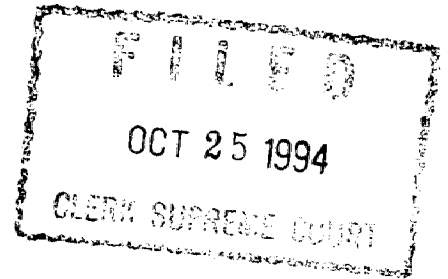


IN THE COURT OF APPEALS OF IOWA

No. 4-299 / 93-1532



IN RE THE MARRIAGE OF BETTY JEAN KISSEE AND
ROBERT DEAN KISSEE

Upon the Petition of
BETTY JEAN KISSEE,

Petitioner-Appellant,

And Concerning
ROBERT DEAN KISSEE,

Respondent-Appellee.

Appeal from the Iowa District Court for Woodbury
County, Michael S. Walsh, Judge.

Petitioner appeals from a judgment of the district
court denying her petition for modification of the parties'
dissolution decree. **AFFIRMED.**

John Sandre of Coppola, Sandre & McConville, P.C., Des
Moines, and William A. Shuminsky of Shuminsky, Shuminsky &
Molstad, Sioux City, for appellant.

W.J. Giles, III, of Giles & Giles, Sioux City, for
appellee.

Heard by Sackett, P.J., and Habhab and Cady, JJ.

HABHAB, J.

Petitioner appeals from a judgment of the district court denying her petition for modification of the parties' dissolution decree. Petitioner argues the district court erred in denying her request for a portion of respondent's military pension. We affirm.

The marriage of Betty Jean Kisse and Robert Kisse was dissolved by decree on July 24, 1979. They had been married twenty-two years. Robert retired from the military in May 1974, and was receiving military retirement benefits at the time the marriage was dissolved. Pursuant to a stipulation signed by both parties and incorporated by the district court into the decree, Betty was awarded all military benefits accruing to her in the future due to future legislation or other reasons.¹ Robert was ordered to pay Betty alimony in the amount of \$350 per month.

On December 17, 1990, Robert filed a petition for modification of the decree, asserting alimony payments should cease because Betty had remarried. The district court ordered Robert to pay all payments due to date, and further provided alimony would cease with the payment due June 1992.

In September 1992, Betty filed a petition for

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1. The relevant provision in the decree reads:

The Petitioner [Betty] shall have all military benefits which are not extinguished by this dissolution and any future benefits accruing to her by reason of future laws or any other reason.

modification, arguing changes by Congress had effectively overruled a United States Supreme Court case prohibiting state courts from apportioning federal pensions, and she was, therefore, entitled to share directly in Robert's military pension. Betty noted that in 1979 when the original decree was entered, she did not qualify to apply for or receive a share of military benefits. Robert currently receives a gross monthly military pension of \$1200.

The district court, however, declined to award Betty any military benefits. The court held the military benefits referred to in the decree did not exist at the time of the stipulation and decree. The district court opined that Betty was entitled only to those benefits to which she was already entitled or to which she might become entitled in the future. The court went on to state that Betty had failed to prove the existence or the contents of any law that may have been passed after the entry of the decree which would have affected her eligibility to receive military benefits. Betty has appealed.

In this modification action, our review of the district court's ruling is de novo. Iowa R. App. P. 4.

In determining the necessity or advisability for modification of a dissolution decree provision, the district court has reasonable discretion. In re Marriage of Wahlert, 400 N.W.2d 557, 560 (Iowa 1987); In re Marriage of Vetterlack, 334 N.W.2d 761, 762 (Iowa 1983); In re

Marriage of Staton, 511 N.W.2d 418, 420 (Iowa App. 1993); In re Marriage of Bonnette, 492 N.W.2d 717, 722 (Iowa App. 1992); In re Marriage of Kern, 408 N.W.2d 387, 389 (Iowa App. 1987). This exercise of discretion will not be disturbed on appeal unless there is a failure to do equity. Wahlert, 400 N.W.2d at 560; Vetternack, 334 N.W.2d at 762; Staton, 511 N.W.2d at 420; Bonnette, 492 N.W.2d at 722; Kern, 408 N.W.2d at 389. We reach our conclusion, as to whether equity has been done, based on our de novo review. Iowa R. App. P. 4.

As our supreme court has stated, 10 U.S.C. § 1408 allows state courts to treat military pensions as marital property. See In re Marriage of Howell, 434 N.W.2d 629, 631-32 (Iowa 1989). The law allows military pension payments to be made directly to the service member's spouse. Id. at 632. We do not find the law requires the division of Robert's military pension benefits and the distribution of such benefits to Betty. It was not mandatory that the district court divide the military pension. The laws upon which Betty relies simply allow military pensions to be divided in marital dissolutions. See In re Marriage of Yates, 365 N.W.2d 49, 51 (Iowa App. 1985).

We find the district court acted equitably and exercised reasonable discretion in not modifying the dissolution decree. We affirm the district court's denial of the modification.

AFFIRMED.