FILED
MAY 26 1981
CLERK SUPREME COURT

IN THE IOWA COURT OF APPEALS

IN RE THE MARRIAGE OF DARREL C. FETTER and BEATRICE J. FETTER

Upon the Petition of)
DARREL C. FETTER,)
Plaintiff-appellant,)
And Concerning)
BEATRICE J. FETTER,)
Respondent-appellee.)

Filed May 26, 1981

1-54
2-64896

Appeal from Scott District Court - Margaret S. Briles, Judge.

Petitioner-husband appeals from economic provisions of the parties' dissolution decree. AFFIRMED AS MODIFIED.

Thomas L. Wine of Schebler & Wine, Davenport, Iowa, for petitioner-appellant.

Patricia Rhodes Cepican and John D. Stonebraker of McDonald, Stonebraker & Cepican, Davenport, Iowa, for respondent-appellee.

Heard by Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

PER CURIAM

Petitioner-husband appeals from economic provisions of the parties' dissolution decree. He claims that the trial court should have excluded evidence regarding his possible future inheritance from his parents, the court erred in considering and valuing his civil service pension as a marital asset, and the division of marital property was inequitable. Our review is **de novo**. Iowa R. App. P. 4. We modify and affirm.

Darrel and Beatrice Fetter were married on October 16, 1946; he filed this petition to dissolve the marriage on May 11, 1979. Their three children have all reached their majority and are self-supporting. According to financial statements filed by both parties, Darrel has a net biweekly income of $811.95; he claims total monthly expenses of $1,535. Beatrice has a net weekly income of $123.77 and claims monthly expenses of $748.

Under the March 4, 1980 decree, the household goods and the two automobiles were divided pursuant to an agreement reached by the parties. Darrel was awarded his interest in a civil service pension plan to which the trial court assigned a present value of $209,790. He was also awarded an $850 account receivable and one-half of the parties' joint savings which totalled $22,200. Beatrice was awarded the house and lot ($85,000 fair market value encumbered by a $13,321 debt), the other half of the joint savings, a church bond ($2,175.30 face value, $1,500 present value) and all insurance policies covering her life. To equalize the value of the distributed assets, including Darrel's retirement benefits program, he was ordered to pay to Beatrice lump sum alimony in the form of $500 monthly payments for 121 months. Each party was to pay his or her own attorney fees; Darrel was ordered to pay the costs. He filed notice of appeal on April 2, 1980.

I. Darrel first claims that the trial court erred in overruling his objections to testimony regarding his parents' wealth and his possible future inheritance. This issue, however, presents no basis for reversal since there is no indication that the court even considered the possibility of inheritance in drawing up the terms of the decree. Moreover, because our review is **de novo**, any error committed in allowing this evidence will not affect our determination.

II. He next claims that the court erred in considering his civil service retirement pension as a marital asset and that the court erroneously valued it. We concur in the court's consideration of the pension in dividing the marital property. "In the absence of statutory prohibition, . . . a court can consider governmental obligations to a spouse in

adjusting the equities between spouses in dissolution decrees." In re Marriage of Schissel, 292 N.W.2d 421, 424 (Iowa 1980). Darrel does not point to any statute which would preclude consideration of the pension as a marital asset.

The trial court found that Darrel invested approximately $28,400 of his own earnings into his retirement fund, but that his overall interest in the pension plan had a present value of $209,790, reduced to $191,400 if Darrel elected an annuity with survivor benefits to the spouse. These figures were apparently obtained by multiplying his future annual income from the benefits by a present-value factor which assumes a discount rate of eight percent and a life expectancy of 19.71 years when he retires at the age of 55. Darrel, who was 53 at the time of trial, will be eligible to draw monthly benefits of $1,820 at that time. If he lives out his life expectancy, that could amount to total cash payments of $430,466.40. Conversely, should Darrel die before recouping from the plan benefits equal to the contributions made by him, his estate would realize only the difference between contributions made and benefits received. We conclude that this contingency, by its very nature, renders the trial court's scheme of property division inequitable.[1] Such inequity is best remedied, we believe, by only dividing Darrel's $28,400 contribution to the plan as a marital asset and otherwise compensating Beatrice with alimony terminable upon her remarriage or the death of either party.

III. Darrel also claims that the property division was inequitable because it left him with mostly illiquid assets while Beatrice was awarded primarily liquid assets. While we do not necessarily agree with Darrel's characterization of the result, we conclude that some modification of the trial court's decree is necessary in view of our conclusion with respect to retirement benefits.

The trial court attempted to divide the property equally between the parties. Given the length of the marriage and the significant contributions made by both Darrel and Beatrice, we agree that an approximately equal division of property is justified, giving such consideration to retirement benefits as has been previously discussed. See Schantz v. Schantz, 163 N.W.2d 398, 405 (Iowa 1968), modified to exclude fault in In re Marriage of Williams, 199 N.W.2d 339, 345 (Iowa 1972).

IV. We modify the decree so that the $850 account receivable and the church bond are divided equally between the parties. We also order that the house be sold and

---

[1] Both parties in their arguments on appeal treat the trial court's award of lump sum alimony as an integral part of the property settlement.

the proceeds divided equally after paying off the rest of the encumbrance and selling expenses. Finally, we vacate the lump sum alimony award and order Darrel to pay to Beatrice in lieu thereof a lump sum property settlement of $14,200, payable within 60 days of the issuance of procedendo. This award shall draw interest of nine percent per annum from the date of the original trial court decree. In addition, we order that Darrel pay monthly alimony to Beatrice, through the office of the clerk of court, in the sum of $500 per month to terminate upon Beatrice's remarriage or the death of either party.

V. Finally, both parties request attorney fees incurred on this appeal. Such an award depends upon the relative financial circumstances of the parties. In re Marriage of Burham, 283 N.W.2d 269, 278 (Iowa 1979). We conclude that Darrel should pay $600 towards Beatrice's appellate attorney fees in addition to his own. Costs are assessed three-fourths to Darrel and one-fourth to Beatrice. All other provisions of the decree not modified above are affirmed.

AFFIRMED AS MODIFIED.