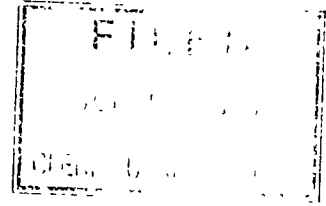


IN THE COURT OF APPEALS OF IOWA

No. 9-326 / 98-815
Filed September 15, 1999



**IN RE THE MARRIAGE OF ROBERT L. JONES
AND LINDA K. JONES**

Upon the Petition of
ROBERT L. JONES,
Petitioner-Appellant,

And Concerning
LINDA K. JONES,
Respondent-Appellee.

Appeal from the Iowa District Court for Woodbury County, James D. Scott,
Judge.

The petitioner appeals various economic provisions of the parties' dissolution
decree. **AFFIRMED.**

Dennis A. Bjorklund, Coralville, for appellant.

Philip D. Furlong, Sioux City, and Martha Fagg, Des Moines, for appellee.

Considered by Streit, P.J., and Mahan and Zimmer, JJ.

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STREIT, P.J.

Robert and Linda Jones separately appeal the district court's dissolution decree granting Linda thirty-five percent of Robert's pension. We find the division was equitable in light of Robert's age and illiteracy and affirm.

I. Background Facts & Proceedings.

Robert and Linda Jones were married on March 6, 1965. Robert filed a petition for dissolution in November 1995. At the time of trial, Robert was fifty-three years old, had dropped out of high school, and was functionally illiterate. He worked in a janitorial position for thirty-two years, received a pension of \$2100 per month pursuant to an early retirement plan, and worked part-time earning approximately \$1000 per month. Linda was forty-seven years old and possessed a GED. She was employed at Hardees for twenty-one years, earned \$2458 per month in a management position, and accumulated an unvested profit sharing plan worth \$40,400.

The sole issue at trial concerned the division of marital property, including Linda's profit sharing plan and Robert's pension. The district court awarded Robert one-half of Linda's profit sharing plan and granted Linda thirty-five percent of Robert's monthly retirement pension, a sum of \$735 per month. The district court valued the marital portion of the pension at \$590,625. Each has appealed, Robert claiming Linda's thirty-five percent share is too great, and Linda arguing it is too low.

II. Standard of Review.

Our review of equitable proceedings is de novo. Iowa R. App. P. 4; *see In re Marriage of Vandergaast*, 573 N.W.2d 601, 602 (Iowa App. 1997). “Even though our review is de novo, we accord the trial court considerable latitude in making this determination and will disturb the ruling only when there has been a failure to do equity.” *In re Marriage of Kurtt*, 561 N.W.2d 385, 388 (Iowa App. 1997).

III. The Division is Equitable and Just Under the Circumstances.

Pension benefits are properly considered marital property and are appropriately subject to equitable distribution. *In re Marriage of Mott*, 444 N.W.2d 507, 510 (Iowa App. 1989). A fastidious adherence to equal property division does not bind the courts of this state. *In re Marriage of Webb*, 426 N.W.2d 402, 405 (Iowa 1988). The proper goal of the courts is to “achieve an equitable and just award under the circumstances.” *Id.* In discerning a just and equitable distribution, a court should evaluate and consider the factors enumerated in Iowa Code section 598.21(1) (1997).¹ *Mott*, 444 N.W.2d at 511. Those factors most relevant to the present case involve Robert’s age and earning capacity.

¹ Iowa Code § 598.21(1) (1997) states in part:

The court shall divide all property . . . equitably between the parties after considering all of the following:

...

d. The age and physical and emotional health of the parties.

...

f. The earning capacity of each party, including educational background, training, employment skills, [and] work experience.

...

i. Other economic circumstances of each party, including pension benefits, vested or unvested, and future interests.

The district court's distribution of Robert's retirement pension was equitable and just under the circumstances. Robert argues the district court erred in failing to consider his age and illiteracy in granting Linda thirty-five percent of his pension. He argues he was employed as a janitor for thirty-two years due to his inability to qualify for other employment. He notes Linda, on the other hand, has obtained her GED, has been employed by Hardees for twenty-one years, and currently holds a management position thus making her more qualified for employment advancement.

The district court specifically accounted for Robert's disabilities in making its decision. The court acknowledged that Robert should receive a substantial portion of his pension due to his illiteracy and age. Due to these special circumstances, the trial judge deviated from a pure application of equal distribution and achieved a just result by awarding Linda only a portion of the pension benefit. Robert's limitations do not rise to the level of complete unemployability, as evidenced by his current part-time job. Robert's primary hurdle is illiteracy. This difficulty, although formidable given his age, can, to a certain degree, be overcome through determined effort.

Linda also appeals, arguing Robert's pension plan, like the remainder of the marital property, should be divided in a purely equal manner. She claims his illiteracy and age has no bearing on his earning potential and his reduction in income was due to an early voluntary retirement, a luxury she cannot enjoy.

Illiteracy coupled with age is a recognizable burden on one's employability and warrants consideration in determining equitable property division, including

pension benefits. *See* Iowa Code § 598.21(1)(f) (education); *id.* § 598.21(1)(d) (age); *see also* *Gaston v. Gaston*, 608 S.W.2d 332, 336 (Tex. Civ. App. 1980) (granting an unequal distribution due to husband's illiteracy and heart condition, while wife was better educated and healthier). Considering all circumstances unique to this case, we find the trial court reached an equitable and just division of the marital property and affirm.

AFFIRMED.