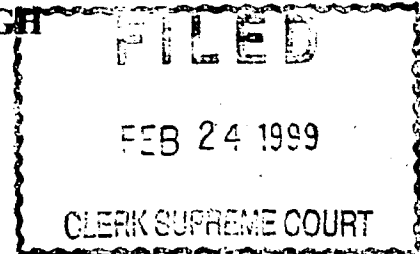


IN THE COURT OF APPEALS OF IOWA

No. 9-027 / 98-0490
Filed February 24, 1999

**IN RE THE MARRIAGE OF LORIE JEANNE WAUGH
AND LOGAN ALLEN WAUGH**

Upon the Petition of
LORIE JEANNE WAUGH,
Petitioner-Appellee/Cross-Appellant,



And Concerning
LOGAN ALLEN WAUGH,
Respondent-Appellant/Cross-Appellee.

Appeal from the Iowa District Court for Scott County, James E. Kelley, Judge.

Logan Waugh appeals from the property and spousal support provisions of the parties' dissolution decree. **AFFIRMED AS MODIFIED.**

James L. Tappa of Spector, Tappa & Nathan, Rock Island, Illinois, for appellant.

R. Douglas Wells of Wells & Wells, P.L.C., Davenport, for appellee.

Considered by Huitink, P.J., and Vogel and Zimmer, JJ.

HUITINK, P.J.

Logan Waugh appeals from the property and spousal support provisions of the parties' dissolution decree. We affirm as modified.

I. Background Facts and Proceedings.

Lorie and Logan Waugh were married on May 21, 1982. They have one son, Ian, born July 13, 1983.

In its decree, the district court awarded Lorie the marital homestead, a 1989 Buick, her Hy-Vee pension funds, and various other items of miscellaneous property. The court assigned Lorie \$7244 of marital debt for a net property distribution of \$14,488. The court awarded Logan a 1990 Dodge pickup truck, his gun collection, and other items of miscellaneous property. After assigning Logan \$5952 of marital debt, his net property distribution was \$17,747.

In addition to the specific property distributed through the decree, the district court ordered the entry of a qualified domestic relations order, awarding Lorie a one-half interest in Logan's pension benefits accrued during the marriage. The court also treated a piece of real property which Lorie brought to the marriage as exempt premarital property and set its value off to Lorie without a corresponding award to Logan. Lorie currently uses the premarital real estate solely to generate rental income.

The parties stipulated they should have joint custody of Ian, with Lorie having primary physical care. The court declined to accept the parties' stipulated amount of

child support, instead ordering Logan to pay child support in the amount of \$523.37 per month. The court also awarded Lorie \$150 per month rehabilitative alimony for four years.

Logan appeals and Lorie cross-appeals from the property distribution, spousal support, and child support provisions of the dissolution decree.

II. Scope of Review.

Our review is de novo. *In re Marriage of Benson*, 545 N.W.2d 252, 257 (Iowa 1996). We are obliged to examine the entire record and adjudicate rights anew on the issues properly presented. *In re Marriage of Geil*, 509 N.W.2d 738, 740 (Iowa 1993). No hard and fast rules govern the economic provisions in a dissolution action; each decision turns on its own uniquely relevant facts. *In re Marriage of Gaer*, 476 N.W.2d 324, 326 (Iowa 1991). We accord the trial court considerable latitude in resolving disputed claims and will disturb a ruling only when there has been a failure to do equity. *Benson*, 545 N.W.2d at 257.

III. Property Distribution.

The partners to a marriage are entitled to a just and equitable share of the property accumulated through their joint efforts. *In re Marriage of Russell*, 473 N.W.2d 244, 246 (Iowa App. 1991). Property brought into a marriage by one party need not necessarily be divided. *In re Marriage of Johnson*, 499 N.W.2d 326, 328 (Iowa App. 1993). Iowa courts do not require an equal division or percentage distribution. *Russell*, 473 N.W.2d at 246. The determining factor is what is fair and

equitable in each circumstance. *Id.* When distributing the property, we take into consideration the criteria codified in Iowa Code section 598.21(1)(1997). *In re Marriage of Estlund*, 344 N.W.2d 276, 280 (Iowa App. 1983). Among the many factors to consider are: length of the marriage; property brought to the marriage by each party; the contribution of each party to the marriage, giving appropriate economic value to each party's contribution in homemaking; and the earning capacity of each party. *See* Iowa Code § 598.21.

A. Premarital Property.

Logan claims the district court's treatment of the premarital real estate was inequitable. He contends Lorie should not have been awarded both the premarital rental property and the marital homestead while he received no real property.

Although we agree with Logan that the rental property should not be exempt from equitable distribution based solely upon its character as premarital property, we find the district court's treatment of the premarital property is equitable in light of other considerations. The court noted that while marital property and assets had been contributed to reduce the mortgage on the rental property, a second mortgage had been taken out on the rental property, which funds had been used solely to improve the marital home. The court remedied any possible inequity by awarding Lorie the marital home subject to both the mortgage thereon and the first and second mortgages on the rental property.

B. Logan's Pension Benefits.

Logan maintains the award of one-half his retirement benefits to Lorie is inequitable, as she will be entitled to social security benefits in addition to her own pension. Conversely, he asserts he is dependent solely on his pension for retirement benefits because he will not be eligible to collect social security benefits when he retires.

Pension benefits are treated as marital property in Iowa and are properly subject to equitable distribution. *In re Marriage of Gonzalez*, 561 N.W.2d 94, 98 (Iowa App. 1997); *In re Marriage of Mott*, 444 N.W.2d 507, 510-11 (Iowa App. 1989). The appellate courts of this state have devised several schemes for the distribution of pension benefits in a dissolution. *Gonzalez*, 561 N.W.2d at 98. One such scheme for dividing pension benefits is to award a portion of the pension benefits if and when they accrue. *Id.* This system awards a portion of the pension benefits in the property distribution. *Id.* The same factors discussed above are relevant to determine whether pension benefits should be equitably divided. *See* Iowa Code § 598.21.

We find the district court's treatment of Logan's pension benefits is equitable. While Lorie has a small pension available to her from her employment at Hy-Vee, she has had little employment history and a limited opportunity to accrue retirement income through the course of the parties' marriage. Although Logan asserts he will be totally dependent on his pension for retirement income, he will still be in sole

possession of the majority of his pension benefits. The record indicates he began accruing benefits almost a decade prior to the parties' marriage, and currently continues to accrue benefits. Under the provisions of the decree, all benefits earned prior to the marriage and after the dissolution are Logan's free and clear of any claim by Lorie. We affirm the district court on this issue.

We have considered the parties' remaining assignments of error concerning the district court's property distribution and find them to be without merit.

IV. Rehabilitative Alimony.

When determining the appropriateness of alimony, the court must consider: "(1) the earning capacity of each party; and (2) present standards of living and ability to pay balanced against relative needs of the other." *In re Marriage of Estlund*, 344 N.W.2d 276, 281 (Iowa App. 1983). The spouse with the lesser-earning capacity is entitled to be supported for a reasonable time in a manner as closely resembling the standard existing during the marriage as possible without destroying the right of the party providing the income to enjoy at least a comparable standard of living as well. *In re Marriage of Hayne*, 334 N.W.2d 347, 351 (Iowa App. 1983).

Rehabilitative alimony serves to support an economically dependent spouse through a limited period of education and retraining. *In re Marriage of O'Rourke*, 547 N.W.2d 864, 866 (Iowa App. 1996). Its objective is self-sufficiency. *Id.* Cases in which rehabilitative alimony is awarded are those where the spouse to receive alimony needs to redevelop previous skills, receive new training, or develop potential

supportive skills. *In re Marriage of Peterson*, 491 N.W.2d 535, 538 (Iowa App. 1992).

We find an award of rehabilitative alimony is warranted in this case. The record reflects Lorie has maintained sporadic part-time employment during the parties' marriage. She is currently qualified for employment which pays minimum wage. She has a high school education and one and one-half years of clerical college education. She has expressed a plan and desire to enroll in courses which will train her for employment in the medical field. The record reflects she will be able to complete the necessary training in two to four years.

Under these circumstances, Lorie is entitled to a term of rehabilitative alimony to help her acquire marketable skills in an effort to become self-sufficient. Her prolonged absence from the full-time workforce and her time spent as a homemaker during the marriage have eroded the marketable skills she once possessed prior to the parties' marriage. We find the district court's award of rehabilitative alimony in the amount of \$150 per month for four years is equitable and we affirm on this issue.

V. Child Support Stipulation.

Logan claims the court erred in rejecting the parties' stipulated amount of child support. Additionally, he asserts the district court improperly calculated his child support obligation by failing to deduct his monthly premium for health insurance coverage for Ian, as well as his mandatory pension contribution.

A stipulation and settlement in a dissolution proceeding is a contract between the parties; however, it becomes final only when accepted and approved by the court. *In re Marriage of Handeland*, 564 N.W.2d 445, 446-47 (Iowa App. 1997). When a stipulation merges into a decree, it is then to be interpreted and enforced as a final judgment of the court, not as a separate contract between the parties. *Id.*

A stipulated settlement should be approved and enforced only if the district court determines the settlement will not adversely affect the best interests of the parties' children. *In re Marriage of Udelhofen*, 538 N.W.2d 308, 310 (Iowa App. 1995) (citing *In re Marriage of Zeliadt*, 390 N.W.2d 117, 119 (Iowa 1986)).

We find the district court had authority to refuse to accept the parties' stipulation in regard to Logan's child support obligation. If the district court believed the agreement was not in Ian's best interests, it should not have incorporated the stipulation in the parties' dissolution decree.

Logan contends the stipulation was in Ian's best interests because under a proper application of the child support guidelines, Lorie would receive less than the stipulated \$500 amount. He contends he is entitled to a deduction for monthly health insurance premiums for Ian's insurance coverage, as well as a deduction for his monthly mandatory pension contribution. *See Child Support Guidelines.*

We find the district court erred by failing to provide Logan with a deduction for his monthly health insurance premium. The record reflects Logan indicated he paid \$80 per month in premiums. When this \$960 is deducted from his annual

income, his net monthly income is \$2424.17. We find the record does not support an additional deduction from net monthly income for a mandatory pension contribution.¹ Applying Logan's net monthly income of \$2424.17 to the child support guidelines yields a monthly support obligation of \$506.65. Because we find that under the parties' stipulation, Ian would not receive the level of support set by the guidelines, we decline to accept the stipulation, and modify the decree to set Logan's monthly child support obligation at \$506.65 per month.

VI. Attorney Fees.

In her cross-appeal, Lorie contends the district Court abused its discretion in failing to award her trial attorney fees. Ordinarily an award of attorney's fees rests in the sound discretion of the trial court and will not be disturbed on appeal in the absence of an abuse of discretion. *In re Marriage of Francis*, 442 N.W.2d 59, 67 (Iowa 1989). An award of attorney's fees depends upon the ability of the respective parties to pay, depending upon the financial circumstances and earnings of each. *In re Marriage of Wessels*, 542 N.W.2d 486, 491 (Iowa 1995). We find the district court did not abuse its discretion in failing to award trial attorney fees in this case. We affirm on this issue.

AFFIRMED AS MODIFIED.

¹ But for a reference on Lorie's child support guidelines worksheet, the record is devoid of evidence demonstrating the amount, if any, of a monthly mandatory pension contribution paid by Logan.