

Decision on Divorce and Benefits

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The May 15, 2017, U.S. Supreme Court ruling in *Howell v. Howell* is a unanimous victory for disabled U.S. veterans. The decision upheld federal law that military disability compensation is not divisible in divorce proceedings.

History of the Law:

In 1981, the U.S. Supreme Court in *McCarty v. McCarty*, 453 U. S. 210 (1981), first addressed whether a state “could consider any of a veteran’s retirement pay to be a form of community property, divisible at divorce.” In 1982, Congress passed the Uniformed Services Former Spouses’ Protection Act (“USFSPA”) which authorized states to treat a veterans’ “disposable retired pay” as community property divisible upon divorce and excluded from the definition any amounts deducted from that pay “as a result of a waiver . . . required by law in order to receive” disability benefits.

The USFSPA was tested in a California case in which a husband was required to pay his spouse fifty percent of his total military retirement compensation, including that portion waived to receive disability benefits. The husband moved to modify the decree and remove the disability compensation portion of the payment. When the California courts refused the U.S. Supreme Court did and held that “federal law forbade California from treating the waived portion as community property divisible at divorce.”

Case Background:

In 1991, Air Force veteran John Howell and Sandra Howell divorced in Arizona. Sandra was awarded one-half of John’s military retirement compensation. In 2005, the VA found John to be partially disabled and awarded him disability compensation. John was required to waive a portion of his military retirement compensation (\$250 per month) to receive the disability compensation. Sandra petitioned the Court



to enforce the original decree and restore the amount she no longer received. The Court concurred and “held that the original divorce decree had given Sandra a vested interest in the prewaiver amount of John’s retirement pay and ordered John to ensure that she receive her full 50% without regard for the disability waiver.” The Arizona Supreme Court affirmed and held “federal law did not pre-empt the family court’s order.” The U.S. Supreme Court accepted the case and reaffirmed that while a divorce decree might “vest” a divorced spouse with an immediate right to a portion of their former spouse’s military retirement compensation, that interest is contingent and subject to being waived. The Court concluded a state court should not be permitted to “subsequently increase, pro rata, the amount the divorced spouse receives each month from the veteran’s retirement pay in order to indemnify the divorced spouse for the loss caused by the veteran’s waiver.” Justice Breyer reversed the Arizona Supreme Court and concluded that under federal law state courts lack the authority to divide up disability benefits and are not permitted to circumvent the restrictions imposed by federal law, by ordering one former spouse to reimburse the other for retirement compensation they no longer receive.

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