IN THE COURT OF APPEALS OF IOWA

No. 8-291 / 07-1870
Filed May 14, 2008

IN RE THE MARRIAGE OF LISA RAE GASSMAN AND GEORGE WAYNE GASSMAN

Upon the Petition of
LISA RAE GASSMAN,
Petitioner-Appellee,

And Concerning
GEORGE WAYNE GASSMAN,
Respondent-Appellant.

Appeal from the Iowa District Court for Marshall County, Carl D. Baker, Judge.

The respondent appeals following entry of the district court's dissolution decree and subsequent orders. **AFFIRMED.**

Barry Kaplan and Melissa A. Nine of Kaplan, Frese & Nine L.L.P., Marshalltown, for appellant.

Reyne L. See of Johnson, Sudenga, Latham, Pedlow & O'Hare, P.L.C., Marshalltown, for appellee.

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

MAHAN, J.

George Gassman appeals the district court's entry of a dissolution decree approving the stipulation entered into previously by George and Lisa Gassman, and subsequent orders concerning construction of the stipulation provision on a Qualified Domestic Relations Order (QDRO) dividing George's pension. We affirm.

I. Background Facts and Proceeding.

George and Lisa's marriage was dissolved by decree on June 13, 2007, which approved and incorporated a stipulation as to child custody and support and property division entered into by the parties also on June 13. Paragraph 10 of the stipulation governed dispersal of George's two retirement accounts, a non-contributory defined benefit plan (the pension) and an employee savings investment plan (the SIP) and reads:

> That Petitioner shall be entitled to receive as property settlement, that percentage of Respondent's undiscounted future retirement benefits (pension) attributable to his employment during the period of the marriage. Said percentage shall be determined by multiplying a fraction, the numerator of which shall be the period of time during which the parties were married and Respondent was employed at Fisher Controls (or any other name under which it may have been operated), and the denominator shall be the total years of service upon which the pension is based; this fraction shall be multiplied by 50 percent to determine the fraction of Respondent's future retirement benefits which shall be awarded to Petitioner. A Qualified Domestic Relations Order shall be entered to this effect and directed to the Plan Administrator, to pay Petitioner her fractional share of the profit sharing plan at the time of the distribution and to pay to Petitioner her fractional share of the monthly pension payments when they commence.
>
> Petitioner shall also be entitled to receive the sum of $153,530.15 from Respondent's SIP account, by way of the entry of a QDRO.

The requisite QDROs were prepared by Lisa's counsel and proposed to George. On July 5, 2007, Lisa requested a hearing on entry of the QDROs as envisioned by the stipulation and decree, due to George's disagreement with the language of the pension QDRO. George contended he did not approve of the QDRO as written and requested the pension be divided using a "frozen marital portion approach" using the total years of service at dissolution rather than the "marital portion approach" as provided in paragraph 10 of the stipulation. Following a hearing on entry of the QDROs in August 2007, the district court concluded George's proposed QDRO using the frozen approach "divides the pension plan in accordance with the terms of the decree." Lisa filed a motion to reconsider, amend or enlarge pursuant to Iowa Rule of Civil Procedure 1.904(2), citing *In re Marriage of Benson*, 545 N.W.2d 252 (Iowa 1996), as controlling on the division of the pension at the time of maturity. The district court reversed its position by order filed October 12, 2007, concluding the *Benson* rule applied and division of the pension should be made at the time of maturity, not frozen at the time of dissolution. George appeals.

II. Scope and Standards of Review.

We review dissolution decrees de novo. Iowa R. App. P. 6.4; *In re Marriage of Fennelly & Breckenfelder*, 737 N.W.2d 97, 100 (Iowa 2007). Though we are not bound by them, we give weight to the district court's factual findings and credibility determinations. *In re Marriage of Sullins*, 715 N.W.2d 242, 247 (Iowa 2006).

When the court merges an agreement of the parties into a dissolution decree, the court construes and enforces the decree as a final judgment of the

court and not as a separate agreement between the parties. *In re Marriage of Goodman*, 690 N.W.2d 279, 283 (Iowa 2004). In construing a decree of dissolution, our supreme court has previously stated:

> 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. Effect is to be given to that which is clearly implied as well as to that which is expressed. Of course, in determining this intent, we take the decree by its four corners and try to ascertain from it the intent as disclosed by the various provisions of the decree.

Goodman, 690 N.W.2d at 283 (citing *In re Roberts' Estate,* 257 Iowa 1, 6, 131 N.W.2d 458, 461 (1964)).

III. Issue on Appeal.

The parties spent much of their time during hearings on entry of the QDROs detailing and disputing what they intended to provide as the controlling division scheme for George's pension. However, this overlooks the simple fact that an agreement was entered into, with clear language governing division of the pension, and approved by the district court. That being said, we need not look beyond the four corners of the decree to review the intentions of the decretal court. *See Bowman v. Bennett*, 250 N.W.2d 47, 51 (Iowa 1977) (stating the court is interpretively confined to the four corners of the decree and the pre-dissolution views of the parties on the intent of the stipulation are irrelevant and extraneous to subsequent proceedings to construe the decree).

George testified he believed the language of paragraph 10 could be construed to fix his years of service as frozen at the date of dissolution. We see no ambiguity in the stipulation and conclude the marital portion approach eventually ordered by the district court is proper according to the parties'

agreement approved by the court and in accordance with Iowa law. *See In re Marriage of Duggan*, 659 N.W.2d 556, 559 (Iowa 2003) (stating in dissolution of marriage proceedings, the assets of parties, including pension benefits, must be divided equitably); *Benson*, 545 N.W.2d at 255-56 (stating Iowa law gauges the value of the spouse's share in the pension plan from the time of maturity at actual retirement, rather than freezing the spousal share at the time of dissolution). Calculating the shares at the time of maturity effects equity between the parties, as follows:

> [A]fter divorce the value of the non-employee spouse's separate property interest in the pension benefits is "frozen" until the employee spouse retires, at which time that "frozen" value is returned to the non-employee spouse. During the time from divorce to retirement, however, the entire fund-- comprised of the employee spouse's separate property interests and the non-employee spouse's separate property interests--continues to establish its earnings profile over time. Since these separate property interests are combined until retirement, the plan administrator can invest the employee spouse's separate property interest in the fund. This "added" investment value increases the fund's earning power, which in turn is used (and may be necessary) to create the employee's future "defined" benefit. [T]he employee spouse receives at retirement the entire value of the "defined" benefit. From that amount, the non-employee spouse is entitled to one-half of the value of the [marital] interest in the benefit on the date of divorce. The "defined" benefit received by the employee spouse is made possible, however, in part by the use of the non-employee spouse's separate property interest in the fund. The entire amount of earnings attributable to the non-employee spouse's separate property interest remains within the fund, committed to create the "defined" benefit. The non-employee spouse receives only his value as calculated and "frozen" on the date of divorce. . . . such a rule allows the employee spouse to reap the benefits of the earnings attributable to the non-employee spouse's separate property interest in the fund. The actual earnings attributable to the non-employee spouse's separate property interest cannot be awarded to the non-employee spouse, as a separate value, because they are needed to generate the value of the ultimate "defined" benefit. Yet, it seems inequitable for a divorce court to "freeze" the value of the non-employee's interests

> in the pension benefits at divorce and prohibit that spouse from realizing any investment income generated by his separate property interest.

Steven R. Brown, *An Interdisciplinary Analysis of the Division of Pension Benefits in Divorce and Post-Judgment Partition Actions*: *Cures for the Inequities in Berry v. Berry*, 39 Baylor L. Rev. 1131, 1188-89 (1987). We affirm the district court's order for entry of a QDRO dividing George's pension according to the marital portion approach as defined in paragraph 10. We decline to award appellate attorney fees, and costs are assessed to George on appeal.

AFFIRMED.