

No. 24M58

IN THE
SUPREME COURT OF THE UNITED STATES

Ron Waterman, ex-husband,
Petitioner pro se,

v.

Robyn Waterman, ex-wife,
Respondent pro se,

ON PETITION FOR WRIT OF CERTIORARI TO
MASSACHUSETTS'
SUPREME COURT & COURT OF APPEALS

APPENDIX TO
PETITION FOR WRIT OF CERTIORARI

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pursuant to U.S. Supreme Court Rule 14.1(i)

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NOTICE: Summary decisions issued by the Appeals Court pursuant to M.A.C. Rule 23.0, as appearing in 97 Mass. App. Ct. 1017 (2020), are primarily directed to the parties and, therefore, may not fully address the facts of the case or a panel's decisional rationale.

COMMONWEALTH OF MASSACHUSETTS
APPEALS COURT

No. 23-P-905

ROBYN B. WATERMAN

vs.

RONALD J. WATERMAN.

MEMORANDUM / ORDER PURSUANT RULE 23.0

Ronald J. Waterman (husband), the former spouse of Robyn B. Waterman (wife), principally appeals from a July 2022 judgment, issued by a Probate and Family Court judge, that adjudicated the wife's complaint for contempt alleging that the husband violated the judgment of divorce nisi (divorce judgment) by failing to satisfy his obligations related to certain military benefits.

Though the judge ultimately found the husband not guilty of contempt, the judge entered a military qualifying court order (MQCO) requiring the husband to pay to the wife fifty percent of his disposable military retired pay that accrued during the marriage. The husband appeals from the July 2022 judgment. ...

We Affirm the Judgment.

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Re Affirmance of Judgment

3055 Judgment ...

the marriage. The marriage subjects from the first
dispositive judgment rendered by that appellate court
the marriage to pay to the wife fifty percent of his
monthly disposable income order (MDCO) regarding
marriage not guilty of contempt, the judge entered a
Thompson the judge ultimately found the

related to certain marriage penalties.
(divorce judgment) by finding to satisfy his obligations
marriage violated the judgment of divorce and
the wife's complaint for contempt alleging that the
Probate and Family Court judge, that adjudicated
subjects from a first 3055 judgment issued by a
Shouse of Robert B. Macterman (wife) principally
Robert J. Macterman (marriage), the former

MEMORANDUM ORDER SUBSIDIARY RULE 33.0

ROBERT J. MACTERMAN

vs.

ROBERT B. MACTERMAN

No. 33-P-302

APPEALS COURT

COMMONWEALTH OF MASSACHUSETTS

the facts of the case or a judge's discretionary rationale.
to the parties and, therefore, may not fully address
3d Mass. App. Ct. 1012 (2020), are primarily directed
Court pursuant to M.G.A. Rule 33.0, as appearing in
NOTICE: Summary decisions issued by the Appeals

... As to the husband's pension, the agreement provided as follows (pension clause):

"To the extent that the [h]usband is entitled to any military or other pension up to the date of this agreement, the [w]ife shall be entitled to receive 50% thereof via appropriate Q[ualified] D[omestic] R[elations] O[rder] or other order. The [h]usband shall have an affirmative obligation to immediately report the existence and status of any such pension rights to the [w]ife as soon as he becomes aware of same."

The judge interpreted the pension clause to mean that the husband's future interest in any military pension he accrued during the marriage would be shared with the wife. ...

2. VSI benefit as equivalent to pension. The husband argues that his VSI benefit was the functional equivalent of a pension, and therefore it was the "military or other pension" referred to in the pension clause. He contends that because he already paid a portion of the VSI benefit to the wife, he should not also be required to pay wife a portion of his military pension. The argument is unavailing.

...

The order dated June 6, 2023, denying the husband's post judgment motions is affirmed.

So ordered.

By the Court (Desmond, Hand & Grant, JJ),

Entered: June 17, 2024.

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FAR-29897 – Notice of docket entry

From: SJC Full Court Clerk
(sjccommclerk@sjc.state.ma.us)
To: ronwaterman3@yahoo.com
Date: Thursday, September 5, 2024 at 10:16 AM

Supreme Judicial Court for the Commonwealth of
Massachusetts

RE: Docket No. FAR-29897

ROBYN B. WATERMAN

vs.

RON J. WATERMAN

Norfolk Probate & Family No. NO98D0300DX2,
A.C. No. 2023-P-0905

**NOTICE OF DENIAL OF APPLICATION FOR
FURTHER APPELLATE REVIEW**

Please take note that on September 5, 2024, the
application for further appellate review was denied.

Very truly yours,
The Clerk's Office

Dated: September 5, 2024

To: Robyn B. Waterman
Ron J. Waterman

APPENDIX to Petition for Writ of Certiorari - 4

FAR-29897 – Notice of docket entry

From: SJC Full Court Clerk
(sjccommclerk@sjc.state.ma.us)
To: ronwaterman3@yahoo.com
Date: Friday, October 18, 2024 at 10:01 AM GMT-4

Supreme Judicial Court for the Commonwealth of
Massachusetts

RE: No. FAR-29897

ROBYN B. WATERMAN
vs.
RON J. WATERMAN

NOTICE OF DOCKET ENTRY

Please take note that on October 17, 2024, the
following entry was made on the docket:

DENIAL of Petition to Reconsider denial of FAR
application.

Very truly yours,
The Clerk's Office

Dated: October 17, 2024

To:
Robyn B. Waterman
Ron J. Waterman

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COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT
PROBATE AND FAMILY COURT DEPARTMENT

Norfolk Division

Docket No. 99D0300

Robyn B. Waterman, Plaintiff

v.

Ron J. Waterman, Defendant

JUDGMENT

(On Complaint for Contempt filed 3/28/22)

This matter came before the Court on July 28, 2022 for hearing on Plaintiff's Complaint for Civil Contempt filed on March 28, 2022. ...

The Plaintiff contends that the Defendant is in contempt of Court of the Judgment of Divorce dated June 16, 1999 which incorporated the parties' Separation Agreement. Specifically, the Plaintiff alleges that the Defendant is violation of Exhibit A, Paragraph V which provides:

“V. Additional Pension Rights – To the extent that the Husband is entitled to any military or other pension up to the date of the Agreement, the Wife shall be entitled to receive 50% thereof via appropriate QDRO or other order. The Husband shall have an affirmative obligation to immediately report the existence and status of any such pension rights to the Wife as soon as he becomes aware of same.”

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...

The parties were married on August 11, 1984 and Judgment of Divorce was entered on June 16, 1999. The Defendant served in the United States Air Force from December of 1985 through September 29, 1993.

...

While cooperation within a reasonable time is certainly inferred, this is insufficient to sustain a finding of contempt. Accordingly, the Court finds the Defendant NOT GUILTY of contempt of court.

...

Lastly, the Court has amended the MQCO to state as follows "the Former Spouse is awarded 50% per month of any benefits which the member accrued during the marriage (i.e. between 8/11/94 to 6/16/99) from the Member's disposable military retired pay," in order to exclude benefits the Defendant may have accrued subsequent to the date of divorce, if any exist.

Date: 7/29/22

//signed//

Kimberly Moses, Justice
Norfolk Family Court

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT
PROBATE AND FAMILY COURT DEPARTMENT

Norfolk Division

Docket No. 98D0300

Robyn B. Waterman

Ron J. Waterman

ORDER

This Court Ordered on April 11, 2023 that each party was to submit a 1 page pleading identifying the matters before the Court. Only Mr. Waterman has done so. After review of Mr. Waterman's submission, it is hereby ORDERED:

1) Defendant's Motion to Amend Judgment (Docket #106) is: DENIED.

...

3) Defendant's Supplemental Motion to Alter or Amend Judgment (Docket #116) is: DENIED

Any other Motions filed prior to April 14, 2023 are stricken.

Dated: 6/6/34

//signed//

Kimberly Moses, Justice

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DECLARATION OF PETITIONER
RON WATERMAN

My name is Ron Waterman. I am over the age of 18, of sound mind, and competent to testify. The facts contained below are true and accurate.

1. 10 U.S.C. § 1408 appears beginning on page 827 of Title 10 – Armed Forces. This section is titled “Payment of retired or retainer pay in compliance with court orders.” Section 1408(a)(2) reads “The term ‘court order’ means a final decree of divorce, dissolution, annulment, or legal separation issued by a court ... which – (A) is issued in accordance with the laws of the jurisdiction of that court; ... “(C) in the case of a division of property, specifically provides for the payment of an amount, expressed in dollars or as a percentage of disposable retired pay...”

2. 10 U.S.C. § 12731 appears beginning on page 3411 of Title 10 – Armed Forces. This section is titled, “Age and service requirements”. Section 12731 reads, “(a) Except as provided in subsection (c), a person ***is entitled***, upon application, to retired pay computed under section 12739 of this title, if the person – (1) has attained the eligibility age applicable ... (2) has performed at least 20 years of service ...” (emphasis added).

3. On August 8, 2022 Petitioner Ron Waterman filed a “Defendant's Motion to Alter or Amend Judgment” under “Mass. R. Civ. P. 59(e)” in the Norfolk County, Mass. Family Court.

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Page 4 of that motion reads:

“Appellate courts have found that VSI payments are a pension, a retirement pay. E.g., *In the Matter of the Marriage of Menard*, 180 Or.Ct.App 181, 183, 42 P.3d 359 (2002) (affirming the trial court when it “found that VSI payments were the ‘functional equivalent’ of retirement benefits and therefore marital property”).

It was this 1993 pension the parties divided 50% and 50% in June 1999, a pension “Husband is entitled to” receive in June 1999. The Agreement did not purport to divide a potential future retirement that was not yet earned and probably would never be; the ex-wife waived interest in any future, potential retirement pay, and instead elected to receive 50% of the existing 1993 pension.”

Page 10 of that Motion to Amend reads:

To alter the terms of a signed Agreement and Absolute Judgment 23 years after Judgment is final violates U.S. Const. (XIV Amend.) Due Process, Mass. R. Civ. P. 54, and offends established (legal) precedent and all court rules promising to promote ...

4. In October, 2023 I filed a Brief of Appellant (BOA) in the Mass. Court of Appeals (COA).

On BOA page 6, Issue One reads:

ISSUE ONE. In July 2022 the Norfolk Family Court altered a 1999 Judgment of that court which had been final for 23 years. My 2021 military

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pension, seized by the lower court's July 2022 Order, was deliberately excluded from division by the parties' June 1999 Separation Agreement. Court's July 2022 Judgment and Order violate US Const. Amend. XIV Due Process, Mass. Const. First Part Art. X, Art. of Amend. Art. CVI, and civil rules protecting finality of Judgments.

On BOA page 13, the brief reads:

For any pension the husband is entitled to AS OF the date of the Agreement, the ex-wife gets 50%. That "pension" was the then active, 1993-2008 VSI pension that this section divided as a marital asset.

Any *future* pension husband may later become entitled to post-divorce was excluded from division. Compare my 1999 Agreement's language to divorce Agreements in other appellate cases that involve VSI pensions:

In *Matter of Marriage of Menard*, 42 P.3d 359 (Or.App. 2002), judgment of divorce provided: "The Husband's *future* military retired pay constitutes marital property to the extent that [it] is based upon military service while the parties were married." *Id.*, at 363 (emphasis added). A/148.

Kelson v. Kelson, 675 So.2d 1370 (Fla. 1996) noted, "judgment incorporated a marital settlement agreement that ... [wife] shall be awarded a monthly percentage share of [husband's] 'retired/retainer pay' upon [his] retirement from the U.S. Marine Corps." *Id.*, at 1370 ([paraphrases] added). A/185.

In *Blair v. Blair*, 271 Mont. 196 (1995), the divorce decree provided, "wife to share in husband's *future* net disposable military retirement pay." Quoted in *Kelson*, 675 So.2d at 1371 fn.1 (emphasis

added). A/189.

The Agreement in this case doesn't *read* "future" since it doesn't *mean* "future." A/26. It divided my *existing* VSI pension, earned 1985-1993.

On BOA page 25, the brief reads:

States have ruled a VSI pension is a retirement benefit and is thus divisible property. A/149 (*Menard*).

On BOA page 32-33, the brief reads:

Normally, by which I mean "in every published case in every State that has addressed this question," during divorce proceedings the military member signs a Separation Agreement to transfer part of his *future* retirement pay to ex-wife; later, he's separated in the 1992 Reduction in Force, *cf.* A/147 (*Menard*), then withholds 100% of his VSI, arguing that 10 U.S.C. § 1408, enacted 1982, does not apply to VSI, established by 10 U.S.C. § 1175, enacted in 1992. A/90.11 *Cf.* A/149.

But every State that has addressed this question affirms that VSI is the "functional equivalent" of retired pay, is a pension, and thus equitably divisible as a marital asset. A/149 (*Marriage of Menard*, 42 P.3d 359, 364 (Or.App. 2002) (citing accord to cases in Florida, Arizona, Montana, Colorado and Oklahoma) (And quoting at length *Kelson v. Kelson*, 675 So.2d 1370, 1372 (Fla. 1996), *Cf.* Accord in appellate court cases in Alaska, Arkansas, Idaho, and Virginia. (Cited in *Abernethy v. Fishkin*, 638 So.2d 160, 163 (Fla.App. 5th Dist 1994)).

5. In July 2024, I filed an "Application for Further Appellate Review" in the Mass. Supreme Judicial Ct.

Page 5 of my Application reads:

VSI PENSION: A dozen States' Appeals Courts have decided that VSI is a pension, properly divided under USFSPA limitations. *E.g.* A/149 (*Marriage of Menard*, 42 P.3d 359, 364 (Or.App. 2002) (citing accord to cases in Florida, Arizona, Montana, Colorado and Oklahoma); A/192, *Abernethy v. Fishkin*, 638 So.2d 160, 163 (Fla.App. 5th Dist. 1994) (citing accord to appellate court cases in Alaska, Arkansas, Idaho, and Virginia). Massachusetts has now dissented.

Page 6 of my Application reads:

Each of these three issues violates my Due Process protections. *Aime v. Commonwealth*, 414 Mass. 667, 674 (2000) ("Procedural due process requires that ... governmental action ... be implemented in a fair manner."); the lower courts' decisions are "contrary to the principle of fundamental fairness that underlies the concept of due process of law." *Doe v. Atty. Gen.*, 426 Mass. 136, 147 (1997); *cf. Mathews v. Eldridge*, 424 U.S. 319, 332-335 (1976).

6. On May 22, 2022, I filed a "DEFENDANT'S ANSWER TO COMPLAINT FOR CIVIL CONTEMPT" to the ex-wife's original Complaint, in the Norfolk County, Mass. Family Court, Docket No. 98D0300. Page 1 of that Answer reads: The

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Judgment of Divorce for this case was final in 1999. No appeal was filed (contesting) that judgment. The statute of limits to complain about failing to comply with a Judgment is six (6) years. M.G.L. Ch. 260 § 2. That six years expired in 2005, several years ago."

That statute reads: "Section 2. Actions of ... upon judgments or decrees of courts of record of the United States or of this or of any other state of the United States, shall, except as otherwise provided, be commenced only within six years next after the cause of action accrues." M.G.L. Ch. 260 § 2.

All of the above is affirmed to be true and correct under penalty of perjury under 28 U.S.C. § 1746.

Done this 15th day of April 2025 in Plymouth, Mass.



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