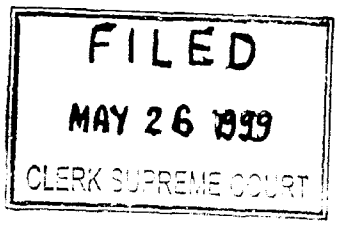
IN THE COURT OF APPEALS OF IOWA

No. 9-002 / 97-944

IN RE THE MARRIAGE OF REBECCA J. LARSON AND JACK I. LARSON



Upon the Petition of
REBECCA J. LARSON,

Petitioner-Appellee,

And Concerning
JACK I. LARSON,

Respondent-Appellant.

Appeal from the Iowa District Court for Guthrie County, Darrell J. Goodhue, Judge.

Respondent appeals from the district court's qualified domestic relations order awarding petitioner one-half his pension benefits that accrued during the marriage.

AFFIRMED.

Dorothy L. Dakin of the Dakin Law Office, Boone, for appellant.

Vicki R. Copeland of Wilcox, Polking, Gerken, Schwarzkopf, Hoyt & Copeland, P.C., Jefferson, for appellee.

Considered by Vogel, P.J., Zimmer, J., and Habhab, S.J.* Sackett, C.J., takes no part.

*Senior judge assigned by order pursuant to Iowa Code § 602.9206 (1997).

HABHAB, S.J.

Respondent-appellant appeals the district court's qualified domestic relations order awarding petitioner-appellee one-half his pension benefits that accrued during the marriage. He claims the district court erred in making an unwarranted modification to the property allocation provisions of the parties' dissolution decree. The Iowa Supreme Court, by order, limited the issues on appeal "to those issues relating to the alterations contained in paragraphs six and eight of the nunc pro tunc order and their effect, if any, on the original Qualified Domestic Relations Order." Petitioner-appellee seeks appellate attorney fees. We affirm the district court and award petitioner-appellee attorney fees.

Factual background: Rebecca and Jack Larson were married in 1970. Jack began working for John Deere & Co. in 1972 and remains employed with the company. Jack has a vested interest in a company-defined benefit plan that accrued entirely during the marriage. Rebecca filed for dissolution of marriage in 1995. Trial began on May 8, 1996. The district court entered its findings of fact, conclusions of law, and order stating, "A qualified domestic relations order shall be entered transferring one-half of the John Deere pension rights to Rebecca which had accrued prior to May 8, 1996." Rebecca's attorney was directed to prepare a decree in accordance with the trial court's findings and to submit it to Jack's attorney for approval as to form. The court filed its decree on August 28, 1996, and as it relates to Jack's pension, it provided, "Jack and Rebecca shall equally divide any retirement

benefits or pensions accumulated by Jack through his employment as of the date of trial." Rebecca's attorney was directed to prepare a QDRO incorporating this provision with the draft being first submitted to Jack's attorney for approval.

After the parties could not agree on the form the QDRO should take, the district court ordered Rebecca's attorney to prepare a proposed QDRO in line with the holding in *In re Marriage of Benson,* 545 N.W.2d 252 (Iowa 1996) (for purposes of division of pension benefits in dissolution actions under percentage method, value of pension benefit is to be determined at time of maturity). The district court then filed a QDRO incorporating the formula set forth in *Benson.* The district court denied Jack's subsequent Iowa Rule of Civil Procedure 179(b) motion. Neither party appealed.

Nunc pro tunc order: On April 8, 1997, Rebecca filed an application for a nunc pro tunc order to clarify apparent ambiguities in the QDRO raised by Jack with the plan administrator. Ruling on the application, the district court amended the original QDRO provisions describing the allocation of benefits. The amendments were technical in nature and did not alter the substance of the original QDRO. Jack appeals.

Supreme Court order: On July 23, 1997, Rebecca filed a motion with the supreme court requesting, among other things, the issues on appeal be strictly limited to the appropriateness of the changes made to the original QDRO by the nunc pro tunc order. She argued that because Jack failed to appeal from the original QDRO, he is

barred from challenging that order. On April 17, 1998, the supreme court granted the motion and limited the issues on appeal to the changes made in paragraphs six and eight of the QDRO by the nunc pro tunc order.

Appellate claims: Jack argues the original decree entitles Rebecca to one-half the value of his retirement benefits as of May 8, 1996, no more and no less. Jack contends the *Benson* formula contained in the QDRO calculating the value of Rebecca's share of benefits at the time of his retirement is inconsistent with the divorce decree. He also argues the court erred in granting Rebecca survivorship rights in the benefits because this provision was not contained in the decree and is not required by the benefit plan.

Discussion: Jack's brief does not argue any of the issues allowed by the limiting order of the supreme court. He did not appeal the dissolution decree, the initial QDRO, or the QDRO provisions set forth in the ruling on his rule 179(b) motion. We cannot consider issues other than those allowed in the supreme court's order. We find the changes to paragraphs six and eight made by the nunc pro tunc order are technical in nature and do not affect any substantive rights of the parties. We affirm.

Rebecca seeks appellate attorney fees. An award of appellate attorney fees is not a matter of right, but rests within the court's discretion and the parties' financial positions. *In re Marriage of Hansen*, 514 N.W.2d 109, 112 (Iowa App. 1994). We 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 Cooper*, 524 N.W.2d 204, 207 (Iowa App. 1994). Jack ignored the supreme court's order limiting the issues on appeal. Rebecca was forced to defend the district court's decision on appeal, even though Jack did not raise any issues allowed by the supreme court's order. We order Jack to pay $1000 of Rebecca's appellate attorney fees.

AFFIRMED.

No. 97-944. [9-002] IN RE MARRIAGE OF LARSON

Appeal from the Iowa District Court for Guthrie County, Darrell J. Goodhue, Judge. **AFFIRMED.** Considered by Vogel, P.J., Zimmer, J., and Habhab, S.J. Sackett, C.J., takes no part. Opinion by Habhab, S.J. (5 pages $2.00)

Jack Larson appeals the district court's qualified domestic relations order (QDRO) awarding Rebecca one-half his pension benefits which accrued during the marriage. The court ordered Rebecca's attorney to prepare a QDRO in line with the holding in *In re Marriage of Benson*, 545 N.W.2d 252 (Iowa 1996). Jack claims the district court erred in making an unwarranted modification to the property allocation **No.**

97-944. [9-002] IN RE MARRIAGE OF LARSON (continued)

provisions of the parties' dissolution decree. The Iowa Supreme Court, by order, limited the issues on appeal "to those issues relating to the alterations contained in paragraphs six and eight of the nunc pro tunc order and their effect, if any, on the original" QDRO. **OPINION HOLDS:** Jack did not argue any of the issues allowed by the supreme court. We cannot consider issues other than those allowed in the supreme court's order. We find the changes to paragraphs six and eight made by the nunc pro tunc order are technical in nature and do not affect any substantive rights of the parties. Rebecca seeks appellate attorney fees. Jack ignored the supreme court's order limiting the issues on appeal. Rebecca was forced to defend the district court's decision on appeal, even though Jack did not raise any issues allowed by the supreme court's order. We order Jack to pay $1,000 of Rebecca's appellate attorney fees.