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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

HEIDI KAUFMAN,

Petitioner,

v.

GEOFFREY KAUFMAN,

Respondent.

APPELLANTS' OPENING BRIEF

Appeal from the Superior Court of Kitsap County,
Cause No. 08-3-00305-7
The Honorable John Hickman, Visiting Judge

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I. ASSIGNMENT OF ERROR

The Court erred in granting the Motion for Enforcement and granting attorney's fees to Ms. Kaufman incurred in the Motion proceedings.

II. ISSUES PERTAINING TO ASSIGNMENT OF ERROR

1. Was it error for the trial court to base its ruling on *Gross v. Wilson* where *Gross* is not binding precedent in Washington, is based in part on different state law, and was incorrectly decided?

2. Was it error for the court to find that the Property Settlement Agreement was a "valid contract" where the provision dividing Mr. Kaufman's disability pension violated state and federal law in effect at the time the Agreement was signed?

3. Was it error for the court to grant the Motion to Enforce the provision dividing Mr. Kaufman's disability pension where that provision was illegal and void ab initio?

4. Was it error for the Court to award attorney's fees to Ms. Kaufman where the Property Settlement provisions regarding division of Mr. Kaufman's disability pension are illegal and void ab initio?

III. STATEMENT OF THE CASE

Heidi and Geoffrey Kaufman were divorced on June 17, 2008.[1] Before the Decree was entered, the parties attended a settlement conference accompanied by their attorneys, where they negotiated a Property Settlement Agreement,[2] including a

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[1] CP 6-11.
[2] CP 317-339.

provision which states:

> Petitioner shall be awarded as her sole and separate property, free and clear of any right, title or interest in Respondent, the following . . . one-half interest in Respondent's US Navy retirement and pursuant to an Order for Division of Military Retirement.[3]

Under "Spousal Maintenance," the Agreement provides:

> Commencing July 1, 2008, the husband shall pay the wife spousal maintenance in a sum representing 50% of the husband's US Navy VA waiver/disability. The current VA waiver/disability is $610.00 per month resulting in a spousal maintenance obligation from the husband to the wife of $305.00 per month. . . .In the event the VA waiver/disability portion and payment increases (either as a result of COLAs or as a result of an increase in the VA waiver portion to the detriment of the retainer pay), the wife shall be entitled to her proportionate increase (50% of the adjusted VA waiver/disability) in spousal maintenance and effective as of the date of the adjustment.. . .
>
> Commencing July 1, 2008 and until such time as the Order for Division of Military Retirement is processed with the US Navy, the husband shall pay the wife her 50% interest in the taxable retirement pay of $2,160.00 per month as spousal maintenance[.][4]

The Agreement further provides

> it is the intention of these parties that this agreement may be merged into said decree, and that these parties retain their respective rights to enforce the provisions of this agreement by contract law, as well as by those remedies

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[3] CP 320.
[4] CP 319-320.

available for the enforcement of judgments.[5]

As to property awarded to wife, the Decree states, "[t]he community and separate property is identified and divided in the Property Settlement Agreement."[6] The spousal maintenance provision in the Decree is verbatim of the spousal maintenance provision in the Property Settlement Agreement.[7]

In January of 2018, Mr. Kaufman submitted a claim for an increase to his VA disability rating, which was increased from 40% to 60%.[8] Because Mr. Kaufman's disability rating was increased to over 50%, he was then entitled to Concurrent Retirement and Disability Pay (CRDP). 10 U.S.C. §1414 is titled "Members eligible for retired pay who are also eligible for veterans' disability compensation for disabilities rated 50 percent or higher: concurrent payment of retired pay and veterans' disability compensation."

In pertinent part, 10 U.S.C. § 1414 provides:

> "Subject to subsection (b), a member or former member of the uniformed services who is entitled for any month to retired pay and who is also entitled for that month to veterans' disability compensation for a qualifying service-connected disability

[5] CP 326.
[6] CP 7.
[7] CP 7-8; CP 319-320.
[8] CP 55; CP 307-311.

> (hereinafter in this section referred to as a "qualified retiree") **is entitled to be paid both** for that month without regard to sections 5304 and 5305 of title 38.

Emphasis added.

Based on the change in his disability rating, Mr. Kaufman wrote to Ms. Kaufman on June 1, 2018 "to explain that she would no longer receive a part of her entitlement from me, but would receive 100% of her entitlement from DFAS."[9] Mr. Kaufman stated in his June 1, 2018 letter : "The only change to you is you will now receive all that is owed to you in one monthly payment (from DFAS) instead of two (one from DFAS and one from me).[10]

> If a veteran is awarded VA disability compensation based on service connected disability, the actual military retired pay is reduced by the amount of VA disability awarded. CRDP is then awarded and acts as the **replacement** of retired pay lost due to disability compensation. Which means that as the disability compensation is increased the actual retired pay is reduced.
>
> It then becomes a question about whether the disabilities are combat-related or just service-connected. **If the veteran has VA compensation and his retired pay becomes CRDP (concurrent retirement and disability payments) due to service-connected rather than combat-related disabilities, then the former spouse would still be**

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[9] CP 163; CP 268. "DFAS" is the acronym for Defense Finance and Accounting Service, the agency that "calculates the amount of military retired pay a veteran/military retiree is entitled to receive[.]" *Haddock v. United States,* 135 Fed. Cl. 82, 84 (2017).
[10] CP 268.

> **entitled to her percentage as provided in the divorce decree. CRDP is in essence the <u>replacement</u> of retired pay.**[11]

Emphasis added.

Ms. Kaufman met with her attorney on June 19, 2019, and following the meeting, her lawyer sent a letter to Mr. Kaufman,[12] in which the lawyer told Mr. Kaufman:

> I am contacting you regarding your letter to [Ms. Kaufman] dated June 1, 2018, in which you indicate your intention to violate the Decree of Dissolution entered on June 17, 2008, and stop paying the maintenance obligation to Ms. Kaufman.
>
> You have indicated as your reasoning behind halting the maintenance obligation is your VA waiver having been terminated. This is an incorrect factual statement and, regardless, has no effect on your obligation for maintenance.[13]

On September 21, 2018, Ms. Kaufman filed a Motion for Contempt Hearing,[14] asserting:

> Geoffrey A. Kaufman did not obey the agreed Property Settlement (as incorporated into the Decree of Dissolution) and Decree of Dissolution entered or filed with the court on June 17, 2998 in Kitsap County, State of Washington.[15]

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[11] https://www.fkgoldstandard.com/content/how-are-crsc-crdp-benefits-affected-divorce. The full article, downloaded on August 4, 2019, is submitted as Appendix A to this brief.
[12] CP 13.
[13] CP 14; CP 39-40.
[14] CP 10-11.
[15] CP 15.

The Court entered an Order to Go to Court for Contempt Hearing on that same date.[16]

The hearing on contempt was held on October 29, 2018. After argument, the Court ruled:

> Order in section 2 of spousal maintenance lacks clarity. Cannot find contempt. Court will not preclude enforcement, and will not grant attorney's fees at this time. Enforcement is not before the Court at this time. Counsel requests that Court take enforcement under advisement to conserve judicial economy. Court will take enforcement issue under advisement.[17]

On March 11, 2019, Ms. Kaufman filed a Motion for Enforcement of the Property Settlement Agreement Memorandum of Law, and a supporting Declaration.[18]

On April 19, 2019, visiting Judge John R. Hickman heard argument on the Motion for Enforcement of the Property Settlement Agreement. At the end of the hearing, Judge Hickman noted "it's a case of first impression for the Court," and stated he would have a decision within ten working days.[19]

On April 25, Judge Hickman entered his Decision on Motion for Enforcement, stating that the Property Settlement "was

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[16] CP 52.
[17] CP 90-91.
[18] CP 93-133
[19] 4/19/19 VRP at 18, lines 4-6.

a valid contract between the parties"; "to go back after 9 plus years of compliance with the settlement agreement would violate the law regarding res judicata (law of the case)"; and "the fact pattern in *Gross v. Wilson,* 424 P.3d 390 (2018), an Alaska Supreme Court decision, more closely resembles the *Kaufman* case, not *Howell v. Howell.*"[20] The Court ruled:

> This Court views the property settlement agreement as a contractual obligation requiring the former husband to pay an amount certain for spousal maintenance. The payment is not restricted to any source of payment (i.e., just the VA funds). Nothing in the USFPA, or the *Howell* decision, prevents a former spouse from voluntarily paying a sum that may originate from disability payments.
>
> In sum, this settlement was a binding contract between the parties and is not void, or voidable, and is enforceable per the original terms. The petitioner's motion, and relief, are hereby granted. The Court will award attorney's fees, per the terms of the settlement agreement. Counsel for the Petitioner shall draft an order and findings of fact to reflect this decision.[21]

Mr. Kaufman filed his Notice of Appeal from the April 25, 2019 Decision on Motion for Enforcement on May 20, 2019.[22]

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[20] ___ U.S.___, 137 S.Ct. 1400, 197 L.Ed. 781 (2017).
[21] CP 224.
[22] CP 226.

V. ARGUMENT

A. THE ALASKA STATE CASE RELIED ON BY THE TRIAL COURT TO REACH ITS DECISION DOES NOT GOVERN THE ISSUE ON APPEAL.

In *Gross v. Wilson,*[23] the parties created a settlement agreement that was incorporated into their divorce decree. The agreement "provided that Wilson was to receive an amount equal to 50% of the military retirement and Veterans Administration (VA) disability pay that Gross received for his service in the United States Coast Guard."[24] When Mr. Gross subsequently "reduced the amount of monthly retirement benefits by $170, citing statutes pertaining to the division of disability pay" Ms. Wilson filed a motion for enforcement of the property settlement agreement.[25]

Mr. Gross filed "filed a cross-motion for an order denying enforcement of the 'claim' for disability, stating that it would be a violation of the USFSPA because that statute "exempts [VA] payments from allocation during divorce as marital property."[26] He also filed an affidavit stating he did not know how the paragraph of the agreement dividing disability pay had been included in the

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[23] 424 P.3d 390 (2018).
[24] *Id.* at 392.
[25] *Id.* at 394.
[26] *Id.*

settlement agreement and that he "had not understood the settlement agreement to divide disability payments.[27]

The Gross trial court "concluded that, even if the payments originated from Gross's disability pay, nothing in the USFSPA or *Mansell* prevents a veteran from voluntarily contracting to pay a former spouse a sum of money that may originate from disability payments."[28] The Alaska Supreme Court affirmed the division of Gross's disability, stating:

> Under *Howell* a state court may not circumvent *Mansell* by ordering a service member to "indemnify" a former spouse for retirement benefits waived to receive disability pay. **But *Howell* does not hold that a state court cannot enforce a property division by ordering a service member who unilaterally stops making payments the service member was legally obligated to make to resume those payments and pay arrearages.**[29]

The Alaska Supreme Court erred.

First, *Mansell* originated in an appeal from "interlocutory and final decrees of dissolution of marriage, **which decrees incorporated a stipulated property settlement agreement between the parties.** Under the agreement the husband's military

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[27] *Id.*
[28] *Id.*
[29] *Gross,* 424 P.3d at 401 (emphasis added).

gross retirement pay was divided between the husband and wife."[30]

Howell affirmed *Mansell*:

> We have held that a State cannot treat as community property, and divide at divorce, this portion (the waived portion) of the veteran's retirement pay. *See Mansell v. Mansell,* 490 U.S. 581, 594–595, 109 S.Ct. 2023, 104 L.Ed.2d 675 (1989).[31]

Second, *Howell* specifically abrogated four cases that involved property settlement agreements: "*Glover v. Ranney,* 314 P.3d 535,[32] *Krapf v. Krapf,* 439 Mass. 97, 786 N.E.2d 318, *Johnson v. Johnson,* 37 S.W.3d 892, *Abernethy v. Fishkin,* 699 So.2d 235."[33] The Alaska Supreme Court misinterpreted both *Mansell* and *Howell.*

Mattson v. *Mattson* is a Minnesota state case decided after *Howell,* also involving a property settlement agreement, in which the state appellate court correctly analyzed and applied the law governing the husband's military disability compensation. In *Mattson,* the court concluded:

> Berberich maintains that Mattson is contractually bound by the terms of their stipulated agreement to

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[30] *In re Marriage of Mansell,* 217 Cal. App. 3d 219, 265 Cal. Rptr. 227 (Cal. Ct. App. 1989).
[31] *Howell v. Howell,* 137 S. Ct. 1400, 1402, 197 L. Ed. 2d 781 (2017).
[32] *Glover* is **an Alaska Supreme Court** case involving a property settlement agreement.
[33] *Howell,* 137 S.Ct. at 1400.

> pay his agreed-upon portion of the property division, and she argues that Mattson has not challenged the decree, which remains a valid judgment. But this argument runs headlong into *Howell,* which makes clear that state courts "cannot 'vest' that which (under governing federal law) they lack the authority to give." 137 S.Ct. at 1406. Moreover, *Howell* effectively overruled cases relying on the sanctity of contract to escape federal preemption. *See id.* at 1404-05 (listing *Krapf,* 786 N.E.2d at 318, as among the state court cases that failed to properly interpret *Mansell*). Simply put, state laws are preempted in this specific area.
>
> Berberich also argues that she should be entitled to the apportioned amount of disability compensation and that, once the disability-compensation funds reach Mattson's pocket, they have become his property and are no longer subject to federal protection. Again, as recognized in *Howell*, state courts may not simply circumvent federal preemption by relying on arguments rooted in semantics. 137 S.Ct. at 1406. To recognize the legitimacy of such an argument would eviscerate federal preemption.[34]

Finally, Alaska law on one very important point differs from Washington law. Under Alaska R RCP Rule 60, a court may relieve a party from a from a judgment, order, or proceeding if "the judgment is void." Under Alaska law, a "void judgment" is limited to one issued when "the issuing court lacked subject matter jurisdiction or violated due process."[35]

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[34] *Id.* at 241.
[35] *Blaufuss v. Ball,* 305 P.3d 281, 285 (Alaska 2013).

In contrast, under Washington law,

> A void judgment is a "'judgment, decree or order entered by a court which lacks jurisdiction of the parties or of the subject matter, **or which lacks the inherent power to make or enter the particular order involved....**'"[36]

Mr. Gross sought relief from the provision of his property settlement agreement under Alaska Rule 60, arguing that

> the settlement provision requiring him to pay a portion of his military disability payments to Wilson is unenforceable. In essence Gross argues that the divorce decree was issued in violation of the USFSPA. If Gross is correct, and if as a consequence of this the March 2014 judgment was void, Gross would be entitled to relief under Rule 60(b)(4).[37]

Based on the limited scope of Alaska Rule 60(b)(4), the *Gross* court ruled:

> Simply put, "[a] judgment is not void merely because it is erroneous." Thus, even if the divorce decree was erroneous as a matter of federal law by including payment to Wilson for the amount of Gross's disability benefits, the judgment might have been voidable if properly challenged, but it would not be void absent a lack of subject matter jurisdiction or a violation of due process.[38]

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[36] *State ex rel. Turner v. Briggs,* 94 Wn. App. 299, 302–03, 971 P.2d 581, 583 (1999) (quoting *Dike v. Dike,* 75 Wash.2d 1, 7, 448 P.2d 490 (1968) (quoting *Robertson v. Commonwealth of Virginia,* 181 Va. 520, 25 S.E.2d 352, 358 (1943)) (emphasis added).
[37] *Gross,* 424 P.3d at 397.
[38] *Id.*

Had Mr. Gross filed a CR 60(b)(5) motion in Washington, the result would have been different. In *Kraft,* the Washington Supreme Court acknowledged that the *Mansell* Court held state courts may not treat military disability pay as property divisible upon divorce, and that the *Mansell* Court "drew this conclusion from the fact that the USFSPA grants state courts the authority to treat disposable retired pay as community property but specifically excludes retirement pay waived in order to receive disability pay."[39] In *Perkins,* the Court wrote:

> law prohibits a state dissolution court from dividing such a pension, and from distributing by any means any part of such pension, according to *Hisquierdo v. Hisquierdo, McCarty v. McCarty,* the Uniformed Services Former Spouses' Protection Act (USFSPA), and *Mansell v. Mansell.*[40]

In other words, Washington acknowledges that state courts have no inherent authority to divide military disability pay as property in dissolution proceedings. In Washington, the division of Mr. Gross's disability pay would have been a "void" decision. The trial court erred in relying on *Gross* to make its decision.

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[39] *In re Marriage of Kraft,* 119 Wn.2d 438, 444, 832 P.2d 871 (1992).
[40] *Perkins v. Perkins,* 107 Wn. App. 313, 318, 26 P.3d 989 (2001).

B. BOTH THE KAUFMAN PROPERTY SETTLEMENT AGREEMENT AND THE KAUFMAN DECREE VIOLATE THE STATE AND FEDERAL LAW IN EFFECT AT THE TIME THEY WERE SIGNED.

The trial court wrote in its Decision on Motion for Enforcement:

> This Court views the property settlement agreement as a contractual obligation requiring the former husband to pay an amount certain for spousal maintenance. The payment is not restricted to any source of payment (i.e., just the VA funds). Nothing in the USFSPA, or the Howell decision, prevents a former spouse from voluntarily paying a sum that may originate from disability payments.
>
> In sum, this settlement agreement was a binding contract between the parties and is not void, or voidable, and is enforceable per the original terms.[41]

The trial court also commented that "Mr. Gross made the same statutory arguments as Mr. Kaufman (Violation of the USFSPA)."[42]

1. The provision in the Kaufman Decree regarding Mr. Kaufman's disability benefit is illegal and unenforceable under Washington law.

In *Perkins v. Perkins*,[43] the husband served in the Air Force for 20 years during the marriage.

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[41] CP 223-224.
[42] CP 223.
[43] 107 Wn. App. 313, 26 P.3d 989 (2001).

> When Jeffrey retired from the Air Force, he was eligible to receive a taxable military service pension in the gross amount of $1,446 per month. He also was eligible to receive a nontaxable veterans disability pension equal to 40 percent of his service pension, but only if he waived 40 percent of his service pension. He opted to waive, and his service pension was reduced accordingly. Thereafter, he received a service pension equal to 60 percent of what it would have been absent disability, and a disability pension equal to 40 percent of what his service pension would have been absent disability[44].
>
> In the Decree, the *Perkins* court ruled that the wife
>
> is hereby entitled to 45% of the ... husband's ... military retirement.... **If the husband's military retirement [pension] ... is ... changed in form to a disability payment, the wife shall be entitled to her 45% share.**
>
> The court ordered in its decree that the husband pay to ... wife ... permanent compensatory spousal maintenance **in an amount which represents 45% of [husband's] total monthly compensation for disability and retirement;** provided that [wife's] maintenance amount shall be reduced by military retirement actually received by [the wife][.][45]

Mr. Perkins appealed, arguing that the "trial court violated federal law by dividing and distributing his veterans disability pension."[46] The Court of Appeals agreed with Mr. Perkins,[47] writing:

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[44] *Perkins,* 107 Wn. App. at 315, 26 P.3d 989.
[45] *Perkins,* 107 Wn. App. at 317, 26 P.3d 989 (emphasis added).
[46] *Perkins,* 107 Wn. App. at 317, 26 P.3d 989.
[47] *Perkins,* 107 Wn. App. at 318, 26 P.3d 989.

> **<u>Federal law prohibits a state dissolution court from dividing such a pension, and from distributing by any means</u> any part of such pension**, according to *Hisquierdo v. Hisquierdo*, *McCarty v. McCarty,* the Uniformed Services Former Spouses' Protection Act (USFSPA), and *Mansell v. Mansell. . . .*
>
> [The wife] argues that the trial court purified this otherwise improper division and distribution by calling it "maintenance." *Mansell* flatly prohibits a state dissolution court from dividing, and then distributing any part of, a veteran's disability pension. **It makes no difference whether the division and distribution are implemented by awarding part of the future income stream that is the pension itself; by finding present value and making an offsetting award of other assets; <u>or by awarding "maintenance.</u>" We hold that *Mansell* cannot be circumvented simply by chanting "maintenance." . . .**
>
> All we hold here is that a trial court may not divide a veteran's disability pension and award part of it to the nondisabled spouse, **even if the court labels its award as "maintenance."**
>
> Because the trial court divided and distributed the veteran's disability pension in violation of federal law, we reverse and vacate the property, debt, and maintenance parts of the dissolution decree.[48]

The language of the Kaufman Decree (incorporating Agreement provisions) regarding Mr. Kaufman's disability pay is very similar to the language in the *Perkins* Decree:

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[48] *Perkins,* 107 Wn. App. at 324, 327, 26 P.3d 989 (emphasis added).

Perkins Decree	*Kaufman* Decree
[the wife] is hereby entitled to <u>45% of the ... husband's ... military retirement</u>.... If the husband's military retirement [pension] ... is ... changed in form to a disability payment, the wife shall be entitled to her 45% share. . . . the **husband pay to ... wife ... permanent compensatory spousal maintenance <u>in an amount which represents 45% of [husband's] total monthly compensation for disability and retirement</u>;** provided that [wife's] maintenance amount shall be reduced by military retirement actually received by [the wife][.][49]	**Petitioner shall be awarded as her sole and separate property, free and clear of any right, title or interest in Respondent, the following . . . <u>one-half interest in Respondent's US Navy retirement</u> and pursuant to an Order for Division of Military Retirement....**[50] the **husband shall pay the wife spousal maintenance <u>in a sum representing 50% of the husband's US Navy VA waiver/disability.</u>** The current VA waiver/disability is $610.00 per month resulting in a spousal maintenance obligation from the husband to the wife of $305.00 per month. . . .In the event the VA waiver/disability portion and payment increases (either as a result of COLAs or as a result of an increase in the VA waiver portion to the detriment of the retainer pay), the wife shall be entitled to her proportionate increase (50% of the adjusted VA waiver/disability) in spousal maintenance and effective as of the date of the adjustment.. . .[51]

Under *Perkins,* the trial court lacked authority to divide Mr. Kaufman's disability benefit -- even by "chanting maintenance" -- so the provision of the Decree incorporating the Property

[49] *Perkins,* 107 Wn. App. at 317, 26 P.3d 989 (emphasis added).
[50] CP 326.
[51] CP 7-8, 326.

Settlement Agreement regarding distribution of Mr. Kaufman's disability benefit was void. "Where a court lacks jurisdiction over the parties or the subject matter, **or lacks the inherent power to make or enter the particular order,** its judgment is void."[52] The Kaufman Decree provision dividing Mr. Kaufman's disability pension was entered by the trial court, which lacked the power to make such a division. That provision of the Kaufman Decree is void.

2. The Kaufman Property Settlement Agreement has the same fatal flaw as did the Mansell Property Settlement Agreement.

At the time the Property Settlement Agreement was executed, *Mansell v. Mansell* [53] governed division of military retirement benefits in divorce cases. In *Mansell,* the husband was receiving

> both Air Force retirement pay and, pursuant to a waiver of a portion of that pay, disability benefits. Mrs. Mansell and Major Mansell **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.** Civ. No. 55594 (May 29, 1979). In 1983,

[52] *In re Marriage of Mu Chai,* 122 Wn. App. 247, 254, 93 P.3d 936 (2004) (emphasis added).
[53] 490 U.S. 581, 109 S. Ct. 2023, 2027, 104 L. Ed. 2d 675 (1989).

> Major Mansell asked the Superior Court to modify the divorce decree by removing the provision that required him to share his total retirement pay with Mrs. Mansell. The Superior Court denied Major Mansell's request without opinion.[54]

The *Mansell* Property Settlement Agreement stated, among other terms,

> that Wife was to receive "1/2 interest in retirement pay and compensation from the Veterans' Administration accrued through Husband's employment with the United States Air Force.
>
> On May 29, 1979, an interlocutory decree of dissolution was entered, incorporating the aforementioned property settlement. Paragraph six of the interlocutory decree provides:
>
>> Respondent [Husband] shall make an allotment to Petitioner [Wife] in an amount equaling fifty percent (50%) of the gross retirement pay and compensation from the Veterans' Administration accrued through Respondent's employment with the United States Air Force, and shall increase such allotment from time to time in an amount necessary to equal fifty percent (50%) of the gross amount of any and all increases in such retirement pay and compensation from the Veterans' Administration that may occur in the future until the death of either party.

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[54] *Mansell,* 490 U.S. at 585–86, 109 S. Ct. 2023, 2027, 104 L. Ed. 2d 675 (emphasis added).

> The interlocutory judgment was incorporated, in all material respects, into a final decree of dissolution entered June 4, 1979.[55]

The California Court of Appeal rejected Mr. Mansell's argument that "both the Former Spouses' Protection Act and the anti-attachment clause that protects a veteran's receipt of disability benefits, 38 U.S.C. § 3101(a) (1982 ed. and Supp. IV), precluded the Superior Court from treating military retirement pay that had been waived to receive disability benefits as community property."[56] The Supreme Court of California denied Mr. Mansell's petition for review,[57] and Mr. Mansell appealed to the Supreme Court of the United States, which noted probable jurisdiction[58] and accepted review.

Justice Marshall wrote:

> In this appeal, we decide whether state courts, consistent with the federal Uniformed Services Former Spouses' Protection Act, 10 U.S.C. § 1408 (1982 ed. and Supp. V) (Former Spouses' Protection Act or Act), may treat as property divisible upon divorce military retirement pay waived by the retiree in order to receive veterans' disability benefits. We hold that they may not. . . .

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[55] *In re Marriage of Mansell,* 217 Cal. App. 3d 219, 223, 265 Cal. Rptr. 227, 228 (Cal. Ct. App. (1989).
[56] *Mansell,* 490 U.S. at 586, 109 S. Ct. 2023, 2027, 104 L. Ed. 2d 675.
[57] *Id.*
[58] *Mansell v. Mansell,* 487 U.S. 1217, 108 S.Ct. 2868, 101 L.Ed.2d 904 (1988).

> We realize that reading the statute literally may inflict economic harm on many former spouses. But we decline to misread the statute in order to reach a sympathetic result when such a reading requires us to do violence to the plain language of the statute and to ignore much of the legislative history. Congress chose the language that requires us to decide as we do, and Congress is free to change it.
>
> For the reasons stated above, we hold that the Former Spouses' Protection Act **does not grant state courts the power to treat as property divisible upon divorce military retirement pay that has been waived to receive veterans' disability benefits. The judgment of the California Court of Appeal is hereby reversed,** and the case is remanded for further proceedings not inconsistent with this opinion. [59]

The fact that the division of Mr. Mansell's disability benefit originated in a property settlement agreement[60] did not prevent application of governing federal law, which preempts state courts from dividing military disability benefits.[61] As in *Mansell,* the provision in the Kaufman Property Settlement Agreement regarding division of Mr. Kaufman's disability pension is "illegal" under "federal law," and thus is not enforceable."[62] A contract that "seriously offends law or public policy" is "void ab initio" or "null

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[59] *Mansell,* 490 U.S. at 594-595, 109 S. Ct. at 2025, 104 L. Ed. 2d 675.
[60] *Mansell,* 490 U.S. at 585 - 586, 198 S.Ct. at 2027, 104 L.Ed. 2d 675.
[61] *Mansell,* 490 U.S. at 587-588, 109 S.Ct. 2023
[62] *Fluke Corp. v. Hartford Accident & Indem. Co.,* 102 Wn. App. 237, 245, 7 P.3d 825 (2000), aff'd, 145 Wn.2d 137, 34 P.3d 809 (2001); *Sherwood & Roberts-Yakima, Inc. v. Leach,* 67 Wn.2d 630, 636, 409 P.2d 160 (1965).

from the beginning[.]"[63] The Kaufman Property Settlement Agreement provision dividing Mr. Kaufman's disability pension is directly contrary to Washington law and federal law that was in effect at the time it was signed. This provision was "void ab initio."

C. "CONTRACTUAL INDEMNIFICATION" IS NOT PERMITTED BY FEDERAL LAW, AND HAS NOT BEEN PERMITTED SINCE *MANSELL* WAS WRITTEN IN 1988.

Ms. Kaufman argued in her Motion for Enforcement that the ruling in *Howell v. Howell*[64] "was a surprise" because:

> all but a handful of the state courts which have ruled on this have upheld the power of a trial judge to order indemnification; they have held that it is unfair and inequitable for retirees -- after the property division is already done -- to make a VA election which a reduction of the share or amount of retired pay that the former spouse receives after the property division has already occurred.[65]

However, Washington courts did not "uphold" the nonexistent power of a trial judge to order indemnification. In *Perkins,* Division 2 of the Court of Appeals wrote:

> the key question here is whether the trial court divided Jeffrey's veteran's disability pension and distributed part of it to Deanna; or, alternatively,

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[63] *Helgeson v. City of Marysville,* 75 Wn. App. 174, 180 n.4, 881 P.2d 1042 (1994) (citing Black's Law Dictionary 1574 (6th ed.)).
[64] 137 S.Ct. 1400, 197 L.Ed.2d 781 (2017)
[65] CP 106.

> whether the trial court merely considered the undivided disability pension as one factor tending to show Jeffrey's postdissolution ability to pay maintenance. The trial court stated in its findings that "the wife's community interest in the military retirement is 45% of the entire retirement"; that "the wife should receive 45% of the disability portion (45% times $482 equals $216.90)"; and that the husband should pay the wife "45% of husband's total monthly compensation for disability ... in addition to the 45% of the reduced military retirement that she is awarded." The trial court stated in its decree that the wife is "entitled to 45% of the ... husband's ... military retirement" even "if the husband's military retirement [pension] ... is ... changed in form to a disability payment"; and that the husband shall pay to the wife "45% of [his] total monthly compensation for disability and retirement[,]" less any amounts received by the wife from federal pension authorities. **This was precisely the kind of dollar-for-dollar division and distribution that *Mansell* and *Kraft* prohibit, and it violated federal law.**[66]

Perkins was binding on the Pierce County Superior Court at the time the Kaufman Property Settlement Agreement and Decree were executed and entered. In addition, *Kraft*[67] was a Washington Supreme Court case also in effect at that time, in which the Court wrote, "[t]he court may not . . . divide or distribute the military disability retirement pay as an asset."[68] In spite of

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[66] *Perkins,* 107 Wn. App. at 323–24, 26 P.3d 989 (emphasis added).
[67] *In re Marriage of Kraft*, 119 Wn.2d 438, 832 P.2d 871 (1992).
[68] *Kraft,* 119 Wn.2d at 448, 832 P.2d 871.

federal law and Washington state law, the parties' Property Settlement Agreement and Decree do exactly that.

Ms. Kaufman asserts that "*Howell* does not say that parties may not contract for indemnification, for restitution or for damages."[69] However,

> Although *Howell* involved a divorce decree and not a property settlement agreement, **the Supreme Court expressly stated that it was abrogating several cases dealing with property settlement agreements**. And significantly, the Court impliedly endorsed *Mansell* and its restriction on using a property settlement agreement to divide pay. The Court overruled cases relying on the sanctity of contract to escape federal preemption. 137 S.Ct. at 1404-05.[70]

At the time the Property Settlement Agreement and the Decree were executed, under current federal and state law, the provisions in those documents dividing Mr. Kaufman's disability were illegal and void ab initio.

In *Howell,* the U.S. Supreme Court wrote:

> 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 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

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[69] CP 107.

[70] *Matter of Marriage of Babin,* 56 Kan. App. 2d at 717–18, 437 P.3d 985 (2019).

> 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."

The *Howell* decision cannot be characterized as a "surprise," because it affirmed *Mansell.*

> We have held that a State cannot treat as community property, and divide at divorce, this portion (the waived portion) of the veteran's retirement pay. *See Mansell v. Mansell*, 490 U.S. 581, 594–595, 109 S.Ct. 2023, 104 L.Ed.2d 675 (1989).[71]

Under *Mansell,* and under *Howell,* the Kaufman Property Settlement Agreement and the Kaufman Decree include illegal provisions dividing Mr. Kaufman's disability pension, as the *Howell* decision makes very clear:

> The Arizona Supreme Court attempted to distinguish *Mansell* by emphasizing the fact that the veteran's waiver in that case took place before the divorce proceeding while the waiver here took place several years after the divorce. **This temporal difference highlights only that John's military pay at the time it came to Sandra was subject to a future contingency, meaning that the value of Sandra's share of military retirement pay was possibly worth less at the time of the divorce.** Nothing in this circumstance makes the Arizona courts' reimbursement award to Sandra any the less

[71] *Howell,* 137 S.Ct. at 1402, 197 L.Ed. 2d 781 (2017).

> an award of the portion of military pay that John waived in order to obtain disability benefits. **That the Arizona courts referred to her interest in the waivable portion as having "vested" does not help: State courts cannot "vest" that which they lack the authority to give. 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 dividing property, a semantic difference and nothing more.** Regardless of their form, such orders displace the federal rule and stand as an obstacle to the accomplishment and execution of the purposes and objectives of Congress. Family courts remain free to take account of the contingency that some military retirement pay might be waived or take account of reductions in value when calculating or recalculating the need for spousal support. Here, however, **the state courts made clear that the original divorce decree divided the whole of John's military pay, and their decisions rested entirely upon the need to restore Sandra's lost portion.**[72]

Petitioners argued in their Motion for Enforcement that the *Howell* decision "must be reviewed and understood through the lens of limited fact" because "[t]here was neither ruling nor dicta as to either of these situations -- express contractual indemnification or res judicata."[73] This argument ignores the fact that the *Howell* decision identified and abrogated four cases that **did** involve "express contractual indemnification," i.e., an agreement between the spouses incorporated into the divorce

[72] *Howell,* 137 S. Ct. at 1401–1402, 197 L. Ed. 2d 781 (2017)(emphasis added).
[73] CP 106.

decree. There is nothing "limited" about the *Howell* decision that state courts have no authority to divide a military disability pension, which is precisely what the Kaufman Property Settlement Agreement and the Kaufman Decree did.

D. RES JUDICATA DOES NOT APPLY TO A PROVISION THAT WAS "VOID AB INITIO."

10 U.S.C. § 1408(c)(1) provides that a state may treat a military veteran's retirement pay as community property and divide it at divorce. However, 10 U.S.C. § 1408(a)(4)(B) "exempts from this grant of permission any amount that the Government deducts 'as a result of a waiver' that the veteran must make in order to receive disability benefits."[74]

Interpreting this federal statute, the U.S. Supreme Court has "held that a State cannot treat as community property, and divide at divorce, this portion (the waived portion) of the veteran's retirement pay."[75] The Kaufman Decree incorporates the Kaufman Property Settlement Agreement, which divides Mr. Kaufman's disability retirement pay. This provision is illegal because it violates the governing statute. It is thus void and unenforceable.

> A contract that is either illegal or violates public policy is void and unenforceable. *Fluke Corp. v.*

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[74] *Howell,* 137 S.Ct. at 1402,197 L.Ed.2d 781.
[75] *Id.*

> *Hartford Accident & Indem. Co.*, 102 Wash.App. 237, 245, 7 P.3d 825 (2000), *aff'd,* 145 Wash.2d 137, 34 P.3d 809 (2001); *Sherwood & Roberts–Yakima, Inc. v. Leach,* 67 Wash.2d 630, 636, 409 P.2d 160 (1965). A contract that "seriously offends law or public policy" is "void ab initio" or "null from the beginning [.]" *Helgeson v. City of Marysville,* 75 Wash.App. 174, 180 n. 4, 881 P.2d 1042 (1994) (citing Black's Law Dictionary 1574 (6th ed.)). An instrument that is "intimately connected" to an illegal instrument is likewise tainted and unenforceable. *Sherwood,* 67 Wash.2d at 637, 409 P.2d 160. In an illegal contract, there is no obligation to perform even if the other party has performed or received a benefit from the bargain. *Cascade Timber Co. v. N. Pac. Ry. Co.,* 28 Wash.2d 684, 708, 184 P.2d 90 (1947).[76]

Where portions of a contract are illegal, the Court may enforce the legal contract provisions and invalidate the illegal terms:

> If less than all of an agreement is unenforceable under the rule stated in § 178 [term unenforceable on public policy grounds, including illegality], a court may nevertheless enforce the rest of the agreement in favor of a party who did not engage in serious misconduct if the performance as to which the agreement is unenforceable is not an essential part of the agreed exchange.

> Restatement (Second) of Contracts § 184(1) (1981). See also 15 S. Williston, Contracts § 1779 (3d ed. 1972). Because this section allows enforcement of

[76] *Hammack v. Hammack,* 114 Wn. App. 805, 810–11, 60 P.3d 663, 666 (2003).

> the legal portion of an agreement only where the unenforceable portion is not an "essential part" of the consideration given to support the contract, we believe it is a sound principle.[77]

Here, only the provisions regarding division of Mr. Kaufman's disability pension are unenforceable. The remainder of the Kaufman Property Settlement Agreement is enforceable. The Kaufman Decree is "intimately connected" with the Property Settlement, because it incorporates the Property Settlement Agreement. Only the provision of the Decree dividing Mr. Kaufman's disability pension is "illegal," and therefore, "void ab initio."

"Void ab initio" is defined as "null from the beginning, as from the first moment when a contract is entered into."[78] "Void ab initio" means it has "no [legal] effect whatsoever."[79] The provision dividing Mr. Kaufman's disability pay was "null from the beginning," and has "no legal effect whatsoever." As a result, there is nothing to which res judicata can apply regarding Mr. Kaufman's disability pay.

Ms. Kaufman's lengthy discussion of res judicata at CP

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[77] *Yakima Cty. (W. Valley) Fire Prot. Dist. No. 12* v. *City of Yakima,* 122 Wn.2d 371, 396, 858 P.2d 245, 258–59 (1993).
[78] BLACK'S LAW DICTIONARY (7th ed., 1995), page 1566.
[79] *Id.* (10th ed., 2014).

109-112 is informative, but irrelevant. Res judicata does not apply to a provision that was "null from the beginning" and which has "no legal effect whatsoever. As to division of Mr. Kaufman's disability pension, there is nothing to "enforce."

Ms. Kaufman asserted at that "[r]egardless of preemption and the Supremacy Clause, the Supreme Court in *Mansell v. Mansell* recognized that finality trumps federalism, and that even erroneous rulings may be enforced through res judicata."[80] This is an egregious mischaracterization of what the *Mansell* Court wrote, which was:

> In a supplemental brief, Mrs. Mansell argues that the doctrine of res judicata should have prevented this pre-*McCarty* property settlement from being reopened. *McCarty v. McCarty,* 453 U.S. 210, 101 S.Ct. 2728, 69 L.Ed.2d 589 (1981). The California Court of Appeal, however, decided that it was appropriate, under California law, to reopen the settlement and reach the federal question. 5 Civ. No. F002872 (Jan. 30, 1987). Whether the doctrine of res judicata, as applied in California, should have barred the reopening of pre-McCarty settlements is a matter of state law over which we have no jurisdiction. The federal question is therefore properly before us.[81]

Res judicata does not apply to the provision for dividing Mr. Kaufman's disability pension.

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[80] CP 118.

[81] *Mansell,* 490 U.S. at 587, 109 S. Ct. at 2028, 104 L. Ed. 2d 675.

E. "EXPRESS CONTRACTUAL INDEMNIFICATION" IS NOT A "REMEDY FOR THE VA WAIVER."

Ms. Kaufman also argued below that "express contractual indemnification" is a "legal doctrine[ ] which offer[s] a remedy for the VA waiver."[82] However, the provision in the Kaufman Property Settlement Agreement that "indemnifies" Ms. Kaufman from loss due to a finding of increased disability is illegal and void ab initio. Further, it is no "remedy" for the VA waiver. As the *Howell* Court wrote, *Mansell* cannot be avoided

> 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.**[83]

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[82] CP 118.
[83] *Howell,* 137 S. Ct. at 1406, 197 L. Ed. 2d 781.

The fact that the parties included an illegal provision in their Property Settlement Agreement is not "a remedy for the waiver."

F. UNDER 10 U.S.C. § 1414, MS. KAUFMAN WILL STILL RECEIVE 50% OF MR. KAUFMAN'S RETIREMENT FOLLOWING THE INCREASE IN MR. KAUFMAN'S DISABILITY RATING.

Traditionally, federal law prohibited "concurrent receipt of both VA Disability and military retirement payments, which meant a retiree had to waive military retirement, dollar for dollar, to receive VA disability. That waiver is now gone for a normal military retiree (i.e., with 20+ years of service) with a disability rating of 50% or higher, as a result of enactment of 10 U.S.C. § 1414(a)(1). This program is known as Concurrent Retirement & Disability Pay, or CRDP, and the amount of retirement restored to retirees to negate the waiver is reflected as CRDP on the Retiree Account Statement.

> Prior to 2004, federal statutes and regulations did not permit veterans who were entitled to both military retired pay and VA disability compensation to receive full payments of both benefits at the same time. *See* 38 U.S.C. §§ 5304, 5305; 38 C.F.R. § 3.750. Instead, veterans who were otherwise entitled to both benefits had to waive some or all of their military retired pay in order to receive all of the tax-free VA disability compensation to which they were entitled. Compl. ¶ 22. Since VA disability

compensation is tax-free, veterans often elected VA disability compensation over military retired pay. In effect, they waived a dollar of their military retired pay for each dollar of VA disability compensation they received. Thus, the election that most veterans made resulted in the amount of military retired pay they received being reduced by the amount of VA disability compensation. *Id.* ¶ 23.

10 U.S.C. § 1414 became effective in 2004, and allowed for concurrent receipt of both military retired pay and VA disability compensation for certain eligible military retirees. The Department of Defense is responsible for administering the program, which it delegates to DFAS. In effect, section 1414 restored to eligible veterans the right to receive some or all of the military retired pay that they previously had waived in order to receive their VA disability compensation. This restoration of military retired pay is known as Concurrent Retirement and Disability Pay ("CRDP"). *Id.* ¶ 24. **With the enactment of section 1414, veterans with at least a 50 percent combined VA disability rating and at least 20 years of qualifying military service were scheduled for the first time to receive, at some future date, both their full military retired pay and their VA disability compensation.** *See* 10 U.S.C. § 1414.

Upon the enactment of section 1414, veterans did not immediately become entitled to receive 100 percent of their military retired pay. Instead, section 1414 has "phase-in" periods during which a portion of the veteran's military retired pay is to be "restored" each calendar year until the applicable phase-in period has been completed. Section 1414 explains in detail how to determine the amount of military retired pay under CRDP that is available to veterans pursuant to this phase-in schedule. Compl. ¶ 25. Section 1414 has two phase-in periods: one for veterans with a disability rating of 50–90 percent, and another for

> veterans with a rating of 100 percent. **For veterans with a 50–90 percent disability rating, section 1414 provides for a ten-year phase-in period, such that the percentage amount of military retired pay restored to the veteran was to increase each calendar year until 2014, when the phase-in period would be completed.** From January 1, 2014 onward, the veteran would be entitled to receive his or her full military retired pay. *Id.*[84]

Mr. Kaufman testified by Declaration:

> At the time of our divorce, the amount of military retirement I was receiving was offset by the amount of disability compensation I received based on my VA rating of 40%
>
> I submitted a claim for an increase to my VA disability rating at the end of January 2018. I found out in the spring that I received an increase from 40 to 60% that was retroactive to when I submitted my claim. Not having expected or even thought about having my disability increased, I was surprised by the outcome, **especially that I no longer needed to waive the right to the full retirement amount and that I would finally receive my full disability.** Having understood from the start that the maintenance agreement was specifically and consistently written based on the "waiver" to ensure she received her full half of the retirement, I wrote her a letter to explain that she would no longer receive a part of her entitlement from me, but would receive 100% of her entitlement from DFAS.[85]

Along with the letter, Mr. Kaufman also provided to Ms. Kaufman a copy of the VA decision letter and a copy of his Retiree Account Statement showing the VA waiver termination and her

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[84] *Haddock v. United States,* 135 Fed. Cl. 82, 84–85 (Fed. Cl. 2017).
[85] CP 176.

increased portion from the Defense Finance and Accounting Services (DFAS).[86] Under 10 U.S.C. § 1414, since Mr. Kaufman's increase in disability rating to 60%, there is no "waiver" of retirement benefits. Ms. Kaufman was awarded one-half of the Military Retirement, and the retirement will never be decreased based on Mr. Kaufman's disability.

Under state and federal law, Mr. Kaufman's disability cannot be divided for spousal maintenance to Ms. Kaufman. As the *Perkins* Court wrote,

> Federal law prohibits a state dissolution court from dividing such a pension, and from distributing *by any means* any part of such pension, according to *Hisquierdo v. Hisquierdo, McCarty v. McCarty,* the Uniformed Services Former Spouses' Protection Act (USFSPA), and *Mansell v. Mansell.*[87]

The *Perkins* court reversed the property, debt, and maintenance parts of the dissolution decree and affirmed the balance of the decree "because the trial court divided and distributed the veteran's disability pension in violation of federal law."[88] The Court instructed that, after remand, the trial court could award maintenance "after considering the existence of an undivided disability pension as one factor (among many) bearing

[86] CP 268 - 278.
[87] *Perkins,* 107 Wn. App. at 327, 26 P.3d 989.
[88] *Id.*

on the husband's ability to pay, and after entering proper findings of fact under RCW 26.09.090." The Court concluded:

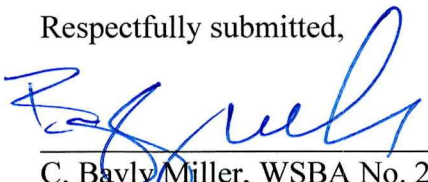
> We remand for redistribution of property and debts, and for reconsideration of maintenance. On remand, the trial court may redistribute and reconsider based on the record already made, or it may in its discretion take more evidence.[89]

VI. CONCLUSION

The Court should reverse the Decision on Motion for Enforcement and the award of attorney's fees to Ms. Kaufman. The Court should remand. as did the Perkins court, for further proceedings in order to determine whether Ms. Kaufman should receive maintenance and, if so, the amount to be paid based on all relevant factors and entry of proper findings of fact under RCW 26.09.090.

DATED this 12th day of August, 2019.

Respectfully submitted,



C. Bayly Miller, WSBA No. 22281
Attorney for Appellant

[89] *Id.*

APPENDIX

THE GOLD STANDARD FORT KNOX KENTUCKY STRENGTH STARTS HERE

How are CRSC, CRDP benefits affected by divorce?

Thursday, June 23, 2011 at 12:02 pm *(Updated: July 7, 5:14 pm)*

By CLINT MESHEW
Fort Knox Veterans Services

Since the passing of federal laws providing for Combat Related Special Compensation in 2003 and Concurrent Retirement and Disability Payments in 2004, there has been a great deal of contro-versy concern-ing how those benefits affect divorce decrees, specifically property settlements as they pertain to divorce decrees.

Most property settlements address the division of military retired pay in accordance with the former Spouse Protection Act. The act provided that given percentages of military retired pay could be divided by divorce courts in accordance with a formula which included years of marriage during active duty of the retired pay recipient.

Remember the words military retired pay because that is what can be divided according to current law.

If a veteran is awarded VA disability compensation based on service connected disability, the actual military retired pay is reduced by the amount of VA disability awarded. CRDP is then awarded and acts as the replacement of retired pay lost due to disability compensation. Which means that as the disability compensation is increased the actual retired pay is reduced.

It then becomes a question about whether the disabilities are combat-related or just service-connected. If the veteran has VA compensation and his retired pay becomes CRDP (concurrent retirement and disability payments) due to service-connected rather than combat-related disabilities, then the former spouse would still be entitled to her percentage as provided in the divorce decree. CRDP is in essence the replacement of retired pay.

Remember that CRSC (combat-related special compensation) is compensation and therefore not taxable. The regulations governing CRSC prohibit division of CRSC by divorce actions.

All of this seems as if a veteran drawing CRSC has no responsibility toward a former spouse. However, the former spouse and her attorney have other avenues of pursuing payments that were expected by the former spouse.

For example, the court may choose to award the former spouse maintenance (which could be more than 50 percent of military retired pay based on actual income of the veteran.) The court may rule that the former spouse had an expectation of receiving an amount based on the prior property settlement and current laws pertaining to CRSC are unconscionable in the eyes of the former spouse and therefore require that the terms of the property settlement be revisited by the court.

If you have questions pertaining to this column contact the Fort Knox Veteran Service Office at (502) 624-4103. If you have questions concerning veterans benefits email them to cmeshew328@yahoo.com.

CERTIFICATE OF SERVICE

The undersigned declares as follows:

1. I am over the age of 21 and not a party to this action.
2. I am an employee of Bayly Miller, Attorney at Law, Attorney for Respondent.
3. On this day, I certify that I forwarded at true and correct copy of this document to the counsel of record for Petitioner and court reporter Carla Higgins in the following manner:

Craig P. Lindsay, WSBA #31078 Lindsay & Lindsay 372 Tremont Street W Port Orchard, WA 98366 E-mail: craig@lindsaylawoffice.com	X	Via electronic mail
Paralegal 1 Lindsay & Lindsay 372 Tremont Street W Port Orchard, WA 98366 E-Mail: pl1@lindsaylawoffice.com	X	Via electronic mail

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated at Tacoma, Washington this 12th day of August, 2019.

Kari M. Spry

Kari M. Spry, Legal Assistant

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