

**IN THE COURT OF APPEALS OF IOWA**

No. 2-1192 / 12-0801

Filed April 10, 2013

**IN RE THE MARRIAGE OF ANNA JANE  
GRIFFITH AND EDWIN H. GRIFFITH**

**Upon the Petition of  
ANNA JANE GRIFFITH,**  
Petitioner-Appellee/Cross-Appellant,

**And Concerning  
EDWIN H. GRIFFITH,**  
Respondent-Appellant/Cross-Appellee.

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Appeal from the Iowa District Court for Black Hawk County, Andrea J. Dryer, Judge.

A husband and wife both appeal the decree dissolving their marriage challenging the spousal support award and allocation of the survivorship benefits of a pension. **AFFIRMED.**

John R. Walker Jr. and Kate B. Mitchell of Beecher, Field, Walker, Morris, Hoffman & Johnson, P.C., Waterloo, for appellant/cross-appellee.

David H. Correll and Emily C. Chase of Correll, Sheerer, Benson, Engles, Galles & Demro, P.L.C., Cedar Falls, for appellee/cross-appellant.

Considered by Vaitheswaran, P.J., and Tabor and Mullins, JJ.

**MULLINS, J.**

We consider whether the district court properly awarded permanent spousal support of \$2000 per month in its decree of dissolution of marriage. On cross-appeal, we consider whether the court erred in failing to award pension survivorship benefits. For the reasons stated below, we affirm on both appeals.

**I. Background Facts and Proceedings**

Anna Jane Griffith (Jane) and Edwin H. Griffith (Ed) married on February 25, 1989, in Peoria, Illinois. They have no children together. Jane is sixty-three years old. She received her college degree and teaching certificate in 1973 and thereafter worked as a teacher for the Peoria public school system. This is Jane's second marriage.

Ed is seventy-two years old. Prior to the marriage, he received his bachelor's degree from Lake Forest College, master's degree from the University of Cincinnati, and Ph.D. from the University of Iowa. After earning his Ph.D., Ed worked for one year at a high school before accepting a position as director of research for the Peoria public school system. He was promoted to executive director of research, then to business manager, and eventually to superintendent of schools. This is also Ed's second marriage.

Jane and Ed lived in Peoria for nine years after their marriage. In 1998 they moved to Waterloo so Ed could work for the University of Northern Iowa developing a program to train school superintendents via the Iowa Communications Network. Jane did not seek employment in Iowa except for a

brief period of time from January 2000 until May 2001 when she taught at the Grundy Center Community Schools.

During their marriage Jane and Ed lived comfortably and enjoyed traveling. They went scuba diving off the Honduran Coast, owned a time share in Florida, and went on three African safaris. While in Iowa, the parties lived in a home worth \$250,000. Ed owns an extensive gun collection. Jane operates a jewelry business as a hobby.

By the time Ed and Jane retired from the Peoria school system in 1998 after nine years of marriage, Ed had worked for a total of thirty-five years and Jane twenty-five. Ed accumulated a pension of \$12,000 per month, and Jane accumulated a pension of \$2076 per month from the Illinois Teachers Retirement System. Ed's net income from his pension after taxes is \$9601. Ed's gross income from Social Security is approximately \$317 per month, and his net Social Security is approximately \$155, bringing his total net income to approximately \$9756 per month. Jane's net income, consisting of her pension, is \$1750 per month. Jane will not receive Social Security because Illinois's educational system deposits those deductions into the Teachers Retirement System.

Trial of this matter was held on November 30, 2011, and the district court entered its decree on February 20, 2012. The court awarded a total of \$547,898 in marital assets to Jane and \$547,899 in marital assets to Ed. The court also set aside \$189,262 in inherited property to Jane and \$113,863 to Ed. The court awarded each party a portion of the other party's monthly retirement benefits pursuant to the *Benson* formula. See *In re Marriage of Benson*, 545 N.W.2d 252,

257 (Iowa 1996). Pursuant to the property division, Jane will receive \$1559.39 from Ed's pension each month and Ed will receive \$362.93 from her pension, giving her income from retirement benefits of \$2946,<sup>1</sup> and Ed \$8560.<sup>2</sup> The court also awarded Jane spousal support of \$2000 per month, bringing Jane's and Ed's final incomes to \$4946 and \$6560, respectively. On April 12, 2012, Jane filed a motion to enlarge or amend the decree seeking to include a provision awarding the survivorship benefits of both of their pensions to the other party. This motion was denied. Ed appeals from the decree, and Jane cross-appeals.

## **II. Standard of Review**

Our scope of review is de novo. Iowa R. App. P. 6.907. Although we are not bound by the trial court's determination of factual findings, we will give considerable weight to them, especially when considering the credibility of witnesses. Iowa R. App. P. 6.904(3)(g). Prior cases, though helpful, have little precedential value since we must base our decision primarily on the particular circumstance of the parties presently before us. *In re Marriage of Weidner*, 338 N.W.2d 351, 356 (Iowa 1983). We accord the trial court considerable latitude in making factual determinations and will disturb the ruling only when there has been a failure to do equity. *Benson*, 545 N.W.2d at 257.

## **III. Analysis**

### **A. Spousal Support**

Spousal support is an allowance to the ex-spouse in lieu of a legal obligation to support that person. See *In re Marriage of Hitchcock*, 309 N.W.2d

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<sup>1</sup> Jane's income after pension division:  $\$1750 + \$1559.39 - \$362.93 = \$2946.46$ .

<sup>2</sup> Ed's income after pension division:  $\$9756 - \$1559.39 + \$362.93 = \$8559.54$ .

432, 437 (Iowa 1981). Spousal support is not an absolute right; its award depends upon the unique circumstances of each particular case. *In re Marriage of Fleener*, 247 N.W.2d 219, 220 (Iowa 1976). The court considers: “(1) the earning capacity of each party, and (2) present standards of living and ability to pay balanced against relative needs of the other.” *Hitchcock*, 309 N.W.2d at 436-37. A spousal support award is justified when the distribution of the assets of the marriage does not equalize the inequities and economic disadvantages suffered in marriage by the party seeking the alimony who also has a need for support. *In re Marriage of Sychra*, 552 N.W.2d 907, 908 (Iowa Ct. App. 1996).

Pension benefits are marital property and thus subject to equitable division between the parties to a dissolution proceeding. *In re Marriage of Branstetter*, 508 N.W.2d 638, 640 (Iowa 1993). The Iowa Supreme Court set forth the formula for dividing pension benefits in *Benson*, 545 N.W.2d at 255. Under the *Benson* formula each spouse receives fifty percent of the other spouse’s pension benefits multiplied by a fraction, the numerator of which is the number of years benefits accrued during the marriage and the denominator of which is the total number of years benefits accrued at maturity. *Benson*, 545 N.W.2d at 255.

Ed argues his pension was properly divided as marital property, and as such does not constitute a resource from which alimony may be derived. See *In re Marriage of Huffman*, 453 N.W.2d 246, 248 (Iowa Ct. App. 1990). In *Huffman*, this court noted that the husband’s “only substantive source of income after the dissolution would be his retirement benefits.” *Id.* Because the division of those benefits was regarded as the division of marital property, we concluded that

under the facts of that case they did not constitute a resource from which alimony could be derived, noting that “[i]n light of the fairly equal division of property in this matter” and the husband’s “limited potential for future employment” an award of alimony was not warranted. *Id.*

Ed asserts *Huffman* stands for the proposition that when a pension has been divided as marital property, a spouse cannot later access the other spouse’s share of that pension by means of an award of spousal support. Some courts have adopted this view. See, e.g., *Kruschel v. Kruschel*, 419 N.W.2d 119, 120 (Minn. Ct. App. 1988) (“Income received from pension fund awarded solely to husband in original property distribution may not be treated as equivalent to employment income on a motion for modification.”). The South Dakota Supreme Court adopted a similar approach but later qualified its ruling. Compare *Stemper v. Stemper*, 403 N.W.2d 405, 408 (S.D. 1987) (“[T]he trial court correctly made a retirement or pension plan a part of the property division . . . . But the trial court erroneously provided for payment of alimony based on that fund.”) *modified on rehearing*, 415 N.W.2d 159 (S.D. 1987) with *Hautala v. Hautala*, 417 N.W.2d 879, 883 (S.D. 1988) (limiting *Stemper*’s authority and allowing the court to consider a husband’s military retirement income in awarding alimony). Similarly, the Wisconsin Supreme Court held it was proper for a trial court to divide a trust as marital property but error to include the husband’s share of the trust in calculating his permanent alimony obligation because “[s]uch an asset cannot be included as a principal asset in making division of the estate and then also as an income item to be considered in awarding alimony.” *Kronforst v. Kronforst*, 123

N.W.2d 528, 534 (Wis. 1963). Thirty-four years later, however, the Wisconsin Supreme Court distanced itself from *Kronforst*, stating:

[B]ecause of the infinite range of factual situations facing circuit courts in dividing property and determining maintenance and child support, some cases have found it inappropriate to enforce an absolute bar against counting a pension in the property division and in the maintenance or support determination. Such an inflexible rule runs counter to the equitable nature of these determinations and to purposes underlying the broad legislative authorization that the circuit court consider relevant financial information in dividing the property and setting the level of maintenance and child support. Rather, the “double-counting” rule serves to warn parties, counsel and the courts to avoid unfairness by carefully considering the division of income-producing and non-income-producing assets and the probable effects of that division on the need for maintenance and the availability of income to both parents for child support.

*Cook v. Cook*, 560 N.W.2d 246, 252 (Wis. 1997).

Other courts have wholly rejected the argument that “dual consideration” of marital property is prohibited, pointing out the separate and distinct concerns present in property divisions versus spousal support determinations. See, e.g., *Riley v. Riley*, 571 A.2d 1261, 1264 (Md. 1990) (“[A]limony is intended to provide periodic support to a financially dependent spouse following the divorce. . . . A monetary award, on the other hand, is not intended as support, and it focuses not on the future but on the present and past.”).

We have not treated *Huffman* as barring consideration of pension benefits when determining spousal support. Nearly five years after *Huffman* was decided we considered the fact that a wife received a significant portion of her husband’s pension plan in assessing her need for alimony, noting that “[w]e consider alimony and property division together in assessing their individual sufficiency.” *In re Marriage of McLaughlin*, 526 N.W.2d 342, 345 (Iowa Ct. App. 1994). “They

are neither made nor subject to evaluation in isolation from one another.” *Id.* We cited *Huffman* for the principle that “[w]e consider pension benefits” in determining the appropriateness of an award of spousal support. *Id.*

The trial court properly considered the criteria for setting spousal support outlined in Iowa Code section 598.21A (2011) and awarded Jane spousal support of \$2000 per month. Jane and Ed were married almost twenty-three years. Both parties treated Jane’s teaching career as secondary and supplemental to Ed’s career. Though Jane had years of teaching experience, over the course of their marriage she became dependent upon Ed’s income as they chose to focus on his professional goals rather than both of their careers. Jane’s present standard of living does not approach her standard of living during the marriage, which was afforded in large part by Ed’s pension benefits. Given Jane’s age and absence from the job market, she will not easily find employment similar to her previous teaching career or employment that will allow her a standard of living comparable to that which she enjoyed during the marriage. Ed has sufficient income to contribute to her support while still maintaining his own comfortable and comparable lifestyle. For these reasons, the district court’s award was not a failure to do equity and need not be disturbed.

#### **B. Survivorship Benefits**

Jane argues the trial court erred in failing to award pension survivorship benefits to the parties, thereby failing to provide them with an equitable share of each other’s pension. Jane did not request the pension survivorship benefits be awarded at trial. It was not until her motion under Iowa Rule of Civil Procedure



1.904(2) that she requested the benefits. Ed resisted the posttrial motion asserting the issue was not addressed at trial and there was no evidence presented as to how an award of survivorship benefits to each party would affect the amount of the other party's monthly benefit. He also asserted the majority of his pension accrued prior to the marriage making it inequitable to require him to designate Jane as the surviving spouse. The trial court denied the motion "for reasons outlined in [Ed's] resistance to the request and in light of the overall property division." We agree with the trial court that equity in this case does not require an award of survivorship benefits.

#### **IV. Conclusion**

For the forgoing reasons, we affirm the trial court's decree. The parties shall each pay their own attorney's fees. Costs on appeal shall be divided equally between the parties.

**AFFIRMED.**