

IN THE COURT OF APPEALS OF IOWA

No. 7-701 / 07-0018
Filed November 15, 2007

**IN RE THE MARRIAGE OF THOMAS ANTHONY BOWE
AND MARY THERESA BOWE**

**Upon the Petition of
THOMAS ANTHONY BOWE,**
Petitioner-Appellant,

**And Concerning
MARY THERESA BOWE,**
Respondent-Appellee.

Appeal from the Iowa District Court for Dallas County, Arthur E. Gamble,
Judge.

Thomas Bowe appeals from the property division and spousal support
provisions of the decree dissolving the parties' marriage. **AFFIRMED.**

Leslie Babich and Kodi A. Petersen of Babich, Goldman, Cashatt &
Renzo, P.C., Des Moines, for appellant.

Vicki R. Copeland of Wilcox, Polking, Gerken, Schwarzkopf & Copeland,
P.C., Jefferson, for appellee.

Considered by Sackett, C.J., and Zimmer and Eisenhauer, JJ.

ZIMMER, J.

Thomas Bowe appeals from the property division and spousal support provisions of the decree dissolving the parties' marriage. We affirm the judgment of the district court.

I. Background Facts and Proceedings.

Thomas and Mary Bowe were married in 1983. Their twin children, Kieran and Angela, were born in 1987. Thomas filed a petition for dissolution of marriage in March 2006. The petition came before the court for trial in October 2006. When the case was tried, the children were eighteen years old and pursuing postsecondary education.

At the time of the trial, Thomas was fifty-three years old, in good health, and employed as a special agent criminal investigator for the Social Security Administration. He has a bachelor's degree from the City University of New York and a master's degree in forensic science from the Antioch School of Law. Thomas began his career with the federal government in 1976 as a police officer for the United States Secret Service. He eventually became a special agent with the Secret Service, which required him to "protect the various presidents, vice presidents of the United States and visiting dignitaries to the United States and to conduct criminal investigations relative to counterfeiting, fraud, things of that nature." His position with the Secret Service necessitated extensive travel and required him to transfer locations every three to five years.

Thomas and Mary met during a training course for their employment with the federal government. Mary was employed as an investigator with the criminal

investigation division of the Internal Revenue Service (IRS). She began her career with the federal government while she was attending college at the University of Northern Iowa in pursuit of her accounting degree. She started working full-time for the IRS after graduating from college in 1981.

Following their marriage in 1983, the parties resided in Indianapolis, Indiana, until 1986 when Thomas was assigned to Washington, D.C. to protect the Vice President of the United States. Mary continued to work for the IRS until 1989 when the parties decided she should stay home with their children. Thomas was transferred to Des Moines in 1992 where the family remained for approximately eight years. While they lived in Iowa, Mary worked as a teacher's associate for several years earning about six dollars per hour.

The family moved to Omaha, Nebraska, in 1999 when Thomas was promoted to the position of "resident agent in charge." Mary did not work when the family lived in Omaha. Thomas retired from the Secret Service in 2001, and the family moved back to Iowa. Throughout his employment with the Secret Service, Thomas contributed to a federal pension known as the "D.C. Government annuity" (D.C. pension). About two years before the parties married, he cashed in all of his interest in the D.C. pension. Before retiring from the Secret Service, Thomas paid \$5000 to repurchase the years of service that he withdrew from the pension prior to the parties' marriage.

After returning to Iowa, Thomas accepted employment with the Iowa Department of Inspections and Appeals as the director of the investigative division. He stayed at that job for about two years until he became the chief of

disaster operations and response for the Iowa Department of Public Health. In July 2004 Thomas returned to employment with the federal government as a special agent criminal investigator for the Social Security Administration and started contributing to the Federal Employees Retirement System (FERS). At the time of the trial, he earned approximately \$120,000 per year from his employment with the Social Security Administration. He was also receiving \$79,476 annually from his D.C. pension.

Mary was fifty-two years old, suffering from a variety of “age-related health problems,” and unemployed when this matter was tried. After the parties moved back to Iowa in 2001, she began working for the Dallas County Treasurer in the motor vehicle division where she earned approximately eight dollars per hour. Mary resigned from that position after about two years because she had difficulty standing due to problems with her knees and hip. She has not worked since then. However, at the time of the trial, she was enrolled in a paralegal program at a community college, which she expected to complete in June 2007.

Prior to the trial, Thomas and Mary agreed to an approximately equal division of their assets and debts. However, they could not agree how Thomas’s D.C. pension should be divided. Nor could they agree on the issue of alimony.

The district court entered a decree dissolving the parties’ marriage in November 2006. The court incorporated the parties’ agreement regarding the division of the majority of their assets and debts into the decree. The court ordered Thomas’s D.C. pension should be “divided equally between the parties, with each party receiving 50% of the gross annual income until their death.” The

court further ordered Thomas to pay Mary \$5000 per month in spousal support until July 2007, at which time his obligation would be reduced to \$3500 per month until either party dies, Mary remarries, or “Thomas actually retires from all gainful employment and Mary actually begins receiving her portion of the monthly payments from Thomas’s FERS account.” Finally, the court ordered Mary was entitled to fifty percent of Thomas’s FERS pension according to the percentage method detailed in *In re Marriage of Benson*, 545 N.W.2d 252, 255 (Iowa 1996).

Thomas filed a motion to reconsider, requesting the district court reduce the award of spousal support and the amount of the D.C. pension awarded to Mary. The district court entered an order reducing Thomas’s spousal support obligation to \$3500 per month until July 2007 and \$2000 per month thereafter. The court denied the remainder of Thomas’s requests.

Thomas appeals. He claims the district court erred in awarding Mary spousal support after July 2007. He further claims the district court erred in awarding Mary fifty percent of his entire D.C. pension benefits.

II. Scope and Standards of Review.

We review dissolution cases de novo. Iowa R. App. P. 6.4; *In re Marriage of Fennelly*, 737 N.W.2d 97, 100 (Iowa 2007). Although not bound by the district court’s factual findings, we give them weight, especially when assessing the credibility of witnesses. Iowa R. App. P. 6.14(6)(g); *In re Marriage of Sullins*, 715 N.W.2d 242, 247 (Iowa 2006). “Precedent is of little value as our determination must depend on the facts of the particular case.” *Fennelly*, 737 N.W.2d at 100.

III. Merits.

A. Spousal Support.

An award of spousal support is used as a means of compensating the party who leaves the marriage at a financial disadvantage, particularly where there is a large disparity in earnings. *In re Marriage of Clinton*, 579 N.W.2d 835, 839 (Iowa Ct. App. 1998). It is a discretionary award, dependent upon factors such as the length of the marriage, the age and health of the parties, their earning capacities, the ability of the spouse seeking support to become self-sufficient, and the relative need for support. Iowa Code § 598.21A (Supp. 2005); *In re Marriage of Olson*, 705 N.W.2d 312, 315 (Iowa 2005). Although our review of the award is de novo, the trial court is granted “considerable latitude in making this determination” and we “will disturb the ruling only when there has been a failure to do equity.” *Olson*, 705 N.W.2d at 315.

The district court in this case awarded Mary traditional spousal support, which is “payable for life or so long as a spouse is incapable of support.” *Id.* at 316. Thomas argues Mary is not entitled to spousal support beyond July 2007 when she completes her paralegal course requirements because she will be self-supporting at that time. We do not agree.

Traditional spousal support is generally appropriate in long marriages where life patterns have been set and the earning potential of the spouses can be predicted with some reliability. *In re Marriage of Francis*, 442 N.W.2d 59, 62-63 (Iowa 1989). The parties were married for twenty-three years. Mary is fifty-two and suffers from a variety of age-related health issues, including orthopedic

and heart problems. She has been removed from the workforce for the majority of the parties' marriage. However, the district court "anticipate[d] that her future earning capacity will be approximately \$35,000" upon her completion of the paralegal program. Thomas, on the other hand, was earning \$120,000 per year at the end of the parties' marriage.

While Mary may be capable of becoming self-supporting, she will do so at a level of income substantially lower than what she enjoyed during the parties' long marriage. See *In re Marriage of Geil*, 509 N.W.2d 738, 742 (Iowa 1993) (noting alimony may be used to remedy the inequities in a marriage and to compensate a spouse who leaves a marriage at a financial disadvantage). As the district court recognized, "Mary's decision to stay at home, sacrificing her career, enabled Tom to have the flexibility in his life to pursue the career he loved and to advance in that career to the point where he now earns over \$120,000" annually. In light of the foregoing, we conclude the district court's decision to award Mary traditional spousal support is equitable and should be affirmed.

Thomas next argues the district court erred in ordering him to pay Mary spousal support until he "actually retires from all gainful employment and Mary actually begins receiving monthly payments from Thomas's FERS account." Thomas must retire from his position with the federal government at age fifty-seven, although he could be exempted from retirement until age sixty. However, the district court noted Thomas is an energetic man who would most likely "continue employment after age fifty-seven or sixty." Indeed, the record shows

Thomas was fifty-three years old, healthy, and working full-time after his first retirement.

Based on the facts of this case, we do not find it was inequitable for the district court to order Thomas to continue paying spousal support to Mary until he retires and Mary begins receiving her portion of his FERS retirement plan. See, e.g., *In re Marriage of Bell*, 576 N.W.2d 618, 623 (Iowa Ct. App. 1998) (declining to terminate alimony when payor retires) *abrogated on other grounds by In re Marriage of Wendell*, 581 N.W.2d 197, 200 (Iowa Ct. App. 1998); *In re Marriage of Hayne*, 334 N.W.2d 347, 353 (Iowa Ct. App. 1983) (finding the court did not err in ordering alimony to continue after payor retired). As we recognized in *Bell*, 576 N.W.2d at 623, and *Hayne*, 334 N.W.2d at 353, if changes in circumstances occur, such as Mary's need for support or Thomas's inability to meet his support obligation, Thomas may seek modification of the dissolution decree at that time.

B. Pension.

We next consider Thomas's claim that the district court erred in awarding Mary one-half of his entire D.C. pension. The district court found,

[A]pproximately two years prior to the parties' marriage, Thomas cashed in all of the interest in his federal pension. At the time of the parties' marriage, Thomas had only invested two years in his federal pension while Mary had accumulated five years in her similar pension. After the parties' marriage, the parties cashed in Mary's federal pension. In October of 2000, marital funds were used to repurchase the years of service Thomas had cashed in prior to the parties' marriage. Therefore, the Court finds that, under these circumstances, it is equitable to equally divide all interest in the Washington DC Pension.

Upon our de novo review, we agree with the district court.

Iowa law characterizes “pensions as marital assets, subject to division in dissolution actions just as any other property.” *Benson*, 545 N.W.2d at 255. “There are two accepted methods of dividing pension benefits: the present-value method and the percentage method.” *Sullins*, 715 N.W.2d at 248. Under the percentage method, the court awards a spouse a percentage of the pension payable in the future at the time the benefits mature. *Id.* at 249. With the percentage method, the non-pensioner spouse is awarded a percentage of a fraction of the pensioner’s benefits based on the duration of the marriage, which is paid if and when the benefits mature. *Id.* at 250. This fraction represents the portion of the pension attributable to the parties’ joint marital efforts. *Id.* The numerator in the fraction is the number of years the pensioner accrued benefits under the plan during the marriage, and the denominator is the total number of years of benefit accrual. *Id.*

At the time of the trial, Thomas’s D.C. pension benefits were vested and matured. See *Benson*, 545 N.W.2d at 254 (stating benefits are “matured” when “all requirements have been met for *immediate* collection” and “vested” when an employee “has rights to *all* the benefits purchased with the employer’s contributions to the plan”). Thomas began contributing to the D.C. pension in 1976, about five years before the parties were married. He argues the district court erred in including those years of premarital service in its division of the D.C. pension. The difficulty presented by this case is the fact that Thomas cashed in his pension before the parties were married and then repurchased those years of service during the parties’ marriage.

Section 598.21(5) requires “all property, except inherited property or gifts received by one party,” to be equitably divided between the parties. “This broad declaration means the property included in the divisible estate includes not only property acquired during the marriage by one or both of the parties, but property owned prior to the marriage by a party.” *In re Marriage of Schriener*, 695 N.W.2d 493, 496 (Iowa 2005). The “property brought to the marriage by each party” is a factor to be considered under section 598.21(5) in making an equitable distribution. Iowa Code § 598.21(5)(b). The purpose of section 598.21(5)(b) “in many instances, is to prevent a spouse from being given an interest in property for which he or she made no contribution to acquiring.” *In re Marriage of Miller*, 452 N.W.2d 622, 624 (Iowa Ct. App. 1989).

In this case, Mary did contribute to the acquisition of Thomas’s pension considering the parties repurchased the years of service Thomas withdrew prior to their marriage using marital funds. We also consider, as did the district court, that Mary began contributing to her federal pension before the parties were married. Mary and Thomas chose to cash in her pension when they decided she should stay home with their children. Given our equitable distribution scheme, the district court was not prohibited from including Thomas’s premarital contributions to the D.C. pension because in this case those contributions were “attributable to the parties’ joint marital efforts.” *Benson*, 545 N.W.2d at 255. We therefore find, under the unique facts presented by this case, the district court was correct in equally dividing Thomas’s entire D.C. pension.

C. Attorney Fees.

Mary requests an award of appellate attorney fees. Appellate attorney fees are not a matter of right, but rather rest in this court's discretion. *In re Marriage of Okland*, 699 N.W.2d 260, 270 (Iowa 2005). In arriving at our decision, we consider the parties' needs, ability to pay, and the relative merits of the appeal. *Sullins*, 715 N.W.2d at 255. We award no appellate attorney fees in this case.

IV. Conclusion.

We conclude the district court's decision to award Mary traditional spousal support is equitable and should be affirmed. We do not find it was inequitable for the district court to order Thomas to continue paying spousal support to Mary until he "actually retires from all gainful employment." Under the unique facts presented by this case, we conclude the district court was correct in equally dividing Thomas's entire D.C. pension. Finally, we decline Mary's request to award her appellate attorney fees.

AFFIRMED.