

IN THE COURT OF APPEALS OF IOWA

No. 2-680 / 11-1915
Filed September 19, 2012

**IN RE THE MARRIAGE OF JOSEPH L. BLAKE
AND BARBARA A. BLAKE**

**Upon the Petition of
JOSEPH L. BLAKE,**
Petitioner-Appellee,

**And Concerning
BARBARA A. BLAKE,**
Respondent-Appellant.

Appeal from the Iowa District Court for Warren County, David L. Christensen, Judge.

Barbara Blake appeals from the property distribution and summer visitation provisions of the parties' dissolution decree. **AFFIRMED AS MODIFIED.**

Barbara A. Blake, Indianola, appellant pro se.

Louis M. Fusco, Indianola, for appellee.

Considered by Vaitheswaran, P.J., and Potterfield and Bower, JJ.

POTTERFIELD, J.

We find no reason to recount extensive facts in this case. The parties were married in September 1998 and had two children: a daughter born in 2001, and a son born in 2005. The parties separated in November 2010. The dissolution trial was held on August 12, 2011.

Barbara Blake appeals from the property distribution and summer visitation provisions of the parties' dissolution decree. She contends the court erred in awarding Joseph Blake¹ fifty percent of her IPERS pension that accrued during the marriage. She also contends the court erred in awarding Joseph more visitation than he requested and that the visitation awarded is not in the children's best interests. Finally, she contends the trial court should have allowed her to reopen the record to present additional evidence. Our review of this equitable proceeding is de novo. Iowa R. App. P. 6.907.

The court ordered that each party will keep their retirement accounts and the party's respective IPERS pensions would be divided by Qualified Domestic Relations Orders "based upon the portion accrued during the marriage, and that amount will be separated pursuant to the formula described by *In re Marriage of Benson*, 545 N.W.2d 252 (Iowa 1996)." This division is the preferred method of dividing such pension plans and we find no failure to do equity. See *In re Marriage of Sullins*, 715 N.W.2d 242, 248 (Iowa 2006) (noting pensions are divisible marital property; and IPERS is a defined-benefit plan generally to be divided by using the percentage method identified in *Benson*, 545 N.W.2d at 255-57).

¹ Joseph has not filed a brief in this court.

As for Barbara's complaint that the decree awards Joseph more summer vacation than he requested² and is unworkable, we note that the decree provides:

During summer break when the children are not in school, the parties will alternate weeks with the children with Joe receiving the first week, Barb the second, and so on. The regular parenting schedule will resume once school begins.

Barbara contends that, as written, because the children attend year-round school and Joseph teaches at a school which is not year-round, the first week of summer visitation will occur while he is still teaching. She also contends that their daughter soon will go to a school that is not year-round while their son will continue to be in a year-round school, which will result in visitation where the children will be separated.

Because there might be some ambiguity in the court's summer visitation award, we modify to clarify that "summer break" begins at that point when Joseph and both children are on summer recess. In all other respects, we affirm.³

Costs on appeal are taxed to Barbara.

AFFIRMED AS MODIFIED.

² Joseph requested four weeks of visitation during the summer, in alternating weeks. Barbara testified that with a year-round-school schedule, summer vacation is six to seven weeks long.

³ We do not address matters asserted that are not part of the record, and find no abuse of the court's discretion in refusing to reopen the record after trial was completed. See *Sun Valley Iowa Lake Ass'n v. Anderson*, 551 N.W.2d 621, 635 (Iowa 1996) (reviewing a district court's decision to reopen the record and consider additional testimony for an abuse of discretion); *In re J.R.H.*, 358 N.W.2d 311, 318 (Iowa 1984) ("[T]he court has broad discretion to reopen the evidence.").