

**IN THE COURT OF APPEALS OF IOWA**

No. 9-122 / 98-908  
Filed August 27, 1999

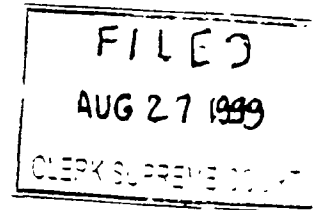
**IN RE THE MARRIAGE OF MARCIA RUTH SCHEPPELE  
AND JAMES SCHEPPELE**

Upon the Petition of  
**MARCIA RUTH SCHEPPELE,**

Petitioner-Appellant,

And Concerning  
**JAMES SCHEPPELE,**

Respondent-Appellee.



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Appeal from the Iowa District Court for Black Hawk County, K.D. Brner,  
Judge.

On appeal from the district court's entry of a qualified domestic relations order, the appellant claims the district court erred in awarding the appellee a greater amount of her retirement benefits than he was entitled. **AFFIRMED.**

Sherry L. Schulte of White & Johnson, P.C., Cedar Rapids, for appellant.

Eric W. Johnson of Beecher, Field, Walker, Morris, Hoffman, & Johnson,  
P.C., Waterloo for appellee.

Considered by Sackett, C.J., and Vogel, and Zimmer, JJ. Mahan, J., takes no  
part.

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**ZIMMER, J.**

This appeal concerns an on-going dispute between Marcia and James Scheppele regarding disposition of Marcia's Iowa Public Employee's Retirement System (IPERS) entitlement. Marcia appeals from the district court's entry of a Qualified Domestic Relations Order (QDRO). She claims the district court awarded her former spouse a greater amount of her retirement benefits than he is entitled. She also claims the court erred in including certain optional paragraphs from a model IPERS QDRO. We affirm the order entered by the district court.

*I. Background Facts and Proceedings.* Marcia and James Scheppele were married in 1969. Their marriage was dissolved by decree entered in 1992. One of the primary disputes at their original trial concerned valuation of Marcia's IPERS pension. In the original decree, the trial court valued Marcia's IPERS account at \$66,000 and treated that amount as an asset of the marriage. Marcia appealed from the property division provisions of the parties' dissolution decree.

In a decision filed in September 1994, the court of appeals addressed the issue of disposition of Marcia's pension as follows:

Thus, we modify the decree to provide when Marcia receives her pension, if IPERS has the authority to divide the pension, James is to receive 50% of a fraction of her pension or pension payments as follows: The numerator of the fraction being twenty years, the number of years Marcia contributed to IPERS during the marriage; and the denominator of the fraction being the total number of years during which benefits were accumulated prior to being paid.

*In re Marriage of Scheppele*, 524 N.W. 2d 678, 680 (Iowa App. 1994).

In fixing James' share of the pension entitlement by a fraction formula, the court of appeals rejected the method adopted by the trial court to value the IPERS pension. The trial court valued the account as of the time of the dissolution based on the employee's and employer's contribution to the fund. At the time of trial the employer did not contribute to the plan in a way assignable to individual employees, but did contribute to the IPERS general fund at a ratio of 1.55 times that of the employee's contribution. The court of appeals acknowledged that in prior decisions it has approved the method used by the trial court but declined to do so in this instance in favor of a percentage division formula. The court referred to the substantial difference in valuations fixed by experts in the field in concluding the decree should be modified to provide for payments out of future benefits when received.

James contacted Marcia in January 1997 regarding stipulating to a QDRO. After the parties were unsuccessful in reaching an agreement, he filed a request for hearing to finalize a QDRO order in March 1998. Following a hearing held on April 27, 1998, the district court entered a ruling approving with minor modification a QDRO proposed by James. A QDRO order was filed on May 5, 1998, and Marcia appealed.

**II. Merits.** At the time of the decree and the court of appeals decision on appeal, Marcia's IPERS benefits were calculated by a formula consisting of four parts: (1) a fraction of the number of years of service, (2) a percentage of the member's average of the three highest years of her salary, (3) date of withdrawal, (4)

the age of retirement. See Iowa Code §§ 97B.41(19), .49(5)(b), .49(5)(c) (1991).<sup>1</sup>

The record reflects, however, that at the time the QDRO was sought, there had been changes in how IPERS benefits are calculated.

First, IPERS benefits can now be divided by a QDRO. See Iowa Code § 97B.39 (1997); *In re Marriage of Kurtt*, 561 N.W.2d 385, 389 (Iowa App. 1997).

Second, her average three-year salary percentage increased from 54% to 60%.<sup>2</sup> See 1998 Iowa Acts ch. 1183, § 35 (now codified at Iowa Code § 97B.49A(1)(a), (3) (1999)).

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<sup>1</sup> Though the Court of Appeals decision was filed in 1994, the original dissolution action occurred in 1992. Therefore, the Court of Appeals applied the 1991 Iowa Code in deciding the case.

Marcia began working for the Waterloo School District in 1972. See *In re Marriage of Scheppele*, 524 N.W.2d 678, 679 (Iowa App. 1994). At the time of trial, she had not retired, she was still working for the school district, and her membership in IPERS had vested. See *id.* From the record, we discern Marcia is calculating her IPERS benefits prior to 1998 pursuant to Iowa Code § 97B.49(5)(b) (1991). That section provides in pertinent part:

For each active or inactive vested member retiring on or after July 1, 1990, with four or more complete years of service, a monthly benefit shall be computed which is equal to one-twelfth of an amount equal to fifty-two percent of the three-year average covered wage multiplied by a fraction of years of service.

See Iowa Code § 97B.49(5)(b).

<sup>2</sup> Before July 1, 1991, the applicable percentage was 52%. See Iowa Code § 97B.49(5)(b) (1991). However, according to Marcia's testimony at the QDRO hearing, the applicable percentage had been raised to 54%. This was not disputed at the QDRO hearing and appears consistent with applicable law at the time of dissolution. See Iowa Code § 97B.49(5)(b) (indicating that after July 1, 1991, the applicable percentage would increase two percentage points).

At the time of dissolution, due to IPERS covered wage limits, Marcia could not receive benefits on any income in excess of \$31,000 even though her actual income was approximately \$44,000. See Iowa Code § 97B.41(25)(b)(17) (1997); Iowa Code § 97B.41(b) (1991); Iowa Admin r. 581—21.4(3)(a) (1997). By the time this QDRO action was brought, however, the covered wage limits had far exceeded her annual salary of \$50,000 to \$52,000. See Iowa Code § 97B.41(25)(b)(17) (1997) (implementing 26 U.S.C. § 401(a)(17) for purposes of setting covered wage limits, Iowa Admin r. 581—21.4(3)(a) (1997). Because of the increased limit, all of her income is now eligible.

At the QDRO hearing, Marcia argued these changes would result in an inequitable distribution of property if the pension was not valued as of the time of dissolution. She claimed the IPERS benefits should be distributed according to the percentages that would apply if the formula for distribution were applied as of the date the marriage was dissolved. The district court rejected Marcia's proposed QDRO, stating:

First, the Court of Appeals decision values the relative interests of the parties as of the time when the petitioner receives her pension and by a percentage formula which is to be determined as of that date. The Court of Appeals provided one formula, quoted above, for dividing the pension if IPERS has authority to divide the pension when Marcia retires. IPERS did not have such authority when the decree was entered but has it now. In the alternative, the Court ordered direct payments from the petitioner to the respondent if IPERS did not have authority to divide the pension. Moreover, the Court of Appeals valued the direct payment at one fraction (years of the marriage divided by total years of qualifying employment divided by 2) if Marcia receives her pension in periodic payments and a larger fraction ( $\frac{1}{2}$ ) if Marcia chooses to withdraw her money from IPERS as a cash refund. The

alternative methods of dividing the pension were based on values to be determined at the time that Marcia began receiving payments from the IPERS pension fund, not as of the date when the marriage was dissolved. Because she did not seek further review or otherwise challenge the findings of the Court of Appeals, Marcia cannot now claim an entitlement to have pension benefits valued according to a different formula. This court would be acting in derogation of its responsibility to enforce and obey the directives of Iowa's appellate courts if it were to adopt her proposal.

Second, Marcia's proposal would create an inequitable result. Valuing James's interest in her pension only as of the date of the decree of dissolution would create for him an asset which he cannot use until some time in the future but which, in the meantime, does not earn interest. Marcia would be the sole beneficiary of monies earned by all of her account, including that portion which belongs to James, from the time of dissolution to the time she retires. She rightly claims that she is entitled to a greater share of her pension account than James will receive (unless she takes a cash refund), but the formula imposed by the Court of Appeals creates that result for each additional quarter that she works James' share of her account is reduced and her share grows by a corresponding amount.

Third, the Iowa Supreme Court has determined that "the value of the pension benefit is to be determined at the time of maturity." *In re Marriage of Benson*, 545 N.W.2d 252, 257 (Iowa 1996). That determination, made since the Court of Appeals decided this case, authoritatively confirms that the Court of Appeals decision in this case was correct.

Marcia argues *Benson* is inapplicable to the present case allegedly because the Benson court did not take into account the pensioner's salary in concluding the value of the benefits should be determined as of the date of maturity. She apparently contends that while the original property division based on an expectation of benefits according to the then-existing covered wage limit of \$31,000 may have been equitable at the time, it is not now equitable. She argues that because determination of her benefits is no longer limited by the covered wage limit, James will actually receive

more money than originally envisioned by the dissolution court. Thus, in order to effect the true equitable position reached between the parties at the time of their dissolution, she claims her IPERS pension should be valued at the time of dissolution according to the IPERS benefits formulas in place at that time. She further claims such property settlement scheme improperly considers and awards to James property acquired by Marcia after the dissolution. We find her arguments lacking in merit.

We agree with the district court's conclusion the result in this case is controlled by our supreme court's decision in *In re Marriage of Benson*, 545 N.W.2d 252, 257 (Iowa 1996). We note initially the general applicability of *Benson* where, as here, the pension plan at issue is a defined benefit plan. See *In re Marriage of Benson*, 545 N.W.2d at 254.<sup>3</sup>

We have carefully considered Marcia's arguments and the holding of *Benson*. We find no indication in that case that the supreme court meant to limit its holding to cases where the computation of benefits accrued over time would not change due to fluctuations in the covered wage limit. In addition, given the covered wage limit has been raised almost yearly since 1976, we find it likely the supreme court was aware of the effect of the types of changes presently before us. See Iowa Code § 97B.41(20)(b) (Supp. 1995) (showing history of covered wage ceilings). In fact, the relevant code sections in place at the time of *Benson* clearly indicate the possibility

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<sup>3</sup> IPERS is a defined benefit plan because "the *future benefit* to be received is specified in advance and 'defined' by a benefit formula or benefit schedule." *In re Marriage of Benson*, 545 N.W.2d at 254.

that the coverage wage limit would increase every year. See Iowa Code § 97B.41(20)(b)(11) (Supp. 1995). Because it was anticipated the pensioner in *Benson* was going to continue to work and contribute to his pension plan after the dissolution of the parties' marriage, the court clearly had before it the possibility the pensioner's covered wage limit would be lifted in the future. Yet, in issuing its holding, the supreme court did not consider this issue and apparently did not believe it had any significant bearing on the case. We do not believe Marcia presents sound legal basis for distinguishing *Benson* from the present case.

We further reject her argument James will be receiving property acquired after the parties' dissolution. The majority in *Benson* specifically rejected similar contentions raised by the dissent that the conclusion reached in *Benson* undermined the ideas (1) that the parties are entitled to a just and equitable share of property acquired through their joint efforts; and (2) that courts should divide property the parties own at the time of dissolution and not property they may acquire after dissolution. See *In re Marriage of Benson*, 545 N.W.2d at 256–57, 261.

We also note Marcia's resistance to the proposed QDRO rings of a modification of the property settlement provisions of the parties' dissolution decree. By her prior appeal, Marcia had her opportunity to correct what she now perceives as an inequitable property division. Our courts have long held that once fixed, property settlements should not be disturbed. See *In re Marriage of Knott*, 331 N.W.2d 135 137 (Iowa 1983). Once set, absent fraud, duress, coercion, mistake, or other similar grounds which would support modification of an ordinary judgment,

**property settlements in dissolution decrees are not subject to modification.** *In re Marriage of Johnson*, 299 N.W.2d 466, 468 (Iowa 1980); *In re Marriage of Trickey*, 589 N.W.2d 753, 756 (Iowa App. 1998). Marcia has not presented any grounds for her appeal on this basis.

We conclude the value of Marcia's IPERS pension should be determined at maturity.

**III. Optional QDRO Paragraphs.** The parties disagree about whether certain optional paragraphs should have been included in the QDRO order entered by the district court. The court concluded those paragraphs were reasonable and necessary to carry out the directives as set forth by the court of appeals in this case. The optional paragraphs in issue appear at subparagraphs A–C of paragraph 5 of the QDRO entered by the court.

Paragraph 5-A provides that if IPERS pays a dividend, a cost of living increase or any other post-retirement benefit increase to Marcia, James should receive a share of that increase in the same proportion as his over all share of the value of the pension.

Paragraph 5-B provides Marcia shall designate James as a designated beneficiary with respect to post-retirement death benefits. If she pre-deceases him, he receives a percentage of Marcia's death benefit equal to the percentage he receives of her monthly retirement benefits.

**Paragraph 5-C provides that Marcia shall not select any joint and survivor IPERS options which would provide to any person other than James that portion of the death benefit to which James is entitled under the distribution formula.**

Paragraph 5-C also requires Marcia to name James as a designated beneficiary with respect to any pre-retirement death benefits payable if she pre-deceases him before she retires. As in paragraphs 5-A and 5-B, the percentage of pre-retirement death benefits designated to him is the same as the percentage of post-retirement death benefits.

We conclude paragraphs 5-A, -B, and -C are reasonable and necessary to carry out the previous directions of the court of appeals that James is entitled to a defined fraction of Marcia's IPERS retirement benefits as part of the property division in the dissolution of marriage.

In his proposed QDRO, James requested inclusion of a fourth optional paragraph barring Marcia from converting her IPERS entitlement into cash, as opposed to a monthly annuity amount, without James' consent. The district court rejected this request, finding no authority for forbidding Marcia from taking a cash refund of her IPERS entitlement if she is willing to suffer "the double economic loss of a high rate of taxation plus surrendering a higher portion of the funds to James." The court substituted its own fourth optional paragraph which requires that if she requests a refund, Marcia must first notify James so that a hearing may be sought if they do not agree on the proper distribution of the refund proceeds. We find this provision to be reasonable as well.

***IV. Appellate Attorney Fees.*** James has requested an award of appellate attorney fees. An award of appellate attorney fees is not a matter of right, but rests within our discretion. See *In re Marriage of Scheppelle*, 524 N.W.2d at 680. We are to consider the needs of the party making the request, the ability of the other party to pay, and whether the party making the request was obligated to defend the trial court's decision on appeal. See *id.* We find each party should pay his or her own appellate attorney fees.

In conclusion, we affirm in all respects the provisions of the QDRO order entered by the district court. Costs of this appeal are taxed to the appellant.

**AFFIRMED.**