IN THE COURT OF APPEALS OF IOWA

No. 3-609 / 93-249

IN RE THE MARRIAGE OF NORMA MILLER AND DAVID MILLER

Upon the Petition of
NORMA MILLER,

Appellant,

And Concerning
DAVID MILLER,

Appellee.

FILED
SEP 16 1994
CLERK SUPREME COURT

Appeal from the Iowa District Court for Mahaska County, James P. Rielly, Judge.

Norma Miller challenges the economic and property division provisions of the decree dissolving the parties' marriage. **AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.**

Craig S. Shannon of Grefe & Sidney, Des Moines, for appellant.

Greg A. Life of the Life Law Office, Oskaloosa, for appellee.

Considered by Donielson, C.J., and Habhab and Huitink, JJ.

DONIELSON, C.J.

Norma and David Miller were married in 1969. They have one adult child. Norma has two other adult children by a previous marriage. Norma filed a petition for dissolution of marriage in 1992. The trial court entered its decree dissolving the parties' marriage on February 18, 1993.

Norma is forty-eight years old. During the parties' marriage she spent the majority of her time taking care of the household and the children. She had little employment outside of the home while the children were young. Approximately five years ago Norma began working for McDonalds. She currently is a shift manager earning approximately $930 net per month.

David is forty-five years old. Throughout the marriage he worked for the Oskaloosa fire department. He currently is fire chief and earns approximately $2373 a month.

The district court awarded Norma net assets of $34,366 and David net assets of $31,216.72. David received the entire interest in his pension plan which the court valued at $17,555. Norma was awarded the family home valued at $38,000 and subject to an $8438 encumbrance.

The court awarded Norma alimony of $300 per month for the first three years and $500 per month thereafter until Norma dies or remarries. The court ordered David to pay Norma's health insurance for three years. The court did not award any attorney fees. Norma appeals.

We review decrees dissolving marriage de novo. Iowa R. App. P. 4. We give weight to the findings of fact of the district court, but are not bound by them. Iowa R. App. P. 14(f)(7). Prior cases have little precedential value, except as they provide us a framework for analysis, because we must base our decision primarily on the particular circumstances of the parties before us. In re Marriage of Will, 489 N.W.2d 394, 397 (Iowa 1992).

I. PENSION BENEFITS

Norma contends she should have been awarded 50% of David's pension benefits. Pension benefits are treated as marital property subject to equitable division. In re Marriage of Mott, 444 N.W.2d 507, 510-11 (Iowa App. 1989). They are considered in formulating an equitable distribution of property. In re Marriage of Miller, 475 N.W.2d 675, 677 (Iowa App. 1991); In re Marriage of Curfman, 446 N.W.2d 88, 89 (Iowa App. 1989). On review, we view all economic aspects of a dissolution decree as an integrated whole. In re Marriage of Imhoff, 461 N.W.2d 343, 344 (Iowa App. 1990) (citing In re Marriage of Campbell, 451 N.W.2d 192, 196 (Iowa App. 1989)).

In Mott we set forth four schemes devised by our courts for distribution of pension benefits in a dissolution:

> The first scheme is to award a percentage of the benefits already being received. . . . The second scheme available is to award a lump sum percentage based on the present value of the pension. . . . The third scheme available is to award . . . a percentage of the pension, as it becomes payable,

> in the form of periodic alimony. . . . The fourth scheme for dividing pension benefits is to award . . . a portion of the benefits if and when they accrue. . . . The fourth system differs from periodic alimony in that it awards a portion of the pension benefits in the property division.

Mott, 444 N.W.2d at 510-11. Since the filing of the Mott decision a fifth scheme has been recognized. Rather than dividing the pension between the parties, it may be awarded to one party and the other receives sufficient other property to offset the value of the pension. In re Marriage of Johnston, 492 N.W.2d 206, 208 (Iowa App. 1992); Miller, 475 N.W.2d at 677-78; In re Marriage of Hansen, 465 N.W.2d 906, 909-10 (Iowa App. 1990); Imhoff, 461 N.W.2d at 344-45. The district court used this latter approach and awarded David all of his interest in his pension and awarded Norma other property of purportedly equal value.

David had worked as a firefighter during the parties' entire twenty-three year marriage and his retirement benefits constituted a significant marital asset For the vast majority of the parties' marriage Norma had vacated herself from the work force and had cared for their family and home. She has no source of retirement income other than minimal social security earnings resulting from her present employment at McDonalds. It was inequitable for the district court not to have awarded Norma a portion of David's retirement plan.

The only evidence before the trial court of the value of David's pension was the amount of his contributions and

the interest thereon. The value of David's pension is not limited to his vested contributions. In re Marriage of Johnston, 494 N.W.2d 206, 208 (Iowa App. 1992); Iowa Code § 598.21(1)(i) (1991). The contributions of David's employer should have been considered in determining the value of David's pension interest at the time of the dissolution trial.

We remand this case for the taking of additional evidence to determine the actual present value of David's retirement benefits. See In re Marriage of Voss, 396 N.W.2d 801, 803-04 (Iowa App. 1986). We anticipate the benefits will have substantial value and the trial court is ordered to adjust its property award accordingly. In light of the limited amount of marital assets available to facilitate a Johnston-type offset of the pension, we encourage the trial court to consider awarding Norma a portion of David's retirement benefits as they become payable.

II. ALIMONY

Norma asserts the district court's award of alimony was inadequate. She request the alimony be increased to $750 a month for five years and $500 a month for an additional five years. When determining the appropriateness of alimony, the court must consider "(1) the earning capacity of each party, and (2) present standards of living and ability to pay balanced against relative needs of the

other." In re Marriage of Estlund, 344 N.W.2d 276, 281 (Iowa App. 1983) (citation omitted). Alimony is an allowance to the former spouse in lieu of a legal obligation to support that person. See In re Marriage of Hitchcock, 309 N.W.2d 432, 437 (Iowa 1981).

The alimony award allows Norma to continue her current standard of living. The scheduled increase from $300 to $500 a month after three years takes into account increased expenses Norma may face because of carrying her own health insurance.

We find the award made by the district court to be equitable to the extent David is not receiving his retirement benefits. However, we have remanded the issue of Norma's entitlement to a portion of David's retirement benefits and upon remand this issue will affect Norma's entitlement to alimony. See, e.g., In re Marriage of Griffin, 356 N.W.2d 606, 608 (Iowa App. 1984) (property and alimony issues are to be considered together in determining their individual sufficiency). On remand the district court is to review and adjust, if necessary, the alimony award to ensure it is equitable in conjunction with the award of a portion of David's retirement benefits to Norma.

III. ATTORNEY FEES

Norma argues the district court should have awarded her attorney fees for the dissolution. The district court taxed the costs of the dissolution to David, but declined

to award attorney fees to either party. Iowa trial courts have considerable discretion in awarding attorney fees. In re Marriage of Giles, 338 N.W.2d 544, 546 (Iowa App. 1983). To overturn an award the complaining party must show the trial court abused its discretion. Id. Awards of attorney fees must be for fair and reasonable amounts, In re Marriage of Willcoxson, 250 N.W.2d 425, 427 (Iowa 1977), and based on the parties' respective abilities to pay. In re Marriage of Lattig, 318 N.W.2d 811, 817 (Iowa App. 1982). Considering the division of assets and the alimony awarded, we do not find the court abused its discretion in requiring the parties to pay their own attorney fees.

Norma also asks for appellate attorney fees. An award of attorney fees is not a matter of right, but rests within the court's discretion and the parties' financial positions. In re Marriage of Kern, 408 N.W.2d 387, 390 (Iowa App. 1987). 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 district court's decision on appeal. In re Marriage of Castle, 312 N.W.2d 147, 150 (Iowa App. 1981). We conclude no award of attorney fees on appeal is appropriate. We assess the costs of this action to David.

AFFIRMED IN PART, REVERSED IN PART AND REMANDED.