


## Alimony, Antenuptial Agreements and Attorney Fees

Alimony is awarded in Iowa more frequently than many people believe. Sometimes alimony is awarded for life but often alimony is awarded, as in this case, for only a few years. Frank represented the wife (Sandy) requesting alimony in this case. Sandy also requested that the prenuptial agreement signed by her and her ex-husband be enforced, even though the premarital assets had been commingled and she had abandoned the marital asset into which the prenuptial asset was invested. The Iowa Court of Appeals reversed the District Court's finding and held that Sandy had not abandoned the prenuptial agreement even though she abandoned the asset into which the premarital asset had been invested.

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*543 N.W.2d 915, \*; 1995 Iowa App. LEXIS 156, \*\**

IN RE THE MARRIAGE OF ~~HUSBAND~~ AND HUSBAND ; Upon  
the Petition of : WIFE , Appellant, And Concerning HUSBAND  
, Appellee.

No. 5-520 / 94-1150

COURT OF APPEALS OF IOWA

543 N.W.2d 915; 1995 Iowa App. LEXIS 156

December 22, 1995, Filed

**PRIOR HISTORY:** **[\*\*1]** Appeal from the Iowa District Court for Benton County, Lynne E. Brady, Judge. Petitioner appeals from various economic provisions of the parties' dissolution decree.

**DISPOSITION:** AFFIRMED AS MODIFIED.

#### CASE SUMMARY

**PROCEDURAL POSTURE:** Appellant wife challenged a decision of the Iowa District Court for Benton County, which found that she had abandoned her antenuptial agreement and which distributed various pension funds, retirement accounts, and real estate pursuant to a divorce from appellee husband.

**OVERVIEW:** The couple entered into a prenuptial agreement giving the wife a right a certain sum of the couple's assets in the event of divorce. The sum equaled the amount paid by the wife as a down payment on the couple's first home. The home was sold to purchase another residence, and that residence went into default and was foreclosed upon. Relations soured, and the parties filed for divorce. The trial court entered an order dividing the marital property and distributing pension funds, retirement accounts, and real estate. The trial court held that the foreclosure had terminated the prenuptial agreement. The wife appealed. The court modified the order and affirmed it as modified. The wife's actions were not inconsistent with the terms of the couple's agreement. The agreement acknowledged the money would be preserved as the wife even though it would be commingled. Furthermore, the agreement did not give the wife a right to the marital asset which the money was used to acquire, but a right to receive certain assets if the marriage terminated. The failure of the couple to prevent forfeiture of the home was not inconsistent with the antenuptial agreement.


**OUTCOME:** The court modified the order of the trial court by enhancing her property distribution and altering the alimony obligation of the husband. The court affirmed the modified order.

**CORE TERMS:** antenuptial agreement, marriage, pension, abandonment, alimony, pension plan, abandoned, one-half, marital, marital property, spouse, antenuptial, couple, continued existence, intent to abandon, same manner, unequivocal, equitable, novo, pension benefits,


real estate, rehabilitative, dissolution, financially, commingling, termination, retirement, short-term, forfeited, withdrawn


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**HN1**  In an equity action, the court's review is de novo. Iowa R. App. P. 4. The court has a duty to examine the entire record and adjudicate anew rights on the issues properly presented. The court gives weight to the fact findings of the trial court, especially when considering the credibility of witnesses, but is not bound by them. Iowa R. App. P. 14(f)(7). [More Like This Headnote](#)


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**HN2**  Generally antenuptial agreements will be upheld if they are fair between the parties and were entered into fairly, freely and understandingly. Antenuptial agreements are favored in the law and should be liberally construed to carry out the intention of the parties. The court construes and treats antenuptial agreements in the same manner as ordinary contracts. Such agreements can be abandoned in the same manner as any contract. [More Like This Headnote](#)


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**HN3**  Abandonment of a contract is the relinquishment, renunciation or surrender of a right. Whether or not an abandonment occurred depends upon the party's intent to abandon and acts evidencing such an intent. The act of abandonment must be unequivocal and decisive. A contract may be abandoned through conduct inconsistent with the continued existence of the contract. Parties who engage in behavior inconsistent with the continued existence of a contract may estop themselves from asserting any rights established by the contract. [More Like This Headnote](#)


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**HN4**  Pension benefits are treated as marital property in Iowa and are properly subject to equitable distribution. [More Like This Headnote](#)

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**HN5**  Alimony is not an absolute right; an award depends upon the circumstances of each particular case. The court considers property division and alimony together in evaluating their individual sufficiency. The court may consider the terms of an antenuptial agreement. Iowa Code § 598.21(3)(i) (1993). [More Like This Headnote](#)

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**HN6**  An award of attorney fees is not a matter of right, but rests within the court's discretion and the parties' financial positions. The court considers the needs of the party making the request, the ability of the other party to pay, and whether the party making the request was obligated to defend the trial court's decision on appeal. [More Like This Headnote](#)

**COUNSEL:** Frank J. **Nidey** of the Maher & **Nidey** Law Firm, Cedar Rapids, for appellant.

Benjamin W. Blackstock and Eric C. Syverud of the Blackstock Law Offices, Cedar Rapids, for appellee.

**JUDGES:** Heard by Habhab, P.J., and Cady and Huitink, JJ.

**OPINIONBY:** CADY

**OPINION:** [\*917] CADY, J.

WIFE appeals provisions of the parties' dissolution decree which found she had abandoned her antenuptial agreement and which distributed various pension funds, retirement accounts and real estate. We affirm as modified.

WIFE AND HUSBAND were married in May 1978. During the marriage, HUSBAND worked at General Mills and WIFE worked at Mercy Hospital. Prior to the marriage, they entered into an antenuptial agreement. The agreement acknowledged the couple disclosed their complete financial affairs and had made a down payment on a home in Cedar Rapids using \$ 16,704.59 of WIFE'S money. It also stated upon termination of the marriage the first \$ 16,704.59 of the marital estate would go to WIFE AND HUSBAND [\*\*2] waived any right to this property.

WIFE AND HUSBAND sold the Cedar Rapids home later during the marriage and used the proceeds to purchase a country house in Belle Plaine on contract. While living in Belle Plaine, WIFE reduced her work hours at Mercy Hospital to care for her children and HUSBAND'S children, who were all from previous marriages. WIFE AND HUSBAND subsequently fell behind on their contract payments on the Belle Plaine home and the contract was forfeited. After a brief separation, the couple purchased a home in Van Horne.

WIFE returned to full time employment at Mercy, but soon left to take a position in a doctor's office. Her new job lasted only eleven months and WIFE began to draw unemployment benefits. She later opened a consignment shop with a partner, but this business caused a financial drain on her resources. HUSBAND was unwilling to assist financially. After WIFE was unable to pay her monthly bills, she cashed in her pension from Mercy, receiving \$ /9/1.27 after penalties and taxes for early withdrawal. HUSBAND throughout the marriage accumulated a General Mills retirement savings plan (RSP) valued at \$ 7829.90 and a defined pension plan. WIFE filed for a dissolution [\*\*3] of their marriage.

After trial, the district court awarded HUSBAND the marital home, valued at \$ 65,000 with equity of 38,000, and ordered him to pay WIFE \$ 19,000. The court awarded WIFE a one-half interest in HUSBAND'S defined pension plan at the date of the dissolution and \$ 1922.14 from the RSP. n1 The court also ordered HUSBAND to pay WIFE \$ 515 per month for eighteen months for short-term rehabilitative alimony to aid in her car payments and to assist in medical insurance payments, thereafter reduced to \$ 151 per month for an additional eighteen months.

----- Footnotes -----

n1 The trial court determined HUSBAND was entitled to one-half of WIFE'S pension plan withdrawn earlier by WIFE. The court took one-half of the amount received by WIFE, or \$ 3,985.63 and credited against his RSP. The total amount of the RSP to be divided then amounted to \$ 3844.27, which the court divided equally among the parties, awarding \$ 1922.14 to WIFE.

----- End Footnotes -----

[\*918] WIFE filed a rule 179(b) motion alleging, among other things, the district court

misread [\*\*4] the antenuptial agreement and its application to the proceedings. HUSBAND as well filed a Rule 179(b) motion seeking to receive all of his RSP pension. He argued it should have been set off against WIFE'S withdrawn Mercy pension. The court amended its findings to state the antenuptial agreement applied but WIFE had abandoned it when she allowed their second home to go into default and the contract for sale be forfeited. It also amended its findings to award WIFE her entire Mercy Hospital pension plan and HUSBAND his entire General Mills RSP funds as the amounts were essentially equal.

WIFE appeals. She contends the district court erred in finding an abandonment of the antenuptial agreement as the commingling of funds was not inconsistent with the terms of the agreement. She also argues the trial court erred in amending its original ruling concerning HUSBAND'S RSP account. She seeks an award of appellate attorney fees.

## I. Standard of Review

HN1 ¶ In this equity action, our review is de novo. Iowa R. App. P. 4. We have a duty to examine the entire record and adjudicate anew rights on the issues properly presented. *In re Marriage of Steenhoek*, 305 N.W.2d 448, 452 (Iowa 1981). [\*\*5] We give weight to the fact findings of the trial court, especially when considering the credibility of witnesses, but are not bound by them. Iowa R. App. P. 14(f)(7).

## II. Antenuptial Agreement

HN2 ¶ Generally antenuptial agreements will be upheld if they are fair between the parties and were entered into fairly, freely and understandingly. *Norris v. Norris*, 174 N.W.2d 368 (Iowa 1970). Antenuptial agreements are favored in the law and should be liberally construed to carry out the intention of the parties. *In re Van Brocklin*, 468 N.W.2d 40, 45 (Iowa App. 1991). Moreover, we construe and treat antenuptial agreements in the same manner as we do ordinary contracts. *Id.*; *Christians v. Christians*, 241 Iowa 1017, 1021, 44 N.W.2d 431, 433 (1950). Thus, such agreements can be abandoned in the same manner as any contract. 468 N.W.2d at 45-46.

HN3 ¶ Abandonment of a contract is the relinquishment, renunciation or surrender of a right. *Iowa Glass Depot, Inc. v. Jindrich*, 338 N.W.2d 376, 380 (Iowa 1983). Whether or not an abandonment occurred depends upon the party's intent to abandon and acts evidencing such an intent. *Id.* The act of abandonment must be unequivocal and decisive. [\*\*6] *Id.*

A contract may be abandoned through conduct inconsistent with the continued existence of the contract. *Holi-Rest, Inc. v. Treloar*, 217 N.W.2d 517 (Iowa 1974); *In re Pillard*, 448 N.W.2d 714, 715 (Iowa App. 1989). Parties who engage in behavior inconsistent with the continued existence of a contract may estop themselves from asserting any rights established by the contract. *Iowa Glass Depot*, at 380.

We have dealt with the issue of the abandonment of an antenuptial agreement on two prior occasions. See generally, *In re Pillard*, 448 N.W.2d 714 (Iowa App. 1989); *In re Van Brocklin*, 468 N.W.2d 40 (Iowa App. 1991). In *Pillard*, we found commingling of assets by the parties constituted an act inconsistent with the terms of an agreement which provided that all separate properties were to remain separate and free from claims by the other. The actions of the parties throughout the marriage implied they chose to ignore the agreement and treat their separate property as marital property. *Pillard*, at 716. In *Van Brocklin*, however, we found that the joint ownership of property and reciprocal wills which left the estate to the other spouse were not inconsistent [\*\*7] with an antenuptial agreement which provided that any inheritance acquired during the marriage would be free from claims from the other spouse. *Van Brocklin*, at 46. The agreement specifically provided property could be placed in joint tenancy and the spouses could provide for disposition of property by will. *Id.* The

fighting issue in this case is whether the actions of the WIFE, under the circumstances, were consistent with the particular terms of her antenuptial agreement.

**[\*919]** We cannot find evidence WIFE'S actions were inconsistent with the terms of the couple's agreement. The agreement specifically acknowledged WIFE'S contributed \$ 16,704.59 as a down-payment on the parties first house. It also provided upon termination of the marriage "the first \$ 16,704.59 . . . of the marital estate [would] be set over and become the sole and exclusive property of [WIFE]." Thus, the agreement acknowledged the money would be preserved as WIFE'S even though it would be commingled. Furthermore, the agreement did not give WIFE a right to the marital asset which the money was used to acquire, but a right to receive the "first \$ 16,704.59" of assets if the marriage terminated. Thus, the **[\*\*8]** failure of the parties to prevent the forfeiture of the real estate contract on their second home cannot be construed as conduct inconsistent with the antenuptial agreement. It may have evidenced an intent to abandon marital property, but was not an unequivocal abandonment of the terms of agreement.

We find the trial court incorrectly interpreted the antenuptial agreement. Under our de novo review, we are unable to find the antenuptial agreement was abandoned and modify the decree to direct HUSBAND to pay WIFE an additional \$ 16,704.59.

### III. Pension Benefits

**HN4** Pension benefits are treated as marital property in Iowa and are properly subject to equitable distribution. *In re Marriage of Mott*, 444 N.W.2d 507, 510-11 (Iowa App. 1989). We find WIFE voluntarily withdrew her pension plan early resulting in her receipt of \$ 7971.27 to pay off her debts and to buy inventory for her new business. This amount was equivalent to the value of HUSBAND'S RSP pension.

We find the trial court did not err in finding HUSBAND was entitled to his entire RSP pension. In making this determination, we consider the financial benefit to WIFE under the antenuptial agreement. See Iowa Code **[\*\*9]** § 598.21(1)(i) (1993) (provisions of an antenuptial agreement can be considered by the court concerning the equitable distribution of property); Iowa Code § 598.21(1)(I) (court can take pension benefits into consideration).

### IV. Alimony

**HN5** Alimony is not an absolute right; an award depends upon the circumstances of each particular case. *In re Marriage of Fleener*, 247 N.W.2d 219, 220 (Iowa 1976). We consider property division and alimony together in evaluating their individual sufficiency. *In re Marriage of Dahl*, 418 N.W.2d 358, 359 (Iowa App. 1987); *In re Marriage of Griffin*, 356 N.W.2d 606, 608 (Iowa App. 1984). Moreover, we may consider the terms of an antenuptial agreement. Iowa Code § 598.21(3)(i) (1993).


We find WIFE'S enhanced property distribution from her antenuptial agreement diminishes her need for short-term rehabilitative alimony. She has a long employment history and has shown she is capable of supporting herself financially. We recognize, however, WIFE'S need for assistance during a transitional period. We therefore modify the decree and order HUSBAND to pay WIFE \$ 300 per month for eighteen months. HUSBAND will not have an alimony obligation **[\*\*10]** at the end of the eighteen month period.

### V. Appellate Attorney Fees

**HN6** An award of attorney fees is not a matter of right, but rests within the court's discretion and the parties' financial positions. *In re Marriage of Kern*, 408 N.W.2d 387, 390 (Iowa App. 1987). We are to consider the needs of the party making the request, the ability of the other

party to pay, and whether the party making the request was obligated to defend the trial court's decision on appeal. *In re Marriage of Castle*, 312 N.W.2d 147, 150 (Iowa App. 1981). Due to evidence indicating HUSBAND'S monthly income is nearly three times WIFE'S income coupled with her obligation to challenge the trial court's findings, we find WIFE is entitled to \$ 1200 in appellate attorney fees. Costs of the appeal to be assessed one-half to each party.

AFFIRMED AS MODIFIED.


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