

IN THE COURT OF APPEALS OF IOWA

No. 2-514 / 11-1913
Filed July 25, 2012

**IN RE THE MARRIAGE OF JAMES A. WAHNER
AND LINDA K. WAHNER**

Upon the Petition of

JAMES A. WAHNER,
Petitioner-Appellant,

And Concerning

LINDA K. WAHNER,
Respondent-Appellee.

Appeal from the Iowa District Court for Black Hawk County, George L. Stigler, Judge.

James Wahner appeals an order dividing his pension according to the percentage method. **AFFIRMED.**

Teresa A. Rastede of Dunakey & Klatt, P.C., Waterloo, for appellant.

Kevin D. Engels of Correll, Sheerer, Benson, Engels, Galles & Demro, P.L.C., Cedar Falls, for appellee.

Considered by Eisenhauer, C.J., Potterfield and Mullins, JJ.

MULLINS, J.

James (“Jim”) Wahner appeals an order granting Linda Wahner’s request that a Qualified Domestic Relations Order (QDRO) be prepared to split Jim’s pension according to the percentage method, or *Benson* formula. Jim claims the order violates the original decree of dissolution between the parties by giving Linda credit for years Jim continued to work after the decree. For the reasons stated below, we affirm.

I. Background Facts and Proceedings

Jim and Linda Wahner married in June of 1970. They separated in 1990 and their marriage was dissolved in April of 1992. Jim introduced evidence at the dissolution trial indicating that if he ceased working immediately and drew his Teamster’s pension beginning at age sixty-five, he would receive a pension of \$752.66 per month. According to that evidence, Jim had joined the fund in 1973, although he had only been employed by his then-current employer since 1982. No other evidence was introduced at trial regarding the present value of the pension, and the value of the pension was not mentioned in the decree of dissolution. In the decree, the court allocated both Jim and Linda one-half interest in Jim’s pension plan. The decree’s language provided specifically that “[Linda] shall be entitled to receive no credit for years worked by [Jim] after the entry of this dissolution decree.” The court directed Linda to prepare a QDRO.

Through inadvertence, no QDRO was filed. This inadvertence was discovered in 2011 when Jim sought to retire and was informed that his pension administrator was withholding fifty percent of his benefit until a QDRO was filed.

Jim's counsel completed a QDRO which would award Linda fifty percent of the value of the pension as of 1992 had Jim ceased working immediately and started drawing benefits at age sixty-five, or \$376.33 per month. Linda refused to sign the order, and brought the matter to a hearing before the district court to decide how the pension should be divided. At the hearing, Linda advocated that the pension be divided according to the percentage method while Jim maintained that the language of the decree only entitled her to \$376.33 monthly. The district court ordered that the *Benson* percentage formula should be used to divide the pension. Jim filed a post-trial motion to amend and enlarge which was denied by the court, and he now appeals.

II. Standard of Review

"A proceeding to modify or implement a marriage dissolution decree subsequent to its entry is triable in equity and reviewed de novo on appeal." *In re Marriage of Pals*, 714 N.W.2d 644, 646 (Iowa 2006). "The decree should be construed in accordance with its evident intention. Indeed the determinative factor is the intention of the court as gathered from all parts of the decree." *In re Marriage of Brown*, 776 N.W.2d 644, 650 (Iowa 2009) (citations omitted). The court will give effect to both expressed and clearly implied intention. *Id.*

III. Analysis

In general, all property awarded in a marriage dissolution belongs to the respective parties the moment the decree is final. *Id.* at 647. However, the division and valuation of pensions requires the filing of a QDRO for tax and statutory reasons. *Id.* at 647-48. There are two general ways Iowa courts use to

divide pensions: the present value method and the percentage method. *In re Marriage of Benson*, 545 N.W.2d 252, 255 (Iowa 1996). In the present value method, a sum certain of the present value of future pension benefits is determined, and a lump sum is immediately payable, representing the portion of that present value to which the pensioner's spouse is entitled. *Id.* While this method has the benefit of immediate distribution, determining the present value of a pension is complicated and requires actuarial science. *Id.* Further, it is generally an economic hardship for the paying party to pay to the payee the present value of the distributive share of the pension in a lump sum. *In re Marriage of Sullins*, 715 N.W.2d 242, 249 (Iowa 2006). The second method, or percentage method, awards the spouse a percentage of the pension payments when the pension has fully matured. *Benson*, 545 N.W.2d at 255. The percentage is calculated by a formula using the number of years of marriage in which pension benefits accumulated as the numerator and the total number of years pension benefits accrued as the denominator. *Id.* That figure is multiplied by the spouse's share of the total value of the pension and the total amount of each monthly payment. *Id.* Under this method, the valuation and division of the pension is determined at the time of maturity.¹ *Id.*

Jim argues that the dissolution decree pre-dates *Benson* or any preference which was later developed for the percentage method of distribution. However, *Benson* was not new law at the time it was decided, and merely

¹ "The word 'matured' simply refers to the point in time when benefits commence." *Benson*, 545 N.W.2d at 254. In this case, the pension matured when Jim retired and became eligible to immediately collect benefits.

clarified the two methods of distributing pensions that were already “recognized” by Iowa courts. *Id.* Both of the methods of distribution described in *Benson* were already in use in Iowa at the time of Jim and Linda’s divorce. The question is whether to apply the present value or percentage method of division as described in *Benson*.

Jim proposes a division of the pension according to the present value method, as indicated by the language in the decree stating Linda would receive no credit for years Jim worked after the dissolution. He offers a monthly value based on the contributions at the time of the decree, assuming he quit that day and retired at age sixty-five. Jim claims that his evidence shows the value of the pension was known with certainty at the time of the decree, and it should be divided accordingly. However, no evidence was presented at trial to value the pension as a sum certain based on probabilities of mortality, interest, and the probability Jim would retire at a specific age. Jim’s value is based on a set of assumptions that were at the time only probable. Importantly, no sum certain was found at the time of the decree that could be split among the parties as a lump sum. The present value method requires these calculations, but there was no evidence of such calculations at the dissolution trial or at the hearing which resulted in the order which is the subject of this appeal. The only equitable way to divide the pension in this case is through the percentage value method.

It is true that Linda may receive an indirect benefit from years worked by Jim subsequent to the date of their dissolution. Jim argues that the language of the dissolution does not entitle her to any of this benefit. By working additional

years, Jim continually increased the denominator and decreased the fraction of his mature pension to which Linda was entitled. The percentage value method of distributing Jim's pension therefore accounts for language in the decree extending Linda no credit for the years he continued to work, but puts her in the position to share in the risk of increase or decrease in value as a result of the delay in distribution of her share of Jim's pension. If Linda had received her portion of the pension as a lump sum under the present value method at the time of the dissolution, she would have had the use of that money and been able to spend or invest that sum. As a result of the delay in her opportunity to use those proceeds, Linda will share in any change in the value of the pension she was awarded at the time of the dissolution. *See id.* at 257.

Jim requests appellate attorney fees. An award of appellate attorney fees rests in our discretion. *Sullins*, 715 N.W.2d at 255. We consider "the needs of the party seeking the award, the ability of the other party to pay, and the relative merits of the appeal." *Id.* Because Jim was not successful on appeal, we deny his request for attorney fees.

AFFIRMED.