

FILED.

AUG - 9 1979

CLERK SUPREME **296**

IN THE COURT OF APPEALS OF IOWA

YVONNE E. BLOMMERS,	)	
Plaintiff-Appellee,	)	Filed August 9, 1979
vs.	)	
FRANCES V. BLOMMERS and	)	
FRANCES V. BLOMMERS, Executrix	)	
of the Estate of Paul J. Blommers,	)	160
Deceased, Probate No. 16596,	)	<u>2-62375</u> &
Defendants-Appellants.	)	2-62376
	)	

Appeal from Johnson District Court - Harold D. Vietor, Judge.

Defendant appeals from trial court's judgment that awarded plaintiff certain retirement benefits and life insurance proceeds. Affirmed.

James D. McCarragher, of Meardon, Sueppel, Downer & Hayes, of Iowa City, for appellants.

John W. Hayek, of Hayek, Hayek & Hayek, of Iowa City, for appellee.

Submitted to Oxberger, C. J., Donielson, Snell and Johnson, JJ.; Carter, J. takes no part.

DONIELSON, J.

Defendant, widow Frances V. Blommers, appeals from the trial court's judgment that plaintiff, ex-wife Yvonne E. Blommers, was entitled to certain retirement benefits and life insurance proceeds. On appeal, Frances asserts that the trial court's decision is inconsistent with the intended effect of the dissolution decree and supplement in issue. We affirm.

I. On December 15, 1977, Yvonne E. Blommers filed an action in equity against Frances V. Blommers as executrix for the estate of Paul J. Blommers to compel Frances to cause certain retirement death benefits of Paul's to be paid to her pursuant to the terms of a prior dissolution of marriage decree between Yvonne and Paul. Then on May 8, 1978, Yvonne filed a petition against Frances individually asking that Yvonne's right to Paul's retirement benefits be established by the court. After consolidation and trial of these two actions, the trial court found that the retirement benefits were not part of Paul's estate so the action against Frances as executrix was dismissed. On the other action, the court found that Yvonne was entitled to the proceeds, worth approximately \$15,000, of three life insurance policies on Paul that named Yvonne as the beneficiary and that Yvonne was the rightful owner of death benefits, worth approximately \$95,800, from Paul's retirement plans. The actions were ordered consolidated on appeal.

Our review is *de novo* on issues properly raised of record below. Iowa R. App. P. 4. While weight will be given to findings of the trial court, we are not bound by them. In re Marriage of Huston, 263 N.W.2d 697, 699 (Iowa 1978); In re Marriage of Winegard, 257 N.W.2d 609, 613 (Iowa 1977); In re Marriage of Jennerjohn, 203 N.W.2d 237, 240 (Iowa 1972).

II. The pertinent facts are as follows. The marriage between Paul and Yvonne was dissolved on February 19, 1975. They had been married 41 years. Judge James H. Carter in the dissolution decree stated that Paul was to keep life insurance policies, worth about \$15,000, in effect and continue to name Yvonne as the primary beneficiary. In a supplement to the decree, Judge Carter ordered Paul to pay Yvonne \$340 per month alimony, decreasing to \$225 per month when he retired. The supplement also provided that, prior to any election by Paul to draw his retirement benefits, Yvonne was to be

the primary beneficiary of such benefits on his death.¹ Yvonne could elect, prior to the time Paul elected to draw any retirement benefits, to receive on Paul's death an annuity of not less than \$200 per month from the retirement benefits in lieu of being a beneficiary of the insurance policies.²

On August 5, 1977, five days before his death, Paul sent a letter to the University of Iowa Assistant Director of Personnel stating:

Pursuant to our discussion on August 5, 1977, this is to confirm my election to draw retirement benefits under TIAA and CREF, which payments I understand will commence on or about November 4, 1977, upon the exhaustion of my current accumulated sick leave

Please immediately initiate any and all correspondence necessary to project the estimated benefits available to me in order that I might select the appropriate payment option.

The trial court made a finding of fact that this letter was not an election to draw any benefits within the terms of Paul's retirement benefits contract nor within the language of the dissolution decree pertaining to an election by him to draw retirement benefits. After reviewing the facts, we agree and hold that Paul did not elect to draw retirement benefits.

¹ Paragraph (b) of the supplement reads as follows:

Prior to any election by the Respondent to draw retirement benefits under his Teachers Insurance and Annuity Association (TIAA) and College Retirement Equities Fund (CREF), he shall maintain Petitioner as primary beneficiary of all right, title and interest in and to such benefits or the value thereof upon his death.

² Paragraph (c) of the supplement reads as follows:

That in lieu of the provisions of Paragraph 10 of the Decree of Dissolution of Marriage filed this date, the Respondent, at Petitioner's option, shall be required to make such elections with respect to this retirement annuities under Teachers Insurance and Annuity Association (TIAA) and College Retirement Equities Fund (CREF) as will assure Petitioner upon Respondent's death a life annuity of not less than \$200.00 per month. Any election by Petitioner to invoke the provisions of this Paragraph of Supplement to Decree must be made prior to Respondent's election to draw retirement benefits under TIAA and CREF and in any event prior to Respondent attaining age 68. Such election, once made, shall release Respondent's obligations under Paragraph 10 of the Decree of Dissolution of Marriage filed this date.

III. The dispute in this action involves interpretation of the dissolution decree and supplement filed by Judge Carter. The determinative factor in such an interpretation is the clearly expressed or implied intention of the court as gathered from all parts of the judgment. Local Board of Health, Boone County v. Wood, 243 N.W.2d 862, 865 (Iowa 1976); Dairyland, Inc. v. Jenison, 207 N.W.2d 753, 754 (Iowa 1973); Whittier v. Whittier, 237 Iowa 655, 663, 23 N.W.2d 435, 440 (1946), quoted in Cooper v. Cooper, 158 N.W.2d 712, 713 (Iowa 1968). A decree must be analyzed in light of the pleadings on which it is rendered and construed according to the ordinary and usual significance of the language employed. Hemmer v. Bonson, 139 Iowa 210, 217, 117 N.W. 257, 259 (1908).

The key element of the decree and supplement is paragraph (b) of the supplement. The trial court and the parties agree the language of paragraph (b) is controlling, but differ over the meaning and effect to be attributed to the words. The trial court accepted Yvonne's argument that the words mean what they say--prior to an election by Paul to draw retirement benefits Paul "shall maintain Petitioner [Yvonne] as primary beneficiary of all right, title and interest in and to [TIAA and CREF death benefits]." This holding granted Yvonne the right to receive all of the TIAA and CREF benefits while remaining as the beneficiary of the three life insurance policies.

This interpretation of paragraph (b) is challenged by Frances as being inconsistent with and contrary to several express and implied provisions of the decree and the intent of Judge Carter when he incorporated paragraph (b) into the supplement. On appeal, Frances contends Judge Carter inserted paragraph (b) into the supplement for the sole purpose of protecting Yvonne's right to elect a life annuity under Paul's TIAA and CREF benefits in lieu of other insurance benefits, prior to Paul's election to draw said benefits or attaining age 68 years. Without such a requirement, Frances argues, there was the possibility that if Paul died prior to attaining age 68 or if Paul died prior to electing to draw retirement benefits under his TIAA and CREF, as the trial court found to be the case here, Yvonne would have to sue the primary beneficiary for interpretation to enforce the right to elect support in the form of a life annuity not less than \$200 per month in lieu of a fixed amount of life insurance. Frances, looking to the decree and supplement, further contends that: Nothing in either document expressly states that on Paul's death, paragraph (b) of the supplement sets forth a support obligation owed by

Paul to Yvonne; the trial court's interpretation of paragraph (b) is contrary to the usual and customary method of awarding support or even property in a dissolution proceeding; the trial court's interpretation of paragraph (b) is inconsistent with the amount of support systematically reasoned by Judge Carter in paragraph (a) of the supplement; the trial court's construction of paragraph (b) is inconsistent with Judge Carter's stated intent and the customary rule of support that any obligation by Paul to make support payments shall cease when Yvonne remarries or dies; and the trial court's construction of paragraph (b) is inconsistent with Judge Carter's stated intent that Yvonne could not elect to receive a life annuity under Paul's TIAA and CREF after Paul attained the age of 68 years.

While the language of the decree and supplement is broad enough to provide a modicum of support for such arguments, Frances' proposed construction requires a strained and forced reading of the decree and supplement. Illustrative of this is Frances' basic contention that Judge Carter did not intend paragraph (b) of the supplemental decree to be an absolute grant of Paul's entire accumulated TIAA and CREF benefits to Yvonne. The transparency of this argument becomes evident in the light of the facts of the case and intended effect of the decree.

The primary function of the supplement to the decree was to fix the amount and method of support payments owed to Yvonne by Paul. The supplement evidences a clear intention to provide financial support for Yvonne both before and after Paul's retirement and even after his death. Upon Paul's retirement, the support was reduced from \$340 per month to \$225 per month, but Yvonne was given the option to require him to make a retirement annuity election that would guarantee her at least \$200 per month after his death. Judge Carter used the retirement fund and insurance policies as means of funding Yvonne's support after Paul's death without burdening his estate. This disposition benefited both parties and was appropriate since the retirement fund was the only substantial asset of the marriage and should be divided equitably between Paul and Yvonne. Thus, one purpose of paragraph (b) was to guarantee Yvonne a right to the retirement benefits in the form of a death benefit in the event Paul died before converting the death benefit into a retirement annuity.

Under our analysis, Frances' proposed protection is too narrow to implement this intended purpose. Frances, as mentioned above, contends paragraph (b) only protects Yvonne's right to elect a survivor's annuity of an amount not more than \$200 per month in lieu of life insurance proceeds. If Paul, as he attempted to do, named someone other than Yvonne as primary beneficiary of the retirement plans and died prior to making an election or reaching age 68, Yvonne's rights, Frances argues, would be limited to bringing an action against the primary beneficiary to elect her \$200 per month annuity. Not only is there no explicit language to support this argument, but such an interpretation fails to adequately dispose of the marriage's major asset. There is no indication in the decree or supplement that Yvonne is limited to a \$200 per month annuity if Paul fails to draw his benefits before he dies.

Yvonne's protection argument, in contrast, is a more reasonable interpretation and is consistent with the intent of Judge Carter in incorporating paragraph (b) into the supplement. As mentioned above, this retirement fund was the major asset accumulated during this 41 year marriage. A fair division of assets and award of alimony would have to deal with this item so that both Paul and Yvonne would equitably share in it. Such an award would have to include protection against an attempt by Paul from alienating this substantial asset by designating someone other than Yvonne as primary beneficiary, prior to the time he elected to withdraw his benefits. This was the other purpose of paragraph (b) of the supplement. If Paul died before making his election or reaching age 68, Yvonne was guaranteed of receiving a death benefit from the retirement fund. If Paul chose to make the election, Yvonne was then guaranteed the right to make the election between the proceeds of the life insurance policies, with an obligation of notice clearly implied in the decree. In either event, Yvonne would be given the opportunity to share in the retirement fund.

Frances, however, argues that Judge Carter did not intend Yvonne to receive anymore than a \$200 per month annuity from the retirement fund. This contention neither comports with the exact wording of the decree nor the intent behind the wording. Yvonne was to receive a \$200 per month annuity only on her election before Paul elected to draw his retirement benefits. Limiting the benefits received by Yvonne was a method of dividing the retirement benefits between her and Paul. Paul would

receive an amount equal to the total amount of benefits available less the amount necessary to provide a \$200 per month survivor's annuity. If, as here, Paul did not receive any benefits due to a failure to elect before his death, Yvonne would receive all of the retirement benefits. Accordingly, the retirement fund was to be split between Paul and Yvonne. We find this equitable division of the retirement benefits under Paul's TIAA and CREF funds to be the rationale underlying paragraphs (b) and (c) of the supplement. This intent was clearly set forth and implemented by the provisions of the decree of dissolution and supplement. Further, neither paragraph (a) of the supplement nor paragraph eleven of the decree nullifies or modifies paragraph (b) of the supplement.

While this decision may on its face seem to unduly benefit Yvonne, the facts support the conclusion that all parties are being treated equitably. The duration of the marriage, the limited earning capacity of Yvonne in the future, her advanced age, and the absence of any other significant asset of the marriage all substantiate the fairness of the amount awarded. Schantz v. Schantz, 163 N.W.2d 398, 405 (Iowa 1968), modified, In re Marriage of Williams, 199 N.W.2d 339, 344 (Iowa 1972); see Locke v. Locke, 246 N.W.2d 246, 254 (Iowa 1976). Any remaining assets at Yvonne's death will likely pass to their two sons. Further, Frances has received approximately \$39,500 in life insurance proceeds from a policy on Paul's life along with inheriting all of Paul's estate.

Yvonne is entitled to both the retirement death benefit and life insurance proceeds.

AFFIRMED.