

IN THE COURT OF APPEALS OF IOWA

No. 0-616 / 89-1600

IN RE THE MARRIAGE OF KATHLEEN A. GRIFFIN AND
GALE R. GRIFFIN

Upon the Petition of
KATHLEEN A. GRIFFIN,

Appellee/Cross-Appellant,

And Concerning
GALE R. GRIFFIN,

Appellant/Cross-Appellee.

Appeal from the Iowa District Court for Woodbury
County, Phillip S. Dandos, Judge.

Both parties have appealed a dissolution decree,
challenging economic provisions. The wife also requests
attorney's fees on appeal. **AFFIRMED AS MODIFIED.**

P.D. Furlong, Sioux City, for appellant/cross-appellee.

Alice S. Horneber of Margolin, Gildemeister, Willia,
Mugan & Keane, Sioux City, for appellee/cross-appellant.

Considered by Donielson, P.J., and Schlegel and Hayden,
JJ.

FILED

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CLERK SUPREME COURT

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HAYDEN, J.

Kathleen and Gale Griffin were married in November 1978. It was a second marriage for both parties. No children were born of the marriage.

Kathleen was born December 12, 1942. She was previously married to Mr. Sencenbaugh and had two children with him. Mr. Sencenbaugh died in 1975. Kathleen received a certain amount of money from Mr. Sencenbaugh's estate which she used to pay off the mortgage on a \$32,000 house in Sioux City, Iowa. Kathleen also brought to her marriage with Gale a 1978 Blazer, a camper worth \$1,000, savings of about \$10,000, and a \$5,000 certificate of deposit.

The Griffins bought a house on Brown's Lake near Salix, Iowa. Kathleen sold her house in Sioux City and used \$10,000 of the proceeds for the down payment on the new house. She used the rest of the proceeds for a \$5,000 certificate of deposit and to buy each of the children a car.

Kathleen worked for Postal Finance Company until 1982. In 1982 she developed a rare disease which caused her to have a stroke. She has not worked since 1982, and there is no expectation she will be able to work in the future. Kathleen receives Social Security benefits of \$498 per month and disability benefits from her former employment of \$202 per month. At the time of the dissolution Kathleen was living in an apartment in Sioux City.

Gale was born November 2, 1942. He began working for Horner-Waldorf Company on June 10, 1968, and was still working for that company when the parties married in 1978. Gale had accumulated \$18,364.77 in his retirement account when the parties married. Gale also brought a 1976 pickup with a net value of about \$3,000 to the marriage.

In 1979 Horner-Waldorf became Champion International. Gale's retirement account carried over to Champion. During the marriage Gale withdrew almost \$45,000 from his retirement account with Champion. \$15,573 of this amount was spent on improvements to the house. The Griffins spent the rest of the \$45,000 on consumer goods. When Gale becomes sixty-five years old he will receive a pension of \$354.48 per month from Champion.

In 1986 Champion was sold to Stone Container Corporation. Gale's gross income at Stone is \$2,384 per month, and his net income is \$1,854. Through Stone, Gale has company stock worth \$212.66 and deferred compensation worth \$8,963.39. Stone began a new retirement program. At the time of the trial, Gale's retirement account at Stone would pay him a pension of \$83.52 per month if he retired at sixty-five.

In contemplation of the dissolution the parties sold their house for a net profit of \$35,113.25. They also sold some of their personal belongings for \$3,222.50. These amounts were placed in an escrow account.

The district court ordered Gale to pay Kathleen \$325 per month in alimony until he reaches the age of sixty-five, and \$150 per month after that. Gale was awarded about \$20,000 more than Kathleen in property. However, Kathleen was awarded the first \$20,000 of the proceeds from the house. The debts of the parties were to be paid from the remainder of the proceeds. Any amount left over would be divided equally between the parties, as would the \$3,222.50 from the sale of personal property. Kathleen was ordered to pay a personal debt of \$2,000. Gale was ordered to pay \$1,000 of Kathleen's attorney fees.

Gale appealed and Kathleen cross-appealed.

I. In this equity action, our review is de novo. Iowa R. App. P. 4. We have a duty to examine the entire record and adjudicate anew rights on the issues properly presented. In re Marriage of Steenhoek, 305 N.W.2d 448, 452 (Iowa 1981). We give weight to the fact findings of the trial court, especially when considering the credibility of witnesses, but are not bound by them. Iowa R. App. P. 14(f)(7).

II. Gale first contends the court should have considered Kathleen's inherited property in making its award of alimony and division of property. Gale does not specify what amount of property he is talking about or how Kathleen inherited it. Kathleen denies inheriting any property. We believe Gale must be referring to the property Kathleen received on the death of her first

husband. Kathleen did not hold this property separate during the marriage. We determine the district court considered all of the parties' property. We affirm on this issue.

III. Gale also contends he should not have to pay Kathleen's attorney fees. Iowa trial courts are permitted considerable discretion in allowing attorney's fees and costs in dissolution actions. In re Marriage of Morehead, 224 N.W.2d 242, 245 (Iowa 1974). We do not disturb the trial court's award of attorney fees to Kathleen. We affirm on this issue.

IV. In her cross-appeal Kathleen claims the court did not properly consider the property she brought to the marriage in making its property division. Furthermore, under a temporary order, Gale was ordered to make payments on the house, which he failed to do, and \$2,548.42 was deducted from the house proceeds. Kathleen also asks for a portion of Gale's pension funds accumulated during the marriage.

The partners in a marriage are "entitled to a just and equitable share of the property accumulated through their joint efforts." In re Marriage of Havran, 406 N.W.2d 450, 452 (Iowa App. 1987). Pension benefits are treated as marital property in Iowa and are properly subject to equitable distribution. 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. The first scheme is to award a percentage of the benefits already being received. Mott, 444 N.W.2d at 510-11. The second scheme available is to award a lump sum percentage based on the present value of the pension. Id. The third scheme available is to award a percentage of the pension, as it becomes payable, in the form of periodic alimony. Id. The fourth scheme for dividing pension benefits is to award a portion of the pension benefits if and when they accrue. The fourth system differs from periodic alimony in that it awards a portion of the pension benefits in the property division. Id.

We will follow the fourth scheme in this case. Under the formula set forth in the case of In re Marriage of Howell, 434 N.W.2d 629, 633 (Iowa 1989), Kathleen should receive one-half of Gale's accrued pension from Stone, or \$41.76 per month, once he begins receiving retirement benefits. She should also receive 20.65% of Gale's \$354.48 pension from Champion, or \$73.20 per month. Gale was married to Kathleen for 7.32 years of the 17.72 years he worked for Champion.

We also order Gale to reimburse Kathleen for the \$2,548.42 which he failed to pay under the temporary order. Except as modified in this division, we affirm the district court's property division in all other respects.

V. We determine the district court made an equitable division of responsibility for the parties' debts.

VI. Kathleen seeks an increased amount of spousal support. When determining the appropriateness of alimony, the court must consider (1) the earning capacity of each party and (2) their present standards of living and ability to pay balanced against their relative needs. In re Marriage of Estlund, 344 N.W.2d 276, 281 (Iowa App. 1983). Alimony is an allowance to the ex-spouse in lieu of a legal obligation to support that person. See In re Marriage of Hitchcock, 309 N.W.2d 432 (Iowa 1981). We consider property division and alimony together in evaluating their individual sufficiency. In re Marriage of Dahl, 418 N.W.2d 358, 359 (Iowa App. 1987); In re Marriage of Griffin, 356 N.W.2d at 608.

Kathleen receives \$700 in disability benefits each month. We affirm the district court's award of \$325 per month in spousal support. In view of our modification of the property division concerning Gale's pension, we also affirm the reduction of alimony to \$150 per month when Gale reaches the age of sixty-five.

VII. Kathleen seeks attorney fees for this appeal. An award of attorney fees is not a matter of right, but rests within the court's discretion and the parties' financial positions. In re Marriage of Kern, 408 N.W.2d 387, 390 (Iowa App. 1987). We are to 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 Castle, 312 N.W.2d 147, 150 (Iowa App. 1981). We order Gale to pay \$500 towards Kathleen's attorney fees for this appeal. We also order Gale to pay all court costs, including the cost of the supplemental appendix.

VIII. In summary, we affirm the decree of dissolution as set forth by the district court, except for two modifications to the property division. We have awarded Kathleen a portion of Gale's pension benefits, which will be payable when Gale receives such benefits. We have also ordered Gale to reimburse Kathleen \$2,548.42 for certain expenses which he failed to pay under a temporary order.

AFFIRMED AS MODIFIED.