FILED
JAN 29 1985
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF RAYMOND E. WILSON AND DOLORIS M. WILSON

UPON THE PETITION OF **RAYMOND E. WILSON,**	)	
Petitioner-Appellee,	)	Filed January 29, 1985
AND CONCERNING **DOLORIS M. WILSON** n/k/a **DOLORIS M. RUDY,**	)	4-396 / 84-659
Respondent-Appellant.	)	

Appeal from the Iowa District Court for Polk County—Luther T. Glanton, Judge.

Appeal from order of trial court modifying decree of dissolution. Decision of trial court modifying decree reversed in part. REVERSED IN PART.

Richard L. Martyn, and Emil Trott, Jr., of Barrett & Trott, Des Moines, for respondent-appellant.

Patrick Payton, Des Moines, for petitioner-appellee.

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

SACKETT, J.

Respondent Doloris Wilson-Rudy appeals from a decree modifying the financial provisions made for her in her 1983 dissolution decree.

In the original decree it was ordered, among other things, that Raymond pay Doloris the sum of five hundred dollars ($500) per month for a period of forty-eight months or until Doloris' death, but in no case were the payments to continue beyond the forty-eight month period. In addition thereto, Doloris was named beneficiary on Raymond's insurance policies and pension and profit sharing plan and Raymond was named as a beneficiary on Doloris' insurance.

The trial court's modification decree found there had been a material change in circumstances, namely, that Doloris had remarried and no longer needs $500 per month as support. The decree was modified to terminate the $500 a month payment, the provisions that Doloris be named beneficiary on Raymond's insurance and pension and profit sharing and the provision that Raymond be named beneficiary on Doloris' insurance.

Doloris contends that the insurance and retirement beneficiary provision and the $500 per month payments are property division, not alimony, and not subject to modification or, if they are alimony, Doloris' remarriage is not a sufficient change not contemplated by the trial court to require termination of the alimony.

We determine that the payments were part of the property division and the decree should not have been modified. This was a marriage of thirty-two years. The parties had four grown children. Doloris did not work outside the home because Raymond would have considered her working outside the home a threat to him. Doloris consequently left the marriage with no employment skills and lack of benefits by way of pensions and social security[1] one acquires from years of service

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[1] While Doloris would retain some spousal benefits, they are not as substantial as the workers benefits.

in the job market outside the home. The trial court's property division (excluding the monthly payments) resulted in Doloris receiving substantially less than one-half of the marital assets, including Raymond's pension rights. The five-hundred dollars per month payment award to Doloris equalized the division.

Taking all relevant factors into consideration, including the extent and nature of the property accumulated by the parties which the court is called upon to distribute in a just and equitable manner and the provisions of the original decree under the guidelines of Schantz v. Schantz, 163 N.W.2d 398, 405 (Iowa 1968) excluding reward or punishment based on fault as outlined in In Re Marriage of Winter, 223 N.W.2d 165, 169 (Iowa 1974), we determine the award to be a part of Doloris' property settlement. See In Re Marriage of Woodward, 229 N.W.2d 274, 279 (Iowa 1975). As a property settlement it was not subject to modification by the trial court absence fraud, coersion, mistake or grounds as would justify the setting aside or changing the decree in any other case. In Re Marriage of Johnson, 299 N.W.2d 466, 468 (Iowa 1980).

We therefore modify the trial court's order to strike the provisions modifying the five-hundred dollar monthly payment to Doloris and terminating her right to be named as a beneficiary of Raymond's insurance and pension and profit sharing.

Raymond did not cross-appeal. The provision striking him as beneficiary on Doloris' insurance will stand as modified by the trial court.

Effective July 1, 1984, however, Iowa Code section 598.36 now provides:

> In a proceeding for the modification of an order or decree under this chapter, the court may award attorney fees to the prevailing party in an amount deemed reasonable by the court.

The amendment to section 598.36 is procedural and therefore subject to retroactive application. See Shima v. Shima, ___ N.W.2d ___ (Iowa 1985) #83-985 filed 1-16-85. We award Doloris attorney fees of $650.

REVERSED IN PART.