IN THE COURT OF APPEALS OF IOWA

No. 8-292 / 97-1468
Filed August 28, 1998

IN RE THE MARRIAGE OF MICHAEL J. HAVERTAPE AND LINDA L. HAVERTAPE

Upon the Petition of
MICHAEL J. HAVERTAPE,
Appellee,

And Concerning
LINDA L. HAVERTAPE,
Appellant.

Appeal from the Iowa District Court for Black Hawk County, George L. Stigler, Judge.

Linda Havertape appeals from the provisions of the parties' dissolution decree.

AFFIRMED AS MODIFIED.

Kevin D. Engels of Correll, Sheerer, Benson, Engels, Galles & Demro, P.L.C., Cedar Falls, for appellant.

John R. Walker, Jr., and Shawn Wehde of Beecher, Field, Walker, Morris, Hoffman & Johnson, P.C., Waterloo, for appellee.

Heard by Cady, C.J., and Streit and Vogel, JJ.

STREIT, J.

Linda Havertape appeals contending the trial court erred in calculating the value of her husband's savings and investment plan which was subject to division and in the amount of alimony she was awarded. We modify the amount of the savings and investment plan which is subject to division and the amount and duration of alimony.

I. Background Facts & Proceedings.

Linda and Michael Havertape were divorced in June 1997. Linda is forty-nine and Michael is fifty. The couple had four children, the youngest is eighteen.

Linda has a high school education. For most of the marriage, she was a homemaker. Within the last ten years, she has returned to the work force and held a variety of jobs, most recently as a full-time mail carrier for the U.S. Post Office. Her gross income is $28,489.40.

Michael has worked at John Deere for twenty-seven years. His gross income is approximately $67,000 per year. Michael also receives bonuses of between $4000 to $7000 per year. Michael has a pension plan at John Deere valued at over $76,000. He has accumulated over $154,000 in a savings and investment plan while working at John Deere.

Through a Qualified Domestic Relations Order (QDRO), the trial court equally divided Michael's pension plan and savings and investment plan based on May 1996 values. The trial court ordered Michael to pay $200 per month in alimony. Linda appeals.

II. Standard of Review.

Dissolutions are equitable in nature and reviewed de novo. *See* Iowa R. App. P. 4. This requires an examination of the entire record to adjudicate anew the rights of the parties. *In re Marriage of Ruter*, 564 N.W.2d 849, 851 (Iowa App. 1997). Weight is given to the findings of the trial court, although they are not binding. *Id.* Iowa R. App. P. 14(f)(7).

III. Division of Michael's Savings and Investment Plan.

Michael and Linda agreed the investment plan should be divided fifty-fifty. The date of distribution is in dispute. Linda contends the trial court erred in valuing Michael's investment plan at $112,415.72, the plan's value at the time of separation, rather than $154,102.00, the value at the time of trial. Michael contends Linda did not contribute anything to the assets after the time of separation and, for that reason, any increase after the time of separation should not be divided. The trial court agreed, stating the court was required under *In re Marriage of Oakes*, 462 N.W.2d 730, 733 (Iowa Ct. App. 1990)(valuing investment plan at time of separation rather than time of trial) to value the investment plan as of the date of separation.

The partners to a marriage are entitled to a just and equitable share of the property accumulated through their joint efforts. *In re Marriage of Russell*, 473 N.W.2d 244, 246 (Iowa App. 1991). Iowa courts do not require an equal division or percentage distribution. *Id.* The determining factor is what is fair and equitable in each circumstance. *Id.* The distribution of the property should be made in consideration of the criteria codified in Iowa Code section 598.21(1) (1991). *In re Marriage of Estlund*, 344 N.W.2d 276, 280 (Iowa App. 1983).

Investment plans, like pension plans, are subject to division as property acquired during the marriage. *In re Marriage of Driscoll*, 563 N.W.2d 640, 642 (Iowa App. 1997). Unless the parties stipulate otherwise, the date of the dissolution trial, rather than the date of separation, is the time when assessment of the parties' net worth is determined. *See In re Marriage of McLaughlin*, 526 N.W.2d at 344 (Iowa App. 1994). In *In re Marriage of Oakes*, 462 N.W.2d at 733, this court did not allow the wife to benefit from the increase in her husband's pension plan which accrued from the time of separation to the time of trial. The court reasoned the wife had not contributed to the growth assets and for that reason should not share in the increase. *Id.*

The *Oakes* decision was a departure from the general rule that the date of trial is the date from which pension and investment plans are valued. *In re Marriage of Driscoll*, 563 N.W.2d at 642. Equitable distributions require flexibility and concrete rules of distribution may frustrate the court's goal of obtaining equitable results. *Id.* Departure from the general rule was necessary in *Oakes* to achieve an equitable result. *Id.* The *Oakes* decision did not lock the courts into a set date for determining the values of investment and pension plans. *Id.* The court must do what is equitable in each unique case. *Id.* (citing *In re Marriage of Starcevic*, 522 N.W.2d 855 (Iowa App.1994)).

In this case, we find no reason to depart from using the date of trial as the date of valuing the investment plan. An equitable division requires the appreciation of the investment plan after separation to be divided equally between Michael and Linda. It was Linda *and* Michael's money which appreciated. Although Michael made additional contributions to the plan, the assets in the investment plan grew because the stock market went up, with no apparent help from either party. If they divided the funds at the time of separation, each party would have received the growth of their portion of the funds. It is unlikely Michael would have sought to use the date of separation to value his pension fund if the value had decreased by the date of trial. *See id.* Moreover, had the pension plan money been sitting in an interest-bearing bank account or had it been invested in real estate, and the value increased following the parties' separation, we would look to the trial date to fix the values. *See id.* The date of fair valuation of the investment plan was at time of trial.

Each party will receive one-half of the $41,686.28 appreciation of the investment plan. We modify the trial court decree and order the parties to present to the district court a modified Qualified Domestic Relations Order (QDRO) equal to fifty percent of Michael's investment account valued on the date of trial.

IV. Alimony.

Linda contends the trial court erred in awarding her traditional alimony of $200 per month, as opposed to $1200 per month, until Michael's retirement, death, or until Linda remarries, whichever occurs first.

There are three types of alimony awarded by the courts. Rehabilitative alimony serves to support an economically dependent spouse through a limited period of education and retraining. *In re Marriage of O'Rouke,* 547 N.W.2d 864, 866 (Iowa App. 1996). Its objective is self-sufficiency. *Id.* Recently, the Iowa Supreme court has recognized the concept of transitional alimony as part of rehabilitative alimony. Reimbursement alimony is predicated upon economic sacrifices made by one spouse during the marriage that directly enhance the future earning capacity of the other. *Id.* Traditional alimony allows payee to maintain a similar life style. *See In re Marriage of Weinberger*, 507 N.W.2d 733, 735 (Iowa App. 1993). It is payable for life or for so long as a dependent spouse is incapable of self-support. *Id.*

The circumstances of this case support an award of rehabilitative rather than traditional alimony. *See In re Marriage of Smith*, 1998 WL 63522,*2 (Iowa 1998). *In re Marriage of Christensen*, 543 N.W.2d 915, 919 (Iowa App. 1995); *In re Marriage of Berger,* 431 N.W.2d 387, 388 (Iowa App. 1988); *In re Marriage of Russell*, 473 N.W.2d 244, 247 (Iowa App. 1991). Linda did not work outside the home while she raised the couple's children. She recently returned to work. She will be self-supporting soon. She makes approximately $30,000 per year at present and her salary will increase. Her monthly expenses exceed her income by approximately $300. This will not be true as the years go by and Linda gets pay raises at the post office. Linda needs alimony for the next five years while she becomes self-supporting and adjusts to a living on a lower income. For that reason, we modify the traditional alimony award to an award of rehabilitative or transitional alimony which will continue while Linda adjusts from living in a household earning over $96,000 per year, to a $30,000 per year household. *See In re Marriage of Smith*, 1998 WL 63522,*2. Her need will dissipate as she adjusts to her new life. Michael is ordered to pay Linda alimony of $500 per month for five years.

Linda contends on appeal Michael should name her as beneficiary on his life insurance policy and surviving spouse on his pension. In light of the portion of the savings and investment plan to which we have ruled Linda is entitled, and the adjustment to her alimony award, it is not necessary to order this. Michael is ordered to pay $1000 of Linda's appellate attorney fees.

AFFIRMED AS MODIFIED.