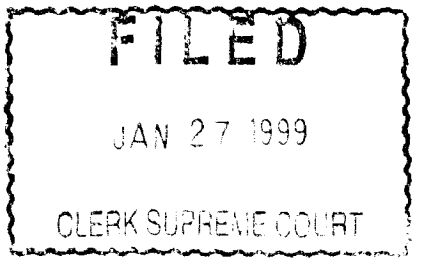
IN THE COURT OF APPEALS OF IOWA

No. 8-656 / 98-0306
Filed January 27, 1999



IN RE THE MARRIAGE OF AGNES A. PETERS AND ERNEST R. PETERS

Upon the Petition of
AGNES A. PETERS,
Appellee,

And Concerning
ERNEST R. PETERS,
Appellant.

Appeal from the Iowa District Court for Webster County, William C. Ostlund, Judge.

Ernest Peters and appeals and Agnes Peters cross-appeals from various economic provisions of the parties' dissolution decree. **AFFIRMED AS MODIFIED.**

Paul B. Ahlers and Stuart J. Cochrane of Johnson, Erb, Bice, Kramer, Good & Mulholland, P.C., Fort Dodge, for appellant.

Jeane W. Pearson of Price & Pearson, Fort Dodge, for appellee.

Heard by Huitink, P.J., and Mahan and Zimmer, JJ.

HUITINK, P.J.

Respondent/appellant Ernest Peters and petitioner/cross-appellant Agnes Peters appeal various economic provisions of the district court's decree of dissolution. We modify and affirm.

I. Background Facts and Proceedings.

Ernest and Agnes Peters were married on December 26, 1967. There are no children affected by this appeal. Ernest and Agnes were both fifty-one years of age at the time of trial.

Agnes has a masters degree in learning disabilities and emotional disturbances. She has worked at the Arrowhead Area Education Agency in Fort Dodge for the past sixteen years teaching special education, with emphasis on the visually impaired. She earns $42,000 per year and has a net monthly income of $2300. Agnes suffers from various maladies, including depression, ulcers, and pre-cancerous polyps.

Ernest is employed as senior director of global regulatory affairs with Fort Dodge Animal Hospital, a subsidiary of American Home Products. In 1997, Ernest earned $96,200 from his employment, and with other income from investments, earned a gross income of $150,000.

In its decree, the district court ordered Ernest to pay $1800 a month in alimony to Agnes. In doing so, the court relied heavily on the parties' standard of living during the marriage, Agnes' declining health, and Ernest's ability to pay. The court

also ordered Ernest to allocate to Agnes $1603 per month from his pension plan upon his retirement. Upon retirement, alimony was reduced to $200 per month.

The court awarded Agnes her 1993 Cadillac, the parties' Smith Barney IRA account, $45,000 of Ernest's 401(k) plan, one-half of Ernest's 1997 bonus, and other property for a total award of $235,937. Agnes was not assigned any debt in the distribution. Ernest was awarded their homestead, $145,000 of his 401(k) plan, and various automobiles and securities, along with all debts of the parties for a total net award of $236,350.

Subsequent to trial, the district court issued a qualified domestic relations order (QDRO) to establish Agnes's right to a portion of Ernest's 401(k). Agnes filed an objection to the QDRO, claiming the value of Ernest's 401(k) had increased since the decree, and she should be entitled to a share of any gain or profit. The district court overruled the objection on May 28, 1998. Agnes filed a notice of cross-appeal on June 8, 1998.

On appeal, Ernest asserts the district court erred in awarding Agnes alimony of $1800 per month. He also disputes whether the district court properly awarded Agnes one-half of his bonus earned in 1997, payable in 1998. Additionally, Ernest claims the district court erred in its division of his pension benefits. He lastly contends the district court erred in ordering him to pay $5000 toward Agnes' attorney fees.

On her cross-appeal from the QDRO, Agnes argues during the months of delay before the QDRO was filed, the value of Ernest's stock rose between twenty and thirty percent. She contends if the QDRO is based on the date of the district court's ruling, she loses considerable gains on her share of the 401(k). She argues the QDRO should be modified to award her a prorated share of the profits and gains associated with the rise in Ernest's stock

II. Scope of Review.

Our review of the economic provisions of a divorce decree is de novo. Iowa R. App. P. 4. We examine the entire record and adjudicate anew the issues properly presented on appeal. *In re Marriage of Grady-Woods*, 577 N.W.2d 851, 852 (Iowa App. 1998). 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).

III. Alimony.

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." *In re Marriage of O'Rourke*, 547 N.W.2d 864, 866 (Iowa App. 1996)(citation omitted). Alimony is an allowance to the former spouse in lieu of a legal obligation to support that person. *See In re Marriage of Hitchcock*, 309 N.W.2d 432, 437 (Iowa 1981).

Alimony is not an absolute right; an award depends upon the circumstances of each particular case. *In re Marriage of Fleener*, 247 N.W.2d 219, 220 (Iowa 1976). The discretionary award of alimony is made after considering those factors listed in Iowa Code section 598.21(3) (1997). *See In re Marriage of Hayne*, 334 N.W.2d 347, 350 (Iowa App. 1983).

We consider property division and alimony together in evaluating their sufficiency. *In re Marriage of Hardy,* 539 N.W.2d 729, 732 (Iowa A.. 1995); *In re Marriage of Hogeland,* 448 N.W.2d 678, 682 (Iowa App. 1989); *In re Marriage of Griffin,* 356 N.W.2d 606, 608 (Iowa App. 1984). They are neither made nor subject to evaluation in isolation from one another. *In re Marriage of McLaughin,* 526 N.W.2d 343, 345 (Iowa App. 1994); *In re Marriage of Griffin,* 356 N.W.2d at 608.

Alimony is awarded to accomplish one or more of three general purposes. Rehabilitative alimony serves to support an economically dependent spouse through a limited period of education and retraining. Its objective is self-sufficiency. *In re Marriage of Francis*, 442 N.W.2d 59, 63-64 (Iowa 1989). An award of reimbursement alimony is predicated upon economic sacrifices made by one spouse during the marriage that directly enhance the future earning capacity of the other. *Id.* Traditional alimony is payable for life or for so long as a dependent spouse is incapable of self-support. *Id.* The amount of alimony awarded and its duration will differ according to the purpose it is designed to serve. *Id.*

The record does not support an award of either reimbursement or rehabilitative alimony. Agnes has been compensated for contributions she made to Ernest's earning capacity as a result of the comfortable lifestyle she enjoyed during their thirty-year marriage and the amount of property she received. *See, e.g., In re Marriage of O'Rourke*, 547 N.W.2d at 866-67. Her employment history and substantial earning capacity evidence a self-sufficiency inconsistent with the underlying purpose of rehabilitative alimony. Any alimony award in this case must therefore serve one or more of the purposes associated with traditional alimony. *See id.*

In making this determination we are required to consider "[t]he feasibility of the party seeking maintenance becoming self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage." Iowa Code § 598.21(3)(f). During their marriage, the parties enjoyed a high standard of living. Although each was awarded an equitable share of marital property, Agnes' ability to support her pre-dissolution lifestyle is limited by virtue of her lower-earning capacity.

Both parties are well-educated and have stable employment. We are not convinced Agnes' physical and mental condition will seriously affect her self-sufficiency. Ernest will continue to enjoy a substantial post-dissolution income. His post-dissolution lifestyle will not be appreciably diminished by a reasonable permanent alimony obligation. Although he has the ability to pay substantial alimony, we nevertheless find the district court's alimony award inequitable, both in amount and duration. Accordingly, we modify the decree to require Ernest to pay

Agnes $1000 per month alimony until she reaches age sixty-five, remarries, or dies. At age sixty-five, Agnes will receive pension benefits from her employer, a portion of Ernest's pension, social security, and other investment income. This award allows Agnes to sustain a standard of living reasonably equal to that enjoyed during the parties' marriage. It also assures her retirement security reasonably comparable to that she would have enjoyed but for this dissolution.

IV. Ernest's 1997 Bonus.

Ernest contends the district court erred in treating his 1997 bonus as marital property subject to equitable distribution. We agree.

The district court properly considered Ernest's 1997 bonus in determining his monthly income for purposes setting his alimony obligation. We think it was inequitable to also include it in the property division. *See O'Rourke*, 547 N.W.2d at 866; *In re Marriage of Lalone*, 469 N.W.2d 695, 698 (Iowa 1991).

The decree is modified to delete the provision granting Agnes one-half of Ernest's 1997 bonus payable in 1998.

V. Ernest's Pension Benefits.

Under Iowa law pensions are characterized as marital assets, subject to division in dissolution actions just as any other property. *In re Marriage of Benson*, 545 N.W.2d 252, 255 (Iowa 1996); *In re Marriage of Branstetter*, 508 N.W.2d 638, 640 (Iowa 1993). In equitably dividing pension plan benefits in dissolution proceedings, Iowa recognizes the percentage method. *Benson*, 545 N.W.2d at 255. The percentage

method utilizes the following formula for determining Agnes' share of any payout of matured benefits from Ernest's pension plan. *Id.*

A fraction is first computed, the numerator being the number of years during the marriage Ernest accrued benefits under the pension plan and the denominator being the total number of years Ernest's benefits accrued prior to maturity (i.e., receipt of payments upon retirement). *Id.* This fraction represents the percentage of Ernest's pension attributable to the parties' joint marital efforts. *Id.* This figure is then multiplied by Agnes' share of the marital assets (fifty percent). *Id.* Finally this second figure is multiplied by Ernest's total accrued monthly benefit upon maturity (retirement) to calculate Agnes' share. *Id.* For purposes of calculation under the percentage method, the value of the pension benefit is determined at the time of maturity. *Id.* at 257. The equation may be expressed as follows:

$$\text{Agnes' share} = \frac{\text{\# of years Ernest was both married and covered by the pension plan}}{\text{\# of years covered by plan prior to conclusion (maturity)}} \times 50\% \times \text{value of monthly pension benefit}$$

See id. at 255.

The parties do not dispute the district court's use of the *Benson* analysis. Ernest, however, contends the district court erred in its application of the *Benson* formula; specifically the value assigned to the numerator of the fraction, representing the number of years he was both married and covered by the pension plan, as well as

the denominator, representing the number of years the pension plan will be in effect before maturity.

The record reflects Ernest did not participate in the Fort Dodge Animal Health pension plan until August 18, 1986. The decree of dissolution was entered in January 1998. Accordingly, the period Ernest was *both* married *and* covered by the pension plan was eleven years and five months. The numerator for purposes of the *Benson* analysis, therefore, is 11.41666. The district court erred in using a numerator of thirty years. The projected retirement (maturity) date of November 1, 2011 would yield a proper denominator figure of 25.20833 years,[1] instead of the forty-year figure used by the district court.

The decree of dissolution is accordingly modified to require Ernest to assign $1067.92 of his monthly pension plan benefit to Agnes. This figure represents an application of the *Benson* formula, using a start date of August 18, 1986, an estimated retirement date of November 1, 2011, and an estimated total monthly pension plan benefit of $4716 per month. The purpose of this distribution is to provide Agnes with the present value of her share of the pension at the time of the decree plus the earnings on the present value of her share through the date of Ernest's retirement. *See Benson*, 545 N.W.2d at 255.

---

[1] This figure represents twenty-five years and two and one-half months.

VI. Agnes' Cross-Appeal.

Agnes claims she is entitled to any gain realized on her share of Ernest's 401(k) between the entry of the dissolution decree and subsequent QDRO. She contends the value of the Fort Dodge Animal Health pension plan recognized gains of twenty to thirty percent between January 1998 and May 1998. She further asserts it is inequitable to allow Ernest to benefit from his delay in transferring the funds to her name by allowing him to retain profits generated by her share of his pension. Even assuming this issue is properly before us,[2] we find Agnes' position without merit.

We first note the decree awards Agnes a $45,000 lump-sum payment from Ernest's pension plan. The decree does not require Ernest to set aside a *percentage* of his pension plan account for Agnes' benefit. The decree also does not impose an obligation to transfer a $45,000 portion of his pension plan along with any accretions, accumulations, or gains realized. Finally, the decree provided no time frame for Ernest to complete the transfer.

Because the decree only awards Agnes a set sum of $45,000, we find she is not entitled to any gains realized during the time between the entry of the dissolution

---

[2] We note the district court decree was entered January 16, 1998. Agnes failed to raise this claim in a timely filed motion to amend or enlarge the decree pursuant to Iowa Rule of Civil Procedure 179(b). Ernest timely filed his notice of appeal on February 19, 1998. This issue was not raised at all until May 18, 1998, and Agnes' notice of cross-appeal was not filed until June 8, 1998. *See* Iowa R. App. P. 5(a)("A cross-appeal may be taken within the thirty days for taking an appeal or in *any event within five days after the appeal is taken*.") (emphasis added.)

decree and the QDRO. If Agnes held misgivings about the wording of the decree, or the timetable for completion of the transfer of funds, those claims would have been more properly raised to the district court in a timely filed Rule 179(b) motion.

VII. Attorney Fees.

Attorney fees are not awarded as a matter of right. *O'Rourke*, 547 N.W.2d at 867. An award of attorney fees is based on the parties' respective needs and ability to pay. *In re Marriage of Lattig*, 318 N.W.2d 811, 817 (Iowa App.1982). The district court has considerable discretion in awarding attorney fees. *In re Marriage of Schettler*, 455 N.W.2d 686, 689 (Iowa App. 1990). We will not interfere unless there is a manifest abuse of discretion.

We find the district court did not abuse its discretion in ordering Ernest to pay $5000 of Agnes' $9811 attorney fee liability. The record reflects discovery of Ernest's financial information was made difficult by his failure to file state and federal income tax returns for the years 1993-1996. Discovery was further complicated by Ernest's overseas travel and alleged foreign holdings. The record also reflects Agnes had incurred significant personal liabilities resulting from Ernest's failure to file the parties' income tax returns. Given these circumstances, along with the disparity in the parties' earning capacity, we find the district court acted within its discretion in awarding attorney fees.

AFFIRMED AS MODIFIED.