party making the request was obligated to defend the trial court's decision on appeal. In re Marriage of Castle, 312 N.W.2d 147, 150 (Iowa App. 1981). The distribution in this case is quite equitable and neither party is in desperate need. However, appellee should not be required to bear the entire cost of defending this appeal. Appellee is awarded attorney fees in the amount of \$500.

AFFIRMED.