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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	)	
	)	Circuit Court Case No. 1990 D 1150
GEORGE M. TRONSRUE, III,	)	
	)	The Honorable Susan L., Alvarado and the Honorable Alexander F. McGimpsey, II, Judges Presiding.
Respondent/Appellant.	)	

BRIEF OF APPELLANT

Michael G. DiDomenico, Esq.
Sean M. Hamann, Esq.
Lillian M. O'Neill, Esq.
Lake Toback DiDomenico
Attorneys for Appellant
33 N. Dearborn St., Suite 1850
Chicago, IL 60602
Telephone No. (312) 726-7111
mdidomenico@laketoback.com
shamann@laketoback.com
loneill@laketoback.com

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STATEMENT OF THE CASE

This case concerns the circuit court's enforcement of a provision in the parties' dissolution judgment which is expressly prohibited by federal law. George Tronsrue ("George") and Elsa Tronsrue n/k/a Toledo ("Elsa") were married in 1978 and divorced in 1992. Their dissolution judgment incorporated a settlement agreement obligating George to pay Elsa one-half the marital portion of his federal military disability payments as a property distribution. Nearly thirty years later, George moved to terminate the payments, arguing that the division of his benefits was void under federal law. Elsa moved to enforce the payments. After protracted proceedings delayed by the pandemic, the circuit court dismissed George's petition to terminate the payments, found George in contempt for not paying, adjudicated an amount due, and ordered him to pay enforcement-related attorney fees.

On appeal to the Third District, the Appellate Court, in a 2-1 decision, affirmed the dismissal of George's petition to terminate. In re Marriage of Tronsrue, 2024 IL App (3d) 220125. ("Tronsrue I") The majority held that because the circuit court had personal and subject matter jurisdiction when the dissolution judgment was entered in 1992, the division of George's benefits was not void even though the division violates federal law. Id. ¶¶ 10-20. Justice Albrecht dissented, concluding that the division was void and unenforceable because it violates federal law. In a companion order, the Appellate Court affirmed the attorney fee award by the same 2-1 vote. In re Marriage of Tronsrue, 2024 IL App (3d) 220294-U, ¶¶ 11-13 ("Tronsrue II") Justice Albrecht dissented again, finding that, because the division of benefits was void, there was no legal basis to award fees. Id. ¶¶ 18-20.

This Court is now called upon to determine if the division of George's disability benefits is void because it violates federal law and the viability of the attorney fee award. No questions are raised on the pleadings.

QUESTIONS PRESENTED FOR REVIEW

1. Whether the provision in the dissolution judgment dividing George's military disability benefits as property is void and unenforceable because the division is preempted and forbidden by federal law.

2. Whether, assuming the division of George's military disability benefits is void, the award of enforcement-related attorney fees must be vacated.

JURISDICTIONAL STATEMENT

On March 7, 2024, the Appellate Court filed its opinion in Tronsrue I and order in Tronsrue II. On April 9, 2024, George timely filed his petitions for leave to appeal from both judgments. On September 25, 2024, this Court allowed George's petitions and consolidated the cases. This Court has jurisdiction pursuant to Rule 315.

STATUTES INVOLVED

38 U.S.C. 5301 provides, in relevant part, as follows:

> (a)(1) Payments of benefits due or to become due under any law administered by the Secretary shall not be assignable except to the extent specifically authorized by law, and such payments made to, or on account of, a beneficiary shall be exempt from taxation, shall be exempt from the claim of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary. The preceding sentence shall not apply to claims of the United States arising under such laws nor shall the exemption therein contained as to taxation extend to any property purchased in part or wholly out of such payments. The provisions of this section shall not be construed to prohibit the assignment of insurance otherwise authorized under chapter 19 of this title, or of servicemen's indemnity.
>
> (3)(A) This paragraph is intended to clarify that, in any case where a beneficiary entitled to compensation, pension, or dependency and indemnity compensation enters into an agreement with another person

> under which agreement such other person acquires for consideration the right to receive such benefit by payment of such compensation, pension, or dependency and indemnity compensation, as the case may be, except as provided in subparagraph (B), and including deposit into a joint account from which such other person may make withdrawals, or otherwise, such agreement shall be deemed to be an assignment and is prohibited.
>
> (C) Any agreement or arrangement for collateral for security for an agreement that is prohibited under subparagraph (A) is also prohibited and is void from its inception.

(750 ILCS 5/508) (from Ch. 40, par. 508) Sec. 508. Attorney's fees; client's rights and responsibilities respecting fees and costs.

> (b) In every proceeding for the enforcement of an order or judgment when the court finds that the failure to comply with the order or judgment was without compelling cause or justification, the court shall order the party against whom the proceeding is brought to pay promptly the costs and reasonable attorney's fees of the prevailing party. If non-compliance is with respect to a discovery order, the non-compliance is presumptively without compelling cause or justification, and the presumption may only be rebutted by clear and convincing evidence. If at any time a court finds that a hearing under this Act was precipitated or conducted for any improper purpose, the court shall allocate fees and costs of all parties for the hearing to the party or counsel found to have acted improperly. Improper purposes include, but are not limited to, harassment, unnecessary delay, or other acts needlessly increasing the cost of litigation.

Restatement (Second) of Judgments § 12 (1982) provides:

> When a court has rendered a judgment in a contested action, the judgment precludes the parties from litigating the question of the court's subject matter jurisdiction in subsequent litigation except if:
>
> (1) The subject matter of the action was so plainly beyond the court's jurisdiction that its entertaining the action was manifest abuse of authority; or
>
> (2) Allowing the judgment to stand would substantially infringe the authority of another tribunal or agency of government; or

> (3) The judgment was rendered by a court lacking capability to make an adequately informed determination of a question concerning its own jurisdiction and as a matter of procedural fairness the party seeking to avoid the judgment should have opportunity belatedly to attack the court's subject matter jurisdiction.

STATEMENT OF FACTS[1]

Elsa and George were married on December 28, 1978, and they now have two adult children. (C44) On May 7, 1990, Elsa petitioned for dissolution of marriage, and George counter petitioned. (C43-C50; C82-C84)

On July 6, 1992, the dissolution judgment was entered, incorporating a marital settlement agreement. (C162-C183) The agreement stated, in relevant part, as follows:

PENSION PLAN

> ARMY\VETERANS' ADMINISTRATION DISABILITY RETIREMENT PAY- The Parties agree that based upon the Court's ruling that 37.2% of Husband's Army Disability Retirement pay and V.A. disability pension is marital that Wife shall receive an amount equal to 18.6% of Husband's Army Disability Retirement pay and 18.6% of Husband's V.A. disability pension payable to Wife pursuant to the applicable sections of the Uniformed Services Former Spouses Protection Act. If for any reason the United States Army and the VA will not withhold the appropriate amounts and send them directly to Wife then Husband shall pay directly to Wife 18.6% of his Army Disability Retirement pay and 18.6% of his VA Disability Pension each and every month upon entry of Judgment for Dissolution for as long as he receives said pay.
>
> The Husband specifically agrees that for purposes of the calculation of child support benefits, his share of the Army / Veterans' Administration Disability Retired Pay is includable as part of his net income against which to apply the Illinois Statutory child support guidelines.
> (C178-C179)

[1] The Appellate Court denied joint efforts to consolidate George's appeals and, accordingly, two separate records were prepared by the DuPage County clerk. Citations in this brief are made to the record prepared for Tronsrue II.

On September 12, 2019, Elsa filed a petition for indirect civil contempt, alleging that she believed that George's federal Army disability and VA pay had increased, yet he continued to pay her the same $303 monthly sum that he had paid her since entry of the dissolution judgment. (C693-C697)

On November 26, 2019, George filed an amended petition to modify or terminate his obligation to pay Elsa the disability benefits. (C704-C709) George alleged that, since 1992, he had paid Elsa approximately $300 per month pursuant to the dissolution judgment. (C705)

George further explained that in 1983, while serving in the military, he sustained an injury while in the "line of duty:"

> GEORGE was seriously injured, after sustaining multiple fractures and dislocations in a "line of duty" accident occurring at Ft. Benning, GA on Jan. 10, 1983. After required surgeries, two months of hospitalization and ongoing physical therapy, a Medical Review Board was convened by Department of the Army in May 1983 and subsequently determined him to be unfit for active duty and 60% disabled and placed on temporary disability retirement, after only serving 5 years, 2 months, and 12 days on active duty…
>
> In March 1985 a second medical Review Board was convened by Department of the Army and the outcome of this was a determination that GEORGE remained unfit for active duty and he was permanently retired at a 60% disability… The only compensation that GEORGE has received from the US Army is disability compensation, owing to his 60% service-connected disability rating from the US Army dating to 1983.
>
> As of March 1984, GEORGE is also a Service-Connected Priority patient of the Veterans Administration and was awarded a 40% VA Disability rating… For sake of clarity, the VA disability compensation that GEORGE receives is not additive or incremental disability compensation. In fact, the amount of disability compensation paid to GEORGE by the VA is subtracted from the disability compensation received for GEORGE from the US Army by the Defense Financing and Accounting Service, the paying authority, each month. Both the Army medical review and the VA medical review concluded that GEORGE had a service-connected disability.
> (C705-C707)

Appended to George's petition were orders from the Army Medical Board, letters from the Department of the Army and the Veterans Administration, George's certificate of retirement from the Army, his VA patient data card, and his physical evaluation in support of his allegations. (C600-C612)

George argued that at the time of dissolution judgment, the circuit court did not have subject matter jurisdiction to order the division of his disability benefits as an asset under federal law. (C707) George alleged that the service-connected disability compensation should never have been divided between the parties, since the court lacked jurisdiction to do so. (C708) He prayed that Elsa's right to receive any percentage of his disability compensation be terminated immediately. (C708)

On December 19, 2019, Elsa filed a motion to dismiss George's amended petition to terminate the disability payments. (C713-C717)

On January 6, 2020, the case came before the Honorable Susan L. Alvarado. (R52-R58) The same day, the court granted Elsa's motion to dismiss. (C719)

On February 18, 2020, George filed a response to Elsa's petition for indirect civil contempt. (C731-C733) Therein, he again argued that the court lacked subject matter jurisdiction to divide his federal military disability benefits under federal law and that portion of dissolution judgment was void and unenforceable. (C732)

On November 2, 2020, after a hearing, Judge Alvarado entered an order finding George in indirect civil contempt. (C772-C774) The court ruled:

> Husband's motion to dismiss that we have previously talked about under 2-619 for lack of subject matter jurisdiction was already denied.
>
> Husband now raises in his response to the petition for rule to show cause as an affirmative matter that this Court lacks subject matter jurisdiction over

Army disability retirement pay and veteran's disability pay. And that lack of subject matter jurisdiction cannot be waived.

First of all, the Court points out that the Court has subject matter jurisdiction over the dissolution proceedings and has subject matter jurisdiction over any subsequent actions necessary for enforcement of the Court's orders.

In this case, we're dealing with a marital settlement agreement. The Court does not disagree with husband that it would not have jurisdiction to order, for example, a division of federal disability benefits.

However, as in this case, the Court clearly has jurisdiction to enforce a binding agreement of the parties.

The Court here is not and did not divide the benefits. The parties did that. And the issue before the Court now is simply whether the parties have lived up to that agreement. The Court clearly has both subject matter and personal jurisdiction to adjudicate that question.

Husband cites Adamson [2] in support of his position. And, frankly, in reviewing Adamson, it appears to more negate rather than support his contention that the Court lacks subject matter jurisdiction to enforce the terms of his own agreement.

The Court notes that Adamson refers to the following: "The Court recognizes a statutory bias in favor of allowing parties to craft their own resolution of disputed issues and that bias should apply with equal force whether the disputes arise before dissolution or as part of a later post-decree enforcement action." That's what we have here in this Court's opinion.

The rationale is quite simply that the parties were in the best position to evaluate their own circumstances and should be allowed to resolve their own disputes by agreement even if the trial court would not or could not order that resolution.

For the record, Adamson deals with a maintenance modification where the parties' agreement went beyond the statutory limitations and called for continued maintenance payments even after the wife had remarried.

Clearly, the Court could not have ordered this term. However, nothing prevented the parties from agreeing to do so. Parties to a dissolution action can waive statutory restrictions. We will not allow the petitioner in this case to challenge this trial court's authority to order that to which he agreed.

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[2] In re Marriage of Adamson & Cosner, 308 Ill. App. 3d 759 (1999).

> Again, I think the clear issue here, at least in my mind, is this was an agreement of the parties. And I hear what you're saying, which is that you cannot -- even if it is an agreed order, if there is no subject matter jurisdiction, it is a void order, that is your client's position, I understand that, but I don't find that to be the case here.
>
> I think this was part and parcel of a larger settlement agreement between the parties. The Court did not order the division of these assets or of these federal benefits. The Court is not now ordering any modification to that. This is just whether or not the parties are living up to the terms of their own agreement.
>
> So once again, the Court finds that Mr. Tronsrue does, in fact, stand in indirect civil contempt of court for failure to comply with the judgment -- the terms of the judgment for dissolution of marriage, and that Mr. Tronsrue has not set forth any compelling cause or justification therefore.
> (R130-R134)

As a partial purge of the contempt, the court ordered George to provide documents reflecting his military disability and VA payments from July 6, 1992, onward so that the amount allegedly owed to Elsa due to cost-of-living adjustments could be determined. (R136; C772-C774)

Over the next year and a half, the parties engaged in discovery and other procedural machinations to determine the amount owed to Elsa. (R142-R149; R153-R162; R166-R175; R179-R185; R219-R238; C809-C811; C825-C831; C850; C853-C856)

On March 4, 2022, counsel for the parties appeared before the Honorable Alexander McGimpsey, who had recently been assigned to the case. (R279-R314) Elsa argued that George was $32,980.86 in arrears. (R284-R286) Again, George denied that the court had subject matter jurisdiction to divide his disability payments under federal law. (R287-R288)

On March 4, 2022, the circuit court entered an order setting a further purge of his contempt of $32,980 which reflected the cost-of-living adjustments to George's disability pay. (C866) The court also granted Elsa leave to file a petition for enforcement-related

attorney fees. (C866) On March 31, 2022, George filed a notice of appeal directed at the orders related to the enforcement of the dissolution judgment. The Appellate Court docketed Tronsrue I as 3-22-0125. (C868-C870)

On April 1, 2022, Elsa filed a petition for contempt-related fees pursuant to Section 5/508(b). (C875-C878) On June 22, 2022, the circuit court ordered George to pay $24,939 in contempt-related attorney fees. (C912) On July 20, 2022, George filed a second notice of appeal directed at the attorney fee award. (C920) The Appellate Court docketed Tronsrue II as 3-22-0294.

Tronsrue I

The Appellate Court majority affirmed the circuit court's dismissal of George's petition to terminate the disability payments. Tronsrue I, ¶ 20. The majority did not cite or even discuss federal law or preemption. Instead, it concluded that because the circuit court had subject matter jurisdiction over the divorce case under our state constitution when the judgment was entered in 1992, the judgment was not void and George could not collaterally attack it, even if the provision dividing his disability benefits is prohibited under federal law. Id. at ¶¶ 10-19.

Justice Albrecht dissented. Tronsrue I, ¶¶ 24-32. For the dissent, the division of the disability benefits violated the anti-assignment provisions in Section 5301 of the Veterans Benefits Act and was therefore void. Id. ¶ 31. After reviewing both federal and state law, Justice Albrecht concluded:

> While the circuit court generally had jurisdiction over the parties and the dissolution proceedings, it lacked the authority to incorporate a provision of the settlement agreement into the judgment that is contrary to federal law. Therefore, I would hold that the circuit court erred by enforcing a marital settlement agreement that required George to assign his military benefits to

> Elsa when such an agreement violates Section 5301 of the Veterans Benefits Act (38 U.S.C. § 5301(a)(1)(2018)).
>
> Id. at ¶ 32.

Tronsrue II

The Appellate Court also affirmed the $24,949 attorney fee award made pursuant to Section 508(b) by the same 2-1 vote. The majority deferred to its finding in Tronsrue I that the dissolution judgment is not void and therefore was enforceable. Tronsrue II, ¶ 13. Accordingly, Elsa was entitled to reasonable attorney fees, and the fee judgment was affirmed. Id. at ¶ 15.

Justice Albrecht dissented again. Id. at ¶¶ 17-20. She found that:

> [T]he issue of fees and costs hinges entirely on our determination of whether the military disability pay could be divided through the marital settlement agreement. If the provision in the agreement is enforceable, fees and costs must be awarded; however, if the provision is void, George had compelling justification not to follow the order and attorney fees should not be imposed. See 750 ILCS 5/508(b) (West 2020). Because I would hold that the provision of the marital settlement agreement that court sought to enforce is void, I would also hold that George had a compelling cause or justification in refusing to comply. Therefore, the court erred in awarding attorney fees and costs when George was able to establish just cause.
>
> Id. at ¶ 20.

ARGUMENT

I. Standard of Review.

The issues involved in this case require this Court to examine the interplay between the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/101 *et seq.*) and the federal Veterans Benefit Act (38 U.S.C. 101 *et seq.*). These are questions of law, and this Court's review is *de novo*. In re Marriage of Crook, 211 Ill. 2d 437, 442 (2004).

II. The division of George's disability payments is preempted by federal law and therefore void and unenforceable.

George will begin as Justice Albrecht did in her dissent—by explaining why the supremacy clause of the United States Constitution preempts a division of George's military disability benefits by way of a marital settlement agreement. Tronsrue I, ¶ 26. Thereafter, George will demonstrate that because the division is preempted it is void and unenforceable as a matter of law.

A. Federal law preempts a state court's ability to divide federal military disability benefits.

Article IV of the federal constitution provides that the laws of the United States "shall be the supreme law of the Land… any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." U.S. Const. art. VI, cl. 2; *see also* Bd. of Educ. v. Bd. of Educ., 231 Ill. 2d 184, 195 (2008). Under the supremacy clause, a federal statute will preempt state law in any one of three circumstances:

> (1) [E]xpress preemption—where Congress has expressly preempted state action; (2) implied field preemption—where Congress has implemented a comprehensive regulatory scheme in an area, thus removing the entire field from the state realm; or (3) implied conflict preemption—where state action actually conflicts with federal law.

Performance Marketing, Ass'n, Inc. v. Hamer, 2013 IL 114496, ¶ 14, *quoting* Carter v. SSC Odin Operating Co., 237 Ill. 2d 30, 39-40 (2010). A state law "actually conflicts with federal law" where it "stands as an obstacle to the accomplishment and execution of full purposes and objectives of Congress." English v. General Elec. Co., 496 U.S. 72, 79 (1990). State law is null and void if it conflicts with federal law. Hamer, 2013 IL 114496, ¶ 14, *citing* Sprietsma v. Mercury Marine, 197 Ill. 2d 112, 117 (2001).

Congress's authority over military benefits originates from its enumerated "military powers" under Article I, § 8, clauses 11 through 14 of the federal constitution. In matters governing the compensation and benefits provided to veterans, the states have no sovereignty or jurisdiction without an express grant from Congress. *See, e.g.*, Torres v. Tex. Dep't of Pub. Safety, 142 S. Ct. 2455, 2465 (2022) (Congress may legislate at the expense of traditional state sovereignty to raise and support the Armed Forces); Howell v. Howell, 581 U.S. 214, 218 (2017). Congress has codified the terms of veterans' benefits in the Veterans Benefits Act at 38 U.S.C. § 101 *et seq*.

This United States Supreme Court has ruled that federal preemption by Congress over matters concerning compensation and benefits paid to military servicemembers and veterans of the armed forces is absolute and occupies the entire field concerning disposition of these federal appropriations. *See, e.g.*, Hillman v. Maretta, 569 U.S. 483, 490-91, 493-96 (2013) (noting that in the areas of federal benefits, Congress has preempted the entire field even in the area of state family law and relying on several cases addressing military benefits legislation to sustain its rationale, *e.g.*, Ridgway v. Ridgway, 454 U.S. 46, 54-56 (1981); and Wissner v. Wissner, 338 U.S. 655, 658-59 (1950). In fact, unless otherwise allowed by federal law, Congress affirmatively prohibits the states from using "any legal or equitable process whatever" to dispossess a veteran of these benefits. See 38 U.S.C., § 5301(a)(1); Mansell v. Mansell, 490 U.S. 581, 588 (1989). Moreover, a veteran beneficiary of these personal entitlements is *expressly prohibited by federal law from contracting away his rights to these benefits*. *See* 38 U.S.C. § 5301(a)(1) and (3)(A) and (C). Any such

agreements are "void from inception" and therefore not subject to enforcement or recognition at any time. Id.[3]

These prohibitions apply to all military disability pay because Congress's preemption has never been expressly lifted by federal legislation (the exclusive means by which a state court could ever have authority over veterans' benefits). Howell, 581 U.S. at 217-18, *citing* McCarty v. McCarty, 453 U.S. 210, 232-35 (1981). In Howell, the United States Supreme Court reconfirmed that federal law preempts all state law concerning the disposition of veterans' disability benefits in state domestic relations proceedings. Howell, 581 U.S. at 222. There, the Court reiterated that Congress must affirmatively grant the state authority over such benefits, and when it does, that grant is precise and limited. Id. at 218, *citing* Mansell, *supra* at 588.

The Court also stated that without this express statutory grant, 38 U.S.C. § 5301(a)(1) affirmatively prohibits state courts from exercising any authority or control over these benefits. Id. at 221-22. In fact, the Court said of § 5301 that "state courts cannot 'vest' that which they have no authority to give…" Id. at 221. These provisions are construed liberally in favor of the veteran and regards these funds as "inviolate" and therefore inaccessible to all state court process. Porter v. Aetna Cas. & Surety Co., 370 U.S. 159, 162 (1962); *see also* Howell, 581 U.S. at 217-18, *citing* McCarty, 453 U.S. at 232-35 ("the division of military retirement pay by the States threatened to harm clear and substantial federal interests. Hence federal law pre-empted the state law").

[3] The Court will note that the division of disability benefits in Mansell was done pursuant to a property settlement agreement. Mansell, 490 U.S. at 585-86.

Here, George is a disabled Army veteran injured in the line of duty. (C600-C612) He receives veterans' disability benefits which were divided *as an asset* in the dissolution judgment. (C178-C179) As established above, these benefits are affirmatively protected from all legal and equitable processes either before or after receipt and the "fact that the parties agreed to the contents of the agreement is immaterial." 38 U.S.C. § 5301(a)(1) and (3)(A) and (C); Tronsrue I, ¶ 31. There is no ambiguity in this provision. It wholly voids attempts by states to exercise control over these restricted benefits. United States v. Hall, 98 U.S. 343, 346-57 (1878) (canvassing legislation applicable to military benefits); Ridgway, *supra* at 56; *see also* Clauson v. Clauson, 831 P.2d 1257, 1264 (Alaska 1992) (holding disability benefits should not be treated as marital property subject to division upon dissolution); In re Marriage of Franz, 831 P.2d 917, 918 (Colo. App. 1992) (a veteran's disability retirement pay is precluded from being divided as marital property).

The Appellate Court has previously recognized these principles. In In re Marriage of Wojcik, the Second District, in affirming a dissolution judgment, found that the supremacy clause precluded Illinois courts from dividing military disability benefits in divorce proceedings. 362 Ill. App. 3d 144, 155-61 (2005). The Wojcik court further held that Section 5301(a)(1) of the Veterans Benefits Act is indistinguishable from the anti-assignment provisions found in the federal Railroad Retirement Act and Social Security Act which this Court *has already determined* preempts state law. Id. at 159, *citing* Crook, 211 Ill. 2d at 448-49; *see also*, Williams v. Burks, 353 So. 2d 549, 553-59 (2021) (division of federal military disability benefits as asset in marital settlement agreement is void and

unenforceable because trial court lacked the authority to award former wife any portion of the benefits under Section 5301).[4]

For all these reasons, Justice Albrecht is correct; the provision of the dissolution judgment dividing George's disability payments is preempted by federal law. Tronsrue I, ¶ 32 ("I would hold that the circuit court erred by enforcing a marital settlement agreement that required George to assign his military disability benefits to Elsa when such an agreement violates Section 5301 of the Veterans Benefits Act (38 U.S.C. § 5301(a)(1) (2018))"). The judgments below should be reversed.

B. Given that the division of George's military disability benefits is preempted by federal law, the provision of the dissolution judgment doing so is void and unenforceable.

In affirming the circuit court, the majority relied on a line of cases from this Court on voidness, collateral attacks and subject matter jurisdiction to the exclusion of *any* analysis of federal law or preemption. Tronsrue I, ¶¶ 13-19. Those cases, and others like it, all tell the same general story: (1) a claim is adjudicated to a conclusion; (2) the resulting judgment failed to comply with certain state statutory prerequisites; (3) no appeal is taken from the judgment; and then (4) the litigant unhappy with the judgment attempts to

[4] In support of its decision, the Tronsrue I majority cited the Michigan Supreme Court's decision in Foster v. Foster, 983 N.W. 2d 373 (Mich. 2022). Foster is from a recent line of cases from around the country dealing with "indemnification" or "offset" agreements related to federal military disability benefits. *See, e.g.,* Yourko v. Yourko, 884 S.E.2d 799 (Va. 2023); Martin v. Martin, 520 P.2d 813 (Nev. 2022). These agreements obligate the veteran to pay any diminution in their ex-spouse's portion of regular military retirement pay if the veteran elects to convert to disability pay. These cases are factually distinguishable from this case because they do not involve the *direct* division of the benefits as an asset. However, to the extent these cases hold that an *indirect* division of disability benefits is not void and not preempted by federal law, they are all wrongly decided for the reasons argued herein. *See also* Crook, 211 Ill. 2d at 449-50 (federal social security benefits may not be divided directly or used as an offset during state dissolution proceedings as a matter of federal preemption).

collaterally attack it as void. *See, e.g.*, McCormick v. Roberston, 2015 IL 188230 (collateral attack of custody judgment under the Illinois Uniform Child Custody Jurisdiction and Enforcement Act); LVNV Funding, LLC v. Trice, 2015 IL 116129 (collateral attack of judgment for unpaid debt under the Illinois Collections Agency Act); In re Estate of Stanfield, 158 Ill. 2d 1 (1994) (collateral attack of guardianship order under the Illinois Probate Act).

These collateral attacks, and others like it, have all been rejected by this Court for the same set of reasons: (1) that, in our civil cases, a judgment is only void if it was entered in the absence of personal or subject matter jurisdiction. LVNV Funding, 2015 IL 116129, ¶ 39; and (2) that the failure of a court to follow state statutory requirements does not render a judgment void and subject to later collateral attack. McCormick, 2015 IL 188230, ¶ 22, *citing* Belleville Toyota, Inc. v. Toyota Motor Sales, U.S.A., Inc., 199 Ill. 2d 325, 340-41 (2002). These propositions flow from both our state constitution and the doctrine of finality of judgments. LVNV Funding, 2015 IL 116129, ¶ 38, *citing* Sarkissian v. Chicago Board of Education, 201 Ill.2d 95, 104 (2002).

The problem with relying on these cases is they do not address the question presented here—where the unfollowed statutory requirements are not only federal laws but federal laws which are *prohibitory* in nature. The majority ignored that "Congress clearly intended [in Section 5301] the circumstance where a beneficiary may enter into an agreement that would require payment of his miliary disability benefits and chose to prohibit the act." Tronsrue I, ¶ 27. Simply put, Section 5301 represents federal law reaching into state divorce courtrooms to declare that military disability benefits are entirely off the table and may not be divided, directly or indirectly, whether by adjudication or agreement,

notwithstanding any state law or doctrine to the contrary. *See* Howell, 581 U.S. at 221. (federal law prohibits state courts from awarding a divorced veteran's former spouse military benefits apart from disposable retired pay which excludes disability pay). The majority failed to recognize that our domestic relations judges must respect federal law when adjudicating divorce cases. *See* Crook, 211 Ill. 2d at 449-52.

There is no doubt that, in 1992, the circuit court had subject matter and personal jurisdiction over this divorce case. But, as argued throughout, that alone cannot be dispositive of whether the judgment is now enforceable, given that the division of benefits violates federal law. The remedy to this dilemma is found in Justice Albrecht's dissent—the Restatement (Second) of Judgments § 12 (1982). Tronsrue I, ¶¶ 28-31. This Court should adopt this section of the Restatement and *create an exception* to the general rule that subject matter jurisdiction may not be relitigated except if, as here, "allowing the judgment to stand would substantially infringe on the authority of another tribunal or agency of government." Doing so would account for federal preemption in our laws on subject matter jurisdiction, voidness, and collateral attacks, something that the federal constitution necessarily requires. U.S. Const. art. VI, cl. 2.

On at least one prior occasion the Appellate Court has applied this section of the Restatement to disallow enforcement of a dissolution judgment which violated federal law. In In re Marriage of Hulstrom, the Second District analyzed the supremacy clause as it pertained to enforcing a marital settlement agreement that divided a spouse's social security benefits in derogation of federal law. 342 Ill. App 3d 262, 266 (2003) The Hulstrom court followed the Restatement to conclude that the provision in the agreement dividing the benefits substantially infringed on federal law; thus, the circuit court did not have

jurisdiction to enforce it. Id.; *see also* In re Marriage of Mitchell, 181 Ill. 2d 169, 175-77 (1998) (where this Court examined the Restatement (Second) of Judgments § 12 (1982) when deciding whether a child support order was void or voidable). Justice Albrecht cited favorably to Hulstrom in her dissent, and this Court should follow that decision too. Tronsrue I, ¶¶ 28, 31.

For these reasons, the provision of the dissolution judgment dividing George's disability benefits is void and unenforceable.

III. The award of Section 508(b) fees should be vacated because the portion of the dissolution judgment which was enforced is void.

Fees and costs shall be assessed if the failure to comply with a domestic relations judgment is found to be "without compelling cause or justification" (formerly, without cause or justification) pursuant to Section 508(b). Nottage v. Jeka, 172 Ill. 2d 386, 391 (1996). Here, George had a compelling reason and just cause not to comply with the dissolution judgment—the provision dividing his federal military disability benefits is void, as established above. Accordingly, the circuit court erred when it ordered George to pay $24,939 in enforcement related fees pursuant to Section 508(b), as a matter of law. (C912) Tronsrue II, ¶¶ 19-21*; see also*, In re Marriage of McGuire, 305 Ill. App. 3d 474, 481-82 (1999) (not an abuse of the court's discretion to find that former husband had compelling cause or justification for his failure to pay maintenance; no Section 508(b) fees awarded); In re Marriage of Lavelle, 206 Ill. App. 3d 607, 614 (1990) (reversing Section 508(b) fee award upon finding payor was justified in not making child support payments). The fee judgment should be reversed.

PRAYER

WHEREFORE, GEORGE TRONSRUE 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: _____
Michael G. DiDomenico, Esq.

Michael G. DiDomenico, Esq.
Sean M. Hamann, Esq.
Lillian O'Neill, Esq.
Lake Toback DiDomenico
Attorneys for George Tronsrue
33 N. Dearborn, Suite 1850
Chicago, Illinois 60602

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	)	Circuit Court Case No. 1990 D 1150
GEORGE M. TRONSRUE, III,	)	The Honorable Susan L., Alvarado and the Honorable Alexander F. McGimpsey, II, Judges Presiding.
Respondent/Appellant.	)	

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 19 pages.

Michael G. DiDomenico, Esq.
Attorney for George Tronsrue, III /Appellant

Michael G. DiDomenico, Esq.
LAKE TOBACK DiDOMENICO
Attorneys for George Tronsrue, III
33 N. Dearborn, Suite 1850
Chicago, Illinois 60602
Telephone No. (312) 726-7111
mdidomenico@laketoback.com

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	)	
	)	Circuit Court Case No. 1990 D 1150
GEORGE M. TRONSRUE, III,	)	
	)	The Honorable Susan L., Alvarado and the Honorable Alexander F. McGimpsey, II, Judges Presiding.
Respondent/Appellant.	)	

APPENDIX

Michael G. DiDomenico, Esq.
Sean M. Hamann, Esq.
Lillian M. O'Neill, Esq.
Lake Toback DiDomenico
Attorneys for Appellant
33 N. Dearborn St., Suite 1850
Chicago, IL 60602
Telephone No. (312) 726-7111
mdidomenico@laketoback.com
shamann@laketoback.com
loneill@laketoback.com

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ORDER - BLANK 2116 (Rev. 2/16)

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STATE OF ILLINOIS UNITED STATES OF AMERICA COUNTY OF DU PAGE
IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT

IRMO

ELSA TRONSRUE

vs

GEORGE M. TRONSRUE, III

1990 D 1150
CASE NUMBER

e-FILED
JAN 06, 2020 03:29 PM
Chris Kachiroubas
CLERK OF THE
18TH JUDICIAL CIRCUIT
DUPAGE COUNTY, ILLINOIS
File Stamp Here

ORDER

This cause coming before the Court; the Court being fully advised in the premises, and having jurisdiction of the subject matter, **IT IS HEREBY ORDERED:**

1. That for the reasons stated by the Court, the Petitioner's Motion To Strike and Dismiss Respondent's Amended Petition to Modify or Terminate Payments Made Pursuant to Judgment for Dissolution of Marriage Entered On July 6, 1992, is ~~denied~~ granted;

2. That the Respondent is granted 21 days to respond to Petitioner's Petition for Adjudication of Indirect Civil Contempt and Other Relief; Respondent is granted 21 days to refile, if he so chooses;

3. That the cause is continued to February 5, 2020, at 9:25 AM in courtroom 3007 for status and setting.

Name: STOGSDILL LAW FIRM ☐ PRO SE
DuPage Attorney Number: 45250
Attorney for: PETITIONER
Address: 1776 S. NAPERVILLE RD.
City/State/Zip: WHEATON, IL 60189
Telephone Number: 630-462-9500
Email: BOB@STOGSDILLLAW.COM

ENTER:

Susan Alvarado
Judge

Date: 1-6-20

CHRIS KACHIROUBAS, CLERK OF THE 18th JUDICIAL CIRCUIT COURT ©
WHEATON, ILLINOIS 60187-0707

A001 C 719

UNITED STATES OF AMERICA

STATE OF ILLINOIS COUNTY OF DU PAGE

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT

ELSA M TRONSRUE

-VS-

GEORGE TRONSRUE

1990D001150
CASE NUMBER

FILED

20 Aug 14 PM 02: 06

Chris Kachiroubas

CLERK OF THE
18TH JUDICIAL CIRCUIT
DUPAGE COUNTY, ILLINOIS

ORDER

THIS MATTER HAVING COME BEFORE THE COURT FOR HEARING ON RESPONDENT'S MOTION TO DISMISS PURSUANT TO 735 ILCS 5/2-619(A)(1) AND 2-619(A)(9), AND PETITIONER'S OBJECTIONS TO RESPONDENT'S WRITTEN INTERROGATORIES. THE COURT HAVING REVIEWED THE RESPONDENT'S MOTION TO DISMISS TOGETHER WITH THE WRITTEN RESPONSE OF PETITIONER, AND THE COURT HAVING REVIEWED ALL APPLICABLE CASE LAW AND STATUTORY LAW AND BEING FULLY APPRISED IN THE PREMISES THROUGH THE ARGUMENTS OF COUNSEL,

IT IS HEREBY ORDERED:

1. FOR THE REASONS STATED ON THE RECORD, RESPONDENT'S MOTION TO DISMISS PURSUANT TO SECTION 5/2-619(A)(1) AND (9) IS DENIED.

2. PETITIONER'S OBJECTIONS TO PARAGRAPHS 1, 2, AND 3 OF RESPONDENT'S "FIRST INTERROGATORIES" ARE OVERRULED. PETITIONER'S OBJECTION TO PARAGRAPH 4 OF RESPONDENT'S "FIRST INTERROGATORIES" IS SUSTAINED.

3. PETITIONER IS GRANTED 21 DAYS TO PROVIDE RESPONSES TO PARAGRAPHS 1, 2 AND 3 OF RESPONDENT'S "FIRST INTERROGATORIES".

4. HEARING ON PETITIONER'S PETITION FOR ADJUDICATION OF INDIRECT CIVIL CONTEMPT FILED ON 9/12/19 IS SET FOR HEARING ON NOVEMBER 2, 2020 AT 1:30 P.M. SAID HEARING TO BE CONDUCTED IN-PERSON UNLESS OTHERWISE ARRANGED THROUGH THE COURT.

5. IN THE EVENT A RULE TO SHOW CAUSE ISSUES ON NOVEMBER 2, 2020, THAT RULE SHALL BE RETURNABLE INSTANTER.

Submitted by: JUDGE SUSAN L ALVARADO

DuPage Attorney Number:

Attorney for:

Address:

City/State/Zip:

Phone number:

File Date: 08/14/2020

Entered:

JUDGE SUSAN L ALVARADO

Validation ID : DP-08142020-0206-20262

Date: 08/14/2020

3479
3475
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ORDER - BLANK 2116 (Rev. 2/16)

STATE OF ILLINOIS UNITED STATES OF AMERICA COUNTY OF DU PAGE #2J
IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT

IRMO
ELSA M. TRONSRUE
vs
GEORGE M. TRONSRUE, III

90 D 1150
CASE NUMBER

FILED
NOV 02, 2020 03:05 PM
Chris Kachiroubas
CLERK OF THE
18TH JUDICIAL CIRCUIT
DUPAGE COUNTY, ILLINOIS
File Stamp Here

ORDER

This cause coming before the Court; the Court being fully advised in the premises, and having jurisdiction of the subject matter, **IT IS HEREBY ORDERED:**

1. That the Respondent, GEORGE M. TRONSRUE, III, for the reasons stated by the Court, is found to be in indirect civil contempt;

2. That as partial purge, the Respondent shall provide within 45 days, documentation showing all amounts received from V.A. Disability Retirement and Pension since July 6, 1992;

3. That the cause is continued to January 5, 2021, in courtroom 3007 at 8:45 AM for status and setting of further purge (if still hearing).

Name: STOGSDILL LAW FIRM ☐ PRO SE
DuPage Attorney Number: 45250
Attorney for: PETITIONER
Address: 1776 S. NAPERVILLE #C
City/State/Zip: WHEATON, IL 60189
Telephone Number: 630-462-9500
Email: BOB@STOGSDILLAW.COM

ENTER:
Susana Alvarado
Judge
Date: 11-2-20

CHRIS KACHIROUBAS, CLERK OF THE 18th JUDICIAL CIRCUIT COURT ©
WHEATON, ILLINOIS 60187-0707

A004 C 774

#20

Rule to Show Cause Order with admonishments

2215 (Rev. 7/16)

STATE OF ILLINOIS **UNITED STATES OF AMERICA** **COUNTY OF DU PAGE**

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT

2740

ELSA M. TRONSRUE

v.

GEORGE M. TRONSRUE, III

90 D 1150
Case Number

FILED
NOV 02, 2020 03:06 PM
Chris Kachiroubas
CLERK OF THE
18TH JUDICIAL CIRCUIT
DUPAGE COUNTY, ILLINOIS
File Stamp Here

ORDER – RULE TO SHOW CAUSE

This matter coming before the Court on the petition of ELSA M. TRONSRUE A/K/A TOLEDO, proper notice having been given, the Court being fully advised in the premises and having jurisdiction of parties and subject matter,

IT IS HEREBY ORDERED that GEORGE M. TRONSRUE, III appear before this court in room 3007 located at The DuPage County Judicial Center, 505 N. County Farm Road, Wheaton, Illinois on INSTANTER at _____ and show cause, if any he/she may have, why he/she should not be held in Contempt of Court for his/her failure to obey an order of the Court entered July 6, 1992 requiring him/her to:

- ☐ Pay child support
- ☐ Pay day-care expenses
- ☐ Extracurricular expenses
- ☐ Contribute to the cost of medical insurance
- ☐ Pay his/her portion of the childís uninsured medical expenses
- ☐ Maintenance
- ☒ Other: PAY ADDITIONAL FUNDS AS RECEIVED BY RESPONDENT

The Court finds that the Respondent is $_____ out of compliance with the above order(s) and RULE RETURNABLE INSTANTER, RESPONDENT NOT APPEARING

IT IS FURTHER ORDERED that the respondent is personally served with a copy of this order.

NOTICE TO JUDGMENT DEBTOR IF YOU FAIL TO APPEAR BEFORE THE COURT AT THE TIME AND PLACE SET FORTH, YOU MAY BE TAKEN INTO CUSTODY AND HELD IN JAIL ON CHARGES OF CONTEMPT OF COURT

Name: STOGSDILL LAW FIRM ☐ Pro Se
DuPage Attorney Number: 45250
Attorney for: PETITIONER
Address: 1776 S. NAPERVILLE RD.
City/State/Zip: WHEATON, IL 60189
Telephone Number: 630-462-9500
Email: BOB@STOGSDILLLAW.COM

JUDGE

Date: Nov. 2, 2020

-SEE REVERSE SIDE-

STATE OF ILLINOIS UNITED STATES OF AMERICA COUNTY OF DU PAGE

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT

IMPORTANT NOTICE REGARDING CONTEMPT

Civil contempt proceedings have been filed against you for not paying your court ordered obligation (s). Your ability to pay these obligations is a critical issue in determining whether you will be held in contempt or not.

It is important that you provide the court with information about your financial ability to pay the support ordered. Your information will enable the court to accurately decide whether you are in contempt or not. If you do not provide the court with this information, you may be found in contempt and placed in jail until you pay a specific sum of money to purge your contempt. If the court determines you are in contempt, the court then will decide what actions or sum of money you should pay to purge or remove the contempt finding. During these contempt proceedings, **YOU MUST:**

1) Appear for all hearings. If you fail to appear, the court has the power to issue a body attachment or warrant for your arrest.

2) Complete and bring to Court an approved disclosure statement. During these contempt proceedings,**YOU HAVE THE RIGHT TO:**

A) Hire an attorney to represent you.

B) Testify about your ability to pay child support.

C) Show the court evidence about your past and current financial ability to pay child support, including:

- Your last 6 paycheck stubs
- Your last 2 federal income tax returns with all schedules, exhibits, and forms attached
- Proof of any and all income
- Proof of government benefits, such as
  Unemployment insurance benefits
  Social security income
  Social security disability veteranís benefits
  Food stamps
  Any other type of payments
- If you have applied for any type of benefit, assistance, or government payment, and have not received a decision yet, bring a copy of the application.
- If you are searching for employment, bring a list of the employers that you have **contacted in the last 2 months. For each employer, include the name and phone** number of the person you spoke to.

ORDER - BLANK 2116 (Rev. 12/20)

STATE OF ILLINOIS UNITED STATES OF AMERICA COUNTY OF DU PAGE

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT #7

IN RE MARRIAGE OF
ELSA TRANSRUE
N/K/A ELSA TOLEDO

3475
1640
2270
2180

vs.

GEORGE TRANSRUE

1990 D 1150
CASE NUMBER

FILED
MAR 04, 2022 01:18 PM
Candice Adams
CLERK OF THE
18TH JUDICIAL CIRCUIT
DUPAGE COUNTY, ILLINOIS
File Stamp Here

ORDER

This cause coming before the Court the Court being fully advised in the premises, and having jurisdiction of the subject matter, **IT IS HEREBY ORDERED:**

1) THAT THE COURT SETS THE PURGE AT $32,980.00 WHICH SHALL BE BE PAID WITHIN SIXTY DAYS (60) OF.
2) STATUS DATE IS SET FOR MAY 11, 2022 AT 1:30 PM IN ROOM 3007 IN PERSON. FOR STATUS ON THE PURGE.
3) PETITIONERS MOTION FOR INTEREST PURSUANT TO 815 ILCS 205/2 IS DENIED FOR THE REASONS STATED IN THE RECORD
4) PETITIONER GRANTED LEAVE TO FILE HER PETITION FOR FEES.

Name: MacKMorkus, LLP ☐ Pro Se
DuPage Attorney Number:
Attorney for: RESPONDENT
Address: 1001 WARRENVILLE RD STE 500
City/State/Zip: LISLE, IL 60532
Telephone Number: 630 434 0297
Email: WSCOTT@MORKUS.COM

ENTER:

Judge

Date: 3/4/22

CANDICE ADAMS, CLERK OF THE 18th JUDICIAL CIRCUIT COURT ©
WHEATON, ILLINOIS 60187-0707

A007 C 866

ORDER 1990D001150-1787

UNITED STATES OF AMERICA

STATE OF ILLINOIS **COUNTY OF DU PAGE**

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT

IN RE: THE MARRIAGE OF
ELSA M TRONSRUE
Plaintiff

AND

GEORGE TRONSRUE
Defendant

1990D001150
CASE NUMBER

FILED
22 Jun 22 PM 03: 30
Candice Adams
CLERK OF THE
18TH JUDICIAL CIRCUIT
DUPAGE COUNTY, ILLINOIS

ORDER

This cause having come on to be heard before this Court for ruling, the Court having conducted a hearing on May 27, 2022 and having reviewed the testimony offered, the Court's notes and exhibits and the Court being fully advised in the premises;

IT IS HEREBY ORDERED:

1. The request by Petitioner's attorneys for interest is denied.

2. The Petitioner's attorneys are awarded the sum of $24,939.00 as and for attorneys fees pursuant to 750 ILCS 5/508(b) in accordance with the oral findings of the Court on the record.

3. The above matter is set for status on August 16, 2022 at 11:50 am in courtroom 3007 via zoom conference for status on the Petitioner's Petition for Fees pursuant to 750 ILCS 5/508(a) filed on June 13, 2022.

Submitted by: WILLIAM SCOTT
Attorney Firm: MOMKUS LLP
DuPage Attorney Number: 20508
Attorney for: GEORGE TRONSRUE
Address: 1001 WARRENVILLE RD, STE 500
City/State/Zip: LISLE, IL, 60532
Phone number: 630-434-0400
Email : wscott@momlaw.com

Entered: File Date: 06/22/2022
JUDGE ALEX MCGIMPSEY
Validation ID : DP-06222022-0330-38112

Date: 06/22/2022

8

2250

IN THE CIRCUIT COURT FOR THE EIGHTEENTH JUDICIAL CIRCUIT
DUPAGE COUNTY, WHEATON, ILLINOIS

IN RE THE MARRIAGE OF:	)	
ELSA TRONSRUE,	)	
Petitioner,	)	
vs.	)	
	)	No. 1990 D 1150
GEORGE M. TRONSRUE,	)	
Respondent.	)	

FILED
JUL 19, 2022 05:00 PM
Candice Adams
CLERK OF THE
18TH JUDICIAL CIRCUIT
DUPAGE COUNTY, ILLINOIS

ORDER
(Pursuant to Illinois Supreme Court Rule 304(a)

This cause coming before the Court; the Court being fully advised in the premises, and being advised of the relevant facts:

IT IS HEREBY ORDERED:

1. That, pursuant to Illinois Supreme Court Rule 304(a) there is no just reason for delaying either enforcement or appeal of the orders entered on January 6, 2020 granting the *Petitioner's Motion to Strike and Dismiss Respondent's Amended Petition to Modify or Terminate Payments made Pursuant to Judgment for Dissolution of Marriage entered on July 5, 1992;* the Order of August 14, 2020 denying *the Respondent's Motion to Dismiss Petitioner's Petition for Adjudication of Indirect Civil Contempt and Other Relief*; the Order of November 2, 2020 finding the Respondent to be in Indirect Civil Contempt of Court; the Order of March 4, 2022 setting the purge amount and the Order of June 22, 2022 granting Petitioner attorney's fees pursuant to 750 ILCS 5/508(b).

ENTER:

Judge Alex McGimpsey
Dated: July 19, 2022

William J. Scott, Jr.
Momkus, LLP (20508)
Attorneys for Respondent
1001 Warrenville Rd. Rd, Suite 500
Lisle, Illinois 60532
(630) 434-0297
wscott@momkus.com

APPEAL TO THE THIRD DISTRICT APPELLATE COURT
FROM THE CIRCUIT COURT FOR THE EIGHTEENTH JUDICIAL CIRCUIT
DUPAGE COUNTY, ILLINOIS

IN RE: THE MARRIAGE OF: ELSA TRONSRUE n/k/a ELSA TOLEDO,	)	
Petitioner-Appellee,	)	Case No. 1990 D 1150
v.	)	Trial Judges: Hon. Susan L. Alvarado Hon, Alex McGimpsey
GEORGE M. TRONSRUE, III,	)	
Respondent-Appellant.	)	

NOTICE OF APPEAL

PLEASE TAKE NOTICE that Respondent-Appellant appeals to the Appellate Court of Illinois, Third Judicial District, from the orders of the Circuit Court of the Eighteenth Judicial Circuit, DuPage County, Illinois, entered on January 6, 2020 granting the *Petitioner's Motion to Strike and Dismiss Respondent's Amended Petition to Modify or Terminate Payments made Pursuant to Judgment for Dissolution of Marriage entered on July 6, 1992*; the Order of August 14, 2020 denying the *Respondent's Motion to Dismiss Petitioner's Petition for Adjudication of Indirect Civil Contempt and Other Relief;* the Order of November 2, 2020 finding the Respondent to be in Indirect Civil Contempt of Court and the Order of March 4, 2022 setting the purge amount.

Respondent-Appellant requests that this Court reverse and vacate the orders of the Circuit Court of the Eighteenth Judicial Circuit, DuPage County, Illinois, entered on January 6, 2020 granting the *Petitioner's Motion to Strike and Dismiss Respondent's Amended Petition to Modify or Terminate Payments made Pursuant to Judgment for Dissolution of Marriage entered on July 6, 1992*; the Order of August 14, 2020 denying the *Respondent's Motion to Dismiss Petitioner's*

Petition for Adjudication of Indirect Civil Contempt and Other Relief; the Order of November 2, 2020 finding the Respondent to be in Indirect Civil Contempt of Court and the Order of March 4, 2022 setting the purge amount pursuant to Rule 301 and Rule 304(b)(5) of the Illinois Supreme Court Rules.

The Respondent-Appellant, George M. Tronsrue, III, is represented by Momkus. LLP., William J, Scott, Jr., 1001 Warrenville Rd., Lisle, Illinois 60532, 630-434-0400 ext. 165.

Respectfully Submitted,

MOMKUS LLP

By: _____
William J. Scott, Jr.

Momkus LLP
William J. Scott, Jr
Attorneys for Respondent-Appellant
DuPage County Attorney No. 20508
1001 Warrenville Road, Ste. 500
Lisle, IL 60532
(630) 434-0400
(wscott@momkus,com)

APPEAL TO THE APPELLATE COURT OF ILLINOIS, THIRD JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF DuPAGE COUNTY, ILLINOIS

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
DuPAGE COUNTY, ILLINOIS

IN RE THE MARRIAGE OF:	)	
	)	
ELSA TRONSRUE,	)	
	)	
Petitioner,	)	
	)	
and	)	No. 1990 D 1150
	)	
GEORGE M. TRONSRUE, III,	)	
Respondent.	)	

NOTICE OF APPEAL

PLEASE TAKE NOTICE that the Respondent, GEORGE M. TRONSRUE, III, by and through his attorneys, LAKE TOBACK DiDOMENICO, under Supreme Court Rules 301, 304(a), 304(b)(5), and any other applicable rule and/or statute, hereby appeals to the Appellate Court of Illinois, Third Judicial District, from the orders entered on January 6, 2020, August 14, 2020, and November 2, 2020, by the Honorable Judge Susan L. Alvarado, and the orders entered March 4, 2022, and June 22, 2022, by the Honorable Judge Alex F. McGimpsey, and any and all order(s) leading up to and included in said order premised upon the manifest errors in the rendering of said order(s).

Respondent prays that the orders entered January 6, 2020, August 14, 2020, November 2, 2020, March 4, 2022, June 22, 2022, and any attendant order(s) leading up to said orders, be reversed by the Appellate Court, and that, if necessary, this cause be remanded to the circuit court with directives consistent with such disposition.

Respectfully submitted,
GEORGE M. TRONSRUE, III

By: _____
MICHAEL G. DiDOMENICO

LAKE TOBACK DiDOMENICO
Atty No. 46541
Attorneys for George M. Tronsrue, III
33 North Dearborn Street, Suite 1720
Chicago, Illinois 60602
Telephone No. (312) 726-7111
mdidomenico@laketoback.com

the opposite sex; the Wife's remarriage; or three (3) years from the date of the entry of Judgment herein. Upon the first of the foregoing to occur, Wife waives any and all right to maintenance or alimony except as set forth herein and will be forever barred from same.

Husband waives, upon the effective date of this Agreement, any and all right to maintenance or alimony.

METROPOLITAN FIBER SYSTEMS, INC. INCENTIVE RIGHTS PROGRAM

Husband is enrolled in the Metropolitan Fiber Systems, Inc. Incentive Rights Program and has accumulated in excess of TEN THOUSAND (10,000) shares of incentive rights which are partially vested and partially due for pay out sometime in 1993. The value of said incentive rights is unknown at this time and is dependent upon the financial performance of the company, but in no event is the value less than one dollar ($1.00) per right. Husband shall pay to Wife the sum of FOUR THOUSAND, ONE HUNDRED FORTY THREE and 50/100 DOLLARS ($4,143.50) as and for her marital property interest in said incentive rights and Wife shall waive any and all rights in and to any incentive rights awarded to Husband now or in the future.

PENSION PLAN

ARMY \ VETERANS' ADMINISTRATION DISABILITY RETIREMENT PAY - The Parties agree that based upon the Court's ruling that 37.2% of Husband's Army Disability Retirement pay and V.A. disability pension is marital that Wife shall receive an amount equal to 18.6% of Husband's Army Disability Retirement pay and 18.6% of Husband's V.A. disability pension payable to Wife pursuant to the applicable sections of the Uniformed Services Former Spouses Protection Act. If for any reason the United States

Army and the V.A. will not withhold the appropriate amounts and send them directly to Wife then Husband shall pay directly to Wife 18.6% of his Army Disability Retirement pay and 18.6% of his V.A. Disability Pension each and every month upon entry of Judgment For Dissolution for as long as he receives said pay.

The Husband specifically agrees that for purposes of the calculation of child support benefits, his share of the Army / Veterans' Administration Disability Retired Pay is includable as part of his net income against which to apply the Illinois Statutory child support guidelines.

The parties each have an Individual Retirement Account (IRA) and each waives any and all interest which he/she may have in the other's account. In order to equalize the value of the Parties' IRA accounts, the sum of $3,250.00 will be rolled over into Wife's IRA account from Husband.

Excluding the aforementioned the Husband shall have the sole right, title and interest in any profit-sharing and retirement plan now or hereinafter made available to him including but not limited to past, present, and future contributions, profits, income, interest and principal whether contributed by employee or employer or both whether unvested, partially vested or fully vested, free and clear of any and all claims of Wife. Wife waives any interest, either directly or indirectly in Husband's retirement plan other than the aforementioned.

Wife shall have the sole right, title and interest in any profit-sharing and retirement plan now or hereinafter made available to her including but not limited to past, present, and future contributions, profits, income, interest and principal whether contributed by employee or employer or both whether unvested, partially vested or fully vested, free and clear of any

MR. SCOTT: Thank you, Judge.

THE COURT: Anything more, Mr. Scott?

MR. SCOTT: No, ma'am.

THE COURT: All right. Very good. Thank you.

The Court has reviewed the petitioner's petition and the husband's written response. The Court has also reviewed the relevant provisions of the parties' judgment for dissolution of marriage and incorporated marital settlement agreement.

The Court has also considered the testimony of the petitioner here today and finds that Elsa's testimony is credible. With regard to Count 1 of petitioner's petition, the Court finds that the parties' agreement entitles Elsa to receive an amount equal to 18.6 of George's VA disability pension and 18.6 percent of George's Army disability retirement pay for so long as George receives payments therefrom.

Petitioner has demonstrated a reasonable basis for her belief that her 18.6 entitlement may now exceed the amount that George has been paying on a monthly basis.

The Court further finds with respect to Count 2 of the petition, that Elsa has requested

substantiation from George and other sources that the amount he is paying does, in fact, comport with the requirements of the judgment.

The Court, therefore, finds that Elsa has met her burden of establishing a prima facie case and the Court now issues a rule against George Tronsrue returnable instanter.

The burden now shifts to George to show good cause why he should not be held in contempt for his failure to comply with the terms of his own agreement incorporated into the judgment.

So it is now your case, Mr. Scott.

MR. SCOTT: Thank you, Judge.

ELSA M. TOLEDO,

called as a witness on behalf of the Respondent, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. SCOTT:

Q. Ms. Toledo, you're familiar with the terms in the judgment; am I correct?

A. Being --

Q. Do you understand what I mean?

A. The divorce --

Q. Yeah.

A. -- decree? Yes.

THE COURT: Ma'am, don't look to your attorney for answers. Mr. Scott is questioning you.

THE WITNESS: Okay. I am sorry. I don't know the legal terms well.

BY MR. SCOTT:

Q. You're familiar with the terms of the judgment; am I right?

A. I am.

Q. If you would, please -- do you have a copy of the judgment in front of you?

A. I don't.

Q. Okay. Do you recall, ma'am, in your memory where the judgment says that information is to be supplied to you by George?

THE COURT: Ma'am.

BY THE WITNESS:

A. I don't recall.

THE COURT: You have to answer the question.

THE WITNESS: I'm sorry, I don't recall. I don't recall.

BY MR. SCOTT:

Q. Okay. Very well. Does the judgment say

specifically that he is to supply you with information at specific times or at your demand?

A. I don't know.

Q. Okay.

A. Is it possible to get a copy of it?

THE COURT: Ma'am, please don't speak unless there is a question asked of you, okay?

THE WITNESS: Okay.

BY MR. SCOTT:

Q. Okay. Ms. Toledo, how long was George in the Army, do you recall?

MR. BOYD: Objection. Relevance.

THE COURT: Overruled. You can answer, ma'am.

BY THE WITNESS:

A. I think five years.

BY MR. SCOTT:

Q. Okay. Five years, two months, 12 days, does that sound maybe a little precise, but probably the right number?

A. Could be.

Q. Okay. And were you married to him that entire time?

A. I was.

Q. Okay. And he -- he was -- he left the

service after that period of time, am I right?

A. Yes.

Q. So he was not in the service 20 years, was he?

A. No.

Q. And you were not married to him ten years during the period of time that he was in the service, were you?

MR. BOYD: Objection. Relevance.

THE COURT: What is the relevance of this, Mr. Scott? Can you help me understand?

MR. SCOTT: Sure, it has to do with disability pay and it has to do with retirement pay and the like.

THE COURT: Well, what we're here for is that has already been established within the four corners of the judgment. So now we're just looking at whether or not he has complied with the judgment. So I am going to sustain the objection now.

MR. SCOTT: Okay. Very well. Then I have no further questions, Judge.

THE COURT: Okay. Thank you. Do you wish to question your client, Mr. Boyd?

MR. BOYD: No.

THE COURT: Okay. Thank you. So the Court finds that, as I said earlier, that there has been a prima facie case established that Mr. Tronsrue has not complied with the terms of the judgment in that he has not provided any verification that the amount he has been paying since entry of the judgment has not changed.

In this Court's opinion, it doesn't mean anything to have an award of something if there is no way to verify that that is the proper amount being paid. So the prima facie case has been shown. A rule has issued. And the Court finds that Mr. Tronsrue is not here today and, therefore, he has not shown that his failure to abide by the court order was, in fact, with compelling cause or justification.

Therefore, the Court does find that Mr. Tronsrue stands in indirect civil contempt of court for his failure to comply with the terms of the judgment entered on July 6th, 1992.

And what are we going to do about a purge, Mr. Boyd?

MR. SCOTT: Judge, I wonder if I might argue one other point, and I know I am going to backtrack here,

but I would like to point something out to the Court.

THE COURT: Okay.

MR. SCOTT: We continue to maintain our position that this Court does not have subject matter jurisdiction over --

THE COURT: And the Court has already made its ruling on that.

MR. SCOTT: But I disagree, Judge. You have ruled on motions which were filed. Initially Mr. Tronsrue filed a motion asking the Court to modify or change or terminate the payments and you ruled -- you granted Mr. Boyd's petition motion to strike which is different than ruling on the substantive issue.

We then filed a motion to dismiss the petition for rule to show cause and you granted his motion to dismiss, which is different than ruling on the substantive issue.

We believe that Mr. Tronsrue's compelling cause and justification for not complying with the order is that this Court does not have subject matter jurisdiction over the disability payments as they are paid at this point.

So with your permission, I would like to

argue that point and have the Court -- I know you think you did, but I don't think you did, with all due respect, rule on that specific issue.

So if you would just say I am wrong, then I think I have a justiciable issue at that stage of the game we can deal with.

THE COURT: Mr. Boyd, do you want to be heard?

MR. BOYD: Judge, my view is this has been argued. This very issue that he is raising now has been argued in each of the motions to strike and dismiss or to dismiss. The issue has been addressed from every possible angle.

In addition to that, a response was filed to my petition for rule and the issue was not raised as any kind of affirmative defense within that response. To now put me in a position to have to reargue those same things that we have argued, and I could probably put it all back together, but it is exactly the same arguments that have been made.

This was an agreement reached by the parties. The Court had subject matter jurisdiction over the parties. Nothing, nothing that the Court did involved the disability of Mr. Tronsrue except that they agreed as to how they would calculate the

number he was going to pay and that was an agreement. That's the thumbnail version of the responses and the arguments that have previously been made. Again, the response was filed, it wasn't raised there.

MR. SCOTT: I disagree. Paragraph 5 of my response says affirmatively the Court does not have subject matter jurisdiction over this. The Court does not have -- the Court has jurisdiction over the parties, but not over the subject matter of a preempted asset, which is Mr. Tronsrue's disability pay.

So from a practical standpoint, that is what our position is, and I don't want that to get lost in all of this.

Our position is that this Court cannot issue a rule to show cause alleging a violation of an order over which you do not have jurisdiction. A void order, which is a nullity, is that, a void order which is a nullity.

THE COURT: But Mr. Scott, hasn't this Court already found that the order is neither void nor voidable? I mean, we have been all through this. Now, what I think you're saying is that in the context of a motion to dismiss, that somehow that

ruling does not stand as a substantive ruling. Is that what you're telling me?

MR. SCOTT: Perhaps I misunderstood what the Court's ruling was, but at one point you said it is the wrong way to do this, it's the wrong motion to bring, and earlier you granted the motion to dismiss our motion which is different than saying --

THE COURT: It is.

MR. SCOTT: Which I believe is different than saying, you know, the jurisdictional issue is one that I believe I have subject matter jurisdiction. I don't think that the Court ever actually ruled on that issue square on. That is all I am saying, okay?

And if that is what the Court's position is, then I just would like that to be clear in the record because clearly I disagree. I mean, obviously I have raised it a couple of times and it is pretty clear that I disagreed with that.

THE COURT: I remember saying that a motion to dismiss is an improper vehicle to bring, actually, in response to a petition for rule to show cause.

However, when you're arguing subject matter jurisdiction, as we all know that could be raised at any time by any person. So I feel like we have been

through all of that. However, I agree that it was raised in his response as he has just read into the record. It was only one sentence, but it nevertheless is raised as an affirmative response. So I am going to allow him time to argue that. If you wish to respond, you may.

MR. BOYD: I think he just argued.

THE COURT: Is that it, is that your argument?

MR. SCOTT: Well --

MR. BOYD: He stopped talking.

THE COURT: If you have an argument to make on subject matter jurisdiction, I will hear it. So I am going to strike my finding, give you time to make your subject matter jurisdiction argument. You may respond orally and I am ready to rule on that.

MR. SCOTT: Very well. I would like to make it, Judge, and it won't take very long.

THE COURT: I will always give your client all the due process I can.

MR. BOYD: Judge, I am just going to grab a couple of orders.

THE COURT: That's okay. Go right ahead. Whenever you're ready, Mr. Scott, please make your record.

MR. SCOTT: Thank you, Judge.

Judge, Paragraph 14 of the judgment is that enforcement of the judgment that Mr. Boyd read to Ms. Toledo which starts with, "The parties agree that based upon the Court's ruling, 37.2 percent of Mr. Tronsrue's VA payment an Army payment are marital."

Paragraph 3 in his petition for -- in his petition for adjudication of civil contempt also reiterates that paragraph. She admits that language, of course, in one of her responses to one of our pleadings.

In addition, our motion to dismiss alleged at Paragraph 19 that Elsa does not qualify pursuant to the Uniform Services Former Spouse's Protection Act as the act requires the parties should be married for ten years and that the service member be in the service for at least ten years. George served five years, two months and 12 days. And Ms. Toledo in her response admits that. That is a judicial admission to that paragraph.

Thereafter, our position is that Mr. Tronsrue is not eligible for retirement pay in the classic sense of retirement pay from the Army

because he wasn't 60 and he had not served 20 years. So what he is receiving is disability pay only.

And when you consider that disability pay, then the Court has to consider at least the following two U.S. Supreme Court cases, which are Mansell, M-a-n-s-e-l-l, which I am certain the Court has read, and Howell, H-o-w-e-l-l, which is a 2017 case.

Both cases say that the state courts -- that disability payments are preempted by the supremacy clause and are dealt with by Congress and the states may not deal with allocating or dividing those benefits as being marital property. Those belong solely to the disabled veteran.

Howell says state courts cannot vest that which under government federal law they lack the authority to give. And the case law goes on to say -- that's Howell. In Illinois case law, Wojick says essentially that same thing. The federal preemption pursuant to the supremacy clause of the United States Constitution deprives your Honor of subject matter jurisdiction.

An agreed order is void as the Court lacks subject matter jurisdiction. And the Court -- and an order entered into by the Court without subject

matter jurisdiction is void and is a nullity. The parties can't agree to it, they can't revest themselves with it because they never had it, and a party -- further In Re the Marriage of Santa Cruz, the party cannot be held in contempt for violating a void court order.

So we are here with the Court issuing a rule to show cause against my client for allegedly violating an order over which not you, but your predecessor judge, had no subject matter jurisdiction. It's a void order. It is null. It is null and void and the Court is not in a position to enforce that order since the order -- you don't have subject matter jurisdiction over that.

And I think the case law is clear and that is Mansell, Wojcik, Strunk in Illinois, Howell, and the several federal statutes that deal with retirement -- that deal with disability pay and military personnel pay. And I can provide those to your Honor also. I can give you the cases and everything. I have them all copied.

So that is what our position is and that -- I don't think the Court has ruled on that specific narrow issue. I could be mistaken, but --

THE COURT: Well, if I haven't, I certainly will. Are you finished, Mr. Scott?

MR. SCOTT: I am sorry, yes, I am.

THE COURT: Thank you very much.

Mr. Boyd, do you wish to respond?

MR. BOYD: Judge, the Court has heard my argument a number of times as each of these motions to strike have been presented to your Honor.

Mr. Scott avoids the topic of the fact that the parties reached an agreement as to moneys that were going to be paid to my client.

It had nothing other than the moneys that Mr. Tronsrue was receiving, there was a calculation as to what portion of that my client was going to get. It doesn't come out of the disability, it doesn't come out of any federal funds at all. It is Mr. Tronsrue pays her a certain percentage of a number. And that the Court certainly had subject matter jurisdiction and it had jurisdiction over the parties.

The federal cases simply say federal government controls how it spends its money. Wojcik, it wasn't even an issue in the case and it was a trial.

The Court made the determination, and as an aside and it is not decisive in the case, it is only the dicta that they tossed in, the Court in Wojcik says, you're right, we don't have -- the trial court does not have the jurisdiction to do that at the end of a trial. This was an agreement between the parties.

Wojcik was a trial. It wasn't decided on any of those factors that counsel has mentioned. It's, again, dicta. This was an agreement and it stands.

THE COURT: Okay. Thank you.

MR. SCOTT: Can I just respond quickly, Judge?

THE COURT: Very quickly.

MR. SCOTT: An agreed order entered is nonetheless void. City of Marseilles versus Radke, R-a-d-k-e.

THE COURT: This I have already addressed, so -- all right. I am ready to rule.

MR. SCOTT: Okay. Very well.

THE COURT: Husband's motion to dismiss that we have previously talked about under 2-619 for lack of subject matter jurisdiction was already denied.

Husband now raises in his response to the

petition for rule to show cause as an affirmative matter that this Court lacks subject matter jurisdiction over Army disability retirement pay and veteran's disability pay. And that lack of subject matter jurisdiction cannot be waived.

First of all, the Court points out that the Court has subject matter jurisdiction over the dissolution proceedings and has subject matter jurisdiction over any subsequent actions necessary for enforcement of the Court's orders.

In this case, we're dealing with a marital settlement agreement. The Court does not disagree with husband that it would not have jurisdiction to order, for example, a division of federal disability benefits.

However, as in this case, the Court clearly has jurisdiction to enforce a binding agreement of the parties.

The Court here is not and did not divide the benefits. The parties did that. And the issue before the Court now is simply whether the parties have lived up to that agreement. The Court clearly has both subject matter and personal jurisdiction to adjudicate that question.

Husband cites Adamson in support of his position. And, frankly, in reviewing Adamson, it appears to more negate rather than support his contention that the Court lacks subject matter jurisdiction to enforce the terms of his own agreement.

The Court notes that Adamson refers to the following: "The Court recognizes a statutory bias in favor of allowing parties to craft their own resolution of disputed issues and that bias should apply with equal force whether the disputes arise before dissolution or as part of a later post-decree enforcement action." That's what we have here in this Court's opinion.

The rationale is quite simply that the parties were in the best position to evaluate their own circumstances and should be allowed to resolve their own disputes by agreement even if the trial court would not or could not order that resolution.

For the record, Adamson deals with a maintenance modification where the parties' agreement went beyond the statutory limitations and called for continued maintenance payments even after the wife had remarried.

Clearly, the Court could not have ordered this term. However, nothing prevented the parties from agreeing to do so. Parties to a dissolution action can waive statutory restrictions. We will not allow the petitioner in this case to challenge this trial court's authority to order that to which he agreed.

Again, I think the clear issue here, at least in my mind, is this was an agreement of the parties. And I hear what you're saying, which is that you cannot -- even if it is an agreed order, if there is no subject matter jurisdiction, it is a void order, that is your client's position, I understand that, but I don't find that to be the case here.

I think this was part and parcel of a larger settlement agreement between the parties. The Court did not order the division of these assets or of these federal benefits. The Court is not now ordering any modification to that. This is just whether or not the parties are living up to the terms of their own agreement.

So once again, the Court finds that Mr. Tronsrue does, in fact, stand in indirect civil contempt of court for failure to comply with the

judgment -- the terms of the judgment for dissolution of marriage, and that Mr. Tronsrue has not set forth any compelling cause or justification therefore.

Now, can we talk about a purge, Mr. Boyd?

MR. SCOTT: Thank you, Judge, for --

THE COURT: Thank you, Mr. Scott.

MR. SCOTT: You know, you have to wait.

MR. BOYD: For you to say thank you?

MR. SCOTT: Be patient, please.

MR. BOYD: She was looking at me and talking to me, so I thought it was my turn.

THE COURT: I am. Purge?

MR. BOYD: Judge, it has to be kind of in two steps. I think the first is he has to provide us the information that we've been seeking as to how much he has been paid, or at least what he is being paid now and we will just add it all together. That doesn't seem to be fairest way to do it, but if he would just let us know how much money he has received over the years, step one.

Step two, then, is a calculation of what the 18.6 percent, whatever the number is, arises to, and then subtract the payments that he has actually made.

THE COURT: Okay. So you're asking the Court, then, the purge would be that he is to turn over all of his income -- proof of income for how long?

MR. BOYD: Going back to the date of the judgment.

THE COURT: Okay. So when was the judgment entered?

MR. BOYD: 2000 --

MR. SCOTT: No, 1992.

THE COURT: Are you kidding? Are we even going to be able to get those records?

MR. BOYD: The government has them. He just has to sign the release in order to get them. They wouldn't give them to her.

THE WITNESS: And I was an Army officer for eight years, so --

MR. BOYD: Stop, stop, stop, fine.

THE WITNESS: No, but I was.

MR. BOYD: Stop.

THE WITNESS: Sorry. That is why this is --

MR. BOYD: Stop.

THE WITNESS: Okay.

THE COURT: Yes.

MR. BOYD: So he can get the information. Once

he provides it to me, then we can do some calculations. And then the second part he has to pay her the money. Two-count purge.

THE COURT: Right. Okay. So be it. So he is ordered to turn over proof of his income at least from the federal government for the period from 1993 onward?

MR. SCOTT: July 6th, 1992, is the date of the entry of the judgment.

THE COURT: All right. If we can get that, then we can come back, I would say, and work on a payment plan.

MR. BOYD: Or payment, yes.

THE COURT: Yes. So he is to turn over that information 45 days, one week?

MR. BOYD: Given the fact that there are -- ordinarily I would say give him plenty of time. However, our petition has been pending for well over a year. At some point he should have been looking into simply providing the information. Whether he thought the Court had jurisdiction or not, to just to provide us with the information, so three weeks.

THE COURT: I am going to give him 45 days, Mr. Boyd, only because we're still dealing with the

THE CLERK: In Re the Marriage of Tronsrue, Case Number 1990 D 1150.

THE COURT: Okay. Good morning again to everybody. Everyone is present who was here when we briefly adjourned.

Mr. Scott, did you have enough time?

MR. SCOTT: Yes, Judge. I'm sorry. Mr. Tronsrue and I have discussed the matter and Mr. Tronsrue is okay with the Court entering an order for the payment of the full amount. He would like to have 45 days to do that, so that he can, you know, have accessibility to some funds which are illiquid.

THE COURT: Okay. Mr. Scott, thank you.

Understanding the -- well, I don't know. Let me -- is there any more further input on that issue, Mr. Boyd?

MR. BOYD: No.

THE COURT: Mr. Scott?

MR. SCOTT: No.

THE COURT: Let me first address the payment issue. I appreciate Mr. Boyd's position. I think it's a reasonable one. And when I heard the request for 30 days, which I find to be reasonable and appropriate, my thought was, given the amount of money here, I think

60 days may be appropriate.

Mr. Scott, I know you indicated 45 days. I'm going to grant your client 60 days, and I think that's -- I think that's appropriate, understanding the amount and the logistics of getting that amount together.

So the Court will rule, based upon the circumstances, that the purge will be set for payment of the $32,980.86 within 60 days of today's date.

And I'll -- the second issue is the one of interest. In considering that issue and hearing, I think, the thoughtful argument of both sides, I think there's credible arguments on both sides here.

And Mr. Boyd's argument that there's a fairness issue, there's a -- this is a contempt proceeding. I'm going to put aside the issue of when the enforcement was initiated. I don't know that that -- it doesn't appear to be any, let's say, any fault with the timeliness of the enforcement, at least that I can understand.

And I also understand Mr. Tronsrue's position that perhaps it was his understanding that he did not owe the money for reasons that have already been decided, but -- so I understand those issues as well. So I don't -- the timeliness of the -- or the timing, I

should say, of the enforcement proceedings here, I don't find relevant.

But I do understand the fairness. I understand the concept of the use of the money, that there is compensation that ought to be provided and ought to be assessed. So I understand that argument.

I also understand the contractual argument, which I think both attorneys have acknowledged, that this is a contract that's reduced to a judgment, so it's, I guess, in some sense, a hybrid, but it's largely governed by the contract and what are the provisions of this contract/judgment.

And I think, as was indicated, there was provided in that contract costs, expenses, and the like, and those can certainly be recovered separately and it looks like those were provided in the contract. But also what I'm hearing is that essentially the contract was silent as to whether or not there would be interest on any failure to pay any amounts under the contract or the provisions of the marital settlement agreement reduced to a judgment.

So I'm focusing on that essentially because I think that is what would govern here. That is the appropriate focus. Now, Mr. Boyd, however, makes a

reasonable argument that perhaps when the contract is silent, there may be legal remedies that can be invoked even if a contract is silent just by operation of law, and I think that's reasonable.

And the statute that's cited here by Mr. Boyd, the 815 ILCS 205/2 I believe it is, the Court had a chance to review that just as we briefly adjourned. And I think it's a reasonable argument. The question is, in the Court's mind, is does it apply here. And I note that the language of that first sentence of the statute says, creditors shall be allowed to receive the interest, and then it proceeds to describe the categories of circumstances where that interest would be allowed.

And based on my reading of it, and it appears to be -- the last semicolon phrasing of that first sentence that applies here and that is on money -- shall be allowed on money withheld by an unreasonable and vexatious delay of payment. I understand there may be a disagreement about whether or not there is an unreasonable or vexatious delay of payment here, but I think based upon an inherent -- with a contempt finding is that that would apply to a contempt finding.

But then I read the second sentence, and the

sentence says, in absence of an agreement between the creditor and the debtor governing the interest, upon 30 days written notice to the debtor, the assignee, or the agent of the creditor may charge and collect interest as provided in the section.

And I don't know, I have not heard that there has been a written notice provided to the debtor in this case. Now, I understand it may be because there -- it wasn't known and I understand all that, but I think that would be a requirement. And without proof of that, I don't think the statute would apply. And I think the intent of the statute is that there has to be a demand, a written demand under the statute, and invoking the statute, giving the other side notice that that interest is in play.

So ultimately, I understand the reference to the statute or the argument under the statute, but I don't think that the components of the statute and the requirements of the statute have been met in terms of providing a written notice under the statute, or at least so far as I know. At least I haven't been presented with any indication there was written notice specifically referencing the statute and demanding that interest would be requested and invoked by the

creditor.

So with that, the Court would find that interest would not apply in this circumstance under the principles of contract and under the Court's interpretation of the statute, though I find credible arguments on both sides.

Okay. We need a -- anything further from either side?

MR. SCOTT: I don't believe so.

THE COURT: Okay. I didn't know whether we needed a status date perhaps.

MR. SCOTT: I think so.

THE COURT: To ensure compliance.

MR. BOYD: And, Judge, I don't think I need leave to file a petition for attorneys' fees, but because of the finding of contempt -- whether we put it in there or not.

THE COURT: Sure. If we give it a 60-day date, are you intending to file -- that gives you a chance to determine whether you wish to file that.

MR. BOYD: It will be filed.

THE COURT: Okay. Very good. And Mr. Scott, is that okay?

MR. SCOTT: I don't think I can stop him.

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DUPAGE COUNTY, ILLINOIS

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Plaintiff/Petitioner

v.

GEORGE TRONSRUE
Defendant/Respondent

Reviewing Court No: 3-22-0294
Circuit Court/Agency No: 1990D001150
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Illinois Official Reports

Appellate Court

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

Appellate Court Caption	*In re* MARRIAGE OF ELSA TRONSRUE, n/k/a Elsa Toledo, Petitioner-Appellee, and GEORGE TRONSRUE, Respondent-Appellant.
District & No.	Third District No. 3-22-0125
Filed	March 7, 2024
Decision Under Review	Appeal from the Circuit Court of Du Page County, No. 90-D-1150; the Hon. Alexander F. McGimpsey III, Judge, presiding.
Judgment	Affirmed.
Counsel on Appeal	Michael G. DiDomenico and Sean M. Hamann, of Lake Toback DiDomenico, of Chicago, for appellant. Robert D. Boyd, of The Stogsdill Law Firm, P.C., of Wheaton, for appellee.
Panel	PRESIDING JUSTICE McDADE delivered the judgment of the court, with opinion. Justice Holdridge concurred in the judgment and opinion. Justice Albrecht dissented, with opinion.

OPINION

¶ 1 In 1990, the petitioner, Elsa Tronsrue, filed for a dissolution of her marriage to the respondent, George Tronsrue. The dissolution was finalized in 1992, and the order included an agreement by the parties that Elsa would receive monthly payments equal to a percentage of George's Army disability retirement pay and Veterans Administration disability benefits. Twenty-seven years later, in 2019, George petitioned the circuit court to terminate the monthly payments, alleging that the order was void because the court lacked jurisdiction in 1992 to divide his federal benefits. The court granted Elsa's motion to dismiss George's petition. On appeal, George argues that the court erred when it granted Elsa's motion to dismiss. We affirm.

¶ 2 I. BACKGROUND

¶ 3 Elsa and George married in 1978. Elsa filed for divorce in 1990. The circuit court's judgment for dissolution of marriage was entered in July 1992 and incorporated the parties' marital settlement agreement, which, among other things, addressed George's Army disability retirement pay and his Veterans Administration (VA) disability benefits, both of which he began to draw during the parties' marriage. In part, that section of the agreement stated:

> "The Parties agree that based upon the Court's ruling that 37.2% of Husband's Army Disability Retirement pay and V.A. disability pension is marital that Wife shall receive an amount equal to 18.6% of Husband's Army Disability Retirement pay and 18.6% of Husband's V.A. disability pension payable to Wife pursuant to the applicable sections of the Uniformed Services Former Spouses Protection Act. If for any reason the United States Army and the V.A. will not withhold the appropriate amounts and send them directly to Wife then Husband shall pay directly to Wife 18.6% of his Army Disability Retirement pay and 18.6% of his V.A. Disability Pension each and every month upon entry of Judgment For Dissolution for as long as he receives said pay."

George did not timely appeal any issue regarding the order of dissolution.

¶ 4 In 2019, George filed a petition to modify or terminate the monthly payments. In part, the petition alleged that George suffered a line of duty accident in 1983 and that the Army's medical review board determined him to be unfit for active duty. He was placed on temporary disability retirement until 1985, when the medical review board found he was 60% disabled and therefore ordered his permanent disability retirement. He noted that since 1984, he had also been receiving VA disability benefits after being "awarded a 40% VA Disability rating." Then, citing two federal cases and one Illinois Appellate Court case from the Second District, George's petition alleged that the circuit court "did not have jurisdiction to order the division" of his federal benefits.

¶ 5 In response, Elsa filed a motion to dismiss, alleging in part that George's petition was an untimely collateral attack on the 1992 judgment. She also filed a petition for adjudication of indirect civil contempt, in which she alleged that George never adjusted his monthly payments to her despite his Army disability retirement pay and VA disability benefits increasing over time.

¶ 6 The circuit court held a hearing on Elsa's motion to dismiss on January 6, 2020. During argument, counsel for George asserted that the court had jurisdiction to modify the 1992 order

under section 510(b) of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/510(b) (West 2018)). In part, counsel for George stated:

> "[Section] 510(b) says that the provisions as to property distribution may not be revoked or modified unless the Court finds the existence of conditions that justify the reopening of a judgment under the laws of this state. And our position is, is that, inasmuch as our allegations are that there is a lack of subject matter jurisdiction, that this Court doesn't have to reopen the judgment, this Court can just find and modify or terminate the judgment with respect to those things over which the Court, at the entry of judgment for dissolution of marriage, would do sometime ago, never had the jurisdiction to do anyway."

The court and attorneys then began to discuss whether the provision regarding George's disability retirement pay in the 1992 order was via agreement of the parties or via a specific ruling of the court that divided military benefits. However, nothing was resolved on the record because the court and the attorneys continued the discussion in chambers, off the record.

¶ 7 The circuit court issued its written order the same day as the hearing. In relevant part, the order stated "[t]hat for the reasons stated by the Court, the Petitioner's Motion to Strike and Dismiss Respondent's Amended Petition to Modify or Terminate Payments Made Pursuant to Judgment for Dissolution of Marriage Entered On July 6, 1992, is granted." Thus, the record does not indicate why the circuit court granted Elsa's motion to dismiss George's petition.

¶ 8 George filed an appeal from the circuit court's dismissal order. Subsequently, the circuit court held a hearing on Elsa's petition for adjudication of indirect civil contempt, which resulted in the court entering a contempt order against George. George filed a separate appeal from that order in appeal No. 3-22-0294.

¶ 9 II. ANALYSIS

¶ 10 Taken directly from George's brief, the sole question presented for review in this case is:

> "Whether the circuit court erred when it enforced a portion of the Tronsrue marital settlement agreement which purported to divide George's Army and VA disability benefits *where the court lacked subject matter jurisdiction to do so at the time of the parties' divorce, rendering that portion of the agreement void*." (Emphasis added.)

George then phrases his sole argument as follows: "The portion of the Tronsrue marital settlement agreement purporting to divide George's federal military disability benefits is void and unenforceable." His entire argument is based on attacking the circuit court's subject-matter jurisdiction *in 1992*.

¶ 11 This appeal involves the circuit court's grant of Elsa's motion to dismiss. We review a circuit court's decision to dismiss a case *de novo*. *Bouton v. Bailie*, 2014 IL App (3d) 130406, ¶ 7.

¶ 12 It is critical in this case to understand the following regarding how a party can challenge dissolution orders of the circuit court:

> "Although a court clearly retains jurisdiction to *enforce* its judgments indefinitely (*Waggoner v. Waggoner* (1979), 78 Ill. 2d 50, 53), it loses jurisdiction *over a matter* once 30 days have passed after the entry of a final and appealable order. (*Northern Illinois Gas Co. v. Midwest Mole, Inc.* (1990), 199 Ill. App. 3d 109, 115.) Provisions in a judgment of dissolution relating to maintenance, support and property disposition

may be modified in some circumstances, however, pursuant to section 510 of the Act." (Emphases added.) *In re Marriage of Hubbard*, 215 Ill. App. 3d 113, 116 (1991).

¶ 13 The painfully obvious reason why George has phrased his argument in terms of subject-matter jurisdiction is that an order that is beyond the timeline of a direct appeal or a section 2-1401 petition (see 735 ILCS 5/2-1401 (West 2018)) cannot be assailed *unless it is void*. There is no ambiguity in Illinois regarding the ways in which a court order is void. "Judgments entered in a civil proceeding may be collaterally attacked as void only where there is a total want of jurisdiction in the court which entered the judgment, either as to the subject matter or as to the parties." *Johnston v. City of Bloomington*, 77 Ill. 2d 108, 112 (1979). While our supreme court has recognized that a voidness challenge can also be "based on a facially unconstitutional statute that is void *ab initio*" (*People v. Thompson*, 2015 IL 118151, ¶ 32), that exception is not relevant in this case. Further, George obviously cannot attack the 1992 order on the basis of personal jurisdiction because the parties were properly before the court. Thus, he is limited to arguing that the 1992 order is void due to a lack of subject-matter jurisdiction.

¶ 14 Jurisdiction forms the entire basis of this appeal, not only in the principles guiding appellate review of the circuit court's order, but also in the specific argument posited by George. Whether an order is void is entirely a question of jurisdiction. *Johnston*, 77 Ill. 2d at 112.

¶ 15 George's specific subject-matter jurisdiction argument reflects a fundamental misunderstanding of the concept. "Simply stated, 'subject matter jurisdiction' refers to the power of a court to hear and determine cases of the *general class* to which the proceeding in question belongs." (Emphasis added.) *Belleville Toyota, Inc. v. Toyota Motor Sales, U.S.A., Inc.*, 199 Ill. 2d 325, 334 (2002). With one exception[1] that is not relevant in this case, subject-matter jurisdiction originates from section 9 of article VI of the Illinois Constitution (Ill. Const. 1970, art. VI, § 9), which grants circuit courts subject-matter jurisdiction over "justiciable matters." *In re M.W.*, 232 Ill. 2d 408, 424 (2009). "Generally, a 'justiciable matter' is a controversy appropriate for review by the court, in that it is definite and concrete, as opposed to hypothetical or moot, touching upon the legal relations of parties having adverse legal interests." *Belleville Toyota*, 199 Ill. 2d at 335.

¶ 16 It is beyond dispute that dissolution of marriage actions present justiciable matters. See *id.*; see also, *e.g.*, *In re Marriage of Panozzo*, 93 Ill. App. 3d 1085, 1088 (1981) (holding that "[t]he issue of dissolution of marriage is justiciable so that the circuit court had jurisdiction over the subject matter of the judgment"). In this case, Elsa filed a petition for dissolution of marriage with the circuit court in 1990. Therefore, the circuit court had subject-matter jurisdiction in the case. See *Belleville Toyota*, 199 Ill. 2d at 335. Accordingly, it is indisputable that the 1992 order is not void. *Johnston*, 77 Ill. 2d at 112; see *Steinbrecher v. Steinbrecher*, 197 Ill. 2d 514, 531 (2001) (holding that when a circuit court has personal and subject-matter jurisdiction in a case, the resulting judgment cannot be void, even if the court failed to strictly follow statutory requirements).

¶ 17 In sum, we emphasize the following points. First, the circuit court had both personal and subject-matter jurisdiction in 1990-92 to enter the order it did, and the order, therefore, is not

[1]The exception not relevant here is the circuit court's power to review the actions of administrative agencies, which derives from statute rather than the constitution. *In re M.W.*, 232 Ill. 2d 408, 424 (2009).

void. Second, the 1992 order was final and appealable, but George did not appeal it. Accordingly, at the end of 30 days, the circuit court lost jurisdiction to ever revisit the *merits* of the order, and George lost all rights to challenge its *merits*. Third, the circuit court did retain, and therefore had, jurisdiction in 2020-22 to modify/enforce the orders it had entered, including the 1992 order, if modification was warranted. Fourth, to obtain modification at this late stage, George had to show that the 1992 order could be modified pursuant to section 510 of the Act or that it was void. He did not do so. Thus, clearly *under state law*, the 1992 judgment cannot be reopened. The circuit court therefore *had* to enforce its 1992 order in its 2022 ruling, *even if* the 1992 order were somehow erroneous. See, *e.g.*, *In re Marriage of Betts*, 200 Ill. App. 3d 26, 62 (1990) (holding that "even an erroneous court order must be obeyed until it is reversed or vacated"); *Welch v. City of Evanston*, 181 Ill. App. 3d 49, 54 (1989) (acknowledging that even if a court order is erroneous, the parties are legally obligated to follow it unless the order itself is reversed and noting that "[f]or this court to rule otherwise would completely undermine the judicial system"); *Foster v. Foster*, 983 N.W.2d 373, 382-84 (Mich. 2022) (holding that because a judgment is void only if it is entered without personal or subject-matter jurisdiction, even if a trial court's dissolution order conflicts with federal law, that fact by itself would not render the order void).

¶ 18 Moreover, to the extent that George actually argues that the 1992 order was void because it was entered without statutory authority, we hold that his argument is legally incorrect. Prior to 1964, the legislature possessed the power to statutorily define the circuit court's jurisdiction. See *M.W.*, 232 Ill. 2d at 425. However, with the 1964 amendments to the judicial article of the 1870 Constitution, that power was limited to administrative review cases. *Id.* The abandonment of the "inherent power" basis for jurisdiction was best described by our supreme court in *LVNV Funding, LLC v. Trice*, 2015 IL 116129, ¶¶ 27-32:

> "As this court has held, whether a judgment is void or voidable presents a question of jurisdiction. *In re Marriage of Mitchell*, 181 Ill. 2d 169, 174 (1998). 'If jurisdiction is lacking, any subsequent judgment of the court is rendered void and may be attacked collaterally.' *Id.* A voidable judgment, on the other hand, is an erroneous judgment entered by a court that possesses jurisdiction. *Id.*
>
> In holding that the circuit court's January 15, 2009, judgment would be void if LVNV lacked a debt collection license, the appellate court in this case appeared to rely on the definition of jurisdiction as the ' "inherent power" ' to enter the judgment involved. 2011 IL App (1st) 092773, ¶ 13 (quoting [*Ford Motor Credit Co. v. Sperry*, 214 Ill. 2d 371, 379-80 (2005))]). Applying that definition here, the appellate court reasoned that, if a debt collection agency does not have the appropriate license, then the circuit court lacks the inherent power or 'authority' to entertain a debt collection lawsuit by that agency. *Id.* ¶ 19. Any judgment entered by the circuit court in the lawsuit would therefore be void for lack of jurisdiction and could be attacked in a collateral proceeding on that basis.
>
> The problem with this reasoning is that the concept of 'inherent power' relied upon by the appellate court was rejected by this court in *Steinbrecher v. Steinbrecher*, 197 Ill. 2d 514 (2001). A lack of 'inherent power' refers to the idea that if a certain statutory requirement or prerequisite—such as obtaining a debt collection license—is not satisfied, then the circuit court loses 'power' or jurisdiction to consider the cause of action at issue. In other words, the circuit court's jurisdiction depends on whether the

court properly follows certain statutory requirements. *Steinbrecher* concluded that this idea of jurisdiction is at odds with the grant of jurisdiction given to the circuit courts under our state constitution.

Steinbrecher noted that a 1964 constitutional amendment significantly altered the basis of circuit court jurisdiction, granting circuit courts 'original jurisdiction of all justiciable matters, and such powers of review of administrative action as may be provided by law.' Ill. Const. 1870, art. VI (amended 1964), § 9. The current Illinois Constitution, adopted in 1970, retained this amendment and provides that 'Circuit Courts shall have original jurisdiction of all justiciable matters' and that 'Circuit Courts shall have such power to review administrative action as provided by law.' Ill. Const. 1970, art. VI, § 9. *Steinbrecher* reasoned that, because circuit court jurisdiction is granted by the constitution, it cannot be the case that the failure to satisfy a certain statutory requirement or prerequisite can deprive the circuit court of its 'power' or jurisdiction to hear a cause of action. *Steinbrecher*, 197 Ill. 2d at 529-32.

In so holding, *Steinbrecher* emphasized the difference between an administrative agency and a circuit court. An administrative agency, *Steinbrecher* observed, is a purely statutory creature and is powerless to act unless statutory authority exists. *Id.* at 530 (citing *City of Chicago v. Fair Employment Practices Comm'n*, 65 Ill. 2d 108, 112 (1976)). A circuit court, on the other hand, 'is a court of general jurisdiction, which need not look to the statute for its jurisdictional authority.' *Id.* Thus, *Steinbrecher* concluded that the ' "inherent power" requirement applies to courts of limited jurisdiction and administrative agencies' but *not* to circuit courts. *Id.*

As Steinbrecher makes clear, following the 1964 constitutional amendment and the adoption of the 1970 Constitution, whether a judgment is void in a civil lawsuit that does not involve an administrative tribunal or administrative review depends solely on whether the circuit court which entered the challenged judgment possessed jurisdiction over the parties and the subject matter. 'Inherent power' as a separate or third type of jurisdiction applies only to courts of limited jurisdiction or in administrative matters. It has no place in civil actions in the circuit courts, since these courts are granted general jurisdictional authority by the constitution." (Emphasis added and in original.)

¶ 19 Any attempt by George to claim that the circuit court lacked the authority to incorporate the parties' agreement on his disability retirement pay into the 1992 dissolution order is nothing more than an attempt to resurrect the long-abandoned "inherent power" theory of jurisdiction. Thus, to the extent he tries to make such a claim, we reject it.

¶ 20 Because the circuit court in this case had both personal and subject-matter jurisdiction in the dissolution proceeding and because there is no facially unconstitutional statute at issue here, George's voidness challenge fails and cannot serve as a basis for reversing the circuit court's judgment. See, *e.g.*, *In re Marriage of Herrera*, 2021 IL App (1st) 200850, ¶ 37 (holding that "[o]nce a court has acquired jurisdiction, an order will not be rendered void merely because of an error or impropriety in the issuing court's determination of the law"). Accordingly, we hold that the circuit court did not err when it granted Elsa's motion to dismiss.

¶ 21 III. CONCLUSION

¶ 22 The judgment of the circuit court of Du Page County is affirmed.

¶ 23 Affirmed.

¶ 24 JUSTICE ALBRECHT, dissenting:

¶ 25 I respectfully dissent from the majority's ruling. The issue here is not whether the court had subject matter jurisdiction over the dissolution case in order to enter the judgment, but whether the court now has the power to enforce a marriage settlement agreement that contains a provision prohibited under federal law. I would hold that it does not have such authority and would therefore reverse the court's ruling.

¶ 26 It is well established that, under the supremacy clause, federal law preempts conflicting state law, nullifying it to the extent that it actually conflicts with the federal law. U.S. Const., art. VI; *In re Marriage of Hulstrom*, 342 Ill. App. 3d 262, 266 (2003). It is also settled that military disability benefits may not be considered marital assets by the court in a dissolution proceeding. *In re Marriage of Wojcik*, 362 Ill. App. 3d 144, 159 (2005). Therefore, the start of our inquiry should begin with whether the supremacy clause of the United States Constitution preempts a division of George's military disability benefits by way of a marital settlement agreement. Section 5301(a)(1) of the Veterans Benefits Act of 2003 (Veterans Benefits Act) provides that:

> "Payments of benefits due or to become due under any law administered by the Secretary shall not be assignable except to the extent specifically authorized by law, and such payments made to, or on account of, a beneficiary shall be exempt from taxation, shall be exempt from the claim of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary." 38 U.S.C. § 5301(a)(1) (2018).

¶ 27 Section 5301(a)(3)(A) later added the clarification that "in any case where a beneficiary entitled to compensation *** enters into an agreement with another person under which agreement such other person acquires for consideration the right to receive such benefit *** such agreement shall be deemed to be an assignment and is prohibited." *Id.* § 5301(a)(3)(A). Additionally, while the parties' marital settlement agreement refers to the applicability of the Uniformed Services Former Spouses' Protection Act (10 U.S.C. § 1401 *et seq.* (1988)), the act applies to the classification of retirement payments as marital property, not the disability payments at issue here. See, *e.g.*, *Clauson v. Clauson*, 831 P.2d 1257, 1264 (Alaska 1992) (holding disability benefits should not be treated as marital property subject to division upon dissolution); *In re Marriage of Franz*, 831 P.2d 917, 918 (Colo. App. 1992) (a veteran's disability retirement pay is precluded from being divided as marital property). Thus, Congress clearly contemplated the circumstance where a beneficiary may enter into an agreement that would require payment of his military disability benefit and chose to prohibit the act. Such is the case here, where George agreed to pay Elsa a portion of his disability benefits.

¶ 28 Illinois courts have already analyzed the supremacy clause as it pertains to enforcing a marital settlement agreement that divides a spouse's social security benefits in contradiction to federal law. See *Hulstrom*, 342 Ill. App. 3d at 266. Section 407(a) of the Social Security Act, as amended (42 U.S.C. § 407(a) (2000)), like the Veterans Benefits Act, contains an anti-

assignment provision that conflicted with a provision of the parties' settlement agreement in their dissolution proceeding. See *Hulstrom*, 342 Ill. App. 3d at 266. In determining whether the trial court had jurisdiction to enforce the settlement agreement, the court in *Hulstrom* found the principles of the Restatement (Second) of Judgments § 12 (1982) instructive. *Hulstrom*, 342 Ill. App. 3d at 271. The Restatement provided that

> " '[w]hen a court has rendered a judgment in a contested action, the judgment precludes the parties from litigating the question of the court's subject matter jurisdiction in subsequent litigation except if: *** (2) Allowing the judgment to stand would substantially infringe the authority of another tribunal or agency of government.' " (Emphasis omitted.) *Id.* (quoting Restatement (Second) of Judgments § 12 (1982)).

The court followed this proposition to conclude that the provision in the settlement agreement that divided the social security benefits substantially infringed on federal law; thus, the trial court did not have jurisdiction to enforce that provision of the agreement. *Id.* at 272.

¶ 29 Several courts have addressed similar situations relating to the Veterans Benefits Act and other statutes with identical provisions. See, *e.g.*, *Wissner v. Wissner*, 338 U.S. 655, 660-61 (1950) (the National Service Life Insurance Act of 1940 (currently codified at 38 U.S.C. § 1901 *et seq.* (2018)) precluded state law requiring division under community property laws); *Hisquierdo v. Hisquierdo*, 439 U.S. 572, 584-87 (1979) (non-assignability of retirement benefits under Railroad Retirement Act of 1974 (Railroad Retirement Act) (45 U.S.C. § 231 *et seq.* (1976)) precludes community property interest in spouse); *Ex parte Johnson*, 591 S.W.2d 453, 456 (Tex. 1979) (disability benefits from the Veterans Administration may not be considered in spousal awards); *Boulter v. Boulter*, 930 P.2d 112, 114 (Nev. 1997) (*per curiam*) (property settlement agreement created an invalid contract transferring retirement benefits to spouse when the federal Social Security Act provision barred such transfer, and the court's divorce decree created state action preempted by federal law). Illinois courts have also provided authority to aid in our analysis. See *Hulstrom*, 342 Ill. App. 3d at 272; *Wojcik*, 362 Ill. App. 3d at 159. I find these authorities persuasive.

¶ 30 Moreover, the court in *Wojcik*, 362 Ill. App. 3d 144, furthered the decision made by the United States Supreme Court regarding the division of benefits under the Veterans Benefits Act through a dissolution proceeding in the case of *Mansell v. Mansell*, 490 U.S. 581 (1989). In *Mansell*, the Court implicitly found that state courts did not have the power to divide military disability benefits upon dissolution of marriage due to federal preemption. *Id.* at 594-95. This principle was followed in *Wojcik*, where the court held that the supremacy clause precluded Illinois courts from dividing Veteran's Administration disability benefits through dissolution proceedings. *Wojcik*, 362 Ill. App. 3d at 159. The court further held that section 5301(a)(1) of the Veterans Benefits Act is indistinguishable from the anti-assignment provisions in the Railroad Retirement Act and the Social Security Act, and because the Supreme Court already determined these statutes preempted state law, the Veterans Benefits Act must also. *Id.*

¶ 31 Applying the precedent outlined above, I would decide that the Veterans Benefits Act precludes state courts from treating military disability benefits as assignable property. See *id.* Moreover, state courts are without power to enforce a private agreement, such as a marriage settlement agreement, from dividing such payments when that agreement violates the prohibition against transfer or assignment of benefits. See 38 U.S.C. § 5301(a)(3)(A) (2018); *Hulstrom*, 342 Ill. App. 3d at 266. As in *Hulstrom*, I would find that the court's enforcement of the provision that requires George to divide his military disability benefits with Elsa

" 'substantially infringe[d] the authority of another tribunal or agency of government,' " namely, the federal government. (Emphasis omitted.) 342 Ill. App. 3d at 271 (quoting Restatement (Second) of Judgments § 12 (1982)). The fact that the parties agreed to the contents of the agreement is immaterial; it is the court's actions in enforcing the provision after George filed his petition that is relevant here. See *id.* at 266; *Boulter*, 930 P.2d at 114.

¶ 32 While the circuit court generally had jurisdiction over the parties and the dissolution proceedings, it lacked the authority to incorporate a provision of the settlement agreement into the judgment that is contrary to federal law. Therefore, I would hold that the circuit court erred by enforcing a marital settlement agreement that required George to assign his military disability benefits to Elsa when such an agreement violates section 5301 of the Veterans Benefits Act (38 U.S.C. § 5301(a)(1) (2018)).

2024 IL App (3d) 220294-U

Order filed March 7, 2024

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2024

In re MARRIAGE OF	)	Appeal from the Circuit Court
	)	of the 18th Judicial Circuit,
ELSA TRONSRUE, n/k/a Elsa Toledo	)	Du Page County, Illinois.
	)	
Petitioner-Appellee,	)	
	)	Appeal No. 3-22-0294
and	)	Circuit No. 90-D-1150
	)	
GEORGE TRONSRUE,	)	
	)	The Honorable
Respondent-Appellant.	)	Alexander F. McGimpsey III,
	)	Judge, presiding.

PRESIDING JUSTICE McDADE delivered the judgment of the court.
Justice Holdridge concurred in the judgment.
Justice Albrecht dissented.

ORDER

¶ 1 *Held*: The circuit court did not err when it held the respondent in indirect civil contempt and ordered him to pay contempt-related attorney fees.

¶ 2 In 1990, the petitioner, Elsa Tronsrue, filed for a dissolution of her marriage to the respondent, George Tronsrue. The dissolution was finalized in 1992 and the order included an agreement by the parties that Elsa would receive monthly payments equal to a percentage of

George's Army disability retirement pay and Veterans Administration disability benefits. Twenty-seven years later, in 2019, George petitioned the circuit court to terminate the monthly payments, alleging that the order was void because the court lacked jurisdiction in 1992 to divide his federal benefits. The court granted Elsa's motion to dismiss George's petition. It also found George in indirect civil contempt for failing to comply with the parties' agreement regarding the monthly payments and awarded contempt-related attorney fees. On appeal, George argues that the court erred when it ordered him to pay contempt-related attorney fees. We affirm.

¶ 3 I. BACKGROUND

¶ 4 Elsa and George married in 1978. Elsa filed for divorce in 1990. The circuit court's judgment for dissolution of marriage was entered in July 1992 and incorporated the parties' marital settlement agreement, which, among other things, addressed George's Army disability retirement pay and his Veterans Administration (VA) disability benefits, both of which he began to draw during the parties' marriage. In part, that section of the agreement stated:

> "The Parties agree that based upon the Court's ruling that 37.2% of Husband's Army Disability Retirement pay and V.A. disability pension is marital that Wife shall receive an amount equal to 18.6% of Husband's Army Disability Retirement pay and 18.6% of Husband's V.A. disability pension payable to Wife pursuant to the applicable sections of the Uniformed Services Former Spouses Protection Act. If for any reason the United States Army and the V.A. will not withhold the appropriate amounts and send them directly to Wife then Husband shall pay directly to Wife 18.6% of his Army Disability Retirement pay and 18.6% of his V.A. Disability Pension each and every month upon entry of Judgment For Dissolution for as long as he receives said pay."

George did not timely appeal any issue regarding the order of dissolution.

¶ 5 In 2019, George filed a petition to modify or terminate the monthly payments, alleging that the circuit court "did not have jurisdiction to order the division" of his federal benefits. In response, Elsa filed a motion to dismiss, alleging in part that George's petition was an untimely collateral attack on the 1992 judgment. She also filed a petition for adjudication of indirect civil contempt in which she alleged that George never adjusted his monthly payments to her despite his Army disability retirement pay and Veterans disability benefits increasing over time.

¶ 6 In January 2020, the circuit court entered an order granting Elsa's motion to dismiss. George filed a separate appeal from that order that we addressed in *In re Marriage of Tronsrue*, 2024 IL App (3d) 220125. In that appeal, we rejected George's argument that the 1992 circuit court order was void for a lack of subject-matter jurisdiction. *Id.* ¶ 17.

¶ 7 The circuit court held a hearing on Elsa's petition for adjudication of indirect civil contempt on November 2, 2020, which resulted in the court entering a contempt order against George. Specifically, the court found that George had not complied with the terms of the parties' 1992 agreement. Further, the court ordered that a partial purge would require George to provide documentation of his related financials since July 6, 1992. Documentation was later provided by George.

¶ 8 After the purge amount was set by the court in 2022, Elsa was allowed to file a petition for contempt-related attorney fees. That petition was later granted, and the amount was set at $24,939.

¶ 9 George appealed.

¶ 10 II. ANALYSIS

¶ 11 George's sole argument in this appeal is that the circuit court erred when it ordered him to pay contempt-related attorney fees. He claims that he had a compelling reason not to comply with the 1992 dissolution judgment—namely, that the portion of the judgment related to his Army

disability retirement pay and his VA disability benefits was void. He raises no other challenge to the contempt finding.

¶ 12 We review contempt orders for an abuse of discretion. *Western States Insurance Co. v. O'Hara*, 357 Ill. App. 3d 509, 515 (2005).

¶ 13 In George's related appeal, we held that the 1992 dissolution order was not void. *Tronsrue*, 2024 IL App (3d) 220125, ¶ 17. Because that order was not void, George was obligated to make the payments as directed in the order, and the circuit court found his intentional failure to do so was contempt. Such a finding is consistent with the applicable law and does not constitute an abuse of discretion. Accordingly, we reject George's argument.

¶ 14 III. CONCLUSION

¶ 15 The judgment of the circuit court of Du Page County is affirmed.

¶ 16 Affirmed.

¶ 17 JUSTICE ALBRECHT, dissenting:

¶ 18 I dissented in this appeal's companion case, No. 3-22-0125, and I dissent in this case as well. *In re Marriage of Tronsrue*, 2024 IL App (3d) 220125 (Albrecht, J., dissenting).

¶ 19 For the reasons I set forth in my dissent in No. 3-22-0125, I disagree that the 1992 order was not void. Furthermore, because I would conclude the judgment to be in error, I would also reverse the circuit court's ruling that George was in contempt and its decision to impose fees and costs against him.

¶ 20 The issue of fees and costs hinges entirely on our determination of whether the military disability pay could be divided through the marital settlement agreement. If the provision in the agreement is enforceable, fees and costs must be awarded; however, if the provision is void, George had compelling justification not to follow the order and attorney fees should not be

imposed. See 750 ILCS 5/508(b) (West 2020). Because I would hold that the provision of the marital settlement agreement the court sought to enforce is void, I would also hold that George had a compelling cause or justification in refusing to comply. Therefore, the court erred in awarding attorney fees and costs when George was able to establish just cause.

353 So.3d 549
Court of Civil Appeals of Alabama.

Dwight Alexander WILLIAMS
v.
Tenesha Maria BURKS

2200169
|
November 5, 2021

Synopsis

Background: After the parties divorced, former wife filed a petition to hold former husband in contempt of court based on his failure to pay her an amount equal to 40% of his veteran's disability benefits. The Circuit Court, Coffee County, No. DR-00-144.01, Shannon R. Clark, J., found former husband in contempt of court and entered judgment in favor of wife in the amount of $191,040.14. Former husband appealed.

The Court of Civil Appeals, Edwards, J., held that trial court lacked the authority to award the former wife any portion of former husband's veteran's disability benefits.

Reversed and remanded with instructions.

Appeal from Coffee Circuit Court (DR-00-144.01); Shannon R. Clark, Judge

Attorneys and Law Firms

Nichole Woodburn of Isaak Law Firm, Enterprise, for appellant.

Donna C. Crooks, Daleville, for appellee.

Opinion

EDWARDS, Judge.

Dwight Alexander Williams ("the former husband") appeals from a judgment entered by the Coffee Circuit Court ("the trial court") holding him in contempt of court for failing to pay Tenesha Maria Burks ("the former wife") an amount equal to 40% of his veteran's disability benefits, which the trial court awarded to the former wife in a divorce judgment entered on November 28, 2001.

The parties married on December 27, 1989, and separated in June 1999. After the separation, the former wife moved to South Carolina and the former husband remained in Alabama. In the summer of 2000, the former husband was honorably discharged from the United States Army after almost 18 years of service. Based on ***550** a claim that the former husband filed with the Department of Veterans Affairs ("the VA"), he was awarded "service connected disability benefits" ("the VA disability benefits"). See 38 U.S.C. § 101(16) (defining "service connected"). The VA disability benefits were based on injuries the former husband had suffered to his back and feet, among other injuries, as well as the status of his dependents. His initial combined disability rating from the VA was 50%.

Based on a May 1, 2001, letter to the former husband from the VA, the effective date of his claim for the VA disability benefits was August 1, 2000, at which time he was entitled to $689 per month based on his disabilities and his having three dependent children. The letter stated that there would be a reduction in the amount of VA disability benefits as each child attained 18 years of age and noted that the former husband had failed to provide dependent information as to the former wife.[1] Regarding the latter, the letter stated that no additional benefits could be paid to him based on the former wife's status as a spouse until the former husband provided additional information. The letter also stated that, despite the fact that the former husband was entitled to receive payments beginning September 1, 2000, because he had received $49,809.98 as separation pay from the military, the VA was required to "hold back all of [the former husband's] VA disability [benefits] until this separation amount is paid in full." Per the letter, after that amount had been collected, the former husband would "start receiving [his] full VA disability [benefits]."[2]

At some point in 2000, the former husband filed a complaint in the trial court seeking a divorce from the former wife. After ore tenus proceedings, the trial court entered a divorce judgment on November 28, 2001, that stated, in pertinent part:

> "[The former husband] separated from the U.S. Army on August 31, 2000. ... [H]e received a lump sum separation pay, however, subsequent to this payment was awarded VA disability [benefits] and had to pay this lump sum back at approximately $631.00 per month[3] before he [could] receive the VA disability [benefits]. ...

"....

"10. The [former wife's] request for an award of a portion of [the former husband's] separation pay is denied as the [former husband] is paying this amount back to the government. However, as a part of the property settlement in this divorce, the [former husband] is awarded [sic] to pay to the [former wife] an amount equal to forty percent (40%) of his disability income to begin when he starts to receive said benefits. The [former husband] is further ORDERED, if eligible, to elect Survivor Benefit Plan coverage for the [former wife]. The [former husband] shall name the [former wife], if eligible, as the beneficiary of forty percent (40%) of the monthly payment of his benefits."[4]

***551** (Capitalization in original.) We note that, at $631 per month, the repayment of the former husband's military-separation pay would have taken approximately six and one-half years. The former husband does not dispute that he never paid the former wife any portion of the VA disability benefits, and the former wife testified that she had never received any payments from the VA, although she apparently had attempted to obtain such from the VA.

The former wife remarried in October 2006, and the former husband also remarried at some point. He also worked for a few years but testified that he had not been employed since 2006. The former husband was incarcerated at some point, according to him from 2008 until 2010, and, at one point, his daughter with the former wife received an apportionment of some of the VA disability benefits, which were paid in care of the former wife.

After the entry of the divorce judgment, the former husband apparently received cost-of-living adjustments to the VA disability benefits, which increased the amount of VA disability benefits, and he filed a claim with the VA as to additional disability. On September 24, 2012, the VA sent the former husband a letter indicating that, effective December 1, 2010, the amount of VA disability benefits to which he was entitled had been increased to $2,870 per month based on various unemployability and compensation adjustments, and that, effective December 1, 2011, the amount of VA disability benefits had been increased to $2,972 per month based on another cost-of-living adjustment.[5] The letter noted that the former husband's combined disability rating had increased to 90%. In addition to the adjustments reflected in the September 2012 letter, the former husband continued to receive additional cost-of-living adjustments that increased the amount of the VA disability benefits, generally in December of each year. At trial, the former husband stated that he was receiving $3,500 per month from the VA and $1,400 in Social Security disability payments and that those were his only sources of income.

On June 18, 2018, the former wife, appearing pro se, filed a complaint in the trial court requesting "the 40% of [the former husband's] disability which was granted .... For years I have not been able to receive benefits from the [VA]." The former wife alleged that the former husband had refused to pay her in accordance with the divorce judgment and that she had "ask[ed] the court for help ...." The former husband filed an answer to the former wife's complaint. He alleged that the former wife was "not eligible to receive alimony or military disability benefits under color of law."

After the former husband filed his answer, an attorney entered a notice of appearance for the former wife, and the trial court allowed the former wife to file an amended complaint. The amended complaint alleged that the former wife "was awarded forty percent (40%) of the [former husband's] disability income to begin when he started receiving said benefits and which he has failed and refused to ***552** pay." The former wife requested that the trial court find the former husband in contempt of court and requested such other relief as the trial court deemed appropriate, including payment of all unpaid amounts plus interest, attorney fees, and court costs.

The trial court held ore tenus proceedings on July 8, 2020. At trial, the former wife requested that the trial court determine whether the VA disability benefits awarded to the former wife in the divorce judgment were a property settlement or alimony, noted that the former husband had failed to appeal from the divorce judgment, and requested that a judgment be entered regarding the amount of the former husband's arrearage of the VA disability benefits allegedly owed to the former wife.[6] The former husband contended that the VA disability benefits awarded to the former wife could not be recharacterized as an alimony award because, he said, the VA disability benefits were not associated with any retirement and, "[b]y statute, ... he doesn't have to pay anything that's associated with the VA."

On September 17, 2020, the trial court entered a judgment stating that, pursuant to the divorce judgment, the former husband had been

> "ordered to pay to the [former wife], an amount equal to 40% of his disability income as a property settlement. The [former husband] failed or refused to pay the property settlement, despite having the ability to pay, and is in arrears in the principal sum of $191,040.14 for payments due from December 4, 2001, through July 31, 2020. Therefore, judgement is rendered in favor of the [former wife for such amount] ...."[7]

The trial court's September 2020 judgment further stated that the former husband was in contempt of the divorce judgment and taxed court costs against him. The September 2020 judgment continued:

> "As punishment for [the former husband's] contempt and to coerce his compliance with the order to pay, he is sentenced to serve one day of confinement in the Coffee County Jail, and from day to day thereafter, until the found arrearages are paid in full. Said sentence is SUSPENDED on the condition that the [former husband] pay, along with any current property settlement due, the additional sum of $250 per month toward the total arrearages owed, beginning October 1, 2020, and continuing each month thereafter until the balance is paid in full. Should the [former husband] fail to timely make said payment, [he] shall be arrested by the Sheriff and confined in Jail for the term defined herein."

(Capitalization in original.) The trial court denied all other claims.

The former husband timely filed a postjudgment motion, and, on October 15, 2020, the trial court entered an order denying that motion. On November 27, 2020 ***553** the former husband timely filed a notice of appeal to this court. See Rule 4(a), Ala. R. App. P.; Rule 6(a), Ala. R. Civ. P.

On appeal, the former husband argues that the provisions in the parties' divorce judgment relating to the VA disability benefits were "preempted by federal law" and that those benefits were not "within the [trial] court's authority to award." He contends therefore that the trial court erred by holding in him "in contempt for failing to pay [the former wife] her portion of [the VA disability benefits that] she would otherwise be preempted from being awarded in divorce." See, e.g., Radio Broad. Technicians Loc. Union No. 1264 v. Jemcon Broad. Co., 281 Ala. 515, 522, 205 So. 2d 595, 600 (1967) ("Preemption rests upon the supremacy clause of the Federal Constitution, United States Constitution, Art. VI, Cl. 2, and deprives a state of jurisdiction over matters embraced by a congressional act regardless of whether the state law coincides with, is complementary to, or opposes the federal congressional expression. ... Accordingly, congressional action in the area ... precludes state enforcement of its own legislation in that area, unless Congress has also legislated to allow the states to act in areas where Congress normally would be deemed to have preempted the field."). In support of his argument, the former husband relies on federal statutes addressing the exclusion of a veteran's disability benefits from military-retirement benefits for purposes of property division in a divorce proceeding. See 10 U.S.C. § 1408(a)(4)(A)(iii).[8] The former husband also refers to precedents construing § 1408(a)(4) in the context of military-retirement benefits that were waived for purposes of receiving veteran's disability benefits, relying for the most part on Howell v. Howell, 581 U.S. 214, 137 S. Ct. 1400, 197 L.Ed.2d 781 (2017), and Brown v. Brown, 260 So. 3d 851 (Ala. Civ. App. 2018).

In Howell, John Howell's military-retirement benefits were divided between him and his wife, Sandra Howell, as a part of the division of their community property. As allowed by federal law, John subsequently elected to waive a portion of his military-retirement benefits in order to receive veteran's disability benefits. See Mansell v. Mansell, 490 U.S. 581, 583-84, 109 S.Ct. 2023, 104 L.Ed.2d 675 (1989) (noting that, in the context of military-retirement benefits, "[i]n order to prevent double dipping, a military retiree may receive disability benefits only to the extent that he waives a corresponding amount of his military retirement pay" and that such waivers are common because "disability benefits are exempt from federal, state, and local taxation"). Thereafter, Sandra, who had been awarded 50% of John's military-retirement benefits in the parties' divorce judgment, filed a claim against John seeking indemnification or reimbursement for the loss to her military-retirement-benefits award that was attributable to John's waiver. The Howell Court described the circumstances as follows:

> "In this case a State treated as community property and awarded to a veteran's spouse upon divorce a portion of the veteran's total retirement pay. Long after ***554** the divorce, the veteran waived a share of the retirement pay in order to receive nontaxable disability benefits from the Federal Government instead. Can the State subsequently increase, pro rata, the amount the divorced spouse receives each month from the veteran's retirement pay in order to indemnify the divorced spouse for the loss caused by the veteran's waiver? The question is complicated, but the answer is not. Our cases and the statute make clear that the answer to the indemnification question is 'no.' "

581 U.S. at 216, 137 S. Ct. at 1402.

In rejecting Sandra's argument that the law permitted such indemnification or reimbursement, the Howell Court discussed Mansell as controlling:

> "Major Gerald E. Mansell and his wife had divorced in California. At the time of the divorce, they entered into a 'property settlement which provided, in part, that Major Mansell would pay Mrs. Mansell 50 percent of his total military retirement pay, including that portion of retirement pay waived so that Major Mansell could receive disability benefits.' [Mansell, 490 U.S.] at 586, 109 S. Ct. 2023. The divorce decree incorporated this settlement and permitted the division. Major Mansell later moved to modify the decree so that it would omit the portion of the retirement pay that he had waived. The California courts refused to do so. But this Court reversed. It held that federal law forbade California from treating the waived portion as community property divisible at divorce.
>
> "Justice Thurgood Marshall, writing for the Court, pointed out that federal law, as construed in McCarty [v. McCarty, 453 U.S. 210, 101 S. Ct. 2728, 69 L.Ed.2d 589 (1981)], 'completely pre-empted the application of state community property law to military retirement pay.' 490 U.S. at 588, 109 S. Ct. 2023. He noted that Congress could 'overcome' this pre-emption 'by enacting an affirmative grant of authority giving the States the power to treat military retirement pay as community property.' Ibid. He recognized that Congress, with its new Act[, 10 U.S.C. § 1408], had done that, but only to a limited extent. The Act provided a 'precise and limited' grant of the power to divide federal military retirement pay. Ibid. It did not 'gran[t]' the States 'the authority to treat total retired pay as community property.' Id., at 589, 109 S. Ct. 2023. Rather, Congress excluded from its grant of authority the disability-related waived portion of military retirement pay. Hence, in respect to the waived portion of retirement pay, McCarty, with its rule of federal pre-emption, still applies. Ibid."

581 U.S. at 217–18, 137 S. Ct. at 1403-04. After noting that "state courts have come to different conclusions on the matter" whether an award of military-retirement benefits could be enforced as to the waived portion of those benefits for purposes of the veteran's receipt of disability benefits, 581 U.S. at 218–20, 137 S. Ct. at 1404, the Howell Court stated: "This Court's decision in Mansell determines the outcome here. In Mansell, the Court held that federal law completely pre-empts the States from treating waived military retirement pay as divisible community property." 581 U.S. at 220, 137 S. Ct. at 1405. The Court in Howell continued:

> "We see nothing in this circumstance that makes the reimbursement award to Sandra any the less an award of the portion of military retirement pay that John waived in order to obtain disability benefits. And that is the portion that Congress omitted from [10 U.S.C. § 1408's] definition of 'disposable retired ***555** pay,' namely, the portion that federal law prohibits state courts from awarding to a divorced veteran's former spouse. Mansell, supra, [490 U.S.] at 589, 109 S. Ct. 2023. That the Arizona courts referred to Sandra's interest in the waivable portion as having 'vested' does not help. State courts cannot 'vest' that which (under governing federal law) they lack the authority to give. Cf. 38 U.S.C. § 5301(a)(1) (providing that disability benefits are generally nonassignable). ...
>
> "Neither can the State avoid Mansell by describing the family court order as an order requiring John to 'reimburse' or to 'indemnify' Sandra, rather than an order that divides property. The difference is semantic and nothing more. The principal reason the state courts have given for ordering reimbursement or indemnification is that they wish to restore the amount previously awarded as community property, i.e., to restore that portion of retirement pay lost due to the postdivorce waiver. And we note that here, the amount of indemnification mirrors the waived retirement pay, dollar for dollar. Regardless of their form, such reimbursement and indemnification orders displace the federal rule and stand as an obstacle to the accomplishment and execution of the purposes and objectives of Congress. All such orders are thus pre-empted.
>
> "The basic reasons McCarty [v. McCarty, 453 U.S. 210, 101 S. Ct. 2728, 69 L.Ed.2d 589 (1981),] gave for believing that Congress intended to exempt military retirement pay from state community property laws apply a fortiori to disability pay. See 453 U.S. at 232-235, 101 S.Ct. 2728 (describing the federal interests in attracting and retaining military personnel). And those reasons apply with equal force to a veteran's postdivorce waiver to receive disability benefits to which he or she has become entitled."

581 U.S. at 221–22, 137 S. Ct. at 1406;[9] see also Brown, 260 So. 3d at 856 (stating that "the evidence presented in this case indicates that [Michael L. Brown's temporary-disability-retired-list] pay was disability pay that, under federal law, is not to be considered marital property subject to division" and rejecting Sinead M. Brown's attempt to enforce her property award as against that disability pay via a contempt

proceeding); Ex parte Pummill, 606 S.W.2d 707, 709 (Tex. Civ. App. 1980) ("[T]he trial court was without the power to divide the V.A. disability compensation benefits; and ... so long as they are paid to [the veteran at issue] under existent provisions of the federal law, they can not be reached or affected by decree of that court. Accordingly, the trial court was likewise without power to hold [the veteran at issue] in contempt for failing to comply with the portion of its order requiring payment of half of the benefits to his former wife. (The division of property attempted was not permissible, so that portion of the decree making the award was void. It necessarily follows that the contempt adjudication, attempting to enforce a void decree or provision thereof, would also be void and unenforceable.)").

The present case does not involve military-retirement benefits or the waiver of military-retirement benefits. The ***556** former husband apparently was not qualified for military-retirement benefits when he separated from the military, and he repeatedly testified that the payments he had received from the VA were not for retirement. Instead, the VA disability benefits appear to have been a part of the veteran's benefits governed by 38 U.S.C. § 101 et seq. Specifically, the former husband was receiving payment for service-connected disabilities that were related to his military service. See 38 U.S.C. § 1101 et seq. Nevertheless, based on the discussions regarding the protected status of disability benefits in Howell and Brown and on the Court's references in Howell to the pertinent federal statute as to such benefits, namely, 38 U.S.C. § 5301(a), as hereinafter discussed, it is clear that the trial court lacked the authority to award the former wife any portion of the VA disability benefits. At trial, the former wife essentially conceded that such an award would be legal error.[10] Nevertheless, she contends, as she did at trial, that she was not awarded 40% of the VA disability benefits but, instead, was awarded an amount equal to 40% of the VA disability benefits. We must reject this argument as the type of semantic exercise that has been foreclosed by Howell. See also Mattson v. Mattson, 903 N.W.2d 233, 241 (Minn. Ct. App. 2017) ("[A]s recognized in Howell, state courts may not simply circumvent federal preemption [as to disability compensation] by relying on arguments rooted in semantics. 137 S. Ct. at 1406. To recognize the legitimacy of such an argument would eviscerate federal preemption."); In re Marriage of Pierce, 26 Kan. App. 2d 236, 240, 982 P.2d 995, 998 (1999) ("The trial court in this case cannot order [the veteran at issue] to change the payments back to retirement benefits, and it cannot order him to pay his disability benefits to [his spouse]. We conclude the court may not do indirectly what it cannot do directly."); cf. Ex parte Billeck, 777 So. 2d 105, 109 (Ala. 2000) ("When a trial court makes an alimony award based upon its consideration of the amount of veteran's disability benefits, the trial court essentially is awarding the wife a portion of those veteran's disability benefits; and in doing so the trial court is violating federal law. Mansell, supra, and [10 U.S.C.] § 1408.").[11]

The former wife also argues, as she did at trial, that the former husband's ***557** failure to appeal from the divorce judgment precluded him from challenging the validity of the award of VA disability benefits in the contempt proceeding.[12] We find this argument to be without merit. First, the strong language used by the Court in Howell suggests that the lack of power to award VA disability benefits as part of a property settlement is the type of defect that would make any such award void. 581 U.S. at 221, 137 S. Ct. at 1405 ("State courts cannot 'vest' that which (under governing federal law) they lack the authority to give. Cf. 38 U.S.C. § 5301(a)(1) (providing that disability benefits are generally nonassignable)."); Stone v. Stone, 26 So. 3d 1232, 1238 (Ala. Civ. App. 2009) ("State courts lack the power to treat a military member's VA disability payments as property subject to division in divorce cases."); see also Old Dominion Tel. Co. v. Powers, 140 Ala. 220, 227, 37 So. 195, 197 (1904) ("[T]here can be no contempt in the disobedience of a void order."). Indeed, amidst the various cases from other jurisdictions that the former wife references in her appellate brief is the unreported case of Foster v. Foster (No. 324853, 2018 WL 1436945, Mar. 22, 2018) (Mich. Ct. App. 2018) (not reported in N.W.2d) ("Foster I"), which she fails to note was reversed in part and vacated in part. See Foster v. Foster, 505 Mich. 151, 949 N.W.2d 102 (2020) ("Foster II") (vacating in part and reversing in part Foster I and remanding the case for consideration of whether a consent divorce decree dividing the veteran at issue's disability benefits could be collaterally attacked on jurisdictional grounds). On remand from Foster II, the Michigan Court of Appeals concluded that collateral attack was permissible on jurisdictional grounds associated with federal preemption, see Foster v. Foster (No. 324853, 2020 WL 4382784, July 30, 2020) (Mich. Ct. App. 2020) (not reported in N.W.2d); however, we note that the Michigan Supreme Court has entered an order granting an application for leave to appeal following the decision on remand, see Foster v. Foster, 506 Mich. 1030, 951 N.W.2d 681 (2020). The former wife's reliance on Foster I is therefore unpersuasive.

Second, § 5301(a)(1) states:

> "Payments of benefits due or to become due under any law administered by the Secretary [of Veterans Affairs] shall not be assignable except to the extent specifically authorized by law, and such payments made to, or on account of, a beneficiary shall be exempt from taxation, shall be exempt from the claim of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary."[13]

This language is straightforward and precludes the former wife from enforcing "by ***558** legal or equitable process" her claim to a portion of the VA disability benefits, "either before or after receipt by the [former husband]." That protection extended, and extends, to "[p]ayments of benefits due or to become due." Ex parte Johnson, 591 S.W.2d 453, 454 (Tex. 1979) (holding that a veteran could not be imprisoned for his failure to comply with a divorce decree that required him to deposit one-half of his disability benefits for the benefit of his former wife); cf. Brown, supra. In short, there is no exception to preemption for purposes of an enforcement proceeding; what § 5301 prohibited as to the divorce judgment, it likewise prohibits as to an order purporting to enforce the divorce judgment. See Mattson, 903 N.W.2d at 241 (overruling, in light of Howell, previous precedents that "held that principles of contract and res judicata could render a stipulated decree indemnifying an ex-spouse enforceable, even if it ran afoul of Mansell," and further noting that "Howell effectively overruled cases relying on the sanctity of contract to escape federal preemption").[14]

Based on the foregoing, we pretermit discussion of the remaining issues raised by the former husband. The September 2020 judgment is reversed, and the cause is remanded to the trial court for the entry of a judgment consistent with this opinion.

REVERSED AND REMANDED WITH INSTRUCTIONS.

Thompson, P.J., and Moore, Hanson, and Fridy, JJ., concur.

All Citations

353 So.3d 549

Footnotes

1 The parties were not yet divorced. However, compensation associated with VA disability benefits is reduced upon divorce. See 38 U.S.C. § 5112(b)(2). Reductions also are made based on changes in a veteran's physical condition or employability. See § 5112(b)(6).

2 The former husband also testified that he had to repay an approximately $13,000 deficiency that was associated with a VA mortgage that was foreclosed and that repayment had also delayed his receipt of payments of the VA disability benefits. However, the trial court sustained the former wife's objection to that testimony as irrelevant.

3 It is unclear why the judgment reflects a different monthly repayment amount than that indicated in the May 2001 letter from the VA.

4 The record from the divorce proceedings is not before us. On December 23, 2020, the former wife filed a motion with the trial court requesting that the record in the present case be supplemented with the transcripts from the divorce proceedings. However, the trial court denied the former wife's motion to supplement the record, noting that the transcripts were not offered into evidence or considered by the trial court in the contempt proceedings. Based on certain statements made by the former wife in the record, it appears that the transcripts might have been purged by the court reporter.

5 The September 2012 letter also noted that additional benefits were being paid for a minor child.

6 The former wife conceded that, if the award was alimony, it should have terminated when she remarried in October 2006.

7 The divorce judgment had awarded the former wife primary physical custody of the parties' minor child (born in 1990) and had ordered the former husband to pay the former wife $174 per month as child support. The former wife's amended complaint also sought to hold the former husband in contempt based on his failure to pay such support and on his failure to pay a child-support arrearage in the amount of $2,964.80 that had accrued during the divorce proceedings. In the September 2020 judgment, the trial court directed the former husband to pay $14,300.80 as a child-support arrearage,

plus accrued interest of $11,081.66. The former husband discusses the child-support-arrearage determination in his appellate brief, but he makes no argument for reversal as to that issue.

8 Veteran's disability benefits associated with retirement are governed by 10 U.S.C. § 1201 et seq. Section 1408 governs, in part, property-settlement awards of the "disposable retired pay" of a member of the military. Section 1408(a)(4)(A) defines "disposable retired pay" to exclude from "the total monthly retired pay to which a member is entitled ... [an amount] equal to the amount of retired pay of the member under [10 U.S.C. § 1201 et seq.] computed using the percentage of the member's disability on the date when the member was retired (or the date on which the member's name was placed on the temporary disability retired list)."

9 Unlike Howell, Mansell did not address the protection afforded by 38 U.S.C. § 5301(a), because it was unnecessary for purposes of the Supreme Court's decision. Mansell, 490 U.S. at 587 n.6, 109 S.Ct. 2023. Likewise, the Court declined to address in Mansell whether the doctrine of res judicata might have barred reopening a marital settlement that had been entered into before the decision in McCarty, 490 U.S. at 586 n.5, 109 S.Ct. 2023, but that likewise was in the absence of any consideration of § 5301(a). See discussion, infra.

10 The issue whether such benefits are divisible as part of a property settlement in a divorce proceeding is well settled in other jurisdictions; they are not. See, e.g., In re Marriage of Bornstein, 359 N.W.2d 500, 504 (Iowa Ct. App. 1984) ("[V]eteran's disability benefits are not considered to be property. The benefits are statutorily exempt from all claims other than claims of the United States, and are not divisible or assignable."); Ex parte Johnson, 591 S.W.2d 453, 456 (Tex. 1979) ("[T]he award to relator's spouse of 50 percent of his anticipated future disability benefits from the Veterans' Administration conflicts with the clear intent of Congress that these benefits be solely for the use of the disabled veteran. The diversion of future payments as soon as they are paid to him by the Veterans' Administration amounts to a seizure of the veteran's benefits for community property purposes and is in conflict with the exemption provision of [38 U.S.C. § 5301]."

11 The former wife also attempts to argue that the apportionment provisions for dependents in 38 U.S.C. § 5307 support her argument. She fails to note, however, that VA disability benefits attributable to a spouse are reduced upon divorce. See 38 U.S.C. § 5112(b)(2); 38 C.F.R. § 3.501(d)(2); see also Batcher v. Wilkie, 975 F.3d 1333 (Fed. Cir. 2020) (affirming a determination that the veteran's former wife was eligible for apportionment of his disability benefits from the time she filed her claim for apportionment until the entry of the divorce judgment at issue). Thus, the apportionment provisions do not support the conclusion that compensation for service-connected disabilities was intended to be for the benefit of a divorced spouse, at least for purposes of a property-settlement award.

Also, the former wife contends that the award in the parties' divorce judgment could be characterized as alimony. That argument, however, contradicts the finding in the September 2020 judgment, and the former wife failed to file a conditional cross-appeal. Thus, we are precluded from considering that argument. See Huntsville City Bd. of Educ. v. Frasier, 122 So. 3d 193, 202 n.17 (Ala. Civ. App. 2013) (explaining that, in the absence of a conditional cross-appeal, we cannot entertain an argument from the appellee attacking the judgment).

12 On appeal, the former wife argues that issue is barred by the doctrine of res judicata, but she did not expressly reference that doctrine at trial or otherwise discuss the issue of collaterally attacking a judgment.

13 The prohibition against attachment, seizure, or other legal or equitable process "does not extend to protect a veteran's disability benefits from seizure where the veteran invokes that provision to avoid an otherwise valid order of child support," in part because the disability benefits include additional compensation for the veteran's dependent children. Rose v. Rose, 481 U.S. 619, 634, 107 S.Ct. 2029, 95 L.Ed.2d 599 (1987).

14 We acknowledge that, after Howell was decided, at least one court has continued to rely on the doctrine of res judicata in enforcing state-court orders as to disability-retirement benefits. See In re Marriage of Kaufman, 17 Wash. App. 2d 497, 512, 485 P.3d 991, 999 (2021). As to the VA disability benefits at issue in the present case, however, we cannot square such an approach with the broad language of § 5301 and Howell.

End of Document

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	)	
	)	Circuit Court Case No. 1990 D 1150
GEORGE M. TRONSRUE, III,	)	
	)	The Honorable Susan L., Alvarado and the Honorable
Respondent/Appellant.	)	Alexander F. McGimpsey, II, Judges Presiding.

NOTICE OF FILING

To: ***Via Email and Regular Mail***
Robert D. Boyd, Esq.
bob@stogsdilllaw.com

PLEASE TAKE NOTICE that on November 7, 2024, there was electronically filed through Odyssey E-File with the Clerk of the Illinois Supreme Court, the following: ***BRIEF OF APPELLANT***, *a copy of which is attached and hereby served upon you*.

Michael G. DiDomenico, Esq.
LAKE TOBACK DIDOMENICO
Attorneys for George Tronsrue, III
33 North Dearborn, Suite 1850
Chicago, Illinois 60602
Telephone No. (312) 726-7111
mdidomenico@laketoback.com

CERTIFICATE OF DELIVERY

The undersigned, a licensed Illinois attorney, hereby certifies that the above *Notice of Filing,* and one copy of the *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 5:00 p.m. on November 7, 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