IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF NANCY B. AIKEN AND ROBERT W. AIKEN

Upon the Petition of	)	
NANCY B. AIKEN,	)	
Petitioner-Appellee,	)	Filed September 24, 1985
And Concerning	)	
ROBERT W. AIKEN,	)	5-382 / 84-1663
Respondent-Appellant.	)	

Appeal from the Iowa District Court for Clinton County - C. H. Pelton, Judge

Respondent husband appeals from the economic provisions of the parties' dissolution decree. **AFFIRMED AS MODIFIED.**

James D. Bruhn of Shaff, Farwell & Senneff, Clinton, for respondent-appellant

James P. Richmond, DeWitt, for petitioner-appellee.

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

PER CURIAM

Nancy and Robert Aiken were married in 1962. They have two children who are both full-time college students. Nancy was 44 and Robert was 43 at the time of trial. Nancy has a high school education and during the marriage her primary role was caring for the home and children. However, Nancy began working part-time as a sales clerk in Walkers department store after her youngest child entered fourth grade and has been employed at the store ever since. At the time of the dissolution proceeding Nancy was earning $3.75 per hour and had just been guaranteed 33 hours per week. Robert has a bachelor of science degree in printing management and is employed as the general manager of Ennis Business Forms, Inc. His annual salary is $36,724 plus he has the use of a company car and receives bonuses annually. His 1983 bonus was $7,000.

The parties stipulated to all the terms of the property division. In brief, each party will receive a net property settlement of $43,592. The trial court honored their stipulation except in the division of Robert's Ennis pension plan and his Ennis stock plan valued at $13,520. The parties stipulated that Nancy would receive one-half of the present value of the stock plan as a lump sum cash award and that Nancy would receive $255 per month for each monthly pension payment that Robert receives when he retires. The court instead awarded Nancy one-half of the 668 shares in the stock plan and ruled that Nancy was entitled to $261 monthly pension payments.

The trial court also ordered that the marital home valued at $48,188.85 be sold and the proceeds divided equally after Robert is reimbursed for the mortgage payments he makes after July 5, 1984. Robert also is ordered to pay for tuition, books, room and board for their two children while they are full-time college students. The court ruled that Robert should pay Nancy alimony of $1,000 per month to continue until Nancy remarries or either party dies. Robert was also ordered to pay $500 toward Nancy's attorney fees.

Robert appeals from the property division and the alimony provision of the decree. He asserts that the alimony award is inequitable and should be set aside or, in the alternative, that alimony should be limited to a reasonable length of time (two years) to allow Nancy to improve her job skills and earning capacity. Robert also contends that the division of his Ennis stock plan and his Ennis pension plan was inequitable.

In this equity action our review is de novo. In re Marriage of Estlund, 344 N.W.2d 276, 279 (Iowa Ct. App. 1983). We give weight to the fact findings of the trial court, but are not bound by them. Iowa R. App. P. 14(f)(7).

I. **Alimony.** The factors to be considered in affixing an award of alimony have been set out at length in Iowa Code section 598.21(3) and need not be enumerated here. The equitable principles that we have enforced in the past require that the spouse with the lesser earning capacity is entitled to be supported for a reasonable time in a manner as closely resembling the standards existing during the marriage as possible. In re Marriage of Hayne, 334 N.W.2d 347, 351 (Iowa Ct. App. 1983). We agree with the trial court's finding that the disparity in the parties' earning capacities is great. Robert earns approximately $40,000 annually (including his bonus) and Nancy's top earnings have been under $6,000 a year. Nancy worked only part time while raising the children and devoted more of her time during that period to homemaking. Given this disparity, coupled with the fact that the marriage lasted twenty-three years, it cannot be questioned that Nancy is entitled to alimony. However, we are persuaded that the trial court's award of $1,000 a month to Nancy for an indefinite period is inequitable and should be reduced in both amount and duration.

We initially note that Nancy is not paying rent at the present time. She has the right to live in the marital home until it is sold, at which point she will receive almost one-half of the sale proceeds. Robert will make the monthly mortgage payments and pay the real estate taxes until the sale. This reduces Nancy's claimed monthly living expenses significantly.

At the time of trial, Nancy was understandably confused as to what direction her life will take after the marriage is over. She enjoys working in the sales field and for her present employer to the extent that she has no desire to work anywhere else. We realize that Nancy will need further training to be able to earn much beyond the minimum wage level. We also recognize that the degenerative disc in Nancy's lower back will limit the types of jobs which she can perform comfortably. However, Nancy is capable and must be encouraged to actively develop new job skills and secure full-time employment. It is not necessary that Robert contribute to her support indefinitely.

Nancy opined about the tight strings Robert kept on their finances throughout the marriage. However, the obvious result of Robert's "miserly" ways is that the parties have no liabilities other than their home mortgage, and ample savings.

In view of the substantial assets awarded to her by the decree, she should be able to achieve at least the moderate standard of living to which she was accustomed during marriage with the income she may realize from those assets, her wages, and alimony of $700 a month. Robert's alimony obligation shall terminate after five years or upon Nancy's remarriage or either party's death, whichever occurs first.

II. Pension Plan. Robert has a vested pension plan through Ennis. He argues that the pension plan is not a marital asset subject to division or, in the alternative, that Nancy should be awarded her one-half interest in the plan currently rather than at the time Robert actually receives his benefits.

Iowa Code section 598.21(1)(i) (1981) specifically provides that pension benefits are one factor for the court to consider in dividing property equitably between the parties. A pension plan interest is a marital asset because it represents a right to additional compensation which is acquired during marriage. 24 Am. Jur. 2d Divorce and Separation § 905 (1983). Such interest stems from a deferral of current compensation which otherwise would have augmented the marital estate. Id. Therefore, Robert's pension plan was correctly considered by the trial court as a marital asset subject to division based on current worth.

Respecting Robert's contention that Nancy should be paid now rather than later, Robert does not provide us with the present value of Nancy's interest. Nowhere in the record has such an amount been suggested or agreed upon. The trial court discounted the amount of the pension fund to its present monthly value, $522.09, and awarded Nancy one-half of this value, $261, to be received monthly when Robert retires. In light of the fact that Nancy has not had full-time employment and has not been able to participate in a significant plan for retirement (her vested monthly retirement income to date from Walkers is $15.48), her receipt of these benefits in later years will be more vital than at the present time. Deferring Nancy's receipt of her interest in Robert's pension plan rather than giving her a lump sum present value award is imminently more equitable under the circumstances.

III. Stock Thrift Plan. Robert has a 100% vested interest in 667.6735 shares of Ennis stock with an agreed-upon value of $13,520. The stock plan is another of Ennis' pension-type benefits for its employees. Robert will receive the stock in kind upon his quitting, retirement, or death. The trial court awarded Nancy 334 shares to be received when Robert is entitled to distribution thereof.

Robert contends that the stock plan is not a marital asset or, in the alternative, that Nancy should have been awarded one-half of the stock's present value rather than a specified portion of a distribution in the future. Robert is willing to pay Nancy $6,760 presently to enable him to retain his full stock holding in the plan. He recognizes that he will incur the risk of any loss the stock takes in value before distribution.

The trial court's stated reason for not distributing Nancy's interest immediately was "since these assets are not now available, their distribution either in kind or in money is difficult at this time." We find the agreed-upon value of the stock is $13,520. Nancy is entitled to one-half of the present value of the stock plan. This one-half interest can be distributed to her now because Robert is willing to do so. We respect Robert's desire to pay Nancy $6,760 and allow him to retain all of the stock when it is distributed in the future. This matter is modified accordingly. Court costs are assessed to Robert.

AFFIRMED AS MODIFIED.

Oxberger, C.J. and Snell, J. concur; Sackett, J. concurs in part and dissents in part

SACKETT, J. (concurring in part and dissenting in part)

I agree with the majority in all respects except I would modify the alimony to terminate in ten years and not terminate it on Nancy's remarriage.