

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.

A handwritten signature in dark ink, consisting of a large, stylized capital 'J' followed by a horizontal line extending to the right.

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.

YVONNE RENEA BOUTTE

No.2020-C-00985

VS.

KEVIN LEE BOUTTE

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;

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



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

SUPREME COURT OF LOUISIANA

No. 2020-C-00985

YVONNE RENE A 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.¹

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

¹ 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." *Fletcher v. Fletcher*, 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

YVONNE RENE A BOUTTE

VERSUS

KEVIN LEE BOUTTE

FILED:

June 24, 2019

36TH JUDICIAL DISTRICT COURT
CLERK OF COURT
BEAUREGARD PARISH

STATE OF LOUISIANA

Suenna Allen
DEPUTY CLERK

FILED

2019 JUN 24 10:07

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 29th day of April 2019.

Present in Court were Ronald K. Seastrunk, attorney for and the plaintiff, YVONNE RENE A 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 RENE A 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 RENE A BOUTTE'S Exception of No Right of Action is denied.

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

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

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

[Signature]
JUDGE, 36TH JUDICIAL DISTRICT COURT

00307

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

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. SEASTRUNK
ATTORNEY AT LAW
104 North Third Street
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Bar Roll # 21871

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DOCKET NO.: 20101241-B

YVONNE RENEA BOUTTE

VERSUS

KEVIN LEE BOUTTE

FILED: June 6, 2014

36TH JUDICIAL DISTRICT COURT

PARISH OF BEAUREGARD

STATE OF LOUISIANA

Henry B. Thomas
DEPUTY CLERK

JUDGMENT

THIS CAUSE having come on for hearing on the 22nd 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 19th, 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 22nd, 2014. The remaining Nine Hundred Twenty Five Dollars (\$925.00) shall be paid within 180 days from May 22nd, 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 22nd, 2014.

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JUDGMENT RENDERED in Beauregard, Louisiana this 6th day of

June, 2014.


36th JUDICIAL DISTRICT COURT

APPROVED AS TO CONTENT AND FORM:


ELIZABETH B. CARR
ATTORNEY AT LAW
202 W. North Street
Leesville, Louisiana 71446
(337) 238-4704
Bar Roll No.: 31089
Attorney for Plaintiff


RONALD K. SEASTRUNK
ATTORNEY AT LAW
104 N. Third Street
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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 19, 2012
By: Cheryl Palmer
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

- 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 acquets 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 De Ridder, Beauséjour Parish, Louisiana, on the 19th day of January, 2012, in the presence of Pam Young and Adrian Galloway, competent witnesses, who hereto sign their names with the said appearers and me, Notary Public, after reading of the whole.

WITNESSES:

Pam Young
Adrian Galloway

KB
KEVIN LEE BOUTTE
[Signature]
Notary Public

THUS DONE AND PASSED, in De Ridder, Beauséjour State of Louisiana, Parish of Vernon, on the 19th 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

Vonne Renea Boutte
VONNE RENE A BOUTTE
[Signature]
Notary Public

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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 Jester

CONSENT JUDGMENT OF DIVORCE

This matter came before me on the 19th 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:

$\frac{1}{2} \times$	the number of months of marriage during the member's credible military service =	Spouse's % of disposable military retired pay:
	Member's total number of months of credible military service	
	<u>Date of Marriage</u>	July 13, 1991
	<u>Date of Divorce</u>	January 19, 2012
	Total number of months of marriage during service =	219 months
	<u>Date entered service</u>	November 17, 1988
	<u>Date of retirement</u>	November 1, 2009

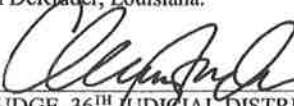
The parties agree to the following:

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


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 19th day of January, 2012 in DeRidder, Louisiana.
- 6) KEVIN LEE BOUTTE assigns to YVONNE RENE A BOUTTE his interest in his military retired pay and YVONNE RENE A 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 RENE A BOUTTE in executing an application for direct payment to her from his retired pay pursuant to 10 U.S.C. 1408 et 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 RENE A BOUTTE, beginning January 19, 2012, until such time as the U.S. government begins deducting that amount and sending payment to YVONNE RENE A 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 RENE A BOUTTE.
- 12) YVONNE RENE A 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 RENE A 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 RENE A 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 RENE A 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, 36TH 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 Renea Boutte
104 North 3rd Street
Leesville, La 71446
(337) 238-5100


Kevin Lee Boutte


Yvonne Renea Boutte

DOCKET NO.: C-2010-1245-B

YVONNE RENEA BOUTTE

VERSUS

KEVIN LEE BOUTTE

FILED: December 21, 2010

FILED
36TH JUDICIAL DISTRICT COURT

2010 DEC 21 AM 10:41
PARISH OF BEAUREGARD

CLERK
STATE OF LOUISIANA

Gweny 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 3rd Street, Broussard, Louisiana, 70518.

2.

That the parties of this action were married to each other on July 13th, 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 16th, 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, DeRidder, Louisiana 70634.

00009

23a

Filed: March 3, 2011
By: Cheryl 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 [REDACTED]	
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		b. HOME OF RECORD AT TIME OF ENTRY (City and state, or complete address if known) [REDACTED]			
8a. LAST DUTY ASSIGNMENT AND MAJOR COMMAND 0083CMBN FC		b. STATION WHERE SEPARATED FORT POLK, LA 71459-5000			
9. COMMAND TO WHICH TRANSFERRED USAR CON GP (RET) 1 RESERVE WAY, ST LOUIS, MO 63132		10. SGLI COVERAGE 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 10 26			
		b. SEPARATION DATE THIS PERIOD 2009 10 31			
		c. NET ACTIVE SERVICE THIS PERIOD 0016 00 05			
		d. TOTAL PRIOR ACTIVE SERVICE 0004 00 00			
		e. TOTAL PRIOR INACTIVE SERVICE 0000 11 08			
		f. FOREIGN SERVICE 0005 03 23			
		g. SEA SERVICE 0000 00 00			
		h. EFFECTIVE DATE OF PAY GRADE 2006 07 01			
13. DECORATIONS, MEDALS, BADGES, CITATIONS AND CAMPAIGN RIBBONS AWARDED OR AUTHORIZED (All periods of service) IRAQ CAMPAIGN MEDAL W/TWO CAMPAIGN STARS// BRONZE STAR MEDAL//ARMY COMMENDATION MEDAL (5TH AWARD)//ARMY ACHIEVEMENT MEDAL (3RD AWARD)//MERITORIOUS UNIT COMMENDATION//ARMY GOOD CONDUCT MEDAL (6TH AWARD)//NATIONAL DEFENSE SERVICE MEDAL (2ND AWARD)//SOUTH WEST ASIA SERVICE MEDAL W/BRONZE//CONT IN BLOCK 18		14. MILITARY EDUCATION (Course title, number of weeks, and month and year completed) ADVANCED NONCOMMISSIONED OFFICER COURSE, 12 WEEKS, 2006//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 REBUILD 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			
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			
18. REMARKS IMMEDIATE 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 ACTION BADGE//SENIOR PARACHUTIST BADGE//PARACHUTIST BADGE//DRIVER AND MECHANIC BADGE WITH DRIVER - WHEELED VEHICLE(S) CLASP//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) [REDACTED]		b. NEAREST RELATIVE (Name and address - Include ZIP Code) [REDACTED]			
20. MEMBER REQUESTS COPY 6 BE SENT TO LA DIRECTOR OF VETERANS AFFAIRS		X YES NO			
21. SIGNATURE OF MEMBER BEING SEPARATED DIGITALLY SIGNED BY: BOUTTE, KEVIN, LEE, 1119886976		22. OFFICIAL AUTHORIZED TO SIGN (Typed name, grade, title and signature) DIGITALLY SIGNED BY: IRVIN, PAMELA, S. 1230838573 PAMELA IRVIN, GS11, RETIREMENT SVC OFF			
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 24a			

DD FORM 214-AUTOMATED, FEB 2000 PREVIOUS EDITION IS OBSOLETE. GENERATED BY TRANSFORMER 00025 MEMBER - 4

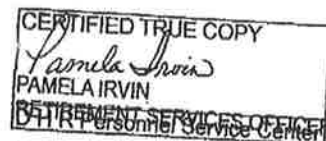
DD FORM 214 CONTINUATION PAGE

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//MBA1 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?

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, 2014
By: [Signature]
Deputy Clerk of Court



DEPARTMENT OF THE ARMY
U.S. ARMY HUMAN RESOURCES COMMAND
1600 SPEARHEAD DIVISION AVENUE DEPT 420
FORT KNOX, KY 40122-5402

November 1, 2013

Combat-Related Special Compensation

SFC (RET) Kevin L. Boutte
[Redacted]

Original Application Date: October 18, 2012

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	Rating	Percentage	Effective Date	Remarks
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

Yvonne Boutte #1

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.

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

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: [Signature]
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 or call the Customer Service Section at 1-888-332-7411 (DFAS411).

Sincerely,

Lisa A. Altus

Lisa A. Altus
Paralegal Specialist



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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

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

4 Nevertheless, Mr. Boutte agreed to that
5 judgment from May 22, 2014.

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.

18 The matter that was before the Court
19 previously was a rule for contempt, which was a
20 summary proceeding.

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

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.

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

1 Circuit, November 24, 2010, has been previously
2 received into the record, but is also the same
3 as Yvonne Boutte Exhibit Number Three.
4 BY MR. SEASTRUNK:
5 Q So would it be fair to say that you agreed to use
6 your separate funds to pay in a contractual obligation?
7 MR. HESSER:
8 Objection.
9 (Cross examination continues)
10 A (MR. BOUTTE)
11 Are you asking me what was said five years ago? I
12 don't remember. That's one thing about PTSD is memory
13 loss.
14 Q Fair enough. You do recall coming into court and
15 stipulating to that judgment?
16 A I do remember.
17 Q Ms. Carr was present with you?
18 A Yes, she was.
19 Q Do you recall receiving a signed copy of that
20 judgment?
21 A I'm sure I did. I don't recall.
22 Q Yes, sir.
23 At any time did you direct Ms. Carr or any other
24 attorney to file an appeal on your behalf?
25 A No. I could not afford it.
26 MR. SEASTRUNK:
27 May I approach, Judge?
28 THE COURT:
29 You may.
30 BY MR. SEASTRUNK:
31 Q Let me show you Yvonne Boutte 4 and ask you to have
32 a look at that.

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

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.

6 The No Cause of Action states that
7 basically if you assume all of the facts
8 alleged in the petition as true, whether or not
9 the person has a cause of action. And
10 ultimately because my ruling in this matter is
11 going to be basically in both party's favors to
12 a large extent, I'm going to deny the No -- I'm
13 going to deny the No Cause of Action. I think
14 a request for a declaratory judgment is a cause
15 of action assuming that everything that is
16 stated in the pleadings is true, grants a cause
17 of action for the court to declare some status
18 of the parties.

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.

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
30
31
32

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.

 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
36th District Court for the Parish of Beauregard,
Civil Docket No. C-2010-1241-B, June 24, 2019
(Judge C. Kerry Anderson)

APPLICATION FOR A WRIT OF CERTIORARI

FAMILY LAW MATTER

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<i>Edwards v. Edwards</i> , 132 N.E.3d 391 (Ind. App. 2019)	3, 21
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<i>Foster v. Foster</i> , 2020 Mich. LEXIS 687 (April 29, 2020).....	2, 13, 21
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<i>Hayburn's Case</i> , 2 U.S. 409 (1792).....	9
<i>Henderson v. Shinseki</i> , 562 U.S. 428 (2011).....	10
<i>Hines v. Lowrey</i> , 305 U.S. 85 (1938).....	11, 12, 13
<i>Howell v. Howell</i> , 137 S. Ct. 1400 (2017).....	passim
<i>Hurt v. Jones-Hurt</i> , 168 A.3d 992 (Md. Ct. App. 2017).....	3, 20
<i>In re Babin</i> , 437 P.3d 985 (Kan. Ct. App. 2019)	2, 19
<i>In re Marriage of Cassinelli (On Remand)</i> , 2018 Cal. App. LEXIS 177 (2018)	3, 20
<i>In re Marriage of Tozer</i> , 410 P. 3d 835 (Colo. Ct. App. 2017)	3, 20

<i>Kalb v. Feurstein</i> , 308 U.S. 433 (1940).....	11
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<i>Mallard v. Burkart</i> , 95 So.3d 1264 (Miss. 2012).....	19
<i>Mansell v. Mansell</i> , 490 U.S. 581 (1989).....	passim
<i>McCarty v. McCarty</i> , 453 U.S. 210 (1981).....	passim
<i>McDaniel v. McDaniel</i> , 567 So.2d 748 (La. App. 2 Cir. 1990)	2, 5, 16
<i>Merrill v. Merrill</i> , 238 Ariz. 467 (2015).....	13
<i>Nelson v. Nelson</i> , 985 So.2d 1285 (La. App. 5 Cir. 2008)	2, 16
<i>Porter v. Aetna Casualty and Surety Co.</i> , 370 U.S. 159 (1962).....	passim
<i>Ridgway v. Ridgway</i> , 454 U.S. 46 (1981).....	3, 11, 15
<i>Roberts v. Roberts</i> , 2018 Tenn. App. LEXIS 195 (Tenn. App. 2018)	2, 19
<i>Rostker v. Goldberg</i> , 453 U.S. 57 (1981).....	10
<i>Ryan v. Ryan</i> , 257 Neb. 682; 600 N.W.2d 739 (Neb 1999).....	19
<i>Sample v. Sample</i> , 2018 Tenn. App. LEXIS 523 (Tenn. App. 2018)	19
<i>South East Auto Dealers Rental Ass’n, Inc. v. EZ Rent to Own, Inc.</i> , 980 So.2d 89 (La. App. 4 Cir. 2/27/08)	6
<i>United States v. Hall</i> , 98 U.S. 343 (1878).....	passim
<i>United States v. Oregon</i> , 366 U.S. 643 (1961).....	3, 10
<i>United States v. Tyler</i> , 105 U.S. 244 (1881).....	1
<i>Vlach v. Vlach</i> , 556 S.W.3d 219 (Tenn. App. 2017).....	2, 19

<i>Wissner v. Wissner</i> , 338 U.S. 655 (1950).....	11, 18
<i>Yake v. Yake</i> , 170 Md. 75; 183 A. 555 (1936)	13
<i>Youngbluth v. Youngbluth</i> , 188 Vt. 53; 6 A.3d 677 (Vt. 2010)	19
Statutes	
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10 U.S.C. § 1413a.....	1, 12, 15, 17
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38 U.S.C. § 5301.....	passim
42 U.S.C. § 659.....	2
La. Civ. Code Ann. art. 1966.....	7
La. Civ. Code Ann. art. 1968.....	7, 16
La. Civ. Code. Ann. art. 1971.....	5, 7, 16
Other Authorities	
9 Nicolay and Hay, Works of Abraham Lincoln 75-77 (1894)	10
Abraham Lincoln, Second Inaugural Address (March 14, 1865).....	3, 10
Schwab, <i>et al.</i> , War and the Family, 11(2) Stress Medicine 131-137 (1995).....	9
Department of Defense Financial Regulations on CRSC, October 2017.....	12
Erickson, W., Lee, C., von Schrader, S. Disability Statistics from the American Community Survey (ACS) (2017).....	8
Evans Hughes, War Powers Under the Constitution, 2 Marquette Law Review 10 (1917).....	10
Fazal, Dead Wrong? Battle Deaths, Military Medicine, and Exaggerated Reports of War's Demise, 39:1 International Security 95 (2014).....	8
Finley, Fields of Combat: Understanding PTSD Among Veterans of Iraq and Afghanistan (Cornell Univ. Press 2011)	9
Kriner & Shen, Invisible Inequality: The Two Americas of Military Sacrifice, 46 Univ. of Memphis L. Rev. 545 (2016).....	9
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).....	9
Rombauer, Marital Status and Eligibility for Federal Statutory Income Benefits: A Historical Survey, 52 Wash. L. Rev. 227 (1977).....	9
Trauschweizer, 32 International Bibliography of Military History 1 (2012)	7

U.S. Census Bureau, Facts for Features.....	8
VA, National Center for Veterans Analysis and Statistics, What's New	8
VA, Trends in Veterans with a Service-Connected Disability: 1985 to 2011	7, 8
Waterstone, Returning Veterans and Disability Law, 85:3 Notre Dame L. Rev. 1081 (2010)	10
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 (2010).....	9
Rules	
La. St. Sup. Ct. Rule X.....	1
Constitutional Provisions	
U.S. Const. art. VI, cl. 2.....	11
U.S. Const., art. I, § 8, cls. 12-14.....	10

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 continuing 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).¹ 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.² 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

¹ "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.

² 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)³ 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*).

³ 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).