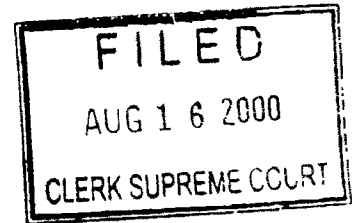


IN THE COURT OF APPEALS OF IOWA

No. 0-415 / 99-1445
Filed August 16, 2000

**IN RE THE MARRIAGE OF RUBY C. HANSEN
AND EDWARD E. HANSEN**

**Upon the Petition of
RUBY C. HANSEN,**
Petitioner-Appellee,



**And Concerning
EDWARD E. HANSEN,**
Respondent-Appellant.

Appeal from the Iowa District Court for Johnson County, L. Vern Robinson, Judge.

Edward Hansen appeals from the property provisions of the parties' dissolution decree. Ruby Hansen requests an award of appellate attorney fees.

AFFIRMED.

Dennis A. Bjorklund, Coralville, for appellant.

Kirsten H. Frey of Kennedy, Cruise, Anderson & Frey, L.L.P., Iowa City,
for appellee.

Considered by Vogel, P.J., and Miller and Hecht, JJ.

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HECHT, J.

After twenty-three years of marriage, Ruby C. Hansen sought dissolution of her marriage to Edward E. ("Gene") Hansen. The parties stipulated to the division of all assets except their pension and retirement accounts. By their agreement, each party received real and personal property valued at approximately \$106,000. After hearing evidence on August 4, 1999, the district court approved the stipulation of the parties and entered "Findings of Fact, Conclusions of Law and Decree of Dissolution." Gene appeals from the district court's division of the pension and retirement assets, and Ruby requests appellate attorney fees. We affirm.

I. Factual Background and Proceedings. At the time of the dissolution trial, Gene was fifty-five years of age. He had retired at age fifty-three from his employment with the Veteran's Administration Hospital after thirty years of service. He received a bonus of \$25,000 in consideration for his early retirement. He then began receiving a Civil Service Retirement System ("CSRS") defined benefit pension payment of \$1,343 per month. At the time of trial, the present value of Gene's future monthly pension payments was \$217,383. Gene also holds an IRA account valued at \$4,569. After retiring, Gene held part-time employment at a car wash and a restaurant, but quit both jobs voluntarily. The record does not suggest that Gene has any physical impairment restricting his ability to work. He testified he would probably have a part-time job in the future from which he expects to earn \$500 per month to supplement his pension income.

Ruby, who was age forty-seven at the time of trial, began working for the Veteran's Administration in 1972. In 1980 she resigned and began working elsewhere. At the time of her resignation, she withdrew her CSRS funds. When she returned to work for the Veteran's Administration in 1985, she restored the funds she had earlier withdrawn from the retirement fund. Although she has been continuously employed by the Veteran's Administration since 1985, she has been unable to make additional contributions to the fund because of changes made to it during the five years she worked elsewhere. The value of Ruby's CSRS fund account was \$7,478 at the time of trial. She will be entitled to a monthly payment of \$75 from the fund when she reaches age fifty-five. Ruby also owns a Thrift Savings Account, which is comparable to a 401(k) account, which had a value of \$11,271 at the time of trial. The evidence suggests that Ruby is in good health and continues to work full-time as a cook for the Veteran's Administration.

The district court determined that Ruby should receive \$450 per month of Gene's CSRS benefit as part of an equitable division of the parties' pension assets. Gene contends the district court's decision failed to consider several factors enumerated in Iowa Code section 598.21(1) (1997). He contends the division of pension assets ordered by the district court is inequitable because Ruby is only forty-seven years of age and earns a net monthly income in excess of \$2,000 from her full-time employment. He further posits that, as a retiree, the district court's disposition leaves him with a fixed income of less than \$900 per month. Ruby contends the district court correctly applied the formula prescribed

by our supreme court for the division of pension assets. She urges us to affirm the district court and asks for an award of attorney fees on appeal.

II. Standard of Review. Dissolution of marriage decrees are reviewed in equity. *In re Marriage of Knickerbocker*, 601 N.W.2d 48, 50 (Iowa 1999). Our standard of review is therefore de novo. Iowa R. App. P. 4. We examine the entire record and adjudicate anew rights on the issues properly presented. *In re Marriage of Beecher*, 582 N.W.2d 510, 512-13 (Iowa 1998). We give weight to the fact findings of the district court, especially when considering the credibility of witnesses, but we are not bound by them. Iowa R. App. P. 14(f)(7).

III. The Merits. Each party is entitled to a just and equitable share of the assets. *In re Marriage of Gonzalez*, 561 N.W.2d 94, 98 (Iowa App. 1997); *In re Marriage of Russell*, 473 N.W.2d 244, 246 (Iowa App. 1991). 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). *In re Marriage of Estlund*, 344 N.W.2d 276, 280 (Iowa App. 1983). Among the many factors to consider are: the length of the marriage, each party's contribution to the marriage, the age and physical and emotional health of the parties, the parties' earning capacities, any written agreements made by the parties concerning property distribution, other economic circumstances including pension benefits, and the tax consequences to each party. See Iowa Code § 598.21(1). Pension plans are treated as assets subject to equitable distribution just as any other property. *In re Marriage of Branstetter*,

508 N.W.2d 638, 640 (Iowa 1993); *In re Marriage of Mott*, 444 N.W.2d 507, 510 (Iowa App. 1989). A spouse may be awarded a fair percentage of a pension acquired during the marriage. *In re Marriage of Benson*, 545 N.W.2d 252, 255 (Iowa 1996).

We have reviewed all of the factors controlling the division of assets in dissolution of marriage cases. See Iowa Code § 598.21(1). We conclude the district court equitably divided the pension and retirement assets by awarding one-third of Gene's monthly CSRS pension benefits to Ruby. The allocation of less than fifty percent of Gene's pension to Ruby is justified because of the age disparity between the parties and because the value of Ruby's individual retirement account (\$11,271) exceeds Gene's (\$4,569). We find no disparity between the parties with respect to physical and emotional health that would justify setting aside all or a greater percentage of Gene's pension to him.

We reject Gene's contention that Ruby has an inordinately greater earning capacity that would justify a more favorable allocation to him. It must be conceded that, at age fifty-five, his work-life expectancy is somewhat shorter than Ruby's. The most significant limitation on Gene's earning capacity, however, is his election to retire at an early age and subsist on his monthly pension distribution and meager auxiliary income from part-time employment. The record contains no evidence tending to prove Gene is unable to work full-time and generate earnings similar to Ruby's. Under the circumstances, we must reject Gene's contention that the district court failed to consider the economic

circumstances of the parties and the other factors enumerated in section 598.21 when it allocated Gene's pension asset between the parties.

Gene contends the omission of any reference to the division of pensions in the parties' stipulation should cause us to infer that the parties had agreed "not to touch" each other's pension. The record discloses, however, the parties informed the district court at the outset of the trial that they had agreed as to the division of all property except the "valuation and distribution of the retirement plan or pension benefits." They presented the dispute to the district court for resolution. Thus, Gene's contention that the parties intended he be permitted to keep his entire pension is obviously incompatible with the record presented to us, and we reject it.

We now turn to Ruby's request for attorney fees on appeal. We assess 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 Dieger*, 584 N.W.2d 567, 570 (Iowa App. 1998). In this case, the assets and earning capacities of the parties are similar. However, we do note that Ruby was obligated to defend the district court's decision on appeal; and that Gene has the ability to pay some amount toward Ruby's attorney fees on appeal. Accordingly, Gene shall pay to Ruby the sum of \$1,000 for her appellate attorney fees.

AFFIRMED.

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