FILED
MAY 30 1995
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 5-035 / 94-0313

IN RE THE MARRIAGE OF DONNA DEE WEIRBACH AND ROBERT EDWARD WEIRBACH

Upon the Petition of
DONNA DEE WEIRBACH,

Appellant,

And Concerning
ROBERT EDWARD WEIRBACH,

Appellee.

Appeal from the Iowa District Court for Wapello County, Phillip R. Collett, Judge.

Donna appeals and Robert cross-appeals the property division provisions of the decree dissolving the parties' marriage. **AFFIRMED.**

John M. Moreland and Timothy J. McKay of McKay, Moreland & Webber, P.C., Ottumwa, for appellants.

Dennis W. Emanuel of Webber, Gaumer, Emanuel & Daily, P.C., Ottumwa, for appellee.

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

HUITINK, J.

Donna and Robert Weirbach were married in 1971. It was a second marriage for Robert and a third marriage for Donna.

Donna was forty-nine years old at the time of the parties' dissolution hearing. She was employed as the administrator of the works simplification process at John Deere Ottumwa Works. Her annual income is about $47,500. Donna was employed at John Deere throughout the marriage. The present value of Donna's pension is $67,983, and $67,322 of this amount accumulated during the marriage.

Robert was sixty-six years old at the time of the dissolution hearing. He worked at John Deere until November 1, 1982, when he took early retirement. The present value of Robert's pension was $216,631, and $202,331 of this amount accumulated during the marriage. Robert receives monthly pension benefits of $1,348 from John Deere and $780 from social security, which gives him total annual income of about $25,536.

The district court entered a dissolution decree for the parties on February 15, 1994. In dividing the parties' assets, the court set aside to Donna her inheritance of $72,281. The court divided the marital assets to award Donna net assets worth $287,821 and her pension plan. The court awarded Robert net assets worth $286,602 and his pension plan. No alimony or attorneys fees were awarded to either party.

Donna appealed and Robert cross-appealed the property division.

I. Our review of this equitable action is de novo. Iowa R. App. P. 4. We are not bound by the district court's findings of fact, but we do give them deference because the district court had an opportunity to view, firsthand, the demeanor of the witnesses when testifying. *In re Marriage of Brown*, 487 N.W.2d 331, 332 (Iowa 1992).

II. Donna contends the property distribution is not equitable because the district court refused to award her an interest in Robert's pension. She points out that Robert's pension increased $202,331 during the marriage, while her pension increased $67,322, and the difference between these two amounts is $135,009. Donna asks to be awarded one-half of this difference, which is $67,504. She believes it is inequitable to allow Robert to retain the increase in his retirement fund which 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 Russell*, 473 N.W.2d 244, 246 (Iowa App. 1991). The Iowa courts do not require an equal division or percentage distribution. *Id.* The determining factor is what is fair and equitable in each particular circumstance. *Id.* Pension benefits are treated as marital property and are subject to equitable distribution. *In re Marriage of Huffman*, 453 N.W.2d 246, 248 (Iowa App. 1990).

We find the district court's decision to award each of the parties his or her own pension plan was equitable under the facts of the case. We note that Robert is

seventeen years older than Donna. This means Donna will have time to accumulate her own pension plan before she retires. There was evidence to show that if Donna works until she is sixty-five, her pension benefits will be similar to the benefits Robert currently receives. Therefore, Donna has no need for a portion of Robert's pension. Robert needs his pension plan. Since Robert is retired, his pension plan is not just an asset to him, but is the major source of his income. Robert will need this income to maintain his subsistence.

We affirm the district court's decision to award each party his or her own pension plan.

III. In his cross-appeal, Robert claims the property distribution was not equitable to him. He believes the district court overvalued a farm, farm equipment, and machinery, which he received in the property distribution. Robert testified he planned to sell these assets at some point in the future. He believes the value of these assets should be reduced due to the probable tax consequences if he sells. Robert asks to be awarded an additional $10,000 to offset the reduced value of the assets he received.

The district court found Robert should be awarded the farm, farm equipment, and machinery because he had wanted to buy the farm, while Donna had not. Ordinarily, the court should consider the tax consequences where there is evidence to support a sale or the court has ordered a sale. *In re Marriage of Friedman*, 466 N.W.2d 689, 691 (Iowa 1991).

Here, the evidence showed Robert was not currently planning to sell the farm, but intended to sell it in the future. Furthermore, the court questioned Robert's testimony that he planned to sell the farm because there was evidence he had attempted to purchase additional farmland in 1993. Under these facts, we agree with the district court that the tax consequences of selling the farm need not be considered.

We affirm the district court on all issues raised in this appeal. Costs of this appeal are assessed one-half to each party.

AFFIRMED.