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Case No. 130596 consolidated with Case No. 130597

IN THE SUPREME COURT OF ILLINOIS

IN RE THE MARRIAGE OF:	)	On Appeal from the Appellate Court, Third District
ELSA TRONSRUE, n/k/a TOLEDO	)	No. 3-22-0125 & 3-22-0294
Petitioner/Appellee,	)	Appeal from the Circuit Court of DuPage County
and	)	
GEORGE M. TRONSRUE, III,	)	Circuit Court Case No. 1990 D 1150
Respondent/Appellant.	)	The Honorable Susan L., Alvarado and the Honorable Alexander F. McGimpsey, II, Judges Presiding.

REPLY BRIEF OF APPELLANT

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ORAL ARGUMENT REQUESTED

TABLE OF CONTENTS

Page

I. Federal law expressly prohibits agreements to divide military disability benefits.... 1

II. The attorney fee issue turns on the voidness question....3

Prayer....4

Rule 341(c) Certification

POINTS AND AUTHORITIES

Page

I. Federal law expressly prohibits agreements to divide military disability benefits.....1

LVNV Funding, LLC v. Trice
2015 IL 116129.....1

Belleville Toyota, Inc. v. Toyota Motor Sales, U.S.A., Inc.
199 Ill. 2d 325 (2002).....1, 2

Sarkissian v. Chicago Board of Education
201 Ill. 2d 95 (2002).....1

38 U.S.C. § 5301(a)(1).....1

38 U.S.C. § 5301(a)(3)(A).....1

38 U.S.C. § 5301(a)(3)(C).....1

Williams Awning Co. v. Illinois Workers' Comp. Comm'n
2011 IL App (1st) 102810WC.....2

Cohen v. Salata
303 Ill. App. 3d 1060 (1999).....2

Maryland v. Louisiana
451 U.S. 725 (1981).....2

Diaz v. Provena Hospitals
352 Ill. App. 3d 1165 (2004).....2

In re Marriage of Rife
376 Ill. App. 3d 1050 (2007).....2

In re Marriage of Linta
2014 IL App (2d) 130862.....2

In re Marriage of Gleason
266 Ill. App. 3d 467 (1994).....2

POINTS AND AUTHORITIES

Page

In re Marriage of Glickman
211 Ill. App. 3d 792 (1991).....2-3

In re Marriage of Solecki
2020 IL App (2d) 190381 3

U.S. Const., art. VI.....3

Restatement (Second) of Judgments § 12 (1982) 3

In re Marriage of Mitchell
181 Ill. 2d 169 (1998) 3

In re Marriage of Tronsrue
2024 IL App (3d) 220125 3

II. The attorney fee issue turns on the voidness question.....3

750 ILCS 5/508.....3

In re Marriage of Tronsrue
2024 IL App (3d) 220294-U 4

In re Marriage of Hyman
2023 IL App (2d) 220041 4

Prayer 4

Rule 341(c) Certification

I. Federal law expressly prohibits agreements to divide military disability benefits.

Initially, Elsa argues that George "brings a new framing of the question" now before this Court. (Elsa's brief, p. 2) While her point is unclear, George's position is the same as it was in the courts below—that the provision of the dissolution judgment dividing George's military disability benefits is void and unenforceable because it violates federal law. Elsa effectively treats subject matter jurisdiction and voidness as wholly separate and distinct legal concepts, but that is contrary to countless cases from this Court. *See, e.g.,* LVNV Funding, LLC v. Trice, 2015 IL 116129, ¶ 38; Belleville Toyota, Inc. v. Toyota Motor Sales, U.S.A., Inc., 199 Ill. 2d 325, 340-41 (2002); Sarkissian v. Chicago Board of Education, 201 Ill. 2d 95, 103-04 (2002) (all holding that a void order is one entered in the absence of personal or subject matter jurisdiction). The issue presented in this case, which Elsa never directly addresses, is whether a defect in a court's subject matter jurisdiction can be relitigated when that defect is a clear and undisputed violation of federal law.

In support of her arguments, Elsa makes odd declarations like "the State is not exercising control over the restricted benefits" and "[e]nforcement by the Court is not a conflict with federal law." (Elsa's brief, p. 2) But the courts are indeed "exercising control" over George's benefits by enforcing the dissolution judgment which divides them and declaring George in contempt for not paying them. (C866; C912) Worse still, Elsa fails to address the clear and unambiguous language of 38 U.S.C. § 5301(a)(1) and (a)(3)(A) and (a)(3)(C) which provides that *any* agreement dividing these benefits is void and unenforceable. State court enforcement of an agreement expressly prohibited by federal law is obviously a "conflict" with that same federal law.

In the end, Elsa adopts the position of the majority opinion below—that this case can be decided under Belleville Toyota and its progeny because the circuit court initially had personal and subject matter jurisdiction in 1992 and thus the judgment cannot be void.[1] (Elsa's brief, pp. 3-4) The implication from that view is, so long as the judgment is not void, its provisions cannot be collaterally attacked under any circumstances without exception. But that is contrary to a long line of cases from our courts which declare void and unenforceable certain provisions of dissolution judgments long after those judgments were entered with initial personal and subject matter jurisdiction. *See, e.g.*, In the Marriage of Linta, 2014 IL App (2d) 130862, ¶ 16 (invaliding prevailing party provision in judgment which could deter financially disadvantaged spouse from litigating issues in the best interests of the children); In re Marriage of Rife, 376 Ill. App. 3d 1050, 1064-65 (2007) (invalidating provision of judgment tying mother's right to modify parenting time with her right to receive child support); In re Marriage of Gleason, 266 Ill. App. 3d 467, 469 (1994) (invalidating provision of judgment providing that child support is non-modifiable); In re Marriage of Glickman, 211 Ill. App. 3d 792, 795 (1991) (invalidating provision of

[1] As argued in George's opening brief, due to the express preemption in federal law regarding the division, or order ratifying a division, of his military disability benefits, the circuit court did *not* have subject matter jurisdiction to do so and the division is void. (George's brief, pp. 11-18) The "general jurisdiction" argument seemingly ignores that "while it is true, under normal circumstances, that a circuit court has subject matter jurisdiction over any claims falling within the general class of claims over which the court's authority extends, a circuit court may still lack subject matter jurisdiction over such claims where a federal statute deprives or divests it of jurisdiction." Williams Awning Co. v. Illinois Workers' Comp. Comm'n, 2011 IL App (1st) 102810WC, ¶ 11 (*citing* Cohen v. Salata, 303 Ill. App. 3d 1060, 1063-64 (1999)). This is "nothing more than an application of the proposition that, in circumstances where state law conflicts with federal law, the former is without effect." Cohen, 303 Ill. App. 3d at 1064 (*citing* Maryland v. Louisiana, 451 U.S. 725, 746 (1981)); *see also,* Diaz v. Provena Hospitals, 352 Ill. App. 3d 1165, 1171-73 (2004).

judgment providing that wife would not petition for more child support); *see also* In re Marriage of Solecki, 2020 IL App (2d) 190381, ¶¶ 62-71 (invalidating prevision of judgment following hearing on modification petition).

While these cases, and others like it, greenlight collateral attacks of *judgments initially entered with personal and subject matter jurisdiction* given the public policy interests associated with the best interests of minor children, they demonstrate that the rule of law espoused by Elsa and the majority opinion is not as rigid and inflexible as portrayed. The issue for this Court thus becomes not *if* collateral attacks of such judgments are permitted, but when and under what circumstances they should be permitted. As George has argued throughout, our laws must also permit collateral attacks when such judgments violate federal law given the plain language of the supremacy clause of the federal constitution. U.S. Const., art. VI. Again, adopting and following the Restatement (Second) of Judgments § 12 (1982) as urged by Justice Albrecht in her dissent would make room for federal preemption in our laws on subject matter jurisdiction, voidness, and collateral attacks.[2] In re Marriage of Tronsrue, 2024 IL App (3d) 220125, ¶¶ 28, 31; *see also,* In re Marriage of Hulstrom, 342 Ill. App 3d 262, 266 (2003).

II. The attorney fee issue turns on the voidness question.

Elsa argues that George does not have a "compelling reason" to comply with the dissolution judgment for purposes of 750 ILCS 5/508(b) because the voidness issue "had

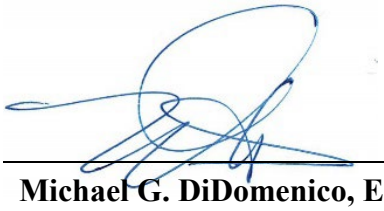
[2] Elsa cites to this Court's decision in In re Marriage of Mitchell, 181 Ill. 2d 169 (1998), in support of her arguments. While Mitchell is distinguishable because the child support order at issue was not a violation of federal law, it is notable in that this Court examined the Restatement (Second) of Judgments § 12 (1982) therein Id. at 175-77. Mitchell did not adopt the Restatement because doing so would not have changed the case's outcome and neither party asked this Court to do so. Id. at 177. Here, adopting the Restatement *would change* the outcome and George expressly asks this Court to do so.

not been raised since entry of the judgment in 1992." (Elsa's brief, p. 5) But that argument is just another way of saying the judgment is not void and therefore not subject to collateral attack. For the reasons argued throughout, the judgment is void and unenforceable and subject to collateral attack because it violates federal law. Accordingly, George has a "compelling reason" not to comply with the judgment, making the imposition of mandatory, enforcement-related attorney fees pursuant to Section 508(b) erroneous as a matter of law. In re Marriage of Tronsrue, 2024 IL App (3d) 220294-U, ¶¶ 19-21; *see also*, In re Marriage of Hyman, 2024 IL App (2d) 230352, ¶¶ 16-18.

PRAYER

WHEREFORE, GEORGE M. TRONSRUE, III prays that this Court: (1) reverse the judgments of the Third District Appellate Court; (2) reverse the judgments of the Circuit Court of DuPage County; and (3) for such other, further and different relief as this Court in its equity deems just and proper.

Respectfully submitted,
GEORGE M. TRONSRUE, III

By: 

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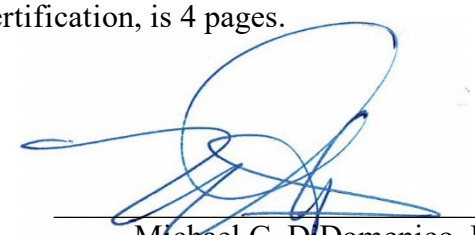
CERTIFICATION OF BRIEF

I certify that this brief conforms to the requirements of Supreme Court Rules 341(a) and (b). The length of this brief, excluding the cover page, table of contents, points and authorities, appendix, and this certification, is 4 pages.



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	)	Judges Presiding.

NOTICE OF FILING

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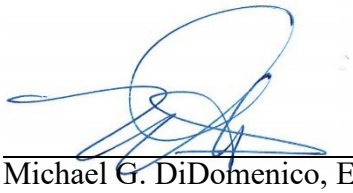
PLEASE TAKE NOTICE that on January 10, 2025, there was electronically filed through Odyssey E-File with the Clerk of the Illinois Supreme Court, the following: **Reply Brief of Appellant**, a copy of which is attached and hereby served upon you.



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CERTIFICATE OF DELIVERY

The undersigned, a licensed Illinois attorney, hereby certifies that the above *Notice of Filing,* and one copy of the *Reply Brief of Appellant,* were electronically transmitted to the above named party at the above stated e-mail address and mailed to the above named party via U.S. Mail, proper postage prepaid, from 33 N. Dearborn, Chicago, Illinois, prior to 10:00 p.m. on January 10, 2024. Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure I certify that the statements set forth in this instrument are true and correct.

Lillian O'Neill

Lillian M. O'Neill