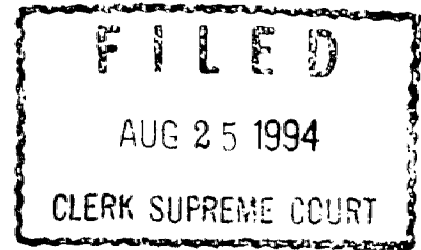


IN THE COURT OF APPEALS OF IOWA

No. 4-150 / 93-882



IN RE THE MARRIAGE OF DALE D. JENSEN AND  
DARLENE M. JENSEN

Upon the Petition of  
DALE D. JENSEN,

Appellant,

And Concerning  
DARLENE M. JENSEN,

Appellee.

---

Appeal from the Iowa District Court for Black Hawk  
County, James L. Beeghly, Judge.

Petitioner appeals a judgment of the district court  
holding respondent was entitled to one-third of his  
retirement benefits from John Deere existing at the time of  
his retirement, not at the date of the dissolution decree.

**AFFIRMED.**

Gary F. McClintock of Hoeger & McClintock,  
Independence, for appellant.

L. Don Snow of Reed-Merner and Mershon, Snow & Knock,  
Cedar Falls, for appellee.

Considered by Hayden, P.J., and Habhab and Cady, JJ.

**HAYDEN, P.J.**

Dale and Darlene Jensen were divorced on July 6, 1988. Pursuant to the decree, Darlene was entitled to receive one-third of Dale's John Deere retirement benefits. A qualified domestic relations order (Q.D.R.O.) was drafted by Darlene's counsel. The district court entered the order on March 22, 1989.

On February 9, 1993, Dale received a letter from John Deere, stating the company interpreted the Q.D.R.O. as giving Darlene one-third of his retirement benefits accrued at the time of his retirement. Dale subsequently filed an application for order regarding the Q.D.R.O. Dale requested the district court interpret the 1989 order as awarding Darlene one-third of his retirement benefits at the time the dissolution decree was entered. The district court concluded John Deere's interpretation of the Q.D.R.O. was correct and dismissed Dale's application. Dale appeals.

Dale insists the domestic relations order awards Darlene one-third of his retirement benefits accrued at the time of the dissolution decree. Dale argues the district court at the time of the decree awarded the benefits to Darlene not as alimony, but as a property award. Dale maintains as a property award Darlene's share of his retirement benefits should be valued as of the date of the dissolution decree.

In this equity action, our review is de novo. Iowa R. App. P. 4. We have a duty to examine the entire record and adjudicate anew rights on the issues properly presented. In re Marriage of Steenhoek, 305 N.W.2d 448, 452 (Iowa 1981). We give weight to the fact findings of the trial court, especially when considering the credibility of witnesses, but are not bound by them. Iowa R. App. P. 14(f)(7).

It is well settled pension benefits are treated as marital property in Iowa and are properly subject to equitable distribution. In re Marriage of Mott, 444 N.W.2d 507, 510 (Iowa App. 1989) (citation omitted).

The issue before us is whether or not the aforementioned Q.D.R.O. is ambiguous. Iowa precedent is clear a dissolution of marriage decree is susceptible to interpretation on the same basis as other documents. See Sieren v. Bauman, 436 N.W.2d 43, 46 (Iowa 1989) (citation omitted). We will not resort to rules of construction where the language is clear and unambiguous. Allen v. Highway Equip. Co., 239 N.W.2d 135, 139 (Iowa 1976) (quotation omitted). The determinative factor in determining a dissolution decree is the intention of the court granting the decree as gathered from all parts of the decree. In re Estate of Jones, 434 N.W.2d 130, 132 (Iowa App. 1988) (citation omitted).

The language of the decree in the instant case is clear and unambiguous. Pursuant to the decree, Darlene is

entitled to receive one-third of Dale's John Deere retirement benefits accrued at the time of retirement. Dale is really asking for a modification of the decree. However, this court does not have the power to change a property settlement unless an appeal is filed within thirty days. Iowa R. App. P. 5(a).

Dale is attempting to do indirectly what he failed to do directly. Dale simply failed to file for review of the decree within the time allowed. Having done so, Dale cannot now complain. The trial court is affirmed.

Darlene requests she be awarded attorney fees on appeal. The courts have considerable discretion in the award of attorney fees. In re Marriage of Huffman, 453 N.W.2d 246, 249 (Iowa App. 1990) (citation omitted). Awards of attorney fees must be for fair and reasonable amounts. In re Marriage of Willcoxson, 250 N.W.2d 425, 427 (Iowa 1977) (citation omitted). They must be based on the parties' respective abilities to pay. In re Marriage of Lattig, 318 N.W.2d 811, 817 (Iowa App. 1982). We award Darlene \$500 to apply upon her appellate attorney fees. Dale shall pay costs on appeal. Judgment of the trial court is affirmed.

**AFFIRMED.**