No. __-____

In the Supreme Court of the United States

SEAN BRAUNSTEIN,
Petitioner,

v.

JERICKA BRAUNSTEIN,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES SUPREME COURT FOR THE
SUPREME COURT OF THE STATE OF NEW HAMPSHIRE

APPENDIX – Volume I

CARSON J. TUCKER, JD, MSEL, *Counsel of Record*
LEX FORI, PLLC
117 N. First St., Suite 111
Ann Arbor, MI 48104
(734) 887-9261
cjtucker@lexfori.org

App. Vol. I - Tab A

Braunstein v. Braunstein

New Hampshire Supreme Court Opinion

February 13, 2020

THE SUPREME COURT OF NEW HAMPSHIRE

6th Circuit Court-Hooksett Family Division
No. 2019-0065

IN THE MATTER OF SEAN BRAUNSTEIN AND JERICKA BRAUNSTEIN

Submitted: January 14, 2020
Opinion Issued: February 13, 2020

Sean Braunstein, self-represented party.

Granite State Legal Resources, of Concord (Anthony Santoro on the brief), for the respondent.

HICKS, J. The petitioner, Sean Braunstein (Husband), appeals the final decree and associated orders entered by the Circuit Court (Sadler, J.) in his divorce from the respondent, Jericka Braunstein (Wife). He argues, among other things, that the trial court erred by including his monthly federal veterans' disability benefits as income for child support purposes. We affirm.

We briefly recite the facts necessary to decide this appeal. Husband is unemployed and describes himself as medically retired and disabled. He receives veterans' disability income, social security disability income, and other federal benefits. According to Husband's financial affidavit, he receives approximately $5,000 monthly from those sources. Before the trial court, Husband asserted that his federal veterans' disability benefits did not qualify for inclusion as income for child support purposes pursuant to federal law, which, in turn, preempts state law. The trial court rejected Husband's assertion, determining that "under the statutory definition of income[,] all amounts should be included." (Footnote omitted.) See RSA 458-C:2, IV (2018)

(defining gross income for the purposes of calculating child support as including veterans' and disability benefits). This appeal followed.

On appeal, Husband reiterates the federal preemption arguments he made in the trial court. Preemption is essentially a matter of statutory interpretation. Hendrick v. N.H. Dep't of Health & Human Servs., 169 N.H. 252, 259 (2016). We review the trial court's statutory interpretation de novo. Id. We interpret federal law in accordance with federal policy and precedent. Id. When interpreting a statute, we begin with the language of the statute itself, and, if possible, construe that language according to its plain and ordinary meaning. Id. When the language of the statute is clear on its face, its meaning is not subject to modification. Id. We will neither consider what Congress might have said, nor add words that it did not see fit to include. Id. We interpret statutes in the context of the overall statutory scheme and not in isolation. Id.

The federal preemption doctrine is based upon the Supremacy Clause of the United States Constitution, U.S. CONST. art. VI, cl. 2. Id. at 260. Article VI provides that federal law "shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." U.S. CONST. art. VI, cl. 2. "There can be no dispute that the Supremacy Clause invalidates all state laws that conflict or interfere with an Act of Congress." Rose v. Arkansas State Police, 479 U.S. 1, 3 (1986) (per curiam).

"Pre-emption may be either express or implied . . . ." FMC Corp. v. Holliday, 498 U.S. 52, 56 (1990) (quotation omitted). "Even without an express provision for preemption, . . . state law must yield to a congressional Act in at least two circumstances." Crosby v. National Foreign Trade Council, 530 U.S. 363, 372 (2000). "When Congress intends federal law to occupy the field, state law in that area is preempted." Id. (quotation omitted). "And even if Congress has not occupied the field, state law is naturally preempted to the extent of any conflict with a federal statute." Id. An actual conflict exists when "it is impossible for a private party to comply with both state and federal requirements or where state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." English v. General Electric Co., 496 U.S. 72, 79 (1990) (quotation and citation omitted); see Wenners v. Great State Beverages, 140 N.H. 100, 104 (1995). "What is a sufficient obstacle is a matter of judgment, to be informed by examining the federal statute as a whole and identifying its purpose and intended effects . . . ." Crosby, 530 U.S. at 373.

Traditionally, "the regulation of domestic relations is . . . the domain of state law," and, therefore, there is "a presumption against preemption of state laws governing domestic relations." Hillman v. Maretta, 569 U.S. 483, 490 (2013) (quotation omitted). "[F]amily and family-property law must do major

damage to clear and substantial federal interests before the Supremacy Clause will demand that state law be overridden." Id. at 490-91 (quotations omitted). "But family law is not entirely insulated from conflict pre-emption principles," and, thus, the United States Supreme Court has "recognized that state laws governing the economic aspects of domestic relations must give way to clearly conflicting federal enactments." Id. at 491 (quotation and ellipsis omitted).

Applying these principles, the United States Supreme Court in Rose v. Rose, 481 U.S. 619 (1987), "addressed expressly whether veterans' disability benefits could be considered by state courts as 'income' for purposes of calculating [child] support." Alwan v. Alwan, 830 S.E.2d 45, 49 (Va. Ct. App. 2019). The issue in Rose was whether a state court had jurisdiction "to hold a disabled veteran in contempt for failing to pay child support" when federal veterans' disability benefits were his "only means of satisfying [that] obligation." Rose, 481 U.S. at 621-22; see In the Matter of Brownell & Brownell, 163 N.H. 593, 598 (2012). The veteran argued that federal law conflicted with, and, thus, preempted, state statutes purporting to grant state courts jurisdiction over veterans' disability benefits. Rose, 481 U.S. at 625; see Brownell, 163 N.H. at 598.

The federal statutes upon which the veteran primarily relied were 38 U.S.C. § 3101(a), 42 U.S.C. § 659(a), and 42 U.S.C. § 662(f)(2). See Rose, 481 U.S. at 630-35. At the time, 38 U.S.C. § 3101(a) provided, "[P]ayments of benefits due or to become due under any law administered by the Veterans' Administration made to, or on account of, a beneficiary shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary." Rose, 481 U.S. at 630 (quotation and ellipses omitted). Section 3101(a) "exists currently in similar form in" 38 U.S.C. § 5301(a)(1) (2012). Holmes v. Dept. of Human Resources, 279 So. 3d 572, 576 (Ala. Civ. App. 2018).

In Rose, the veteran argued that, pursuant to 38 U.S.C. § 3101(a), only the Federal Veterans' Administration could order him to pay child support and that the state court lacked jurisdiction over his federal veterans' disability benefits. Rose, 481 U.S. at 623; see Alwan, 830 S.E.2d at 49. In rejecting that argument, the Court explained that this statute serves two purposes: (1) "to avoid the possibility of the Veterans' Administration being placed in the position of a collection agency"; and (2) "to prevent the deprivation and depletion of the means of subsistence of veterans dependent upon these benefits as the main source of their income." Rose, 481 U.S. at 630 (quotations and ellipsis omitted). The Court held that the state's assertion of its contempt power did not frustrate the first purpose because the Federal Veterans' Administration was neither a party to the contempt proceedings nor required to pay the veteran's disability benefits directly to his ex-wife. Holmes, 279 So. 3d at 576; see Rose, 481 U.S. at 630. The second purpose was not frustrated because veterans' disability benefits "are not provided to support [the veteran]

alone." Rose, 481 U.S. at 630. Rather, the Court ruled, Congress intended those benefits "to provide reasonable and adequate compensation for disabled veterans and their families." Id. (quotation omitted); see Alwan, 830 S.E.2d at 50.

Because federal veterans' disability benefits "are intended to support not only the veteran, but the veteran's family," the Court recognized an exception in the context of child support to the statutory prohibition against attachment, levy, or seizure of a veteran's benefits. Rose, 481 U.S. at 634; see Brownell, 163 N.H. at 598. The Court ruled, therefore, that a veteran's disability benefits are not protected from seizure when the veteran invokes Section 3101(a) "to avoid an otherwise valid order of child support." Rose, 481 U.S. at 634; see Brownell, 163 N.H. at 598.

The veteran also relied upon 42 U.S.C. § 659(a), which, at the time, provided:

> [M]oneys (the entitlement to which is based upon remuneration for employment) due from, or payable by, the United States to any individual, including members of the armed services, shall be subject, in like manner and to the same extent as if the United States were a private person, to legal process brought for the enforcement, against such individual of his legal obligations to provide child support.

Rose, 481 U.S. at 634 (quotation and ellipses omitted). 42 U.S.C. § 662(f)(2) specifically excluded veterans' disability benefits from the statutory definition of an entitlement "based upon remuneration for employment." Rose, 481 U.S. at 634-35 (quotation omitted). The current version of 42 U.S.C. § 659(a) is substantially the same as the version at issue in Rose. Compare Rose, 481 U.S. at 634-35 (quoting version of the statute then in effect), with 42 U.S.C. § 659(a) (2012). Currently, veterans' disability benefits are deemed to be remuneration from employment only under certain circumstances. See 42 U.S.C. § 659(h)(1)(A)(ii)(V), (h)(1)(B)(iii) (2012).

In Rose, the veteran argued that the exclusion of veterans' disability benefits from the statutory definition of remuneration for employment "embodie[d] Congress' intent that veterans' disability benefits not be subject to any legal process aimed at diverting funds for child support, including a state-court contempt proceeding." Rose, 481 U.S. at 635. In rejecting that argument, the Court explained that 42 U.S.C. § 659(a) "was intended to create a limited waiver of sovereign immunity so that state courts could issue valid orders directed against agencies of the United States Government attaching funds in the possession of those agencies." Id. Observing that "[w]aivers of sovereign immunity are strictly construed," the Court found "no indication in the statute that a state-court order of contempt issued against an individual is

precluded where the individual's income happens to be composed of veterans' disability benefits." Id. (emphasis omitted). "Thus," the Court reasoned, "while it may be true that [veterans' disability benefits] are exempt from garnishment or attachment while in the hands of the Administrator, we are not persuaded that once these funds are delivered to the veteran a state court cannot require that veteran to use them to satisfy an order of child support." Id.

Numerous state courts, relying upon Rose, have determined that federal law does not preclude a state court from treating a veteran's disability benefits as income for child support purposes. See Goldman v. Goldman, 197 So. 3d 487, 493-94 (Ala. Civ. App. 2015); Loving v. Sterling, 680 A.2d 1030 (D.C. 1996); Casey v. Casey, 948 N.E.2d 892, 901-02 (Mass. App. Ct. 2011) (deciding that "[i]t was error . . . for the husband to fail to include the [veterans'] disability payment amount in his financial statement listing his income" because "State courts are not precluded from considering these benefits as a portion of the husband's income for purposes of child support"); Nieves v. Iacono, 77 N.Y.S.3d 493, 493-94 (App. Div. 2018) (father's veterans' disability benefits are income; federal statute exempting veterans' benefits from claims in general did not apply to child support obligations); Alwan, 830 S.E.2d at 51 (ruling that the trial court "did not err in . . . calculat[ing] father's gross income based on the income he received from all sources, including his [federal] veterans' disability benefits").

In Brownell, we relied upon "the logic of Rose" to hold that federal law does not preclude a state court from including veterans' disability benefits as income for alimony purposes. Brownell, 163 N.H. at 598-99 (quotation omitted). We did not then have occasion to apply Rose to child support calculations. We now join the courts that have applied Rose and hold that the trial court in this case did not err by including Husband's veterans' disability benefits as income for the purposes of calculating child support.

In arguing for a contrary result, Husband asserts that Rose is not dispositive because it "was wrongly decided." However, "[w]hen interpreting federal law, . . . we are bound by the United States Supreme Court's current explication of it." State v. Melvin, 150 N.H. 134, 140 (2003); see Marmet Health Care Center, Inc. v. Brown, 565 U.S. 530, 531 (2012) (per curiam) ("When this Court has fulfilled its duty to interpret federal law, a state court may not contradict or fail to implement the rule so established.").

To the extent that Husband contends that Rose has been "overruled" by subsequent amendments to the pertinent federal statutes, he is mistaken. The statutes upon which Husband relies "to counter the viability and reach of the Rose decision . . . are essentially the same statutes that were rejected as controlling in Rose." Alwan, 830 S.E.2d at 50; see Iannucci v. Jones, No. 345886, 2019 WL 6977116, at *4 (Mich. Ct. App. Dec. 19, 2019) (reviewing the current versions of 42 U.S.C. § 659 and 38 U.S.C. § 5301(a)(1) and deciding

that they "do not prevent state courts from considering veterans' disability benefits as income in calculating child support and . . . do no[t] preempt state law in this field").

Husband is also mistaken to the extent that he argues that Howell v. Howell, 137 S. Ct. 1400 (2017), abrogated Rose. "Howell addressed the treatment and division of military benefits as 'property' in divorce, not as income used to support a veteran's dependents." Alwan, 830 S.E.2d at 51; see Howell, 137 S. Ct. at 1403-06. "Howell did not address the calculation of a veteran's income for child support purposes." Alwan, 830 S.E.2d at 51; see Lesh v. Lesh, 809 S.E.2d 890, 899 (N.C. Ct. App. 2018) ("Nothing in Howell alters the holding in Rose that military disability benefits are not required to be excluded from the definition of income for the purposes of calculating the resources a party can draw upon to fulfill child support obligations.").

Husband's reliance upon In re Marriage of Cassinelli, 229 Cal. Rptr. 3d 801 (Ct. App. 2018), is equally misplaced. That case concerned a divorced spouse's share of her ex-husband's military retired pay. Cassinelli, 229 Cal. Rptr. 3d at 806-08. It did not concern the inclusion of veterans' disability benefits as income for child support purposes. Moreover, in Cassinelli, the court specifically agreed with other courts that "a court may include [veterans'] disability benefits as a source of income to be considered in awarding spousal support." Id. at 807 (quotation omitted).

Husband asserts that by incorrectly calculating his income for child support purposes, the trial court infringed upon his constitutionally-protected property right to veterans' disability benefits. This argument is insufficiently developed for our review. "Judicial review is not warranted for complaints regarding adverse rulings without developed legal argument, and neither passing reference to constitutional claims nor off-hand invocations of constitutional rights without support by legal argument or authority warrants extended consideration." Appeal of Omega Entm't, 156 N.H. 282, 287 (2007).

Husband next contends that "the NH Legislation branch, and the Department of Health and Human Services, knew they were out of compliance with federal mandates when the state attempted to submit HB-652-FN in 2017," a bill that, when it was introduced, sought to amend the statutory definition of gross income for child support purposes to include veterans' benefits only "to the extent permitted by federal law and to the extent such benefits are intended to support not only the veteran but also the veteran's family." H.B. 652-FN, 2017 Leg., Reg. Sess. (N.H. 2017) (bolding omitted). The fiscal note accompanying the bill stated, in pertinent part:

> The Department of Health and Human Services states the definition of gross income in this bill appears to conflict with 45 CFR 302.56(c)(1) requiring state child support guidelines take into

> consideration all earnings and income of the noncustodial parent. If this bill results in state law being out of compliance with the federal mandate, the state may be subject to various federal sanctions that could include the total loss of federal funding of the child support program, loss of federal child support performance measures incentive funds, and loss of five percent of the State's TANF block grant.

Id. The version of the bill that the legislature eventually passed and the Governor signed into law did not amend the statutory definition of gross income. See Laws 2017, ch. 169.

As the above discussion demonstrates, the broad statutory definition of "gross income" for child support purposes, which includes veterans' benefits and disability benefits, is consistent with federal law. Moreover, neither the intent of the New Hampshire Legislature nor of the New Hampshire Department of Health and Human Services is relevant to the federal question of preemption. Thus, for all of the reasons stated above, we hold that federal law did not preclude the trial court from including Husband's federal veterans' disability benefits as income for child support purposes.

We have reviewed Husband's remaining arguments and conclude that they do not warrant extended discussion. See Vogel v. Vogel, 137 N.H. 321, 322 (1993). In his remaining arguments, Husband challenges several of the trial court's discretionary decisions, such as its decisions to: (1) hold a final hearing even though Wife had not answered all of Husband's interrogatories; (2) not find that Wife is voluntarily underemployed; (3) not hold Wife in contempt; (4) not specifically rule upon Husband's motion in limine to prevent Wife from testifying about finances; (6) find Wife's testimony credible; (7) not "remove the clause of the parties mutually releasing one another" (footnote omitted); (8) require Husband to pay for private kindergarten; (9) decline to follow the recommendation of the guardian ad litem regarding the child's legal residence for school; (10) divide the current cash value of an insurance policy on Wife's life unequally; and (11) not refer the case to the complex case docket.

The trial court has broad discretion in fashioning a final divorce decree. In the Matter of Spenard & Spenard, 167 N.H. 1, 3 (2014). Its discretion necessarily encompasses decisions concerning property distribution, child support, and parenting rights and responsibilities. See id.; see also In the Matter of Conant & Faller, 167 N.H. 577, 582 (2015). The trial court's discretion also extends to managing the proceedings before it, including resolving discovery disputes. See In the Matter of Kempton & Kempton, 167 N.H. 785, 792 (2015); see also In the Matter of Jones and Jones, 146 N.H. 119, 121 (2001).

We will not overturn the trial court's rulings on such matters absent an unsustainable exercise of discretion. Spenard, 167 N.H. at 3; Conant & Faller, 167 N.H. at 582; Kempton, 167 N.H. at 793; see Jones, 146 N.H. at 121. This standard of review means that we review only whether the record establishes an objective basis sufficient to sustain the discretionary judgment made, and we will not disturb the trial court's determination if it could reasonably have been made. In the Matter of Kurowski & Kurowski, 161 N.H. 578, 585 (2011). We defer to the trial court's judgment in matters of conflicting testimony and evaluating the credibility of witnesses. In the Matter of Aube & Aube, 158 N.H. 459, 465 (2009). As the trier of fact, the trial court could accept or reject, in whole or in part, the testimony of any witness or party, and was not required to believe even uncontroverted evidence. Brent v. Paquette, 132 N.H. 415, 418 (1989). We also defer to the trial court's judgment as to the weight to be accorded evidence, including the recommendations of a guardian ad litem. In the Matter of Heinrich & Curotto, 160 N.H. 650, 657-58 (2010). If the trial court's findings could reasonably have been made on the evidence presented at trial, they will stand. Spenard, 167 N.H. at 3.

"Our standard of review is not whether we would rule differently than the trial court, but whether a reasonable person could have reached the same decision as the trial court based upon the same evidence." Cook v. Sullivan, 149 N.H. 774, 780 (2003). We will not substitute our judgment for that of the trial court. See Brent, 132 N.H. at 419. Nor will we reweigh the equities. In the Matter of Heinrich & Heinrich, 164 N.H. 357, 365 (2012).

As the appealing party, Husband has the burden of demonstrating reversible error. Gallo v. Traina, 166 N.H. 737, 740 (2014). Based upon our review of the trial court's discretionary decisions, Husband's challenges to them, the relevant law, and the record submitted on appeal, we conclude that Husband has not demonstrated reversible error with respect to those decisions. See id.

Affirmed.

BASSETT, HANTZ MARCONI, and DONOVAN, JJ., concurred.

App. Vol. I - Tab B

Braunstein v. Braunstein

New Hampshire Supreme Court Order Denying Reconsideration and Stay of Proceedings

March 31, 2020

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2019-0065, In the Matter of Sean Braunstein and Jericka Braunstein, the court on March 31, 2020, issued the following order:

Supreme Court Rule 22(2) provides that a party filing a motion for rehearing or reconsideration shall state with particularity the points of law or fact that he claims the court has overlooked or misapprehended.

We have reviewed the claims made in the petitioner's motion for reconsideration of the court's February 13, 2020 opinion and in his motion for reconsideration of a single justice order denying his March 6, 2020 motion for a stay. We conclude that no points of law or fact were overlooked or misapprehended in either decision. Accordingly, upon reconsideration, we affirm both decisions and deny the relief requested.

Relief requested in motion for reconsideration of February 13, 2020 opinion and in motion for reconsideration of March 12, 2020 order is denied.

Hicks, Bassett, Hantz Marconi, and Donovan, JJ., concurred.

Timothy A. Gudas,
Clerk

Distribution:
6th N.H. Circuit Court - Hooksett Family Division, 647-2017-DM-00081
Honorable Suzanne M. Gorman
Honorable Lucinda V. Sadler
Mr. Sean Braunstein
Anthony Santoro, II, Esquire
Deborah Mulcrone, Esquire
Lin Willis, Supreme Court
File

App. Vol. I - Tab C

Braunstein v. Braunstein

6th Circuit Court of New Hampshire, Merrimack County Hooksett (Family Division) Final Decree and Order

November 19, 2018

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
NH CIRCUIT COURT

6th Circuit - Family Division - Hooksett
101 Merrimack Street
Hooksett NH 03106

Telephone: 1-855-212-1234
TTY/TDD Relay: (800) 735-2964
http://www.courts.state.nh.us

NOTICE OF DECISION

FILE COPY

Case Name: **In the Matter of Sean Braunstein and Jericka Braunstein**
Case Number: **647-2017-DM-00081**

Enclosed please find a copy of the Court's Order dated November 19, 2018 relative to:

Order
Final Decree
Uniform Support Order
Child Support Guidelines Worksheet

Any party obligated to pay child support is advised that it is his/her responsibility to keep the Court (and the Division of Human Services if appropriate) advised of his/her current mailing address in writing, until such time as support payments are terminated.

It will cost $40.00 for a certified copy of your decree.

This matter will become final on 12/22/2018 known as the Judgment Day, if no objections or appeals are filed. Objections must be filed with this court within 10 days of the date of the Notice of Decision, appeals to the Supreme Court within 30 days.

November 21, 2018

Nancy E. Ringland
Clerk of Court

(169)

C: Anthony Santoro, II, ESQ; Deborah Mulcrone, ESQ; Division of Child Support; Robert D. Hunt, ESQ

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
NH CIRCUIT COURT

Merrimack County

6th Circuit – Family Division - Hooksett

SEAN BRAUNSTEIN and JERICKA BRAUNSTEIN

Docket # 647-2017-DM-81

ORDER

On October 29, 2018 the parties appeared, with counsel, for a final hearing on the financial issues in their divorce. After a review of the evidence and as much of the case file necessary for this order, the court finds and rules as follows on each of the disputed issues:

Child Support:
Sean does not believe he should pay child support because he pays for some extracurricular and other expenses. In the alternative he argued he should be entitled a downward deviation based on the statute considerations regarding financial obligations and parenting schedule.

According to the temporary Uniform Support Order (USO) Sean was to pay Jericka $57 per week in support of their daughter Rowyn (age 5). This amount was determined after a downward deviation was applied due to the parenting schedule (approximately equal) and the parents sharing the cost of pre-school and extracurricular activities. In respect to pre-school the court specifically stated "if one party removes Rowyn from daycare for non-medical reasons that parent shall be responsible for paying the additional pre-school cost, if any"[1].

Sean is not employed: he described himself as medically retired and disabled. He receives veteran's disability income, Social Security Disability Income and federal benefits. According to his financial affidavit[2] filed on the date of the hearing, Sean receives approximately $5000 each month in income from these sources. Sean provided the court with a Memorandum of Law[3] regarding his income and arguing it does not qualify for inclusion in child support. The court disagrees and finds under the statutory definition of income[4] all amounts should be included. Sean also argued Jericka is voluntarily underemployed based on her leaving a higher paying position at Tuckers and taking a lower paying position and working part-time. He argued in the past she has been able to earn almost $60,000 annually and now earns less than half that amount. Sean proposes the court not obligate him to pay child support and he will continue to pay for all extracurricular expenses.[5]

Sean also argued that it is not an equally shared parenting schedule because he believes he has care of Rowyn 60-70% of the time. This may be due to his taking Rowyn out of daycare without legitimate

[1] USO, index #29, ¶ 21.
[2] Index #107
[3] Index #105
[4] See NH RSA 458-C: 2
[5] He testified he spends $800 on extra-curricular expenses for Rowyn.

A TRUE COPY ATTEST:
Nancy Ringland
Clerk of Court

reason except to spend additional time with her. He shall not do so as the child should not be removed from daycare for non-medical reasons. The court finds the parents share parenting equally.

Jericka believes the court should calculate the child support obligation for each parent and then offset those amounts to calculate Sean's child support obligation. She testified she is not voluntarily underemployed. She indicated she has reduced hours based on a medical issues including three dissected arteries, arthritis and a surgical requirement. She stated these issues affect her ability to work. She also has reduced her hours to reduce her stress and try to prevent further illness.

Jericka argued the court should order child support with a downward deviation based on the shared parenting schedule and have Sean's obligation enforced because he has not paid child support as currently ordered. She challenges Sean's testimony that he pays $800 per month in extra-curricular expenses for Rowyn as they current split her education and extra-curricular costs. She stated she was never told he was putting expenses for Rowyn on the Our Family Wizard program so she did not believe there were any bills presented to her for reimbursement. She testified Sean told her he would pay all these expenses so he would not have to pay child support.

Jericka wants the court to institute a child support order and have the parents split the cost of any extracurricular activities. If the parents don't agree on an activity then the parent proposing the activity has to pay the full expense.

When the parents have an equal or approximately equal parenting schedule that alone cannot form the basis for a downward deviation in a child support obligation.[6] The statute states, in pertinent part:

> "In considering requests for adjustments to the application of the child support guidelines based on the parenting schedule, the court may consider the following factors:
> (A) Whether, in cases of equal or approximately equal residential responsibility, the parties have agreed to the specific apportionment of variable expenses for the children, including but not limited to education, school supplies, day care, after school, vacation and summer care, extracurricular activities, clothing, health insurance costs and uninsured health costs, and other child-related expenses.
> (B) Whether the obligor parent has established that the equal or approximately equal residential responsibility will result in a reduction of any of the fixed costs of child rearing incurred by the obligee parent.
> (C) Whether the income of the lower earning parent enables that parent to meet the costs of child rearing in a similar or approximately equal style to that of the other parent."[7]

In the temporary support order[8], issued in January 2018, Sean was obligated to pay Jericka $57 per week in support of Rowyn. The court issued that order after applying a downward deviation based on the parenting schedule, the shared cost of pre-school and sharing extra-curricular activity expenses.

[6] See NH RSA 458-C: 5 I (h) 1
[7] NH RSA 458-C: 5 I (h) 2
[8] Index #29

Sean lists five people living in the home so there are three others not counting him and Rowyn. Sean admittedly has not been paying the mortgage on the former marital home and even without that expense he lists expenses of over $5000 per month. He lists over $800 in expenses for Rowyn including daycare, tuition and lessons, clothing, sports and camps, lunches and supplies. Jericka lists about $350 in expenses for Rowyn in respect to these same categories but does not have an expense listed for tuition and camps[9]. The disparity in daycare could be attributed to Jericka receiving assistance with her part of that expense.

The court is obligating Sean to pay child support but will grant a downward deviation based on the shared parenting schedule and the shared expense of pre-school and daycare. The court does not find either parent has a reduction in their fixed costs due to the parenting schedule. However the court does find Sean has additional support in meeting his expenses which is not available to Jericka at this time. The court also does not find her voluntarily underemployed based on the credible evidence submitted at the final hearing. Thus the court finds Jericka does not have the ability based on her income and lack of additional support to raise Rowyn in a style similar to that of Sean.

See Final Uniform Support Order

Life Insurance:
According to Sean there are three policies in place at this time: (1) a VA policy of $400,000. This is a term policy with no cash value, (2) a Department of Defense policy of $44,000. This is also a term policy with no cash value, and (3) a State Farm policy on Jericka's life of $395,000 with a cash value of $2512.00 (currently). The first two policies are for the benefit of Rowyn with Jericka as the trustee beneficiary. The third policy has Rowyn as a 50% beneficiary. Jericka wants this policy to be in her possession. Sean does not agree as he believes Jericka will let the policy lapse as she has done this before and it causes the cash value to decrease.

Jericka indicated she had trouble making full payment for the State Farm policy but was in contact with them and is making minimum payments as they allow. She does not intend to have the policy lapse. She also argued Sean only pays the minimum amount.

The court finds Jericka should have possession and control of the State Farm policy. She shall pay as required to keep the policy in good standing. Sean shall be designated as the trustee beneficiary for Rowyn's 50% share of the proceeds of the policy. The policy shall remain in good standing at least until Rowyn reaches the age of 18 years.

Sean is awarded possession of the other two policies. Jericka shall remain as trustee beneficiary for any interest Rowyn has in the policies. The policies shall remain in good standing at least until Rowyn reaches the age of 18 years.

Each party shall give the other updates on an annual basis (on or around 12/31 each year) to document that the policies remain in full force and effect and there has been no diminution in value.

[9] See her financial affidavit at Index #108

Furniture and Personal Property:
The parties have been separated for a while so they have already fairly divided the furniture.

There was one item under discussion at the final hearing: a gold bracelet given to Sean by his mother-in-law. Sean testified he received the bracelet as a gift upon his graduation. He understood the bracelet was made from a section of a broken necklace formerly owned by Jericka's step-father which was made into a bracelet. Sean wants to retain the bracelet because he always felt close to his mother-in-law and it was a gift from her.

Jericka indicated she had spoken to her mother about the bracelet as recently as a week or so before the final hearing. According to Jericka her mother does not recall why Sean was given the bracelet, she asked him to return it but he declined and her mother denies it was a graduation present. Jericka indicated the bracelet has a lot of sentimental value and the family would like it to remain with them in light of the parties' divorce. She does not seek return of the bracelet to herself; she seeks to have it returned to her mother.

The fact remains this was a gift given to Sean and there is no evidence that it was given with conditions attached. Regardless of the reason given the court finds it is a gift and unless Sean is willing to return it to his former mother-in-law it is his to keep.

Jericka has also asked for additional items of Rowyn's which may remain at the former marital home. To the extent the items still exist Jericka is awarded the items.

Other financial assets:
The USAA account still exists as a joint account. Sean would like the account to stay open; Jericka wants it closed.

The court orders the parties to determine the balance in the account as of the date of this final order and to divide the balance equally. The account can remain open after that and Jericka will cooperate with completing any documents necessary to have her name removed from the account.

If there is any joint tax filing for 2018 and the parties receive a refund the refund shall be shared equally between them.

Business interests of the parties:
The parties owned a business together which no longer operates. The business went through a bankruptcy proceeding so most if not all of the debts should have been extinguished. There is a debt associated with the former business for tax preparation fees. There is also an existing business account with some funds in it; around $215 dollars. These funds shall be used to pay the tax preparer.

There may be a carryover loss from tax filings with the IRS. To the extent they are able to do so under Federal rules, laws and regulations each party shall be allowed to utilize up to 50% of that carry over loss.

A TRUE COPY ATTEST:
Nancy Ringland
Clerk of Court

Marital home:
Sean currently occupies the former marital home at 56 Post Road in Hooksett, NH. He has been trying to secure a mortgage modification so he can remain in the home. He wants Jericka to cooperate with the process as he believes she caused him to lose final approval for the modification in May 2018. He wants her held responsible for any additional fees he incurs based on the lack of modification from May. He stated he needs her to sign a quitclaim deed so he can get final approval and remove her name from the debt on the home. Because of the amount of time involved in the process and the non-payment of ongoing obligations the home is in foreclosure and due to be sold at auction.

Sean testified he talked to Jericka about the modification and believes she does not want him to remain in the home so she is blocking the modification. She also told him she does not want to be liable on any new debt he incurs by the modification. He stated he believes the modification is still available to him because it is a VA loan.

Jericka testified she contacted the Bank of America (the mortgage holder) and they indicated the loan was now held by Carrington Mortgage. She also learned Sean had not paid the mortgage for many months. When Sean requested the quitclaim deed she didn't sign it because she thought there may be additional liens on the home and she wanted to see if she could afford the home. She indicated she offered a quitclaim at one point but Sean refused stating he had lost the modification as the program he applied for was no longer available. Upon checking Carrington indicated that program was never available to Sean. She stated further no documents have ever been provided to her from Sean or the bank until she saw Sean's proposed exhibits in this case and saw an agreement of some sort. Jericka indicated her constant concern in this regard is reaffirming the debt that was discharged in bankruptcy. She stated that if she is not held responsible in any way for any debt associated with the home Sean can have it but don't want to reaffirm a discharged debt, don't want to be associated with any loan on the home (in case Sean stops paying again) and she doesn't want to be included on a modification as it affects her credit.

Sean shall be awarded the exclusive use and occupancy of the former marital home. He shall refinance or modify the mortgage within 120 days of the date of the notice of this decision or the home shall be placed on the market for sale. Jericka shall cooperate with any requirements *directed to her from any financial institution working with Sean on the loan modification or refinancing. Sean shall sign all necessary documents so that the loan institutions can talk directly to Jericka*. Jericka does not trust that Sean is disclosing all information to her so she shall be able to deal with the loan institutions directly.

The court denies Sean's request to have Jericka pay any fees associated with any purported delays in the modification process. There is insufficient evidence to hold her strictly liable for any lost opportunity in May 2018.

Miscellaneous:
Sean agrees to split the 2017 tax refund with Jericka on an equal basis. Once received the other party shall be given their share as soon as possible.

A TRUE COPY ATTEST:
Nancy Ringland
Clerk of Court

Contempt: Jericka filed a Motion for Contempt[10] in regard to Sean's non-payment of child support. That request is granted as the evidence establishes Sean failed to pay child support in violation of the court order without just cause. Jericka's counsel shall file an affidavit of fees associated with this issue only. After a review the court will order Sean to pay reasonable attorney's fees as a sanction.

IN THE EVENT OF AN APPEAL OF THIS ORDER TO THE NEW HAMPSHIRE SUPREME COURT THIS ORDER WILL ACT AS A TEMPORARY ORDER UNTIL THE APPEAL IS RESOLVED.

So Ordered.

11/19/18
Date

Lucinda V. Sadler, Judge

A TRUE COPY ATTEST:
Nancy Ringland
Clerk of Court

[10] Index #94.

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
http://www.courts.state.nh.us

Court Name: 6th Circuit - Family Division - Hooksett

Case Name: Sean Braunstein and Jericka Braunstein

Case Number: 647-2016-DM-0081
(if known)

FINAL DECREE ON PETITION FOR DIVORCE, LEGAL SEPARATION, OR CIVIL UNION DISSOLUTION

This decree is (choose one):

☐ Agreed to by Parties ☐ Proposed By _____

☑ Ordered by the Court after hearing on 10/29/2018 at which ☑ petitioner ☑ respondent appeared.

1. **Type of Case:** (Choose Divorce, Legal Separation or Civil Union Dissolution)

☑ DIVORCE:

A decree of divorce is granted to the ☐ petitioner ☐ respondent ☑ parties based on:

☑ Irreconcilable differences that have caused the irremediable breakdown of the marriage; or

☐ Grounds stated in the petition. Cross petition, if any, is dismissed.

☐ LEGAL SEPARATION:

A decree of legal separation is granted to ☐ petitioner ☐ respondent ☐ parties based on:

☐ Irreconcilable differences that have caused the irremediable breakdown of the marriage; or

☐ Grounds stated in the petition. Cross petition, if any, is dismissed.

☐ CIVIL UNION DISSOLUTION:

A decree of civil union dissolution is granted to ☐ petitioner ☐ respondent ☐ parties based on:

☐ Irreconcilable differences that have caused the irremediable breakdown of the civil union; or

☐ Grounds stated in the petition. Cross petition, if any, is dismissed.

2. **Parenting Plan and Uniform Support Order** ☐ N/A

☑ See ~~attached~~ Parenting Plan and Uniform Support Order

3. **Dependents** ☐ N/A

☑ The parties shall claim the minor child(ren) and/or other qualifying relative as dependent(s) for all income tax purposes, in the following manner:

☑ Petitioner, if otherwise qualified under federal/state law, shall be entitled to claim

Rowyn
as tax dependent(s) for ☐ all years ☑ even years ☐ odd years ☐ other

☑ Respondent, if otherwise qualified under federal/state law, shall be entitled to claim

Rowyn
as tax dependent(s) for ☐ all years ☐ even years ☑ odd years ☐ other

☑ A parent may only claim a child as a dependent if that parent is current on child support for the applicable tax year.

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4. OPTIONAL: Post-Secondary Educational Expenses ☑ N/A

IMPORTANT NOTE: The court cannot order parties to pay for college or other educational expenses beyond the completion of high school unless BOTH parties agree. However, if the parties agree to contribute to these expenses by checking the boxes in Section 4, below, this agreement will become an enforceable order of the court.

☐ The parties agree to contributions to college or other educational expenses beyond the completion of high school in the following manner:

Type of contribution (check all that apply):

☐ Contributions to an account by ☐ Petitioner ☐ Respondent ☐ Both

(Specify the amount and frequency of contributions and account information. Also specify what will happen to the contributions in the event the child does not incur post-secondary educational expenses):

_____

_____

☐ Contribution of an asset:

(Specify the account or other asset being contributed and its current balance or value. If an asset is identified specify how the asset will be used. Also specify what will happen to the contributions in the event the child does not incur post-secondary educational expenses):

_____

_____

☐ Payments shall be made as post-secondary education expenses are incurred. Payments shall be made by ☐ Petitioner ☐ Respondent ☐ Both

(Specify amount to be paid by each party or the percentage or other formula agreed upon to determine the post-secondary education expense obligation agreed to by the parties):

_____

_____

Select one of the following:

☐ Both parties agree that this post-secondary educational expense agreement IS modifiable based on a substantial change in circumstances that was not foreseeable when the agreement was signed.

☐ Both parties agree that this post-secondary education expense agreement is NOT modifiable and the specific dollar amount to be contributed by either or both parents is set forth above.

Note: Before any court hearing to modify or enforce the agreement described above, the parties shall participate in mediation.

5. Guardian *ad Litem* Fees ☐ N/A

☑ See Order on Appointment of Guardian *ad Litem*

☐ Other: _____

6. Alimony ☑ N/A

☐ _____ shall pay the sum of $ _____ per _____ as alimony.

This obligation shall terminate: _____

See attached Uniform Support Order.

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7. Health Insurance for Spouse ☑ N/A

☐ The continuation of _____ employer-sponsored group medical health insurance benefits on behalf of _____ shall be governed by RSA 415:18. VII-b, COBRA, or other applicable law. The following additional provisions, if any, apply:

_____

_____

_____

_____

_____

☐ _____ shall maintain health insurance for the benefit of _____. This obligation shall terminate: _____

☐ _____ shall maintain dental insurance for the benefit of _____. This obligation shall terminate: _____

☐ _____ shall be responsible for payment of the premiums. This obligation shall terminate: _____

☑ Each party shall be responsible for his/her own medical and dental insurance and for paying all of his/her own unreimbursed medical, dental, optical, and other expenses not otherwise covered by insurance.

8. Life Insurance ☐ N/A

☐ Each party is awarded any and all life insurance policies owned by that party, free and clear of any right, title, or interest of the other.

☐ _____ shall maintain a life insurance policy in the minimum amount of $ _____ designating _____ as trustee for the benefit of the child(ren). This obligation shall continue as long as the insured is obligated to pay support.

☑ Other:

See narrative order

9. Motor Vehicles ☐ N/A

☑ Each party is awarded the vehicles in his/her name or possession, free of any right, title or interest of the other.

☐ _____ is awarded the _____ free and clear of any interest of _____

☐ _____ is awarded the _____ free and clear of any interest of _____

☑ Each party shall be responsible for all expenses as to his/her vehicles, including car payments, maintenance, registration and insurance.

10. Furniture and Other Personal Property ☐ N/A

☑ The parties have already fairly divided between themselves their household furniture, furnishings and all other tangible property (other than as specifically set forth below), and each party is awarded that property currently in his/her possession, free and clear of any interest of the other.

☑ Petitioner is awarded the following specific items of personal property:

see narrative order

☐ Respondent is awarded the following specific items of personal property:

_____

_____

11. Retirement Plans and Other Tax-Deferred Assets ☐ N/A

☑ Each party is awarded any interest in any pension, retirement, 401(k), IRA, or other retirement account that s/he may have and as shown on his/her respective financial affidavits free and clear of any interest of the other.

☐ _____ is awarded one-half of _____'s IRA and/or 401(k) as of the date of this decree.

☐ _____ is awarded one-half of _____'s pension plan which accrued between the date of the marriage or civil union and the date of the filing of the petition for divorce, legal separation, or dissolution pursuant to the Hodgins formula. Subject to the above distribution, _____ is awarded all other right, title, and interest in his/her pension plan, free of any further interest of _____

☐ A Qualified Domestic Relations Order (QDRO) shall be prepared by _____ within a reasonable period of time from the date of this decree and filed with the Court for approval.

☐ Other:

_____

_____

12. Other Financial Assets ☐ N/A

☐ The parties are awarded their respective checking and/or savings bank accounts, credit union accounts, certificates of deposits and the like, and all similar accounts as shown on their individual financial affidavits filed with the court.

☐ Petitioner is awarded the following bank accounts, stocks, bonds, mutual funds or other intangible personal property:

_____

_____

☐ Respondent is awarded the following bank accounts, stocks, bonds, mutual funds or other intangible personal property:

_____

_____

☑ Other:

see narrative order

13. Business Interests of the Parties ☐ N/A

☐ _____ is awarded all right, title, and interest in the business known as _____ free of any claim or interest of the other party.

_____ shall be solely responsible for all debts of the business and shall be entitled to receive all profits from the business.

_____ shall transfer all property interest and stock to _____ forthwith and shall resign as an officer or director in the business forthwith.

☑ Other:

see narrative order

14. Division of Debt ☐ N/A

☑ The parties shall each be responsible for any debt they have incurred after the date of separation, holding each other harmless of the same.

☐ The parties' joint marital/civil union debt shall be divided as follows:

Petitioner shall assume and be solely responsible for the following marital/civil union debts and obligations incurred during the marriage/civil union:

_____

_____

Respondent shall assume and be solely responsible for the following marital/civil union debts and obligations incurred during the marriage/civil union:

_____

_____

15. Marital/Civil Union Home ☐ N/A

☐ _____ is awarded all right, title and interest in the real estate located at: _____ free of any right, title or interest of the other party.

_____ shall be responsible for the payment of the mortgage, insurance, and real estate taxes for this property and all expenses for this property.

☐ _____ shall refinance the mortgage on the home so as to remove the other party's name from the mortgage by _____ or the home will be placed on the market and sold.

☐ The marital/civil union home shall be sold and, upon sale, the net proceeds shall be divided equally between the parties.

☑ Other:

see narrative order

16. Other Real Property ☑ N/A

☐ The real estate located at _____ is awarded to _____, free of any right, title or interest of the other party.

_____ shall be responsible for the payment of the mortgage, insurance, and real estate taxes for this property and all expenses for this property.

☐ Other:

_____

_____

17. Enforceability after Death ☐ N/A

☑ The terms of this decree shall be a charge against each party's estate.

18. Signing of Documents ☐ N/A

☑ Each party shall, within thirty (30) days, sign and deliver to the other party any document or paper that is needed to fulfill or accomplish the terms of this decree.

19. Restraining Order ☑ N/A

☐ _____ is restrained and enjoined from entering the home or the place of employment of the other party, and from harassing, intimidating or threatening the other party or his/her relatives or other household members.

☐ Other:

_____

_____

20. Name Change (Divorce or Civil Union Dissolution Only) ☑ N/A

☐ _____ may resume use of her/his former name: _____

21. Other Requests

☑ **Attorney's Fees:** Any party that unreasonably fails to comply with this decree or other court orders (including "Uniform Support Order") may be responsible to reimburse the other party for whatever costs, including reasonable attorney's fees, that may be incurred in order to enforce compliance.

☑ **Tax Refunds:** Any tax refund due or anticipated by the parties resulting from their having filed a joint federal and/or state income tax return for this or any prior year shall, upon receipt, be endorsed by both parties and equally distributed between them.

Disclosure of Assets: The parties warrant that they have fully disclosed all assets within their knowledge on their respective Financial Affidavit, specifically including any pension, profit sharing or retirement account, along with reasonable estimated values of each asset. The financial information contained on each party's Financial Affidavit is accurate and complete and has been relied upon by the other party.

☐ **Compliance With Rule 1.25-A** (Family Division Only):

☐ The parties have fully complied with Rule 1.25-A; or

☐ The parties agreed to limit their document exchange under Rule 1.25-A.

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
http://www.courts.state.nh.us

Court Name: 6th Circuit - Family Division - Hooksett

Case Name: Sean Braunstein and Jericka Braunstein

Case Number: 647-2016-DM-0081
(if known)

FINAL DECREE ON PETITION FOR DIVORCE, LEGAL SEPARATION, OR CIVIL UNION DISSOLUTION

This decree is (choose one):

☐ Agreed to by Parties ☐ Proposed By _____

☑ Ordered by the Court after hearing on 10/29/2018 at which ☑ petitioner ☑ respondent appeared.

1. **Type of Case:** (Choose Divorce, Legal Separation or Civil Union Dissolution)

☑ DIVORCE:
A decree of divorce is granted to the ☐ petitioner ☐ respondent ☑ parties based on:
☑ Irreconcilable differences that have caused the irremediable breakdown of the marriage; or
☐ Grounds stated in the petition. Cross petition, if any, is dismissed.

☐ LEGAL SEPARATION:
A decree of legal separation is granted to ☐ petitioner ☐ respondent ☐ parties based on:
☐ Irreconcilable differences that have caused the irremediable breakdown of the marriage; or
☐ Grounds stated in the petition. Cross petition, if any, is dismissed.

☐ CIVIL UNION DISSOLUTION:
A decree of civil union dissolution is granted to ☐ petitioner ☐ respondent ☐ parties based on:
☐ Irreconcilable differences that have caused the irremediable breakdown of the civil union; or
☐ Grounds stated in the petition. Cross petition, if any, is dismissed.

2. **Parenting Plan and Uniform Support Order** ☐ N/A
☑ See ~~attached~~ Parenting Plan and Uniform Support Order

3. **Dependents** ☐ N/A
☑ The parties shall claim the minor child(ren) and/or other qualifying relative as dependent(s) for all income tax purposes, in the following manner:
☑ Petitioner, if otherwise qualified under federal/state law, shall be entitled to claim
Rowyn
as tax dependent(s) for ☐ all years ☑ even years ☐ odd years ☐ other

☑ Respondent, if otherwise qualified under federal/state law, shall be entitled to claim
Rowyn
as tax dependent(s) for ☐ all years ☐ even years ☑ odd years ☐ other

☑ A parent may only claim a child as a dependent if that parent is current on child support for the applicable tax year.

A TRUE COPY ATTEST:
Nancy Ringland
Clerk of Court

4. OPTIONAL: Post-Secondary Educational Expenses ☑ N/A

IMPORTANT NOTE: The court cannot order parties to pay for college or other educational expenses beyond the completion of high school unless BOTH parties agree. However, if the parties agree to contribute to these expenses by checking the boxes in Section 4, below, this agreement will become an enforceable order of the court.

☐ The parties agree to contributions to college or other educational expenses beyond the completion of high school in the following manner:

Type of contribution (check all that apply):

☐ Contributions to an account by ☐ Petitioner ☐ Respondent ☐ Both
(Specify the amount and frequency of contributions and account information. Also specify what will happen to the contributions in the event the child does not incur post-secondary educational expenses):

_____

_____

☐ Contribution of an asset:
(Specify the account or other asset being contributed and its current balance or value. If an asset is identified specify how the asset will be used. Also specify what will happen to the contributions in the event the child does not incur post-secondary educational expenses):

_____

_____

☐ Payments shall be made as post-secondary education expenses are incurred. Payments shall be made by ☐ Petitioner ☐ Respondent ☐ Both
(Specify amount to be paid by each party or the percentage or other formula agreed upon to determine the post-secondary education expense obligation agreed to by the parties):

_____

_____

Select one of the following:

☐ Both parties agree that this post-secondary educational expense agreement IS modifiable based on a substantial change in circumstances that was not foreseeable when the agreement was signed.

☐ Both parties agree that this post-secondary education expense agreement is NOT modifiable and the specific dollar amount to be contributed by either or both parents is set forth above.

Note: Before any court hearing to modify or enforce the agreement described above, the parties shall participate in mediation.

5. Guardian *ad Litem* Fees ☐ N/A

☑ See Order on Appointment of Guardian *ad Litem*

☐ Other: _____

6. Alimony ☑ N/A

☐ _____ shall pay the sum of $ _____ per _____ as alimony.

This obligation shall terminate: _____

See attached Uniform Support Order.

A TRUE COPY ATTEST:
Nancy Ringland
Clerk of Court

7. Health Insurance for Spouse ☑ N/A

☐ The continuation of _____ employer-sponsored group medical health insurance benefits on behalf of _____ shall be governed by RSA 415:18. VII-b, COBRA, or other applicable law. The following additional provisions, if any, apply:

_____

_____

_____

_____

_____

☐ _____ shall maintain health insurance for the benefit of _____. This obligation shall terminate: _____

☐ _____ shall maintain dental insurance for the benefit of _____. This obligation shall terminate: _____

☐ _____ shall be responsible for payment of the premiums. This obligation shall terminate: _____

☑ Each party shall be responsible for his/her own medical and dental insurance and for paying all of his/her own unreimbursed medical, dental, optical, and other expenses not otherwise covered by insurance.

8. Life Insurance ☐ N/A

☐ Each party is awarded any and all life insurance policies owned by that party, free and clear of any right, title, or interest of the other.

☐ _____ shall maintain a life insurance policy in the minimum amount of $ _____ designating _____ as trustee for the benefit of the child(ren). This obligation shall continue as long as the insured is obligated to pay support.

☑ Other:

See narrative order

9. Motor Vehicles ☐ N/A

☑ Each party is awarded the vehicles in his/her name or possession, free of any right, title or interest of the other.

☐ _____ is awarded the _____ free and clear of any interest of _____

☐ _____ is awarded the _____ free and clear of any interest of _____

☑ Each party shall be responsible for all expenses as to his/her vehicles, including car payments, maintenance, registration and insurance.

A TRUE COPY ATTEST:
Nancy Ringland
Clerk of Court

10. Furniture and Other Personal Property ☐ N/A

☑ The parties have already fairly divided between themselves their household furniture, furnishings and all other tangible property (other than as specifically set forth below), and each party is awarded that property currently in his/her possession, free and clear of any interest of the other.

☑ Petitioner is awarded the following specific items of personal property:

see narrative order

☐ Respondent is awarded the following specific items of personal property:

_____

_____

11. Retirement Plans and Other Tax-Deferred Assets ☐ N/A

☑ Each party is awarded any interest in any pension, retirement, 401(k), IRA, or other retirement account that s/he may have and as shown on his/her respective financial affidavits free and clear of any interest of the other.

☐ _____ is awarded one-half of _____'s IRA and/or 401(k) as of the date of this decree.

☐ _____ is awarded one-half of _____'s pension plan which accrued between the date of the marriage or civil union and the date of the filing of the petition for divorce, legal separation, or dissolution pursuant to the Hodgins formula. Subject to the above distribution, _____ is awarded all other right, title, and interest in his/her pension plan, free of any further interest of _____

☐ A Qualified Domestic Relations Order (QDRO) shall be prepared by _____ within a reasonable period of time from the date of this decree and filed with the Court for approval.

☐ Other:

_____

_____

12. Other Financial Assets ☐ N/A

☐ The parties are awarded their respective checking and/or savings bank accounts, credit union accounts, certificates of deposits and the like, and all similar accounts as shown on their individual financial affidavits filed with the court.

☐ Petitioner is awarded the following bank accounts, stocks, bonds, mutual funds or other intangible personal property:

_____

_____

☐ Respondent is awarded the following bank accounts, stocks, bonds, mutual funds or other intangible personal property:

_____

_____

A TRUE COPY ATTEST:
Nancy Ringland
Clerk of Court

☑ Other:

see narrative order

13. Business Interests of the Parties ☐ N/A

☐ _____ is awarded all right, title, and interest in the business known as _____ free of any claim or interest of the other party.

_____ shall be solely responsible for all debts of the business and shall be entitled to receive all profits from the business.

_____ shall transfer all property interest and stock to _____ forthwith and shall resign as an officer or director in the business forthwith.

☑ Other:

see narrative order

14. Division of Debt ☐ N/A

☑ The parties shall each be responsible for any debt they have incurred after the date of separation, holding each other harmless of the same.

☐ The parties' joint marital/civil union debt shall be divided as follows:

Petitioner shall assume and be solely responsible for the following marital/civil union debts and obligations incurred during the marriage/civil union:

_____

_____

Respondent shall assume and be solely responsible for the following marital/civil union debts and obligations incurred during the marriage/civil union:

_____

_____

15. Marital/Civil Union Home ☐ N/A

☐ _____ is awarded all right, title and interest in the real estate located at: _____ free of any right, title or interest of the other party.

_____ shall be responsible for the payment of the mortgage, insurance, and real estate taxes for this property and all expenses for this property.

☐ _____ shall refinance the mortgage on the home so as to remove the other party's name from the mortgage by _____ or the home will be placed on the market and sold.

☐ The marital/civil union home shall be sold and, upon sale, the net proceeds shall be divided equally between the parties.

A TRUE COPY ATTEST:
Nancy Ringland
Clerk of Court

☑ Other:

see narrative order

16. Other Real Property ☑ N/A

☐ The real estate located at _____ is awarded to _____, free of any right, title or interest of the other party.

_____ shall be responsible for the payment of the mortgage, insurance, and real estate taxes for this property and all expenses for this property.

☐ Other:

_____

_____

17. Enforceability after Death ☐ N/A

☑ The terms of this decree shall be a charge against each party's estate.

18. Signing of Documents ☐ N/A

☑ Each party shall, within thirty (30) days, sign and deliver to the other party any document or paper that is needed to fulfill or accomplish the terms of this decree.

19. Restraining Order ☑ N/A

☐ _____ is restrained and enjoined from entering the home or the place of employment of the other party, and from harassing, intimidating or threatening the other party or his/her relatives or other household members.

☐ Other:

_____

_____

20. Name Change (Divorce or Civil Union Dissolution Only) ☑ N/A

☐ _____ may resume use of her/his former name: _____

21. Other Requests

☑ **Attorney's Fees:** Any party that unreasonably fails to comply with this decree or other court orders (including "Uniform Support Order") may be responsible to reimburse the other party for whatever costs, including reasonable attorney's fees, that may be incurred in order to enforce compliance.

☑ **Tax Refunds:** Any tax refund due or anticipated by the parties resulting from their having filed a joint federal and/or state income tax return for this or any prior year shall, upon receipt, be endorsed by both parties and equally distributed between them.

Disclosure of Assets: The parties warrant that they have fully disclosed all assets within their knowledge on their respective Financial Affidavit, specifically including any pension, profit sharing or retirement account, along with reasonable estimated values of each asset. The financial information contained on each party's Financial Affidavit is accurate and complete and has been relied upon by the other party.

☐ **Compliance With Rule 1.25-A** (Family Division Only):

☐ The parties have fully complied with Rule 1.25-A; or

☐ The parties agreed to limit their document exchange under Rule 1.25-A

A TRUE COPY ATTEST:
Nancy Ringland
Clerk of Court

☑ **Mutual Releases:** Other than as set forth in this decree or other order of this court (including "Uniform Support Order") each party releases and agrees to defend, indemnify and hold the other harmless from any and all claims of any nature whatsoever arising out of the marriage (including any claim for alimony).

☑ **Obligations:** Unless specifically mentioned in this decree, each party shall be solely responsible for any bills, obligations or other indebtedness that he or she has charged or incurred before or during the marriage or civil union.

☑ **Change in Address or Employment:** Each party shall promptly notify the other of any change in his/her address or telephone number, and of any material change in employment as long as there are any continuing obligations under this decree. "Material change" will include availability of medical, dental or life insurance and any substantial increase or decrease in earnings or other income.

☐ **Waiver of Attendance:** Both parties waive attendance at a final hearing.

☐ **Miscellaneous:**

I/we believe that this is a fair and reasonable resolution of all the issues related to our marriage or civil union. I/we request that the Court approve this decree and incorporate all of its terms and conditions as part of the Decree of Divorce, Decree of Legal Separation, or Decree of Civil Union Dissolution.

Date — Signature of Petitioner

Date — Signature of Attorney/Witness for Petitioner

Date — Signature of Respondent

Date — Signature of Attorney/Witness for Respondent

I state that on this date I provided a copy of this document to _____ (other party) or to _____ (other party's attorney) by: ☐ Hand-delivery OR ☐ US Mail OR ☐ E-mail (E-mail only by prior agreement of the parties based on Circuit Court Administrative Order).

Date — Signature

Recommended:

Date — Signature of Marital Master

Printed Name of Marital Master

So Ordered:

I hereby certify that I have read the recommendation(s) and agree that, to the extent the marital master/judicial referee/hearing officer has made factual findings, she/he has applied the correct legal standard to the facts determined by the marital master/judicial referee/hearing officer.

11/15/18
Date

Signature of Judge

Lucinda V. Sadler
Printed Name of Judge

A TRUE COPY ATTEST:
Nancy Ringland
Clerk of Court

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
http://www.courts.state.nh.us

Court Name: 6th Circuit - Family Division - Hooksett

Case Name: In the Matter of Sean Braunstein and Jericka Braunstein

Case Number: 647-2017-DM-00081

UNIFORM SUPPORT ORDER

Name, Residence and Mailing Address of Person Ordered to Pay Support (Obligor)	Name, Residence and Mailing Address of Person Receiving Support (Obligee)
Sean Braunstein	Jericka Braunstein
56 Post Road	66 Broadway
Hooksett, NH	Pembroke, NH
D.O.B. _____ Telephone _____	D.O.B. _____ Telephone _____
E-mail Address _____	E-mail Address _____
Name of Employer: n/a	Name of Employer: Tuckers
Address of Employer:	Address of Employer: Hooksett, NH

Child(ren) to whom this order applies:

Full Name	Date of Birth	Full Name	Date of Birth
Rowyn	12/12/2012		

The following parties appeared: ☒ Obligor ☒ Obligee ☐ Division of Child Support Services
☒ Other counsel for each party

NOTE: SECTIONS PRECEDED BY ☐ ARE ONLY PART OF THIS ORDER IF MARKED.

1. This order is entered:
   - ☒ after hearing
   - ☐ upon approval of agreement
   - ☐ upon default

2. This order is a:
   - ☐ temporary order
   - ☒ final order

☐ 3. This order modifies a final support obligation in accordance with:
   - ☐ a three-year review (RSA 458-C:7) OR
   - ☐ substantial change in circumstances, as follows:

4. Obligor is ORDERED to PAY THE FOLLOWING AMOUNTS (See Standing Orders 4A-4G):
   - 4.1 CHILD SUPPORT: $ 75.00 per week (week, month, etc.)
   - 4.2 Arrearage of $ tbd as of 11/19/2018, payable $ 20.00 per week (week, month, etc.)

4.3 Medical arrearage of $ _____ as of _____,
payable $ _____ per _____ (week, month, etc.)

4.4 SPOUSAL SUPPORT (ALIMONY): $ _____ per _____ (week, month, etc.)

4.5 Arrearage of $ _____ as of _____,
payable $ _____ per _____ (week, month, etc.)

4.6 Alimony shall terminate _____

5. Payments on all ordered amounts shall begin on 11/19/218 _____. All ordered amounts shall be payable to ☐ Obligee ☒ Division of Child Support Services ☒ Other Sean was found in contempt for failing to pay child support per temp. USO. Therefore collection and enforcement shall be done through DCSS and both parents shall contact DCSS in regard to services.

6. ☐ This order complies with the child support guidelines. RSA 458-C.

☐ This order, entered upon obligor's default, is based on a reasonable estimate of obligor's income. Compliance with the guidelines cannot be determined.

☒ The following special circumstances warrant an adjustment from the guidelines (Enter applicable circumstances below. See Standing Order 6):
Shared parenting schedule plus shared school and extra-curricular activities.

7. Support ordered is payable by immediate income assignment.

☐ 8. The Court finds that there is good cause to suspend the immediate income assignment because:

☐ Obligor and obligee have agreed in writing.

☐ Payments have been timely and it would be in the best interest of the minor child(ren) because:

_____

☐ 9A. Obligor is unemployed and **MUST REPORT EFFORTS TO SEEK EMPLOYMENT. (See Standing Order 9A).**

☐ 9B. Upon employment the Obligor shall bring the matter forward for recalculation of support. Failure to do so may result in a recalculated support order effective the date of employment.

MEDICAL SUPPORT FINDINGS (Paragraphs 10 through 15)

10. **OBLIGOR'S** medical support reasonable cost obligation: $ 206.00 per month

10A. ☐ The medical support reasonable cost obligation is adjusted from the presumptive amount because of the following special circumstances (Enter applicable circumstances below. See Standing Order 6):

_____

_____

11. Private health insurance coverage ☒ is not available ☐ is available to the **OBLIGOR in an amount equal to or less than the amount of the medical support reasonable cost obligation ordered in paragraph 10.**

12. ☐ Private health insurance coverage available to the **OBLIGOR** is not accessible to the child(ren).

13. **OBLIGEE'S** medical support reasonable cost obligation:$ 98.00 per month.

13A. ☐ The medical support reasonable cost obligation is adjusted from the presumptive amount because of the following special circumstances (Enter applicable circumstances below. See Standing Order 6):

_____

_____

14. Private health insurance coverage ☒ is not available ☐ is available to the **OBLIGEE in an amount equal to or less than the amount of the medical support reasonable cost obligation ordered in paragraph 13.**

15. ☐ Private health insurance coverage available to the **OBLIGEE** is not accessible to the child(ren).

PRIVATE HEALTH INSURANCE COVERAGE (Paragraph 16A and/or 16B must be completed):

16A. ☒ Obligor ☐ Obligee is ordered to provide private health insurance coverage for the child(ren) effective ongoing

16B. ☐ Obligor ☐ Obligee is/are not ordered to provide private health insurance coverage at this time but is/are ordered to immediately obtain private health insurance coverage when it becomes accessible and available at an amount equal to or less than the ordered medical support reasonable cost obligation.

UNINSURED MEDICAL EXPENSES

17. Uninsured medical expenses shall be paid in the following percentage amounts:
Obligor 50 % Obligee 50 % Other: _____

☐ 18. Public assistance (TANF) or medical assistance (Medicaid) is or was provided for the children. Copies of pleadings related to medical coverage and child support were mailed to the Division of Child Support Services, Child Support Legal, 129 Pleasant Street, Concord, NH 03301.

19. ☐ Obligor ☐ Obligee is adjudicated the father of the minor child(ren) named above. The clerk of the city(ies) of _____ shall enter the name of the father on the birth certificate(s) of the child(ren). The father's date of birth is _____ and his state of birth is _____.

20. The State of _____ has provided public assistance for the benefit of the minor child(ren) between _____ and _____
for _____ weeks. Obligor is indebted for the assistance in the total amount of $ _____

21. Variation to standing order (specify paragraph #), additional agreement or order of the Court:

_____

_____

_____

_____

Obligor	Obligee	Staff Attorney Division of Child Support Services
Obligor's Attorney/Witness	Obligee's Attorney/Witness	
Date	Date	Date

Case Name: In the Matter of Sean Braunstein and Jericka Braunstein

Case Number: 647-2017-DM-00081

UNIFORM SUPPORT ORDER

All paragraphs of this order (except those that have a check box and have not been selected) and all paragraphs of the Standing Order, (except variations in paragraph 21) are part of this order and apply to all parties.

So Ordered:

11/9/18
Date

Signature of Judge

Lucinda V. Sadler
Printed Name of Judge

THE STATE OF NEW HAMPSHIRE
UNIFORM SUPPORT ORDER — STANDING ORDER

NOTICE: This Standing Order (SO) is a part of all Uniform Support Orders (USO) and shall be given full effect as an order of the Court. Variations to paragraphs of the SO in a specific case must be entered in paragraph 21 of the USO and approved by the Court.

(Paragraph numbers in the SO correspond to related paragraph numbers in the USO. Variations entered in paragraph 21 should reference the related paragraph number.)

SUPPORT PAYMENT TERMS

SO-3A. All prior orders not inconsistent with this order remain in full force and effect.

SO-3B. In cases where the order of another jurisdiction is registered for modification, a tribunal of this state may not modify any aspect of a child support order that may not be modified under the law of the issuing jurisdiction. (See RSA 546-B:49,III.)

SO-3C. This order shall be subject to review and Court modification three years from its effective date upon the request of a party. Any party may petition the Court at any time for a modification of this support order if there is a substantial change in circumstances. The effective date of any modification shall be no earlier than the date of notice to the other party. "Notice" means either of the following: 1) service as specified in civil actions or 2) the respondent's acceptance of a copy of the petition, as long as the petition is filed no later than 30 days following the respondent's acceptance. See RSA 458-C:7.
NOTE: The July 1, 2013 change to the child support guidelines does not constitute a substantial change in circumstances. 2012, Chapter 248:5, "Applicability" states as follows (emphasis added):
"RSA 458-C:3,I as amended by this act shall apply to any child support order issued on or after July 1, 2013. RSA 458-C:3, I as amended by this act shall not apply to a valid child support order in effect on the effective date of this act until the next scheduled review hearing under RSA 458-C:7 or as otherwise agreed by the parties. **This act shall not constitute a substantial change in circumstances for purposes of RSA 458-C:7."**

SO-3D. No modification of a support order shall alter any arrearages due prior to the date of filing the pleading for modification. RSA 461-A:14, VIII.

SO-4A. The amount of a child support obligation shall remain as stated in the order until the dependent child for whom support is ordered completes his or her high school education or reaches the age of 18 years, whichever is later, or marries, or becomes a member of the armed services, at which time the child support obligation, including all educational support obligations, terminates without further legal action, except where duration of the support obligation has been previously determined by another jurisdiction, or is governed by the law of another jurisdiction, and may not be modified in accordance with statutory language referenced in SO-3B. If the parties have a child with disabilities, the court may initiate or continue the child support obligation after the child reaches the age of 18. No child support order for a child with disabilities which becomes effective after July 9, 2013 may continue after the child reaches age 21. (See RSA 461-A:14, IV)

SO-4B. In multiple child orders, the amount of child support may be recalculated according to the guidelines whenever there is a change in the number of children for whom support is ordered, upon petition of any party. In single child orders, the support obligation terminates automatically, without the need for further court action, upon the emancipation of the child. The obligor remains obligated for any and all arrearages of the support obligation that may exist at the time of emancipation.

SO-4C. If the order establishes a support obligation for more than one child, and if the court can determine that within the next 3 years support will terminate for one of the children, the amount of the new child support obligation for the remaining children may be stated in the order and shall take effect on the date or event specified without further legal action.

SO-4D. In cases payable through the New Hampshire Division of Child Support Services (DCSS), if there are arrearages when support for a child is terminated, payments on the arrearages shall increase by the amount of any reduction of child support until the arrearages are paid in full.

SO-4E. Pursuant to RSA 161-C:22, III when an assignment of support rights has terminated and obligor and the recipient of public assistance reunite, obligor may request a suspension of the collection of support arrearage owed to the state under RSA 161-C:4. So long as the family remains reunited and provided that the adjusted gross income of the family as defined by RSA 458-C is equal to or less than 185% of the Federal poverty guidelines as set by the United States Department of Health and Human Services, DCSS shall not take any action to collect the support arrearage owed to the State.

SO-4F. If the collection of a support arrearage pursuant to RSA 161-C:4 is suspended, the obligor shall provide DCSS with a financial affidavit every six months evidencing the income of the reunited family and shall notify his or her child support worker in writing within ten days of any change in income or if the family is no longer reunited. Failure to report changes in income or in the status of the family as reunited or to provide a financial affidavit shall cause the suspension of collection to terminate.

SO-4G. Each party shall inform the Court in writing of any change in address, within 15 days of the change, so long as this order is in effect. Service of notice of any proceeding related to this order shall be sufficient if made on a party at the last address on file with the Court. A party who fails to keep the Court informed of such a change in address, and who then fails to attend a hearing because of the lack of notice, may be subject to arrest.

SO-5A. If no date appears in paragraph 5 of the USO, the first support payment shall be due on the date this order is signed by the Judge.

SO-5B If support is payable through DCSS, a DCSS application for child support services must be submitted before DCSS can provide services in accordance with the order.

SO-5C. If support is payable through DCSS, DCSS is authorized and directed to collect all sums, including any arrearages, from the obligor and forward the sums collected to the obligee or person, department, or agency providing support to the children named in the USO. Any payment shall be applied first as payment towards the current child and medical support obligation due that month and second towards any arrearages.

SO-5D. If support is ordered payable directly to the obligee, it can only be made payable through DCSS at a later time if (1) the children named in the USO receive assistance pursuant to RSA 161 or RSA 167; (2) a party applies for support enforcement services and certifies to DCSS that (a) an arrearage has accumulated to an amount equal to the support obligation for one month, or (b) a court has issued a protective order pursuant to RSA 173-B or RSA 461-A:10 which remains in full force and effect at the time of application; or (3) a court orders payment through DCSS upon motion of any party that it is in the best interest of the child, obligee, or obligor to do so. RSA 161-B:4.

SO-5E. Collection by DCSS on any arrearage may include intercepting the obligor's federal tax refund, placing liens on the obligor's personal and real property including qualifying financial accounts. Federal tax refund intercept and lien remedies shall be used to collect arrearages even if an obligor is complying with the child support orders. Pursuant to 45 CFR 303.72 (h) any federal tax refund intercept shall be applied first as payment towards the past due support assigned to the State.

SO-5F. In all cases where child support is payable through DCSS, obligor and obligee shall inform DCSS in writing of any change of address or change of name and address of employer, within 15 days of the change.

SO-5G. In all cases where child support is payable through DCSS, obligor and obligee shall furnish their social security numbers to the New Hampshire Department of Health and Human Services (Department).

SO-6. Where the court determines that, in light of the best interests of the child, special circumstances exist that result in adjustments in the application of the guidelines for the child support obligation or the reasonable medical support obligation, the court shall make written findings relative to the applicability of one or more of the special circumstances described in RSA 458-C:5, I.

INCOME ASSIGNMENT

SO-7A. Until such time as an income assignment goes into effect, payments shall be made as follows: (1) if the case is not payable through DCSS, directly to obligee, or (2) if support is payable through the DCSS by use of payment coupons available at the local DCSS office. An income assignment will not go into effect for self-employed obligors as long as they do not receive income as defined in RSA 458-B:1, paragraph IX. Future income will be subject to assignment if the case is payable through DCSS.

SO-7B. If a parent is ordered to provide health coverage for Medicaid-eligible child(ren), he or she must use payments received for health care services to reimburse the appropriate party, otherwise his or her income may be subject to income assignment by DCSS. RSA 161-H:2(V).

SO-7C. Increased income assignment for the purposes of payment on arrearages shall continue until such time as the arrearages are paid in full.

SO-8. Whenever an income assignment is suspended, it may be instituted if a Court finds obligor in violation or contempt of this order OR after notice and the opportunity to be heard (RSA 458-B:5 & 7), when the Department begins paying public assistance for the benefit of a child OR when an arrearage amounting to the support due for a one-month period has accrued.

REPORT CHANGES OF EMPLOYMENT

SO-9A. If support is payable through DCSS, obligor shall report in writing weekly, or as otherwise ordered by Court, to DCSS, and shall provide details of efforts made to find a job. Efforts to obtain employment shall include registering with New Hampshire Employment Security within two weeks of the date of this order. The obligor shall immediately report employment to DCSS in writing.

SO-9B. Immediately upon employment the obligor shall report to the obligee, **in writing**, details of employment, including name and address of employer, the starting date, number of weekly hours and the rate of pay.

MEDICAL SUPPORT PROVISIONS

SO-10-16B (1). In all cases where support is payable through DCSS, or where the Department is providing medical assistance for the child(ren) under RSA 167, the court shall include the medical support obligation in any child support order issued. RSA 461-A:14, IX(d).

SO-10-16B (2). The court shall establish and order a reasonable medical support obligation for each parent. The presumptive amount of a reasonable medical support obligation shall be 4 percent of the individual parent's gross income, unless the court establishes and orders a different amount based on a written finding or a specific finding, made by the presiding officer on the record, that the presumptive amount would be unjust or inappropriate, using the criteria set forth in RSA 458-C:5.

SO-10-16B (3). The court shall determine whether private health insurance is available to either parent at a cost that is at or below the reasonable medical support obligation amount, as established and ordered pursuant to RSA 458-C:3, V, or is available by combining the reasonable medical support obligations of both parents, and, if so available, the court shall order the parent, or parents, to provide such insurance for the child.

SO-10-16B (4). The cost of providing private health insurance is the cost of adding the child to existing coverage, or the difference between individual and family coverage.

SO-12, 15. Accessible health insurance means the primary care services are located within 50 miles or one hour from the child(ren)'s primary residence. RSA 461-A:14, IX(b).

SO-16A-16B A party providing or ordered to provide health insurance for the child(ren) shall give the other party sufficient information and documentation to make sure insurance coverage is effective. If support is payable through DCSS, or if there has been an assignment of medical support rights to DCSS, the information and documentation shall be provided to DCSS. In addition, obligor shall inform DCSS in writing when health insurance is available, obtained or discontinued.

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THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
http://www.courts.state.nh.us

Court Name: 6th Circuit Court-Family Division-Hooksett

Case Name: Sean Braunstein and Jericka Braunstein

Case Number: 6472017-DM-0081

CHILD SUPPORT GUIDELINES WORKSHEET
Effective April 1 2018

Child's Name	DOB	Child's Name	DOB
Rowyn	12/12/2012		
1. Total Number Of Children ◉ 1 ○ 2 ○ 3 ○ 4 +			
2. Obligor's Reasonable Medical Support Obligation *(4% Monthly Gross Income, rounded to the nearest dollar)* $206.00		3. Obligee's Reasonable Medical Support Obligation *(4% Monthly Gross Income, rounded to the nearest dollar)* $98.00	

PAYMENT CALCULATIONS *NOTE: All income and expenses must be converted to monthly amounts (multiply weekly amounts by 4.33; bi-weekly amounts by 2.17).*	OBLIGOR (Column 1)	OBLIGEE (Column2)	Combined (Column 3)
4. Monthly gross income	$ 5150.00	$ 2450.00	
5A. Court/Admin. ordered support for other children	$ ____.__	$ ____.__	
5B. 50% of actual self-employment taxes paid	$ ____.__	$ ____.__	
5C. Mandatory retirement	$ ____.__	$ ____.__	
5D. Actual state income taxes paid	$ ____.__	$ ____.__	
5E. Allowable child care expenses (obligor) *(See LINE 5E instructions)*	$ 308.00		
5F. Medical support for children (obligor)	$ 313.00		
5G. Total deductions (Add lines 5A through 5F)	$621.00	$0.00	
6. Adjusted monthly gross income *(Subtract line 5G from line 4)*	$4,529.00	$2,450.00	$6,979.00
7A. Child Support guideline amount *(From Guideline Calculation Table)*			$1,187.23
7B. Guideline Percentage *(From Guideline Calculation Table)*			**21.72 %**
8A. Allowable child care expenses (obligee) *(See LINE 8A instructions)*		$ 143.00	
8B. Medical support for children (obligee)		$ ____.__	
8C. Total allowable obligee expenses *(Add line 8A and 8B)*		$143.00	
9. Total adjusted monthly gross income	$4,529.00	$2,307.00	$6,836.00
10. Proportional share of income	66.25 %	33.75 %	
11. Parental support obligation *(Line 10 times line 7A)*	$786.57	$400.66	
ABILITY TO PAY CALCULATION			
12. Self-support reserve *(From Guideline Calculation Table)*	$1,163.00		
13. Income available for support *(Subtract line 12 from line 9, column 1)*	$3,366.00		
14. Monthly support payable *(Enter the smaller line 11, column 1, or line 13, column 1. If line 13, column 1, is less than $50.00, then a minimum order of $50.00 is entered.)*	$786.57		
15. Presumptive child support obligation *(If weekly, divide line 14 by 4.33; if bi-weekly, divide line 14 by 2.17; if monthly, enter same amount as in line 14.)* ** ROUND THE RESULT TO THE NEAREST WHOLE DOLLAR **			
Calculate	Weekly $182.00	Bi-Weekly $362.00	Monthly $787.00

Prepared By: _____ Title: _____ Date: _____

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THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
http://www.courts.state.nh.us

Court Name: 6th Circuit Court-Family Division-Hooksett

Case Name: Sean Braunstein and Jericka Braunstein

Case Number: 6472017-DM-0081

CHILD SUPPORT GUIDELINES WORKSHEET
Effective April 1 2018

Child's Name	DOB	Child's Name	DOB
Rowyn	12/12/2012		
1. Total Number Of Children ◉1 ○2 ○3 ○4+			
2. Obligor's Reasonable Medical Support Obligation *(4% Monthly Gross Income, rounded to the nearest dollar)* $98.00		3. Obligee's Reasonable Medical Support Obligation *(4% Monthly Gross Income, rounded to the nearest dollar)* $206.00	

PAYMENT CALCULATIONS NOTE: All income and expenses must be converted to monthly amounts (multiply weekly amounts by 4.33; bi-weekly amounts by 2.17).	OBLIGOR (Column 1)	OBLIGEE (Column2)	Combined (Column 3)
4. Monthly gross income	$ 2450.00	$ 5150.00	
5A. Court/Admin. ordered support for other children	$.__	$.__	
5B. 50% of actual self-employment taxes paid	$.__	$.__	
5C. Mandatory retirement	$.__	$.__	
5D. Actual state income taxes paid	$.__	$.__	
5E. Allowable child care expenses (obligor) *(See LINE 5E instructions)*	$ 143.00		
5F. Medical support for children (obligor)	$ .00		
5G. Total deductions (Add lines 5A through 5F)	$143.00	$0.00	
6. Adjusted monthly gross income *(Subtract line 5G from line 4)*	$2,307.00	$5,150.00	$7,457.00
7A. Child Support guideline amount *(From Guideline Calculation Table)*			$1,248.70
7B. Guideline Percentage *(From Guideline Calculation Table)*			**21.52 %**
8A. Allowable child care expenses (obligee) *(See LINE 8A instructions)*		$ 308.00	
8B. Medical support for children (obligee)		$ 313.00	
8C. Total allowable obligee expenses *(Add line 8A and 8B)*		$621.00	
9. Total adjusted monthly gross income	$2,307.00	$4,529.00	$6,836.00
10. Proportional share of income	33.75 %	66.25 %	
11. Parental support obligation *(Line 10 times line 7A)*	$421.41	$827.29	
ABILITY TO PAY CALCULATION			
12. Self-support reserve *(From Guideline Calculation Table)*	$1,163.00		
13. Income available for support *(Subtract line 12 from line 9, column 1)*	$1,144.00		
14. Monthly support payable *(Enter the smaller line 11, column 1, or line 13, column 1. If line 13, column 1, is less than $50.00, then a minimum order of $50.00 is entered.)*	$421.41		
15. Presumptive child support obligation *(If weekly, divide line 14 by 4.33; if bi-weekly, divide line 14 by 2.17; if monthly, enter same amount as in line 14.)* ** ROUND THE RESULT TO THE NEAREST WHOLE DOLLAR **			
Calculate	Weekly $97.00	Bi-Weekly $194.00	Monthly $421.00

Prepared By: _____ Title: _____ Date: _____

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37a

No. __-____

In the Supreme Court of the United States

SEAN BRAUNSTEIN,
Petitioner,

v.

JERICKA BRAUNSTEIN,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES SUPREME COURT FOR THE
SUPREME COURT OF THE STATE OF NEW HAMPSHIRE

APPENDIX – Volume II

CARSON J. TUCKER, JD, MSEL, *Counsel of Record*
LEX FORI, PLLC
117 N. First St., Suite 111
Ann Arbor, MI 48104
(734) 887-9261
cjtucker@lexfori.org

App. Vol. II – Tab D

Braunstein v. Braunstein

Notice of Appeal and Statement of Issues

January 30, 2019

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
http://www.courts.state.nh.us

RULE 7 NOTICE OF MANDATORY APPEAL

This form should be used for an appeal from a final decision on the merits issued by a superior court or circuit court except for a decision from: (1) a post-conviction review proceeding; (2) a proceeding involving a collateral challenge to a conviction or sentence; (3) a sentence modification or suspension proceeding; (4) an imposition of sentence proceeding; (5) a parole revocation proceeding; (6) a probation revocation proceeding; (7) a landlord/tenant action or a possessory action filed under RSA chapter 540; (8) an order denying a motion to intervene; or (9) a domestic relations matter filed under RSA chapters 457 to 461-A other than an appeal from the first final order. (An appeal from the first final order issued in a domestic relations matter filed under RSA chapters 457 to 461-A should be filed on this form.)

1. COMPLETE CASE TITLE AND CASE NUMBERS IN TRIAL COURT

In The Matter Of Sean Braunstein and Jericka Braunstein 647-2017-DM-00081

RECEIVED
NEW HAMPSHIRE
SUPREME COURT
2019 JAN 30 P 2:56

2. COURT APPEALED FROM AND NAME OF JUDGE(S) WHO ISSUED DECISION(S)

6th Circuit Hooksett Family Division
Judge Suzanne Gorman & Judge Lucinda Sadler

3A. APPEALING PARTY: NAME, MAILING ADDRESS, E-MAIL ADDRESS, AND TELEPHONE NUMBER.

Sean Braunstein
56 Post Road, Hooksett, NH, 03106

E-Mail address: **seanjbraunstein@yahoo.com**
Telephone number: **603-396-8293**

3B. APPEALING PARTY'S COUNSEL: NAME, BAR ID NUMBER, FIRM NAME, MAILING ADDRESS, E-MAIL ADDRESS, AND TELEPHONE NUMBER.

Pro Se

E-Mail address:
Telephone number:

4A. OPPOSING PARTY: NAME, MAILING ADDRESS, E-MAIL ADDRESS, AND TELEPHONE NUMBER.

Jericka (Angelini) Braunstein
66 Broadway, Pembroke, NH 03275

E-Mail address: **jericka.braunstein@gmail.com**
Telephone number: **603-540-2810**

4B. OPPOSING PARTY'S COUNSEL: NAME, BAR ID NUMBER, FIRM NAME, MAILING ADDRESS, E-MAIL ADDRESS, AND TELEPHONE NUMBER.

Anthony Santoro Esq
NH Bar No. 15167
Granite State Legal Resources
64 North State Street, Suite 5
Concord, NH 03301

E-Mail address: **anthony@legaladvicenh.com**
Telephone number: **603-545-1575**

Case Name: _____

RULE 7 NOTICE OF MANDATORY APPEAL

5. NAMES OF ALL OTHER PARTIES AND COUNSEL IN TRIAL COURT
Court Appointed GAL for Minor Child- Attorney Deborah Mulcrone

Court Ordered Mediation - Mediator Elizabeth Christensen
Limited Appearance Counsel - Attorney Caroline LeBuffer (Temp Hearing & Trial Day 1 & 2)
Limited Appearance Counsel - Attorney Robert Hunt (Trial Day 3 Financial Hearing only)

6. DATE OF CLERK'S NOTICE OF DECISION OR SENTENCING. ATTACH OR INCLUDE COPY OF NOTICE AND DECISION.
November 19, 2018

DATE OF CLERK'S NOTICE OF DECISION ON POST-TRIAL MOTION, IF ANY. ATTACH OR INCLUDE COPY OF NOTICE AND DECISION.
December 31, 2018

7. CRIMINAL CASES: DEFENDANT'S SENTENCE AND BAIL STATUS
n/a

8. APPELLATE DEFENDER REQUESTED? YES or NO: **No**
IF YOUR ANSWER IS YES, YOU MUST CITE STATUTE OR OTHER LEGAL AUTHORITY UPON WHICH CRIMINAL LIABILITY WAS BASED AND ATTACH FINANCIAL AFFIDAVIT & APPLICATION FOR COURT APPOINTED COUNSEL (OCC FORM 4). SEE SUPREME COURT RULE 32(4).

9. IS ANY PART OF CASE CONFIDENTIAL? YES or NO: **Yes**
IF SO, IDENTIFY WHICH PART AND CITE AUTHORITY FOR CONFIDENTIALITY. SEE SUPREME COURT RULE 12.
Full Report, per NH Circuit Court- Family Division Rule 2.15

10. IF ANY PARTY IS A CORPORATION, LIST THE NAMES OF PARENTS, SUBSIDIARIES AND AFFILIATES.
313 Associates INC, Metropolis Entertainment LLC, Maple Willow Functions & Maple Willow Cafe

11. DO YOU KNOW OF ANY REASON WHY ONE OR MORE OF THE SUPREME COURT JUSTICES WOULD BE DISQUALIFIED FROM THIS CASE? YES or NO: **No**

IF YOUR ANSWER IS YES, YOU MUST FILE A MOTION FOR RECUSAL IN ACCORDANCE WITH SUPREME COURT RULE 21A.

12. IS A TRANSCRIPT OF TRIAL COURT PROCEEDINGS NECESSARY FOR THIS APPEAL? SEE SUPREME COURT RULE 15, COMMENT.
YES or NO: **Yes**

IF YOUR ANSWER IS YES, YOU MUST COMPLETE THE TRANSCRIPT ORDER FORM ON PAGE 4 OF THIS FORM.

Case Name: _____

RULE 7 NOTICE OF MANDATORY APPEAL

13. LIST SPECIFIC QUESTIONS TO BE RAISED ON APPEAL, EXPRESSED IN TERMS AND CIRCUMSTANCES OF THE CASE, BUT WITHOUT UNNECESSARY DETAIL. STATE EACH QUESTION IN A SEPARATELY NUMBERED PARAGRAPH.

1. Whether or not the Court erred by including the appellant's Veteran Disability Compensation as "income", for purposes of calculating child support at the final and temporary hearing when 26 USC Sec 104(b)(2)(D) specifically excludes this award from definition of gross income?

2. Whether or not the Court erred by including the appellant's Federal Disability Retirement as "income" for purposes of calculating child support at final and temporary hearing when 26 USC Sec 104 (a)(4) specifically excludes this award from definition of gross income?

3. Whether or not the Court erred by allowing a State Statue to be applied to this matter, instead of Federal Law?

4. Whether or not the Court erred by not allowing appellant to challenge the constitution of a state statue and/or properly provided due process to appellant?

5.Whether or not the Court erred by holding a final hearing in the case when the appellant still had not received all interrogatories that were propounded or a final financial hearing, when financial documents still had not been received that were previously ordered to be provided to the appellant?

6. Whether or not the Court erred in not upholding Court Rules 1.25a Mandatory Disclosures, 1.25c, Unavailability of Documents, and 1.25d Failure to Provide Initial Disclosures?

7. Whether or not the Court erred in removing residential responsibility of the parties minor child from appellant due to other party not following temporary orders, causing financial distress to appellant or erred in not holding the other party accountable for excessive interest and fees, due to non-compliance?

8. Whether or not the Court erred by only holding appellant in contempt, when both parties filed Contempt Motions?

9. Whether or not the Court erred in ruling on the Motion in Limine, and if the ruling was upheld?

10. Whether or not the Court erred on the ruling of Mutual Releases?

11. Whether or not the Court erred in recognizing that appellant was being held solely financially responsible for the minor child and required appellant to pay for private kindergarten?

12. Whether or not the Court erred in not finding the other party in default after several motions to compel, and conditional defaults were filed or allowing opposing counsel to provide changed proposed orders moments before walking into court?

13. Whether or not the Court erred in not fully reading the GAL Comprehensive report, and hearing testimony, showing significant concerns that were raised?

14. Whether or not the Court erred in equitable division of a cash value on a Whole Life Policy that was owned and paid since its inception by appellant?

15. Whether or not the Court erred in allowing testimony be credible during a financial hearing, without evidence that was requested during Interrogatories?

16. Whether or not the Court erred in not submitting case to the Complex Case Docket?

14. CERTIFICATIONS

I hereby certify that every issue specifically raised has been presented to the court below and has been properly preserved for appellate review by a contemporaneous objection or, where appropriate, by a properly filed pleading.

30

Appealing Party or Counsel

I hereby certify that on or before the date below, copies of this notice of appeal were served on all parties to the case and were filed with the clerk of the court from which the appeal is taken in accordance with Supreme Court Rules 5(1) and 26(2) and, if applicable, with Rule 18 of the 2018 Supplemental Rules of the Supreme Court.

30 Jan 2019

Date

Appealing Party or Counsel

Case Name: _____

RULE 7 NOTICE OF MANDATORY APPEAL

TRANSCRIPT ORDER FORM

INSTRUCTIONS:

1. If a transcript is necessary for your appeal, you must complete this form.
2. List each portion of the proceedings that must be transcribed for appeal, e.g., entire trial (see Supreme Court Rule 15(3)), motion to suppress hearing, jury charge, etc., and provide information requested.
3. Determine the amount of deposit required for each portion of the proceedings and the total deposit required for all portions listed. Do not send the deposit to the Supreme Court. You will receive an order from the Supreme Court notifying you of the deadline for paying the deposit amount to the court transcriber. Failure to pay the deposit by the deadline may result in the dismissal of your appeal.
4. The transcriber will produce a digitally-signed electronic version of the transcript for the Supreme Court, which will be the official record of the transcribed proceedings. Parties will be provided with an electronic copy of the transcript in PDF-A format. A paper copy of the transcript may also be prepared for the court.

PROCEEDINGS TO BE TRANSCRIBED					
PROCEEDING DATE (List each day separately, e.g. 5/1/11; 5/2/11; 6/30/11)	TYPE OF PROCEEDING (Motion hearing, opening statement, trial day 2, etc.)	NAME OF JUDGE	LENGTH OF PROCEEDING (in .5 hour segments, e.g.,1.5 hours, 8 hours)	RATE (standard rate unless ordered by Supreme Court)	DEPOSIT
11/14/17	**Temporary Hearing**	**Hon. Suzanne Gorman**	**3ish**	X $137.50	$ **412.50**
8/6/18	**Trial Day 1 Morning**	**Hon. Lucinda Sadler**	**.5**	X $137.50	$ **68.75**
8/6/18	**Trial Day 1 Afternoon**	**Hon. Lucinda Sadler**	**1.5**	X $137.50	$ **206.25**
8/8/18	**Trial Day 2**	**Hon. Lucinda Sadler**	**1.5**	X $137.50	$ **206.25**
10/29/18	**Trial Day 3 Financial Hearing**	**Hon. Lucinda Sadler**	**2.5ish**	X $137.50	$ **343.75**
				X $137.50	$
				X $137.50	$
				X $137.50	$
				X $137.50	$
				X $137.50	$
				TOTAL DEPOSIT	**$**

PROCEEDINGS PREVIOUSLY TRANSCRIBED					
PROCEEDING DATE (List date of each transcript volume)	TYPE OF PROCEEDING (Motion hearing, opening statement, trial day 2, etc.)	NAME OF JUDGE	NAME OF TRANSCRIBER	DO ALL PARTIES HAVE COPY (YES OR NO)	DEPOSIT FOR ADDITIONAL COPIES
					TBD
					TBD
					TBD

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Braunstein v. Braunstein

Petitioner's Appeal Brief
New Hampshire Supreme Court

August 28, 2019

The State of New Hampshire

SUPREME COURT

Case No. 2019-0065

IN THE MATTER OF

SEAN BRAUNSTEIN AND JERICKA BRAUNSTEIN

RULE 7 APPEAL OF THE FINAL ORDERS OF THE

6TH CIRCUIT FAMILY COURT DIVISION – HOOKSETT

BRIEF OF PETITIONER – APPELLANT

SEAN BRAUNSTEIN

By: Sean Braunstein, Pro Se
56 Post Road
Hooksett, NH 03106
(603) 396-8293

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V. **Whether or not the Court erred by holding a final hearing in the case when the appellant still had not received all interrogatories that were propounded or a final financial hearing, when financial documents still had not been received that were previously ordered, to be provided to appellant?**

VI. **Whether or not the Court erred in not upholding Court Rules 1.25a Mandatory Disclosures, 1.25c, Unavailability of Documents, and 1.25d Failure to Provide Initial Disclosures?**

VII. **Whether or not the Court erred in removing residential responsibility of the parties minor child from appellant due to other party not following temporary orders, causing financial distress to appellant or erred in not holding the other party accountable for excessive interest and fees, due to non-compliance?**

VIII. **Whether or not the Court erred by only holding appellant in contempt, when both parties Contempt Motions?**

IX. **Whether or not the Court erred in ruling on the Motion in Limine, and if the ruling was upheld?**

X. **Whether or not the court erred on the ruling of Mutual Releases?**

XI. **Whether or not the Court erred in recognizing that appellant was being held solely financially responsible for the minor child and required appellant to pay for private kindergarten?**

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QUESTIONS PRESENTED

1. Did the Trial Court err when it ruled to include Sean's VA and other Federal Disability benefits for the calculation of Child Support?

2. Did the Trial Court err by allowing a State Statue to be applied to this matter, when Federal Law supersedes?

3. Did the Trial Court err when it removed residential responsibility from Sean, due to Ms. Braunstein willfully refusing to cooperate to save the marital home from foreclosure?

4. Did the Trial Court err in not sufficiently providing due process, to either party?

5. Did the Trial Court err by not upholding Mandatory Court Rules, providing requested motions, enforcing orders, making each party accountable for their actions?

6. Did the Trial Court err by not sending their case to the complex case docket, by not allowing appropriate time to argue the facts, or due to a new judge presiding?

7. Did the Trial Court err in conducting a final financial hearing; despite knowing that Petitioner still did not have

all of the required Mandatory Disclosure documents, along with interrogatories which were ordered to compel to obtain such documents, all pertaining to financials?

8. Whether or not the Court erred in allowing testimony be considered credible during a financial hearing, without evidence that was requested during Interrogatories, with out sanctioning the party and without providing guidance on requested orders for a Motion in Limine, an open Motion barring testimony?

STATEMENT OF THE CASE

The parties, Sean Braunstein, (Mr. Braunstein) and Jericka Braunstein[1], (Ms. Braunstein) were wed on January 26, 2010. On May 26, 2017, Mr. Braunstein filed an *Ex Parte* requesting emergency custody with the parties' only minor child (Rowyn Jeyna Braunstein, hereafter "Rowyn" D.O.B 12/12/2012) along with a Petition for Divorce[2].

[1] Jericka Braunstein is now Jericka Angelini. To prevent confusion, she will be called Ms. Braunstein throughout this brief.

[2] Ms Braunstein and Sean will be referred to collectively as "the parties."

An *Ex Parte* hearing was conduction on June 6, 2017, at which time, Sean requested that the court appoint a *Guardian at Litem* (GAL) for the parties child. A temporary hearing was scheduled for August 22, 2017.

On August 13, 2017, Sean and Ms Braunstein both assented to a motion to continue for the GAL. The Temporary Hearing was rescheduled for November 14, 2017.

On October 23, 2017, Sean filed an Ex Parte Motion[3] to remain in his home, after the bank was attempting to conduct a fraudulent foreclose on the property. Sean spoke with the bank, and was informed he qualified for the Veterans Affairs Home Affordability Modification Program, but would need to have the co-borrower also participate, and therefore would not accept Sean's Modification documents. Despite the numerous attempts in obtaining a full Rule 1.25 and 1.25a Ms Braunstein refused to sign loan modification documents and refused to provide financial documentation that the bank requested. Ms. Braunstein noted that she did not want to be held "financially responsible, as she had discharged the debt in 2016, after the parties filed a joint bankruptcy petition, which discharged her obligation to the home." The foreclosure would cause him to lose 96% of the eligibility, leaving him with a non-cash value of $17,080. By losing the home, Sean would have both immediate and irreparable harm done to

[3] See App, Vol 1, pg 4

him, yet Ms. Braunstein continued to refuse. The only other option was for Sean to request a Quit Claim deed, and do the modification alone. The Court did NOT deny the motion, but ruled:[4] *"The Motion shall be addressed at the pending temporary hearing."* No objection was ever filed by Ms Braunstein.

On November 14, 2017, the parties had a Temporary Hearing that reviewed the proposed decree, parenting, child support, and the ex parte motion. Attorney Santoro[5] stated that the order had been denied, and the Court reiterated their stance that *"it had not been denied, and there was no objection."* The GAL submitted a 20 page preliminary report[6] and provided testimony directly to the Court, addressing all of the concerns in her appointment. In the report, it does address that Ms. Braunstein had just changed her schedule, to now work Monday to Thursday, allowing her to home on weekends during her parenting time. Attorney Santoro and Ms. Braunstein both testify that her income that reflects her current Financial Affidavit, would remain the same, at $3,850/mo. Sean testified to the current state of the marital home, and steps that he had taken to remove it from foreclosure.

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[4] See App, Vol 1, page 21
[5] See 11/14/2017 Transcript pg 2; lines 13-25.
[6] See App Vol 2, GAL Report page 4

On December 5, 2017, Counsel for Sean, Attorney Caroline Lefebure, withdrew from the case, and provided limited appearance, requiring Sean to represent himself, Pro Se. [7]

On January 16, 2018, the court issued orders[8] from the Temporary Hearing, which provided specific instructions concerning the marital home, and assigned Rowyn's residency to Sean, on a temporary basis. Attorney Santoro filed a Motion to Reconsider, on January 31, 2018[9], which was 5 days past the deadline (See Rule 1.26f) Sean submitted an objection February 2, 2018[10], supporting his original stance, and again asking for the documents that Ms. Braunstein still refused to provide, again being in violation with Family Rule 1.25.

The parties exchanged interrogatories. Sean supplied his response, and objected to others that were overly broad, or overly burdensome. The motion was granted in part, and further guidance was given. Attorney Santoro never supplied further guidance; therefore the information was given, based off of the courts suggestion. Sean later sent his interrogatories.

On March 9, 2018, Sean sent Ms. Braunstein a request for Interrogatories, due back by April 8, 2018. Attorney Santoro was aware of the deadline.

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[7] See App Vol 1, Pg 22
[8] See App, Vol 1, Pg 23-46
[9] See App, Vol 1, Pg 48
[10] See App, Vol 1 Pg 52

On March 19, 2018 the parties had a Pre-Trial Hearing, where the parties exchanged plans, and only providing Sean with 1 paystub, and a financial affidavit that was not able to be verified, based on the numbers compared to her bank statements, and the charges she listed. The parties also agreed to attend three sessions of mediation.

On April 17, 2018 Sean had to file a Motion to Compel, requesting the court to provided assistance to get Ms. Braunstein to respond. Despite the request through the court, and through emails, Attorney Santoro did not respond.

On May 22, 2018 A notice of Conditional Default for failure to provide Interrogatories was entered by the Clerk of the Court.

On June 1, 2018, Attorney Santoro submitted a Motion to Strike the Conditional Default, stating that answers were supplied on May 31, 2018. When Sean received the responses, he found that the answers were lacking specific details, releases weren't signed, and a majority were stated "n/a". He reached out again to Attorney Santoro, but did not hear back.

On July 26, 2018, Sean submitted a Second Motion to Compel[11], and a Partially Assented to continuance. The motion

[11] See App, Vol 1, Pg 62

was granted in part, "pertaining to information related to financial issues only"

On August 6, 2018, the parties appeared in court for their final hearing. Attorney Santoro supplied the Court with a Findings of Fact/Rulings of Law[12]. Sean testified regarding the difficulty of obtaining specific documents, and that his case was being impacted negatively due to Ms. Braunstein not providing the required documents. The court agreed to a continuance for the financial hearing, but continued with the parenting portion.

On August 8, 2018, the parties appeared for a second day of parenting, with Attorney Santoro looking to settle the case, and not continue. Based upon the amount of documents that were received, Sean disagreed, stating that he had not been given the opportunity to review the documents, and thus declined to move forward with a financial hearing that day. In a very quick review an effort to rebuttal Attorney Santoro's Findings of Fact/Rulings of Law,.

The court issued orders on August 9, 2018.[13]

The court reversed the temporary order, since Sean's home was in foreclosure. The court further states that a Full Day

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[12] See App Vol 1, Pg 69
[13] See App, Vol 1, Pg 73

Program would be better for Rowyn – despite the GAL specifically stating that she recommends Hooksett School System, knowing that it was half day, and knowing that Sean's home was in foreclosure.

The order granted Ms. Braunstein's residence to be used in Pembroke for school destination for kindergarten. The court seems to overlook the Motion of Contempt that Sean filed, stating the only reason his home was in foreclosure, was that Ms. Braunstein was intentionally refusing to follow the original court orders, which ordered her to cooperate and provided any documents that were needed to file a modification.

Sean submitted a motion to reconsider, stating that prior orders that had been previously ruled on, by the former judge, they appear to seem to have been overlooked based on the October 16, 2018, ruling.

On October 10, 2018, to obtain the requested 1.25a and final answers to his interrogatories, to support his case, Sean files for a third Motion to Compel.

On October 29, 2018, the parties attend their financial hearing. Attorney Robert Hunt in a limited capacity for Sean, argues to the court that documents pertaining to the hearing, are still missing, which have caused irreprehensible harm to both Sean

and Rowyn. Sean also filed a Memorandum of Law[14], in an effort to provide the updated case of Howell v Howell, 137 S. Ct. 1400, 1403 (2017).

Despite the courts direct knowledge of Ms Braunstein not being in compliance, Sean argues that the court erred in allowing Ms. Braunstein the ability to testify, based on the Motion in Limine.[15] The court did not specifically rule on it, and place it in a blanketed denial in the December 31, 2018.[16]

The parties each submitted a motion to reconsider, each stating their opinions of the errors of the orders. Sean was fond in contempt[17] for not paying Child support, despite his award amount being inaccurately calculated, and Ms. Braunstein.

STATEMENT OF FACTS

Sean is a disabled veteran. He served in the United States Army from 2003-2007. After several appeals, in 2010, the Veterans Administration (VA) back dated Sean's claims and determined he was 70% as of the date of his last day of service, and then was increased to 100% as of the letter, making him disabled due to a service-connected condition. In 2012, the VA revisited Sean's service connected-disabilities, and rated him at

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[14] See App, Vol 1, Pg142
[15] See App, Vol1, Pg 131
[16] See App, Vol1 Pg 189
[17] See App, Vol1 Pg 149

100% Permanent and Total (P&T.) Each changed; Sean received a lump sum payment of Veterans Administration (VA) disability benefits.

ISSUES

Among the issues likely to be addressed in this case is the rule concerning the absolute preemption of federal law over state courts in the disposition of VA disability benefits. Under it's enumerated Article I "Military Powers", Congress provides veterans disability benefits as a personal entitlement to the veteran. The Supremacy Clause provides that federal laws passed pursuant to Congress' enumerated Article I powers absolutely preempt all state law. Under this power, Congress has prohibited *any legal process* from being used to deprive veterans of their disability benefits. 38 U.S.C. § 5301.Unless Congress has *lifted* the absolute preemption provided by federal law in this area, state courts and state agencies simply have no authority, or jurisdiction, to direct that such benefits be seized or paid over to someone other than their intended beneficiary. Congress has lifted this absolute preemption in a small subset of cases: (1) for marital property through the Uniformed Services Former Spouses Protection Act (USFSPA), 10 U.S.C. § 1408; and (2) spousal support and child support, through the Child Support Enforcement Act (CSEA), 42 U.S.C. § 659. 42 U.S.C. § 659 was amended to specifically *exclude* VA disability benefits that are paid to non-retiree disabled veterans – those veterans who had not retired, and therefore could not have waived retired or retention pay to receive

disability benefits. See also *Howell v. Howell*, 137 S. Ct. 1400 (2017).

Where a state court is preempted by controlling federal law, the state court has no authority to issue an order that exceeds its jurisdictional control. When federal law, through the Supremacy Clause preempts state law, as it does in the area of divorce in regard to veterans' benefits, then a state court lacks jurisdiction to issue a contrary award. "State courts may exercise jurisdiction and authority over veteran's disability pay to satisfy a child support and/or spousal support award, *but only up to the amount of his or her waiver of retired pay.*" *In re Marriage of Cassinelli*, 20 Cal App 5th 1267, 1277; 229 Cal Rptr 3d 801 (2018). See also 42 U.S.C. §§ 659(a), (h)(1)(A)(ii)(V), (B)(iii); 5 C.F.R. § 581.103 (2018) (emphasis supplied). *Cassinelli* was a decision on remand after *Howell, supra.*

VA and Federal disability benefits have also been deemed constitutionally protected property rights under the Fifth and Fourteenth Amendments to the Constitution. *Cushman v. Shinseki*, 576 F.3d 1290 (Fed. Cir. 2009) and *Robinson v. McDonald*, 28 Vet. App. 178, 185 (U.S. 2016) (federal veterans' benefits are constitutionally protected property rights). See also *Morris v Shinseki*, 26 Vet. App. 494, 508 (2014) (same).
Petitioner has presented the arguments that demonstrate federal law preempts state law, and that his constitutional rights have been infringed upon by the trial court, incorrectly calculating his

support order, forcing him to pay for privatized schooling, and ordering him to pay Ms. Braunstein's attorney's fee for contempt.

Finally, *Rose* was wrongly decided, and it is an outdated case that does not even apply to the factual circumstances of this case because Congress amended 42 U.S.C. § 659 to add subsection (h)(1)(B)(iii) after *Rose*. Most importantly, all of the issues of law presented by this case are of national significance due to the increasing number of disabled veterans whose main or only source of income are disability benefits.

The purpose of Congress in enacting 38 U.S.C. § 5301 was to "prevent the deprivation and depletion of the means of subsistence of veterans dependent upon these benefits as the main source of their income." *Rose*, 481 U.S. at 630. For a very limited time (after *Rose v. Rose*), the *judicial* allowance to state courts to force veterans to use their disability pay for child support and spousal support appears to have applied across the board to all disabled veterans. However, this worked an inequitable result on a certain subset of disabled veterans; namely those, like Sean in this case, who had been injured and rendered disabled and unable to serve before they had acquired years in service sufficient to also have the financial support and economic security of retirement pay. Now, this subset of veterans, especially due to the last 3 decades of up-tempo, high-volume deployment and military operations in which the U.S. military has been involved represents the largest population of disabled veterans in existence. The significance of this cannot be understated. See Trauschweizer, 32 International

Bibliography of Military History 1 (2012), pp. 48-49 (describing the intensity of military operations commencing in the 1990's culminating in full-scale military involvement in Iraq and Afghanistan during the past three decades).

[18]Our Country is faced with the waning population of disabled veterans from the post-Vietnam era and prior. *Rose* was, as noted, a 1987 case, and it necessarily addressed an entirely different population of aging and disabled veterans. Since 1990, there has been a 46% increase in disabled veterans, placing the total number of veterans with service-connected disabilities *above* 3.3 million as of 2011.[19]. As of March 22, 2016, the number of veterans receiving disability benefits had increased from 3.9 million to 4.5 million. *Id.* See also VA, National Center for Veterans Analysis and Statistics, What's New at: https://www.va.gov/vetdata/veteran_population.asp. Also, since 1990, there has been a remarkable increase in veterans with disability ratings of 50 percent of higher, with approximately 900,000 in 2011. VA, Trends, *supra* at slide 6. That same year, 1.1 million of the 3.3 million total disabled veterans had a disability rating of 70 percent or higher. *Id.*

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[18] See also VA, Trends in Veterans with a Service-Connected Disability: 1985 to 2011, Slide 4 at: http://www.va.gov/vetdata/docs/QuickFacts/SCD_trends_FINAL.pdf.

[19] VA, Trends, *supra*. By 2014, the number of veterans with a service-connected disability was 3.8 million.[19] See U.S. Census Bureau, Facts for Features at: http://www.census.gov/newsroom/facts-for-features/2015/cb15-ff23.html

Finally, the disability numbers and ratings for younger veterans has markedly inclined. Conducting an adjusted data search, 570,400 out of 2,198,300 non-institutionalized civilian veterans aged 21 to 64 had a VA service-connected disability at 70% or higher in the United States in 2014. See Erickson, W., Lee, C., von Schrader, S. Disability Statistics from the American Community Survey (ACS) (2017). Data retrieved from Cornell University Disability Statistics website: www.disabilitystatistics.org. Thus, according to this data analysis, half of the total numbers of veterans with a disability rating *greater* than 70% are between 21 and 64 years of age.

Per the National Veterans Foundation, there are over 2.5 Military Members, who served in Iraq and Afghanistan. Of those, nearly 6,600 were killed, and over 770,000 have filed disability claims. See http://www.nvf.org/staggering-number-of-disabled-veterans/. Yet another study shows nearly 40,000 service members returning from Iraq and Afghanistan have suffered traumatic injuries, with over 300,000 at risk for PTSD or other psychiatric problems. These veterans face post-deployment health concerns, sharing substantial burdens with their families. These staggering numbers are, in part, a reflection of the nature of wounds received in modern military operations, modern medicine's ability to aggressively treat the wounded, and modern transportation's ability to get those most severely wounded to the most technologically advanced medical treatment facilities in a

matter of hours.[20] Physical injuries in these situations are understandably horrific. *Id*[21]. However, many veterans also suffer severe psychological injuries, some attendant to witnessing the sudden arbitrariness and indiscretion of war's violence. Zeber, Noel, Pugh, Copeland & Parchman, Family perceptions of post-deployment healthcare needs of Iraq/Afghanistan military personnel, 7(3) Mental Health in Family Medicine 135-143 (2010). As one observer has stated: "assignments can shift rapidly from altruistic humanitarian work to the delivery of immense deadly force, leaving service members with confusing internal conflicts that are difficult to integrate. During deployments, even medical personnel are at times compelled to use deadly force to protect themselves, their patients, and their fellow soldiers." Combat-related post-traumatic stress symptoms (PTSS), with or without a diagnosis of post-traumatic stress disorder (PTSD) can negatively impact soldiers and their families. These conditions have been linked to increased domestic violence, divorce, and suicides. Stress Medicine 131-137 (1995).[22]

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[20] Fazal, Dead Wrong? Battle Deaths, Military Medicine, and Exaggerated Reports of War's Demise, 39:1 International Security 95 (2014), pp. 95-96, 107-113.

[21] . See also Kriner & Shen, Invisible Inequality: The Two Americas of Military Sacrifice, 46 Univ. of Memphis L. Rev. 545, 570 (2016)

[22] Melvin, Couple Functioning and Posttraumatic Stress in Operation Iraqi Freedom and Operation Enduring Freedom – Veterans and Spouses, available from PILOTS: Published International Literature On Traumatic Stress. (914613931; 93193). See also Schwab, et al., War and the Family, 11(2) Stress Medicine 131-137 (1995).

Such conditions are exacerbated when returning veterans must face stress in their families caused by their absence. Despite the amazing cohesion of the military community and the best efforts of the larger military family support network, separations and divorces are common. Families, already stretched by this extraordinary burden, are often pushed beyond their limits causing relationships to break down. Long deployments, the daily uncertainty of not knowing whether the family will ever be reunited, and the everyday travails of civilian life are difficult enough. A physical disability coupled with mental and emotional scars brought on by wartime environments make the veteran's reintegration with his family even more challenging. Finley, *supra.*

This younger population of disabled veterans are not entitled to retirement pay because they were injured or wounded during the first few years of their service to the country. Like Sean, who only served for approximately 4 years, many disabled veterans in this population do not and will never have the financial security and economic assurances of a retirement pension and all the other benefits that come with being classified as retired. When it became apparent that this growing subset of disabled veterans were also being subjected to having their disability benefits taken by state courts to satisfy support orders in domestic relations cases, Congress acted to differentiate this class of veterans by amending the CSEA and adding 42 U.S.C. § 659(h)(1)(A)(ii)(V) and (h)(1)(B)(iii) distinguishing the two subsets of veterans and the two classes of disability benefits, those which are available to former spouses and

minor children from the former group of retiree veterans and those that are not from the latter group of non-retiree veterans. Because federal law has always preempted state law in this very specific circumstance, any state-court domestic relations order awarding support (child and/or spousal) would be void and unenforceable, both going forward and retroactively. In this case, all of Petitioner's federal disability benefits are specifically excluded from consideration as remuneration for employment, and therefore as income, by 42 USC 659(a); (h)(1)(A)(ii)(V); and (h)(1)(B)(iii). As such, these benefits are jurisdictionally protected from *any legal process* whatever by 38 U.S.C. § 5301.

Federal law is very clear and has been changed since *Rose v. Rose* to protect veterans' rights and enforce federal law. Yet, state courts across the country continue to blindly cite *Rose* for the proposition that states have unfettered access to these disability benefits no matter what the income and status of the disabled veteran. This has caused a systemic destruction of the ability of disabled veterans to sustain themselves and their families. The greatest tragedy, of course, is the effect that this has had on the veteran community as a whole. Homelessness, destitution, alcoholism, drug abuse, criminality, incarceration and, in too many cases, suicide, are a direct result of the consequences of a blind adherence to outdated and no longer viable federal law that fails to take account of the reality of current circumstances.

A state court that rules incorrectly on a matter preempted by federal law acts in excess of its jurisdiction. Such rulings, and the judgments they spring from, including all subsequent contempt and related orders (which would cover the contempt award here) are *void ab initio* and exposed to collateral attack. The United States Supreme Court has said as much: "That a state court before which a proceeding is competently initiated may – by operation of supreme federal law – lose jurisdiction to proceed to a judgment unassailable on collateral attack is not a concept unknown to our federal system." *Kalb v. Feurstein*, 308 U.S. 433, 440, n 12 (1940). "The States cannot, in the exercise of control over local laws and practice, vest state courts with power to violate the supreme law of the land." *Id.* at 439. "States have *no power*...to retard, impede, burden, or *in any manner control*, the operations of the constitutional laws enacted by Congress to carry into execution the powers vested in the general government." *McCulloch v Maryland*, 17 US (4 Wheat) 316, 436; 4 L Ed 579 (1819) (MARSHALL, CJ) (emphasis added). Absent such power, any attempt by state courts to impede the operation of federal laws must be considered a nullity and void. *Kalb, supra*

SUMMARY OF ARGUMENT

Sean believes that his case has two main points to argue. The first one in regards to the inconsistencies across New Hampshire Courts when it comes to following mandated court rules, or following court orders. While he is aware each Justice is able to use their own discretion, he questions at what point does the line get drawn, and willful violations receive appropriate consequences? He argues that if two exact cases were argued with one in one district, and that the other in a further district, its likely they would have completely different results. The same would likely happen when a Judge who oversaw all the foundation of a case is being laid out, and then a new Judge came in, and took over. The possibility of the orders would certainly be different, which should not be the case.

The second main point, is in regard to Federal disability benefits, and how Congress provides veterans with multiple benefits and entitlements by enacting legislation pursuant to its "Military Powers" under Article I, § 8, clauses 11 through 13 of the United States Constitution. These enumerated powers are supported by the Necessary and Proper Clause, § 8, cl. 16. These powers are further protected from state infringement by the Supremacy Clause, Article VI, cl. 2, which expressly declares the laws of Congress enacted pursuant to its Military Powers "shall be the supreme Law of the Land and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." Congress provides

veterans benefits for the maintenance, readiness, support and care of the nation's military service members, for the common defense and protection of the nation's citizens. The type of veterans' benefits at issue in this case (federal retirement and disability pay) have been authorized since the dawn of this nation's independence.[23] The United States Supreme Court has, over the course of nearly a century, confirmed that such benefits are an exercise of Congress' exclusive Article I, § 8 Military Powers and have held, accordingly, that state courts are preempted from exercising authority or control over these benefits to the detriment of veterans. Since the 6th Circuit Court in the case sub judice violated this principle, Appellant respectfully submit this brief in support of to urge reversal.

ARGUMENT

XVII. Whether or not the Court erred by including the appellant's Veteran Disability Compensation as

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[23] Rombauer, Marital Status and Eligibility for Federal Statutory Income Benefits: A Historical Survey, 52 WASH. L. REV. 227, 228 (1977) ("[o]ne of the early resolutions of the first Congress in 1776 provided for monthly payments of up to half pay to officers, soldiers, and seaman disabled in the line of duty" and "in 1789 one of the early acts of the Congress under the new Constitution provided continuance of these payments to the disabled veterans of the Revolutionary Army.") See also Waterstone, Returning Veterans and Disability Law, 85:3 NOTRE DAME L. REV. 1081, 1084 (2010).

"income", for purposes of calculating child support at the final and temporary hearing when 26 USC Sec104(b)(2)(D) specifically excludes this award from definition of gross income?

While there are many Federal Statues that cover this specific benefit on, the Internal Revenue Service, the Department of Treasury do not consider any veteran's benefits income, and have ruled that it is safe from any assignment or seizure.

XVIII. Whether or not the Court erred by including the appellant's Federal Disability Retirement as "income", for purposes of calculating child support at the final and temporary hearing when 26 USC Sec 104(b)(2)(D) specifically excludes this award from definition of gross income?

Federal Statues that cover this specific benefit include the Internal Revenue Service, and the Department of Treasury. Both of which do not consider any Federal Disability benefits to be income. Despite this knowledge, the Court erred in their calculations, which caused irreversible damage, both by forcing an order of $95 per week, and the State garnishing 25% of Sean's federal disability, totally over $500 a month.

XIX. Whether or not the Court erred by allowing a State Statue to be applied to this matter, instead of Federal Law?

During the Trial, a Memorandum of Facts was provided by Attorney Santoro, and in response Sean supplied a Memorandum of Law[24], and later a Reconsideration requesting to address the Courts disagreement, who instead sited NH RSA 458 C:2 regarding child support income. Both of these documents, specifically spelling out the errors that the court was ruling on, along with the known errors that the State of New Hampshire's Department of Health and Human Service were well aware of[25], yet the State opted to sweep any knowledge under the carpet, with regards to HB652-FN's final publication. Since *Rose v Rose*, many state courts, without authority, have asserted an unbridled interest in veterans' disability pay to force veterans to pay child support, spousal support, maintenance and alimony to former spouses. Federal law preempts state law concerning the disposition and entitlement to veteran's benefits. Moreover, after *Rose*, Congress amended federal law to specifically exclude veterans disability benefits from being counted towards a disabled veterans child support or spousal support obligations, *unless* the veteran had also gained enough time in service and credit to retire, and chose to waive retirement or retention benefits to receive such disability pay. Sean in this case is like so many other disabled veterans who have been severely disabled and who have not waived retired or retainer pay to receive their disability entitlements. Federal law protects this pay by way of the U.S. Constitution's Supremacy Clause, which provides that all state laws that stand in the way of

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[24] See App, Vol 1, Pg 137-142

[25] See New Hampshire, HB652, 2017

Congress' exercise of its enumerated powers are void, have no force and effect, and are preempted. Moreover, positive enactments by Congress further specify that certain veterans' disability pay is off limits to state courts and state agencies for satisfaction of child support and spousal support in state court divorce proceedings. See 42 USCS 659(a), (h)(1)(A)(ii)(V), and (h)(1)(B)(iii); and 38 USCS 5301. These provisions jurisdictionally bar state courts from exercising authority over veterans' personal entitlements to their disability benefits. The United States Supreme Court recently said as much in the case of Howell v. Howell, 137 S. Ct. 1400 (2017). There, the Court held that 38 USCS 5301 jurisdictionally protected all veterans' disability pay and state courts had no authority to vest those benefits in any one other than the entitled beneficiary, i.e., the veteran. The Court also noted the one limited federal law exception in the child support and spousal support context envisioned by 42 USCS 659(h)(1)(A)(ii)(V), "...who is in receipt of retired or retainer pay if the former member has waived a portion of the retired or retainer pay in order to receive such compensation; which Sean did not do, therefore it must be exempt.

XX. <u>Whether or not the Court erred by not allowing appellant to challenge the constitution of a state statue and/or properly provide due process to appellant?</u>

In his initial Memorandum of Law[26] in the Trial Court, Petitioner argued that 38 U.S.C. § 5301(a)(1) exempts his federal disability benefits from "attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary." Petitioner conceded that certain VA benefits may be subject to income withholding, garnishment, or other legal process brought by a state agency seeking to enforce payment of a child-support obligation, but only with respect to those VA disability benefits received in lieu of retirement or retention benefits. *Cf.* 42 U.S.C. § 659(a), (h)(1)(A)(ii)(V), and (h)(1)(B)(iii). Because Petitioner's VA disability was not received in lieu of retirement pay or retention pay, as such they could not lawfully be assigned, or included for child support purposes, and were off limits under 38 U.S.C. § 5301 as a personal entitlement. See *Howell v. Howell*, 137 S. Ct. 1400, 1405-1406 (holding state courts cannot vest that which under governing federal law they lack the authority to give, citing 38 U.S.C. § 5301, which provides that disability benefits are generally non-assignable, while noting that for military retirement pay, the state courts are allowed to take account that some retirement or retainer pay may be waived and calculate or recalculate the need for child support or spousal support, citing *Rose v. Rose*, 481 U.S. 619, 630-634, and n. 6, 107 S. Ct. 2029, 95 L. Ed. 2d 599 (1987), but reserving the questions concerning the scope and breadth of allowing the use of VA disability pay for spousal support and child support). Petitioner also made a claim under 42 U.S.C. § 1983, alleging the court had,

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[26] See App, Vol 1, 137

by its actions, deprived him of his constitutional rights to his property, of Federal disability benefits and VA disability pay. The Court disagreed[27] that Sean's disability benefits were off limits, in fact, sited NH RSA 458 C:2. The Trial Court violated federal statutory and constitutional provisions, including 38 U.S.C. § 5301(a)(1) and 42 U.S.C. § 659(h)(1)(A)(ii)(V), and that its decision was clearly erroneous, arbitrary and capricious. Petitioner also claimed that the Trial Court had violated his rights under the due process clause of the 14th Amendment to the United States Constitution. Petitioner also argued that the NH Legislation branch, and the Department of Health and Human Services, knew they were out of compliance with federal mandates when the state attempted to submit HB-652-FN in 2017.

XXI. Whether or not the Court erred by holding a final hearing in the case when the appellant still had not received all interrogatories that were propounded or a final financial hearing, when financial documents still had not been received that were previously ordered, to be provided to appellant?

The parties requested two days to conduct their final hearing, which included financials. Despite THREE Motions to Compel, and various requests for documents Sean still had not been given the Full Financial Mandatory Disclosure that was required at the beginning of the case. He was rarely supplied with updated Financial Affidavits, and was not given consecutive pay

[27] See App, Vol 1, 146 Orders

stubs, trust information, employment benefits, bank statements, Profit & Loss Statements, and various other documents that were requested in the interrogatories. It wasn't until the evening of he second trial in August 2018, nearly a year later, Sean was provided with minimal information. Despite the request for the documents, and seeking the courts assistance, Sean was met with opposition when he attempted to obtain information he had a right to have.

XXII. Whether or not the Court erred in not upholding Court Rules 1.25a Mandatory Disclosures, 1.25c, Unavailability of Documents, and 1.25d Failure to Provide Initial Disclosures?

Sean pointed out in his final motion of reconsideration, that Ms. Braunstein knowingly refused to provide initial disclosures, despite having an obligation to either provide the documents, or a release for Sean to obtain them himself, per Rule 1.25-C (1)(2). Notably, in Rule 1.25D Failure to provide initial disclosures.... By section B and C.... the Court may impose sanctions, including.... Prohibiting a party from introducing evidence, testifying or making an offer of proof... filing requests for discovery, or filing any discovery motion. As a requirement for Child Support, both parties must provide accurate information, and if a parties failure to provide such information, prejudices access of a compliant party to requested substantive relief, such as the calculation and receipt of Child Support, the court may, in addition to other sanctions address the relief requested by the compliant party on the basis of reasonable estimates and assumptions, at least until such time the

documents are produced. The Trial Court erred in allowing Ms Braunstein to provide "creditable testimony" knowing that she was out of compliance, and continuing the financial hearing, which resulted negatively for Sean. Based on Ms Braunstein's testimony, the court found that by changing her work hours, and stepping down from a management position, that she was not purposely underemployed. Sean points out that Ms. Braunstein's testimony does not reflect the facts, since by doing so, it caused her wages to go down over $1,000/mo -despite previous testimony that her wages would not be impacted. Based on this, his child support was increased.

XXIII. Whether or not the Court erred in removing residential responsibility of the parties minor child due to other party not following temporary orders, causing financial distress to appellant or erred in not holding the other party accountable for excessive interest and fees, due to non-compliance?

During the Final Parenting Plan, in which Sean has filed a contempt prior to the hearing of violation of not providing the necessary financial information the bank needed, and not cooperating to secure his housing from foreclosure. Ms. Braunstein attempted to previously argue at the Temporary Hearing, with the prior Judge, saying she wasn't allowed to talk to the bank, despite

being on the mortgage, and deed. The court informed her that the bank was required to talk with her, and stated that both parties had all the documents in court, and should review them together. Ms. Braunstein, through counsel, refused, continued to contradict testimony of being able to speak with them or not when a new judge was appointed. Attorney Santoro, painted a different picture of the complexity of the home foreclosure, which lead to a permanent change in residency.

XXIV. Whether or not the Court erred by only holding appellant in contempt, when both parties filed Contempt Motions?

Attorney Santoro filed a Motion of Contempt[28] regarding child support, and non payment. Sean did file an objection[29] stating, the parties were in mediation discussing it up until July 31, 2018. Sean also filed a Motion for Contempt[30] regarding non-compliance in the January 16, 2018 order, regarding the marital home. Sean was excessively charged every day, while in foreclosure with the bank. The court erred by not find Ms. Braunstein in contempt, as the interested he was assessed, was far more than child support payments the court ordered.

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[28] See App, Vol 1 Pg ,109
[29] See App, Vol 1, Pg 119
[30] See App, Vol1, Pg 128

XXV. Whether or not the Court erred in ruling on the Motion in Limine, and if the ruling was upheld?

Sean filed a Motion in Limine on October 17, 2018. The motion was mentioned during the final financial hearing, however, when limit counsel Attorney Robert Hunt for Sean informed the court of the list of documents that still had not been provided, the court simply state that if documents from Ms. Braunstein was attempted to be given, that he could object. The Court erred in not providing a direct motion on whether or not the Motion in Limine was granted, or denied. This does two things. First, it leaves the door open for Ms. Braunstein to testify on her own behalf, instead of providing evidence, and documents that were requested, and her testimony was accepted without providing proof or validation. Second, it removes the opportunity for Sean to appeal to a higher court, until all open motions are ruled on. Sean does point to this out in his Motion to Reconsider. The court responded, and provided an overly broad response of saying all further requests are denied. This is unjust, and leaves him the inability to have properly appealed the decision, impacting his right to due-process. See Morill v Morill 147 N.H. 116 (2001).

XXVI. Whether or not the court erred on the ruling of Mutual Releases?

Throughout the history of the parties divorce, Sean has requested several financial and business records from Ms. Braunstein, who kept the business computer, after the business closed. Ms. Braunstein was the Treasurer on business the parties operated

jointly. Despite these requests, Sean was unable to obtain any of the information regarding the business. As such, Sean asked the court to remove the clause[31] of the parties mutually releasing one another. As stated in the October 29, 2018 hearing, the parties went through a personal bankruptcy, and any remaining debts that their business had, could potentially still be sought after, as their businesses did not go through bankruptcy, despite Attorney Santoro's statement.

XXVII. Whether or not the Court erred in recognizing that appellant was being held solely financially responsible for the minor child and required appellant to pay for private kindergarten?

In the final parenting orders, the court orders that Rowyn go to school in Pembroke Public School District. Ms. Braunstein wanted to leave Rowyn in her current school. When Ms. Braunstein refused to update the USO, Sean later found out that his cost share would actually double, from when Attorney Santoro informed the court what the cost share would be[32]. Sean filed a motion to reconsider asking the court to either agree to the changes, or to enforce the order for public school. The court denied the request, and as a result, Sean was put in several financial predicaments due to the constant change of tuition costs, ranging form $32/week to $137/week. Since Ms. Braunstein did

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[31] Trans Vol 3, pg 145, ln 12-20

[32] Trans 11/14/17 pg 18, Ln 2-16

not keep Sean current of the financial changes, the school would continuously send emails saying that Rowyn's cost share was suddenly increasing, without advance notice, which impacted his ability to budget being on a fixed budget.

XXVIII. Whether or not the Court erred in not finding the other party in default after several motions to compel, and conditional defaults were filed, or allowing opposing counsel to provide changed proposed orders moments before walking into court?

Each Motion to Compel that was submitted to the court was either granted, or granted in part. Despite this, each time, no answer from Ms. Braunstein's attorney, regarding the status of the information, when information was finally provided, it was minimal, and extremely rushed. The court erred in finding Ms Braunstein in contempt for not providing releases, correct data, and full disclosures.

XXIX. Whether or not the Court erred in not fully reading the GAL Comprehensive report, and hearing testimony, showing significant concerns that were raised?

From the Temporary Hearing, until the Final Financial hearing, the orders that were presented for Parenting, and recommendations from the GAL that were turned into orders, by the prior Judge, were essentially ignored by the income Judge.

Sean was transparent with all entities' he worked with, as such, the prior Judge ruled that he have Legal Residency, and the GAL supported Rowyn going to Hooksett Public School System. Several of the orders contradict what the GAL recommended, and as such, became confusing for both parties.

XXX. Whether or not the Court erred in equitable division of cash value on a Whole Life Policy that was owned and paid since its inception by appellant?

The Court erred in allowing a cash asset to solely go to one individual, despite all other marital cash being divided equally. Sean owned the Whole Life Insurance Policy, and as such, should have been entitled to half of the total value, which was $2,512. The court denied his request for reconsideration.[33]

XXXI. Whether or not the Court erred in allowing testimony be credible during a financial hearing, without evidence that was requested during Interrogatories?

Sean requested several documents to support his case, and was unable to obtain them from Ms. Braunstein. As such Sean requested the court in a Motion in Limine, to refuse any testimony that pertained to financial matters. Sean argues that Ms. Braunstein discussed her reasoning for lowering her hours, and pay, which was in direct conflict of her earlier testimony from the

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[33] See App, Vol 1, Pg 173

August 8, 2018 Hearing[34]. Since the court never directly provided an approval or a denial, Sean's ability to have due process, and validate testimony was denied. He further was not provided with such requests that were stated earlier in this brief.

XXXII. Whether or not the Court erred in not submitted case to the Complex Case Docket?

On several occasions the court appeared to be overwhelmed and frustrated with the specifics of this case, specifically around Bankruptcy Protections, VA Benefits, including a VA Home Loan, and the complexity of whether or not the Court Rules were adhered to. While most Judges are provided with a certain level of discretion, it should not be done in such a matter that appears to be out of sync with their own Mandatory Rules. The vast majority of veterans today need more support and knowledgeable justices in the courtroom, as each court appears to have different standards for them. Veterans who are not retirees, and did not waive retirement pay to receive disability pay, and therefore, have no other forms of subsistence. Yet, trial courts ignore federal law, blindly cite to *Rose v. Rose* as authority, and continue to take veterans' disability pay from the veteran. As such, this case should have been referred by the presiding judge to the Complex Case Docket, where it could have had the time it needed to untangle the complexity in each issue.

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[34] Trans Vol 2, Pg 121, Ln 1-9

Statement of the Case

Sean is a disabled veteran. He served in the United States Army from August 2003 to June 2007. After a several appeals, in 2010, the Veterans Administration (VA) back dated Sean's claims and determined he was 70% as of the date of his last day of service, and then was increased to 100% as of the letter, making him disabled due to a service-connected condition. In 2012, the VA rated him at 100% Permanent and Total (P&T.)

Issues

Among the issues likely to be addressed in this case is the rule concerning the absolute preemption of federal law over state courts in the disposition of VA disability benefits. Under it's enumerated Article I "Military Powers", Congress provides veterans disability benefits as a personal entitlement to the veteran. The Supremacy Clause provides that federal laws passed pursuant to Congress' enumerated Article I powers absolutely preempt all state law. Under this power, Congress has prohibited *any legal process* from being used to deprive veterans of their disability benefits. 38 U.S.C. § 5301.Unless Congress has *lifted* the absolute preemption provided by federal law in this area, state courts and state agencies simply have no authority, or jurisdiction, to direct that such benefits be seized or paid over to someone other than their intended beneficiary. Congress has lifted this absolute preemption in a small subset of cases: (1) for marital property through the Uniformed Services Former Spouses Protection Act (USFSPA), 10 U.S.C. § 1408; and (2) spousal support and child support, through

the Child Support Enforcement Act (CSEA), 42 U.S.C. § 659. 42 U.S.C. § 659 was amended to specifically *exclude* VA disability benefits that are paid to non-retiree disabled veterans – those veterans who had not retired, and therefore could not have waived retired or retention pay to receive disability benefits. See also *Howell v. Howell*, 137 S. Ct. 1400 (2017).

Where a state court is preempted by controlling federal law, the state court has no authority to issue an order that exceeds its jurisdictional control. When federal law, through the Supremacy Clause preempts state law, as it does in the area of divorce in regard to veterans' benefits, then a state court lacks jurisdiction to issue a contrary award. "State courts may exercise jurisdiction and authority over veteran's disability pay to satisfy a child support and/or spousal support award, *but only up to the amount of his or her waiver of retired pay.*" *In re Marriage of Cassinelli*, 20 Cal App 5th 1267, 1277; 229 Cal Rptr 3d 801 (2018). See also 42 U.S.C. §§ 659(a), (h)(1)(A)(ii)(V), (B)(iii); 5 C.F.R. § 581.103 (2018) (emphasis supplied). *Cassinelli* was a decision on remand after *Howell*, *supra.*

VA and Federal disability benefits have also been deemed constitutionally protected property rights under the Fifth and Fourteenth Amendments to the Constitution. *Cushman v. Shinseki*, 576 F.3d 1290 (Fed. Cir. 2009) and *Robinson v. McDonald*, 28 Vet. App. 178, 185 (U.S. 2016) (federal veterans' benefits are constitutionally protected property rights). See also *Morris v Shinseki*, 26 Vet. App. 494, 508 (2014) (same).

Petitioner has presented the arguments that demonstrate federal law preempts state law, and that his constitutional rights have been infringed upon by the trial court, incorrectly calculating his support order, forcing him to pay for privatized schooling, and ordering him to pay Ms. Braunstein's attorney's fee for contempt.

Finally, *Rose* was wrongly decided, and it is an outdated case that does not even apply to the factual circumstances of this case because Congress amended 42 U.S.C. § 659 to add subsection (h)(1)(B)(iii) after *Rose*. Most importantly, all of the issues of law presented by this case are of national significance due to the increasing number of disabled veterans whose main or only source of income are disability benefits.

The purpose of Congress in enacting 38 U.S.C. § 5301 was to "prevent the deprivation and depletion of the means of subsistence of veterans dependent upon these benefits as the main source of their income." *Rose*, 481 U.S. at 630. For a very limited time (after *Rose v. Rose*), the *judicial* allowance to state courts to force veterans to use their disability pay for child support and spousal support appears to have applied across the board to all disabled veterans. However, this worked an inequitable result on a certain subset of disabled veterans; namely those, like Sean in this case, who had been injured and rendered disabled and unable to serve before they had acquired years in service sufficient to also have the financial support and economic security of retirement pay. Now, this subset of veterans, especially due to the last 3 decades of up-

tempo, high-volume deployment and military operations in which the U.S. military has been involved represents the largest population of disabled veterans in existence. The significance of this cannot be understated.

Indeed, the country is no longer only faced with the waning population of disabled veterans from the post-Vietnam era and prior. *Rose* was, as noted, a 1987 case, and it necessarily addressed an entirely different population of aging and disabled veterans. Since 1990, there has been a 46% increase in disabled veterans, placing the total number of veterans with service-connected disabilities *above* 3.3 million as of 2011. VA, Trends, *supra.* By 2014, the number of veterans with a service-connected disability was 3.8 million. See U.S. Census Bureau, Facts for Features at: http://www.census.gov/newsroom/facts-for-features/2015/cb15-ff23.html. As of March 22, 2016, the number of veterans receiving disability benefits had increased from 3.9 million to 4.5 million. *Id.* See also VA, National Center for Veterans Analysis and Statistics, What's New at: https://www.va.gov/vetdata/veteran_population.asp. Also, since 1990, there has been a remarkable increase in veterans with disability ratings of 50 percent of higher, with approximately 900,000 in 2011. VA, Trends, *supra* at slide 6. That same year, 1.1 million of the 3.3 million total disabled veterans had a disability rating of 70 percent or higher. *Id.*

Finally, the disability numbers and ratings for younger veterans has markedly inclined. Conducting an adjusted data search, 570,400 out of 2,198,300 non-institutionalized civilian veterans aged 21 to 64 had a VA service-connected disability at 70% or higher in the United States in 2014. See Erickson, W., Lee, C., von Schrader, S. Disability Statistics from the American Community Survey (ACS) (2017). Data retrieved from Cornell University Disability Statistics website: www.disabilitystatistics.org. Thus, according to this data analysis, half of the total numbers of veterans with a disability rating *greater* than 70% are between 21 and 64 years of age.

Per the National Veterans Foundation, there are over 2.5 million Military Members served in Iraq and Afghanistan. Of those, nearly 6,600 were killed, and over 770,000 have filed disability claims. See http://www.nvf.org/staggering-number-of-disabled-veterans/. Yet another study shows nearly 40,000 service members returning from Iraq and Afghanistan have suffered traumatic injuries, with over 300,000 at risk for PTSD or other psychiatric problems. These veterans face numerous post-deployment health concerns, sharing substantial burdens with their families. These staggering numbers are, in part, a reflection of the nature of wounds received in modern military operations, modern medicine's ability to aggressively treat the wounded, and modern transportation's ability to get those most severely wounded to the most technologically advanced medical treatment facilities in a matter of hours. Fazal, Dead Wrong? Battle Deaths, Military

Medicine, and Exaggerated Reports of War's Demise, 39:1 International Security 95 (2014), pp. 95-96, 107-113. Physical injuries in these situations are understandably horrific. *Id.* See also Kriner & Shen, Invisible Inequality: The Two Americas of Military Sacrifice, 46 Univ. of Memphis L. Rev. 545, 570 (2016). However, many veterans also suffer severe psychological injuries, some attendant to witnessing the sudden arbitrariness and indiscretion of war's violence. Zeber, Noel, Pugh, Copeland & Parchman, Family perceptions of post-deployment healthcare needs of Iraq/Afghanistan military personnel, 7(3) Mental Health in Family Medicine 135-143 (2010). As one observer has stated: "assignments can shift rapidly from altruistic humanitarian work to the delivery of immense deadly force, leaving service members with confusing internal conflicts that are difficult to integrate. During deployments, even medical personnel are at times compelled to use deadly force to protect themselves, their patients, and their fellow soldiers." Finley, Fields of Combat: Understanding PTSD Among Veterans of Iraq and Afghanistan (Cornell Univ. Press 2011).

Combat-related post-traumatic stress symptoms (PTSS), with or without a diagnosis of post-traumatic stress disorder (PTSD) can negatively impact soldiers and their families. These conditions have been linked to increased domestic violence, divorce, and suicides. Melvin, Couple Functioning and Posttraumatic Stress in Operation Iraqi Freedom and Operation Enduring Freedom – Veterans and Spouses, available from PILOTS: Published International Literature

On Traumatic Stress. (914613931; 93193). See also Schwab, et al., War and the Family, 11(2) Stress Medicine 131-137 (1995). Such conditions are exacerbated when returning veterans must face stress in their families caused by their absence. Despite the amazing cohesion of the military community and the best efforts of the larger military family support network, separations and divorces are common. Families, already stretched by this extraordinary burden, are often pushed beyond their limits causing relationships to break down. Long deployments, the daily uncertainty of not knowing whether the family will ever be reunited, and the everyday travails of civilian life are difficult enough. A physical disability coupled with mental and emotional scars brought on by wartime environments make the veteran's reintegration with his family even more challenging. Finley, *supra.*

This younger population of disabled veterans are not entitled to retirement pay because they were injured or wounded during the first few years of their service to the country. Like Sean, who only served for approximately 4 years, many disabled veterans in this population do not and will never have the financial security and economic assurances of a retirement pension and all the other benefits that come with being classified as retired. When it became apparent that this growing subset of disabled veterans were also being subjected to having their disability benefits taken by state courts to satisfy support orders in domestic relations cases, Congress acted to differentiate this class of veterans by amending the CSEA and adding 42 U.S.C. § 659(h)(1)(A)(ii)(V) and (h)(1)(B)(iii)

distinguishing the two subsets of veterans and the two classes of disability benefits, those which are available to former spouses and minor children from the former group of retiree veterans and those that are not from the latter group of non-retiree veterans. Because federal law has always preempted state law in this very specific circumstance, any state-court domestic relations order awarding support (child and/or spousal) would be void and unenforceable, both going forward and retroactively. In this case, all of Petitioner's federal disability benefits are specifically excluded from consideration as remuneration for employment, and therefore as income, by 42 USC 659(a); (h)(1)(A)(ii)(V); and (h)(1)(B)(iii). As such, these benefits are jurisdictionally protected from *any legal process* whatever by 38 U.S.C. § 5301.

Federal law is very clear and has been changed since *Rose v. Rose* to protect veterans' rights and enforce federal law. Yet, state courts across the country continue to blindly cite *Rose* for the proposition that states have unfettered access to these disability benefits no matter what the income and status of the disabled veteran. This has caused a systemic destruction of the ability of disabled veterans to sustain themselves and their families. The greatest tragedy, of course, is the effect that this has had on the veteran community as a whole. Homelessness, destitution, alcoholism, drug abuse, criminality, incarceration and, in too many cases, suicide, are a direct result of the consequences of a blind adherence to outdated and no longer viable federal law that fails to take account of the reality of current circumstances.

A state court that rules incorrectly on a matter preempted by federal law acts in excess of its jurisdiction. Such rulings, and the judgments they spring from, including all subsequent contempt and related orders (which would cover the contempt award here) are *void ab initio* and exposed to collateral attack. The United States Supreme Court has said as much: "That a state court before which a proceeding is competently initiated may – by operation of supreme federal law – lose jurisdiction to proceed to a judgment unassailable on collateral attack is not a concept unknown to our federal system." *Kalb v. Feurstein*, 308 U.S. 433, 440, n 12 (1940). "The States cannot, in the exercise of control over local laws and practice, vest state courts with power to violate the supreme law of the land." *Id.* at 439. "States have *no power*...to retard, impede, burden, or *in any manner control*, the operations of the constitutional laws enacted by Congress to carry into execution the powers vested in the general government." *McCulloch v Maryland*, 17 US (4 Wheat) 316, 436; 4 L Ed 579 (1819) (MARSHALL, CJ) (emphasis added). Absent such power, any attempt by state courts to impede the operation of federal laws must be considered a nullity and void. *Kalb*, *supra*

CONCLUSION

Article I of the Constitution has given Congress plenary authority to make all provisions for the supply, maintenance and welfare of the service men and women of the armed forces so that

they may operate with the skill, dedication and concentration required in the most dangerous and unpredictable of environments. As explained in this brief, Congress has put in place the apparatus to protect our veterans both during and after their service to our country. These laws are based on perhaps the most powerful of those enumerated powers given to Congress by the Constitution, the Military Powers Clauses. Congress has been accorded no greater deference by this Court than in these premises.

The Court's decision in this case will not only impact three lives (Sean, Rowyn & Ms. Braunstein), it will also have a potential impact on numerous other New Hampshire families where individuals have been denied the correct due-process based on inconsistencies in the lower family courts

While it is arguably true that the New Hampshire Legislature may need to review and update statues that this pertain to, based on the current state of our law, we ask the court to review, and provide the following relief requested below that the trial courts

1. We ask that the Court to honor its Mandatory Rules, and to obtain detailed records as originally ordered.

2. We ask the Court to enforce the Rules of the Trial Court in terms of required documentation, information

regarding trusts and complete responses to interrogatories that are outstanding.

3. We ask the Court to reverse the contempt regarding child support; and calculate child support off of Sean's disposable income, per Federal Law.

4. We ask the court to reverse, and GRANT the request to remove Mutual Releases.

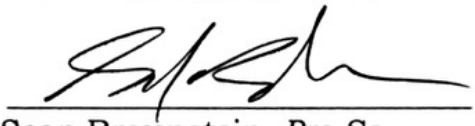
5. We ask the court to reverse the trial court orders, which required Sean to pay for private kindergarten,

6. We ask the court to grant and equitably divide the cash value of the Life Insurance Policy that Sean owned, of $2,512. Awarding each party $1,256.

7. Any other relief that is equal and just.

Respectfully Submitted,
Sean Braunstein, *Pro Se*

28 Aug 2019
Dated



Sean Braunstein, *Pro Se*
56 Post Road, Hooksett, NH
603-396-8293

REQUEST FOR ORAL ARGUMENT

I, Sean Braunstein, request the opportunity to be heard at oral argument. Sean sees this matter as a case with updated information, with a current opinion, supporting the facts, from the United States Supreme Court Justices. The issues raised in this brief are of sufficient magnitude that the full court should consider its merits.

CERTIFICATIONS

I hereby certify that the word count is no more than 9,500 words.

I hereby certify that on August 28, 2019, ONE (1) copy of the foregoing as sent to the Court Appointed GAL, Attorney Deborah Mulcrone, and to Counsel for Jericka Braunstein, Attorney Anthony Santoro.

28 Aug 2019
Dated

Sean Braunstein, Pro Se

App. Vol. II - Tab F

Braunstein v. Braunstein

Petitioner's Brief in Support of Reconsideration New Hampshire Supreme Court

March 10, 2020

The State of New Hampshire

SUPREME COURT

Case No. 2019-0065

IN THE MATTER OF

SEAN BRAUNSTEIN AND JERICKA BRAUNSTEIN

RULE 7 APPEAL OF THE FINAL ORDERS OF THE

6TH CIRCUIT FAMILY COURT DIVISION – HOOKSETT

RECONSIDERATION BRIEF OF PETITIONER SEAN BRAUNSTEIN – APPELLANT

By: Sean Braunstein, Pro Se
56 Post Road
Hooksett, NH 03106
(603) 396-8293

The State of New Hampshire

SUPREME COURT

Case No. 2019-0065

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SEAN BRAUNSTEIN – APPELLANT

By: Sean Braunstein, Pro Se
56 Post Road
Hooksett, NH 03106
(603) 396-8293

TABLE OF CONTENTS

QUESTIONS PRESENTED

1. Did the Trial Court err when it ruled to include Sean's VA and other Federal Disability benefits for the calculation of Child Support?

2. Did the Trial Court err by allowing a State Statue to be applied to this matter, when Federal Law supersedes?

3. Did the Trial Court err when it removed residential responsibility from Sean, due to Ms. Braunstein willfully refusing to cooperate to save the marital home from foreclosure?

4. Did the Trial Court err in not sufficiently providing due process, to either party?

5. Did the Trial Court err by not upholding Mandatory Court Rules, providing requested motions, enforcing orders, making each party accountable for their actions?

6. Did the Trial Court err by not sending their case to the complex case docket, by not allowing appropriate time to argue the facts, or due to a new judge presiding?

7. Did the Trial Court err in conducting a final financial hearing; despite knowing that Petitioner still did not have

all of the required Mandatory Disclosure documents, along with interrogatories which were ordered to compel to obtain such documents, all pertaining to financials?

8. Whether or not the Court erred in allowing testimony be considered credible during a financial hearing, without evidence that was requested during Interrogatories, with out sanctioning the party and without providing guidance on requested orders for a Motion in Limine, an open Motion barring testimony?

STATEMENT OF RECONSIDERATION OF THE CASE

The New Hampshire Supreme Court provided an opinion dated February 13, 2020, only 29 days after it had been submitted from January 14, 2020.

Petitioner filed a motion to extend time to file a reconsideration, which was granted, pushing the submission date to March 10, 2020.

Petitioner filed a motion to temporary stay/hold on March 6, 2020, to allow the Department of Veteran Affairs to rule on an Apportionment Claim. The State of New Hampshire filed an Apportionment Review Request with the Department of Veterans Affairs on February 19, 2020. Petitioner filed a letter with his request, from the Office of Congressman Chris Pappas, showing that he filed a Congressional to assist in having the request expedited. It is unknown at this time if the stay is granted.

Petitioner previously requested to assert is rights in the lower courts, multiple times, which were denied[1], despite providing significant evidence that Petitioner believe the state was out of compliance with the Federal Office of Child Support Enforcement – IM-98-03.

---

[1] See App, Vol 3, pg 3

SUMMARY OF ARGUMENT

Sean believes that this case has not been afforded appropriate time and consideration, based upon a quick turn around, and a denial for oral arguments. Many cases that come across are simply referred back to old cases, such as Rose v. Rose.

Sean has provided a copy of his request where he asserts his rights for due process in the Copyright document of the "Parson's Due Process Affidavit"[2] complete with attachments, as provided to the Hooksett Court on October 17, 2019.

A Pro Se individual rarely has the ability to research and provide a NEW argument to the court. Laws change, Regulations change, items supersede old ones, but courts continue to go back to old cases, without properly accessing the new requirements, memorandums, etc.

Rose v. Rose did not have an apportionment ruling, however right after the case, Title 38, 211 was amended, and Congress passed the Department of Veteran Affairs Act of 1988. There were more cases that came forward, and therefore The Federal Office of Child Support Enforcement created the IM-98-03 in Sept 1998 This means that Mr Rose never had a ruling – and Justice Scalia stated " I am not persuaded that if the Administrator makes an apportionment ruling, a state court may enter a conflicting child support order. It would be extraordinary to hold that a federal

[2] See App. Vol 3, pg 8

officer's authorized allocation of federally granted funds between two claimants can be overridden by a state official." Page 481 U.S. 641.

Sean continues to state that while New Hampshire Justices have discretion on how to rule, and recognizes some leeway, the courts continue to have inconsistencies across New Hampshire when it comes to following mandated court rules, or following court orders. At what point does it become Judicial Misconduct when an individual is not afforded their rights, under the New Hampshire Constitution.

He asserts that this very case has been heard in lower courts, as recent as March 2020. Same case, two different jurisdictions. Two different orders, one following federal policy, the other not.

With all that Veteran's have fought for and are fighting for, the one thing that is continuously suppressed by state courts and those who are our enemies is the very plain fact that 38 U.S.C.A. § 5301 is unambiguous and excludes benefits from state court control or authority, period.

Yet every time a disabled veteran goes to state courts with this argument, the court bends over backwards to misconstrue it and misinterpret it. In the Michigan Court of Appeals in *Foster v. Foster* case – they said that if a "state court" concludes that the law allows the theft of veteran's benefits, then that is the "except as

otherwise authorized by law" exception allowed by 38 U.S.C.A. § 5301.

Not only that, but we have express statements from federal courts that say in respect to this statute, if it is going to be "interpreted" that interpretation and application ***must be skewed*** in the veteran's favor. One court summarized the interpretive principles to be applied as follows:

> [W]hen interpreting statutes relating to veterans, Federal veterans' benefit statutes are to be liberally construed for the benefit of a returning veteran, see Coffy v. Republic Steel Corp., 447 U.S. 191, 196, 100 S. Ct. 2100, 65 L. Ed. 2d 53 (1980), and any interpretive doubt is to be resolved in the veteran's favor, e.g., Natl. Org. of Veterans' Advocates, Inc. v. Secy. of VA, 330 F.3d 1345, 1350 (Fed. Cir. 2003), [**13] so long as that interpretation does not override the clear meaning of a [*139] particular provision, e.g., Disabled Am. Veterans v. Gober, 234 F.3d 682, 692 (Fed. Cir. 2000).
>
> Wallace v. Commissioner, 128 T.C. 132, 138-39 (2007), on 38 U.S.C.A. § 5301.

ARGUMENT

I. Whether or not the Court erred by including the appellant's Veteran Disability Compensation as "income", for purposes of calculating child support at the final and temporary hearing when 26 USC Sec104(b)(2)(D) specifically excludes this award from definition of gross income?

While there are many Federal Statues that cover this specific benefit on, the Internal Revenue Service, the Department of Treasury do not consider any veteran's benefits income, and have ruled that it is safe from any assignment or seizure. Sean asserts that the lower court denied him this right, and if the NH Supreme Court continues to affirm the lower courts decision, Sean shall keep this matter preserved for appealing to a higher court and/or filing a judicial complaint, should he so chooses.

II. Whether or not the Court erred by including the appellant's Federal Disability Retirement as "income", for purposes of calculating child support at the final and temporary hearing when 26 USC Sec 104(b)(2)(D) specifically excludes this award from definition of gross income?

Federal Statues that cover this specific benefit include the Internal Revenue Service, and the Department of Treasury. Both of which do not consider any Federal Disability benefits to be income.

Despite this knowledge, the Court erred in their calculations, which caused irreversible damage, both by forcing an order of $95 per week, and the State garnishing 25% of Sean's federal disability, totally over $500 a month.

Sean asserts that the lower court denied him this right, and if the NH Supreme Court continues to affirm the lower courts decision, Sean shall keep this matter preserved for appealing to a higher court and/or filing a judicial complaint, should he so chooses.

III. Whether or not the Court erred by allowing a State Statue to be applied to this matter, instead of Federal Law?

Sean asserts that the lower court denied him this right, and if the NH Supreme Court continues to affirm the lower courts decision, Sean shall keep this matter preserved for appealing to a higher court and/or filing a judicial complaint, should he so chooses.

IV. Whether or not the Court erred by not allowing appellant to challenge the constitution of a state statue and/or properly provide due process to appellant?

Sean asserts that the lower court denied him this right, and if the NH Supreme Court continues to affirm the lower courts decision, Sean shall keep this matter preserved for appealing to a higher court and/or filing a judicial complaint, should he so chooses.

V. Whether or not the Court erred by holding a final hearing in the case when the appellant still had not received all interrogatories that were propounded or a final financial hearing, when financial documents still had not been received that were previously ordered, to be provided to appellant?

Sean asserts that the lower court denied him this right, and if the NH Supreme Court continues to affirm the lower courts decision, Sean shall keep this matter preserved for appealing to a higher court and/or filing a judicial complaint, should he so chooses.

VI. Whether or not the Court erred in not upholding Court Rules 1.25a Mandatory Disclosures, 1.25c, Unavailability of Documents, and 1.25d Failure to Provide Initial Disclosures?

Sean asserts that the lower court denied him this right, and if the NH Supreme Court continues to affirm the lower courts decision, Sean shall keep this matter preserved for appealing to a higher court and/or filing a judicial complaint, should he so chooses.

VII. **Whether or not the Court erred in removing residential responsibility of the parties minor child due to other party not following temporary orders, causing financial distress to appellant or erred in not holding the other party accountable for excessive interest and fees, due to non-compliance?**

Sean asserts that the lower court denied him this right, and if the NH Supreme Court continues to affirm the lower courts decision, Sean shall keep this matter preserved for appealing to a higher court and/or filing a judicial complaint, should he so chooses.

VIII. **Whether or not the Court erred by only holding appellant in contempt, when both parties filed Contempt Motions?**

Sean asserts that the lower court denied him this right, and if the NH Supreme Court continues to affirm the lower courts decision, Sean shall keep this matter preserved for appealing to a higher court and/or filing a judicial complaint, should he so chooses.

IX. Whether or not the Court erred in ruling on the Motion in Limine, and if the ruling was upheld?

Sean asserts that the lower court denied him this right, and if the NH Supreme Court continues to affirm the lower courts decision, Sean shall keep this matter preserved for appealing to a higher court and/or filing a judicial complaint, should he so chooses.

X. Whether or not the court erred on the ruling of Mutual Releases?

Sean asserts that the lower court denied him this right, and if the NH Supreme Court continues to affirm the lower courts decision, Sean shall keep this matter preserved for appealing to a higher court and/or filing a judicial complaint, should he so chooses.

XI. Whether or not the Court erred in recognizing that appellant was being held solely financially responsible for the minor child and required appellant to pay for private kindergarten?

Sean asserts that the lower court denied him this right, and if the NH Supreme Court continues to affirm the lower courts decision, Sean shall keep this matter preserved for appealing to a higher court and/or filing a judicial complaint, should he so chooses.

XII. Whether or not the Court erred in not fully reading the GAL Comprehensive report, and hearing testimony, showing significant concerns that were raised?

Sean asserts that the lower court denied him this right, and if the NH Supreme Court continues to affirm the lower courts decision, Sean shall keep this matter preserved for appealing to a higher court and/or filing a judicial complaint, should he so chooses.

XIII. Whether or not the Court erred in equitable division of cash value on a Whole Life Policy that was owned and paid since its inception by appellant?

Sean asserts that the lower court denied him this right, and if the NH Supreme Court continues to affirm the lower courts decision, Sean shall keep this matter preserved for appealing to a higher court and/or filing a judicial complaint, should he so chooses.

XIV. Whether or not the Court erred in allowing testimony be credible during a financial hearing, without evidence that was requested during Interrogatories?

Sean asserts that the lower court denied him this right, and if the NH Supreme Court continues to affirm the lower courts decision, Sean shall keep this matter preserved for appealing to a higher court and/or filing a judicial complaint, should he so chooses.

XV. Whether or not the Court erred in not submitted case to the Complex Case Docket?

Sean asserts that the lower court denied him this right, and if the NH Supreme Court continues to affirm the lower courts decision, Sean shall keep this matter preserved for appealing to a higher court and/or filing a judicial complaint, should he so chooses.

Statement of the Case

Sean is a disabled veteran. He served in the United States Army from August 2003 to June 2007. In 2012, the VA rated him at 100% Permanent and Total (P&T.) which the state has continued threats of enforcement, regardless of any "internal policy"[3] that Attorney Santoro notes in his objection dated October 23, 2019. Sean continues to pay the ordered amount for fear he would loose what other liberties he may have, including parenting time, or being incarcerated.

Issues

Among the issues likely to be addressed in this case is the rule concerning the absolute preemption of federal law over state courts in the disposition of VA disability benefits. Congress has prohibited *any legal process* from being used to deprive veterans of their disability benefits. 38 U.S.C. § 5301.

Violation of Due Process Rights

New Hampshire Judges, while having the ability to have some leeway in their decisions, should relatively allow individuals to assert their rights without fear of retaliation, threats of contempt, and should be held accountable for their decisions when decided they are out of jurisdiction as mentioned in the New Hampshire Judicial Complaint guidelines.

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3. See App. Vol 3 pg 139

CONCLUSION AND RELIEF

We ask the court to review, and provide the following relief requested below that the trial courts

1. We ask the court to GRANT a temporary hold/stay which was submitted on March 6, 2020, while a Federal Ruling is provided.

2. We ask reconsideration of oral arguments, allowing for a more fruitful, debate to review changes since past case, such as Rose v Rose.

3. We ask that the Court reconsider its opinion with regards to denying due process to Petitioner, in not instructing Ms. Braunstein to comply with the Federal OCSE IM-98-03.

4. We ask the Court to enforce the Rules of the New Hampshire Trial Court in terms of required documentation per Rule 1.25A.

5. We ask the Court to reverse the contempt regarding child support; and calculate child support off of Sean's disposable income, per Federal Law.

6. We ask the court to reverse, and GRANT the request to remove Mutual Releases, which allows Mr Braunstein to obtain business account records from Ms. Braunstein.

7. We ask the court to reverse orders which forced Mr. Braunstein to pay for private kindergarten.

8. We ask the court to grant and equitably divide the cash value of the Life Insurance Policy that Sean owned, of $2,512. Awarding each party $1,256.

9. Any other relief that is equal and just.

Respectfully Submitted,

Sean Braunstein, *Pro Se*

10 March 2020
Dated

Sean Braunstein, *Pro Se*
56 Post Road, Hooksett, NH
603-396-8293

REQUEST FOR ORAL ARGUMENT

I, Sean Braunstein, request the court to reconsider its previous decision on hearing oral arguments regarding this case.

CERTIFICATIONS

I hereby certify that the word count is no more than 3,000 words.

I hereby certify that on March 10, 2020, ONE (1) copy of the foregoing as sent to the Court Appointed GAL, Attorney Deborah Mulcrone, and to Counsel for Jericka Braunstein, Attorney Anthony Santoro.

10 March 2020
Dated

Sean Braunstein, Pro Se

App. Vol. II - Tab G

Braunstein v. Braunstein

Petitioner's Memorandum of Law
6th Circuit (Family Division)

October 29, 2018

THE STATE OF NEW HAMPSHIRE

6th Circuit – Family Division- Hooksett

In the Matter of Sean Braunstein and Jericka Braunstein

Docket No. 647-2017-DM-00081

MEMORANDUM OF LAW IN SUPPORT OF PETITION FOR DIVROCE

Now comes Petitioner and Affiant, Sean Braunstein, for his Memorandum of Law in Support of the Petition for Divorce, and states as follows:

When a member of the military retires after 20 years of service, they may receive military retired pay as defined under 38 CFR 3.750(a). Enlisted members of the United States Army[1] may retire after a specified period of service and receive "retired pay." 10 U.S.C. § 3914 (Supp. 2016). The monthly amount of retired pay is based upon years of service and rank. Id. § 3925. Sean Braunstein was unable to serve the required 20 years minimum to qualify for military retired pay. As evidenced in his filed *VA Summary Benefits* letter in accordance with 38 CFR 1.511, provides evidence that Affiant, *Sean Braunstein*, is a 100% permanent and total disabled veteran as awarded beginning in February 2012 under the authority of the Secretary of the Department of Veterans Affairs ("VA"), an independent nonparty to all of the previous state proceedings. As defined in 10 U.S.C. § 1408(a)(4)(A)(ii), Affiant, *Sean Braunstein*, receives $0.00 disposable retired pay for consideration of child support by the State of New Hampshire. Because he is not retired with the U.S. Army, Sean Braunstein does not waive a portion of "military retired pay" in order to receive his Department of Veterans Affairs ("VA") service-connected disability compensation benefits award. Braunstein has also been awarded Social Security Disability Insurance ("SSDI") pay as well as federal disability compensation as he is unemployable.

Although the United States Supreme Court decided in *Rose v. Rose*, 481 U.S. 619 (1987) which benefits may be reached by state courts, U.S. Congress actively legislated to correct the noted deficiencies cited in that case. They passed The Department of Veterans Affairs Act of 1988 (Pub.L.

[1] Members of other branches of the Armed Forces are entitled to similar retirement benefits. 10 U.S.C. §§ 6321-6336 (Supp. 2016) (Navy and Marine Corps); 10 U.S.C. §§ 8911-8929 (Air Force); see also Howell v. Howell, 137 S. Ct. 1400, 1403 (2017).

100–527) transforming the former Veterans Administration into a Cabinet-level Department of Veterans Affairs. It was signed into law by President Ronald Reagan on October 25, 1988. The Veterans' Judicial Review Act of 1988 granted exclusive jurisdiction of the VA Apportionment Claim process within the newly created federal court system and Title 38 § 211 was amended that same year to overcome the acclaimed, lacking exclusivity language.

Post *Rose*, the congressional intent is to exempt such benefits from contentious legal process outside of the exclusive jurisdiction of the VA Courts, which were established in the Veterans' Judicial Review Act of 1988. As such, the Veteran Disability Benefit Award that is received by Petitioner, *Sean Braunstein*, is not to be considered disposable pay or income for child support purposes.

Congress subsequently codified § 211 as § 511 in 1991 to properly enroll "Secretary" language consistent with the new Department of Veterans Affairs Act. 42 U.S.C. § 662 relating to allowable garnishment exclusions of veterans' compensation for enforcement of child support orders granted in the *Rose* decision was also repealed in Pub. L. 104-193, title III, § 362(b)(1), 110 Stat. 2246, (Aug. 22, 1996) effective beginning fiscal year 1997 after Congress ascertained that VA Apportionment claims were being properly provisioned in accordance with 38 U.S.C. § 512 and 5307. 38 U.S. Code § 511 now EXPLICITLY EXCLUDES state court jurisdiction. *Rose v. Rose*, 481 U.S. 619 (1987), Veterans' Judicial Review Act of 1988 and 38 USC § 511.

Under 15 USC §§ 1672 and 1673, aggregate disposable earnings are defined as the obligors' remuneration for employment. It is clear that Petitioner, Sean Braunstein, herein is not being compensated for employment which he has done, but rather is receiving disability benefits from the VA, the Social Security Administration as well as the federal government. Viewing 15 USC §§ 1672 and 1673, along with 42 USC § 659, it is clear that the VA disability benefits and federal disability benefits are not remuneration from employment because they are not compensation payable for personal services so they do not count towards aggregate disposable earnings. These disability awards are not remuneration for employment.

Under 26 USC § 104(b)(2)(D), VA disability award received by Petitioner, Sean Braunstein is not gross income.

For a child support award to be lawfully considered from VA benefits, a special procedure was

officially promulgated to all state Title IV-D Agencies in 1998 by the federal Office of Child Support Enforcement on how to properly submit a claim for apportionment to the appropriate jurisdictional VA Regional Office ("VARO") for those veterans awarded benefits legally defined as "not remuneration for employment." Information Memorandum IM-98-03 Financial Support for Children from Benefits Paid by Veterans Affairs. 38 USC § 5307.

Veteran's benefits award will not be apportioned "[i]f there are any children of the veteran not in his or her custody an apportionment will not be authorized unless and until a claim for apportioned share is filed in their behalf." 38 CFR 3.458(g). The VA Office of General Counsel Precedent Opinion 4-97 holds that a regional office must not consider a state court support order as an apportionment claim.

Privity of Contract with the VA is protected and backed under the preemptive authority of the Contract Clause found in Article 1, Section 10 of the Constitution which provides that "No State shall . . . pass any . . . law impairing the Obligation of Contracts." This guarantee is also provided in the New Hampshire Constitution, Part I, Article 23. VA Awards and Apportionment rulings or judgments are considered in privity of contract only between family claimants pursuant to 38 U.S.C. §§ 5307 & 511. The State of New Hampshire is a third party when it comes to VA disability compensation benefits award. Therefore, the State of New Hampshire is not legally a party to Braunstein's VA award contract as he does not waive a portion of military retired pay. Pursuant to 38 U.S.C. § 501(a), Petitioner, Sean Braunstein and Respondent, Jericka Braunstein are considered the exclusive authorized claimants in privity of contract with an independent party, the Department of Veterans Affairs, Manchester VARO jurisdiction. Petitioner's Manchester VARO Apportionment contract claim, which will be based upon the New Hampshire Office of Attorney General - Child Support Division's ("OAG - CSD") and Claimant's properly submitted 6TH Circuit, Family Division Court child support order dated January 8, 2018 and any subsequent alleged arrears, will indicate unequivocally whether or not *Petitioner's* VA award was and continues to be provisioned solely for his support and associated visitation costs with his children. The independent VA Apportionment decision, as ordered by both U.S. Congress under the authority of the Secretary of the Department of Veterans Affairs and should now be properly initiated by the New Hampshire Title IV-D Agency on behalf of claimant and Respondent, and will take the best interest of the children into "careful and compassionate consideration". **28 U.S. Code § 1652 - State laws as rules of decision** "The laws of the several states, **except where the Constitution** or treaties **of the United States or Acts of Congress otherwise require or provide**, shall be regarded as rules of

decision in civil actions in the courts of the United States, in cases where they apply." (emphasis added) The State of New Hampshire is excluded as an independent third party to a VA Apportionment ruling considered in privity of contract strictly between authorized claimants as provided in Article Six and the Fourteenth Amendment of the U.S. Constitution as well as requirement by numerous post-1987 Acts of Congress.

All questions of law and fact necessary to a provisioning decision regarding VA benefits has been solely in discretion of the Secretary of the Department of Veterans Affairs. 38 USC § 511(a) authorizes "all questions of law and fact necessary to a decision by the Secretary under a law that affects the provision of benefits by the Secretary to veterans or the dependents . . . of veterans." A finality clause is included to clearly preclude the states meddling, "the decision of the Secretary as to any such question shall be final and conclusive and may not be reviewed by any other official or by any court, whether by an action in the nature of mandamus or otherwise." 38 USC § 511(a) and 5307 and CFR 3.450 - 3.458.

VA Service Connected Disability Benefits Award is protected by 38 USC § 5301(a) and states "Payments of benefits due or to become due under any law administered by the Secretary shall not be assignable except to the extent specifically authorized by law, and such payments made to, or on account of, a beneficiary shall be exempt from taxation, shall be exempt from the claim of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal equitable process whatever, either before or after receipt by the beneficiary." This section was further expounded upon in the VA Office of General Counsel, Precedent Opinion 2-2002, Nonassignability of Benefits.

> "4. An ASSIGNMENT is a transfer of property or some other right from one person to another that confers a complete and present right to the assignee in the subject matter of the assignment. 6 Am. Jur. 2d Assignments § 1 (1999); see also Black's Law Dictionary 115 (7th ed. 1999) (transfer of rights or property). The term 'assignment' ordinarily refers to a transfer of intangible rights in property, as opposed to transfer of property itself, 6 Am. Jur. 2d Assignments § 1 (1999), i.e., a transfer of a right to receive payments, rather than a transfer of the funds themselves. An assignment is by its nature a voluntary transfer. 6 Am. Jur. 2d Assignments § 2 (1999)."

Furthermore, pursuant to 38 USC § 5301(a):

> "(3)(A) This paragraph is intended to clarify that, in any case where a beneficiary entitled to compensation, pension, or dependency and indemnity compensation enters into an agreement with another person under which agreement such other person

acquires for consideration the right to receive such benefit by payment of such compensation, pension, or dependency and indemnity compensation, as the case may be, except as provided in subparagraph (B), and including deposit into a joint account from which such other person may make withdrawals, or otherwise, such agreement shall be deemed to be an ASSIGNMENT and IS PROHIBITED." (emphasis added)

"(3)(C) Any AGREEMENT or arrangement for collateral for security for an agreement that is prohibited under subparagraph (A) is also PROHIBITED and is VOID from its inception." (emphasis added)

Additional federal protection is available to the Petitioner's VA benefits in accordance with 38 USC 5301(a). The payments, legally established as "not remuneration for employment", are not eligible for garnishment by any child support enforcement agency, as stated in the 2013 Final Rule of 31 CFR Part 212; Final Rule Garnishment of Accounts Containing Federal Benefits.

The 9th Circuit Federal Court has concluded that it lacks "jurisdiction to afford such relief because Congress, in its discretion, has elected to place judicial review of claims related to the provision of veterans' benefits beyond our reach and within the exclusive purview of the United States Court of Appeals for Veterans Claims . . . granting [such] requested relief would transform the adjudication of veterans' benefits into a contentious, adversarial system -- a system that Congress has actively legislated to preclude." *Veterans for Common Sense v. Shinseki*, 678 F.3d 1013, 1016 (9th Cir.2012). The 6th Federal Circuit has confirmed in *Anestis v. United States*, No. 13-6062, 8 (6th Cir.2014) and *Zuspann v. Brown*, 60 F.3d 1156 (5th Cir.1995); *Hicks v. Veterans Administration*, 961 F.2d 1367, 1370 (8th Cir.1992); *Beamon v. Brown* 125 F. 3d 965 (6th Cir.1997).

Respectfully submitted,
Sean Braunstein

Date: October 29, 2018 By: S/ Sean Braunstein

CERTIFICATE OF SERVICE

I hereby certify that a copy of the within Motion has been hand delivered to Attorney Anthony Santoro, and sent via first-class mail this 29th day of October, 2018 to court appointed Guardian at Litem.

Anthony Santoro, Esq., Granite State Legal Resources 64 North State Street, Suite 5 Concord, NH 03301	Attorney Deborah Mulcrone Mulcrone Law PLLC 37 Salmon Street Manchester, NH 03104

S/ Sean Braunstein

Sean Braunstein

No. __-____

In the Supreme Court of the United States

SEAN BRAUNSTEIN,
Petitioner,

v.

JERICKA BRAUNSTEIN,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES SUPREME COURT FOR THE
SUPREME COURT OF THE STATE OF NEW HAMPSHIRE

APPENDIX – Volume III

CARSON J. TUCKER, JD, MSEL, *Counsel of Record*
LEX FORI, PLLC
117 N. First St., Suite 111
Ann Arbor, MI 48104
(734) 887-9261
cjtucker@lexfori.org

App. Vol. III - Tab H

Braunstein v. Braunstein

VA Benefits Letter,

October 16, 2019

DEPARTMENT OF VETERANS AFFAIRS
810 Vermont Ave NW
Washington, D.C. 20420

A-1

October 16, 2019

Sean J Braunstein
56 Post Rd
Hooksett, NH 03106

In Reply Refer to:
xxx-xx-4286
27/eBenefits

Dear Mr. Braunstein:

This letter is a summary of benefits you currently receive from the Department of Veterans Affairs (VA). We are providing this letter to disabled Veterans to use in applying for benefits such as state or local property or vehicle tax relief, civil service preference, to obtain housing entitlements, free or reduced state park annual memberships, or any other program or entitlement in which verification of VA benefits is required. Please safeguard this important document. This letter is considered an official record of your VA entitlement.

Our records contain the following information:

Personal Claim Information

Your VA claim number is: -4286

You are the Veteran.

Military Information

Your most recent, verified periods of service (up to three) include:

Branch of Service	Character of Service	Entered Active Duty	Released/Discharged
Army	Honorable	April 28, 2004	June 24, 2007

(There may be additional periods of service not listed above.)

VA Benefit Information

You have one or more service-connected disabilities:	Yes
Your combined service-connected evaluation is:	100%
You are considered to be totally and permanently disabled due solely to your service-connected disabilities:	Yes
The effective date of when you became totally and permanently disabled due to your service-connected disabilities:	February 29, 2012

You should contact your state or local office of Veterans' affairs for information on any tax, license, or fee-related benefits for which you may be eligible. State offices of Veterans' affairs are available at http://www.va.gov/statedva.htm.

How You Can Contact Us

- If you need general information about benefits and eligibility, please visit us at https://www.ebenefits.va.gov or http://www.va.gov.
- Call us at 1-800-827-1000. If you use a Telecommunications Device for the Deaf (TDD), the number is 1-800-829-4833.
- Ask a question on the Internet at https://iris.custhelp.va.gov.

Sincerely,

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Braunstein v. Braunstein

Circuit Court Docket Report

6TH CIRCUIT - FAMILY DIVISION - HOOKSETT

CASE SUMMARY

CASE NO. 647-2017-DM-00081

In the Matter of Sean Braunstein and Jericka Braunstein

Location: **6th Circuit - Family Division - Hooksett**
Filed on: **05/26/2017**

CASE INFORMATION

Case Type: **Individual Petition for Divorce**

Case Status: **01/31/2019 Appeal to Supreme Court**

DATE — CASE ASSIGNMENT

Current Case Assignment

Case Number	647-2017-DM-00081
Court	6th Circuit - Family Division - Hooksett
Date Assigned	05/26/2017

PARTY INFORMATION

Petitioner — **Braunstein, Sean**
56 Post Rd
Hooksett, NH 03106

Respondent — **Braunstein, Jericka**
66 Broadway
Pembroke, NH 03275

Santoro, II, Anthony, ESQ
Retained
000-000-0000(F)
603-545-1575(W)
Granite State Legal Resources
64 N State St Ste 5
Concord, NH 03301
anthony@legaladvicenh.com

Agency — **DCYF**
40 Terrill Park Drive
Concord, NH 03301

Child — **Braunstein, Rowyn**

Division of Human Services — **Division of Child Support**
40 Terrill Park Drive
Concord, NH 03301

Guardian ad Litem — **Mulcrone, Deborah, ESQ**
37 Salmon Street
Manchester, NH 03104

DATE	EVENTS & ORDERS OF THE COURT	INDEX
05/26/2017	Petition for Divorce	*Index #1*
05/26/2017	Motion to Waive Filing Fee Party: Petitioner Braunstein, Sean	*Index #2*
05/30/2017	Granted (Judicial Officer: Gorman, Suzanne M)	
05/26/2017	Motion for Ex Parte Relief Party: Petitioner Braunstein, Sean	*Index #3*

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CASE SUMMARY

CASE NO. 647-2017-DM-00081

05/26/2017	Granted (Judicial Officer: Gorman, Suzanne M)	
05/26/2017	Financial Affidavit Party: Petitioner Braunstein, Sean	*Index #4*
05/26/2017	Instruction for Service Party: Petitioner Braunstein, Sean	*Index #5*
05/30/2017	Important Notice to Parties	*Index #6*
05/30/2017	CIP Notice Sent to Petitioner Party: Petitioner Braunstein, Sean	*Index #7*
05/30/2017	CIP Notice Sent to Respondent Party: Respondent Braunstein, Jericka	*Index #8*
06/01/2017	Appearance Party: Attorney Santoro, II, Anthony, ESQ	*Index #9*
06/01/2017	Answer Party: Attorney Santoro, II, Anthony, ESQ *To Ex Parte Petition & Request For An Expedited Hearing*	*Index #10*
06/06/2017	**Ex Parte Hearing**	
06/06/2017	Order (Judicial Officer: Gorman, Suzanne M) *On Ex Parte Motion*	*Index #11*
06/06/2017	Parenting Plan (Judicial Officer: Gorman, Suzanne M) Party: Attorney Santoro, II, Anthony, ESQ; Attorney Lefebure, Caroline R., ESQ	*Index #12*
06/06/2017	Order Appointing GAL (Judicial Officer: Gorman, Suzanne M) Party: Guardian ad Litem Mulcrone, Deborah, ESQ	*Index #13*
06/06/2017	Return of Service Party: Respondent Braunstein, Jericka	*Index #14*
06/06/2017	Proposed Order Party: Attorney Lefebure, Caroline R., ESQ	*Index #15*
06/20/2017	Motion to Reconsider Party: Attorney Lefebure, Caroline R., ESQ *Order On Ex Parte Motion*	*Index #16*
07/11/2017	Denied (Judicial Officer: Gorman, Suzanne M)	
06/26/2017	Obj to Motion to Reconsider Party: Attorney Santoro, II, Anthony, ESQ	*Index #17*
07/25/2017	Other *Replication to Motion to Reconsider odr on Ex Parte*	*Index #18*
07/27/2017	Guardian Ad Litem Stipulation Party: Guardian ad Litem Mulcrone, Deborah, ESQ; Petitioner Braunstein, Sean *Sean*	*Index #19*
08/07/2017	Report Party: Agency DCYF	*Index #20*
08/18/2017	Assented to Motion to Continue Party: Guardian ad Litem Mulcrone, Deborah, ESQ *and Extend Time to File Report*	*Index #21*
08/21/2017	Granted (Judicial Officer: Gorman, Suzanne M)	

6TH CIRCUIT - FAMILY DIVISION - HOOKSETT

CASE SUMMARY

CASE NO. 647-2017-DM-00081

08/22/2017	*CANCELED* **Temporary Hearing**	
10/23/2017	Motion for Ex Parte Relief Party: Attorney Lefebure, Caroline R., ESQ	*Index #22*
10/23/2017	Ex Parte Order (Judicial Officer: Gorman, Suzanne M) *No Ex Parte Orders issued. To be heard at 11/14/17 Temporary Hearing.*	*Index #23*
11/13/2017	Motion to Extend Deadlines Party: Guardian ad Litem Mulcrone, Deborah, ESQ	*Index #24*
11/14/2017	Granted (Judicial Officer: Gorman, Suzanne M)	
11/14/2017	**Temporary Hearing**	
11/14/2017	Proposed Decree Party: Attorney Lefebure, Caroline R., ESQ *Parenting Plan; USO; GWS*	*Index #25*
11/14/2017	Proposed Decree Party: Attorney Santoro, II, Anthony, ESQ *Parenting Plan;USO; GWS*	*Index #26*
12/06/2017	Withdrawal Party: Attorney Lefebure, Caroline R., ESQ	*Index #27*
12/18/2017	Objection Party: Petitioner Braunstein, Sean *to respondent's first set of interrogatories*	*Index #28*
01/08/2018	Granted in Part (Judicial Officer: Gorman, Suzanne M)	
01/08/2018	Uniform Support Order (Judicial Officer: Gorman, Suzanne M) *Temporary*	*Index #29*
01/08/2018	Parenting Plan (Judicial Officer: Gorman, Suzanne M) *Temporary*	*Index #30*
01/08/2018	Temporary Decree (Judicial Officer: Gorman, Suzanne M)	*Index #31*
01/08/2018	Order (Judicial Officer: Gorman, Suzanne M)	*Index #32*
01/08/2018	Motion to Compel Party: Attorney Santoro, II, Anthony, ESQ	*Index #33*
01/18/2018	Objection Party: Petitioner Braunstein, Sean *to motion to compel*	*Index #34*
01/22/2018	Order (Judicial Officer: Sadler, Lucinda V)	*Index #35*
01/25/2018	Notice of Consequence for Failing to Complete CIP *both*	*Index #36*
01/29/2018	CIP Certificate - Petitioner	*Index #37*
01/29/2018	Motion Party: Petitioner Braunstein, Sean *waive att at CIP*	*Index #38*
01/30/2018	Granted (Judicial Officer: Sadler, Lucinda V)	
01/30/2018	Notice to Pick Up Exhibits *Petitioner/per LVS. Picked up on 2/12/18*	*Index #39*

CASE SUMMARY

CASE NO. 647-2017-DM-00081

01/30/2018	Notice to Pick Up Exhibits *Res/per LVS*	*Index #40*
01/31/2018	Motion to Reconsider Party: Attorney Santoro, II, Anthony, ESQ	*Index #41*
02/20/2018	Order Issued (Judicial Officer: Gorman, Suzanne M)	
02/02/2018	Objection Party: Petitioner Braunstein, Sean *Motion to Reconsider*	*Index #42*
02/06/2018	Appearance *and Withdrawal/ Atty. Cohen and Winters to Granite State Legal. Atty. Santoro*	*Index #43*
03/19/2018	**Pretrial Hearing**	
03/19/2018	Limited Appearance or Withdrawal Party: Attorney Lefebure, Caroline R., ESQ	*Index #44*
03/19/2018	Financial Affidavit Party: Attorney Santoro, II, Anthony, ESQ; Attorney Lefebure, Caroline R., ESQ; Petitioner Braunstein, Sean *Sean's*	*Index #45*
03/19/2018	Child Support Guidelines Worksheet Party: Attorney Lefebure, Caroline R., ESQ; Petitioner Braunstein, Sean *two CSGWs submitted-one with each parent as the obligor*	*Index #46*
03/19/2018	Proposed Uniform Support Order Party: Attorney Lefebure, Caroline R., ESQ; Petitioner Braunstein, Sean *Sean's proposed final*	*Index #47*
03/19/2018	Proposed Parenting Plan Party: Attorney Lefebure, Caroline R., ESQ; Petitioner Braunstein, Sean *Sean's proposed final*	*Index #48*
03/19/2018	Proposed Decree Party: Attorney Lefebure, Caroline R., ESQ; Petitioner Braunstein, Sean *Sean's proposed final decree*	*Index #49*
03/19/2018	Pretrial Statement Party: Attorney Lefebure, Caroline R., ESQ; Petitioner Braunstein, Sean *Sean's*	*Index #50*
03/19/2018	Financial Affidavit Party: Attorney Santoro, II, Anthony, ESQ; Respondent Braunstein, Jericka *Jericka's*	*Index #51*
03/19/2018	Proposed Parenting Plan Party: Attorney Santoro, II, Anthony, ESQ; Respondent Braunstein, Jericka *Jericka's proposed final*	*Index #52*
03/19/2018	Proposed Decree Party: Attorney Santoro, II, Anthony, ESQ; Respondent Braunstein, Jericka *Jericka's proposed final*	*Index #53*
03/19/2018	Pretrial Statement Party: Attorney Santoro, II, Anthony, ESQ; Respondent Braunstein, Jericka *Jericka's*	*Index #54*
03/20/2018	Pretrial Conference Report/Agreemt (Judicial Officer: Sadler, Lucinda V)	*Index #55*
03/20/2018	Order Issued (Judicial Officer: Sadler, Lucinda V)	

CASE SUMMARY

CASE NO. 647-2017-DM-00081

03/20/2018	Order on Appointment of Mediator (Judicial Officer: Sadler, Lucinda V)	*Index #56*
03/20/2018	Order Issued (Judicial Officer: Sadler, Lucinda V)	
04/04/2018	Mediation Report Party: Mediator Christensen, Elizabeth A *rescheduled*	*Index #57*
04/17/2018	Motion to Compel Party: Attorney Santoro, II, Anthony, ESQ *answers to interrogatories*	*Index #58*
05/07/2018	Granted (Judicial Officer: Sadler, Lucinda V)	
05/03/2018	*CANCELED* **Mediation**	
05/10/2018	**Mediation**	
05/15/2018	Mediation Report	*Index #59*
05/21/2018	Motion for Conditional Default Party: Petitioner Braunstein, Sean	*Index #60*
05/22/2018	Notice of Conditional Default	*Index #61*
06/01/2018	Motion to Strike Conditional Default Party: Attorney Santoro, II, Anthony, ESQ	*Index #62*
06/12/2018	Granted (Judicial Officer: Sadler, Lucinda V)	
07/10/2018	**Mediation** *OFF SITE- Atty. LeFebure's office*	
07/10/2018	Mediation Report Party: Mediator Christensen, Elizabeth A	*Index #63*
07/26/2018	Motion to Compel Party: Petitioner Braunstein, Sean	*Index #64*
08/08/2018	Granted in Part (Judicial Officer: Sadler, Lucinda V) *Information related to financial issues only*	
07/26/2018	Motion to Continue Party: Petitioner Braunstein, Sean *Particaly Assented to/*	*Index #65*
08/06/2018	Granted in Part (Judicial Officer: Sadler, Lucinda V)	
07/31/2018	**Mediation**	
08/01/2018	Mediation Report Party: Mediator Christensen, Elizabeth A	*Index #66*
08/03/2018	Obj to Motion to Compel Party: Attorney Santoro, II, Anthony, ESQ	*Index #67*
08/03/2018	Objection to Motion to Continue Party: Attorney Santoro, II, Anthony, ESQ	*Index #68*
08/06/2018	**Final Divorce Hearing**	
08/06/2018	Financial Affidavit Party: Attorney Santoro, II, Anthony, ESQ; Respondent Braunstein, Jericka *Jericka's*	*Index #69*

CASE SUMMARY

CASE NO. 647-2017-DM-00081

08/06/2018	Limited Appearance or Withdrawal Party: Attorney Lefebure, Caroline R., ESQ	*Index #70*
08/06/2018	Findings of Fact/Rulings of Law Party: Attorney Santoro, II, Anthony, ESQ; Respondent Braunstein, Jericka *Jericka's proposed*	*Index #71*
08/06/2018	Proposed Decree Party: Attorney Santoro, II, Anthony, ESQ; Respondent Braunstein, Jericka *Jericka's proposed final*	*Index #72*
08/06/2018	Child Support Guidelines Worksheet Party: Attorney Santoro, II, Anthony, ESQ; Respondent Braunstein, Jericka *Jericka's x2*	*Index #73*
08/06/2018	Uniform Support Order Party: Attorney Santoro, II, Anthony, ESQ; Respondent Braunstein, Jericka *Jericka's proposed final*	*Index #74*
08/06/2018	Stipulation Party: Guardian ad Litem Mulcrone, Deborah, ESQ; Attorney Santoro, II, Anthony, ESQ; Attorney Lefebure, Caroline R., ESQ; Petitioner Braunstein, Sean; Respondent Braunstein, Jericka *Partial stipulation-parenting plan-#1 (7/31/18)*	*Index #75*
08/06/2018	Stipulation Party: Guardian ad Litem Mulcrone, Deborah, ESQ; Attorney Santoro, II, Anthony, ESQ; Attorney Lefebure, Caroline R., ESQ; Petitioner Braunstein, Sean; Respondent Braunstein, Jericka *partial stipulation-parenting plan-#2 (8/6/18)*	*Index #76*
08/06/2018	Proposed Parenting Plan Party: Attorney Santoro, II, Anthony, ESQ; Respondent Braunstein, Jericka *Jericka's proposed order*	*Index #77*
08/06/2018	Financial Affidavit Party: Attorney Lefebure, Caroline R., ESQ; Petitioner Braunstein, Sean *Sean's*	*Index #78*
08/06/2018	Child Support Guidelines Worksheet Party: Attorney Lefebure, Caroline R., ESQ; Petitioner Braunstein, Sean *Sean's x2*	*Index #79*
08/06/2018	Proposed Uniform Support Order Party: Attorney Lefebure, Caroline R., ESQ; Petitioner Braunstein, Sean *Sean's proposed final*	*Index #80*
08/06/2018	Proposed Parenting Plan Party: Attorney Lefebure, Caroline R., ESQ; Petitioner Braunstein, Sean *Sean's proposed final with addendum*	*Index #81*
08/06/2018	Proposed Decree Party: Attorney Lefebure, Caroline R., ESQ; Petitioner Braunstein, Sean *Sean's proposed final*	*Index #82*
08/08/2018	**Final Divorce Hearing**	
08/09/2018	Order (Judicial Officer: Sadler, Lucinda V)	*Index #83*
08/23/2018	Motion to Reconsider Party: Petitioner Braunstein, Sean	*Index #84*
09/11/2018	Denied (Judicial Officer: Sadler, Lucinda V)	

CASE SUMMARY

CASE NO. 647-2017-DM-00081

09/04/2018	Obj to Motion to Reconsider Party: Attorney Santoro, II, Anthony, ESQ	*Index #85*
09/07/2018	Response Party: Petitioner Braunstein, Sean *Sean's Replication to Objection to Motion to Reconsider*	*Index #86*
09/13/2018	Motion for Conditional Default Party: Petitioner Braunstein, Sean	*Index #87*
09/17/2018	Notice of Conditional Default	*Index #88*
09/18/2018	Motion for CIP Exemption Party: Attorney Santoro, II, Anthony, ESQ	*Index #89*
10/16/2018	Granted (Judicial Officer: Sadler, Lucinda V)	
09/18/2018	Affidavit Party: Respondent Braunstein, Jericka *Exception on CIP Attendance*	*Index #90*
10/16/2018	Granted (Judicial Officer: Sadler, Lucinda V)	
09/25/2018	Motion Party: Petitioner Braunstein, Sean *for Default judgment*	*Index #91*
10/16/2018	Denied (Judicial Officer: Sadler, Lucinda V)	
09/27/2018	Objection Party: Attorney Santoro, II, Anthony, ESQ *to motion for Conditional Default*	*Index #92*
09/27/2018	Objection Party: Attorney Santoro, II, Anthony, ESQ *to Motion fo default judgment*	*Index #93*
09/27/2018	Motion for Contempt Party: Attorney Santoro, II, Anthony, ESQ	*Index #94*
10/16/2018	Order Issued (Judicial Officer: Sadler, Lucinda V) *will be discussed at final hg*	
10/05/2018	Vital Statistics Party: Petitioner Braunstein, Sean	*Index #95*
10/05/2018	Objection Party: Petitioner Braunstein, Sean *to Motion for Conditional Default and Strike CD*	*Index #96*
10/05/2018	Objection Party: Petitioner Braunstein, Sean *to Res's obj to Motion for Default Judgment*	*Index #97*
10/05/2018	Objection Party: Petitioner Braunstein, Sean *to motion for Contempt*	*Index #98*
10/09/2018	Motion to Compel Party: Attorney Santoro, II, Anthony, ESQ	*Index #99*
10/16/2018	Order Issued (Judicial Officer: Sadler, Lucinda V)	
10/10/2018	Objection Party: Petitioner Braunstein, Sean	*Index #100*

CASE SUMMARY

CASE NO. 647-2017-DM-00081

	to Motion to Compel and Motion to Strike	
10/12/2018	Motion for Contempt Party: Petitioner Braunstein, Sean	*Index #101*
10/25/2018	Order Issued (Judicial Officer: Sadler, Lucinda V)	
10/17/2018	Motion Party: Petitioner Braunstein, Sean *In Limine*	*Index #102*
10/22/2018	Objection to Motion for Contempt Party: Attorney Santoro, II, Anthony, ESQ	*Index #103*
10/26/2018	Objection Party: Attorney Santoro, II, Anthony, ESQ; Respondent Braunstein, Jericka *to Sean's Motion in Limine*	*Index #104*
10/29/2018	**Final Divorce Hearing** *on financial issues*	
10/29/2018	Memorandum of Law Party: Petitioner Braunstein, Sean	*Index #105*
10/29/2018	Limited Appearance or Withdrawal	*Index #106*
10/29/2018	Financial Affidavit Party: Attorney Hunt, Robert D., ESQ; Petitioner Braunstein, Sean *Sean's*	*Index #107*
10/29/2018	Financial Affidavit Party: Attorney Santoro, II, Anthony, ESQ; Respondent Braunstein, Jericka *Jericka's*	*Index #108*
10/29/2018	Child Support Guidelines Worksheet Party: Attorney Santoro, II, Anthony, ESQ; Respondent Braunstein, Jericka *Jericka's x2*	*Index #109*
10/29/2018	Proposed Uniform Support Order Party: Attorney Santoro, II, Anthony, ESQ; Respondent Braunstein, Jericka *Jericka's*	*Index #110*
11/19/2018	Child Support Guidelines Worksheet (Judicial Officer: Sadler, Lucinda V)	*Index #111*
11/19/2018	Uniform Support Order (Judicial Officer: Sadler, Lucinda V)	*Index #112*
11/19/2018	Final Decree (Judicial Officer: Sadler, Lucinda V)	*Index #113*
11/19/2018	Order (Judicial Officer: Sadler, Lucinda V)	*Index #114*
11/19/2018	**Decree** (Judicial Officer: Sadler, Lucinda V)	
11/21/2018	Notice sent re Final Judgment	*Index #115*
12/03/2018	Motion for Clarification Party: Attorney Santoro, II, Anthony, ESQ	*Index #116*
12/03/2018	Motion Party: Attorney Santoro, II, Anthony, ESQ *for Further Orders*	*Index #117*
12/03/2018	Withdrawal Party: Attorney Hunt, Robert D., ESQ	*Index #118*
12/03/2018	Motion to Reconsider	*Index #119*

CASE SUMMARY

CASE NO. 647-2017-DM-00081

	Party: Petitioner Braunstein, Sean	
12/10/2018	Obj to Motion to Reconsider Party: Attorney Santoro, II, Anthony, ESQ	*Index #120*
12/13/2018	Obj to Motion to Clarify Party: Petitioner Braunstein, Sean	*Index #121*
12/31/2018	Uniform Support Order (Judicial Officer: Sadler, Lucinda V) *Amended*	*Index #122*
12/31/2018	Order (Judicial Officer: Sadler, Lucinda V) *on Motions*	*Index #123*
12/31/2018	Notice sent re Final Judgment	*Index #124*
02/11/2019	Supreme Court Order	*Index #125*
05/08/2019	Supreme Court Order	*Index #126*

TARGET DATE	TIME STANDARDS
01/31/2019 ****Overdue****	Case Disposition (31 Days)

DATE	FINANCIAL INFORMATION	
	Petitioner Braunstein, Sean	
	Total Charges	82.50
	Total Payments and Credits	82.50
	Balance Due as of 8/27/2019	**0.00**
	Respondent Braunstein, Jericka	
	Total Charges	77.50
	Total Payments and Credits	77.50
	Balance Due as of 8/27/2019	**0.00**

App. Vol. III - Tab J

Braunstein v. Braunstein

Brief in Support of Motion for Reconsideration and Petition on Constitutionality of State Statute,

March 10, 2020

The State of New Hampshire

SUPREME COURT

Case No. 2019-0065

IN THE MATTER OF
SEAN BRAUNSTEIN AND JERICKA BRAUNSTEIN

RULE 7 APPEAL OF THE FINAL ORDERS OF THE
6TH CIRCUIT FAMILY COURT DIVISION – HOOKSETT

Appendix 3

RECONSIDERATION BRIEF OF PETITIONER SEAN BRAUNSTEIN – APPELLANT

By: Sean Braunstein, Pro Se
56 Post Road
Hooksett, NH 03106
(603) 396-8293

TABLE OF CONTENTS

THE STATE OF NEW HAMPSHIRE

6th Circuit – Family Division- Hooksett

In the Matter of Sean Braunstein and Jericka Braunstein

Docket No. 647-2017-DM-00081

MOTION FOR PROPER SUBMISSION OF DEPARTMENT OF VETERANS AFFAIRS APPORTIONMENT CLAIM

NOW COMES the Petitioner, Sean Braunstein, and respectfully submits this Motion for proper submission of Department of Veterans Affairs Apportionment Claim in Accordance with Cited Federal Laws & Regulations, IM-98-93, and the Veterans' Judicial Review Act of 1988. In support of this motion, the Petitioner states as follows;

1. Pursuant to 42 U.S.C. §§ 662(f)(2) & 659(h)(1)(B)(iii), 38 U.S.C. § 5307, 38 CFR §§ 3.450 (a)(1)(ii), 3.451 & 3.458(g), averred *Due Process Affidavit*, the Veterans' Judicial Review Act of 1988, the federal Office of Child Support Enforcement Information Memorandum IM-98-03 and New Hampshire Revised Statutes Annotated (RSA) Title XLIII Chapter 458-C:2. Disabled Veteran and Obligor, Sean Braunstein now respectfully requests that the state assigned Title IV-D agency be ordered to ***expeditiously*** write or fax the Department of Veterans Affairs ("VA") using their official agency letterhead to lawfully initiate a VA apportionment claim review. Specific instructions follow.

2. Obligor, Mr. Braunstein does not waive a portion of military retired pay to receive his VA disability compensation award. The properly submitted letter must be signed by both the appropriate IV-D official and the Obligee, Ms. Jericka Braunstein ("Ms. Braunstein"). Disabled Veteran, and Father Mr. Braunstein resides in the Manchester VA Regional Office jurisdiction. Unless Ms. Braunstein or the IV-D official is informed to file the claim to another location, the letter should be addressed to the appropriate VA Apportionment Intake Center servicing Sean Braunstein's disability benefits award:

Department of Veterans Affairs
Claims & Intake Center
P.O. BOX 5235
Janesville, WI 53547-5235

Fax Number: 1-844-531-7818

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Last known Obligee information is

Jericka Braunstein
66 Broadway
Pembroke, NH 03275
(TEL) 603-540-2810

3. Movant Sean Braunstein explicitly requests to have his child support obligation lawfully apportioned from his VA benefits award payable to Obligee Jericka Braunstein and as directed in IM-98-03, attached as Exhibit "A" incorporated by reference as if fully set forth herein. Ms. Braunstein is to include a completed VA Form 21-0788 entitled *INFORMATION REGARDING APPORTIONMENT OF BENEFICIARY'S AWARD* and VA Form 21-4138 *STATEMENT IN SUPPORT OF CLAIM* with the outgoing signed letter. A copy of the *current support order* and an *arrearage determination sheet*, *payment ledger*, *payment records*, etc. must be attached as well.

WHEREFORE, the Petitioner, respectfully requests that this Honorable Court:

1. Obligor Braunstein requests that an official confirmation letter along with copies of all submitted documents is ordered mailed to him from the Title IV-D agency upon fulfillment of the request and in light of granted order.

2. Grant such other and further relief as may be just and equitable.

Sincerely requested,
Sean Braunstein

Date: October __, 2019

BY _____
Sean Braunstein, Pro Se

Sean Braunstein
56 Post Road
Hooksett, NH 03106
Telephone: 603-396-8293
Email: seanjbraunstein@yahoo.com

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Exhibit A

Financial Support for Children from Benefits Paid by Veterans Affairs

IM-98-03

Published: September 25, 1998

Information Memorandum IM-98-03

DATE: September 25, 1998

TO: STATE AGENCIES ADMINISTERING CHILD SUPPORT ENFORCEMENT PLANS UNDER TITLE IV-D OF THE SOCIAL SECURITY ACT AND OTHER INTERESTED INDIVIDUALS.

SUBJECT: Obtaining financial support for children from benefits paid by the Department of Veterans Affairs.

ATTACHMENT: VA Form 21-4138

BACKGROUND: Section 459 of the Social Security Act, as amended, provides for the garnishment of certain Federal payments for the enforcement of child support and alimony obligations. However, benefits paid by the Department of Veterans Affairs (VA) are specifically excluded with one exception [42 U.S.C. 659(h)(1)(B)(iii)]. The test to determine if a payment is subject to garnishment is whether the payment is remuneration for employment as defined in section 459 [42 U.S.C. 659(a) and (h)]. While Federal salaries fit this test, and Title II Social Security Old-Age, Survivors, and Disability Insurance benefits (OASDI) can be garnished (entitlement to these benefits is based on employee contributions into FICA), VA monetary benefits, entitlement to which is generally based on either the veteran's disability and wartime service (pension) or disability from service-connected injury or disease (compensation), is generally not considered remuneration for employment.

However, the Social Security Act and the statutes governing benefit payment by the Department of Veterans Affairs do provide for processes by which dependents may obtain financial support from veterans' benefits under certain circumstances. Below are two examples highlighting the laws or regulations under which benefits paid by the Department of Veterans Affairs can be paid to dependents to fulfill child support obligations.

Example #1: The Social Security Act [42 U.S.C. 659(h)(1)(A)(ii)(V)] provides that if a veteran is eligible to receive military retired/retainer pay and has waived a portion of his/her retired/retainer pay in order to receive disability compensation from VA, that portion of the VA benefit received in lieu of retired/retainer pay is subject to garnishment.

Example #2: The Department of Veterans Affairs has issued regulations pursuant to 38 U.S.C. 5307 that provide for an apportionment of VA benefits between the veteran and his/her dependents under certain circumstances. VA regulations at 38 CFR Section 3.450(a)(1)(ii) provide that, if the veteran is not residing with his or her spouse, or if the veteran's children are not residing with the veteran and the

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veteran is not reasonably discharging his or her responsibility for the spouse's or children's support, all or any part of the veteran's pension, compensation, or emergency officers' retirement pay may be apportioned.

Additionally, where a hardship is shown to exist, 38 CFR Section 3.451 authorizes a special apportionment of a beneficiary's pension, compensation, emergency officers' retirement pay, or dependency and indemnity compensation between the veteran and his or her dependents. The apportionment is based on the facts in the individual case, and may not cause undue hardship to the other persons in interest. Factors which determine the basis for special apportionment include the amount of veteran benefits payable, other resources and income of the veteran and those dependents in whose behalf apportionment is claimed, and special needs of the veteran, the dependents, and those applying for apportionment. Ordinarily, the VA considers that an apportionment of more than 50 percent of the veteran's benefits would constitute undue hardship on the veteran, while an apportionment of less than 20 percent would not provide a reasonable amount for any apportionee.

GARNISHMENT: To arrange for garnishment, contact the VA Regional Office that provides the non custodial parent's benefits. VA provides a toll free number to help in determining which regional office is appropriate (1-800-827-1000), or refer to 5 CFR Part 581 - (Appendix A). The VA office will determine if the veteran has waived any portion of his/her retired/retainer pay in order to receive VA benefits. Send service of process for garnishment to the regional office serving the veteran.

SPECIAL APPORTIONMENTS:

1. The IV-D agency (state child support enforcement office) should write the Department of Veterans Affairs using agency letterhead to request an apportionment review. The letter should be signed by both the appropriate IV-D official and the custodial parent. The letter should be addressed to the VA Regional Office servicing that veteran's benefits. Use the toll free number to determine which regional VA office is appropriate (1-800-827-1000).

2. Complete and attach VA Form 21-4138 "Statement in Support of Claim." The normal VA procedure is to request this after receiving an apportionment application, so time can be saved by doing this as part of the first step. This is where information regarding income and net worth may be provided.

3. Attach a copy of the current support order, to assist VA in the development of the apportionment award.

4. Attach a copy of the arrearage determination sheet, payment ledger, payment records, etc.

CONTACTS: For more information on obtaining payments from veterans benefits, contact your ACF regional office.

David Gray Ross
Commissioner
Office of Child Support Enforcement

cc: Regional Administrators
Regional Program Managers

7

THE STATE OF NEW HAMPSHIRE

6th Circuit – Family Division - Hooksett

In the Matter of Sean Braunstein and Jericka Braunstein

Docket No. 647-2017-DM-00081

DUE PROCESS AFFIDAVIT

THE STATE OF NEW HAMPSHIRE COUNTY OF MERRIMACK BEFORE ME, the undersigned authority, on this day personally appeared

SEAN BRAUNSTEIN,

who swore or affirmed to tell truth, and stated as follows:

"My name is SEAN BRAUNSTEIN.

I am of sound mind and capable of making this sworn statement. I have personal knowledge of the facts written in this statement. I understand that if I lie in this statement I may be held criminally responsible. The following uncontested *prima facie* averments of the following are in support of the *Petition for Divorce*, *Interlocutory Petition to Challenge,* and *Memorandum of Law* are incorporated by reference as if fully set forth herein. My averments must be considered as true in absence of controverting affidavit. This statement is my main pleadings and testimony.

1. **45 Code of Federal Regulations § 302.56** provides guidelines for setting child support awards. Pursuant to paragraph **(f)**, the State of New Hampshire must provide me a rebuttable presumption, in any judicial or administrative proceeding for the award of child support, that the amount of the award which would result from the application of the New Hampshire Revised Statutes Annotated (RSA) Title XLIII Chapter 458-C:2, IV for both setting and modifying child support award amounts is the correct amount to be awarded. My completed *Interlocutory Petition for Challenge to Constitutionality of a State Statute* for **Declaratory Judgment** is incorporated by reference as if fully set forth herein. My subsequent assertions that rebut RSA Title XLIII Chapter 458 shall state the amount of spousal and child support that should be required under appropriate & just procedural due process guidelines and include the required justification proof as presented *infra*:

2. I am a former U.S. Army Soldier with only four (4) years of honorable active duty service as evidenced in my *Department of Veterans Affairs Summary of Benefits* letter (Attachment A-1)

(True and correct copies of all referenced documents are attached hereto and made a part hereof.) According to **38 CFR 3.750(a)** "Definition of military retired pay. For the purposes of this part, military retired pay is payment received by a veteran that is classified as retired pay by the Service Department, including retainer pay, based on the recipient's service as a member of the Armed Forces". Enlisted members of the United States Army[1] may retire after a specified period of service and receive "retired pay." 10 U.S.C. § 3914 (Supp. 2016). The monthly amount of retired pay is based upon years of service and rank. Id. § 3925. I was unable to serve the required 20 years minimum to qualify for military retired pay. As evidenced in my latest redacted *Department of Veterans Affairs Summary of Benefits* letter as officially promulgated by my jurisdictional Manchester Veterans Affairs Regional Office ("VARO") in accordance with **38 CFR 1.511 & 3.340** (Attach. A-1), I am also a "100% permanent & total service-connected disabled veteran" since February 2012 under the full authority of the Secretary of the Department of Veterans Affairs ("VA"), an independent, nonparty to my previous State of New Hampshire temporary court support order. I do not waive a portion of military retired pay in order to receive my VA disability compensation benefits award. Therefore, as legally defined in the Uniformed Services Former Spouses' Protection Act of 1982 ("USFSPA") at **10 U.S.C. § 1408(a)(4)(A)(ii)**[2], only Title 10 disposable military retired pay may be used for compliance with any property division, spousal or child support consideration by the State of New Hampshire and does show a congressional intent to exempt my Title 38 benefits from a contentious legal process outside the exclusive jurisdiction of the VA courts established in the **Veterans' Judicial Review Act ("VJRA") of 1988**. The USFSPA does not grant the New Hampshire family courts the power to award any of the items deducted from gross retired pay such as VA disability benefits. See ***Mansell v. Mansell* 490 U.S. at 594-95 (1989)**. VA disability compensation awards were examined in the very recent U.S. Supreme Court family law case; "State courts cannot 'vest' that which (under governing federal law) they lack the authority to give...Regardless of their form, such reimbursement and indemnification orders displace the federal rule and stand as an obstacle to the accomplishment and execution of

[1] Members of other branches of the Armed Forces are entitled to similar retirement benefits. 10 U.S.C. §§ 6321-6336 (Supp. 2016) (Navy and Marine Corps); 10 U.S.C. §§ 8911-8929 (Air Force); see also Howell v. Howell, 137 S. Ct. 1400, 1403 (2017).

[2] AMENDMENT 2016—Subsec. (a)(4). Pub. L. 114–328, § 641(a), designated existing provisions as subpar. (A), inserted "(as determined pursuant to subparagraph (B)" after "member is entitled" in introductory provisions, redesignated former subpars. (A) to (D) as cls. (i) to (iv), respectively, of subpar. (A) and added subpar. (B).

the purposes and objectives of Congress. All such orders are thus pre-empted."[3] I am also deemed disabled with the Social Security Administration and rate monthly Social Security Disability Insurance ("SSDI") payments which entitle my child to a direct and separate derivative monthly payments in their name. Finally, I also receive a federal disability award associated with my injuries and illnesses that incurred on active duty and was exacerbated while working for the Department of Defense. This award also falls into this category and is protected from assignment.

3. Barred consent is further confirmed in ***DD Form 2293, APPLICATION FOR FORMER SPOUSE PAYMENTS FROM RETIRED PAY***: "I request payment of: . . . (2) Child support in the amount of $ _____ per month." "INSTRUCTIONS FOR COMPLETION OF DD FORM 2293 - GENERAL. These instructions govern an application for direct payment from retired pay of a Uniformed Service member in response to court ordered **DIVISION OF PROPERTY, CHILD SUPPORT, or ALIMONY**, under the authority of 10 USC 1408." . . . "I hereby acknowledge that any payment from me must be paid from disposable retired pay as defined by the statute and implementing regulations." . . . "IMPORTANT NOTE: Making a false statement or claim against the United States Government is punishable. The penalty for willfully making a false claim or false statement is a maximum fine of $10,000 or maximum imprisonment of 5 years or both (**18 USC 287 and 1001**)." (emphasis added)

4. **42 U.S.C. § 659(a) & (h)(1)(B)(iii)** bars consent of the United States to income withholding, garnishment, and similar proceedings for enforcement of child support obligations by the State of New Hampshire with any of my service-connected disability compensation benefits award provisioned by the Secretary of the Department of Veterans Affairs since I do not, nor have I ever waived a portion of military retired pay in order to receive such. Finally, **5 CFR 581.103(c)(7)** prohibits the State of New Hampshire from garnishing my VA disability compensation benefits award, and Disability Retirement benefits.

5. **5 C.F.R. §§ 581.102 & 581.401** as well as **15 U.S.C. §§ 1672 & 1673** establishes that the "**aggregate disposable earnings**", when used in reference to the amounts due from, or payable by, the United States or the District of Columbia which are garnishable under the Federal **Consumer Credit Protection Act** for child support, are the obligor's remuneration for employment. ***Black's Law Dictionary*** 1322 (8th ed. 2004) defines "remuneration" as "[p]ayment; compensation" and "employment" as "work for which one has been hired and is being paid," id. 545; see also id. at

[3] *Howell v. Howell*, 581 U.S. ___ (2017).

1180, "personal service" as "an economic service ... involving personal effort of an individual". Therefore, reading **15 U.S.C. §§ 1672** and **1673** and **42 U.S.C. § 659** in tandem indicates that because both my federal disability retired pay from the DoD and my independent VA disability benefits award are not premised upon remuneration for employment, they are not "compensation paid or payable for personal services" and so do not count toward my aggregate disposable earnings. Both my DoD disability compensation and my VA award are legally defined to be "**not remuneration for employment**".

6. **26 U.S.C. § 104(b)(2)(D)** also codifies my VA disability COMPENSATION as "**not gross income**".

7. ***Black's Law Dictionary*** 363 (St. Paul, MN, West Publishing Co, 1991) defines "employee" as "a person in the service of another under any contract of hire, express or implied, oral or written, where the employer has the power or right to control and direct the employee in the material details of how the work is to be performed."

8. SOCIAL SECURITY ACT TITLE II—FEDERAL OLD–AGE, SURVIVORS, AND DISABILITY INSURANCE BENEFITS Title 42 § 410 - **Definition of Employee**:

"(j) The term '**employee**' means—
(1) any officer of a corporation; or
(2) any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee; or
(3) any individual (other than an individual who is an employee under paragraph (1) or (2) of this subsection) who performs services for remuneration for any person—"

9. Applicable Common Law Rule: UNITED STATES CODE Title 26. Internal Revenue Code Subtitle C. Employment Taxes Chapter 24. Collection of Income Tax at Source on Wage

§3401. DEFINITIONS

"(d) **Employer.** - For purposes of this chapter, the term 'employer' means the person for whom an individual performs or performed any service, of whatever nature, as the employee of such person...."

10. **Section 207** of the **Social Security Act** states at **42 U.S.C. § 407 (a) IN GENERAL**

> The right of any person to any future payment under this subchapter shall not be transferable or assignable, at law or in equity, and none of the moneys paid or payable or rights existing under this subchapter shall be subject to execution, levy,

attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law.[4]

11. Attachment A-2 is the federal memorandum decision in *Paula Minter v. Shinseki*, UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS, No. 08-2404 (2010) which provides further appropriate guidance regarding nonpotential spousal or alimony support from my VA award.

12. It must be noted here that the following NH RSA definitions are preempted, in my specific support case, by the prevailing Federal U.S. Codes previously cited. The State has also been prohibited from using definitions that are not consistent with those codified in Federal Acts because where "the intent of Congress is clear, that is the end of the matter."[5] The State cannot impose additional burdens and restrictions on a federal program when those burdens unduly frustrate the federal goals.[6]

13. Therefore, reflecting on the noted definitions in **5 CFR § 581.401 & 15 U.S.C. § 1672** and reading **the CCPA "Withholding Limits" warning,** "For state orders, the employer/income withholder may not withhold more than the lesser of: 1) the amounts allowed by the Federal Consumer Credit Protection Act (15 USC §1673(b)); or 2) the amounts allowed by the state of the employee/obligor's principal place of employment." **42 U.S.C. § 659(a)** in tandem indicates that because my federal disability compensation, VA Disability Compensation Award and SSDI are not paid to me as an **'employee'**, they are not 'compensation paid or payable for personal services'.

14. My SSDI payments are benefits based upon a complex weighted formula scheme of my **past** average covered earnings over a period of years specifically termed "Average Indexed Monthly Earnings" (AIME). The formula has been applied to my AIME to calculate my Primary Insurance Amount (PIA); the base figure that SSA uses in setting my monthly insurance benefit payment. By legal definition, I'm totally disabled and physically unable to render any service, of whatever nature, as an **'employee'.** Neither the SSA nor the VA nor the federal government are

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[4] *Bennett v. Arkansas*, 485 U.S. 395 (1988) Held: "The Arkansas statute violates the Supremacy Clause. There is no 'implied exception' to the express language of § 407(a) and its clear intent that Social Security benefits not be attachable, . . . The State is not a statutorily intended beneficiary of petitioner's Social Security benefits. *Rose v. Rose*, 481 U. S. 619, distinguished." (The children have additionally received monthly SSA direct derivative payments from Affiant Parsons's SSDI account and he received credit for these payments as averred in ¶s 17-19 including distinguished *Rose v. Rose* rebuttal in ¶s 20-38 below.)

[5] *Comacho v. Texas Workforce Commission*, 408 F.3d 237 (5th Cir. 2005).

[6] *Planned Parenthood of Houston and Southeast Texas v. Sanchez*, 403 F.3d 324 (5th Cir. 2005).

my 'employers'. **I earn no current wages from any personal service.** Therefore, all my disability benefits are **not remuneration for employment** and do not count toward my '**aggregate disposable earnings**'.

15. I have been unable to perform any personal service or work for earnings as an 'employee' under any contract for hire since January 2016. What's more, I have not performed personal service, of whatever nature, as an 'employee' for neither the SSA nor VA nor the DoD. Therefore, by definition, my monthly SSDI payments will not be defined to be remuneration for employment. I earn no current wages and have zero earnings.

16. U.S. Congress, provisioning for the Social Security Act protection language of **42 U.S.C. § 407,** has seen to it that my child receives direct monthly derivative payments from SSA based upon their SSDI trust benefits scheme and as verified in the attached SSA official document (Attachment A-3).

***ROSE V. ROSE*, 481 U. S. 619 (1987) - REBUTTAL**

17. From the U.S. Supreme Court ruling of ROSE V. ROSE, 481 U. S. 619 (1987), the late Associate Justice Antonin Scalia, concurring in part and concurring in the judgment, writes "I would not reach the question whether the State may enter a support order that conflict with an apportionment ruling made by the Administrator [now Secretary of the Department of Veterans Affairs], or whether the Administrator may make an apportionment ruling that conflicts with a support order entered by the State. Ante, at 627. Those questions are not before us, since the Administrator has made no such ruling." ... "I am not persuaded that if the Administrator makes an apportionment ruling, a state court may enter a conflicting child support order. It would be extraordinary to hold that a federal officer's authorized allocation of federally granted funds between two claimants can be overridden by a state official." Page 481 U.S. 641

18. Justice Scalia continues, "I also disagree with the Court's construction of 38 U.S.C. 211(a), which provides that '[d]ecisions of the Administrator on any question of law or fact under any law administered by the Veterans' Administration providing benefits for veterans and their dependents . . . shall be final and conclusive and no other official or any court of the United States shall have power or jurisdiction to review any such decision.' The Court finds this [§ 211]

inapplicable because it does not explicitly exclude state-court jurisdiction, as it does federal; ante, at 629." Ibid.

19. "Had the Administrator granted or denied an application to apportion benefits, state court action providing a contrary disposition would arguably conflict with the language of § 211 making his decisions 'final and conclusive' -- and, if so, would, in my view, be preempted, regardless of the Court's perception that it does not conflict with the 'purposes' of § 211. But there is absolutely no need to pronounce upon that issue here. Because the Administrator can make an apportionment only upon receipt of a claim, Veterans' Administration Manual M21-1, ch. 26, § 26.01 (Aug. 1, 1979), and because no claim for apportionment of the benefits at issue here has ever been filed, the Administrator has made no 'decision' to which finality and conclusiveness can attach." ... "The Court again expresses views on a significant issue that is not presented." Page 642

20. It is very remarkable here that immediately following the noted *Rose* deficiencies, U.S. Congress passed The **Department of Veterans Affairs Act of 1988** (Pub.L. 100–527) transforming the former Veterans Administration into a Cabinet-level Department of Veterans Affairs. It was signed into law by President Ronald Reagan on October 25, 1988. And as previously mentioned, the previously noted **Veterans' Judicial Review Act of 1988** granted exclusive, independent jurisdiction of the VA Apportionment Claim process within the newly created federal court system and **Title 38 § 211 was amended** to overcome the noted lacking exclusivity language. Congress subsequently codified § 211 as § 511 in 1991 to properly engross "Secretary" language consistent with the new Department of Veterans Affairs Act. **42 U.S.C. § 662** relating to allowable garnishment exclusions of veterans' compensation for enforcement of child support orders granted in the *Rose* decision was also repealed in **Pub. L. 104-193, title III, § 362(b)(1), 110 Stat. 2246, (Aug. 22, 1996)** effective beginning fiscal year 1997 after Congress ascertained that VA Apportionment claims were being properly provisioned in accordance with **38 U.S.C. § 512. 38 U.S. Code § 511 now EXPLICITLY EXCLUDES state-court jurisdiction.**

21. Most noteworthy, **38 U.S.C. § 511 is the Decisions of the Secretary; finality,** and such decisions lie solely with the Secretary of the Department of Veterans Affairs, not the State of New Hampshire. Section 511(a) was signed into the U.S. Code four years after the Rose decision. Pursuant to the Secretary's authority in **38 U.S.C. §§ 511(a) & 5307** and **38 CFR Sections 3.450-3.458**, "The Secretary shall decide all questions of law and fact necessary to a decision by the Secretary under a law that affects the provision of benefits by the Secretary to veterans or **the dependents** ... of veterans." ...

"the decision of the Secretary as to any such question shall be final and conclusive and may not be reviewed by any other official or by any court, whether by an action in the nature of mandamus or otherwise." (emphasis added)

22. Another noteworthy shortcoming discussed in the Rose case; "the implementing regulations, which simply authorize apportionment if 'the veteran is not reasonably discharging his or her [child support] responsibility . . .,' contain few guidelines for apportionment, and no specific procedures for bringing claims." Page 481 U.S. 619 And continuing, "it seems certain that Congress would have been more explicit had it meant the VA's apportionment power to displace state court authority." Pages 619-620

23. Those sparse guidelines were resolved in 1998 when Federal Commissioner for the Office of Child Support Enforcement ("OCSE"), David Gray Ross, published Information Memorandum IM-98-03, with Congressional oversight, to every state and commonwealth Title IV-D Agency. **IM-98-03** is entitled ***Financial Support for Children from Benefits Paid by Veterans Affairs*** and is a Federal OCSE policy directive that now instructs the New Hampshire Title IV-D Agency on how to properly submit the independent claim for apportionment to the Department of Veterans Affairs for those New Hampshire veterans whose benefits are legally defined, during due process, as "**not remuneration for employment**". Four specific instructions for proper submission of a VA Apportionment claim, **VA FORM 21-0788** ***INFORMATION REGARDING APPORTIONMENT OF BENEFICIARY'S AWARD***, by the State of New Hampshire are now to be followed:

> 1. The IV-D agency (state child support enforcement office) should write the Department of Veterans Affairs using agency letterhead to request an apportionment review. The letter should be signed by both the appropriate IV-D official and the custodial parent. The letter should be addressed to the VA Regional Office servicing that veteran's benefits. Use the toll-free number to determine which regional VA office is appropriate (1-800-827-1000).
>
> 2. Complete and attach VA Form 21-4138 "Statement in Support of Claim." The normal VA procedure is to request this after receiving an apportionment application, so time can be saved by doing this as part of the first step. This is where information regarding income and net worth may be provided.
>
> 3. **Attach a copy of the current support order,** to assist VA in the development of the apportionment award.

> **4. Attach a copy of the arrearage determination sheet**, payment ledger, payment records, etc.

24. Pursuant to **38 CFR 3.458**, Veteran's benefits will not be apportioned: (g) "If there are any children of the veteran not in his or her custody an apportionment will not be authorized unless and until a claim for an apportioned share is filed in their behalf."

25. What's more and from 1997, the **VA Office of General Counsel Precedent Opinion 4-97** holds that a regional office must not consider a state court support order as an apportionment claim. Additional findings of OGC 4-97, "11. Pursuant to 38 U.S.C. § 7104(a), the Board has jurisdiction to review '[a]ll questions in a matter which under section 511(a) of this title is subject to decision by the Secretary.' Section 511(a) authorizes the Secretary to 'decide all questions of law and fact necessary to a decision by the Secretary under a law that affects the provision of benefits by the Secretary to veterans or the dependents or survivors of veterans.' See also 38 C.F.R. § 20.101(a) (Board's jurisdiction extends to review of all decisions 'under a law that affects the provision of benefits by the Secretary to veterans or their dependents or survivors.'). Thus, the Board's appellate jurisdiction is generally coextensive with the Secretary's authority under 38 U.S.C. § 511(a) to render initial decisions." Attachment A-4 is the October 12, 2016 VA inquiry response letter that further supports, ***"Neither the State nor the Division of Child Support Services has authority to enforce child support on a Veteran's disability compensation...."***

26. Privity of Contract:

> Privity of Contract refers to relationship between the parties to a contract which allows them to sue each other but prevents a third party from doing so. It is a doctrine of contract law that prevents any person from seeking the enforcement of a contract, or suing on its terms, unless they are a party to that contract. As a general rule, a contract cannot confer rights or impose obligations arising under it on any person except the parties to it.[7]

My privity of contract with the VA is protected and backed under the preemptive authority of the Contract Clause found in Article 1, Section 10 of the Constitution which provides that "No State shall . . . pass any . . . law impairing the Obligation of Contracts." VA Awards and Apportionment rulings or judgments are considered in privity of contract only between family claimants pursuant to **38 U.S.C. §§ 5307 & 511.** The State of New Hampshire is and has always been a third party when it comes to my VA disability compensation benefits award. Therefore, the

[7] *Privity of Contract Law & Legal Definition*, http://definitions.uslegal.com/p/privity-of-contract/ (Sept. 26, 2017)

State of New Hampshire, not legally a party to my VA award contract, has been prohibited from seeking establishment and enforcement of its child support order utilizing my VA award. To do so flagrantly violates the sovereign immunity of the U.S. Pursuant to the authority granted exclusively with the Secretary of the VA in **§ 511**, the State of New Hampshire is barred from imposing any obligations for me to pay child or spousal support from my VA award. The Manchester VARO Regional Counsel ("RC") has authority to represent the independent claims and facts relevant to this legal matter between myself and Jericka Braunstein as claimants entitled to privity of their VA apportionment claim. In accordance with **38 C.F.R. 14.500, 14.501 and 14.504**, the Manchester VARO RC also has exclusive authority to summons the Office of the U.S. Attorney regarding the federal improprieties which may arise in this legal matter.[8]

27. Since the 1987 *Rose* decision, U.S. Congress has actively legislated to preclude both the state and its officials from disregarding proper, independent VA Apportionment claims between family claimants. However, this is now my instant case question presented to the State of New Hampshire, in affidavit form, that must be answered without disregard and contempt of presented post 1987 federal laws, regulations, directives and high court rulings.

28. It must be reiterated here that the Rose v. Rose SCOTUS ruling was based upon the fact that disabled veteran Charlie Wayne Rose was never afforded a proper VA Apportionment claim review. "Those questions are not before us, since the Administrator has made no such ruling." A VA Apportionment Claim ruling was never before the 1987 Court! **However, in my evidence and assertions before you, I have not yet properly been afforded my VA Apportionment claim review pursuant to IM-98-03.**

29. **38 U.S.C. § 5301** is the *Nonassignability and Exempt Status of Benefits*. My VA service connected disability benefits award is protected by **38 U.S.C. § 5301**. **38 U.S.C. § 5301(a)** states that: "(1) Payments of benefits due or to become due under any law administered by the Secretary shall not be assignable except to the extent specifically authorized by law, and such payments made to, or on account of, a beneficiary shall be exempt from taxation, shall be exempt from the claim of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary."[9] I aver that the VA is

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[8] *Veterans Administration v. Kee*, 706 S.W.2d 101 (1986).

[9] *Higgins v. Beyer*, 293 F3d. 683, p. 686 & 694 (3d Cir. 2002) (Section 5301(a) provides a federal right that is enforceable under 42 U.S.C. § 1983.) "Higgins's procedural due process rights are enforceable under § 1983. See

now a Necessary Party with privity of contract with absolute sovereign immunity of the U.S. when it comes to my required Apportionment claim submission for proper determination of provisioning and assignment of any portion of my VA disability benefits award to my dependent(s).[10]

30. From the **VA Office of General Counsel, Precedent Opinion 2-2002** Nonassignability of Benefits—38 U.S.C. § 5301(a) Citation:

> "4. An ASSIGNMENT is a transfer of property or some other right from one person to another that confers a complete and present right to the assignee in the subject matter of the assignment. 6 Am. Jur. 2d Assignments § 1 (1999); see also Black's Law Dictionary 115 (7th ed. 1999) (transfer of rights or property). The term 'assignment' ordinarily refers to a transfer of intangible rights in property, as opposed to transfer of property itself, 6 Am. Jur. 2d Assignments § 1 (1999), i.e., a transfer of a right to receive payments, rather than a transfer of the funds themselves. An assignment is by its nature a voluntary transfer. 6 Am. Jur. 2d Assignments § 2 (1999)."

31. "(3)(A) This paragraph is intended to clarify that, in any case where a beneficiary entitled to compensation, pension, or dependency and indemnity compensation enters into an agreement with another person under which agreement such other person acquires for consideration the right to receive such benefit by payment of such compensation, pension, or dependency and indemnity compensation, as the case may be, except as provided in subparagraph (B), and including deposit into a joint account from which such other person may make withdrawals, or otherwise, such agreement shall be deemed to be an ASSIGNMENT and IS PROHIBITED." (emphasis added)

32. "(3)(C) Any AGREEMENT or arrangement for collateral for security for an agreement that is prohibited under subparagraph (A) is also PROHIBITED and is VOID from its inception." (emphasis added) The **False Claims Act** ("FCA"), **31 U.S.C. §§ 3729 – 3733**, sets forth liability for any person who knowingly submits a false claim to the government or causes another to submit a false claim to the government or knowingly makes a false record or statement. A false claim, in this instance, is defined as a demand for a portion of my VA award made directly to me by any New Hampshire judge or Title IV-D official to be paid to my child.

Zinermon, 494 U.S. at 125, 110 S.Ct. 975 ('A § 1983 action may be brought for a violation of procedural due process. . ..')" "[W]e conclude that Higgins's pro se complaint, when liberally construed, stated sufficient facts to state a cause of action for a violation of a federal right under § 5301(a), and a deprivation of his Fourteenth Amendment right to notice and hearing prior to the deprivation of his property interest in the proceeds of his veteran's benefits. . . under the Due Process Clause."

[10] *Sanchez Dieppa v. Rodriguez Pereira,* 580 F.Supp 735 (1984).

33. **31 CFR Part 212 Final Rule June 2013** is the Garnishment of Accounts Containing Federal Benefits. My service connected VA disability compensation benefits award is such a protected federal benefit. The preamble of the Final Rule directs me to cite, invoke, and assert the protections of 38 U.S.C. § 5301(a):

> ...federal payments subject to garnishment by child support enforcement agencies under 42 U.S.C. 659 are limited to payments based on remuneration for employment. This does not include VA payments other than those representing compensation for a service-connected disability paid to a former member of the Armed Forces who is in receipt of retired or retainer pay and who has waived a portion of the retired or retainer pay in order to receive such compensation...
>
> We note that an individual who receives VA payments can still challenge in court the garnishment of those payments for child support obligations and assert the protections of 38 U.S.C. § 5301(a) in the event a State child support enforcement agency serves a garnishment order on a financial institution.

As a warning to those officials who disregard this promulgated regulation, **18 U.S.C. § 1344** authorizes a fine of not more than $1,000,000 and/or imprisonment of not more than 30 years.

34. In addition to previously cited federal civil rights, both my spousal and child support calculations must not take into consideration any of my VA award as this would violate numerous potential **18 U.S. Code violations, including Sections 241, 246, 249(a), 371, 641, & 666** to list a few. There are indications from the attached January 29, 2015 joint Department of Justice and U.S. Department of Health and Human Services letter, Attachment A-5, that I could be similarly discriminated against contrary to my rights granted me in the **Americans with Disabilities Act of 1990** ("ADA"). With regards to Title II of the ADA, I caution the State of New Hampshire that I have a right to bring a suit pursuant to 42 U.S.C. § 12132, for any potential prejudicial discrimination and unequal opportunity resulting in exclusion and denial of programs and services from the public entity that is the New Hampshire Veterans Commission and the New Hampshire Title IV-D Agency. I potentially may bring suit against Defendants, the State of New Hampshire, the Title IV-D Agency and New Hampshire Veterans Commission pursuant to 42 U.S.C. § 12202 as

> A State shall not be immune under the eleventh amendment to the Constitution of the United States from an action in a Federal or State court of competent jurisdiction for a violation of this chapter. In any action against a State for a violation of the requirements of this chapter, remedies (including remedies both at

> law and in equity) are available for such a violation to the same extent as such remedies are available for such a violation in an action against any public or private entity other than a State.

And with regards to **Section 504 of the Rehabilitation Act of 1973** ("Section 504"), I could then bring a suit pursuant to **29 U.S.C. § 794** for exclusionary participation in, benefits denial and subjection to discrimination under the programs and activities receiving Federal financial assistance, incentives, grants, etc. conducted by the New Hampshire Title IV-D Agency. Pursuant to 794a(a)(2), "the remedies, procedures, and rights set forth in title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) (and in subsection (e)(3) of section 706 of such Act (42 U.S.C. 2000e–5), applied to claims of discrimination in compensation) shall be available to any person aggrieved by any act or failure to act by any recipient of Federal assistance or Federal provider of such assistance under section 794 of this title."

35. **15 U.S.C. § 1681** establishes accuracy and fairness of credit reporting known formally as the Fair Credit Reporting Act. Section 1681n is the Civil liability for willful noncompliance and Section 1681o is the Civil liability for negligent noncompliance of this Act. Section 1681p states "An action to enforce any liability created under this subchapter may be brought in any appropriate United States district court, without regard to the amount in controversy..."

36. National Security implications are well indicated in my current and previous child support orders and as discussed in ***McCarty v. McCarty,* 453 U.S. 210 (1981)**. The refusal of a New Hampshire court judge to accept constitutional clauses, current acts of congress and higher federal court rulings on the limitations of their jurisdiction in matters of National Security can be seen as a treasonous act under the color of law. For in doing so, such disregard of federal laws and regulations interferes with the current Congressional veterans' disability benefit scheme which serves as an important inducement for the nation's voluntary military service structure. The **principle of federal sovereign immunity** precludes the individual states from suing without its consent. In my instant case, the sovereign immunity of the U.S. has not been waived and is contemptuously being ignored by the State of New Hampshire.

37. **18 U.S.C. Section 2381** - Treason must be noted in examining the engrossed language found in RSA Title XLIII Chapter 458. It is totally devoid of substantive and procedural due process rights each New Hampshire disabled veteran must be granted in every judicial or administrative child support proceeding.

38. Pursuant to **5 C.F.R. § 581.401**, my true "aggregate disposable earnings" are not to include my VA benefits award, for demonstrated privity of contract, and therefore, lack of subject matter jurisdiction by the family court, in both establishment or assignment in any legal process.

39. Furthermore, pursuant to **45 CFR 302.56(g)**, I refuse to pay any spousal or child support from my VA benefits award until the Title IV-D Agency follows all the federal laws, regulations, and policy directives as contracted with the Federal Office of Child Support Enforcement and monitored by the Region I Boston, Massachusetts office. Manchester VARO will make an authorized ruling in accordance with the **Veterans' Judicial Review Act of 1988** and procedural requirements for simultaneously contested claims such as apportionment by the **Veterans Claims Assistance Act of 2000** codified in part at **38 U.S.C. §§ 5103, 5103A** and implemented in part at **38 C.F.R. § 19.100, 19.101, and 19.102** on any state alleged arrears based upon rendered temporary child support order following a proper apportionment application submission by the Title IV-D agency. The only jurisdiction for an appeal of the VA Apportionment ruling will be **Board of Veterans' Appeal** as stated in **VA Form 4107c. 28 U.S. Code § 1652 - State laws as rules of decision** "The laws of the several states, **except where the Constitution** or treaties **of the United States or Acts of Congress otherwise require or provide**, shall be regarded as rules of decision in civil actions in the courts of the United States, in cases where they apply." (emphasis added) The State of New Hampshire is excluded as an independent third party to a VA Apportionment claim review considered in privity of contract strictly between authorized claimants as provided in Article Six and the Fourteenth Amendment of the U.S. Constitution as well as requirement by numerous post-1987 Acts of Congress. If I am denied my lawful asserted demands, both the Secretary of Health & Human Services and the Director of the Boston Region I OCSE will receive a copy of this notarized affidavit along with a notification of the New Hampshire Title IV-D Agency's refusal to follow proper legal procedures regarding this disabled veteran's federal civil rights.

40. From ***Veterans for Common Sense v. Shinseki, 678 F.3d 1013, 1016 (9th Cir. 2012)***, "'We conclude that we lack jurisdiction to afford such relief because Congress, in its discretion, has elected to place judicial review of claims relate to the provision of veterans' benefits beyond our reach and within the exclusive purview of the United States Court of Appeals for Veterans Claims and the Court of Appeals for the Federal Circuit... Without jurisdiction the court cannot proceed at all in any cause. Jurisdiction is power to declare the law, and when it ceases to exist, the

only function remaining to the court is that of announcing the fact and dismissing the cause.' Ex parte McCardle, 74 U.S. (7 Wall.) 506, 514, 19 L.Ed. 264 (1868) ... we conclude that granting VCS its requested relief would transform the adjudication of veterans' benefits into a contentious, adversarial system--a system that Congress has actively legislated to preclude. See Walters v. Nat'/ Assn. of Radiation Survivors, 473 U.S. 305, 323-24, 105 S.Ct. 3180, 87 L.Ed.2d 220 (1985). The Due Process Clause does not demand such a system."

41. ***Anestis v. United States, No. 13-6062, 8 (6th Cir. 2014)***, "In 2012, the Ninth Circuit synthesized the case law and concluded that '[38 U.S.C.] § 511precludes jurisdiction over a claim if it requires the district court to review "VA decisions that relate to benefits decisions," including "any decision made by the Secretary in the course of making benefits determinations."'"

42. "Whatever springes the state may set for those who are endeavoring to assert rights that the state confers, the assertion of federal rights, when plainly and reasonably made, is not to be defeated under the name of local practice. Even if the order went only to the venue, and not to the jurisdiction, of the court, each Director General in turn plainly indicated that he meant to adopt the position of his predecessor, and to insist that the suit was brought in the wrong county. His lawful insistence cannot be evaded by attempting a distinction between his appearance and his substantially contemporaneous adoption of the plea. Indeed, when the law requires him to unite his defense on the merits, which imports an appearance *pro hac vice,* with his preliminary plea, it is hard to understand how any effect could be attributed to the statement that he appeared. The state courts may deal with that as they think proper in local matters, but they cannot treat it as defeating a plain assertion of federal right. The principle is general and necessary. *Ward v. Love County,* 253 U. S. 17, 253 U. S. 22. If the Constitution and laws of the United States are to be enforced, this Court cannot accept as final the decision of the state tribunal as to what are the facts alleged to give rise to the right or to bar the assertion of it, even upon local grounds. *Creswill v. Grand Lodge Knights of Pythias,* 225 U. S. 246. This is familiar as to the substantive law, and, for the same reasons, it is necessary to see that local practice shall not be allowed to put unreasonable obstacles in the way. *See American Ry. Express Co. v. Levee, ante,* 263 U. S. 19." *Davis v. Wechsler,* 263 U.S. at 24-25 (1923).

43. ***Rankin v. Howard, No. 78-3216. 633 F.2d 844 (9th Cir.1980)*** "...when a judge knows that he lacks jurisdiction, or acts in the face of clearly valid statutes or case law expressly depriving him of jurisdiction, judicial immunity is lost. See Bradley v. Fisher, 80 U.S. (13 Wall.) at

351 ('when the want of jurisdiction is known to the judge, no excuse is permissible'); Turner v. Raynes, 611 F.2d 92, 95 (5th Cir.1980) (Stump is consistent with the view that 'a clearly inordinate exercise of unconferred jurisdiction by a judge-one so crass as to establish that he embarked on it either knowingly or recklessly-subjects him to personal liability')."

44. Because the State of New Hampshire substantive due process has totally disregarded my federal procedural due process rights denying me Equal Protection Under the Law as asserted in this affidavit, I now demand that my current 'unjust' temporary order utilizing my Title 38 benefits award in support establishment be rendered **void ab initio**. Otherwise such an order will be rendered **void ab initio** pursuant to **38 U.S.C. § 5301(a) (3)(C)** 'Any agreement or arrangement for collateral for security for an agreement that is prohibited under subparagraph **(A)** is also prohibited and is void from its inception'. Thus, it is now incumbent upon the state family law system to honor the long-standing principle, "the court may not do indirectly what it cannot do directly", when it comes to aggregating any of my disability benefits. *See* also **38 USC §§ 5905 & 6102 The False Claims Act** ("FCA"), **31 U.S.C. §§ 3729 – 3733**, sets forth liability for any person who knowingly submits a false claim to the government or causes another to submit a false claim to the government or knowingly makes a false record or statement. A claim is defined as a demand for money or property made directly to the grantee or other recipient where the Federal Government provides any of the money demanded. Only the custodial parent and I may file a claim for dependent apportionment. In accordance with **28 USC § 1738B**, the Full Faith and Credit Clause only limits my filing a federal lawsuit against the State of New Hampshire if the child support order is ***made consistently*** whenever the court that makes the order has SUBJECT MATTER JURISDICTION and grants me full due process. State Immunity will also be stripped as Congress allows in **42 U.S.C. § 12202** in accordance with discrimination practices of a public entity receiving substantial federal grant money and as allowed under Section 504 of the Rehabilitation Act of 1973 and Title II of the ADA. "Rooker-Feldman...does not bar actions by nonparties [i.e. the VA] to the earlier state-court judgment simply because, for purposes of preclusion law, they could be considered in privity with a party to the judgment." ***Lance v. Dennis*, 126 S. Ct. 1198, 1203 (2006)**. "The doctrine, however, does not preclude federal jurisdiction over an 'independent claim,' even 'one that denies a legal conclusion that a state court has reached.'" ***Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 293 (2005)**. Until the State of New Hampshire considers a 'just' and 'appropriate' child support order calculation with my VA award, I will be

blatantly denied both unfettered full access to my personal compensation and my protected federal civil rights from a contentious, adversarial system that U.S. Congress has actively legislated to preclude from such contempt."

Sean Braunstein

State of New Hampshire
County of Hillsborough

SWORN to and SUBSCRIBED before me, the undersigned authority, on

the 17th day of October, 2019 year,

by Sean J. Braunstein
[PRINT the first and last names of the person who is signing this affidavit.]

Michele L. LaGrandier
Notary Public, State of New Hampshire

MICHELE L. LaGRANDIER, Notary Public
My Commission Expires January 23, 2024

[Notary's seal must be included]

CERTIFICATE OF SERVICE

I hereby certify that a copy of this affadavit has been sent via first-class mail this 17th day of Oct, 2019 to attorney for Jericka Braunstein and court appointed Guardian at Litem.

Anthony Santoro, Esq., Granite State Legal Resources 64 North State Street, Suite 5 Concord, NH 03301	Attorney Deborah Mulcrone Mulcrone Law PLLC 37 Salmon Street Manchester, NH 03104

Sean Braunstein

THE STATE OF NEW HAMPSHIRE

6th Circuit – Family Division- Hooksett

In the Matter of Sean Braunstein and Jericka Braunstein

Docket No. 647-2017-DM-00081

INTERLOCUTORY PETITION FOR CHALLENGE TO CONSTITUTIONALITY OF A STATE STATUTE

1. Petitioner and Affiant, SEAN BRAUNSTEIN, a 100% Permanent and Total Disabled veteran, now challenges the constitutionality of the NH RSA TITLE XLIII: DOMESTIC RELATIONS CHAPTER 458-C CHILD SUPPORT GUIDELINES as it inappropriately mandates assignment of his awarded Department of Veterans Affairs ("VA") disability compensation benefits in all child support establishment and enforcement proceedings. Petitioner does so in conjunction with his ongoing legal action entitled *MOTION TO MODIFY* and for demonstrable injury under the NH RSA TITLE LI COURTS, CHAPTER 491 SUPERIOR COURT. Section 491:22 Declaratory Judgments.

2. Congress often passes federal laws and standards in a regulated area but leaves to the states the implementation of much of the federal program. Privity of Contract with the VA is protected and backed under the preemptive authority of the Contract Clause found in Article 1, Section 10 of the Constitution which provides that "No State shall . . . pass any . . . law impairing the Obligation of Contracts." This guarantee is also secured in the New Hampshire Constitution, Bill of Rights, Part 1. Art. 23. "Retrospective laws are highly injurious, oppressive, and unjust. No such laws, therefore, should be made, either for the decision of civil causes, or the punishment of offenses." VA Awards and Apportionment rulings or judgments are considered in privity of contract only between family claimants under 38 U.S.C. §§ 5307 & 511 when the disabled veteran does not waive a portion of military retired pay. The State of New Hampshire is a third party when it comes to the provisioning of VA disability compensation benefits award to dependents. Preemption issues often arise when the state attempts to interpret federal law. Preemption may be overlooked during the state legislative

law-making and amendment process when actors and principles presumptively hold to a past U.S. Supreme Court decision without exercising reasonable diligence of enacted post-corrective congressional legislative preclusions of the noted high court deficiencies and holding. As the Supreme Court stated in *Altria Group v. Good*, 555 U.S. 70 (2008), a federal law that conflicts with state law will trump, or "preempt," that state law:

> Consistent with that command, we have long recognized that state laws that conflict with federal law are "without effect." *Maryland v. Louisiana*, 451 U. S. 725, 746 (1981)

Broad federal preemption of Texas legislation as a result of comprehensive federal law-making has been upheld in the Supreme Court when such has been deemed to "pose an obstacle to the purpose and objectives of Congress."[1] State schemes have been known to conflict with Acts of Congress passed to restrict and preclude the State's authority that was not consistent with the federal scheme.[2] Such was the case about VA awards in the very recent U.S. Supreme Court family law case; "State courts cannot 'vest' that which (under governing federal law) they lack the authority to give. . . . 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."[3]

3. The Supremacy Clause of the U.S. Constitution "shall be the supreme Law of the Land," that "the Judges in every State shall be bound thereby." and orders that a congressional enactment preempts all inconsistent state legislation if conflicts exist between state and federal law.[4] Under the Supremacy Clause, any state law that conflicts with federal law is preempted. *Gibbons v. Ogden*, 22 U.S. 1 (1824). Conflict arises when it is impossible to comply with both the state and federal regulations, or when the state law interposes [*(to) put up (between)*] an obstacle to the achievement and discernible objectives of Congress. *Gade v. National Solid Wastes Mgmt. Ass'n*, 505 U.S. 88, 98 (1992). A conflict exists if a party cannot comply with both state law and federal law (for example, if federal law forbids something that state law requires). *Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 142-43 (1963). Federal law will only preempt state law in the area of domestic relations "where enforcement of

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[1] *Aetna Health Inc. v. Davila*, 542 U.S. 200, 124 S.Ct. 2500 (2004).
[2] *AT&T Corp. v. Public Utility Commission*, 373 F.3d 647 (5th Cir. 2004).
[3] *Howell v. Howell*, 137 S. Ct. 1400 (2017).
[4] U.S. CONST. art. VI, cl. 2.

state law will cause major damage to clear and substantial federal interests."[5] The State has also been prohibited from using definitions that are not consistent with those codified in Federal Acts because where "the intent of Congress is clear, that is the end of the matter."[6] The State cannot impose additional burdens and restrictions on a federal program when those burdens unduly frustrate the national goals.[7]

4. Affiant and Petitioner now seeks an affirmative Declaratory Judgment in accordance with the NH RSA TITLE LI COURTS, CHAPTER 491 SUPERIOR COURT. Section 491:22 Declaratory Judgements, that addresses his allegations principally pleaded within his asserted *prima facie* pleadings with listed specific "major damage" to "clear and substantial" federal interests averred in his notarized *Due Process Affidavit,* pursuant to RULES OF THE CIRCUIT COURT OF THE STATE OF NEW HAMPSHIRE – FAMILY DIVISION. SECTION 1.28.[8] This Court's general jurisdictional authority under the New Hampshire Constitution, Bill of Rights, Part 1. Art. 35. as well as Petitioner Sean Braunstein's naming of the proper state official as required in NH RSA 490-D JUDICIAL BRANCH FAMILY DIVISION Section 490-D:2 is appropriately invoked by the filing of this Supplemental *Interlocutory Petition.*[9]

5. Specifically, in this "as-applied" challenge,[10] NH RSA TITLE XLIII DOMESTIC RELATIONS. CHAPTER 458-C. SECTION 458-C:2 Definitions. Gross Income(IV) includes:

> means all income from any source, whether earned or unearned...including, but not limited to,.. . ***workers'compensation, veterans' benefits, unemployment benefits, and disability benefits***, ..., (emphasis added)

has been and continues to be an unconstitutional state statute because of the paltry substantive due process guidelines currently engrossed effectively denies the disabled veteran Petitioner, appearing in any judicial or administrative child support establishment or enforcement proceeding, his federal civil due process rights, protection of U.S. Congressional Acts and

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[5] Richard P. Shafer, *Federal Pre-emption of State Authority Over Domestic Relations-Federal Cases,*70 L. Ed. 2d 897 (1983).
[6] *Comacho v. Texas Workforce Commission*, 408 F.3d 237 (5th Cir. 2005).
[7] *Planned Parenthood of Houston and Southeast Texas v. Sanchez*, 403 F.3d 324 (5th Cir. 2005).
[8] *Hisquierdo v. Hisquierdo,* 439 U.S. at 581 (1979).
[9] *Gregory K. Parsons v. Texas Office of Attorney General, et al.* 4:18-CV-65, at *7 (E.D. Tex. Dec. 21, 2018)
[10] In an as-applied constitutional challenge, the court "must evaluate the statute as it operates in practice against the particular plaintiff." *Texas Mun. League Intergovernmental Risk Pool v. Texas Workers' Comp. Comm'n*, 74 S.W.3d 377 (Tex. 2002).

consequently, the provisions of the Supremacy, Equal Protection, Spending and Military Powers Clauses.[11] The U.S. Supreme Court recently held in a 2013 decision that a Virginia statute was pre-empted by the Federal Employees' Group Life Insurance Act of 1954.[12] The Supremacy Clause has been interpreted to require state laws to yield to federal law when they "interfere with, or are contrary to the laws of Congress."[13] While "express" and "field" federal preemptions must be considered, "conflict" preemption is alleged to predominantly exist in this instant case before the court since the state law "'stands as an obstacle to the accomplishment and execution of the full purposes and objective of Congress.'"[14] This categorization is helpful in the analysis of the noted preemption issues, but it should be noted that it is not "rigidly distinct" and the statute may fall into more than one category.[15]

6. Bill of Rights, Part I, Art. 15 of the New Hampshire Constitution also provides, "that no person shall be deprived of his life, liberty or property except in accordance with the "law of the land." The New Hampshire Constitution's "Law of the Land" provision parallels the due process clause of the Fourteenth Amendment to the U.S. Constitution, which provides that, "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."[16] Like the federal due process clause, the New Hampshire due course of law provision contains both a procedural component and a substantive component.[17] NH RSA TITLE XLIII DOMESTIC RELATIONS CHAPTER 458-C, Section 458:C:2(IV) assures third-party interference between the privity of contract of the two claimants, specifically the VA Apportionment claim scheme, because it clearly directs the court and administrators to inappropriately, and without subject matter jurisdiction, provision a disabled veteran's compensation in a proceeding where no authority exists to do so when the veteran does not waive a portion of military retired pay in order to receive their VA award. This transgression of the federal benefit scheme by the third party without privity of contract, namely the State of

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[11] Exhibit A attached in accordance with Rule 59 of T.R.C.P., LT(j.g.) Gregory Parsons U.S. Navy, PDRL, Letter to the Chair of the Texas House Committee on Defense and Veterans' Affairs, February 9, 2017, 27-37.
[12] *Hillman v. Maretta*, 569 U.S. (2013).
[13] *Gibbons v. Ogden*, 22 U.S. (9 Wheat.) 1, 211 (1824).
[14] *Crosby v. Nat'l Foreign Trade Council*, 530 U.S. at 372-73, 120 S.Ct. at 2294 (2000).
[15] *English v. General Elec. Co.*, 496 U.S. at 79 n.5, 110 S.Ct. at 2275 n.5 (1990).
[16] U.S. CONST. amend. XIV, § 1.
[17] *Barshop v. Medina County Underground Water Conservation Dist.*, 925 S.W.2d 618 (Tex. 1996).

New Hampshire in this instance, has then created a cause of action for recovery by the harmed Petitioner. The Veterans' Judicial Review Act of 1988, as well as other listed Congressional Acts averred in the Petitioner's *Due Process Affidavit*, established a transparent and procedural claim process by the Secretary of the VA for timely submission of an independent, privity of contract VA Apportionment claim that has been appropriately submitted regarding Petitioner Sean Braunstein's benefits award. Both the past and current NH RSA TITLE XLIII DOMESTIC RELATIONS engrossed language has not and does not proffer any substantive due process for the Petitioner that should assure a just outcome. From the New Hampshire Constitution, Bill of Rights, Part 1. Art. 23. "Retrospective laws are highly injurious, oppressive, and unjust. No such laws, therefore, should be made."

7. **28 U.S. Code § 1652 - State laws as rules of decision** "The laws of the several states, **except where the Constitution** or treaties **of the United States or Acts of Congress otherwise require or provide**, shall be regarded as rules of decision in civil actions in the courts of the United States, in cases where they apply." (emphasis added) The State of New Hampshire is excluded as an independent third party to a VA Apportionment ruling considered in privity of contract strictly between authorized claimants as provided in Article Six and the Fourteenth Amendment of the U.S. Constitution as well as a requirement by various post-1987 Acts of Congress.

Parties Affected

8. The New Hampshire Attorney General, Respondent and a Necessary Party to this cause will be appropriately served a true and correct copy of this *Petition* with supporting *Due Process Affidavit* accordance with RULES OF THE SUPERIOR COURT OF THE STATE OF NEW HAMPSHIRE. – FAMILY DIVISION, SECTION 1 – GENERAL PROVISIONS(1.31)(A)"When a question of law is to be transferred after a decision on the merits, all appeals shall be deemed waived and final judgment shall be entered on the thirty-first (31st) day from the date on the Clerk's written notice that the Court has made the decision on the merits, unless the party aggrieved enters a notice of appeal in the Supreme Court within thirty days from the date on the Clerk's written notice of the Court's decision that aggrieves the party, pursuant to Supreme Court Rule 7. . ." RULES OF THE SUPERIOR COURT OF THE

STATE OF NEW HAMPSHIRE. – FAMILY DIVISION, SECTION 1 – GENERAL PROVISIONS 1.31(B) "Whenever any question of law is to be transferred by interlocutory appeal from a ruling or by interlocutory transfer without ruling, counsel shall prepare and file with the Clerk of the family division the interlocutory appeal statement or interlocutory transfer statement pursuant to Supreme Court Rule 8 and Supreme Court Rule 9, and after the Court has signed the statement, counsel shall mail the number of copies provided for by the rules of the Supreme Court to its Clerk." *In re State*, No. 04-14-00282-CV, 2014 WL 2443910, at *2 (Tex.App.-San Antonio, May 28, 2014, orig. proceeding) (mem.op.). Custodian, mother of the child, Respondent and VA Claimant with privity of contract, JERICKA BRAUNSTEIN (MS. BRAUNSTEIN), will be appropriately served a true and correct copy of this *instrument* under RULES OF THE SUPERIOR COURT OF THE STATE OF NEW HAMPSHIRE. CIVIL RULES. I. GENERAL PRINCIPLES. Rule 3 Filing and Service.

Additional Supporting High Court Cites Regarding Standing, Justifiability, and Ripeness

9. *Texas Workers' Comp. Comm'n v. Garcia*, 893 S.W.2d 504, 517-18 (1995) (citing *Texas Ass'n of Business v. Texas Air Control Bd.*, 852 S.W.2d at 445 (Tex. 1993)). (emphasis in original):

> Thus, to challenge a statute, a plaintiff must first suffer some actual or threatened restriction under that statute. Second, the plaintiff must contend that the statute unconstitutionally restricts the *plaintiff's* rights, not somebody else's.

10. *City of Houston v. Blackbird*, 394 S.W.2d 159, 162 (Tex. 1965). "The right to judicial review of acts of legislative and administrative bodies affecting constitutional or property rights is axiomatic."

11. *Texas Health Care Info. Council v. Seton Health Plan, Inc.*, 94 S.W.3d 841, 849 (Tex. App.–Austin 2002, pet. denied). If an action has previously been taken or threatened, unless the agency officials make a "binding admission or [take] extrajudicial action that would prevent a recurrence of the challenged action," a declaratory judgment action remains justiciable.

12. *Atmos Energy Corp. v. Abbott*, 127 S.W.3d 852, 857 (Tex. App.–Austin 2004, no pet.). Statutory challenges, however, must still meet traditional standards of ripeness. "A court cannot pass on the constitutionality of a statute unless the facts have matured, forming the concrete

basis against which the statute may be applied." The court evaluated the ripeness issue by two considerations: "(1) the fitness of the issues for judicial decision; and (2) the hardship occasioned to a party by the court's denying judicial review." *Id.* At 858. In this instant case before the Court, OAG - CSD has enforced and is detrimentally enforcing the statute against Sean Braunstein.

13. *Juliff Gardens, L.L.C. v. Texas Commission on Environmental Quality*, 131 S.W.3d 271 (Tex. App.–Austin 2004, no pet.). Applying the same two considerations as were employed in *Atmos*, the court reasoned that a determination that the statute was constitutional "is unquestionably an issue fit for judicial review" because the agency had no authority to determine the constitutionality of the statute. *Id.* At 278. The court further found that refusing to decide the issue imposed a hardship on the plaintiff because it would be forced to expend resources defending its permit application against a statute that might ultimately be held unconstitutional. *Id.* The court reasoned that the Commission had no statutory authority to determine the constitutionality of the statute, and the declaratory relief requested regarding the validity of the statute "does not infringe on the Commission's permitting power." *Id.* At 279.

14. Direct suit against the agency is generally permitted. *See, e.g., EnRe Corp. v. Railroad Comm'n*, 852 S.W.2d 661, 663 (Tex. App.–Austin 1993, no writ). The right to directly challenge a state agency that is enforcing an unconstitutional statute exists because the agency action "adversely affects a vested property right or otherwise violates a constitutional right." *Texas Dep't of Protective and Regulatory Servs. v. Mega Child Care, Inc.*, 145 S.W.3d 170, 172 (Tex. 2004), citing *Continental Cas. Ins. Co. v. Functional Restoration Assocs.*, 19 S.W.3d 393, 397 (Tex. 2000). *See* TEX. CIV. PRAC. & REM. CODE § 37.006.

15. *Thomas v. Piorkowski*, Court of Appeals of Texas, Corpus-Edinburg, No. 13-07-00372-CV, (June 11, 2009). ". . . Thomas is complaining of the trial court's actions in determining that his pay is disposable retired pay." "Thomas asserts that the money awarded to Piorkowski was not disposable retired pay but was disability pay and was awarded in direct violation of section 1408(a)(4)(C) of the USFSPA. See 10 U.S.C.A. § 1408(a)(4)(C) (1998) (***providing for payment of retired pay in compliance with court orders***). We agree." (emphasis added) "Therefore, we conclude that the trial court erred in determining that Thomas's pay was

disposable retired pay, in awarding a portion thereof to Piorkowski in the amount of $510.86 per month, in adjudging Thomas in contempt, and in finding that Piorkowski was entitled to $4,597.74, the amount of unpaid payments. See Downer, 701 S.W.2d at 242. The trial court abused its discretion when it entered a clarifying order reflecting this relief. See Worford, 801 S.W.2d at 109. Accordingly, we sustain Thomas's first issue."

16. *Mallard v. Burkart,* Supreme Court of Mississippi, No. 2010-CA-02069-SCT, (August 30, 2012). "¶ 21. Whatever the equities may be, state law is preempted by federal law, and thus, state courts are precluded from ordering distribution of military disability benefits contrary to federal law."

17. *Ryan v. Ryan*, Nebraska Supreme Court, S-98-280, 1999. "Federal law precludes a state court from exercising subject matter over VA disability benefits.";

18. *Clark v. Clark*, State of Michigan Court of Appeals, Monroe Circuit, No. 312434, (March 4, 2014). "At the time of the divorce proceedings, they had one remaining minor child." "Consequently, [V.A.] disability benefits are not 'disposable retired pay.'" ". . . [T]he trial court must consider defendant's disability pay to be. . . asset belonging solely to defendant." ". . . [T]he trial court must craft a new . . . structure of support payments. . .." "The trial court's . . . support awards are vacated, and the matter is remanded for the trial court to craft new such awards not inconsistent with this opinion."

19. *Halstead v. Halstead*, 164 N.C.App. 543, 550, 596 S.E.2d 353, 357–58 (N.C.Ct.App.2004). The North Carolina Court of Appeals held that a trial court "could not substitute its own definition of military retired pay in lieu of the definition of disposable retirement pay as defined by the Congress[,]" because it was precluded from doing so by the United States Code and by federal precedent.

20. *Bacon v. Smith,* State of Illinois, 12th Circuit, St Clair "child support to be paid is reduced to zero effective 6-1-16.... Petitioners only income is V.A. disability benefits."

PRAYER

Petitioner Sean Braunstein prays that the Court grant all relief requested herein, including an affirmative Declaratory Judgment. Sean Braunstein also prays for general assistance and that supplemental relief in the form of Writ of Mandamus will also be issued for the State of New Hampshire to immediately begin honoring a favorable Declaratory Judgment in all State of New Hampshire judicial hearings, administrative proceedings and Title IV-D Agency conducted Child Support Review Process meetings. Finally, it is also prayed that a granted Writ of Mandamus shall order the first available legislature to engross proper NH RSA TITLE XLIII DOMESTIC RELATIONS language that is consistent with an awarded supportive Declaratory Judgment and asserts all noted federal civil rights of New Hampshire disabled veterans in all future family law proceedings.

Respectfully submitted,

Sean Braunstein, Pro Se

Sean Braunstein
56 Post Road
Hooksett, NH 03106
Telephone: (603) 396-8293
Petitioner

App. Vol. III - Tab K

Braunstein v. Braunstein

New Hampshire Supreme Court Docket

Case Number: 2019-0065

Filed: 01/30/2019

Status: Closed

Case Title: **In the Matter of Sean Braunstein and Jericka Braunstein**

Class: Appeal by Right

Rule Type: Rule 7 Mandatory

Type: Family

Subtype: Divorce Decree

Panel: Full

Track: Submitted

Submitted on Briefs: 01/14/2020

Lower Court/Agency Information

Lower Court/Agency:	6th N.H. Circuit Court - Hooksett Family Division
Case Number:	647-2017-DM-00081
Decision-Maker:	Judge Lucinda V. Sadler
Decision-Maker:	Judge Suzanne M. Gorman

Disqualifications and Special Assignments

Disqualified Justices: None

Special Assignments: None

Parties and Counsel

Appellant

Party Name:	Sean Braunstein
Attorney(s):	
Former Counsel:	Robert D. Hunt, Esq. Caroline R. Lefebure, Esq.

Appellee

Party Name:	Jericka Braunstein
Attorney(s):	Anthony Santoro, II, Esq.
Former Counsel:	

Other

Party Name: Deborah Mulcrone, Esq.
Attorney(s): Deborah Mulcrone, Esq.
Former Counsel:

Docket Entries

Filing Date	Document Description
01/30/2019	Notice of appeal filed (Sean Braunstein)
01/30/2019	Motion to waive filing fee (Sean Braunstein)
01/30/2019	Affidavit of assets and liabilities (Sean Braunstein)
02/08/2019	E-file docketing notice
02/08/2019	Notice of Confidentiality
03/21/2019	Motion to waive filing fee denied; Pay filing fee of $250
03/22/2019	Attorney Deborah Mulcrone to register with e-filing system
04/02/2019	Appearance as case participant (Deborah Mulcrone)
04/05/2019	Filing fee paid; Petitioner's filing fee paid with check #1186 in the amount of $250.00 (Sean Braunstein)
04/10/2019	Acceptance Order; Notice of mediation eligibility
05/06/2019	Transcript preparation
05/06/2019	Transcript order transmittal form
06/24/2019	Transcripts filed (4 vols.); 11/14/2017, 8/6/2018, 8/8/2018, 10/29/2018; over 100 pages; complete
06/27/2019	Briefing schedule; 8/12/19 & 9/26/19
08/07/2019	Petitioner's notice of assented to automatic extension (Sean Braunstein)
08/07/2019	Petitioner's brief due 8/27/19; Opposing briefs due 10/11/19
08/28/2019	Motion for acceptance for late entry (Sean Braunstein)
08/28/2019	Brief and appendices (2-vols.) filed for the petitioner (Sean Braunstein). Oral argument is requested
08/29/2019	Errata; table of contents missing from petitioner's brief (Sean Braunstein) SCANNED WITH APPENDIX
08/29/2019	Compliance with Rule 16(3)(i) (Sean Braunstein)
09/18/2019	Petitioner's motion for late entry of brief granted; Opposing briefs due 10/15/19
10/15/2019	Respondent's Brief filed (Anthony Santoro) Requests argument if necessary-No time given
11/25/2019	Case to be submitted at January 14, 2020 oral argument session.
01/14/2020	Submitted On Briefs
02/13/2020	Affirmed (Hicks, J)
02/21/2020	Petitioner's motion for extension of time to file reconsideration (Sean Braunstein)
03/06/2020	Motion for extension of time to file motion for reconsideration granted
03/06/2020	Motion to grant temporary stay/hold (Sean Braunstein)
03/10/2020	Petitioner's motion for reconsideration with appendix filed (San Braunstein)
03/12/2020	Petitioner's motion to grant temporary stay/hold denied
03/23/2020	Motion to reconsider order on denial temporary stay/hold (Sean Braustein)
03/31/2020	Motion for reconsideration denied
03/31/2020	Mandate Issued
04/02/2020	4 Transcripts to Law Library
04/03/2020	Pleading filed after mandate issued; motion for further orders (Sean Braunstein)

04/22/2020	Pleading filed after mandate issued; correspondence re motion submitted on March 31, 2020 (Sean Braunstein)