

Case No. 130596 Consolidated With 130597

ILLINOIS SUPREME COURT OF ILLINOIS

IN RE THE MARRIAGE OF:)	On Appeal from the Appellate Court
)	Third District
ELSA M. TRONSRUE n/k/a/ TOLEDO,)	
)	
Petitioner/Appellee,)	Nos. 3-22-25 and 3-22-0294
)	
)	Appeal From The Circuit Court Of
)	Du Page County
Vs.)	
)	Circuit Court Case No. 1990 D 1150
)	Honorable Susan L. Alvarado,
GEORGE M. TRONSRUE, III.)	Honorable Alex McGimpsey
)	Judges Presiding
Respondent/Appellant.)	

BRIEF OF PETITIONER – APPELLEE

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ARGUMENT

Appellee in her brief will make references to and will follow the format and issues of Appellant's Brief.

- I. The division of George's disability **payments** is preempted by Federal Law and therefore, void and unenforceable.
 - A. **Federal Law preempts a state court's ability to divide federal military disability payments.**

The trial court ruled correctly and succinctly in denying George's Motion to Dismiss based upon a lack of subject matter jurisdiction. In its ruling the Court stated:

"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, 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.

...

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 the Trial Court's authority to order that to which he agreed."

The Appellate Court likewise addressed the single issue framed on appeal. The Court quoted directly from George's brief in stating the question for review:

"Whether the court erred when it enforced a portion of the Tronsrue 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.)"

In each instance the issue was decided against George. He now brings a new framing of the question as follows:

- "I. 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."

In citing language from *Performance Marketing Ass'n., Inc. v. Homer*, George quotes, "State law is null and void if it conflicts with Federal Law." What is not addressed thereafter is what "state law" is in conflict with federal Law. It is never argued that enforcement of the agreement of the parties and the judgment incorporating the agreement is the state law that is in conflict. The State is not exercising control over the restricted benefits. It is enforcing a judgment and marital settlement agreement agreed to by the parties. The marital settlement agreement of the parties contemplated that the United States Army and the V.A. may not withhold the amounts and send them to Elsa and addressed that by having George pay the amounts to Elsa directly, after he receives them. Again, the Court approved the agreement of the parties, it did not make the determination that it was necessary. George and Elsa entered into the agreement in its totality. Enforcement by the Court is not a conflict with federal law.

The Appellate Court properly held George to the issue he framed an appeal. It also properly outlined the concept of subject matter jurisdiction citing *Belleville Toyota, Inc. v. Toyota Motor Sales, U.S.A., Inc.*, 199 Ill. 2d 325, 334 (2002).

"Simply stated, subject matter jurisdiction refers to the power of a court to hear and determine cases of the general class to which this proceeding in question belongs."

George now argues that the trial court had no authority to accept the provisions of a contract which he (and Elsa) requested the court to approve. The Court should have rejected the agreement on the basis that George did not have the right to do that to which he agreed. The practicality is that the Court, not just the parties, must then be an active participant in negotiations and settlement.

The issue of subject matter jurisdiction seems now to be abandoned.

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

George now argues, or agrees, that: "There is no doubt that, in 1992, the circuit court had subject matter and personal jurisdiction over the divorce case." Page 16, Appellant's Brief. He then urges this Court not to follow the general rule that subject matter jurisdiction may not be re-litigated, but to create an exception to undo what he allowed the trial court to do in 1992.

George suggests that the trial court, the Appellate Court and the cases from the Supreme Courts of Michigan, Virginia and Nevada cited in the Illinois Appellate decision are all wrongly decided.

George had the ability to appeal from the original judgment or to move to vacate the original judgment. He chose to do neither but now attempts to avoid his inaction. George chose instead to accept the provisions of the marital settlement agreement and whatever balance or equity it created. The agreement anticipates that if the Army or the V.A. will not withhold the funds awarded, George will pay them directly after receipt when the funds may be used in any manner: to pay bills, to gamble, to squander, etc., or as here, to balance the benefits he otherwise receives from the agreement.

George provides a clear and direct synopsis of his position in the first paragraph of his section B. Paraphrasing, a claim is adjudicated, the judgment contains errors, no appeal is taken, and the unhappy litigant attempts to collaterally attack the judgment as void. It is acknowledged that the Circuit Court had subject matter and personal jurisdiction over the original dissolution of marriage action. George also cites McCormick v. Robertson, 2015 IL. 118230, in that the failure of a court to follow statutory requirements does not render a judgment void and subject to later collateral attack. He properly acknowledges that the circuit court had subject matter and personal jurisdiction over this divorce case (Appellant Brief, page 16). With that, the issue of the judgment being void is resolved.

This Court has previously provided an analysis of this issue in In Re: Marriage of Mitchell, 181 Ill. 2d 169 (1988). 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. In Re: Marriage of Mitchell, 181 Ill.2d 169 quoting Johnston v. City Of Bloomington, 77 Ill.2d 108, 112. Once a court 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. Mitchell, quoting Vulcan Materials Co. v. Bee Construction, 96 Ill.2d 159 (1983). Accordingly, a court may not lose jurisdiction because it makes a mistake in determining either of the facts, the law or both. Mitchell quoting People v. Davis, 156 Ill.2d 149.

For these reasons, the judgment for dissolution of marriage is not void.

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

Appellant's argument that he had a compelling reason and just cause not to comply is without merit given the "compelling reason" had not been raised since entry of the judgment in 1992. Appellant offered nothing regarding his inability or mitigating circumstances for his non-compliance. The award of fees should be affirmed.

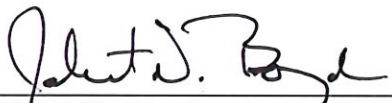
PRAYER

WHEREFORE, Appellee, ELSA TRONSRUE n/k/a/ ELSA TOLEDO prays that this Court affirm the judgments of the Third District Appellate Court and the Circuit Court Of Du Page County.

Respectfully submitted,

ELISA TOLEDO

By:



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CERTIFICATION OF COMPLIANCE

I certify that this Brief conforms to the requirements of Rules 341 (a) and (b). The length of this Brief, excluding the pages containing the Rule 341 (d) cover, the Rule 341 (h)(1) table of contents and statement of points and authorities, the Rule 341 (c) certificate of compliance, and those matters to be appended under Rule 342(a), is 5 pages.


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NOTICE OF FILING

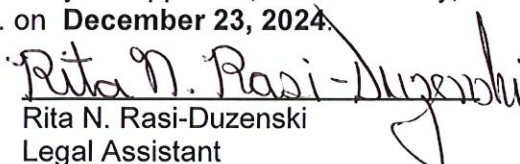
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PLEASE TAKE NOTICE that on or about **December 23, 2024**, the Appellee's Brief was filed with the Illinois Supreme Court Of Illinois.


 ROBERT D. BOYD
 Attorney for Petitioner/Appellee

CERTIFICATE OF DELIVERY

The undersigned, a non-attorney, hereby certifies under penalties of perjury as provided by law pursuant to 735 ILCS 5/1-109, that the above Notice Of Filing Motion with the document referred to herein was sent to the above named attorney for Appellant, via e-mail only, (mdidomenico@laketoback.com), before 5:00 p.m. on **December 23, 2024**.


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