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**Court of Appeals, Div. II,
of the State of Washington**

In re Marriage of

Rachell Daniels (n/k/a Rachell Bonds),

Appellant,

v.

Nathaniel Daniels,

Respondent.

Brief of Appellant

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1. Introduction

The Uniformed Services Former Spouses' Protection Act (USFSPA), 10 U.S.C. § 1408, permits state courts to divide “disposable military retired pay” as community property in a dissolution decree. It does not permit state courts to divide military disability retirement pay. When “disposable military retired pay” is divided in a decree, but the veteran subsequently receives disability pay instead, the former spouse is not entitled to receive any portion of the disability pay. Under *Howell v. Howell*, __ U.S. __, 137 S.Ct. 1400, 197 L.Ed.2d 781 (2017), state courts are prohibited from ordering the veteran to compensate the former spouse for the loss.

By way of agreed orders entered in 2013-14, Bonds' military retirement was divided as community property and \$146,191.30 of it assigned to Daniels in order to equalize the parties' retirement assets. Bonds was placed on disability retirement by the Army in 2018. When Daniels complained that he was not receiving any payments, the trial court entered judgment against Bonds to ensure that Daniels would be compensated. The trial court's order is prohibited under *Howell*. This Court should reverse and vacate the judgment.

2. Assignments of Error

Assignments of Error

1. The trial court erred in entering judgment against Bonds.
2. The trial court erred in interpreting the prior, 2013-14 orders as not dividing Bonds' military retirement.
3. The trial court erred in effectively ordering Bonds to indemnify Daniels for the loss of his portion of Bonds' military retirement.

Issues Pertaining to Assignments of Error

1. In 2013, Daniels asked the trial court to divide Bonds' military retirement. The court granted the motion and ordered the parties to return with formal orders dividing the military retirement, which the parties did. Did the 2013-14 orders divide Bonds' military retirement? (assignments of error 1-3)
2. Subsequent to the 2013-14 orders, Bonds was placed on disability retirement. Under the USFSPA, disability retirement cannot be divided. Under *Howell v. Howell*, ___ U.S. ___, 137 S.Ct. 1400, 197 L.Ed.2d 781 (2017), a state court cannot order a veteran to indemnify a former spouse for the loss of the former spouse's portion of the veteran's retirement pay due to disability. Did the trial court err in ordering Bonds to pay Daniels for the lost retirement pay?

3. Statement of the Case

3.1 At the time of their original divorce decree, the parties agreed to divide the community property portions of their retirement assets 50/50 once the values of their respective pensions were calculated.

Rachell Bonds and Nathaniel Daniels were married in January 1994 and separated in June 2006. CP 2. Their marriage was dissolved by a Decree dated July 18, 2008. CP 8. Bonds was a Captain in the U.S. Army, with 18 years of service and in good health. CP 121. Her expectation at the time was that she would retire sometime after achieving 20 years of service and receive military disposable retired pay. CP 121. Daniels was a federal government employee and would be entitled to a federal pension when he retired. CP 19, 28.

The parties worked out a settlement, which became part of the Decree. *See* CP 121. They agreed to divide equally the total values of the marital portions of their retirement accounts. CP 10, 11, 122. There were six “accounts”: an IRA in each party’s name, a TSP account in each party’s name, Daniels’ FERS pension, and Bonds’ military pension. CP 19, 121.

At the time, the parties did not know the values of their respective pensions. *See* CP 121-22. They agreed to have Steven Kessler, CPA, compute the present value of all six accounts. CP 9, 11, 122. The decree provided, “The present value of all six

retirement accounts shall be totaled and divided such that the end result is each party receives one-half of the present value of the marital portion.” CP 10, 11. The decree further provided a method and priorities for accomplishing the division by the party with the greater valued accounts paying the difference to the other party out of their share of the marital assets, with the goal that “neither the husbands nor the wife’s military retirement accounts shall be divided.” CP 10, 11.

3.2 After the amounts were calculated, the parties realized that the only way to achieve the 50/50 division would be to divide Bonds’ military retirement.

By March 2012 the present values had been calculated but the division had not been accomplished. *See* CP 18-19. In August 2012, Daniels moved to enforce the decree, alleging that Bonds owed him \$146,191.30 based on the values of the accounts. CP 16-19. Daniels asserted, “The decree of dissolution states that the retirement account shall not be divided, but the only way for me to get the funds owed to me by [Bonds] is for the court to divide her military retirement because there is only \$14532.16 in her TSP account. Therefore I have prepared and submitted with this motion my proposed order dividing [Bonds]’s military retirement.” CP 19.

Bonds responded with her own motion and proposed order. CP 27. Bonds agreed with the values presented by Daniels

for the six accounts. CP 28-29, 30. She agreed that the only way to accomplish the 50/50 division intended in the decree was to divide her military retirement. *See* CP 30. She proposed some alternative methods this could be accomplished in compliance with the Uniformed Services Former Spouses' Protection Act (USFSPA), 10 U.S.C. § 1408. CP 30-33, 39-40. Her stated preference was to divide the disposable retirement pay such that Daniels would receive \$593.22 per month until the \$146,191.30 total had been paid. CP 31. She anticipated these payments would begin in 2020, when she expected to retire. CP 31.

3.3 The trial court granted the parties' request and amended the decree to order a division of Bonds' military retirement, from which Daniels was to receive a total of \$146,191.30, paid out in monthly payments after Bonds retired.

The trial court entered an order in January 2013 granting in part Daniels' motion for an order dividing Bonds' military retirement. CP 47-49. The court agreed that Bonds owed Daniels \$146,191.30 to accomplish the division ordered in the decree and that the payment would have to come from Bonds' military retirement. CP 48. The court gave Daniels 30 days to select from the options proposed by Bonds to comply with federal law. CP 48. The court ordered the parties to return promptly, "to enter [an] order dividing [Bonds]'s military retirement." CP 48-49.

The parties returned to court in January 2014 with a joint motion for entry of an “Addendum to the Decree of Dissolution” and a “Military Retired Pay Division Order” to “effectuate the parties’ intention at the time they entered into the final dissolution paperwork in 2008.” CP 50-51. The trial court entered an “Order for Addendum to Decree of Dissolution,” which required Bonds to pay Daniels \$146,191.30 from her military retirement at \$593.22 per month. CP 55. The trial court also entered the proposed “Military Retired Pay Division Order,” which “assign[ed] to [Daniels] a portion of” Bonds’ military retirement benefits. CP 223.¹

Specifically, the Military Retired Pay Division Order stated,

The Court assigns an interest in the Member’s [Bonds] disposable military retired pay to the Former Spouse [Daniels]. The Former Spouse is entitled to a direct payment in the amount specified below from the Defense Finance and Accounting Service (DFAS), and which will be paid from the Member’s disposable retired pay, under provisions of the Uniformed Services Former Spouses’ Protection Act (“USFSPA”), 10 U.S.C. Section 1408, as that statute provides at the time of entry of this Order or hereafter may be amended.

¹ CP numbers above 221 are part of a supplemental designation of clerk’s papers filed shortly before this brief was due. The numbers cited here represent counsel’s best estimate. If there is an error, Bonds will file an amended brief with corrected citations.

Effective upon the retirement of the Member as part of the division of the couple's Community Property, the Member shall pay the Former Spouse, Nathaniel Daniels, a portion of her disposable military retired pay in the amount of \$593.22 per month, of the Member's disposable military retired pay...

CP 224. The order later repeats, "Upon Petitioner's retirement, as division of Community Property, Petitioner shall pay Respondent \$593.22 per month." CP 224-25.

3.4 Bonds was subsequently placed on disability retirement by the Army, and payments to Daniels terminated.

After 27 years of military service and multiple deployments, Bonds had suffered injuries that were affecting her performance. CP 118-19, 119-20. The Army placed her on Temporary Disability Retirement Leave on October 1, 2016, and started paying her disposable retired pay. CP 119, 127. Pursuant to the Military Retired Pay Division Order, DFAS started paying Daniels his \$593.22 per month out of Bonds' disposable retired pay. *See* CP 119.

On January 11, 2018, the Army determined that Bonds was 70 percent disabled and medically unfit for duty. CP 118-19. The Army discharged her and placed her on Permanent Disability Retirement. CP 118-19, 127. Instead of receiving "disposable military retired pay," Bonds started receiving "military disability pay," which is not divisible as community

property. CP 119. DFAS terminated its payments to Daniels. CP 97, 119, 127.

3.5 Daniels sought to enforce payment of the \$146,191.30 even though he agreed the trial court could not award him any portion of Bonds' disability retirement.

Daniels returned to the trial court and moved, in the alternative, for contempt or to enforce, clarify, or vacate the decree. CP 62. Daniels noted that the recent U.S. Supreme Court decision in *Howell v. Howell*, __ U.S. __, 137 S.Ct. 1400, 197 L.Ed.2d 781 (2017), prohibited state courts from ordering a servicemember to indemnify a former spouse for the loss of the former spouse's portion of the servicemember's retirement pay when the servicemember starts receiving disability payments instead of disposable retired pay. CP 66. He argued that if *Howell* applies—that is, if Bonds was receiving disability payments—that the court should vacate the decree and determine a new, equitable division of property. CP 66.

Bonds' response explained in more detail the effect of the USFSPA and the Supreme Court decision in *Mansell v. Mansell*, 490 U.S. 581, 109 S.Ct. 2023, 104 L.Ed.2d 675 (1989), followed in *Howell*, which only allows state courts in divorce cases to divide “disposable retired pay,” not disability pay. CP 135-36. She emphasized that her placement on disability retirement was not voluntary. CP 134-35. Bonds argued that she should be

relieved from paying the \$146,191.30 ordered in 2014 because it was based on the erroneous premise that her retirement would be “disposable retired pay,” when in fact it turned out to be disability retirement, an asset the court does not have power to divide. CP 137. She also argued that the \$146,191.30 amount had erroneously included her First Command account, which the original decree did not include in the balancing of retirement accounts. CP 139.

Daniels agreed that the court did not have authority to divide Bonds’ disability pay. CP 170, 172. Instead he argued, for the first time, that the \$146,191.30 ordered in 2014 was “an equalization payment,” not a division of assets. CP 170, 173-74. Bonds countered that in view of the parties’ assets at the time of the original decree, the only way to equalize the retirement assets was to divide her military retirement. CP 191; RP 5-6. “Therefore, in a very real sense, [Bonds’] military pension was divided.” CP 191.

3.6 The trial court entered judgment in favor of Daniels, reasoning that it was “an equalization payment,” not a division of Bonds’ retirement.

The trial court entered a judgment in favor of Daniels for \$127,193.86, reducing the amount for the First Command error and to reflect the payments Daniels had already received. CP 209-11; RP 35. The trial court reasoned that it was a debt for a

fixed amount that Bonds should have already paid. RP 32. The trial court viewed the 2013-14 orders as only designating a vehicle for the payment, not dividing the military retirement. RP 4, 32, 35-36. The trial court reasoned if she had paid it before, her subsequent disability would never have been an issue. RP 35. The trial court ordered Bonds to continue making monthly payments of \$593.22 until the judgment is paid in full. CP 211.

4. Argument

The trial court erred in entering judgment against Bonds for a \$127,193.86 “equalization payment,” some or all of which represents a division of Bonds’ military retirement, to which Daniels is no longer entitled under federal law. Although a state court may divide a veteran’s “disposable military retired pay” as community property in a dissolution decree, the court may not divide a veteran’s **disability** retirement pay. When a veteran’s military retirement is divided in a decree and the veteran subsequently starts receiving **disability** pay, the former spouse is not entitled to receive any portion of the disability pay.

Here, the trial court’s 2013-14 orders amended the original decree, by agreement of the parties, to divide Bonds’ military retirement as community property, awarding \$146,191.30 of it to Daniels. In the 2019 decision being appealed,

the trial court erred in interpreting the orders as something other than a division of the military retirement. The 2014 order divided Bonds' military retirement. When Bonds was subsequently placed on disability retirement, Daniels was no longer entitled to collect.

Under the USFSPA and *Howell v. Howell*, __ U.S. __, 137 S.Ct. 1400, 197 L.Ed.2d 781 (2017), military disability retirement cannot be divided pursuant to a divorce decree, and a state court cannot order a veteran to indemnify the former spouse for the loss. In seeking a division of Bonds' military retirement, Daniels took a gamble on the contingency that Bonds would remain healthy and the retirement payable to him. He lost that gamble. Under *Howell*, the trial court could not compensate him for that loss.

Because the trial court's order and judgment did precisely what *Howell* prohibits, this Court should reverse and vacate the 2019 order and judgment.

4.1 Under federal law, a state court cannot order a veteran to compensate a former spouse for the loss of the spouse's share of disposable military retired pay when the veteran subsequently receives disability retirement pay instead.

"The Federal Government has long provided retirement pay to those veterans who have retired from the Armed Forces after serving, *e.g.*, 20 years or more. It also provides disabled

members of the Armed Forces with disability benefits. In order to prevent double counting, however, federal law typically insists that, to receive disability benefits, a retired veteran must give up an equivalent amount of retirement pay.” *Howell v. Howell*, ___ U.S. ___, 137 S.Ct. 1400, 1402-03, 197 L.Ed.2d 781 (2017).

In the 1981 case of *McCarty v. McCarty*, the U.S. Supreme Court held that state courts could not consider any portion of military retirement as community property. *Howell*, 137 S.Ct. at 1403 (citing *McCarty v. McCarty*, 453 U.S. 210, 101 S.Ct. 2728, 69 L.Ed.2d 589 (1981)). Congress responded in 1982 by passing the Uniformed Services Former Spouses’ Protection Act, 10 U.S.C. § 1408. *Howell*, 137 S.Ct. at 1403.

The Act permitted state courts to treat “disposable retired pay” as community property divisible upon divorce, but excluded disability payments from such treatment. *Howell*, 137 S.Ct. at 1403; 10 U.S.C. § 1408. The U.S. Supreme Court confirmed in *Mansell* that state courts are prohibited from treating disability benefits as community property or dividing those benefits at divorce. *Howell*, 137 S.Ct. at 1403-04 (citing *Mansell v. Mansell*, 490 U.S. 581, 109 S.Ct. 2023, 104 L.Ed.2d 675 (1989)).

In *Howell*, the U.S. Supreme Court was faced with the question of whether a state court that had divided “disposable retired pay” at the time of an initial divorce decree could later modify the decree to compensate the former spouse for the loss

of “disposable retired pay” that had been waived in exchange for disability benefits. *Howell*, 137 S.Ct. at 1402. The Court held that the state court’s compensatory modification order that the servicemember “reimburse” or “indemnify” his former spouse was an impermissible division of the disability benefits. *Id.* at 1405-06. “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 preempted.” *Id.* at 1406.

The Court recognized “the hardship that congressional pre-emption can sometimes work on divorcing spouses.” *Id.* at 1406. Nevertheless, the result was that the former spouse could not receive any portion of the veteran’s disability pay. The right to receive a portion of a divided military retirement is contingent upon the veteran receiving “disposable military retired pay,” not disability pay. *See Id.* at 1405-06.

Here, the trial court erred by ordering Bonds to reimburse or indemnify Daniels for the loss of his share of Bonds’ military retirement after Bonds was placed on disability retirement. As explained below, this Court should reverse.

4.2 The 2013-14 orders of the trial court divided Bonds' military retirement as community property, awarding \$146,191.30 of it to Daniels. The trial court erred in concluding otherwise.

The trial court's error in this case appears to stem from its misinterpretation of the prior, 2013-14 orders that divided Bonds' military retirement. Interpretation of a dissolution decree, including in the context of a motion to enforce, is a question of law subject to de novo review. *In re Marriage of Thompson*, 97 Wn. App. 873, 877, 988 P.2d 499 (1999).

When interpreting a prior court order, a trial court may clarify the order "by defining the parties' respective rights and obligations," but it does not have authority to extend or reduce any party's rights and obligations without first finding grounds to justify reopening the judgment. *In re Marriage of Christel*, 101 Wn. App. 13, 22, 1 P.3d 600 (2000); *Thompson*, 97 Wn. App. at 878.

The court's goal in interpreting a prior order is to ascertain the intent of the court that entered it. *Thompson*, 97 Wn. App. at 878. In determining the original intent, the trial court uses the general rules of construction applicable to statutes and contracts. *Id.* The court must view the order or orders as a whole, giving meaning and effect to each word. *Stokes v. Polley*, 145 Wn.2d 341, 346, 37 P.3d 1211 (2001). The court must interpret the order in a manner that avoids absurd

results. *See State v. Larson*, 184 Wn.2d 843, 851, 365 P.3d 740 (2015). The context surrounding entry of the order can aid the court in understanding the original intent of the order. *See Hearst Commc'ns, Inc. v. Seattle Times Co.*, 154 Wn.2d 493, 502-04, 115 P.3d 262 (2005).

4.2.1 The language of the orders shows that the court and the parties intended to divide Bonds' military retirement.

In January 2013, in response to Daniels' motion, the trial court entered an "Order on Motion for Enforcement of Decree and **Entry of Order Dividing Military Retirement.**" CP 47 (emphasis added). This title was drafted by Daniels' attorney. CP 49. The order stated, "The wife owes the husband \$146,191.30 pursuant to the decree of dissolution." CP 48. The decree of dissolution provided that the present value of the community property portions of the parties' retirement accounts would be calculated and then divided 50/50:

The present value of all six retirement accounts shall be totaled **and divided** such that the end result is each party receives one-half of the present value of the marital portion.

CP 10 (emphasis added). Thus, the 2013 order specified the amount of Bonds' assets that had to be awarded to Daniels in order to accomplish the division.

The 2013 order further specified, “This amount shall come from the wife’s military retirement.” CP 48. In other words, the division of assets would be accomplished by dividing Bonds’ military retirement.

This is bolstered by the remaining text of the order. The order gave Daniels “30 days to select the option he prefers” from the methods of division that had been “put forth by the wife in her pleadings.” CP 48. Bonds’ pleadings had specifically asked for her military retirement to be divided, because, she agreed with Daniels, that was the only way he could receive the amount determined under the original decree. CP 30. She proposed alternative methods for dividing her military retirement in compliance with USFSPA and with DFAS rules. CP 30-32, 40.

Finally, the 2013 order required, “The parties shall schedule a presentment ... to enter [an] order **dividing the wife’s military retirement.**” CP 48-49 (emphasis added). The text of the 2013 order shows that the court intended to divide Bonds’ military retirement.

The parties followed this order with a set of agreed orders, which the court signed in January 2014. The court entered an “Order for Addendum to Decree of Dissolution,” which “require[ed] Ms. Daniels to pay Mr. Daniels to total of \$146,191.30 from her military retirement, once she retires, paying \$593.22 per month.” CP 55. The order offered no further

explanation, but did make reference to a “Military Pension Division Retirement Order” that was a part of the agreed proposal. CP 55.

On the same day, the court entered a “Military Retired Pay Division Order.” CP 223. This order provides, “[Daniels] **is entitled to a portion** of [Bonds’] United States military retired pay as set forth herein.” CP 224 (emphasis added). “The Court **assigns an interest** in the Member’s disposable military retired pay to the Former Spouse.” CP 224 (emphasis added). “Effective upon the retirement of the Member **as part of the division of the couple’s Community Property**, the Member shall pay the Former Spouse, Nathaniel Daniels, a portion of her disposable military retired pay in the amount of \$593.22 per month.” CP 224 (emphasis added). The plain language of this order **divides** Bonds’ disposable military retired pay, “as part of the division of the couple’s Community Property,” and “assigns an interest” in the disposable military retired pay to Daniels. This language shows that the parties and the court intended in 2014 to divide Bonds’ military retirement. The trial court’s 2019 interpretation to the contrary was legal error. This Court should reverse and hold that the 2014 orders divided Bonds’ military retirement.

4.2.2 The context of the 2013-14 orders supports a conclusion that the parties and the court intended to divide Bonds' military retirement.

The context of the 2013-14 orders lends further support to the original intent to divide Bonds' military retirement. The 2013 order was prompted by Daniels' motion, in which he presented his valuation of the parties' retirement assets and argued, "the only way for me to get the funds owed to me by [Bonds] **is for the court to divide her military retirement.**" CP 19 (emphasis added).

Daniels submitted with the motion "my proposed order dividing [Bonds'] military retirement." CP 19. Bonds responded with her own motion asking the court to divide her military retirement. CP 27. It is little wonder, then, that the 2013 order required the parties to return with a formal order "dividing the wife's military retirement." CP 48-49.

Consistent with the 2013 order, the parties returned in 2014 with a joint motion for an addendum to the decree and entry of a "Military Division Pension Order," "as the parties' resolution for the division of property." CP 50. Because the division of property in the original decree "is legally unworkable," "the division of retirement accounts have been modified with a new Military Division Pension Order, to be signed by this court. That, along with this Addendum, will carry

out the intention of the parties for an equal division of the parties' retirement and savings accounts." CP 50.

According to the parties' joint motion, the 2014 "Order for Addendum to Decree of Dissolution" and "Military Retired Pay Division Order" must be read and interpreted together. Only **together** do the orders "carry out the intention of the parties." CP 50. Together the two orders divide Bonds' military retirement as community property, assigning to Daniels an interest in Bonds' disposable military retired pay.

4.2.3 The trial court's contrary interpretation is an absurd result.

In interpreting court orders, the court must seek to avoid absurd results. The trial court's absurd interpretation of these orders was that the \$146,191.30 was merely a nebulous "equalization payment" not tied to any of the parties' assets at the time of dissolution.

An examination of the assets demonstrates that the \$146,191.30 was inextricably tied to Bonds' military retirement. At the time of dissolution, Daniels' retirement assets were valued at \$87,265.51 and Bonds' at \$379,648.10. CP 19. Each party's 50% share would have been \$233,456.81. CP 19. Adjusted for the First Command error (*see* CP 210; RP 35), Daniels would have been entitled to \$136,092.16 of Bonds' retirement assets.

Because Bonds' non-military retirement assets totaled only around \$25,000, the intended 50/50 division of retirement assets could only be accomplished by dividing her military retirement. For the trial court to conclude that the prior orders did not divide the military retirement was absurd.

Additionally, regardless of what the assets were at the time of the original decree, the 2013-14 orders represented a negotiated settlement, by which Daniels agreed that the \$146,191.30 would be satisfied by dividing Bonds' military retirement as community property under the USFSPA. In doing so, he put all of his eggs in that basket. The trial court could not change that outcome without first finding grounds justifying reopening the decree. The trial court did not do so. The original intent of the 2013-14 orders must stand. The decree, as amended in 2014, divided Bonds' military retirement as community property and assigned Daniels an interest in \$146,191.30 of Bonds' disposable military retired pay, to be paid out in monthly payments after Bonds retired.

The trial court's decision to the contrary was legal error. The language of the orders and the context in which they were entered point inexorably to the conclusion that the court divided Bonds' military retirement. This Court should reverse the erroneous trial court decision and vacate the judgment.

4.3 Under *Howell*, the trial court did not have authority to order Bonds to indemnify Daniels for the loss of his portion of the military retirement.

Daniels knew that the 2013-14 orders divided Bonds' military retirement. He knew—or at least suspected—that Bonds was receiving disability pay. That is why his 2018 motion to enforce, clarify, or vacate was “based upon *Howell v. Howell*.” CP 63. That is why the motion acknowledged that if *Howell* applied, the court would have to vacate the decree in order to grant him any relief. CP 66.

Howell does apply. Under *Howell*, the trial court did not have authority to order Bonds to compensate Daniels for the loss of his share of Bonds' military retirement. Yet that is exactly what the trial court attempted to do.

The trial court erroneously accepted Daniels' last-minute recharacterization of the \$146,191.30 as an “equalization payment” or a lump-sum debt. The trial court believed that Daniels was entitled to his share and had to be compensated one way or another. In *Howell*, the Arizona family court had held that the decree gave the former spouse a “vested” interest in the veteran's retirement pay and ordered that the former spouse should “receive her share without regard for the disability.” *Howell*, 137 S.Ct. at 1405.

In treating the \$146,191.30 as a lump-sum debt for an “equalization payment,” the trial court here was trying to do the same thing that the Arizona court tried to do in *Howell*. Any other characterization of the trial court’s actions here would be “semantic and nothing more.” *See Id.* at 1406. No matter the form of the order, the trial court did not have authority to order Bonds to reimburse, indemnify, or otherwise compensate Daniels for the loss occasioned by Bonds’ receipt of disability pay instead of the “disposable military retired pay” the parties and the court originally thought would be at play when they divided it through the 2013-14 orders.

5. Conclusion

The parties agreed and the court ordered in 2013-14 that Bonds’ disposable military retired pay would be divided and a share assigned to Daniels. Bonds’ subsequent disability retirement resulted in the loss of the disposable military retired pay. Under *Howell*, the trial court had no authority to compensate Daniels for this loss.

The result mandated by *Howell* may be a hardship for Daniels, but it is the result the law requires. The trial court’s 2019 order and judgment were legal error. This Court should reverse and vacate the order and judgment.

Respectfully submitted this 8th day of July, 2019.

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Certificate of Service

I certify, under penalty of perjury under the laws of the State of Washington, that on July 8, 2019, I caused the foregoing document to be filed with the Court and served on counsel listed below by way of the Washington State Appellate Courts' Portal.

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SIGNED at Lacey, Washington, this 8th day of July, 2019.

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