

**IN THE COURT OF APPEALS OF IOWA**

No. 9-542 / 08-1697  
Filed August 6, 2009

**IN RE THE MARRIAGE OF PATRICK FRANCIS GILL AND TERESA MARIE GILL**

**Upon the Petition of**

**PATRICK FRANCIS GILL,**  
Petitioner-Appellant,

**And Concerning**

**TERESA MARIE GILL,**  
Respondent-Appellee.

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Appeal from the Iowa District Court for Woodbury County, Steven J. Andreasen, Judge.

Petitioner appeals the qualified domestic relations order (QDRO) of his IPERS benefits. **AFFIRMED AS MODIFIED AND REMANDED.**

John S. Moeller of O'Brien, Galvin & Moeller, Sioux City, for appellant.

Sabrina Sayler, Dakota Dunes, South Dakota, for appellee.

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

**EISENHAUER, J.**

Patrick and Teresa Gill married on May 23, 1998. Since January 1997, Patrick has held the position of Woodbury County Recorder/Auditor, an elected position. Patrick has an Iowa Public Employees Retirement System (IPERS) account through current and past state employment.

After a trial in June 2008, the Gills' marriage was dissolved on September 16, 2008. In allocating Patrick's IPERS account, the district court directed Patrick's IPERS be divided under the percentage method using a qualified domestic relations order (QDRO). Specifically, the court ruled Teresa's equitable share is fifty percent of the fraction-based formula utilized by the Iowa Supreme Court in *In re Marriage of Sullins*, 715 N.W.2d 242, 250 (Iowa 2006): "the numerator is the number of years benefits were accrued during the marriage and the denominator is the total number of years of benefit accrual."

The court used nineteen years of service as the denominator of the *Sullins* fraction, stating: "The number of years before retirement is determined based upon Patrick's earliest retirement age." The court ruled Patrick's earliest retirement age is fifty-five, when he would have nineteen years of service. The court utilized nineteen in the *Sullins* fraction, even though it recognized "there is no guarantee that Patrick will be reelected."

Patrick does not dispute a QDRO using the *Sullins* formula is appropriate and agrees Teresa's equitable share is fifty percent, but appeals the denominator utilized by the district court for the formula's calculation. Teresa has not filed a

brief and does not challenge Patrick's appeal. We review this equity action de novo and agree the district court erred. See Iowa R. App. P. 6.4.

"Iowa law gauges the value of the spouse's share in the pension plan from the time of maturity at *actual retirement*. . . ." *In re Marriage of McGinley*, 724 N.W.2d 458, 462 (Iowa Ct. App. 2006) (emphasis added). See *In re Marriage of Benson*, 545 N.W.2d 252, 255 (Iowa 1996) (ruling denominator is the total number of years "benefits accrued prior to maturity, i.e., receipt of payments upon retirement"). We quote *Sullins* and substitute the names of our parties, Patrick and Teresa, where appropriate.

Under the percentage method, the non-pensioner spouse is awarded a percentage (frequently fifty percent) of a fraction of the pensioner's benefits (based on the duration of the marriage), by a qualified domestic relations order (QDRO), which is paid if and when the benefits mature. The fraction represents the portion of the pension attributable to the parties' joint marital efforts. 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.

Applying this method, we modify the decree to provide for a QDRO to divide [Patrick's] monthly IPERS benefits when received under the following formula:

[Teresa's] share = 50% X

# of quarters [Patrick] contributed to IPERS while married  
# of quarters [Patrick] contributed to IPERS before retirement

X Monthly Benefits

*Sullins*, 715 N.W.2d at 250 (citations omitted) (names changed).

Accordingly, the district court decree is affirmed, as modified in the following respects: A QDRO shall be entered directing IPERS to pay benefits to Teresa as a marital property settlement under the following formula: fifty percent

of the gross monthly or lump-sum benefit payable at the date of distribution to Patrick, multiplied by the "service factor." The numerator of the service factor is the number of quarters covered during the marriage period of May 23, 1998 through September 16, 2008, and the denominator is Patrick's total quarters of service covered by IPERS as determined when he retires.

**AFFIRMED AS MODIFIED AND REMANDED.**