

IN THE COURT OF APPEALS OF IOWA

No. 23-0513
Filed March 27, 2024

**IN RE THE MARRIAGE OF CHERYL ANN GULASH
AND GARRY VAL EARL GULASH**

**Upon the Petition of
CHERYL ANN GULASH, n/k/a CHERYL ANN SIDNEY,**
Petitioner-Appellee,

**And Concerning
GARRY VAL EARL GULASH,**
Respondent-Appellant.

Appeal from the Iowa District Court for Scott County, Henry W. Latham II,
Judge.

A husband appeals the district court's denial of his request to modify the
property division in the parties' dissolution decree. **AFFIRMED.**

Garth M. Carlson of Gomez May LLP, Davenport, for appellant.

Christine Frederick of Zamora, Taylor & Frederick, Davenport, for appellee.

Considered by Schumacher, P.J., and Ahlers and Langholz, JJ.

SCHUMACHER, Presiding Judge.

Garry Gulash appeals the district court's denial of his request to modify the property division in the parties' dissolution decree. At the time of the dissolution decree, the court and the parties treated Garry's pension benefits as marital property, not as income. We reject Garry's attempt to recategorize the benefits he receives as disability benefits, which could be treated as income. The division of property in a dissolution decree is not subject to modification. We affirm the court's denial of the petition to modify the decree.

I. Background Facts & Proceedings

Garry and Cheryl Gulash, now Cheryl Sidney, were previously married. A dissolution decree was filed on October 26, 2012. Garry had previously been employed as a firefighter. The decree stated, "The pension benefits from the Davenport Fire Department and the City of Davenport 457 Plan shall also be subject to distribution between the parties as well."

Cheryl filed a motion pursuant to Iowa Rule of Civil Procedure 1.904(2), stating the court had not determined the division of the Davenport Fire Department pension benefits. The court ruled, "The Davenport Fire Department pension benefits accrued during this marriage by Garry V. Gulash shall be divided equally with half of the pension benefits now being awarded to Cheryl A. Gulash." The court also specifically stated there was no award of alimony. A qualified domestic relations order (QDRO) was filed on June 7, 2013, providing Cheryl fifty percent of Garry's pension benefits from his employment as a firefighter.

On December 3, 2021, Garry filed a petition to modify the dissolution decree.¹ He stated he believed the division of his firefighters' pension benefits was a form of alimony, which could be modified. Garry asked to have Cheryl's share of his pension benefits reduced or eliminated.

The court denied Garry's request to eliminate Cheryl's share of his pension. Garry filed a motion pursuant to Iowa Rule of Civil Procedure 1.904(2), asserting the court improperly found the dispute involved pension benefits rather than disability benefits. The court denied the motion. Garry now appeals.

II. Standard of Review

"We review dissolution cases de novo." *In re Marriage of Brown*, 776 N.W.2d 644, 647 (Iowa 2009). "Although we decide the issues raised on appeal anew, we give weight to the trial court's factual findings, especially with respect to the credibility of the witnesses." *Id.*

III. Modification

Garry claims the benefits he receives from his time working for the Davenport Fire Department are disability benefits, not pension benefits. He asserts that based on *In re Marriage of Miller*, disability benefits are considered to be income, rather than property subject to division in a dissolution decree. 966 N.W.2d 630, 639 (Iowa 2021). This is because disability benefits "more closely resemble a replacement or compensation for lost service income that the member

¹ Cheryl counterclaimed requesting an order requiring Garry to contribute to the post-secondary education of the parties' two children. She subsequently dismissed her counterclaim. Cheryl also moved for rule to show cause alleging Garry was delinquent in his child-support obligation. Garry was found to be in contempt for failure to timely pay child support.

otherwise would have earned in the future but for the disability.” *Id.* (citation omitted).

Although Garry now claims he receives disability benefits, the dissolution decree referred to them as pension benefits. The court also stated there was no award of alimony, so the benefits were not treated as income to be shared between Garry and Cheryl. The dissolution decree treated and awarded the benefits as a property distribution.

We note that the statement of contested and uncontested issues pertaining to the original dissolution proceedings, signed by Garry and Cheryl, set forth one of the issues for court determination as “the division of the parties’ assets, including [Garry’s] Davenport Fire Department Pension.” The court’s ruling on Cheryl’s rule 1.904(2) motion in the original dissolution proceedings again refers to “[t]he Davenport Fire Department pension benefits,” and it states that “half of the pension benefits” should be awarded to Cheryl. The QDRO also states Garry “was employed by the Davenport Fire Department and is a participant in the retirement plan of the System under Chapter 411 of the Code of Iowa.”

Gary did not appeal the dissolution decree.² The court and the parties consistently referred to the benefits as Garry’s pension benefits in the record before Garry’s application for modification, filed nine years after the dissolution decree. We reject Garry’s current attempt to recategorize his benefits as disability benefits rather than pension benefits. “Under Iowa law pensions are characterized

² The time to appeal the dissolution decree has long expired. See Iowa R. App. P. 6.101(1)(b). And Gary did not file a timely request to vacate or modify the dissolution decree under Iowa Rule of Civil Procedure 1.1012. Such motions must be filed within one year after the district court’s decision. Iowa R. Civ. P. 1.1013(1).

as marital assets, subject to division in dissolution actions just as any other property.” *In re Marriage of Benson*, 545 N.W.2d 252, 255 (Iowa 1996).

The division of Garry’s pension benefits was a division of property, not a division of income. The division of property in a dissolution decree is not subject to modification.³ Iowa Code § 598.21(7); *In re Marriage of Hazen*, 778 N.W.2d 55, 59–60 (Iowa Ct. App. 2009) (“A property division divides the property at hand and is not modifiable.”). We determine the district court properly denied Garry’s request to modify the division of his Davenport Fire Department pension in the dissolution decree.

We affirm the decision of the district court.

AFFIRMED.

³ “[P]roperty divisions in a dissolution decree can be subject to modification after direct appeal if there is a finding of ‘fraud, duress, coercion, mistake or some other grounds that would justify changing the decree.’” *In re Marriage of Hutchinson*, 974 N.W.2d 466, 474 (Iowa 2022) (citation omitted). There have been no allegations of fraud, duress, coercion, or mistake.