

# APPENDIX A

12/08/2020 "See News Release 047 for any Concurrences and/or Dissents."

**The Supreme Court of the State of Louisiana**

**YVONNE RENEA BOUTTE**

No.2020-C-00985

**VS.**

**KEVIN LEE BOUTTE**

IN RE: Kevin Lee Boutte - Applicant Defendant; Applying For Writ Of Certiorari,  
Parish of Beauregard, 36th Judicial District Court Number(s) 20101241-B, Court of  
Appeal, Third Circuit, Number(s) 19-734;

**December 08, 2020**

Writ application denied.

BJJ

JLW

JDH

JTG

Crichton, J., would grant and docket and assigns reasons.

Crain, J., would grant.

McCallum, J., would grant.



**1a**

12/08/2020 "See News Release 047 for any Concurrences and/or Dissents."

**SUPREME COURT OF LOUISIANA**

**No. 2020-C-00985**

**YVONNE RENEA BOUTTE**

**VS.**

**KEVIN LEE BOUTTE**

**On Writ of Certiorari to the Court of Appeal,  
Third Circuit, Parish of Beauregard**

**CRICHTON, J., would grant and docket and assigns reasons:**

I would grant and docket this writ application to examine whether an application of *John Howell v. Sandra Howell*, \_\_\_ U.S. \_\_\_, 137 S.Ct. 1400, 197 L.Ed.2d 781 (2017) is necessary under the facts of this matter. Specifically, this Court has not yet considered whether federal law preempts state law concerning the disposition of military disability benefits, and further, upon application of *Howell*, whether a previously executed consent judgment concerning division of benefits between ex-spouses is subject to a *res judicata* exception under La. R.S. 13:4231. Consequently, I find this application presents significant unresolved issues of law and I would therefore grant and docket it for this Court's thorough consideration.

02/09/2021 "See News Release 006 for any Concurrences and/or Dissents."

**YVONNE RENEA BOUTTE**

No.2020-C-00985

**VS.**

**KEVIN LEE BOUTTE**

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IN RE: Kevin Lee Boutte - Applicant Defendant; Applying for Rehearing/Reconsideration, Parish of Beauregard, 36th Judicial District Court Number(s) 20101241-B, Court of Appeal, Third Circuit, Number(s) 19-734;  
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**February 09, 2021**

Application for reconsideration not considered. See Louisiana Supreme Court Rule IX, § 6.

JLW

JDH

JTG

WJC

JBM

PDG

Crichton, J., would grant and assigns reasons.

Supreme Court of Louisiana  
February 09, 2021



**3a**

02/09/2021 "See News Release 006 for any Concurrences and/or Dissents."

**SUPREME COURT OF LOUISIANA**

**No. 2020-C-00985**

**YVONNE RENEA BOUTTE**

**VS.**

**KEVIN LEE BOUTTE**

On Writ of Certiorari to the Court of Appeal, Third Circuit, Parish of Beauregard

**CRICHTON, J., would grant rehearing and assigns reasons:**

As I have stated before, while Supreme Court Rule IX, § 6 prohibits reconsideration of a prior writ denial, an exception to this rule must exist in order to further the interest of justice in certain extraordinary circumstances where good cause is shown. *See State v. Hauser*, 20-429 (La. 10/6/20), 302 So.3d 514 (mem) (Crichton, J., would grant reconsideration and assigning reasons), citing *Harris v. Am. Home Assurance Co.*, 2018-589 (La. 8/31/18), 251 So. 3d 397, 398 (Crichton, J., would grant reconsideration); *Marable v. Empire Truck Sales of La., LLC*, 2017-1469 (La. 11/17/17), 230 So.3d 212 (Crichton, J., would grant reconsideration); and *State v. Franklin*, 2019-1454 (La. 1/14/20), 286 So. 3d 1039 (mem) (Crichton, J., additionally concurring with grant of reconsideration). Because I find good cause shown in this case, specifically, the issue of whether an application of the recent decision in *John Howell v. Sandra Howell*, \_\_\_ U.S. \_\_\_, 137 S.Ct. 1400, 197 L.Ed.2d 781 (2017) (the Court holding the Uniformed Services Former Spouses' Protection Act preempted States from treating as divisible community property the military retirement pay that a veteran has waived in order to receive nontaxable service-related disability benefits) is necessary under the facts presented, I would grant rehearing and docket the case for oral argument.

# APPENDIX B

STATE OF LOUISIANA  
COURT OF APPEAL, THIRD CIRCUIT

19-734

**YVONNE RENEA BOUTTE**

**VERSUS**

**KEVIN LEE BOUTTE**

\*\*\*\*\*

APPEAL FROM THE  
THIRTY-SIXTH JUDICIAL DISTRICT COURT  
PARISH OF BEAUREGARD, NO. C-2010-1241-B  
HONORABLE C. KERRY ANDERSON, DISTRICT JUDGE

\*\*\*\*\*

**D. KENT SAVOIE**  
**JUDGE**

\*\*\*\*\*

Court composed of John E. Conery, D. Kent Savoie, and Jonathan W. Perry,  
Judges.

**AFFIRMED.**

**SAVOIE, Judge.**

Appellant Kevin Lee Boutte appeals the judgment of the trial court, granting Appellee Yvonne Renea Boutte's Exception of Res Judicata and dismissing his petition. For the following reasons, we affirm.

**FACTS AND PROCEDURAL HISTORY**

Kevin Boutte and Yvonne Boutte were married on July 13, 1991. Kevin served in the United States Army for over twenty years until November 1, 2009, when he retired with an Honorable Discharge. Yvonne filed for divorce in December 2010. On January 19, 2012, the parties agreed to a consent judgment, dividing Kevin's military retirement using language in compliance with the Uniformed Former Spouses Act.<sup>1</sup>

On November 1, 2013, the United States Army awarded Kevin Combat Related Special Compensation Disability (CRSCD) due to his Post-Traumatic Stress Disorder (PTSD), Mood Disorder, Cognitive Disorder and Tinnitus. This benefit was paid to Kevin instead of his retirement benefits. Yvonne received a letter from the Department of Finance and Accounting Service (DFAS), the payor of Kevin's retirement benefits, on February 19, 2014, informing her that her portion of Kevin's retirement payments were terminated because Kevin was no longer receiving retirement benefits.

Yvonne filed a Rule for Contempt and/or Rule for Allocation of Assets Pursuant to [La.]R.S. 9:2801.1. On the morning of the May 22, 2014 hearing, Kevin filed an Exception of No Cause of Action and No Right of Action asserting that the disability payments were his separate property and were not divisible. On that date, Kevin withdrew his exceptions, and the parties agreed to a stipulated

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<sup>1</sup> 10 U.S.C. §1408

Consent Judgment, which was signed on June 6, 2014. The 2014 consent judgment provides the following:

IT IS ORDERED, ADJUDGED, DECREED AND STIPULATED that the defendant, Kevin Lee Boutte is in contempt of court.

IT IS ORDERED, ADJUDGED, DECREED AND STIPULATED that the parties agree that the defendant, Kevin Lee Boutte, shall resume payment to the plaintiff, Yvonne Renea Boutte of her forty-three percent (43%) interest in the defendant's military retirement pay and/or benefit including cost of living expenses as ordered by the Consent Judgment and Voluntary Partition Agreement dated January 19, 2012.

Kevin continued to pay Yvonne forty-three percent (43%) of his CRSCD benefits for several years. In 2018, Kevin filed a Petition for Declaratory Judgment, Alternative Petition to Annul Judgment, Alternative Petition to Modify MDRO. In response, Yvonne filed an Exception of Res Judicata, No Cause of Action and No Right of Action and in the Alternative Petition for Specific Performance and Injunctive Relief. The trial court ruled in favor of Yvonne, granting the Exception of Res Judicata and dismissing Kevin's petition. Kevin now appeals.

## LAW AND ANALYSIS

### *I. Standard of Review*

"The standard of review of a peremptory exception of *res judicata* requires an appellate court to determine if the trial court's decision is legally correct." *Fletchinger v. Fletchinger*, 10-0474, p. 4 (La.App. 4 Cir. 1/19/11), 56 So.3d 403, 405. "[T]he doctrine of *res judicata* is *stricti juris* and, accordingly, any doubt concerning the applicability of the principle must be resolved against its application." *Id.*, at 406.

*McCalmont v. McCalmont*, 19-738, p. 6 (La.App. 3 Cir. 4/29/20), \_\_\_\_So.3d\_\_\_\_,  
\_\_\_\_.

## *II. Res Judicata*

The only issue presented to this court is whether the trial court erred in finding that res judicata applied to a consent judgment in a family law case. The doctrine of res judicata is found in La.R.S. 13:4231, which states:

Except as otherwise provided by law, a valid and final judgment is conclusive between the same parties, except on appeal or other direct review, to the following extent:

- (1) If the judgment is in favor of the plaintiff, all causes of action existing at the time of final judgment arising out of the transaction or occurrence that is the subject matter of the litigation are extinguished and merged in the judgment.
- (2) If the judgment is in favor of the defendant, all causes of action existing at the time of final judgment arising out of the transaction or occurrence that is the subject matter of the litigation are extinguished and the judgment bars a subsequent action on those causes of action.
- (3) A judgment in favor of either the plaintiff or the defendant is conclusive, in any subsequent action between them, with respect to any issue actually litigated and determined if its determination was essential to that judgment.

Kevin argues that a consent judgment was ordered without an adjudication of the issues, therefore, res judicata does not apply. For this proposition, he cites La.R.S. 13:4232, which lists the res judicata exceptions, stating:

### A. A judgment does not bar another action by the plaintiff:

- (1) When exceptional circumstances justify relief from the res judicata effect of the judgment;
- (2) When the judgment dismissed the first action without prejudice; or,
- (3) When the judgment reserved the right of the plaintiff to bring another action.

B. In an action for divorce under Civil Code Article 102 or 103, in an action for determination of incidental matters under Civil Code Article 105, in an action for contributions to a spouse's education or training under Civil Code Article 121, and in an action for partition of community property and settlement of claims between spouses under

R.S. 9:2801, the judgment has the effect of res judicata only as to causes of action actually adjudicated.

It is Kevin's contention that this case falls under the exception found in Part (B) regarding "an action for partition of community property and settlement of claims between spouses under R.S. 9:2801." In that instance, "the judgment has the effect of res judicata only as to causes of action actually adjudicated." *Id.*

In the present case, while a hearing was set for May 22, 2014, it did not take place. Rather, the parties appeared and entered a consent judgment on the record.

The minutes show:

This matter is fixed this date for hearing. The petitioner is present with counsel Mr. Seastrunk. The defendant is present with counsel Beth Carr. An agreement has been reached between the parties and a stipulation is entered in the record concerning the issues before the Court. Judgement is rendered in accordance with the stipulation of the parties and will be signed when presented as to form. The Court takes notice that the petitioner has received an envelope with a stated cash payment of \$1100.00. Mr. Seastrunk will prepare the judgment. Counsel for the defendant withdraws Exception of No Case of Action and No Right of Action, filed today.

In order for the exception to apply, we must first determine whether the May 22, 2014 hearing concerned "an action for partition of community property and settlement of claims between spouses under R.S. 9:2801." Set for hearing was Yvonne's Rule for Contempt and/or Rule for Allocation of Assets Pursuant to [La.]R.S. 9:2801.1. Louisiana Revised Statutes 9:2801.1 is entitled "Community Property; allocation and assignment of ownership" and states:

When federal law or the provisions of a statutory pension or retirement plan, state or federal, preempt or preclude community classification of property that would have been classified as community property under the principles of the Civil Code, the spouse of the person entitled to such property shall be allocated or assigned the ownership of community property equal in value to such property prior to the division of the rest of the community property. Nevertheless, if such property consists of a spouse's right to receive social security benefits or the benefits themselves, then the court in its

discretion may allocate or assign other community property equal in value to the other spouse.

Kevin's failure to pay Yvonne's portion of his military retirement payment was before the trial court on May 22, 2014. Yvonne requested that Kevin be ordered to pay but, in the alternative, she requested the trial court "allocate or assign the ownership of other property of equal value pursuant to R.S. 9:2801.1." As such, we find that the action before the court on May 22, 2014, which resulted in the consent judgment at issue was "an action for partition of community property and settlement of claims between spouses under R.S. 9:2801." La.R.S. 13:4232(B).

Next, we must decide whether the "action [was] actually adjudicated." *Id.* Kevin argues that the case was not "actually adjudicated" because the 2014 Consent Judgment is silent as to CRSCD benefits. We disagree.

A review of the record shows that Yvonne filed a Rule for Contempt and/or Rule for Allocation of Assets Pursuant to [La.]R.S. 9:2801.1 on April 9, 2014. In the rule, Yvonne alleged that Kevin breached the 2012 Consent Judgment by "willfully interfering and failing to pay mover her percentage share of his military retirement and by wrongfully taking possession and converting her monies for his own use." In response, Kevin filed Exceptions of No Cause of Action and No Right of Action. He argued that his retirement pay was transferred to CRSCD and there had been recent caselaw stating that CRSCD was not subject to division of community property.

A hearing was to be held on these issues on May 22, 2014. Discussions were held off the record. When the case was called, Kevin withdrew his exceptions and the parties entered into the 2014 Consent Judgment. In the

judgment, Kevin stipulated (or agreed) that he was in contempt of court and agreed to resume payment to Yvonne “her forty-three percent (43%) interest in the defendant’s military retirement pay and/or benefit[.]” He also agreed to pay arrearages.

Kevin complains that the judgment does not specifically state he was to pay Yvonne CRSCD benefits, rather it states he would pay her from his “military retirement pay and/or benefit.” We find that the judgment is referring to CRSCD benefits when it states “and/or benefit.” On November 1, 2013, the military awarded Kevin CRSCD benefits, converting 100% of his retirement pay into said benefits. On February 19, 2014, Yvonne received a letter from the military’s finance office informing her that she would no longer receive her share of Kevin’s retirement benefits due to this conversion. In April 2014, Yvonne filed for contempt of court based on the lack of payment and conversion of funds. In response, Kevin filed exceptions explaining that his retirement pay was transferred to CRSCD benefits, therefore, he stopped payment to Yvonne based on recent caselaw. In May 2014, Kevin admitted that he was in contempt of court and agreed to pay Yvonne her share from his “retirement pay and/or benefit.” Based on the sequence of events found in the record, the only logical conclusion to be reached is that the benefits referenced in the 2014 Consent Judgment are the CRSCD benefits.

In *Riche v. Riche*, 09-1354 (La.App. 3 Cir. 4/7/10), 34 So.3d 1004, this court dealt with the issue of whether a community property settlement was “actually adjudicated” between the parties. A compromise agreement was reached, partitioning the community property. Thereafter, Ms. Riche filed a supplemental

petition for partition of the community regarding Mr. Riche's business. Mr. Riche filed an exception of res judicata. This court determined that:

"A compromise is a contract whereby the parties, through concessions made by one or more of them, settle a dispute or an uncertainty concerning an obligation or other legal relationship." La.Civ.Code art. 3071. A compromise precludes subsequent litigation based on the matter that was compromised. La.Civ.Code art. 3080. Comment (b) to article 3080 provides that the preclusive effect of the article is tantamount to that of former article 3078, which provided that a transaction or compromise had the effect of a thing adjudged; therefore, res judicata would attach as though the document were a judgment.

*Id.* at 1008.

This court found that the compromise was valid. Ms. Riche argued that certain issues regarding Mr. Riche's business were not specifically referenced in the judgment, and, therefore, they were not litigated. This court determined that, while the issues were not specifically addressed, the language in the compromise agreement made it clear that the Riches did not reserve any issues for litigation for a later date. This court upheld the trial court's grant of res judicata.

"A consent judgment is a bilateral contract wherein the parties adjust their differences by mutual consent and thereby put an end to a lawsuit with each party balancing the hope of gain against the fear of loss." *McDaniel v. McDaniel*, 567 So.2d 748, 750 (La.App. 2 Cir. 1990). The 2014 Consent Judgment adjudicated the issues asserted by Yvonne in the rule for contempt. As such, we find that the action was "actually adjudicated" and that res judicata applies.

Similar to the compromise agreement in *Riche*, Kevin's petition for declaratory judgment attempts to re-litigate the issues that were already decided by the 2014 Consent Judgment. Therefore, we affirm the trial court's grant of res judicata in this case.

We note the United States Supreme Court case of *Howell v. Howell*, \_\_\_ U.S. \_\_\_, 137 S.Ct. 1400 (2017), wherein it was held that CRSCD benefits are not divisible nor are they part of the community. Kevin argues that this case applies to the case at bar. Had this issue not been litigated previously in this matter, an application of *Howell* would be necessary. However, La.Civ.Code art. 1971 allows parties “to contract for any object that is lawful, possible, and determined or determinable.” Unless the object of the contract is restricted by the government because it violates public policy, a party has the freedom to contract for any object. *South East Auto Dealers Rental Ass'n, Inc. v. EZ Rent To Own, Inc.*, 2007-0599 (La.App. 4 Cir. 2/27/08), 980 So.2d 89, *writ denied*, 08-684 (La. 4/18/08), 978 So.2d 355. Kevin agreed in the 2014 Consent Judgment to continue paying Yvonne the agreed upon portion of his retirement pay “and/or benefit.” The 2014 Consent Judgment is a legal, binding judgment, and Kevin is barred by res judicata from re-litigating the payments.

#### **DECREE**

The trial court’s judgment granting Yvonne Boutte’s exception of res judicata is affirmed. Costs of this appeal are assessed to Kevin Boutte.

**AFFIRMED.**

# APPENDIX C

DOCKET NO.: 20101241-B

FILED

YVONNE RENEA BOUTTE

36<sup>TH</sup> JUDICIAL DISTRICT COURT

VERSUS

CLERK OF COURT  
PARISH OF BEAUREGARD PARISH

KEVIN LEE BOUTTE

STATE OF LOUISIANA

FILED: June 24, 2019

Yvonne Allen  
DEPUTY CLERK

JUDGMENT

THIS CAUSE having come on for hearing pursuant to the defendant, KEVIN LEE BOUTTE'S, Petition For Declaratory Judgment, Alternative, Petition To Annual Judgment, Alternative Petition To Modify MDRO And Incorporated Memorandum Of Law and the plaintiff, YVONNE RENEE BOUTTE'S Exception of Res Judicata, No Cause of Action and No Right of Action In The Alternative Petition For Specific Performance And Injunctive Relief on the 29<sup>th</sup> day of April 2019.

Present in Court were Ronald K. Seastrunk, attorney for and the plaintiff, YVONNE RENEA BOUTTE, and David Hesser, attorney for and the defendant, KEVIN LEE BOUTTE.

The Court, after considering the law, evidence and stipulation of the parties, hereby finds as follows:

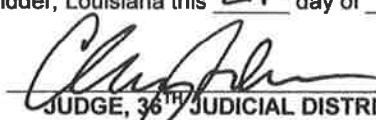
IT IS ORDERED, ADJUDGED AND DECREED that the plaintiff, YVONNE RENEA BOUTTE'S Exception of Res Judicata is granted and the defendant, KEVIN LEE BOUTTE'S Petition is dismissed.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the plaintiff, YVONNE RENEA BOUTTE'S Exception of No Right of Action is denied.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the plaintiff, YVONNE RENEA BOUTTE'S Exception of No Cause of Action is denied.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the plaintiff, YVONNE RENEA BOUTTE'S request for attorney fees is denied and that the plaintiff, YVONNE RENEA BOUTTE and the defendant, KEVIN LEE BOUTTE shall each pay fifty percent (50%) of the court cost.

JUDGMENT RENDERED on the 29<sup>th</sup> day of April 2019. READ AND SIGNED in Chambers in DeRidder, Louisiana this 24<sup>th</sup> day of June 2019.

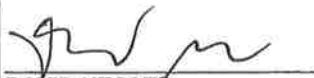
  
JUDGE, 36<sup>TH</sup> JUDICIAL DISTRICT COURT

00307

CLERK OF COURT  
BEAUREGARD PARISH  
FILED  
JUN 25 2019  
12:56 PM  
12:56 PM  
9:21

APPROVED AS TO CONTENT AND FORM:

Respectfully Submitted:



DAVID HESSER  
ATTORNEY AT LAW  
2820 Jackson Street  
Alexandria, Louisiana 71301  
(318) 542-4102  
Bar Roll #23131

Respectfully Submitted:



RONALD K. SEASTRUKN  
ATTORNEY AT LAW  
104 North Third Street  
Leesville, LA 71446  
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Bar Roll # 21871

00308

15a

DOCKET NO.: 20101241-B

YVONNE RENEA BOUTTE

VERSUS

KEVIN LEE BOUTTE

FILED: June 6, 2014

36<sup>TH</sup> JUDICIAL DISTRICT COURT  
CLERK OF COURT  
PARISH OF BEAUREGARD  
STATE OF LOUISIANA

Kimberly B. Johnson  
DEPUTY CLERK

JUDGMENT

THIS CAUSE having come on for hearing on the 22<sup>nd</sup> day of May 2014.

Present in Court were Ronald K. Seastrunk attorney for and the plaintiff,

YVONNE RENEA BOUTTE, and Elizabeth B. Carr, attorney for and the defendant

KEVIN LEE BOUTTE.

The Court after considering the law, evidence and stipulation of the parties  
hereby finds as follows:

IT IS ORDERED, ADJUDGED, DECREED AND STIPULATED that the  
defendant, KEVIN LEE BOUTTE is in contempt of court.

IT IS FURTHER ORDERED, ADJUDGED, DECREED AND STIPULATED that  
the parties agree that the defendant, KEVIN LEE BOUTTE, shall resume payment to  
the plaintiff, YVONNE RENEA BOUTTE of her forty three percent (43%) interest in  
the defendant's military retirement pay and/or benefit including cost of living  
expenses as ordered by the Consent Judgment and Voluntary Partition Agreement  
dated January 19<sup>th</sup>, 2012.

IT IS FURTHER ORDERED, ADJUDGED, DECREED AND STIPULATED that  
the parties agree that the defendant, KEVIN LEE BOUTTE, will pay an arrearage  
amount of Two Thousand and Twenty Five Dollars (\$2,025.00) to the plaintiff,  
YVONNE RENEA BOUTTE. The defendant, KEVIN LEE BOUTTE will agree to pay  
the plaintiff, YVONNE RENEA BOUTTE, One Thousand One Hundred Dollars  
(\$1,100.00) of this amount in open court today, May 22<sup>nd</sup>, 2014. The remaining Nine  
Hundred Twenty Five Dollars (\$925.00) shall be paid within 180 days from May 22<sup>nd</sup>,  
2014.

IT IS FURTHER ORDERED, ADJUDGED, DECREED AND STIPULATED that  
the parties further agree that the defendant, KEVIN LEE BOUTTE shall pay the  
plaintiff, YVONNE RENEA BOUTTE, One Thousand Dollars (\$1,000.00) in attorney  
fees. This attorney fees shall be paid within 180 days from May 22<sup>nd</sup>, 2014.

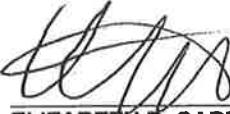
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JUDGMENT RENDERED in Beauregard, Louisiana this 6th day of

June, 2014.

  
36<sup>th</sup> JUDICIAL DISTRICT COURT

APPROVED AS TO CONTENT AND FORM:



ELIZABETH B. CARR  
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Bar Roll No.: 31089  
Attorney for Plaintiff



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Bar Roll No.: 21871  
Attorney for Defendant

YVONNE RENEA BOUTTE

36TH JUDICIAL DISTRICT COURT

VERSUS NO. 20101241-B

PARISH OF BEAUREGARD

KEVIN LEE BOUTTE

STATE OF LOUISIANA

VOLUNTARY PARTITION OF COMMUNITY OF  
YVONNE RENEA BOUTTE AND KEVIN LEE BOUTTE

*Filed January 14, 2012  
By Deputy Clerk of Court*

BE IT KNOWN that on the date(s) written below, before me, Notary Public, duly commissioned in and for the Parish and State written below, personally came and appeared: YVONNE RENEA BOUTTE and KEVIN LEE BOUTTE, who now declare that they desire to settle and liquidate the community which formally existed between them and that they have agreed to settle the same in the following manner to-wit:

The parties agree that KEVIN LEE BOUTTE surrenders all rights, titles and interest in the following described property to YVONNE RENEA BOUTTE:

- 1) Home located at 1213 Allison Drive, DeRidder, LA bearing property description;

*Lot fourteen (14) of RAINBOW FOREST NO. 3, being a subdivision of a part of the West Half of the Southwest Quarter of the Northeast Quarter (W/2 of SW/4 of NE/4) and a part of the West Half of the Northwest Quarter of Northeast Quarter (W/2 of NW/4 of NE/4), all in Section Twenty-nine (29), Township Two (2) South, Range Nine (9) West, Beauregard Parish, Louisiana, as per plat recorded under Instrument File No. 375042, recorded in Conveyance Book 587, Page 171.*

- 2) 2007 Dodge Caliber, bearing VIN #1B3HB48B57D521584
- 3) 2004 Chrysler PT Cruiser, bearing VIN #3C4FY58B44T295702
- 4) Zero turn lawn mower
- 5) Generator
- 6) 4-wheeler
- 7) Two shelves for shrunk

The parties further agree that YVONNE RENEA BOUTTE shall be responsible for payment of the insurance and notes on the above mentioned property. YVONNE RENEA BOUTTE agrees to hold KEVIN LEE BOUTTE, harmless on that debt. KEVIN LEE BOUTTE agrees that at the time the loans are paid, he will sign any and all documents necessary for transfer of titles to YVONNE RENEA BOUTTE.

The parties further agree that YVONNE RENEA BOUTTE surrenders all rights, titles, and interests in the following described property to KEVIN LEE BOUTTE:

- 1) Antique Bedroom Set
- 2) Gun Cabinet and all guns
- 3) Antiques received from parents and grandparents (except those given to YVONNE RENEA BOUTTE)
- 4) Tools and tool boxes
- 5) Baseball card collection
- 6) Trailer
- 7) Military items
- 8) Freezer in garage
- 9) Refrigerator in garage

00047

18a

- 10) Art work given by family
- 11) Personal items
- 12) Shot glass collection
- 13) Outside stereo
- 14) All hunting equipment
- 15) All softball equipment
- 16) GPS
- 17) Small television in spare bedroom
- 18) Couch
- 19) Recliner
- 20) All LSU items in spare room

The parties agree that the parties shall retain possession of any and all movable property presently in their possession not specifically mentioned above in this community property settlement.

The parties further agree that the conveyances and transfers, obligations assumed, and promises and obligations made as a part of this agreement, each and all constitute full and sufficient consideration and cause for all other transfers, promises, and obligations contained in this agreement. As a result hereof, the parties hereto discharge each other from any further accounting to the community which formally existed between them. Each of the parties agrees and accepts this settlement and partition of the community of acquests and gains, being fully informed on all pertinent facts, and each considers the agreements and stipulations contained herein to be fair and equitable to both parties.

THUS DONE AND PASSED, in DeRidder, Beauregard Parish, Louisiana, on the 19<sup>th</sup> day of January, 2012, in the presence of Pam Young and Adrean Galloway, competent witnesses, who hereto sign their names with the said appearers and me, Notary Public, after reading of the whole.

WITNESSES:

Pam Young  
Adrean Galloway

KB  
KEVIN LEE BOUTTE  
DKW  
Notary Public

THUS DONE AND PASSED, in DeRidder, State of Louisiana, Parish of Beauregard, on the 19<sup>th</sup> day of January, 2012, in the presence of Sue Boycher and Pam Young, competent witnesses, who hereto sign their names with the said appearers and me, Notary Public, after reading of the whole.

WITNESSES:

Sue Boycher  
Pam Young

YVONNE RENEE BOUTTE  
YVONNE RENEE BOUTTE  
KB  
Notary Public  
00048

YVONNE RENEA BOUTTE

36TH JUDICIAL DISTRICT COURT

VERSUS NO. 20101241-B

PARISH OF BEAUREGARD

KEVIN LEE BOUTTE

STATE OF LOUISIANA

FILED: January 19, 2012

DEPUTY: Sarah Sistes

CONSENT JUDGMENT OF DIVORCE

This matter came before me on the 19<sup>th</sup> day of January, 2012. When after considering the pleadings, the Court entered into the following judgment.

IT IS ORDERED; ADJUDGED AND DECREED that YVONNE RENEA BOUTTE be awarded a divorce a vinculo matrimonii from KEVIN LEE BOUTTE, forever dissolving the bonds of matrimony existing heretofore between them.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that KEVIN LEE BOUTTE shall pay unto YVONNE RENEA BOUTTE interim periodic support in the amount of FOUR HUNDRED FIFTY AND NO1/00 (\$450.00) DOLLARS for a period of 30 months from the date of divorce.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that KEVIN LEE BOUTTE will continue to pay the Care One bill in the amount of SEVEN HUNDRED THIRTY FIVE AND NO/100 (\$735.00) DOLLARS per month.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that YVONNE RENEA BOUTTE is entitled to a forty-three (43%) percent share of KEVIN LEE BOUTTE's military retirement pay and/or benefits, including cost of living expenses or any other retirement system in which his military service was a significant part of the entitlement. The exact percentage was determined in accordance with the SIMMS formula, as follows:

$$\frac{1}{2} X \frac{\text{the number of months of marriage during the member's credible military service}}{\text{Member's total number of months of credible military service}} = \text{Spouse's \% of disposable military retired pay:}$$

<u>Date of Marriage</u>	July 13, 1991
<u>Date of Divorce</u>	January 19, 2012
Total number of months of marriage	
<u>during service</u> =	219 months
<u>Date entered service</u>	November 17, 1988
<u>Date of retirement</u>	November 1, 2009

The parties agree to the following:

1) The parties are:  
a) Employee: Kevin Lee Boutte  
Address: 301 Third Street, Broussard, La 70518  
Social Security #: 436-45-4877

00049

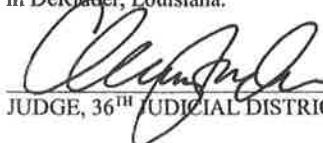
20a

	Date of Birth	08/07/1968
	Employer	US Army
	Rank at time of Retirement	E-7
b)	Former Spouse	Yvonne Renea BOUTTE
	Address	1213 Allison Drive, DeRidder, La 70634
	Social Security #	xxx-xx-4771
	Date of Birth	02/22/1965

- 2) This Court has jurisdiction over KEVIN LEE BOUTTE as required by 10 U.S.C. 1408 by reason of his residence in the territorial jurisdiction of this Court at the time of the parties divorce.
- 3) This Court has jurisdiction over the subject matter as required by 10 U.S.C. 1409.
- 4) KEVIN LEE BOUTTE entered into service in the United States Army on November 17, 1988. His service ended on November 1, 2009.
- 5) The parties were married on July 13, 1991. A judgment of divorce was rendered in docket number 20101241-B on the 19<sup>th</sup> day of January, 2012 in DeRidder, Louisiana.
- 6) KEVIN LEE BOUTTE assigns to YVONNE RENEAE BOUTTE his interest in his military retired pay and YVONNE RENEAE BOUTTE shall receive payments at the same time as KEVIN LEE BOUTTE, or as soon as possible thereafter.
- 7) The parties intend that this order qualify for direct payment of military pension benefits under the Uniformed Former Spouses Protection Act, 10 U.S.C. 1408, et seq. All provisions hereof shall be interpreted liberally so as to make this order so qualify.
- 8) KEVIN LEE BOUTTE will cooperate with YVONNE RENEAE BOUTTE in executing an application for direct payment to her from his retired pay pursuant to 10 U.S.C. 1408 eq seq, and he agrees to execute all documents that DFAS may require for direct payments.
- 9) KEVIN LEE BOUTTE rights under the Soldiers and Sailors' Civil Relief Act, have been observed and honored.
- 10) KEVIN LEE BOUTTE is responsible for making these payment directly to YVONNE RENEAE BOUTTE, beginning January 19, 2012, until such time as the U.S. government begins deducting that amount and sending payment to YVONNE RENEAE BOUTTE directly.
- 11) When DFAS has determined that this order meets the requirements of the applicable federal law and is a military pension division order, then it shall carry out the provisions of this order. DFAS shall give written notice to the plaintiff at the address contained in this order that this order meets the requirements for a direct-pay military pension division order. DFAS shall also give written notice to KEVIN LEE BOUTTE at the address contained in this order when direct-pay of military pension will begin to YVONNE RENEAE BOUTTE.
- 12) YVONNE RENEAE BOUTTE further agrees that (a) any future overpayments to her are recoverable and subject to involuntary collection from her or her estate; (b) she shall notify DFAS about any changes in this agreement or the order affecting these provisions of it, or in the eligibility of any recipient receiving benefits pursuant to it; (c) she shall be responsible for the taxes on her share of KEVIN LEE BOUTTE's military retired pay; (d) she shall notify DFAS in writing of any new address upon moving from the current address; and (e) she recognizing that any entitled to retired pay of KEVIN LEE BOUTTE shall begin on January 19, 2012.
- 13) YVONNE RENEAE BOUTTE shall provide promptly to KEVIN LEE BOUTTE any document or information that she needs in order to obtain direct payment of military pension benefits and shall keep him informed at all times of her current address.
- 14) The monthly payments herein shall be paid to YVONNE RENEAE BOUTTE regardless of her marital status and shall not end at remarriage.
- 15) If entitled to received survivor benefits per Defense Finance and Accounting Service and military retirement regulations, KEVIN LEE BOUTTE agrees to retain YVONNE RENEAE BOUTTE in the Survivors Benefit Plan.
- 16) The Defense Finance and Accounting Service, Cleveland Center, Garnishment Operations, P.O. Box 998002, Cleveland, Ohio 44199-8002, be served with a certified copy of this judgment.

JUDGMENT READ, RENDERED AND SIGNED on the 19th day of

January, 2012, in DeRidder, Louisiana.

  
JUDGE, 36<sup>TH</sup> JUDICIAL DISTRICT COURT

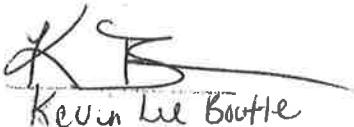
APPROVED AS TO FORM AND CONTENT:



Lisa K. Nelson  
Attorney for Kevin Lee Boutte  
202 W. North Street  
Leesville, La 71446  
(337) 238-4704



Ronald Seastrunk  
Attorney for Yvonne Rena Boutte  
104 North 3<sup>rd</sup> Street  
Leesville, La 71446  
(337) 238-5100

  
Kevin Lee Boutte

  
Yvonne Rena Boutte

YVONNE RENEA BOUTTE

VERSUS

KEVIN LEE BOUTTE

FILED: December 21, 2010

DOCKET NO.: C-2010-1245-B

FILED

36<sup>TH</sup> JUDICIAL DISTRICT COURT

2010 DEC 21 AM 10:17

PARISH OF BEAUREGARD

CLERK

BEAUREGARD

STATE OF LOUISIANA

Gwenver Allen

DEPUTY CLERK

**PETITION FOR DIVORCE**

The petition of YVONNE RENEA BOUTTE, a resident of Beauregard Parish, State of Louisiana, a person of the full age of majority, with respect represents:

1.

That the defendant herein is KEVIN LEE BOUTTE, a person of the full age of majority, who is domiciled in and a resident of Lafayette Parish, State of Louisiana, whose address is 301 3<sup>rd</sup> Street, Broussard, Louisiana, 70518.

2.

That the parties of this action were married to each other on July 13<sup>th</sup>, 1991, in Dillion, South Carolina. Thereafter, they established a marital home in Beauregard Parish, State of Louisiana, where the same has remained continuously until the date of separation on December 16<sup>th</sup>, 2010. The parties have not contracted a covenant marriage.

3.

Petitioner intends to live separate and apart continuously, and without reconciling, for a period of one hundred eighty days prior to filing a rule to show cause why a divorce should not be granted.

4.

That two children were born issue of the marriage of the parties, but both have reached the age of majority.

5.

Petitioner has insufficient income to support herself, and, therefore desires that this Honorable Court grant an amount of money for temporary and, in due time, permanent spousal support.

6.

Petitioner, YVONNE RENEA BOUTTE, desires that she be granted the temporary and, in due time, the permanent use of the family home located 1213 Allison Drive, 00009 DeRidder, Louisiana 70634.

23a

Filed: March 3, 2011  
 By: Cherie Holmes  
 Deputy Clerk of Court

C2010-1241 B

CAUTION: NOT TO BE USED FOR  
 IDENTIFICATION PURPOSES

THIS IS AN IMPORTANT RECORD.  
 SAFEGUARD IT.

ANY ALTERATIONS IN SHADED AREAS  
 RENDER FORM VOID

CERTIFICATE OF RELEASE OR DISCHARGE FROM ACTIVE DUTY					
1. NAME (Last, First, Middle) BOUTTE, KEVIN LEE		2. DEPARTMENT, COMPONENT AND BRANCH ARMY/RA		3. SOCIAL SECURITY NUMBER	
4a. GRADE, RATE OR RANK SFC	b. PAY GRADE E07	5. DATE OF BIRTH (YYYYMMDD) 19680807	6. RESERVE OBLIGATION TERMINATION DATE (YYYYMMDD) 00000000		
7a. PLACE OF ENTRY INTO ACTIVE DUTY NEW ORLEANS, LOUISIANA			d. HOME OF RECORD AT TIME OF ENTRY (City and state, or complete address if known)		
8a. LAST DUTY ASSIGNMENT AND MAJOR COMMAND 0083CBMN FC		b. STATION WHERE SEPARATED FORT POLK, LA 71459-5000			
9. COMMAND TO WHICH TRANSFERRED					
10. SGLI COVERAGE <input type="checkbox"/> NONE AMOUNT: \$400,000.00					
11. PRIMARY SPECIALTY (List number, title and years and months in specialty. List additional specialty numbers and titles involving periods of one or more years). 92Y40 G3 UNIT SUPPLY SPEC - 9 YRS 4 MOS// 63X40 VEHICLE MAINT SUPVSR - 20 YRS 5 MOS// NOTHING FOLLOWS					
12. RECORD OF SERVICE					
a. DATE ENTERED AD THIS PERIOD 1993	b. MONTH(S) 10	c. DAY(S) 26			
d. SEPARATION DATE THIS PERIOD 2009	e. MONTH(S) 10	f. DAY(S) 31			
g. NET ACTIVE SERVICE THIS PERIOD 0016	h. MONTH(S) 00	i. DAY(S) 05			
j. TOTAL PRIOR ACTIVE SERVICE 0004	k. MONTH(S) 00	l. DAY(S) 00			
m. TOTAL PRIOR INACTIVE SERVICE 0000	n. MONTH(S) 11	o. DAY(S) 08			
p. FOREIGN SERVICE 0005	q. MONTH(S) 03	r. DAY(S) 23			
s. SEA SERVICE 0000	t. MONTH(S) 00	u. DAY(S) 00			
v. EFFECTIVE DATE OF PAY GRADE 2006	w. MONTH(S) 07	x. DAY(S) 01			
14. MILITARY EDUCATION (Course title, number of weeks, and month and year completed) ADVANCED NONCOMMISSIONED OFFICER COURSE, 12 WEEKS, 2005//AIRBORNE COURSE, 3 WEEKS, 1989//AIRLIFT OPERATIONS COURSE, 1 WEEK, 1997//BASIC INSTRUCTOR COURSE, 2 WEEKS, 2005//BASIC NONCOMMISSIONED OFFICER COURSE, 8 WEEKS, 2001//C-SERIES ENGINE REPAIR COURSE, 2 WEEKS, 1994//COMBAT LIFESAVERS//CONT IN BLOCK 18					
15a. MEMBER CONTRIBUTED TO POST-VIETNAM ERA VETERANS' EDUCATIONAL ASSISTANCE PROGRAM					
b. HIGH SCHOOL GRADUATE OR EQUIVALENT <input checked="" type="checkbox"/> YES <input type="checkbox"/> X <input type="checkbox"/> NO					
16. DAYS ACCRUED LEAVE PAID 0					
17. MEMBER WAS PROVIDED COMPLETE DENTAL EXAMINATION AND ALL APPROPRIATE DENTAL SERVICES AND TREATMENT WITHIN 90 DAYS PRIOR TO SEPARATION <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO					
18. REMARKS //REENLISTMENTS THIS PERIOD 19960404-20000406, 20000407-20091031//SUBJECT TO ACTIVE DUTY RECALL BY THE SECRETARY OF THE ARMY//RETIRED LIST GRADE SFC//SERVED IN A DESIGNATED IMMINENT DANGER PAY AREA//SERVICE IN SAUDI ARABIA 19900825-19910402//SERVICE IN IRAQ 20050221-20060220//MEMBER HAS COMPLETED FIRST FULL TERM OF SERVICE//UNITED STATES FLAG ISSUED//CONT FROM BLOCK 13: SERVICE STAR (2ND AWARD)//GLOBAL WAR ON TERRORISM SERVICE MEDAL//NON COMMISSIONED OFFICER PROFESSIONAL DEVELOPMENT RIBBON (3RD AWARD)//ARMY SERVICE RIBBON//OVERSEAS SERVICE RIBBON (2ND AWARD)//KU-LIB-MDL (SAUDI ARABIA)//KU-LIB-MDL (KUWAIT)//COMBAT ACTION BADGE//SENIOR PARACHUTIST BADGE//PARACHUTIST BADGE//DRIVER AND MECHANIC BRIDGE WITH DRIVER - WHEELED VEHICLE (S) CLSP//GERMAN ARMY MARKSMANSHIP BADGE SILVER//CONT FROM BLOCK 14: COURSE, 1 WEEK, 1998//CONTRACTING OFFICER REPRESENTATIVE COURSE, 1 WEEK, 1996//DRIVERS TRAINING COURSE, 1 WEEK, 1989//EQUAL OPPORTUNITY LEADERS//SEE ATTACHED CONTINUATION SHEET The information contained herein is subject to computer matching within the Department of Defense or with any other affected Federal or non-Federal agency for verification purposes and to determine eligibility for, and/or continued compliance with, the requirements of a Federal benefit program.					
19a. MAILING ADDRESS AFTER SEPARATION (Include ZIP Code)		b. NEAREST RELATIVE (Name and address - Include ZIP Code)			
20. MEMBER REQUESTS COPY BE SENT TO LA DIRECTOR OF VETERANS AFFAIRS <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO					
21. SIGNATURE OF MEMBER BEING SEPARATED DIGITALLY SIGNED BY: BOUTTE, KEVIN LEE 1119886976		22. OFFICIAL AUTHORIZED TO SIGN (Type name, grade, title and signature) DIGITALLY SIGNED BY: IRVIN, PAMELA S. 1230830573 PAMELA IRVIN, GS11, RETIREMENT SVC OFF			
23. SPECIAL ADDITIONAL INFORMATION (For use by authorized agencies only)					
23. TYPE OF SEPARATION RETIREMENT		24. CHARACTER OF SERVICE (Include upgrades) HONORABLE			
25. SEPARATION AUTHORITY AR 635-200, CHAP 12		26. SEPARATION CODE RBD		27. REENTRY CODE 4R	
28. NARRATIVE REASON FOR SEPARATION SUFFICIENT SERVICE FOR RETIREMENT					
29. DATES OF TIME LOST DURING THIS PERIOD (YYYYMMDD) NONE		30. MEMBER REQUESTS COPY 4 (Initials) KLB <b>24a</b> MEMBER - 4			
DD FORM 214-AUTOMATED, FEB 2000 PREVIOUS EDITION IS OBSOLETE. GENERATED BY TRANSPRO 00025					

DD FORM 214 CONTINUATION PAGE

NAME: BOUTTE, KEVIN LEE

CONT FROM BLOCK 18: COURSE, 2 WEEKS, 1999//FIELD SANITATION TEAM CERTIFICATION COURSE, 1 WEEK, 1996//JUMPMASTER COURSE, 2 WEEKS, 2004//LOG 73, SUPPLY COURSE, 1 WEEK, 2000//MSA1 AGENT ALARM COURSE, 2 WEEKS, 1994//NUCLEAR BIOLOGICAL CHEMICAL DEFENSE COURSE, 1 WEEK, 1994//STANDARD ARMY RETAIL SUPPLY SYSTEM SUPERVISOR COURSE, 2 WEEKS, 1997//STANDARD PROPERTY BOOK SYSTEM COURSE, 3 WEEKS, 2001//UNIT ARMORER COURSE, 2 WEEKS, 1994//UNIT SUPPLY COURSE, 8 WEEKS, 2000//WARRIOR LEADERS COURSE, 4 WEEKS, 1995//WHEEL VEHICLE REPAIRER COURSE, 17 WEEKS, 1989//NOTHING FOLLOWS

SIGNATURE OF MEMBER BEING SEPARATED  
BOUTTE.KEVIN.LEE.1119886976

OFFICIAL AUTHORIZED TO SIGN  
IRVIN.PAMELA.S.1230838573  
PAMELA IRVIN, GS11, RETIREMENT SVC OFF



00026

25a

1 Q And what is the next payment that's showing on that  
2 statement.

3 A That's half my retirement. \$744.96.

4 Q Okay, and that was how much you were receiving back  
5 in --

6 A Sorry; yes.

7 Q -- in January of 2014?

8 A Yes.

9 MR. HESSER:

10 Okay, I would go ahead and offer --

11 BY MR. HESSER:

12 Q And these are -- The rest of these are your bank  
13 statements that you produced to me for court today for  
14 the whole year of 2014?

15 A Yes.

16 MR. HESSER:

17 I would submit the 2014 bank statements as  
18 Exhibit 6.

19 MR. SEASTRUNK:

20 Once again, Judge, I'm going to object as  
21 to the relevance of that document as to the  
22 issue before the Court at this time.

23 THE COURT:

24 Subject to the objection, I will receive  
25 them for purpose of judicial economy as it  
26 relates to the declaratory judgment request.

27 BY MR. HESSER:

28 Q Sir, why is it that you are receiving Combat  
29 Related Special Compensation?

30 A For injuries received dated back through my service  
31 in the military.

32 Q And what are the two main injuries you received?

MARTHA A. KIBLER, CCR

Official Court Reporter - 27011

Thirty-Sixth Judicial District Court

P.O. Box 1148

DeRidder, LA 70634

31

26a

00350

1 A PTSD and Traumatic Brain Injury.

2 Q Traumatic Brain Injury; does that affect you

3 regularly?

4 A Yes.

5 Q On a daily basis?

6 A Yes.

7 MR. SEASTRUNK:

8 Judge, objection to this line of question.

9 Once again, it's irrelevant.

10 MR. HESSER:

11 I think it goes to the basis, Your Honor,

12 for the client.

13 THE COURT:

14 Well, it's not for this Court to -- I'm

15 going to sustain the objection. I don't have

16 any dispute or quarrel with the VA's

17 determination that he has a Combat Related

18 Injury or else he wouldn't be receiving CRSC.

19 That sort of begs the question. It doesn't

20 really have any relevance as to what his combat

21 related injury is or the percentage. That's

22 not for me to decide or question.

23 BY MR. HESSER:

24 Q Sir, do you recall seeing the consent judgment of

25 divorce back in 2012?

26 A Yes.

27 Q Let me show you -- It's already been offered into

28 evidence, but I'm just going to show you a copy of that

29 document.

30 Sir, can you look at this and tell me if that is a

31 copy of the consent judgment of divorce from 2012?

32 A Yes, it is.

Filed April 29, 2019  
By: Melody Shee  
Deputy Clerk of Court



DEPARTMENT OF THE ARMY  
U.S. ARMY HUMAN RESOURCES COMMAND  
1600 SPEARHEAD DIVISION AVENUE DEPT 420  
FORT KNOX, KY 40122-6402

November 1, 2013

Combat-Related Special Compensation

SFC (RET) Kevin L. Boutte  
[REDACTED]

Original Application Date: October 18, 2013

Subject: Army CRSC Decision Letter, (Claim #: 304629)

Dear SFC Boutte (RET):

We have reviewed your claim for Combat-Related Special Compensation (CRSC) and have approved your claim in accordance with current program guidance. A copy of this decision letter will be sent to the Defense Finance and Accounting Service (DFAS) for payment calculation and processing. Payment questions should be referred to DFAS at 1-800-321-1080.

Verified as Combat-Related:

Condition	Service Connected	Disability	Effective Date	Comments
9411 Post-Traumatic Stress Disorder, Mood Disorder And Cognitive Disorder	AC	30%	NOV 09 - MAY 10	This condition is granted due to your combat awards
9411 Post-Traumatic Stress Disorder, Mood Disorder And Cognitive Disorder	AC	70%	JUN 10	This condition is granted due to your combat awards
6260 Tinnitus	IN	10%	NOV 09	This condition is granted due to your combat awards

Total Combined Percentage:

Total Combat-Related Disability: 40%	NOV 09 - MAY 10
Total Combat-Related Disability: 70%	JUN 10

Army CRSC Decision Letter

00279

28a

Exhibit  
A

1 Q Did he ever indicate that he would do nothing to  
2 interfere with that?

3 A Yes, sir.

4 Q As a result of that agreement, did you do anything  
5 with respect to the permanent spousal support?

6 A I let it go.

7 Q You agreed to a lesser amount?

8 A Yes.

9 Q And when I say permanent spousal support, I mean  
10 until somebody dies or you remarry or start living in  
11 open --

12 A Yes, sir. I agreed to thirty months.

13 Q You agreed to something less.

14 A Something less; yes.

15 Q Yes, ma'am. Would you have agreed to that or  
16 agreed to allow him to maintain his interest in your  
17 retirement if you knew that he would have affected that  
18 forty-three percent?

19 A No, sir.

20 Q After the divorce did you begin to receive that  
21 forty-three percent?

22 A Yes, sir.

23 Q And how did you receive it?

24 A From DFAS; direct deposit?

25 Q Was that on a monthly basis?

26 A Yes, sir.

27 Q What was the amount?

28 A Six seventy-three sixty-eight.

29 Q And when did you first begin to receive it?

30 A I probably got the first check the first of March  
31 because I had to file the paperwork after the divorce  
32 in January.

MARTHA A. KIBLER, CCR

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Thirty-Sixth Judicial District Court

P.O. Box 1148

DeRidder, LA 70634

62

29a

00381

1 Q That would have been March of 2012.  
2 A Yes, sir; March of 2012.  
3 Q And did you receive these benefits up until a  
4 certain point?  
5 A Yes, sir.  
6 Q All right. Explain to us what happened.  
7 A I received them up until February of 2014 and then  
8 that month I received a letter from DFAS explaining to  
9 me that I would no longer be receiving those benefits  
10 because he was no longer receiving retirement pay.  
11 MR. SEASTRUNK:  
12 Yvonne Boutte 8.  
13 THE COURT:  
14 No objection.  
15 BY MR. SEASTRUNK:  
16 Q Ms. Boutte, what is that I'm showing?  
17 A This is the letter from DFAS dated February 19,  
18 2014.  
19 Q Would you read it to us?  
20 A (Reading out loud) "Dear Sergeant First Class  
21 Boutte, this letter is to notify you that we are  
22 terminating your payments under Uniform Services Former  
23 Spouse's Protection Act for the retired-retainer pay of  
24 Boutte, Kevin L. No further funds are available since  
25 the member is in a non-pay status. You must include  
26 the employee member social security number on all  
27 correspondence to this office. If you have any  
28 questions, you may contact us through the DFAS web page  
29 or call customer service."  
30 Q Thank you, ma'am. Ms. Boutte, after you received  
31 that letter, what if anything, did you do?  
32 A I e-mailed Mr. Boutte to ask him if he knew what

MARTHA A. KIBLER, CCR  
Official Court Reporter - 27011  
Thirty-Sixth Judicial District Court  
P.O. Box 1148  
DeRidder, LA 70634

DEFENSE FINANCE AND ACCOUNTING SERVICE  
GARNISHMENT OPERATIONS  
PO BOX 998002  
CLEVELAND, OH 44199-8002

(DFAS-HGA/CL)

Feb 19, 2014  
BOUTTE KEVIN L  
4877

YVONNE R BOUTTE  
1213 ALLISON DRIVE  
DERIDDER LA 70634

Filed: April 29, 2019

By: Lilly Stelle  
Deputy Clerk of Court

Dear SFC BOUTTE:

This letter is to notify you that we are terminating your payments under the Uniformed Services Former Spouses' Protection Act from the retired/retainer pay of BOUTTE, KEVIN L.

No further funds are available since the member is in a non-pay status.

You must include the employee/member's social security number on all correspondence to this office. If you have any questions, you may contact us through the DFAS WEB page at [www.dfas.mil/garnishment.html](http://www.dfas.mil/garnishment.html) or call the Customer Service Section at 1-888-332-7411 (DFAS411).

Sincerely,

*Lisa A. Altus*

Lisa A. Altus  
Paralegal Specialist



00306

31a

1 MR. HESSER:

2 Well, here's another point --

3 THE COURT:

4 -- but I don't think did we ever get to  
5 those questions. Those were the questions that  
6 were arguably before the Court on May the 22nd,  
7 2014. Let me hear you out.

8 MR. HESSER:

9 Let me go back to that.

10 THE COURT:

11 Because I think there's some key  
12 distinctions in that regard. And I don't -- I  
13 don't disagree with the legal analysis that  
14 Disposable Retired Pay is a term of art. But  
15 you'll notice that word, disposable, is not in  
16 the May 22nd, 2014 judgment. Because  
17 basically, this was the same legal issue that  
18 was before the Court in May of 2014, is whether  
19 or not Ms. Boutte was still going to get money  
20 even though she couldn't get money from the  
21 government because of the rules. Case Law and  
22 the Federal Statutes. And Mr. Boutte agreed  
23 that he was going to continue to pay privately  
24 forty-three percent of his military retirement  
25 pay. Not disposable retired pay because he has  
26 the option under the law. Now whether he  
27 totally understood that or Ms. Carr explained  
28 it to him or whether Ms. Carr fully understood  
29 it; I don't know. But that was the -- The  
30 issue that you are arguing today is the very  
31 issue that we were here about in May of 2014 is  
32 whether or not by moving this money and calling

MARTHA A. KIBLER, CCR

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Thirty-Sixth Judicial District Court

P.O. Box 1148

DeRidder, LA 70634

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32a

00331

1 it Combat Related Special Compensation or  
2 Concurrent Retirement Disability Pay, if it  
3 could be shielded from Ms. Boutte.

6 MR. HESSER:

7 Let me address that a little further and  
8 then I'll move onto my other arguments, Your  
9 Honor.

10 One of the things about this is it's not -  
11 - For example, I filed a petition for  
12 declaratory judgment which is an ordinary  
13 proceeding. Okay, technically, they could have  
14 filed an exception of improper use of summary  
15 proceedings, but apparently, they haven't done.  
16 So that's considered waived under our  
17 provision.

21                   So, unless that he would have known that  
22                   they would have waived their objection at that  
23                   time, he couldn't actually even join. He would  
24                   have had to hear that on a different date  
25                   unless the Court wanted to. Unless everybody  
26                   consented to it.

27 So, you have essentially two different  
28 types of proceedings as well. So, he  
29 procedurally couldn't even address the  
30 declaratory judgment type issues that I raised  
31 now which we are only here and doing at one  
32 time because essentially, there's no objection

**MARTHA A. KIBLER, CCR**  
Official Court Reporter - 27011

Thirty-Sixth Judicial District Court  
P.O. Box 1148  
DeRidder, LA 70634

1                   The point is well on this, Your Honor, is  
2                   that when they did the May 2014 judgment, there  
3                   was never any agreement to pay anything but  
4                   military retired pay. That was it. There was  
5                   never any -- In other words, Mr. Boutte doesn't  
6                   owe, based upon the language of that agreement  
7                   or the language of the first agreement,  
8                   anything from the concurrent -- the Combat  
9                   Related Special Compensation. He doesn't owe  
10                   that based upon that agreement. The plain  
11                   language which is clear and unambiguous just  
12                   says military retired pay and/or benefits.

13                   And so, then I have cited the law that we  
14                   previously had in Louisiana which was the  
15                   Poullard case which I believe was overruled by  
16                   the Supreme Court in the Howell case.

17                   And in Poullard, what happened there is  
18                   the parties agreed that and the lady in  
19                   conjunction was waiving spousal support, the  
20                   non-service member former wife, agreed to take  
21                   a percentage and there the Court said -- the  
22                   Third Circuit said you can't come back later  
23                   and reduce the money that you are paying her.

24                   Well, the Howell case out of the U.S.  
25                   Supreme Court essentially in overruling the  
26                   Arizona Court says that you can't go back and  
27                   force somebody to pay that in these cases.

28                   THE COURT:

29                   But don't the parties have a right in any  
30                   area of the law to create the law between  
31                   themselves? In other words, case law may say  
32                   this is what the rules are.

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1           But if the parties want to and do agree to  
2           contract differently, I believe one of the  
3           general principals of the law is that parties  
4           are free to create the law between themselves.  
5           So, assuming arguendo that Mr. Boutte didn't  
6           have to pay Ms. Boutte anything on May 22nd,  
7           2014, he nevertheless circumvented any  
8           jurisprudence to the opposite by agreeing that  
9           he would resume paying to her that forty-three  
10           percent.

11           MR. HESSER:

12           Well, that's what I'm saying --

13           THE COURT:

14           So in other words, I get if Mr. Boutte had  
15           insisted that he didn't owe her anything and  
16           the Court had ruled that he still had to pay  
17           her x-amount or x-percentage and you took that  
18           upon appeal, then you apply those  
19           jurisprudential rules of Louisiana Courts or  
20           the U.S. Supreme Court. But if the parties  
21           come to court and agree to do something  
22           different than what the case law is, they have  
23           created their own law between the parties.

24           MR. HESSER:

25           But what I'm saying, Your Honor, is this.  
26           The point is, the language from May the 22nd,  
27           2014, does not agree to anything to give her  
28           anything extra. It doesn't agree to give her  
29           that. That's what the point is, right now.  
30           The res judicata actually works against her  
31           because the language in that stipulation  
32           specifically says "Military Retired Pay

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1 THE COURT:

2 From May 2014 up through this very day.

3 MR. HESSER:

4 And he has done that voluntarily so that  
5 he would not be held in contempt of court. But  
6 he doesn't owe it. The judgment does not order  
7 him to do that. And that's my point. It can't  
8 be res judicata.

9 THE COURT:

10 Well, that's your position.

11 MR. HESSER:

12 Yes, Your Honor.

13 THE COURT:

14 I understand. All right.

15 The Court will consider the matter  
16 submitted.

17 First of all, the competing motions filed  
18 by both sides here, and actually my initial  
19 thought was that the exception of res judicata  
20 which I believe is a valid exception sort of  
21 pretermits the issues or all of the issues  
22 raised by Mr. Boutte.

23 Actually, after hearing all of the  
24 evidence and reconsidering this matter in my  
25 mind, I don't think that there are necessarily  
26 exclusive issues. And I think hopefully that  
27 will be clear as I go through my ruling in this  
28 matter.

29 First of all, there were actually three  
30 exceptions filed by Ms. Boutte. An Exception  
31 of No Right of Action and No Cause of Action.  
32 As to the No Right of Action I am going to deny

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1 that exception. I think certainly the other  
2 party effected by a judgment falls within the  
3 class of individuals who has the right to seek  
4 nullity, declaratory judgment, any of those  
5 issues. So, I'm going to deny that exception.

19 Now, as to the Exception of Res Judicata,  
20 I believe there is merit and I'm going to grant  
21 that because I believe basically what Mr.  
22 Hesser is artfully trying to do for his client  
23 is the same thing that could have been argued  
24 on May 22nd, 2014, and that is under Federal  
25 law and the prior judgment in this matter, Mr.  
26 Boutte doesn't have to pay Ms. Boutte anything.  
27 And the parties agreed differently on May 22nd,  
28 2014. Not only did the parties agree  
29 differently in a judgment based upon that  
30 stipulation was rendered, but Mr. Boutte has in  
31 accordance with that agreement and judgment  
32 continued to pay.

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1                   And the reason why I say the rulings are  
2                   really not exclusionary is I don't disagree  
3                   with Mr. Hesser's request for declaratory  
4                   judgment that CRSC is the separate property of  
5                   the military spouse. I think that's clear  
6                   under Federal law. VA disability. Declaring  
7                   that VA disability is separate property under  
8                   Federal law. I don't think I need to declare  
9                   that. I think Congress and the Courts have  
10                  declared that.

11                  But I don't think -- I don't think me  
12                  declaring that as a declaratory judgment  
13                  affects the May 22, 2014 judgment. Because,  
14                  for example, in the Petition for Declaratory  
15                  Judgment, there is an assertion by Mr. Boutte  
16                  that on December the 29th, 2017, the military  
17                  changed his CRDP to CRSC. That's not correct.  
18                  The evidence that has been presented in this  
19                  matter shows that his pay was converted from  
20                  CRDP to CRSC in February of 2014, before we  
21                  came to court and the parties agreed to this  
22                  May 22nd, 2014 judgment.

23                  So, the argument that a subsequent change  
24                  by DFAS gave Mr. Boutte another opportunity to  
25                  waive pay that Ms. Boutte might have otherwise  
26                  been entitled to receive directly from DFAS is  
27                  not a correct statement of the facts. That's  
28                  not what the evidence has shown.

29                  And to that point as it has been pointed  
30                  out in the evidence here today, the actual  
31                  total military benefits that Mr. Boutte has  
32                  been receiving since he retired in 2009 is

1 somewhere in the neighborhood of \$4600-4700.  
2 Ms. Boutte never claimed to be entitled to  
3 forty-three percent of that number. She simply  
4 asked for and expected and the parties were  
5 both agreeable to Ms. Boutte receiving forty-  
6 three percent of the DFAS non-disability  
7 portion of that retirement, which was  
8 apparently around anywhere from \$336.69 times  
9 two or \$745. I'm not sure where -- maybe there  
10 was withholdings or some difference in those  
11 numbers that Mr. Boutte referenced and Ms.  
12 Boutte referenced as to what they have actually  
13 been doing since their divorce in 2012  
14 basically. Either from DFAS or directly from  
15 Mr. Boutte.

16 So, in one event it would be around \$674,  
17 the other would be around \$745.

18 But to the extent that that's a true  
19 statement of the law that CRSC is Mr. Boutte's  
20 separate property. That's what the prayer in  
21 this matter asked for by the filings from Mr.  
22 Boutte. But I don't think that effects the May  
23 22, 2014 judgment and therefore that's why I  
24 think the Exception of Res Judicata is a valid  
25 judgment.

26 I think that's the issues before the Court  
27 today.

28 I think the parties have the right to  
29 create their own law between them. And I think  
30 that's what they did on May 22, 2014. And that  
31 in light of all of these negotiations back and  
32 forth regarding property divisions, spousal

1 support, that the parties agreed that Ms.  
2 Boutte would continue -- the judgment uses the  
3 word "resume" -- payment of forty-three percent  
4 of what the military retirement payment was,  
5 which was somewhere between that number of \$674  
6 and \$745 per month, and that's in fact what's  
7 been happening since 2014.

8 So that is my ruling. It's not a clear  
9 issue but this area of the law is not clear.  
10 So, I think the Exception of Res Judicata is  
11 valid and to the extent that CRSC is the  
12 separate property of Mr. Boutte. I haven't  
13 seen anything by Ms. Boutte that argues  
14 anything other than that. So, I think to the  
15 extent that that is request for declaratory  
16 judgment, I think that's really not mutually  
17 exclusive to the judgment from May 22, 2014.  
18 All right.

19 I'll probably note both of your objections  
20 to the ruling if you so choose and then  
21 whichever one of you will prepare that  
22 judgment.

23 MR. SEASTRUNK:

24 Your Honor, if I may, on behalf of my  
25 client. She had requested in her petition that  
26 the defendant be ordered to pay cost and  
27 attorney fees.

28 MR. HESSER:

29 Just in response, Your Honor, there is no  
30 basis to ask for attorney fees.

31 THE COURT:

32 I agree. The law is clear on attorney

1 fees unless it is contractually agreed to or  
2 there is a specific statutory authorization,  
3 it's not allowed under Louisiana law. So, I  
4 deny that request.

5 As to court cost, I think that the parties  
6 in effect both prevailed today in the Court's  
7 ruling in that what Mr. Hesser asked to be  
8 declared as separate property, I think the law  
9 is clear in that CRSC is the separate property  
10 and I think Mr. Seastrunk's Exception of Res  
11 Judicata, I think the judgment of May 22, 2014  
12 stands and so I'm going to assess the cost  
13 fifty percent as to each party.

14 MR. HESSER:

15 Thank you.

16 MR. SEASTRUNK:

17 Judge, I'll prepare the judgment.

18 THE COURT:

19 If you will get that to Mr. Hesser within  
20 five business days and Mr. Hesser to me within  
21 five business days thereafter.

22 Anything before we close court?

23 MR. HESSER:

24 No, sir. Thank you, Your Honor. Thank you  
25 for your time.

26 MR. SEASTRUNK:

27 No, sir. Thank you, Your Honor.

28 (PROCEEDINGS CLOSED)

29

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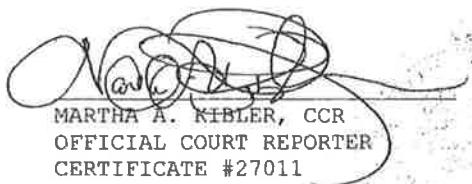
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C E R T I F I C A T E

This certificate is valid only for a transcript accompanied by my original signature and original required seal on this page.

I, Martha A. Kibler, Official Court Reporter in and for the State of Louisiana, employed as an Official Court Reporter by the 36th Judicial District Court for the State of Louisiana, as the officer before whom this testimony was taken, do hereby certify that this testimony was reported by me in the stenomask reporting method, was prepared and transcribed by me or under my direction and supervision, and is a true and correct transcript to the best of my ability and understanding; that the transcript has been prepared in compliance with transcript format guidelines required by statute or by the rules of the board or by the Supreme Court of Louisiana; and that I am not related to counsel or to the parties herein; nor am I otherwise interested in the outcome of this matter.

October 11, 2019

  
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# APPENDIX D

IN THE SUPREME COURT

STATE OF LOUISIANA

Docket No. \_\_\_\_\_

---

YVONNE RENEA BOUTTE, Respondent

VERSUS

KEVIN LEE BOUTTE, Petitioner / Applicant

---

Application for a Writ of Certiorari  
from a July 8, 2020 decision by the  
Court of Appeal, Third Circuit, State of Louisiana  
(Judges Conery, Savoie and Perry)  
Docket No. 19-734,  
affirming a decision of the  
36<sup>th</sup> District Court for the Parish of Beauregard,  
Civil Docket No. C-2010-1241-B, June 24, 2019  
(Judge C. Kerry Anderson)

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APPLICATION FOR A WRIT OF CERTIORARI

FAMILY LAW MATTER

---

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#### STATEMENT OF RULE X(1)(a) CONSIDERATION

Pursuant to La. St. Sup. Ct. Rule X, § 1(a), the following grounds exist to justify this Court's discretionary review of Petitioner's application for a writ.

**Rule X, § 1(a)(1).** The Court of Appeals decision conflicts with a decision of the United States Supreme Court. In *Howell v. Howell*, 137 S. Ct. 1400 (2017), the Supreme Court held that state courts do not have the authority to prospectively vest veterans' disability benefits as property in anyone other than the veteran beneficiary, whether by way of a consent agreement or forced order of indemnification or reimbursement. *Howell, supra* at 1405, citing 38 U.S.C. § 5301(a)(1). In the instant case, the trial court's order that Petitioner continue paying his former spouse violated this rule because it required Petitioner to use veterans' disability benefits to satisfy a state court consent decree. *Id.* *Howell* ruled that all military retired pay and disability pay is protected by federal preemption except that which is defined as "disposable" under the Uniform Former Spouses Protection Act (USFSPA). *Id.* at 1403-1406, citing USFSPA, 10 U.S.C. § 1408 and 38 U.S.C. § 5301.

**Rule 10, § 1(a)(2).** The Court of Appeals decision that *res judicata* barred Petitioner's claim that he should not have to continue using his federal disability pay to satisfy the "community property" division is a significant issue of law that has not been resolved by the Louisiana Supreme Court since the release of *Howell, supra*. *Howell* held that state courts could not authorize or force indemnification agreements that required veterans to dispossess themselves of their personal entitlements to federal disability payments. *Howell, supra* at 1406. The Court reasoned that the protected benefits are personal entitlements intended to actually reach the beneficiary. *Id.* at 1403. The Court further held that orders which effectively force the veteran to indemnify or reimburse the former spouse (even those orders that do not designate what benefits the veteran is to use to do so) are equally preempted and prohibited. *Id.* at 1406. Such orders "displace the federal rule and stand as an obstacle to the accomplishment and execution of the purposes and objectives of Congress." *Howell, supra* at 1405-1406.

As the Court reiterated, it makes no difference whether the state court designates that the money is to come from the veteran's non-disposable federal benefits, the effect is the same – it unlawfully deprives the veteran of his or her entitlement in contravention of the preemptive federal law, which requires that the veteran retain the value of his or her benefit. *Id.* It means nothing to

the veteran if the non-disposable benefit he or she receives can be diminished by the simple, but unlawful, convention of an offsetting award. “All such orders are thus preempted.” *Howell*, 137 S Ct at 1406.

Since *Howell*, many state courts have ruled that it applies to consent agreements notwithstanding the sanctity of contracts. See, e.g., *Roberts v. Roberts*, 2018 Tenn. App. LEXIS 195, \*22 (Tenn. App. 2018) (“*Howell* casts substantial doubt as to whether state courts may enter divorce decrees of any kind in which the parties seek to divide any service related benefit other than disposable retired pay); *In re Babin*, 437 P.3d 985, 991 (Kan. Ct. App. 2019) (*Howell* “abrogate[ed] several cases dealing with property settlement agreements” and “endorsed *Mansell v. Mansell*, 490 U.S. 581 (1989)”) and its restriction on using a property settlement agreement to divide pay” and “overruled cases relying on the sanctity of contract to escape the federal preemption.”); *Berberich v. Mattson*, 903 N.W.2d 233, 241 (2017) (*Howell* “makes clear that state courts ‘cannot ‘vest’ that which (under governing federal law) they lack the authority to give” and “overruled cases relying on the sanctity of contract to escape federal preemption”; “[s]imply put, state laws are preempted in this specific area.”). At least one court has now ruled that principles of *res judicata* would not apply where the veteran entered into a federally preempted and impermissible consent agreement. *Foster v. Foster*, 2020 Mich. LEXIS 687, \*21-22 (April 29, 2020) (consent agreement requiring veteran to dispossess himself of disability benefits was prohibited by 38 U.S.C. § 5301(a)(1) and (3) and therefore impermissible) and *Foster v. Foster (On Second Remand)*, 2020 Mich. App. LEXIS 4880, \*3-4 (Mich. Ct. App., July 30, 2020) (holding principle of federal preemption deprives the state courts of subject matter jurisdiction to the extent that the state court requires the veteran to dispossess himself of his federal disability benefits and therefore the veteran “did not engage in an improper collateral attack on the 2008 consent judgment.”).

The application of *Howell* to the division of military disability benefits in state court divorce proceedings has not been addressed by this Court. Many state courts have reviewed and overturned or significantly clarified existing state case law on the basis of *Howell* since that opinion was issued. See, e.g., *Roberts, supra*; *Babin, supra*; *Berberich, supra*; *Foster, supra*; *Vlach v. Vlach*, 556 S.W.3d 219, 223-224 (Tenn. App. 2017) (canvassing pre-*Howell* state cases and explaining that *Howell* rejected both the “vested interest” approach and the “reimbursement or

“indemnification” approach (the one used here by the trial court) because “either approach amounted to an award of military pay waived in order to obtain disability benefits” and “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.”); *Brown v. Brown*, 260 So.3d 851 (Ala. Ct. App. 2018); *Hurt v. Jones-Hurt*, 168 A.3d 992, 1001, 1002 (Md. Ct. App. 2017); *In re Marriage of Tozer*, 410 P. 3d 835, 836-837 (Colo. Ct. App. 2017); *In re Marriage of Cassinelli (On Remand)*, 2018 Cal. App. LEXIS 177 (2018); *Fattore v. Fattore*, 2019 N. J. Super. LEXIS 16 (N. J. App. 2019); *Edwards v. Edwards*, 132 N.E.3d 391 (Ind. App. 2019), transfer denied 138 N.E. 3d 957 (2019) (holding that *res judicata* barred the challenge to the prior agreement but that *Howell* required the trial court to modify the judgment so that the veteran would not be required to continue using his disability benefits to pay his former spouse).

In light of this significant (and growing) body of post-*Howell* case law across the country, this Court has the opportunity to address a post-*Howell* decision forcing a veteran to continue to dispossess himself of these benefits in a manner contrary to federal law. Petitioner urges it do so here.

**Rule 10, § 1(a)(4).** In light of the above discussion, and the fact that federal preemption is absolute when it comes to the disposition of military benefits as property in state court divorce proceedings See, e.g., *McCarty v. McCarty*, 453 U.S. 210, 223-234 (1981); *Ridgway v. Ridgway*, 454 U.S. 46, 60-61 (1981); *Mansell v. Mansell*, 490 U.S. 581, 587 (1989) and *Howell, supra* at 1404 (stating “in respect to the waived portion of military retirement pay, *McCarty*, with its rule of federal pre-emption, still applies.”), and because 38 U.S.C. § 5301 is a federal statute that prohibits agreements by veterans to dispossess themselves of these benefits, the Court of Appeals erroneously applied the constitution and laws of the United States. Its decision will cause material injustice for all disabled veterans who are similarly situated and significantly affect the public interest in caring for those “who shall have borne the battle” and the “long standing...solicitude of Congress for veterans”. See, respectively, Abraham Lincoln, Second Inaugural Address (March 14, 1865) and *United States v. Oregon*, 366 U.S. 643 (1961).

**MEMORANDUM IN SUPPORT OF THE WRIT APPLICATION**

**STATEMENT OF THE CASE**

Petitioner, Kevin Boutte, and Respondent, Yvonne Boutte, married on July 13, 1991 (R. 9).<sup>1</sup> They divorced on January 27, 2012 (**ATTACHMENT A**, Judgment of Divorce, January 27, 2012). Kevin served over 20 years in the United States Army (from 1989 to 2009) (R. 25-26). He retired with an Honorable Discharge (R. 25).

As a direct result of his military service, Kevin suffered injuries, including traumatic brain injuries (TBI), post-traumatic stress disorder (PTSD), mood disorder, cognitive disorder, and tinnitus (R. 351, ll. 1-6). These disabilities affect him on a daily basis (R. 351).

Because he suffered these injuries during combat, Kevin was entitled to both veterans disability pay and Combat Related Special Compensation (CRSC) (R. 279, CRSC Decision Letter). See also 10 U.S.C. § 1413a.<sup>2</sup> Although Kevin acquired sufficient years of military service to qualify for military retired pay, a former servicemember who incurs injuries during service may be entitled to disability pay, and, in most cases, must give up the military retired pay to receive the disability pay. *Mansell v. Mansell*, 490 U.S. 581, 583, 594-595 (1989).

The Secretary of the service branch of the member administers the member's retirement pay and retains jurisdiction over the member and the authority to recall him or her to active duty. See *United States v. Tyler*, 105 U.S. 244, 245 (1881) (explaining the "manifest difference" in two kinds of military retirement from active service and retiring (or being disabled) from service altogether); *Barker v. Kansas*, 503 U.S. 594, 599 (1992) ("Military retirees unquestionably remain in the service and are subject to restrictions and recall; in these respects they are different from other retirees"). See also *McCarty v. McCarty*, 453 U.S. 210, 223-232 and n. 16 (1981). These benefits are paid by the Defense Finance and Accounting Service (DFAS). Disability pay, on the other hand, is tax free and paid by the Secretary of Veterans Affairs. *Mansell*, 490 U.S. at 583-584. Once a servicemember's disability rating meets or exceeds a threshold (usually 100 percent) the

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<sup>1</sup> "R #" refers to the appellate record filed in the court of appeals in two volumes containing page numbers 00001 through 00393. Requisite attachments are referred to as "Attachment" followed by capital letters commencing with A.

<sup>2</sup> CRSC pay is a specialized form of disability pay whereby a retiree with a combat-related disability is entitled to receive an amount equal to or less than his or her length of service retirement pay and his veterans administration (VA) disability compensation combined. See 10 U.S.C. § 1414(d); *Adams v. United States*, 126 Fed. Cl. 645, 647-648 (2016) (CRSC benefits are based on a "combat-related disability" that is "compensable under the laws administered by the Secretary of Veterans Affairs").

former servicemember no longer receives *any* disposable military retired pay. Those benefits are replaced by the disability benefits and paid by the Veterans Administration (VA)

As they are not received as compensation for prior services rendered, but rather are intended to compensate the veteran for his or her specific disabilities, these benefits are not considered disposable military retired pay and therefore they are not considered a divisible “property” interest under the direct pay provision of the Uniform Services Former Spouses Protection Act (USFSPA), 10 U.S.C. § 1408(a)(2)(B)(iii) and (C); (4)(A); (c)(1) and (e)(1), nor as available “income”, termed “remuneration for employment”, under the similar provisions governing division of military pay as alimony or child support found in the Child Support Enforcement Act (CSEA), 42 U.S.C. § 659(a), (h)(1)(A)(ii)(V) and (h)(1)(B)(iii).

Importantly, VA disability benefits are also affirmatively protected by federal law. Thus, 38 U.S.C. § 5301(a)(1) jurisdictionally protects these benefits when they are “due or to become due”, “before or after receipt by the beneficiary”, from “any legal or equitable process whatever.” So protective is this provision that it even prohibits the veteran beneficiary from voluntarily entering into a contractual agreement (or consent judgment) to give up these benefits and renders them “void from inception”. See 38 U.S.C. § 5301(a)(1) and (3)(A) and (C). See, e.g., *United States v. Hall*, 98 U.S. 343, 349-356 (1878), *Howell v. Howell*, 137 S. Ct. 1400, 1405 (2017). See also *Foster v. Foster*, \_\_\_ Mich. \_\_\_; \_\_\_ N.W.2d \_\_\_; 2020 Mich. LEXIS 687 (Mich. 2020) (consent judgment requiring veteran to use disability pay to make up the difference in former spouse’s loss of her share of previously available disposable retired pay was an impermissible assignment under 38 U.S.C. § 5301(a)(3)(A) and preempted by federal law)<sup>3</sup> and *Foster v. Foster (On Second Remand)*, \_\_\_ Mich. App. \_\_\_; 2020 Mich. App. LEXIS 4880 (July 30, 2020) (state courts are deprived of subject matter jurisdiction where principles of federal preemption apply and consent judgment entered in 2008 whereby veteran agreed to pay property settlement to former spouse using disability pay if he waived retired pay was preempted and subject to collateral attack notwithstanding principles of *res judicata*).

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<sup>3</sup> Cf., *Nelson v. Nelson*, 985 So.2d 1285, 1290 (La. App. 5 Cir. 2008) (a consent judgment is a bilateral contract wherein the parties adjust their differences by mutual consent). See also *McDaniel v. McDaniel*, 567 So.2d 748, 750 (La. App. 2 Cir. 1990) (same).