FILED
MAY 28 1985
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF JOYCE K. POHLMAN AND JOSEPH H. POHLMAN

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Upon the Petition of	)	
JOYCE K. POHLMAN,	)	Filed May 28, 1985
Petitioner-Appellee,	)	
And Concerning	)	
JOSEPH H. POHLMAN,	)	5-212 / 84-1038
Respondent-Appellant.	)	

Appeal from the Iowa District Court for Johnson County - William L. Thomas, Judge.

Respondent-husband appeals from the economic provisions of the decree dissolving the parties' marriage. AFFIRMED AS MODIFIED.

Griff Wodtke of Barrett & Trott, Des Moines, Iowa, for respondent-appellant.

Richard H. Zimmermann of Mears, Zimmermann & Mears, Iowa City, Iowa, for petitioner-appellee.

Considered by Snell, P.J., Hayden, and Sackett, JJ.

HAYDEN, J.

Respondent-husband appeals from the economic provisions of the decree dissolving the parties' marriage.

Petitioner Joyce Pohlman and respondent Joseph Pohlman were married in 1948. At the time of the marriage Joseph was attending Drake University. Joyce worked as a secretary until the birth of the first of the parties' three children. Shortly after the marriage Joyce experienced bouts of depression which eventually led to alcohol abuse and psychiatric treatment. She attributed some of her problems to marital difficulties. In the late 1960's Joyce participated in Antabuse to remedy her drinking problem and worked in a factory and as a waitress to supplement the family income when Joseph's acoustical tile contracting business failed. In 1973 Joyce enrolled in Blackhawk College and worked as a respiratory therapist to pay tuition. She attended Augustana College from 1976 to 1979 and graduated summa cum laude. Joyce also completed a master's degree in botany at the University of Iowa and was enrolled in a doctoral program in pharmacology. However, she dropped out of the doctoral program after one year and stated that she did not intend to resume that program. Joyce's education was financed partly through student loans and partly through contributions from Joseph.

At the time of trial Joyce was fifty-five and Joseph was fifty-eight years of age. Joyce was employed as a research assistant in genetics at the University of Iowa earning $14,700 per year. She testified that she could possibly get a job paying $30,000 if she moved to San Francisco. She stated that companies doing work in genetic engineering were not very stable and that she had no desire to move to California. Joseph was employed as a supervisor at the Rock Island arsenal earning $45,000 per year. He planned to retire at age sixty, approximately eighteen months after the hearing, at which time his civil service pension would be $1,359 per month. If he waited until age sixty-five to retire his pension would be approximately $1,700 per month.

The parties' primary asset was a house valued at $70,000 with an indebtedness of $32,000. The trial court equally divided the equity in the house and gave Joseph the option to choose any of three methods for allowing Joyce to realize her share of the equity. The court also made each party responsible for one-half of Joyce's student loans of $13,500. Joyce was awarded forty percent of Joseph's pension, not less than $600 per month, as her share of the pension rights accumulated during the marriage. In addition the trial court ordered Joseph to pay alimony of $160 per week until Joyce dies or Joseph reaches age 65. The court provided that the alimony "shall not be contingent upon the happening of any other event." The court also stipulated that the alimony should be increased in the same percentage as any increases Joseph receives in his salary. Finally, the trial court awarded Joyce $1,000 in attorney fees.

On appeal Joseph claims: (1) that the alimony award is excessive; (2) that the conditions placed on the alimony award are unreasonable; (3) that it is inequitable to divide Joseph's retirement benefits; (4) that Joseph should not have been ordered to pay one-half of Joyce's student loans; and (5) that the award of attorney fees was unjustified. Joyce requests attorney fees on appeal as well.

Our review of this proceeding in equity is de novo. Iowa R. Civ. P. 4. We give weight to the findings of fact of the trial court, especially where the credibility of witnesses is involved, but we are not bound by them. Iowa R. App. P. 14(f)(7).

I. Joseph argues that alimony of $160 per week ($8,320 per year) is excessive in view of Joyce's education and earning capacity. In determining an award of alimony we consider the factors listed in Iowa Code section 598.21(3). Alimony is not an absolute right, but must be determined in light of all the circumstances, including the property division. In re Marriage of Bevers, 326 N.W.2d 896, 900 (Iowa 1982). We do not find that the record supports Joseph's allegation that Joyce has deliberately minimized her income in order to obtain

more alimony. Although the possibility of her finding a higher paying job exists, the only evidence in the record was that she would be forced to move to California and work for a company which may not be financially secure. Furthermore, we are aware that Joyce's age is a factor limiting the number of jobs available to her. On the other hand, Joyce is presently earning approximately the same yearly income Joseph will receive if he retires at age sixty.

We find that the trial court did not err in fixing the amount of alimony. Presently Joseph has a greater earning capacity and is physically capable of working until age sixty-five if he finds it necessary in order to maintain his obligation to contribute to Joyce's support. In view of the length of the marriage and our holding in Division II of the opinion regarding the trial court's division of Joseph's pension, we modify the decree to provide that the alimony shall continue until Joyce remarries or either party dies. It shall not terminate when Joseph reaches age sixty-five.

Joseph also argues that the trial court attempted to make the alimony nonmodifiable by stating in the decree that the alimony payments "shall not be contingent upon the happening of any other event." We are not convinced that this language must be interpreted as Joseph suggests. However, in view of our modification of the decree regarding the length of the alimony, we strike this language from the decree.

II. Joseph also claims that the trial court erred in awarding Joyce forty percent of his pension rights, but not less than $600 per month, at or after Joseph reaches age sixty-five. Joyce argues that this is a proper method of distributing this asset and cites the Iowa cases of In re Marriage of Bevers, 326 N.W.2d 896 (Iowa 1982) and In re Marriage of Byall, 353 N.W.2d 103 (Iowa Ct. App. 1984).

In Bevers the trial court had determined the present value of respondent's interest in petitioner's pension fund to be $2,500 and included that amount in a $20,000 lien on the house payable to respondent in lump sum installments. The

supreme court held that the provision was reasonable and equitable under the circumstances of that case. 326 N.W.2d at 899-900. In Byall this court held that the retirement funds of both parties should be considered in the property division at their current value. 353 N.W.2d at 106. In neither of these cases was an actual division of the monthly benefit checks made.

We strike the provision of the decree awarding Joyce part of Joseph's retirement checks. We have considered his retirement as well as Joyce's social security benefits in making our determination that Joyce's alimony should not automatically terminate when Joseph reaches age sixty-five.

III. We do not agree with Joseph's argument that it was inequitable for the trial court to order him to pay one-half of Joyce's student loans. The record shows that Joyce worked and contributed to his education when the parties were first married and it is not unfair that Joseph now contribute to Joyce's education.

IV. We affirm the trial court's award of attorney fees, but we decline to make a further award of attorney fees incurred in this appeal.

AFFIRMED AS MODIFIED.