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No. _____

ORIGINAL

FILED
JAN 22 2022

OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

Byron L. Case — PETITIONER
(Your Name)

vs.

Douglas County, et al. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the Ninth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Byron L Case
(Your Name)

860 wilbur Rd
(Address)

Roseburg Or 97470
(City, State, Zip Code)

541 - 802 - 9556
(Phone Number)

QUESTION(S) PRESENTED

Weather federal law(s) 10 U.S.C. § 1408 and 38 U.S.C. § 5301 can be overridden by state law(s) regarding military veterans' disability income or assets

Whether State courts can override Congress Enacted Laws

Weather a state can override federally enacted military veterans' disability laws 10 U.S.C. § 1408 and 38 U.S.C. § 5301 in a dissolution when the veteran did not waive a portion of retirement for disability

Weather military veterans' disability can be offset by a court order to sell a joint marital asset in order to provide spousal support, or spousal maintenance, in a one lump sum since military veterans disability cannot be garnished monthly, per federal law(s) 10 U.S.C. § 1408 and 38 U.S.C. § 5301

Weather military veterans' disability that has been Commingled into a Military Veterans' marital asset is still protected under 10 U.S.C. § 1408 and 38 U.S.C. § 5301

Weather a military disabled veteran can be held in contempt of court for not signing Escrow Documents to sell a marital asset home as a means to provide spousal support or spousal maintenance

Weather a military disabled veteran can be incarcerated for not signing Escrow Documents in order to sell a marital asset home as a means to provide spousal support, or spousal maintenance, in a single lump sum

Weather a military disabled veteran can be incarcerated with the only means of release is to sign Escrow Title Documents selling the home/asset(s) as a means to provide spousal support or spousal maintenance

Weather courts can legally order a prior spouse to sign the disabled veteran's name on Title Escrow documents in order to sell a marital asset(s) as a means to provide spousal support or spousal maintenance

Weather state courts can override the Supremacy Clause and retain jurisdiction

Weather a sheriff auction can proceed to sell a disabled veteran's asset(s) as a means to provide spousal support or spousal maintenance

Weather a sheriff auction of disabled veterans' asset(s) can proceed as a means to circumvent military veteran disability income in order to pay spousal support or spousal maintenance

Whether a Sheriff's department can legally allow the prior spouse to vandalize and thief military disabled veterans' property stating it is a civil matter and nothing can be done

Whether a Sheriffs department can dismiss a military disabled veteran's reporting of theft and classify him/her as a 5150 Mentally ill person stating the theft is a civil matter

Weather a federal court of appeals can deny an appeal as frivolous if Informa pauperis is requested

LIST OF PARTIES

[] All parties appear in the caption of the case on the cover page.

All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

United States Courts for the Ninth Circuit Court of Appeals
United States District Court of Oregon
Douglas County Oregon
Douglas County Sheriff's Office
John Hanlin, Sheriff
Frances Burge, Circuit Court Judge
Ann Marie Simmons, Circuit Court Judge
William A. Marshall, Circuit Court Judge

RELATED CASES

- *Byron L. Case et al v. Douglas County et al*, No. 21-35851, United States Court of Appeals for the Ninth Circuit
- *Byron L. Case et al v. Douglas County et al*, No. 6:2-CV-01193, United States District Court for the District of Oregon
- *Laurel L. Case v Byron L. Case*, No. S067237, Supreme Court of the State of Oregon
- *Laurel L. Case v Byron L. Case*, No. A168980, Court of Appeals of the State of Oregon
- *Laurel L. Case v Byron L. Case*, No. 20CV03103, Douglas County Oregon. Foreclosure of house.
- *Laurel L. Case v Byron L. Case*, No. 18CN00356, Douglas County Oregon. Contempt with Jail.
- *Laurel L. Case v Byron L. Case*, No. 15DR16607, Douglas County Oregon. Dissolution. Order of Spousal Support in a single lump sum to Plaintiff.

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APPENDIX D Opinion and Order of United States District Court for the District of Oregon
Dismissal of Plaintiff's complaint, Granted motion to proceed in forma pauperis,
Denied motion for preliminary injunction

APPENDIX E Sheriff Auction Sale of Home 1/25/2022 - Judicial Foreclosure Ordered, all
proceeds going to prior spouse to meet single lump sum payment ordered for
Spousal Support since VA Disability is not garnishable per Federal Law.
Douglas County Foreclosure Court Case No. 20CV03103.

APPENDIX F Foreclosure General Judgment dated October 22, 2021. Douglas County
Foreclosure Court Case No. 20CV03103.

APPENDIX G Foreclosure Judicial Opinion dated October 22, 2021. Douglas County
Foreclosure Court Case No. 20CV03103.

APPENDIX H Jurisdiction Hearing on 10/19/2020. Douglas County Foreclosure Court Case No. 20CV03103.

APPENDIX I Order Denying Review dated January 30, 2020. Supreme Court of the State Of Oregon. Court Case No. S067237.

APPENDIX J Order Affirmed without Opinion dated November 6, 2019. Court of Appeals Of the State of Oregon. Court Case No. A168980.

APPENDIX K Judgment – Contempt dated 8/28/2018. Douglas County Procedural Matters- Contempt of Court Remedial. Douglas County Court Case No. 18CN00356.

APPENDIX L Order - Commitment dated 8/27/2018. 180 days Jail. Douglas County Procedural Matters-Contempt of Court Remedial. Douglas County Court Case No. 18CN00356.

APPENDIX M Order – Show Case dated 2/6/2018. Sale of real property & authorization to sign all escrow/closing documents Procedural Matters - Contempt of Court Remedial. Douglas County Procedural Matters-Contempt of Court Remedial. Douglas County Court Case No. 17CN04838.

APPENDIX N General Judgment of Dissolution with Spousal Support order. Douglas County Court Case No. 15DR16607

TABLE OF AUTHORITIES CITED

STATUTES AND RULES

- Supremacy Clause of the U.S. Constitution, Article VI, Clause 2
- 10 U.S.C. § 1408 – Uniformed Services Former Spouses Protections Act (USFSPA)
- 38 U.S.C. § 5301 – Nonassignability and Exempt Status of Benefits

OTHER

Howell v Howell – United States Supreme Court Case No. 15-1031

Mansell v Mansell – United States Supreme Court Case No. 87-201

Copeland v Copeland – Colorado Court of Appeals No. 18CA1177

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix B to the petition and is

reported at Justia.com; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

The opinion of the United States district court appears at Appendix D to the petition and is

reported at Unicourt.com; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

[] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

The opinion of the _____ court appears at Appendix to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was January 3, 2022.

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

For cases from **state courts**:

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix _____.

A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

- Supremacy Clause of the U.S. Constitution, Article VI, Clause 2
- 28 U.S.C § 1441 -
- 10 U.S.C. § 1408 – Uniformed Services Former Spouses Protections Act (USFSPA)
- 38 U.S.C. § 5301 – Nonassignability and Exempt Status of Benefits

STATEMENT OF THE CASE

Petitioner, Byron L. Case, appealed the decision of the Douglas County Court, which entered an order under 11 USC§ 523(5) and 11 USC§ 523(15), that ordered Mr. Case to pay marital dissolution support obligation, court costs, attorney fees and costs expenses plus 9% per annum simple interest on support arrearages from the date the arrearage accrues until paid. The parties were married on August 28, 1982 and Ms. Case filed a Petition for Dissolution of Marriage on October 30, 2015. The trial court determined on July 5, 2017, the parties marriage was legally dissolved with the parties continuing to dispute issues of spousal support, attorney fees and costs, court costs, and expense money. Oregon is not a community property state. During the Marital Dissolution, Veteran service-connected monthly disability was shifted to marital property to avoid the requirements of the Uniformed Services Former Spouses Protection Act (USFSPA), Title 10 § 1408.

The dissolution judgment ordered Plaintiff to pay \$1,300 per month in spousal support for 15 years. Because that pay could not be garnished, respondent sought, and received, a dissolution judgment that required husband to sell the couple's real property in order to pay spousal support to wife, without the need to garnish defendant's monthly income. The support was to be paid in a lump sum in the amount of \$234,000. The proceeds of the sale were to be directed toward that judgment. Judgment 15DR16607, ER-1 at para. 3.6.4. Liens created in the dissolution are currently a total of \$286,037.43 plus interest to date. The trial court verbally stated that veteran's money was free money.

The dissolution record reflects the trial court's dissolution judgment included as "income" husbands 100% service-connected military veteran's disability pay. In its dissolution judgment,

the trial court found that "husband is unemployed is receiving VA Disability and Social Security in the amount of \$4,347.00 per month and Wife is unemployed with no income." Judgment 15DR16607. The rationale for the spousal support for the decision in the marital dissolution was based on the status of disability benefits.

The court found plaintiff in contempt in a proceeding initiated by respondents show-cause motion. The motion alleged that petitioner failed to comply with the dissolution judgment entered in 15DR16607 and the contempt judgment entered in 18CN00356, by failing to make his home and property available for viewing by realtors and potential buyers. The show-cause motion sought remedial sanctions to include confinement.

The trial court found Petitioner in contempt of the dissolution judgment. The trial court imposed a sanction of confinement for 180 days, which husband could purge by signing documents to sell the property. The judgment also ordered that the property "shall be sold" pursuant to a specific offer, and specific parties. Trial court's enforcement of a dissolution judgment intended to circumvent the purpose of the Uniformed Services Former Spouses' Protection Act, which preempts state law. That claim relied on *Howell v. Howell*, US, 137 S Ct 1400, 1403, 197 L Ed 2d 781 (2017), which unsettled precedent in this area but which this court has yet to apply to Oregon law.

The Court imposed punitive measures such as court costs, expenses, and attorney fees on Petitioner due to his insistence that his disability benefits were exempt. Title 10 U.S.C § 1408(a)(4)(B) preempts the authority of state Courts to consider Veteran's disability benefits as property divisible upon dissolution of a marriage. (See *Jennings v Jennings*, 2018, United States Supreme Court).

The Court of Appeals of the State of Oregon, case AI68980, filed a decision AFFIRMED WITHOUT OPINION dated November 06 ' 2019. (See Appendix A) The appellate court decision was petitioned for review to the Supreme Court of the State of Oregon, case 8067237 dated December 5, 2019. The Supreme Court of the State of Oregon filed a decision of ORDER DENYING REVIEW dated January 30, 2020. (See Appendix B). Lastly, the Court of Appeals of the State of Oregon entered an Appellate Judgment and Supplemental Judgment dated May 14, 2020 AFFIRMED WITHOUT OPINION, designating the creditor and prevailing party as Laurel M. Case.

Douglas County proceeded with a Foreclosure Case, 20CV03103 to provide sale proceeds in a single lump sum in order to pay spousal support to the prior spouse. The house is scheduled to sale at the Douglas County Sheriff Auction on 1/25/2022 at 10:00 a.m. All proceeds from the sale have been ordered to pay spousal support directly to plaintiff, even though an existing mortgage loan for \$105,000 with Umpqua Bank is still active. Byron Case is the primary and Laurel Case is the secondary on the Title, and loan. During the Foreclosure case, the courts put Laurel Case as creditor and is ordered to be paid before pay-off of any loan to the Mortgage lien carrier, Umpqua Bank.

REASONS FOR GRANTING THE PETITION

Federal Law and State Law are conflicting one another. Federal Laws are not being adhered to. Congress has enacted Federal Laws regarding military veterans' disability being non-divisible, but the State of Oregon has circumvented those Federal Laws. This has been done by ordering Spousal Support be made through the sale of a veteran's home in which he resides, and all proceeds from that sell provided to the prior spouse to meet previously ordered spousal support. This not only affects the military veteran of this case but has a potential to affect other military veterans as well. This could also have a devastating effect on our nation being able to attract new military personnel, and retain military personnel, as military personnel and veterans have Federal Laws protecting their disability pay and assets.

ARGUMENT IN SUPPORT

FEDERAL LAW PREEMPTS STATE LAW, INCLUDING OREGON SPOUSAL SUPPORT LAW, CONCERNING TREATMENT OF COMPENSATION FOR A SERVICE-CONNECTED DISABILITY AWARDED UNDER 10 U.S.C. § 1408 (2020), WITH THE RESULT THAT NO PORTION OF COMPENSATION FOR A SERVICE-CONNECTED DISABILITY MAY LAWFULLY BE AWARDED TO A DIVORCING SPOUSE FOR SPOUSAL SUPPORT.

The Oregon Court must be reversed, and this matter remanded for further proceedings for the reason the Appellate Court, and Supreme Court, ignored relevant provisions of the Federal Uniformed Services Former Spouses' Protection Act (USFSPA), 10 U.S.C. § 1408, which preempts state law with respect to inclusion of VA disability benefits in the calculations of future

spousal support and 38 U.S. C § 3101(a), which preempts state law and exempts VA disability benefits from the reach of state courts.

Federal law preempts states from treating disability retirement pay as marital property and thus from dividing that property at divorce, per 10 USC § 1408. Because states are completely preempted in this manner, a trial court lacks jurisdiction to enforce such an award. Moreover, the United States Supreme Court has held that indemnification and similar order that are intended to circumvent the objectives of Congress in protecting those payments from distribution, "regardless of form," displace the federal rule and are preempted.

The plaintiff never waived retirement in order to receive wartime disability, and was discharged from the military disabled, and is 100% service-connected disabled and has been since 1996. The plaintiff purchased the home, and all mortgage payments from the time of purchase in 2001 to current have been made with monthly disability earnings.

Under the USFSPA, state courts only have the authority to treat "disposable retired pay" as marital property. 10 USC § 1408. The USFSPA defines "disposable retired pay" as "the total monthly retired pay to which a member is entitled". With respect to the disability-waived or other non-disposable military retirement pay, the complete preemption rule still applies. *Howell*, US at, 137 S Ct at 1404. As the Court explained in *Howell*, the "basic reason McCarty gave for believing that Congress intended to exempt military retirement pay from state community property laws apply a fortiori to disability pay." See US, 137 S CT at 1406. Specifically, those reasons to make military service attractive and to retain enlistees. *Id.* *McCarty*, 453 US at 234.

Federal law does not authorize states to treat VA disability payments as marital property and divide them in a dissolution of marriage action, see *Mansell v Mansell*, 490 US 581 (1989), in contrast to military retirement where the federal government has explicitly authorized states to divide such payments.

The *Marriage of Copeland* Colorado Court of Appeals upheld the trial court determination that it could not consider a spouse's VA disability payments for purposes of a property settlement; "Thus, courts may not shift marital property to avoid the requirements of the USFSPA or *Mansell's Holding*, nor may they financially compensate a former spouse for not receiving a share of the military spouse's disability pay.

FEDERAL LAW PREEMPTS STATE LAW, INCLUDING OREGON LAW, CONCERNING TREATMENT OF COMPENSATION FOR A SERVICE-CONNECTED DISABILITY AWARDED UNDER 38 USC§ 5301(a)(l), SHALL BE EXEMPT FROM THE CLAIM OF CREDITORS, AND SHALL NOT BE LIABLE TO ATTACHMENT, LEVY, OR SEIZURE BY OR UNDER ANY LEGAL OR EQUITABLE PROCESS WHATEVER, EITHER BEFORE OR AFTER RECEIPT BY THE BENEFICIARY.

CONCLUSION

The petition for a writ of certiorari should be granted for the foregoing reasons.

Respectfully submitted,

Byron L Case

Date: 1-21-2022