No. 99623-7

Court of Appeals No. 53224-7-II

SUPREME COURT
OF THE STATE OF WASHINGTON

RACHELL LYNETTE DANIELS, PETITIONER

v.

NATHANIEL DANIELS, RESPONDENT

RESPONDENT'S ANSWER TO PETITION FOR REVIEW

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I. INTRODUCTION

In 2007, the parties entered into a CR2A that provided a formula for equalizing the parties' retirement accounts that ensured their respective retirement accounts would be awarded to the spouse who earned them and would not be divided by the court. The parties agreed the equalization payment would come from non-retirement sources. A series of agreed, unappealed orders were entered to effectuate this agreement, including a Military Qualifying Order (MQO) and an Order for Addendum to Decree of Dissolution using Rachell's military retirement to effectuate the equalization. In 2018, Nathaniel's payments from DFAS stopped. He filed a Motion to Vacate, for Contempt, and/or to Clarify the Decree of Dissolution.

The trial court entered an order enforcing the prior agreed, unappealed orders and granted Nathaniel a judgment for the remaining amounts owed. Contrary to statute, case law, and the facts in this case, Rachell's petition for review argues that the trial court improperly interpreted the 2013-2014 agreed, unappealed orders, and argues that Nathaniel is now entitled to $0. This Court should deny Rachell's petition for review of the Court of Appeals unpublished opinion affirming the trial court's order enforcing the agreement of the parties, which raises no possible grounds for further review in this Court under RAP 13.4(b).

II. RESTATEMENT OF FACTS

A. THE PARTIES ORIGINALLY ENTERED INTO AN AGREED ORDER TO EQUALIZE THE VALUES OF THE PARTIES' RETIREMENT FROM NON-RETIREMENT SOURCES.

The parties reached an agreement on the terms of their dissolution. CP 248-262. Both Rachell and Nathaniel gave formal proof, on the record and under oath regarding the terms of their agreement. Id. The relevant terms of their agreement is as follows:

> Mr. Lutz: We are still going to have Steve Kessler value those two retirement accounts, correct?
>
> Mr. Daniels: Yes.
>
> Mr. Lutz: If either party disagrees with that value, at their own expense, they may have it valued by another person.
>
> Mr. Daniels: Yes, sir.
>
> Mr. Lutz: And we still are going to add up the six retirement accounts, and our desired result is that you and your wife each would receive one half of the value, except you cannot have any of her military retirement she can't have any of your federal employees retirement, correct?
>
> Mr. Daniels: Yes, sir.
>
> Mr. Lutz: Okay. In the event that either your federal retirement orders military retirement is so valuable that we are not able to affect the fifty-fifty division of those six retirement accounts using the retirement account only, then we will divide the equity in the house in a different way that would achieve that result; is that correct?

Mr. Daniels: Yes, sir.

Mr. Lutz: So, more money would be allocated to one spouse to effectuate that fifty-fifty division, correct?

Mr. Daniels: Yes, sir.

Mr. Lutz: We already put on the record how we are dividing up the house, did we not? Yes, okay. So, the only way that there's a difference in how we are dividing up the house is, in the event, as I've just said, we can achieve the fifty-fifty just using the six retirement accounts by themselves, correct?

Mr. Daniels: Yes, sir.

Mr. Lutz: Everything else I said before stance. Okay. And in the event that the complete equity in the home being given to one spouse still does not achieve a result fifty-fifty with those six retirement accounts, then the mutual fund account that's in the wife's name would be divided to achieve that. And if we still do not achieve a fifty-fifty result we would leave it at that, meaning that were given preeminence to not dividing the military retirement we are not dividing the first account. Do you agree with that?

Mr. Daniels: Yes, sir.

CP 235-237.

Rachell refused to sign final orders, and Nathaniel brought a Motion to Enforce their agreement. CP 277-306. Judge Felnagle rejected Rachell's allegation that the CR2A should not be enforced, specifically finding:

1. Ms. Daniels was represented by counsel at trial and had the benefit of his advice.

2. The settlement was fair, attempting to reach a 50/50 split.

3. Ms. Daniels had the opportunity to know or should have known the value or approximate value of her retirement accounts.

4. Ms. Daniels rejected the option she today asked the Court to impose.

5. The agreement contemplated the fact that one or both of the retirement accounts would be greater in value than the other.

6. Ms. Daniels said under oath and on the record she agreed to the settlement.

CP 307-308. Judge Felnagle signed the Decree of Dissolution, dissolving the parties' marriage. CP 8-14. These orders were not appealed.

B. THE PARTIES SUBSEQUENTLY AGREED RACHELL OWED NATHANIEL $141,191.30 TO EQUALIZE THEIR RETIREMENT ACCOUNTS.

On August 3, 2012, Nathaniel filed a Motion for an Order Enforcing the Decree of Dissolution and for entry of an order dividing Rachell's retirement, based on her refusal to effectuate the transfer of monies to Nathaniel to equalize the parties' retirement accounts. CP 16-26.

In response, Rachell agreed she owed Nathaniel $141,191.30, and not only did not oppose Nathaniel's request to divide her military retirement, she made her own motion to the court asking the trial court adopt *her* proposed Military Qualifying Order. CP 27-33. Rachell agreed

that in order to effectuate the terms of the Decree of Dissolution, Nathaniel should be awarded a portion of her military retirement as the means to satisfy the $146,191.30. CP 30.

In her January 17, 2013 Declaration, Rachell states, "I agree with Nathan [sic] that the [sic] because of the differences between the valuation of our retirements that there are insufficient funds in the remaining retirement assets to comply with the court's original order. Specifically, I agree that utilizing the court's formula in the order of dissolution for division of the retirement assets would require me to transfer to Nathan [sic] $146,191.30 from my proportional share of the retirement assets in exchange for retaining my military retirement including the portion earned during my marriage in its entirety." CP 30.

C. THE PARTIES ENTERED AN AGREED ORDER REQUIRING RACHELL TO PAY THE $146,191.30 AGREED AMOUNT FROM HER MILITARY RETIREMENT, BUT RESERVED JURISDICTION TO ADDRESS PAYMENTS IF DFAS CEASED PAYMENTS TO NATHANIEL.

On January 25, 2013, Judge Felnagle entered an order finding Rachell owed Nathaniel $146,191.30 based on Rachell's agreement, and the term of the Decree of Dissolution. CP 48. An order effectuating that agreement was entered January 8, 2014. CP 223-229. This order was never appealed.

That order specifically requires:

The member agrees that in the event that DFAS is unable to

> pay the former spouse the full amount of $593.22 due to 10 USC 1408 limiting provision of 50% of total retirement benefits payable the former spouse, because of any voluntary election she may have made in conjunction to her military pension including but not limited to acceptance of lump-sum retirement election of veterans disability benefits, to pay the former spouse the difference between any amount received from DFAS and the amount awarded the former spouse of monthly maintenance.

CP 225

> The order further provides:
>
> Continuing Jurisdiction: the court shall retain jurisdiction to enter such further orders as are necessary to enforce the award of the former spouse of the portion of the member's military retired pay awarded herein, including the recharacterization thereof as a division of civil service or other retirement benefits, or to make an award of alimony or spousal maintenance in the sum of benefits payable in the event that member fails to comply with the provisions contained herein requiring said payments to the former spouse by any means, including the application for disability award or military or government regulations or other restrictions interfere with payments to the former spouse as set forth herein, or if the member fails to comply with the provisions contained herein requiring said payments to the former spouse, or if the adjustment of the percentages or amount ordered herein should be required, or if she fail to obtain life insurance protecting the former spouse.
>
> The court hereby retains jurisdiction to entertain a motion for maintenance, alimony or other award of money to compensate the former spouse for any ammunition in the amount he receives as his portion of the member's disposable retired pay.

CP 226. This order was entered by agreement of the parties. CP 55-57.

This order was never appealed.

Nathaniel began receiving payments directly from DFAS in December 2016. CP 65. Between December 2016 and February 2018, he received 15 payments, totaling $8898.30. Id. In February 2018, Nathaniel received a letter from DFAS stating "The member is currently in a suspended pay status or the maximum percentage of disposable income is being remitted for an order served prior to your order. Funds will be remitted as soon as they become available." CP 97. Nathaniel attempted to discuss the issue with Rachell, but she refused to address the matter outside of court. CP 66, 113, 115.

Nathaniel filed multiple motions, seeking alternative relief. CP 59-61, 62-115. Specifically, he requested the court find Rachell in contempt for failing to comply with the terms of the Decree of Dissolution, Enforce the Decree by requiring Rachell to pay amounts owed directly to Nathaniel, vacate the property and spousal maintenance award and awarding spousal maintenance, or granting a judgment for amounts owed less, those already paid. Id.

In response, Rachell filed her own Motion to Vacate the retirement provision of the July 8, 2008 Decree of Dissolution, and the January 25, 2013 Order on Motion for Enforcement and the January 8, 2014 Military Retired Pay Division Order. CP 116-117. Her request was based on CR 60(b)(4), CR 60(b)(6) and CR 60(b)(11). Id.

D. THE TRIAL COURT ENFORCED THE DECREE OF DISSOLUTION, AND THE 2013 AND 2014 COURT ORDERS, ALL OF WHICH WERE AGREED, FINAL AND UNAPPEALED.

Judge Leanderson enforced the 2008 agreed Decree of Dissolution, and 2013 and 2014 agreed court orders, and reduced Rachell's outstanding amount owed to judgment. CP 215-218.

On appeal, Rachell argued that the trial court improperly enforced the 2013-14 orders, violating Howell when it ordered Rachell to pay the amounts owed to the Nathaniel despite the waiver of her disposable military retired pay.

In an unpublished opinion, ("Opinion") Division Two affirmed the trial court's order enforcing the final, unappealed dissolution decree and the final unappealed 2013-14 orders finding Rachell's arguments were barred by res judicata.

III. ARGUMENT WHY REVIEW SHOULD BE DENIED

A. The Court of Appeals' unpublished opinion conflicts with neither Thompson nor Weiser, nor any other authority, making further review unwarranted.

Rachell's contention that the Court of Appeals decision conflicts with multiple published decisions of this Court or of the Court of Appeals is wrong both as a matter of law and fact.

In In re Marriage of Weiser, 14 Wn.App.2d 884, 475 P.3d 237

(2020), the nonmilitary spouse was awarded a share of her former husband's military retirement pursuant to the parties' agreement. Id. at 889. The husband subsequently waived his military retirement in favor of military disability retirement. Id. at 889-90. Division Two rejected the husband's assertion that the trial court erred by enforcing the final, unappealed dissolution decree and ordered him to compensate his wife for her share of the waived military retirement. Id. at 890-91. There, the court held that res judicata protected the finality of the unappealed prior order even where the trial court's enforcement of that order resulted in a property division that contradicted federal and state law because errors of law do not "automatically open [the trial court's] judgments to collateral attack." Id. at 905-06.

Here, Rachell argues that because the Weiser court addressed the husband's argument that the trial court misinterpreted the underlying orders, Division Two erred when it declined to do so in this case, instead finding it barred by res judicata. This argument is wholly without merit and unsupported by the law.

Rachell appealed the trial court's interpretation of the 2019 orders, arguing that the 2019 interpretation violated Howell[1] by improperly

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[1] Howell v. Howell, 581 U.S. ___, 137 S.Ct. 1400, (2017)

indemnifying Nathaniel from the reduction in military retirement payments. However, Rachell's argument that 2019 orders violated Howell, is predicated on collaterally attacking the 2013-2014 orders that she *agreed* to. Those final, unappealed, agreed orders required Rachell to pay Nathaniel the agreed upon amount, even if her disposable military retired pay was subsequently reduced. Because this was an agreement of the parties, and not a trial court order, there is no violation of Howell. Division Two addressed Rachell's interpretation argument by properly applying res judicata to Rachell's improper attempt to collaterally attack the 2013-14 final, agreed, unappealed orders. Rachell's argument is the very argument rejected in Weiser by applying res judicata. Thus, there is no conflict between the Opinion and the opinion in Weiser.

Rachell next argues that the Opinion conflicts with In re the Marriage of Thompson, 97 Wn.App 873, 988 P.2d 499 (1999), arguing that Thompson stands for the proposition that res judicata is not a bar to an appeal of a trial court's interpretation of an earlier order or decree. Rachell is correct that res judicata is not a bar to an appeal of a trial court's interpretation of an earlier order or decree. However, Thompson does not discuss or even address the applicability of res judicata at all or stand for the proposition for which Rachell cites it for. Further, the Opinion does not rely on res judicata as a basis to reject Rachell's appeal of the trial

court's *interpretation* of the 2013-14 orders. Her argument was rejected because she asked the Court of Appeals to find that the 2013-14 orders violated Howell, an argument clearly barred by res judicata. Thus there is no conflict between the Opinion and the opinion in Weiser.

B. The trial court did not order indemnification in violation of Howell.

In In re Marriage of Mansell, 490 U.S. 581, 588–89, 109 S.Ct. 2023, 104 L.Ed.2d 675 (1989), the Supreme Court held that "disposable military retirement pay" is subject to division in a dissolution, but the language of the Uniformed Services Former Spouses' Protection Act[2] (USFSPA) specifically defines "disposable" to exclude military retirement pay waived in order to receive veterans' disability payments. Under the USFSPA and Mansell, military retirement benefits are considered community property subject to distribution in a marital dissolution in Washington; military disability benefits are not subject to distribution. See also In re Marriage of Jennings, 138 Wn.2d 612, 629, 980 P.2d 1248 (1999).

In In re Marriage of Kraft, 119 Wn.2d 438, 447-48, 832 P.2d 871 (1992), our Supreme Court reconciled federal preemption when it comes to disability benefits with RCW 26.09.080, which requires the court to dispose of the parties' property in a "just and equitable" manner:

> [W]hen making property distributions or

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[2] 10 U.S.C. § 1408 (2017), et. seq.

> awarding spousal support in a dissolution proceeding, the court may regard military disability retirement pay as future income to the retiree spouse and, so regarded, consider it as an economic circumstance of the parties. ... The court may not, however, divide or distribute the military disability retirement pay as an asset. It is improper under Mansell for the trial court to reduce military disability pay to present value where the purpose of ascertaining present value is to serve as a basis to award the nonretiree spouse a proportionately greater share of the community property as a direct offset of assets.

Id. at 447-48. And the court reiterated later in its opinion:

> The trial court in a marriage dissolution action may consider military disability retirement pay as a source of income in awarding spousal or child support, or generally as an economic circumstance of the parties justifying a disproportionate award of community property to the nonretiree spouse. The trial court may not, however, divide and distribute the disability pay or value it and offset other property against that value. In the present case, the trial court reduced the military disability pay to present value and then offset assets against it by awarding to Mrs. Kraft a proportionately larger share of the community property. This is not a permissible way of considering military disability retirement pay under the Mansell holding.

Id. at 451.

The Court in In re the Marriage of Perkins, 107 Wn. App 313, 315

26 P2d 989 (2001), recognized a long line of federal precedent set forth in Hisquierdo v. Hisquierdo, 439 U.S. 572, 99 S.Ct. 802, 59 L.Ed.2d 1 (1979), McCarty v. McCarty, 453 U.S. 210, 101 S.Ct. 2728, 69 L.Ed.2d 589 (1981), the Uniformed Services Former Spouses' Protection Act (USFSPA), and Mansell v. Mansell that held a state court is precluded from dividing a veteran's disability pension, preempting the second of the state-law propositions set forth above. Id. at 321.

However, consistent with the subsequent ruling announced in Howell, this Court had already harmonized this long line of federal precedent, with existing state-court precedent that allows a trial court to *consider* a spouse's entitlement to an undivided veteran's disability pension as one factor relevant to a just and equitable division of property under RCW 26.09.080, and as one factor relevant to an award of maintenance under RCW 26.09.090.

This Court reversed and remanded the order of compensatory maintenance, finding that even though it was labeled as "maintenance" it was "precisely the dollar-for-dollar division and distribution that Mansell and Kraft prohibit." Id. at 324. At the same time, this Court recognized that even in light of Mansell and Kraft, the trial court might still award the wife a dollar amount of maintenance amounting to 45 percent of the disability pay[3]. Quoting Kraft, it stated:

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[3] Further supporting its ruling, the Perkins Court cites a number of cases from around the country that hold federal law does not preclude state courts from considering a nondivisible military benefit when making a just and equitable award of property, in

> [T]he trial court may, if in its view equity so requires, distribute the [parties'] property in the same manner in which it did initially. What is required is that [it] arrive at its decision as to what is just and equitable under all the circumstances after considering the military disability retirement pay in the manner we here explain.

Id. at 328.

In Howell v. Howell, 581 U.S. ___, 137 S.Ct. 1400, (2017), in anticipation of the husband's eventual retirement, and consistent with the parties' settlement agreement, the divorce decree awarded the wife half of the husband's future military retirement pay. In re Marriage of Howell,

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awarding spousal maintenance, or setting child support. See Clauson v. Clauson, 831 P.2d 1257, 1263 (Alaska 1992) ("We ... hold that federal law does not preclude our courts from considering, when equitably allocating property upon divorce, the economic consequences of a decision to waive military retirement pay in order to receive disability pay."); McMahan v. McMahan, 567 So.2d 976, 980 (Fla. 1st DCA 1990) (notwithstanding Mansell, state courts may consider the impact of veterans' disability payments in determining the "entire equitable distribution scheme ... in an effort to do equity and justice to both [parties]"); Jones v. Jones, 7 Haw.App. 496, 780 P.2d 581, 584 (Haw. Ct. App. 1989) ("Neither Hawaii's rule ... nor federal law precludes the family court, when dividing property and debts in a divorce case, from considering as one of the relevant circumstances ... a party's time-of-divorce right to receive veterans' and military disability pay post-divorce in the same way that the family court considers each party's ability or lack of ability to earn and receive income postdivorce."), cert. denied, 71 Haw. 668, 833 P.2d 900 (1989); Bewley v. Bewley, 116 Idaho 845, 780 P.2d 596, 598 (Idaho Ct.App.1989) ("We do not interpret Hisquierdo to bar unequal awards of community property in all cases where nondivisible federal benefits are involved. But any inequality must be based upon bona fide considerations other than dissatisfaction with the federal scheme."); Strong v. Strong, 300 Mont. 331, 8 P.3d 763, 769 (Mont 2000) (A court "may consider VA disability benefits in the same way it considers each party's ability to earn income post-dissolution as an import factor in achieving an equitable property division[.]"); Weberg v. Weberg, 158 Wis.2d 540, 463 N.W.2d 382, 384 (Ct.App.1990) (trial court may consider veterans' disability payments as a factor in assessing ex-husband's ability to pay spousal maintenance); but see Billeck v. Billeck, 777 So.2d 105 (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 ... violate[s] federal law.")

238 Ariz. 407, 361 P.3d 936, 937 (2015). The husband retired a year later, and half of his retirement pay went to his ex-wife. Howell, 137 S.Ct. at 1404. Thirteen years later he qualified for and elected to receive disability benefits, which required him to waive a portion of the retirement pay he shared with his former spouse, thereby reducing the amount she received each month. Id.

The former spouse asked the Arizona family court to enforce the original decree and restore the value of her share of retirement pay. Id. The family court did so, and the Supreme Court of Arizona affirmed, reasoning that Mansell did not control because the veteran made his waiver after, rather than before, the divorce and because the family court simply ordered the veteran to "reimburse" his former spouse for the reduction of her share of military retirement pay. Id.

The US Supreme Court reversed, reasoning that the reimbursement award at issue was still a "portion of military retirement pay that [the service member] waived in order to obtain disability benefits" Howell. at 1405-06. and that a state court could not "avoid Mansell by describing the family court order as an order requiring [the veteran] to 'reimburse' or to 'indemnify' [a former spouse], rather than an order that divides property." Howell, at 1406. It noted that the temporal difference relied on by the Arizona Supreme Court "highlight[ed] only that [the veteran's] military retirement pay at the time it came to [his former spouse] was subject to later reduction" and that "[t]he state court did not extinguish (and most likely would not have had the legal power to extinguish) that future

contingency." Id. at 1405. The Supreme Court concluded: "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." Id. at 1406.

Even the Howell court itself, recognized the inequity of ignoring indivisible military compensation:

> We recognize, as we recognized in Mansell the hardship that congressional pre-emption can sometimes work on divorcing spouses. See 490 U. S., at 594. *But we note that a family court, when it first determines the value of a family's assets, remains free to take account of the contingency that some military retirement pay might be waived, or, as the petitioner himself recognizes, take account of reductions in value when it calculates or recalculates the need for spousal support*. See Rose v. Rose, 481 U.S. 619, 630-634, 107 S.Ct. 202, 995 L.Ed.2d 599 (1987), and n. 6 (1987); 10 U. S. C. §1408(e)(6) (2017).

Id. at 1406 (emphasis added). The Howell court specifically recognized that a state court can make provisions for maintenance, *or a disproportionate award of property* to reach a just and equitable division of assets when there is an indivisible federal benefit, reasoning Washington Courts had already adopted in Kraft and Perkins.

In A Change in Military Pension Division: The End of Court-

Adjudicated Indemnification - Howell v. Howell[4], Eliza Grace Lynch analyzes the Howell decision and its impact on family law cases where a military pension is subject to division. Indeed, the focus of this law review article is to point out the uncertainty the Howell decision creates and to offer possible remedies for practitioners and judges alike. Ms. Lynch identifies five possible remedies to the Howell indemnification prohibition, including *express contractual indemnification* which is what the parties did here. Id. at 1082-1086 (emphasis added).

Here, the trial court did not order Rachell indemnify Nathaniel. But, even if it had, it would have been enforcing the *agreed* 2014 Military Qualifying Order that contained an *agreed upon* indemnification clause. Unlike in Howell[5], the court order here contains an *agreed upon* indemnification clause, requiring Rachell to pay Nathaniel $593.22 if DFAS did not pay him directly. This clause was negotiated and agreed to by the parties and was not ordered by the trial court, thus is not prohibited by Howell.

Further, Rachell *agreed* in 2008 to the formula for equalization. She *agreed* in 2013 she owed $146,191.30. She *agreed*, and specifically requested that her military retirement be used as the *vehicle* for the

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[4] Lynch, Eliza Grace, A Change in Military Pension Division: The End of Court Adjudicated Indemnification - Howell v. Howell Mitchell Hamline Law Review: Vol. 44: Iss. 3 , Article 8.

[5] The Howell court only addressed indemnification ordered by the trial court. It did not address or prohibit parties from *agreeing* to indemnification in the event disposable military pay is reduced. Thus, the parties can contract around the Howell decision and agree to dollar-for-dollar indemnification.

payment of the $141,191.30. At no time did the trial court order indemnification in violation of Howell. Rather, the trial court simply enforced the 2008 *agreed* Decree of Dissolution, the *agreed* 2013 order that included Rachell's agreement she owed $141,191.30 and the 2014 *agreed* Military Order that said she would pay Nathaniel directly if DFAS did not do so.

Nonetheless, Rachell argues that the language of the orders "shows that the court and the parties intended to divide Bond's military retirement." Br. Of Appellant at 15. Her argument completely ignores the procedural history of this case, and Rachell's own declaration that she agrees she owes Nathaniel $143,191.30.

If Rachell's argument were accepted, it would result in a windfall to Rachell as it would mean a significant economic circumstance would now be unaccounted for in the overall division of debts and assets and spousal maintenance award as it was agreed to in 2008. Further, Rachell continues to receive monthly benefits, at least equal to her prior disposable military retired pay. Had Rachell's military retirement been reduced (or eliminated) prior to the dissolution, neither the parties' nor the trial court would have simply ignored this economic circumstance. Cases such as Perkins, supra, allow the trial court to consider all debts and assets, even if the court does not have the authority to divide the asset and to make provisions for a spouse in the event of an indivisible military benefit such as the one that Rachell currently receives.

Howell states that the USFSPA preempts a *state court* from

ordering a retired servicemember to indemnify a former spouse for a reduction in their share of the retiree's military pension when the retiree elects to receive disability compensation from the Department of Veterans Affairs (VA), resulting in the waiver of an equal amount of military retired pay. This ruling prohibited a long-standing practice by state court judges of ordering indemnification in the event a non-member spouse's portion of his or her military pension was reduced. It has left attorneys and judges alike confounded about how to fashion a just and equitable result in light of this new prohibition[6]. However, Howell *does not* preclude state courts from considering the non-divisible benefit, or more importantly, from allowing parties to contract around its indemnification prohibition as Rachell and Nathaniel did here.

C. This case does not involve a matter of substantial public interest.

While it is true our geographic area is home to a large military population, that fact alone does not make every case involving a military retirement a matter of substantial public interest. Rachell has failed to identify any other valid basis for establishing this case involves a matter of substantial public interest.

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[6] See Col. Mark E. Sullivan, The Death of Indemnification, North Carolina Legal Assistance for Military Personnel (April 12, 2018), https://www.nclamp.gov/publications/silent-partners/the-death-of-indemnification/ (last visited May 5, 2019); Laura Morgan, Circumventing a Trial Court's Ruling, Family Lawyer Magazine (March 22, 2018) https://familylawyermagazine.com/articles/circumventing-a-trial-courts-ruling/ (last visited May 5, 2019

The Opinion's holding is consistent with a long line of cases in Washington established prior to the ruling in Howell. Our Courts of Appeal have addressed these issues, consistently. See Weiser, Kaufman v. Kaufman, --- P.3d ----2021 WL 1623474, (2021). Further review is not warranted.

IV. CONCLUSION

Rachell has failed to establish this case involves a matter of substantial public interest or that the Opinion conflicts with published opinions of the Court of Appeals, or of the Supreme Court. The petition for review should be denied.

DATED this 29th day of April, 2021.

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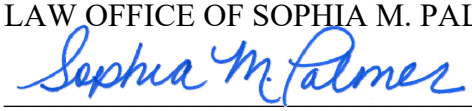

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CERTIFICATE OF SERVICE

I certify that I caused to be transmitted via U.S. Mail, postage prepaid, transmitted via the Appellate Court on-line portal, and/or emailed as designated below, a copy of the foregoing ANSWER TO PETITION FOR REVIEW on the 2ND day of May 2021, to the following parties or counsel of record at the following address:

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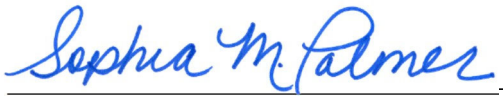

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