

FILED

OCT 20 1988

CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

**IN RE THE MARRIAGE OF JERRY REENT SAATHOFF
AND SUSAN JANE SAATHOFF**

Upon the Petition of)

JERRY REENT SAATHOFF,)

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Petitioner-Appellant,)

And Concerning)

SUSAN JANE SAATHOFF,)

8-287
87-1163

Respondent-Appellee.)

Appeal from the Iowa District Court for Polk County
(No. CD 54-32367), Gene L. Needles, Judge.

Petitioner-appellant appeals from the economic
provisions of a dissolution decree. **AFFIRMED.**

Jerry R. Foxhoven of Foxhoven & McCann, Des Moines, for
petitioner-appellant.

Kolleen K. Samek, Des Moines, for respondent-appellee.

Considered by Oxberger, C.J., and Sackett and Habhab,
JJ.

PER CURIAM

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The parties were married in 1970 and are the parents of two minor children. A dissolution decree in 1987 awarded physical custody of the children to Susan, appellee, and ordered Jerry, appellant, to make support payments of \$50 per week per child, pay Susan rehabilitative alimony of \$150 per month for two years, and give Susan 15% of his IPERS benefits upon retirement. On appeal, Jerry challenges each of these financial provisions.

I.

Appellant contends the trial court erred in awarding alimony to appellee. Criteria to be applied in determining whether or not alimony should be awarded are set forth in Iowa Code section 598.21(3) (1987). In addition, whether or not spousal support should be awarded hinges on the facts of each case. In re Marriage of Murray, 213 N.W.2d 657 (Iowa 1973). When determining appropriateness of alimony, "the trial 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 Hitchcock, 309 N.W.2d 432 (Iowa 1981)."

With the applicable law in mind, we turn to the record. We find that appellee is handicapped as a result of polio and a lawnmower accident which damaged her foot. She cannot bend her toes, one leg is shorter than the other

which requires her to wear a buildup in her shoe, she cannot sit for prolonged periods of time, stand in one spot, or go up and down stairs. Appellee has a high school education and did not complete her first year of beauty school. Soon after the marriage, she worked at Topps department store for the Christmas season and then subsequently for eighteen months for 7-11 Stores. It had been eight years since she worked outside the marriage prior to the parties separating.

She currently stocks shelves for \$3.50 per hour, twenty-five hours per week. She has no special skills which would help her get a better job. The children suffer from allergies and asthma and require flexibility in her employment so that she may take time away from her work to attend to their special needs. She wants to work and educate herself to improve her competitiveness in the job market.

In light of these facts, we determine that the trial court's award of alimony was fair and equitable. Appellant argues that any award of rehabilitative alimony is inappropriate since appellee is cohabiting with an attorney who is supporting her in a standard of living higher than his own.

While this is a relevant factor to be considered, In re Marriage of Orgren, 375 N.W.2d 710 (Iowa App. 1985), cohabitation does not automatically result in denial of

benefits. Id. Under the circumstances of this case, particularly since rehabilitation alimony is involved, appellee's cohabitation should not affect the trial court's award. We affirm the trial court on this issue.

II.

On the issue of the trial court's award of a share of appellant's IPERS benefits to the appellee, we affirm. Pension benefits are properly considered in formulating the economic portions of a dissolution decree. Petition of Sturtz, 415 N.W.2d 173, 173 (Iowa App. 1987) (citing In re Marriage of Bevers, 326 N.W.2d 876, 900 (Iowa 1982)).

Not only were the pension benefits properly considered, but awarded as well. The trial court noted that appellant had contributed to IPERS for thirteen years and the parties had been married for fifteen years. During all but a few instances of that time, appellee absented herself from the job market with the resulting loss of social security and employment benefits. It was therefore equitable to award appellee a share of appellant's pension. See In re Marriage of Woodward, 426 N.W.2d 668, 671 (Iowa App. 1988).

The trial court awarded a percentage of the benefits to the appellee to be paid upon appellant's retirement. "There is considerable support for apportioning future benefits only if and when they are paid." Id.

In addition, the amount awarded was equitable under the circumstances. In this respect we note the trial court

initially awarded appellee 25% of appellant's IPERS benefits upon his retirement. On appellant's motion for new trial, he argued that he could work for another thirty years and pay into IPERS, for a total of forty-three years, and it would be unfair for appellee to receive 25% of that. The trial court agreed and adjusted the amount appellee was to receive to 15%. We find this fair and equitable under the circumstances.

III.

After considering the factors listed under Iowa Code section 598.21(4) and reviewing the record before us, we do not find, as appellant contends, the child support payments to be unreasonably high. We affirm the trial court in this respect.

AFFIRMED.