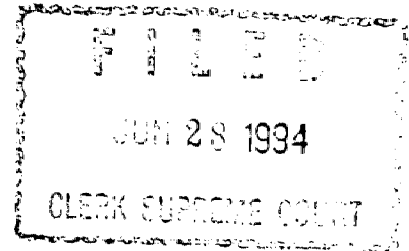


IN THE COURT OF APPEALS OF IOWA

No. 3-509 / 92-1499



IN RE THE MARRIAGE OF GEORGE R. ROMANELLI AND
LINDA SUE ROMANELLI

Upon the Petition of
GEORGE R. ROMANELLI,

Appellant/Cross-Appellee,

And Concerning
LINDA SUE ROMANELLI,

Appellee/Cross-Appellant.

Appeal from the Iowa District Court for Polk County,
William H. Joy, Judge.

George Romanelli appeals from the economic provisions
of the parties' dissolution decree. **AFFIRMED AS MODIFIED.**

Patrick H. Payton of Patrick H. Payton & Associates,
P.C., Des Moines, for appellant.

Leslie Babich of Babich & Nickerson, Des Moines, for
appellee.

Considered by Donielson, C.J., and Sackett and Huitink,
JJ.

HUITINK, J.

George appeals and Linda cross-appeals various provisions of their dissolution decree. We affirm as modified.

Both George and Linda are forty-six years old. They were married twenty-three years and have one son, Michael, who is nineteen and attending college. George has worked for the Chicago Northwestern Railroad since 1968. His gross salary is approximately \$55,000. Linda was a homemaker and primary caregiver for their son during the marriage. Linda has congenital muscular dystrophy and is unable to seek employment.

The decree awarded Linda assets valued at \$62,073 and liabilities of \$17,472. The marital home, valued at \$50,000, was included in her award of assets. George received assets in the amount of \$56,045 and liabilities of \$27,760. The court also awarded George a \$9658 lien on the marital home to equalize the property distribution.

Linda received one-half of George's Tier I Railroad Retirement Board benefits and one-half of his Tier II benefits. George was ordered to pay spousal support of \$1700 per month until September 1995, at which time the amount would increase to \$2000 per month. He was also ordered to pay \$3000 of Linda's trial attorney's fees.

George contends the property division was inequitable because of the court's disposition of the marital home and erroneous valuations of the marital property. He also

claims the court erred in its award of Tier II pension benefits to Linda. George argues Linda's alimony award is excessive and the court erred by ordering him to pay \$3000 of Linda's trial attorney fees.

Linda cross-appeals, arguing her alimony award should be increased. She also contends George should name her as the beneficiary of his existing life insurance coverage because of her medical condition. She claims she is entitled to one-half of a \$5000 bonus paid to George and asserts George should have been ordered to pay all of her trial attorney fees in the amount of \$6400.

Our review is de novo. Iowa R. App. P. 4. We give weight to the fact findings of the trial court, especially when considering the credibility of witnesses, but we are not bound by them. Iowa R. App. P. 14(f)(7).

George and Linda both challenge the division of property. The partners in the marriage are entitled to a just and equitable share of the property accumulated through their joint efforts. 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. Id. The determining factor is what is fair and equitable in each circumstance. Id. The distribution of the property should be made in consideration of the criteria codified in Iowa Code section 598.21(1) (1991). In re Marriage of Estlund, 344 N.W.2d 276, 280 (Iowa App. 1983).

Linda's medical condition makes it necessary for her to live in a home which is affordable and accessible. The lien on the property guarantees George some interest in the home while attempting to equalize the distribution. We conclude under these circumstances the court's disposition of the marital home was equitable.

The parties presented conflicting evidence regarding the value of their property. The trial court's evaluations reflect its assessment of the credibility of the witnesses on this issue. We believe the trial court was in the best position to determine the credibility of the witnesses. Its valuations of the property are supported by credible evidence, and we will not disturb them on appeal. See In re Marriage of Griffin, 356 N.W.2d 606, 608 (Iowa App. 1984). Finally, Linda is not entitled to one-half of George's bonus because it is not marital property. In re Marriage of Lalone, 469 N.W.2d 695, 698 (Iowa 1991). The court correctly considered the bonus as part of George's income used to figure the amount of alimony awarded to Linda. Id. We affirm the division of property made by the district court.

George also challenges the alimony award. When determining the appropriateness of alimony, the court must consider "(1) the earning capacity of each party, and (2) present standards of living and ability to pay balanced against relative needs of the other." Estlund, 344 N.W.2d at 281 (citation omitted).

Linda's monthly expenses are \$1313. George's average monthly income is \$2649, and his monthly expenses are \$1201, not including the \$300 per month in support he must pay for their son's college expenses.

Linda's expenses will decrease by approximately \$400 per month in five years as the mortgage and home improvement loan are paid off. The district court failed to consider these facts and lost sight of George's ability to pay when it determined the alimony award. See In re Marriage of Mott, 444 N.W.2d 507, 510 (Iowa App. 1989). Linda will be able to meet her current and future expenses if she is awarded one-half of George's monthly income. We modify the alimony award accordingly and award Linda \$1324 per month with no increase in September 1995.

George also argues the court erred in awarding Linda one-half of his present and future Tier II Railroad Retirement Benefits. We agree.

Tier II benefits are similar to a private pension plan and are divisible property. In Re Marriage of Conger, 492 N.W.2d 715, 716 (Iowa App. 1992). Linda is entitled to a portion of these benefits; however, she is only entitled to a fraction of the benefits which accrued during the marriage. Id. (emphasis added). To award her any of the benefits which accrue after the dissolution is inequitable.

We therefore modify the decree and award Linda a portion of George's Tier II benefits which accrued during

their marriage. George's share shall be computed by multiplying the divisible portion of his monthly benefit by a fraction, the numerator of which is the number of years George worked for the railroad during the period of marriage (March 1969 through September 1992), and the denominator of which shall be George's total number of years employed by the railroad at retirement, and then dividing the product by two.

In her cross-appeal Linda claims the district court should have ordered George to name her as the beneficiary on his life insurance policies. We have considered Linda's request, and in light of the alimony and property divisions we determine it would be inequitable to name her a beneficiary on George's life insurance policies.

Finally, both parties argue the district court erred in its award of attorney fees. The trial court has considerable discretion in awarding attorney fees. In re Marriage of Hunt, 476 N.W.2d 99, 101 (Iowa App. 1991). To overturn an award the complaining party must show the trial court abused its discretion. Id. Awards of attorney fees must be for fair and reasonable amounts, In re Marriage of Benson, 495 N.W.2d 777, 783 (Iowa App. 1993), and based on the parties' respective abilities to pay. Id. The court did not abuse its discretion in ordering George to pay \$3000 toward Linda's attorney fees.

Linda also requests attorney fees on 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 Sires, 506 N.W.2d 813, 815 (Iowa App. 1993). 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 Manson, 503 N.W.2d 427, 431 (Iowa App. 1993). The parties shall be responsible for their own attorney fees.

We determine any other issues the parties may have raised are either covered by this opinion or are without merit. Costs are assessed one-half to each party.

AFFIRMED AS MODIFIED.