

IN THE COURT OF APPEALS OF IOWA

No. 7-109 / 06-1209
Filed March 28, 2007

**IN RE THE MARRIAGE OF WENDY JANE ESTRADA
AND THOMAS MATTHEW ESTRADA**

**Upon the Petition of
WENDY JANE ESTRADA,
n/k/a WENDY JANE EVANS,**
Petitioner-Appellant,

**And Concerning
THOMAS MATTHEW ESTRADA,**
Respondent-Appellee.

Appeal from the Iowa District Court for Linn County, Mitchell E. Turner,
Judge.

Petitioner appeals the district court ruling denying her request to enter her
proposed qualified domestic relations order. **AFFIRMED.**

Karen Volz of Ackley, Kopecky & Kingery, Cedar Rapids, for appellant.

Jospeh G. Bertroche, Jr. of Bertroche Law Offices and Ronald L. Ricklefs,
Cedar Rapids, for appellee.

Considered by Sackett, C.J., and Huitink and Mahan, JJ.

MAHAN, J.

Wendy Estrada appeals a district court ruling denying her request to enter her proposed qualified domestic relations order (QDRO). Wendy claims the court should have entered her proposed QDRO naming her as her former husband's surviving spouse and indicating that she would receive her share of his pension benefit for her lifetime. We affirm.

I. Background Facts and Proceedings

Wendy and Thomas Estrada were married for thirty-three years before Wendy filed a petition for dissolution of marriage in 2004. In February 2005 they entered into a formal stipulation of settlement purporting to resolve all issues in their pending dissolution proceeding. The court incorporated this stipulation into the decree of dissolution. Both Wendy and Thomas were fifty years old at the time of the decree.

The stipulation provided that, along with her portion of other marital property, Wendy was "awarded all right, title, and interest in and to" her own pension at Rockwell and "\$1526.00 per month from [Thomas's] Peace Officer's Retirement pension plan to be distributed via a qualified domestic relations order to be prepared by [Wendy's] counsel within 60 days from the date of the entry of a decree." The stipulation did not indicate Wendy was entitled to surviving spouse benefits or indicate she would receive the \$1526 monthly payment after Thomas died.¹ The final paragraph of the stipulation recites that the stipulation "contains the entire understanding and agreement of the parties."

¹ The amount of \$1526 per month was arrived at by adding Thomas's retirement benefit accrued during the term of the marriage of \$3513.76 per month to Wendy's total

After numerous failed attempts to agree on the language in the QDRO, Wendy filed an application with the court to enter her proposed QDRO. In the application, Wendy requested the court enter an order naming her as Thomas's surviving spouse for the purposes of his pension and ordering that she receive \$1526 per month for the duration of her life, whether or not Thomas dies before her. The district court denied her application, ordering her to prepare a QDRO that did not name herself as the surviving spouse and did not extend the \$1526 monthly benefit to her for her lifetime. Wendy appeals, claiming the court should have entered an order naming Wendy as a surviving spouse and preventing Thomas from making any decision² that would jeopardize her ability to receive his pension benefits after his death.

II. Standard of Review

Our review of a ruling on an application for entry of a QDRO is de novo. *In re Marriage of Klein*, 522 N.W.2d 625, 627 (Iowa Ct. App. 1994) (reviewing whether QDRO followed the dissolution decree).

III. Merits

The pension at issue in this case is provided to participants of the peace officers' retirement, accident, and disability system. The terms of the retirement system are governed by Iowa Code section 97A (2005). Section 97A.6(12)

pension benefit of \$462 per month. The total of these two was divided in half, and then Wendy's share was offset by the pension benefit she would receive from her employer.

² Upon his retirement, Thomas has the option to choose a single life annuity plan whereby he would receive the maximum monthly pension payment during his lifetime, but all benefits would cease upon his death. Thomas could also choose a survivor annuitant option where he would be entitled to a smaller monthly benefit during his lifetime, but after his death a monthly benefit would continue to his designated "surviving spouse" for the remainder of her lifetime. Thomas will be eligible to retire at age fifty-five.

allows benefits to be paid to a surviving spouse. Section 97A.1(17) states that a former spouse qualifies as a surviving spouse “*only* if the division of assets in the dissolution of marriage decree pursuant to 598.17 grants the former spouse rights of a spouse under this chapter.” (Emphasis added.) This section clearly indicates Wendy is not entitled to pension benefits past the date of Thomas’s death unless she was designated as his “surviving spouse” in the divorce decree.

Despite the plain language of the statute and the absence of any language in the decree designating her as the surviving spouse, Wendy claims the district court should have entered her proposed order based on the supreme court’s holding in *In re Marriage of Duggan*, 659 N.W.2d 556 (Iowa 2003).

In *Duggan*, a former firefighter took early retirement and received monthly pension benefits prior to the time he filed for dissolution of his thirty-five-year marriage. *Duggan*, 659 N.W.2d at 558. At trial, the district court treated his pension as income, rather than a marital asset, and awarded him all of the rights to his pension. *Id.* Mrs. Duggan appealed the court’s decision, arguing she should have been designated as the surviving spouse on her former husband’s pension plan and she should have been awarded one-half of his monthly pension benefit. *Id.* at 557-59. When analyzing the property distribution provision in the dissolution decree, the supreme court stated:

Although the relevant statutes and rules set forth the procedure for designating a former spouse as the surviving spouse, the circumstances under which that designation should occur depend on the facts of each case and whether the allowance of survivorship rights effectuates an equitable distribution of the parties’ assets.

Id. at 560. The court concluded the pension was marital property, awarded Mrs. Duggan one-half of the monthly benefits, and ordered that she be given survivorship rights as to her share of the payments to “insure that she will receive her one-half share of [his] pension plan.” *Id.*

Based upon this holding, and her testimony that Thomas told her the monthly pension benefit would continue through her lifetime, Wendy claims the district court should have entered her proposed QDRO naming her as a surviving spouse and ordering pension benefits for the balance of her lifetime.

Duggan is readily distinguishable from the current case. *Duggan* was a direct appeal challenging whether the marital property division of a dissolution decree was equitable. In the present case, no party has appealed the stipulation and decree, nor has either party filed an application to modify the prior stipulation and decree. Instead, this case reviews the district court’s decision on the limited issue presented to the court: whether it should enter the proposed QDRO based upon the *existing* dissolution decree.

Surviving spouse benefits are recognized as a separate property right from the underlying pension benefits. *In re Marriage of Davis*, 608 N.W.2d 766, 770-71 (Iowa 2000). The decree and incorporated stipulation, which was drafted by Wendy’s counsel, did not designate Wendy as a surviving spouse and did not indicate her benefits would run after Thomas’s death. Wendy testified she assumed the law was that she would get Thomas’s benefits until she died and that Thomas told her as much.³ Thomas denies ever speaking with Wendy

³ In her appellate brief, Wendy implies that we should enter her proposed QDRO because the underlying stipulation was based on Thomas’s misrepresentation or a

about this subject because all settlement negotiations were carried out through their respective counsel. Based upon our de novo review of the evidence, we find Thomas's testimony more credible. The district court properly refused to modify the property division provisions in the unappealed decree through her proposed QDRO. See *id.* at 772 (“[Petitioner] was therefore left with a decree without a provision granting her surviving-spouse benefits. Without such a provision, she simply is not entitled to surviving-spouse benefits according to Iowa Code section 411.1(19), no matter what [Petitioner] thinks the equities are and no matter what contractual rights [the Petitioner] thought she had.”); see also *Irato v. Irato*, 732 N.Y.S.2d 213, 213 (2001) (holding QDRO was in error because it deviated from divorce decree).

Accordingly, we affirm the district court's ruling.

AFFIRMED.

mutual mistaken belief. Even if this argument was somehow raised in front of the district court, it was not decided by the court. Before an issue may be raised and adjudicated on appeal, the issue must have been raised before and decided by the district court. *Benavides v. J.C. Penney Life Ins. Co.*, 539 N.W.2d 352, 356 (Iowa 1995). When the district court fails to rule on an issue properly raised by a party, that party must file a post-ruling motion bringing the omission to the court's attention. *Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002). This argument was not raised to, or decided by, the district court. Therefore we will not review it here.