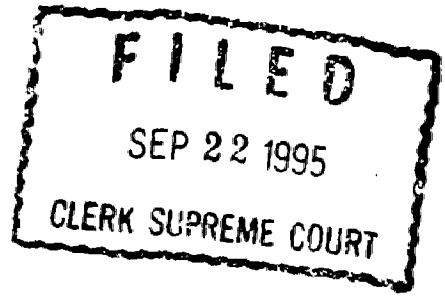
IN THE COURT OF APPEALS OF IOWA



No. 5-284 / 94-1304

IN RE THE MARRIAGE OF ROBERT L. BENSON AND CAMY A. BENSON

Upon the Petition of
ROBERT L. BENSON,

Appellant,

And Concerning
CAMY A. BENSON,

Appellee.

Appeal from the Iowa District Court for Linn County, William L. Thomas, Judge.

Robert Benson challenges the alimony and pension benefits provisions of the order dissolving the parties' marriage. **AFFIRMED.**

Henry E. Nathanson of Johnston, Potterfield & Nathanson, P.C., Cedar Rapids, for appellant.

Stephen B. Jackson and Stephen B. Jackson, Jr., Cedar Rapids, for appellee.

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

DONIELSON, C.J.

Robert appeals the district court's award of alimony and the division of his pension benefits. Camy asks for an award of appellate attorney fees. Our review of this equity action is de novo. Iowa R. App. P. 4. We affirm the district court's decision and decline to award appellate attorney fees to Camy.

I. PENSION BENEFITS

The parties were married in 1962, and a decree of dissolution was entered on June 15, 1994. During the majority of the marriage Robert was a member of the Teamsters Union and a participant in the Teamsters' pension plan. Robert's pension plan is a noncontributory, defined benefit plan. Robert's interest in the plan was vested at the time of trial.

The district court awarded Camy a percentage interest in Robert's pension to be paid when Robert began to receive pension payments. The court utilized the numerator/denominator calculation approved by this court in *In re Marriage of Curfman*, 446 N.W.2d 88, 90 (Iowa App. 1989). Robert contends the district court's division of his pension interests was erroneous in that it gives Camy an interest in pension benefits he accumulates after the termination of the marriage. He argues he offered testimony regarding the present value of his monthly pension benefits at age sixty-five ($1,060) and Camy's monthly benefit share of his pension interest should have been no more than one-half of that amount ($530).

Pensions in general are held to be marital assets subject to division in dissolution cases. *In re Marriage of Branstetter*, 508 N.W.2d 638, 640 (Iowa 1993). There are generally two ways for a court to divide pension benefits. One is to assign a value to the benefits, based on their present worth, and award that amount to the pensioner's spouse. *Id.* at 642. The second method is to award the spouse a percentage of the pension as the benefits become payable. This percentage is based on the number of years the employee contributed to the plan during the parties' marriage in relation to the total years of contribution. *Id.*

The evidence was conflicting and incomplete as to the present value of Robert's monthly pension benefits at age 65. The district court did not err in its application of the formula to divide Robert's pension benefits. Robert's concern that Camy will benefit from his continued employment and entitlement to increased benefits after the dissolution is ameliorated by two factors: 1) this is a noncontributory pension plan in which Robert is not required to make contributions; and 2) the denominator figure in the formula will increase with each additional year Robert works and will reduce the fractional amount which Camy will receive.

II. ALIMONY

The district court awarded Camy $500 in alimony per month for sixty months. Robert argues Camy should not have been awarded any alimony. When determining the appropriateness of alimony we consider the earning capacity of each party, the

parties' standards of living, and the ability to pay balanced against the other party's relative needs. *In re Marriage of Anderson*, 522 N.W.2d 99, 102 (Iowa App. 1994). Alimony is an allowance to the former spouse in lieu of a legal obligation to support that person. *Id.*

This was a long-term marriage. Camy was primarily responsible for caring for the parties' two children. While Camy did work during part of the marriage, her present level of earnings ($21,000/yr) is considerably less than Robert's ($36,000/yr). Robert presently is, and will continue to be, in a substantially superior position to Camy in terms of earning capacity and retirement benefits. The alimony awarded by the district court is equitable.

III. APPELLATE ATTORNEY FEES

Camy requests an award of appellate attorney fees. An award of attorney fees is not a matter of right but rests within the court's discretion. *In re Marriage of Scheppele*, 524 N.W.2d 678, 680 (Iowa App. 1994). In determining whether to award appellate attorney fees we consider the parties' financial positions and whether the party making the request was obligated to defend the trial court's decision on appeal. *Id.* Upon our review of each party's financial needs and ability to pay, we conclude equity does not warrant an award of attorney fees in this case.

AFFIRMED.