FILED
AUG 29 1985
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF BARBARA BROWNRIGG AND WILLIAM T. BROWNRIGG

Upon the Petition of	)	
BARBARA BROWNRIGG,	)	
Petitioner-Appellee/ Cross-Appellant,	)	Filed August 29, 1985
And Concerning	)	
WILLIAM T. BROWNRIGG,	)	5-258 84-364
Respondent-Appellant/ Cross-Appellee.	)	

Appeal from the Iowa District Court for Union County - Michael J. Streit, Judge.

Respondent husband appeals and petitioner wife cross-appeals from the decree dissolving the parties' marriage. AFFIRMED; CROSS-APPEAL DISMISSED.

Ronald D. Bonnett of Wilson, Bonnett & Christensen, Lenox, for respondent-appellant/cross-appellee.

Marion E. James, Clearfield, for petitioner-appellee/cross-appellant.

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

Respondent husband appeals and petitioner wife cross-appeals from the decree dissolving the parties' marriage. On appeal, respondent husband asserts (1) that the trial court's valuation of petitioner wife's pension fund is incorrect; (2) that the trial court's property division is inequitable; and (3) that the trial court should not have awarded petitioner wife any attorney fees. On cross-appeal, petitioner wife asserts (1) that the trial court should not have considered petitioner wife's pension fund at all in making the property division; and (2) that the trial court's property division is inequitable. Petitioner wife also requests attorney fees on appeal. The issue of this court's jurisdiction to entertain the cross-appeal has been ordered submitted with the appeal.

Petitioner Barbara R. Brownrigg and respondent William T. Brownrigg were married in 1952. They have two children, both of whom are now grown. During the marriage, the parties worked at various jobs. At the time of trial, Barbara was working as an X ray technician and William was working as a farm manager and a hail insurance adjuster.

The trial court awarded Barbara the parties' house, the furnishings, a car, her stock in her mother's farm corporation, and her pension fund. The trial court awarded William his life estate following his mother's life estate in his deceased father's farm, some machinery, and a pickup truck. The trial court directed William to pay the parties' debts and $2,457 toward Barbara's attorney fees. The trial court directed Barbara to pay William $10,000, offset by the attorney fee award and the $3,140 of William's debts Barbara had already paid, for a net of $4,188.

The trial court found that beginning before the parties' separation, William had made several financial transactions in anticipation of the marriage dissolution, including an attempt to conceal assets; the trial court stated that its property division reflected these transactions.

The dissolution decree was entered on December 27, 1983. William filed a notice of appeal on January 26, 1984. Barbara filed a notice of cross-appeal on February 29, 1984.

I. The Appeal

William asserts on appeal that the trial court's finding as to the value of Barbara's pension fund was too low. Under Iowa law a spouse's pension fund is a marital asset and properly includable within the property division. In re Marriage of Bevers, 326 N.W.2d 896, 900 (Iowa 1982); In re Marriage of Byall, 353 N.W.2d 103, 106 (Iowa Ct. App. 1984). The Iowa courts, however, have not expounded on the valuation method(s) which should be used to determine the value of a spouse's pension fund.

In Bevers, the supreme court held it was correct to discount the amount of the pension fund to present value. This court in Byall indicated that the value of the pension fund at issue should have been based on current worth. Thus, the Iowa courts have dealt with the issue of valuing pension funds, but not to the extent that other courts have done so. Both parties in their briefs direct us to non-Iowa authority which discusses alternative methods of valuation for pension funds.

There are three recognized methods commonly used to value and divide pension fund rights. These methods are summarized as follows:

> 1. The trial court may determine the amount of the employee-spouse's contribution to the fund, plus interest, and award the other spouse an appropriate share;
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> 2. the court may award the nonemployee-spouse a share of the present value of the employee-spouse's retirement benefits when they vest under the plan. In addition to discounting to present value, further discounting should be made to account for the probability of death before qualification for benefits and for vesting. Consideration should also be given to the employee-spouse's life expectancy as a retiree. This approach may be too speculative in some situations.
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> 3. the trial court may determine a fixed percentage of any future payments under the employee-spouse's pension plan attributable to earnings during marriage to which the

> nonemployee-spouse is entitled. This requires no calculation of present value. This method is best where present value of a pension fund is difficult or impossible to assess.

Holbrook v. Holbrook, 309 N.W.2d 343, 349 (Wis. Ct. App. 1981). See also Taylor v. Taylor, 329 N.W.2d 795, 798-99 (Minn. 1983); Selchert v. Selchert, 280 N.W.2d 293, 297-98 (Wis. 1979); Bloomer v. Bloomer, 267 N.W.2d 235, 238-39 (Wis. 1978).

The trial court apparently used a discounted present value method to determine the value of Barbara's pension fund. William argues that the method employed by the trial court constituted "double discounting" which the Wisconsin Supreme Court found was objectionable in Bloomer. The term "double discounting" describes a situation where the present sum is discounted "as if it were a future sum, without first accounting for future growth in the asset up to the time of distribution." Bloomer, 267 N.W.2d at 240.

Despite any allegations of "double discounting," we find that the trial court's valuation and division of the pension fund was reasonable and equitable under this record. See In re Marriage of Bevers, 326 N.W.2d at 900. While property division must be determined on a case-by-case basis, In re Marriage of Lattig, 318 N.W.2d 811, 814 (Iowa Ct. App. 1982); In re Marriage of Callenius, 309 N.W.2d 510, 511, 514 (Iowa 1981), we nonetheless believe the aforementioned non-Iowa authority shall provide helpful guidelines in determining the value of pension funds in future cases.

William further maintains the property division is inequitable. Iowa follows a flexible approach to property division based on the specific facts of each case in which precedents have relatively little value as guides. In re Marriage of Wallace, 315 N.W.2d 827, 830 (Iowa Ct. App. 1981). The trial court's findings indicate William entered into financially "defensive" measures prior to the dissolution in an attempt to insulate funds from the eventual property division. The trial court apparently took these transactions into account when making the property division. We find no error in the trial court's decision.

It is also claimed that Barbara should not have been awarded attorney fees. Attorney fees are not recoverable as a matter of right, but depend upon one spouse's financial needs and the other spouse's ability to satisfy them. Locke v. Locke, 263 N.W.2d 694, 696 (Iowa 1978); In re Marriage of Willcoxson, 250 N.W.2d 425, 427 (Iowa 1977); In re Marriage of Peterson, 227 N.W.2d 139, 142 (Iowa 1975). Considerable discretion is given to the trial court's decision as to attorney fees. In re Marriage of Winegard, 257 N.W.2d 604, 618 (Iowa 1977).

In this case Barbara's legal fees totalled $3,673.75 and the trial court awarded her $2,457.00. In light of the property division and respective assets of each party, we believe the trial court's ruling as to attorney fees as reasonable and affirm the decision.

II. The Cross-Appeal

The threshold issue is whether this court has jurisdiction to hear Barbara's cross-appeal. Iowa law provides that "a cross appeal may be taken within thirty days for taking an appeal or in any event within five days after an appeal is taken." Iowa R. App. P. 5(a).

The judgment deciding this case was entered on December 27, 1983, which allowed Barbara to file a cross-appeal by January 26, 1984. Alternatively, rule 5(a) allows a cross-appeal to be filed five days after the appeal is taken. The appeal was taken on January 26, 1984, which meant Barbara had to file a cross-appeal by January 31, 1984. Barbara did not file the cross-appeal until February 29, 1984, and thus did not meet either of the requirements of rule 5(a). Because the cross-appeal was untimely, we do not have jurisdiction and it must be dismissed. See Hueling v. Iowa National Mutual Insurance Co., 329 N.W.2d 6, 7 (Iowa 1983); Carpenter v. Ruperto, 315 N.W.2d 782, 786 (Iowa 1982).

AFFIRMED ON THE APPEAL: DISMISSED ON THE CROSS-APPEAL.