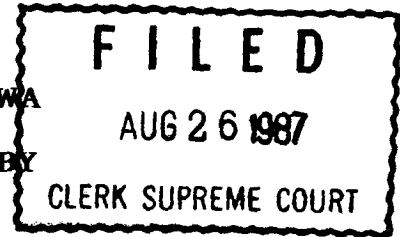


IN THE COURT OF APPEALS OF IOWA
IN RE MARRIAGE OF MIRIAM RODBY
AND ROY RODBY



Upon the Petition of)
MIRIAM RODBY,)
Petitioner-Appellant,)
And Concerning)
ROY RODBY,)
Respondent-Appellee.)

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Filed August 26, 1987

7-215
86-1070

Appeal from the Iowa District Court for Black Hawk County (No. 33749),
Peter Van Metre, Judge.

Petitioner wife appeals from the decree dissolving the parties' marriage.

AFFIRMED.

David J. Dutton and Cheryl L. Weber of Mosier, Thomas, Beatty, Dutton,
Braun & Staack, Waterloo, for appellant.

L. Don Snow of Mershon, Snow & Knock, Cedar Falls, for appellee.

Considered en banc.

OXBERGER, C.J.

In this appeal, the Appellant Miriam Rodby (wife) seeks to have her husband's pension funds treated as a marital asset rather than as a source for alimony payments. We find the case of Marriage of Jones, 309 N.W.2d 457 (1981) controlling where the pension funds are being received. There the court ordered husband to pay wife 37% of his military pension as periodic alimony. We have examined wife's needs and husband's ability to pay and consider the trial court's award equitable.

Wife further contends that she should have received one-half of her current rent because husband is living in the fully-paid-for marital home. We do not look at situations in isolation but review the totality of the circumstances. We find the failure of the trial court to award a specific allowance to wife for this item equitable under the circumstances.

Wife also says she should have received credit for her inheritance. We concur with the trial court's conclusion the inheritance of both wife and husband balance each other.

Wife seeks \$100.00 additional award to pay health insurance. We find the support award equitable and deny her request.

Wife seeks attorney fees and costs of this action. We find the parties should pay their own attorney's fees and order the courts costs divided 50-50.

AFFIRMED.

All judges concur except Sackett, J. and Schlegel, J. who dissent.

SACKETT, J. (dissenting)

The majority's reliance on In re Marriage of Jones, 309 N.W.2d 457 (Iowa 1981), is misplaced. The majority interprets Jones as holding that pension funds cannot be divided but should only be used to determine alimony. Jones involved military retirement. Jones, 309 N.W.2d at 459. Jones was decided in 1981 after the Supreme Court determined in McCarty v. McCarty, 453 U.S. 210, 101 S.Ct. 2728, 69 L.Ed.2d 589 (1981), there was a conflict between the community property law of the State of California and the federal military retirement statutes and that military pay was the personal entitlement of the retiree. Consequently federal law preempted and military pay could not be considered marital property.

As such, the Jones court had no choice but to consider the military pension as an issue of alimony because the court could not divide it as property. After Jones, Congress enacted the Uniformed Services Former Spouses' Protection Act, Pub. L. No. 97-252, 96 Stat. 718, 730-738 (1983). The act removed the federal preemption of state laws and allows division of military pensions in dissolution proceedings. See In re Marriage of Yates, 365 N.W.2d 49, 50-51 (Iowa App. 1985).

The court here has jurisdiction to divide the pension fund. This was a long-term marriage. Roy leaves with substantial pension benefits, all accrued during marriage. Additionally, he will have considerably greater social security benefits than Miriam will.

Miriam has a substantial income in her own right. Miriam has no need for alimony but she should receive an equitable allocation of Roy's John Deere pension. I would modify the decree to strike the alimony but order Roy pay to Miriam one-half his monthly John Deere pension.