APPLICATION NO. __-____

IN THE SUPREME COURT OF THE UNITED STATES

GEORGE M. TRONSRUE III,
PETITIONER,

v.

ELSA M. TRONSRUE,
RESPONDENT.

ON APPLICATION FOR EXTENSION OF TIME TO FILE
A PETITION FOR A WRIT OF CERTIORARI
TO THE ILLINOIS SUPREME COURT

PETITIONER'S APPLICATION

Respectfully submitted by:

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PETITIONER'S APPLICATION FOR AN EXTENSION OF TIME TO FILE HIS PETITION FOR A WRIT OF CERTIORARI TO THE ILLINOIS SUPREME COURT

Submitted To: The Honorable Amy Coney Barrett, Associate Justice, Circuit Justice for the Seventh Circuit Court of Appeals and including the State of Illinois.

Pursuant to 28 U.S.C. § 2101(c) and Supreme Court Rule 13.5, Petitioner, George M. Tronsrue, for good cause, respectfully submits this application for an extension of 60 days to file a Petition for a Writ of Certiorari to the Illinois Supreme Court in the above-captioned case.

Petitioner is seeking review of a May 22, 2025, decision by the Supreme Court of Illinois, see *In re Tronsrue*, 2025 IL 130596, affirming the judgment of the Illinois Court of Appeals, see *In re Marriage of Tronsrue*, 2024 IL App (3d) 220125, 476 Ill. Dec. 1, 239 N.E.3d 1199 (2024), concerning Petitioner's federal preemption arguments.

The Illinois Supreme Court ruled that Petitioner was required to abide by a marital settlement agreement which ultimately forced him to use federal veterans' benefits to satisfy a marital property division, even though the use of such funds for property divisions in state court divorce proceedings is preempted by federal law and prohibited by the plain language of 38 U.S.C. § 5301.

The Illinois Supreme Court's opinion and order affirming the judgments of the Illinois Court of Appeals, and the decisions of the latter court, are attached to this application as Attachments 1 and 2, respectively.

The petition for a writ of certiorari in this Court from the Illinois Supreme Court's May 22, 2025, opinion and order is due on or before Wednesday, August 20, 2025.

Pursuant to the Rules of the Supreme Court, Rules 13.5 and 22, Petitioner is filing this application requesting an extension on or before a date 10 days prior to Wednesday, August 20, 2025.

JURISDICTION OF THE COURT

Pursuant to 28 U.S.C. § 1257, this Court has jurisdiction over petitions for a writ of certiorari from final orders and judgments of the highest court of a state that disposes of all issues and parties. Under § 1257, the Court can review final judgments or decrees rendered by the highest court of a state in which a decision could be had where the validity of a treaty or statute of the United States is drawn in question, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of the United States.

Principal among the issues raised by Petitioner was that the Illinois Supreme Court and the lower courts erred in its interpretation and application of 10 U.S.C. § 1408 (the Uniformed Services Former Spouses Protection Act (USFSPA)) and 38 U.S.C. § 5301, particularly as those statutes relate to the division of Petitioner's protected federal retirement and disability benefits pursuant to a divorce settlement agreement. The Circuit Court's and Court of Appeals' interpretations caused Petitioner to be divested of military benefits that are protected by federal law, including, but not limited to, 10 U.S.C. § 1408 and 38 U.S.C. § 5301.

The Illinois Supreme Court affirmed the lower court decisions, thereby effectuating a violation of these provisions. (**Attachment 1**).

This Court has jurisdiction over Petitioner's Application and Writ of Certiorari to the Supreme Court of the State of Illinois pursuant to 28 U.S.C. § 2101(c) and 28 U.S.C. § 1257, due to the latter court's May 22, 2025, opinion as that was the final order of the state's highest court and a final disposition of the matter.

SUMMARY OF THE CASE

In *Howell v. Howell*, 581 U.S. 214, 221-22; 137 S. Ct. 1400 (2017), this Court ruled that federal law preempted state law based on this Court's decisions in *Mansell v. Mansell*, 490 U.S. 581 (1989), and thus, state courts could not force veterans to use their federal veterans' benefits without *specific* federal statutory authorization to do so.

The Supreme Court of Illinois held that while the agreement by and between the veteran and his former spouse forced the veteran to dispossess himself of his federal disability pay, the agreement was an enforceable contract that could not be voided, even where federal law holds that such agreements are illegal and void. See 38 U.S.C. § 5301(a)(1), and (a)(3)(A) and (C). See *Yourko v. Yourko*, 302 Va. 149, 884 S.E.2d 799 (2023), cert. denied, 220 L.Ed.2d 11 (2024).

In this case, the Illinois Supreme Court upheld a circuit court order enforcing a marital settlement agreement that has the effect of forcing Petitioner to dispossess himself of his federally protected veterans' benefits in contravention of federal law, particularly, 10 U.S.C. § 1408 and 38 U.S.C. § 5301, and this Court's ruling in *Howell*.

The Illinois Court of Appeals, with one justice dissenting, affirmed the circuit court's decision. The Illinois Supreme Court granted Petitioner's request for review and issued an opinion affirming the decision of the court of appeals.

Petitioner seeks to file a writ of certiorari to the Illinois Supreme Court to challenge the rulings below on the federal issues and constitutional grounds asserted in his pleadings and preserved for further review.

The Supremacy Clause, as set forth in Article VI, Clause 2, of the United States Constitution establishes that the Constitution, federal laws made pursuant to it, and treaties made under its authority, constitute the supreme law of the land. This clause binds all judges in every state to follow federal law when a conflict arises between federal law and either a state constitution or state law.

Pursuant to its enumerated powers concerning military affairs under Article I, section 8, Clauses 11 through 16 of the Constitution, Congress passes legislation proving for and protecting federal military benefits and Congress has historically intended those appropriated benefits to be the inviolable entitlement of the veteran beneficiary. See *Porter v. Aetna Cas. Co.*, 370 U.S. 159, 162 (1962) (interpreting 38 U.S.C. § 3101 (renumbered as 38 U.S.C. § 5301). In *Porter*, this Court noted that this provision is to be liberally construed "to protect the funds granted by the Congress for the maintenance and support of the beneficiaries thereof" and these benefits "should remain inviolate." *Id.* Section 5301(a)(1) therefore protects *all veterans' benefits* from any equitable or legal process, unless Congress provides otherwise. *Id.*

This Court stated as much in *Howell*, 581 U.S. at 221-22, when it noted that under 38 U.S.C. § 5301, state courts do not have the authority to vest these federal benefits in anyone other than the designated statutory beneficiary. The default position is, and always has been, that *prima facie*, *all* federal benefits are appropriated and purposed for a specific beneficiary and for a specific reason. *McCarty v. McCarty*, 453 U.S. 210, 101 S. Ct. 2728 (1981), with its rule of absolute preemption over state law in this area "*still applies*." *Howell*, *supra* at 218. Congress may grant authority to the states to consider federal benefits as disposable assets in domestic state proceedings, but when it does so, that grant is "precise and limited." *Id*.

One of these "precise and limited" grants is the USFSPA, 10 U.S.C. § 1408. It allows division of a portion of a veteran's retirement pension to be considered a divisible property asset available to a veteran's former spouse in state court divorce proceedings. Thus, the statute provides a limited exception to the prima facie default rule that all federal benefits appropriated by Congress for veterans are non-disposable and non-divisible in state court proceedings and for the exclusive use and enjoyment of the veteran beneficiary.

Any other forced division of federal benefits that is not compliant with the USFSPA's limited grant of authority is not authorized by federal law, preempted thereby, and should be *void ab initio*. This is the case whether that division results from a court order or an agreement by and between the parties. *Howell*, *supra* at 222-23. Indeed, 38 U.S.C. § 5301 specifically prohibits and *voids from inception* any

instrument wherein a veteran beneficiary agrees to dispossess himself or herself of benefits beyond that which is affirmatively allowed by existing federal law. See 38 U.S.C. § 5301(a)(3)(A) and (C).

The instant case represents yet another critical and errant decision affecting a vast number of disabled veterans. The Illinois courts have essentially *ignored* federal statutory law and particularly this Court's sweeping decision in *Howell*, *supra* at 221-22, which reasoned that "State courts cannot 'vest' that which (under governing federal law) they lack the authority to give. Cf. 38 U.S.C. §5301(a)(1) (providing that disability benefits are generally nonassignable)." *Howell* ruled simply that state law was and always has been fully preempted where Congress exercises its enumerated powers under Article I of the Constitution concerning compensation and benefits for federal military members. *Id.* at 218 (stating that *McCarty [v. McCarty*, 453 U.S. 210, 101 S. Ct. 2728 (1981)] with its rule of federal pre-emption, still applies.").

Despite this Court's sweeping affirmation of this rule of absolute federal preemption in this subject, state courts have continued to find ways to circumvent this principle and have persisted in considering federally appropriated veterans' benefits that are not legally available as disposable income and/or property that can be taken from the sole and exclusive beneficiary. These benefits may not be used for any purpose other than that designated by federal statute and the federal agencies with exclusive jurisdiction over those federal appropriations. See, e.g., *Hillman v. Maretta*, 569 U.S. 483, 491 (2013) (citing *Ridgway v. Ridgway*, 454 U.S. 46, 55 (1981) and noting that federal benefits (there federal employee life insurance benefits) are

protected by the Supremacy Clause from state control or invasion, and the economic aspects of domestic relations must give way to federal law).

The Illinois Supreme Court's opinion affirming the lower courts' rulings, conflicts with the exercise by Congress of its enumerated powers in contravention of the Supremacy Clause.

BACKGROUND

Respondent, Elsa M. Tronsrue, filed a petition for dissolution of marriage from her husband, Petitioner, George M. Tronsrue III. Petitioner filed a counterpetition. In 1992, the Du Page County circuit court entered a judgment for dissolution of marriage incorporating a marital settlement agreement that obligated Petitioner to pay Respondent one-half of the marital portion of his federal veterans' disability payments as a property distribution. In 2019, Petitioner filed a petition to terminate the veterans' disability payments, maintaining that the division of his benefits was void under federal law. Respondent moved to dismiss the petition. The circuit court granted Respondent's motion to dismiss Petitionre's motion to terminate his veterans' disability payments, found him in contempt for failing to make the payments, and ordered him to pay Respondent's attorney fees.

The appellate court, with one justice dissenting, affirmed the judgment of the circuit court, finding that, because the circuit court had personal and subject-matter jurisdiction over the judgment of dissolution of marriage, the marital settlement agreement dividing Petitioner's veterans' disability benefits was not void even if it violates federal law. 2024 IL App (3d) 220125, ¶¶ 10-23 (*Tronsrue I*).

Justice Albrecht dissented, reasoning that, although the circuit court had jurisdiction over the matter, pursuant to the supremacy clause, federal law preempts the marital settlement agreement provision in the judgment of dissolution of marriage where the parties agreed that Petitioner would pay Respondent a percentage of his veterans' disability benefits. Justice Albrecht further reasoned that the division of the disability benefits violated the anti-assignment provisions in section 5301 of the Veterans Benefits Act of 2003 (Act) (38 U.S.C. § 5301 (2018)). *Tronsrue I*, 2024 IL App (3d) 220125, ¶ 26. Therefore, the marital settlement agreement provision in the judgment of dissolution was void and unenforceable. *Id.* ¶¶ 25-32.

In a related order, the appellate court also affirmed the circuit court's contempt finding, reasoning that Petitioner was required to make the payments because the judgment was not void. 2024 IL App (3d) 220294-U, ¶¶ 13 (*Tronsrue II*). Justice Albrecht dissented from the contempt decision as well, reasoning that, because a provision in the judgment of dissolution of marriage was void with respect to the division of Petitioner's benefits, he had a compelling justification for refusing to comply. *Id.* ¶¶ 18-20 (Albrecht, J., dissenting).

The Supreme Court of Illinois granted Petitioner's application for leave to appeal both cases. Petitioner presented and argued two issues: (1) whether the provision in the marital settlement agreement incorporated into the 1992 judgment of dissolution of marriage, dividing his military disability benefits and treating them as marital property, is void and unenforceable because the state law authorizing the

division is preempted by federal law and (2) whether the attorney fee award must be vacated if it was based on a void order.

As Petitioner argued that the 1992 judgment of dissolution of marriage was a void order because federal law preempted the state law (section 502 of the Marriage Act (750 ILCS 5/502 (West 2018))) that authorized the circuit court to enforce a provision in the marital settlement agreement that divided veterans disability benefits—requires this court to answer the following questions: (1) Does federal law preempt enforcement of the marital settlement agreement? (2) If so, does federal preemption divest the circuit court of jurisdiction, thereby rendering the judgment of dissolution, which incorporated the marital settlement agreement, void? The Illinois Supreme Court answered both questions in the negative.

The substantive reasoning of the Court was as follows:

> Article VI of the United States Constitution provides that federal law, including the constitution itself, treaties, and laws passed by Congress, is the supreme law of the land. See U.S. Const., art. VI.
>
> Pursuant to the supremacy clause of the United States Constitution, in any one of the following three circumstances, a federal statute will preempt state law: " '(1) express preemption—where Congress has expressly preempted state action; (2) implied field preemption—where Congress has implemented a comprehensive regulatory scheme in an area, thus removing the entire field from the state realm; or (3) implied conflict preemption—where state action actually conflicts with federal law.'" *Performance Marketing Ass'n v. Hamer*, 2013 IL 114496, ¶ 14 (quoting *Carter*, 237 Ill. 2d at 39-40). A state law conflicts with federal law when it "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *English v. General Electric Co.*, 496 U.S. 72, 79 (1990) (quoting *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941)). If a state law conflicts with federal law, it is null and void. *Performance Marketing*, 2013 IL 114496, ¶ 14.

The federal statute that is at issue in this case is section 5301(a)(1) of the Act, which provides:

> "Payments of benefits due or to become due under any law administered by the Secretary shall not be assignable except to the extent specifically authorized by law, and such payments made to, or on account of, a beneficiary shall be exempt from taxation, shall be exempt from the claim of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary." 38 U.S.C. § 5301(a)(1) (2018).

Section 5301(a)(3)(A) clarifies that, "in any case where a beneficiary entitled to compensation…enters into an agreement with another person under which agreement such other person acquires for consideration the right to receive such benefit, such agreement shall be deemed to be an assignment and is prohibited." *Id.* § 5301(a)(3)(A).

Relying primarily on two United States Supreme Court cases, *Mansell v. Mansell*, 490 U.S. 581, 588 (1989), and *Howell v. Howell*, 581 U.S. 214, 222 (2017), George asserts that the plain language of the Act preempts any state law concerning the disposition of veterans' disability benefits in state domestic relations proceedings and prohibits states "from using 'any legal or equitable process whatever' to dispossess a veteran of these benefits."

However, *Mansell* and *Howell* are distinguishable from the facts in this case. *Mansell* and *Howell* hold (1) that federal law preempts the application of state community property law to military retirement pay and (2) that states cannot treat disability benefits as community property that may be divided to reimburse a divorcing spouse for a lost or diminished share of retirement pay. See *Howell*, 581 U.S. at 220; *Mansell*, 490 U.S. at 594-95.

Neither of these cases involved parties agreeing to an indemnification provision in a judgment of dissolution property settlement agreement. In addition, neither of these cases involved one party entering into a marital settlement agreement and agreeing to use those benefits however he wants after he has received them, including to pay his former spouse. Finally, neither *Howell* nor *Mansell* can be read as addressing the enforceability of such a provision in a marital settlement agreement.

Mansell involved a state court declining to modify a divorce decree where the parties divided disability benefits as community property. See *Mansell*, 490 U.S. at 586. In other words, *Mansell* prevents state courts from "treating military retirement pay that had been waived to receive disability benefits as community property."[1] *Id. Howell* involved a state court ordering a husband to pay his wife the original amount established in the divorce decree after waiving some of his military retirement pay for disability benefits. See *Howell*, 581 U.S. at 216. *Howell* establishes that state courts cannot order a veteran who elects to waive retirement pay for disability pay to indemnify a former spouse. *Id.* at 222. *Howell* does not bar a spouse from choosing to use his disability benefits however he wants after receiving them, including paying a former spouse.

In this case, the record reveals that the parties entered into a marital settlement agreement where George agreed to pay Elsa a portion of his disability benefits after receiving them. A marital settlement agreement is a contract, and therefore, we must treat it as such. See *In re Marriage of Dynako*, 2021 IL 126835, ¶ 15 ("A marital settlement agreement is construed in the same manner as any other contract" and the court "must therefore ascertain the parties' intent from the language of the agreement itself."); see also 750 ILCS 5/502(e) (West 2018) ("Terms of the agreement set forth in the judgment are enforceable…as contract terms."). The express language of the marital settlement agreement was that the disability benefits directly to Elsa, George "shall pay directly to" Elsa "as long as he receives said pay." It matters not that the marital settlement agreement did not contain a specific indemnification provision, as there is no question of the voluntariness of the agreement and the language expressed a clear intent on the part of George to pay to Elsa benefits that he received after he received them.

The circuit court did not order George to make these payments; instead, George agreed to use his disability benefits how he saw fit after receiving them. Because *Mansell* does not prevent George from entering into a marital settlement agreement, it does not preempt the circuit court from entering an order incorporating such a provision in an agreement. Nor can it be argued that the circuit court is required to reopen an agreement that had been final for nearly 30 years at the time of the initiation of these proceedings. In fact, the *Mansell* Court

[1] We note that the Mansell decision is not limited to only community property states, as the Mansell Court explained in a footnote, "[t]he language of the Act covers both community property and equitable distribution States, as does our decision today. Because this case concerns a community property State, for the sake of simplicity we refer to § 1408(c)(1) as authorizing state courts to treat 'disposable retired or retainer pay' as community property." *Mansell*, 490 U.S. at 584 n.2.

expressly noted that a circuit court's decision about whether it should reopen a final settlement agreement or whether that final judgment was *res judicata* was an issue of state law over which the United States Supreme Court had no jurisdiction. *Mansell*, 490 U.S. at 586 n.5. Finally, the United States Supreme Court denied review after the California Court of Appeals later held that the divorce judgment containing the agreement would not be reopened. See *In re Marriage of Mansell*, 265 Cal. Rptr. 227 (Ct. App. 1989), *cert. denied*, 498 U.S. 806 (1990).

Based on our review of these cases, we see no limitation by the United States Supreme Court on how a veteran can use his benefits once he receives them. Put simply, federal law does not prohibit a veteran from using the disability payments he receives in any way he chooses, as long as the funds are first paid to the veteran. In fact, the Act expressly indicates the liberty a veteran has in the usage of his disability payments after receiving them. See 38 U.S.C. § 5301(a)(3)(B) (permitting a veteran to use disability benefits to repay loans, as long as the payments are "separately and voluntarily executed by the [veteran]").

Additionally, courts from other jurisdictions have concluded that federal law does not preempt a veteran from using his disability benefits to pay a former spouse. See *Yourko v. Yourko*, 884 S.E.2d 799, 804 (Va. 2023) (upholding an agreement between the former spouses where the veteran husband agreed to pay disability payments to his former wife because "federal law does not prohibit a veteran from using military disability pay in any manner he or she sees fit, provided the money is paid directly to the veteran first") [*cert. denied*, *Yourko v. Yourko*, 145 S. Ct. 137 (2024) (undersigned for petitioner)]; *Martin v. Martin*, 520 P.3d 813, 817-20 (Nev. 2022) (upholding a settlement agreement between former spouses where disability payments were paid to a former spouse, finding that federal law does not preempt enforcement of the divorce decree) [*cert. denied*, *Martin v. Martin*, 520 P.3d 813 (Nev. 2022) (undersigned for petitioner)]; *Jones v. Jones*, 505 P.3d 224, 230 (Alaska 2022) (finding that federal law does not preclude state courts from enforcing a negotiated settlement agreement in which a military spouse promised to pay another a share of the military spouse's disability benefits, reasoning that "'[i]t's one thing to argue about a judge's power to require…a duty to indemnify,' but 'another matter entirely to require a litigant to perform what he has promised in a contract'" (quoting 2 Mark E. Sullivan, *The Military Divorce Handbook: A Practical Guide to Representing Military Personnel and Their Families* 670, 691 n.7 (3d ed. 2019))).

The decisions in the aforementioned cases reveal the importance of contract law and reinforce the value of allowing divorcing spouses to agree to certain terms, regardless of whether those terms reflect what a court could or would be able to order. We find *Yourko*, *Martin*, and *Jones* instructive and hold that, in this case, federal law did not preempt section 502, the agreement section in the Marriage Act, which authorized the circuit court to enter a judgment incorporating a marital settlement agreement that George voluntarily executed to use the disability payments that he received for a purpose that he chose to pay Elsa pursuant to the marital settlement agreement. Therefore, we will require him to make the payments to Elsa that he agreed to make in the marital settlement agreement. See *Jones*, 505 P.3d at 230.

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In this case, George and Elsa negotiated and signed a marital settlement agreement, which was incorporated into their judgment of dissolution of marriage. In so doing, they executed a valid, unambiguous, and legally binding contract. The marital settlement agreement provided that George would pay Elsa a portion of his military disability payments that he received. Based on our review of *Mansell* and *Howell*, this provision of the marital settlement agreement may be enforced based on contract principles. Moreover, the circuit court retained jurisdiction of the cause to enforce all terms of the judgment of dissolution of marriage.

We reiterate that federal preemption is not applicable in a case where the circuit court did not order payment but, instead, the parties entered into an agreement that required George to pay Elsa disability benefits that he received. Additionally, we find, pursuant to the express authority granted to state courts by *Mansell*, 490 U.S. at 586 n.5, that res judicata applies and the agreed-upon obligations cannot now be relitigated because (1) George and Elsa are the same parties in the original proceedings, (2) the judgment of dissolution of marriage containing the marital settlement agreement is a valid final judgment, and (3) the present action enforces the original judgment for dissolution without modifying the judgment or proceeding. See *Martin*, 520 P.3d at 815 (holding that "state courts do not improperly divide disability pay when they enforce the terms of a negotiated property settlement as res judicata, even if the parties agreed on a reimbursement provision that the state court would lack authority to otherwise mandate"); see also *In re Marriage of Weiser*, 475 P.3d 237, 248-49 (Wash. Ct. App. 2020) (finding *res judicata* applied to enforcement of a divorce decree where the lower court enforced the original terms of the decree and did not

> modify the property disposition and rejecting the argument that *Howell* barred the distribution of military disability pay)
>
> Accordingly, we find that the federal preemption doctrine does not apply, the circuit court was not divested of jurisdiction, and the marital settlement agreement was not void, as the circuit court possessed both subject-matter and personal jurisdiction at the time the judgment of dissolution was entered and it retained jurisdiction. *LVNV Funding, LLC*, 2015 IL 116129, ¶ 38 (void judgment is one entered without the court having jurisdiction).

Petitioner is seeking review of the Illinois Supreme Court's decision in this Court, and hereby respectfully requests a 60-day extension of time to file said writ for the following reasons, *inter alia*.

REASONS FOR GRANTING EXTENSION OF TIME

1. Petitioner is a disabled veteran who suffers service-connected disabilities and is entitled to and does receive federal veterans' disability pay.

2. Undersigned counsel is a solo practitioner and assists veterans in *pro bono* and *low bono* representation in trials and appeals throughout the United States. The filing and preparation of petitions for writs of certiorari requires significant resources, costs, and expenses that cannot always be borne by the veteran. As a result, undersigned is required to maintain his regular law practice, while coordinating with various veterans' groups and organizations, and devising alternative ways to allocate resources and cover these costs.

3. No prejudice would arise from the requested extension. If the petition were granted, the Court would likely not hear oral argument until after the October 2025 term began.

4. The issues in this case are of national significance. State courts across the country have issued conflicting and disparate opinions in the wake of *Howell* that are inconsistent and, in the majority, not in keeping with the principles of federal supremacy concerning the disposition of congressionally authorized and appropriated military benefits.

Therefore, Petitioner is not the only disabled veteran whose disability pay is a sole means of subsistence and who relies on these benefits to survive. He is also not the only disabled veteran whose benefits have been misappropriated and redirected by state courts in violation of the principles of absolute federal preemption and Congress' inviolate Article I powers.

Every decision by a state court defying the Supremacy Clause and ignoring federal law affects thousands of veterans in that state. States courts that have addressed this issue and ruled against the veteran include, *inter alia*:

- *Lott v. Lott*, No. 1322-22-1, 2023 Va. App. LEXIS 821 (Ct. App. Dec. 12, 2023), petition for certiorari denied by the Virginia Supreme Court, petition for certiorari filed by undersigned on May 13, 2025, and pending as Docket No. 24-1160.

- *Yourko v. Yourko*, 884 S.E.2d 799 (Va. 2023), *cert. denied*, 220 L.Ed.2d 11 (2024) (undersigned for Petitioner);

- *Martin v. Martin*, 520 P.3d 813 (Nev. 2022), cert. denied, 220 L.Ed.2d 10 (2024) (undersigned for Petitioner);

- *Foster v. Foster*, 983 N.W.2d 373 (Mich. 2022), modified on reh'g, 509 Mich. 988 (2022), cert. denied, 144 S. Ct. 79 (2023) (undersigned for Petitioner);

- *Hammond v. Hammond*, 680 S.W.3d 269 (Tenn. Ct. App. 2023);

- *Boutte v. Boutte*, 304 So. 3d 467 (La. App. 2020), state cert. denied (undersigned for appellant veteran), state cert denied, 306 So. 3d 426 (2020), cert denied, 142 S. Ct. 220 (2021) (undersigned for Petitioner);

- *In re Marriage of Weiser*, 475 P.3d 237 (Wash. 2020);

- *Jones v. Jones*, 505 P.3d 224 (Alaska 2022).

In *Hammond* 680 S.W.3d at 279, the court noted that in the wake of *Howell*, state courts had reached a vast array of conclusions regarding its application.

However, as demonstrated herein, the more recent cases are trending away from upholding the principles of the supremacy of federal law.

Consistent with *Howell* and 38 U.S.C. § 5301, there are states that have ruled that *any* disposition of a veterans' federal benefits which are not expressly designated as disposable and therefore divisible in state court divorce proceedings, whether it be through contractual provisions or state court orders, is contrary to federal law and invalid.

These include, *inter alia*:

- *Russ v. Russ*, 485 P.3d 223, 225 (N.M. 2021);

- *Fattore v. Fattore*, 203 A.3d 151 (N.J. Sup. Ct. App. Div. 2019);

- *In re Babin*, 437 P.3d 985, 989 (Kan. App. 2019);

- *Brown v. Brown*, 260 So.3d 851, 858 (Ala. Civ. App. 2018);

- *Phillips v. Phillips*, 820 S.E.2d 158, 163-64 (Ga. 2018);

- *Berberich v. Mattson*, 903 N.W.2d 233, 237 (Minn. Ct. App. 2017) (undersigned on the *amicus curiae* brief in support of the veteran)

Still other states have gotten this right from the beginning and have not wavered from their adherence to the federal Constitution's strict mandate regarding

the supremacy of federal law in this particular subject matter. Well before *Howell*, the Nebraska Supreme Court ruled, correctly, that because res judicata does not bar collateral attacks on void judgments and the state court had no authority or jurisdiction to issue an order dividing federal veterans' disability benefits, that portion of an order dividing such income was void and subject to collateral attack in any subsequent enforcement action. *Ryan v. Ryan*, 600 N.W.2d 739, 744 (Neb. 1999).

What is clear is that there is a split of authority among the states. These decisions cover the entire spectrum of rulings for and against the veteran, and all of the arguments and reasoning concerning this issue have been presented to the highest courts of these states. Thus, the state cases have once again reached a point of issue singularity, which is primed and ready for this Court's treatment.

Those courts that have ruled that the state (and lawyers) can devise ways to get around the clear implication of *Howell's* rule of absolute preemption have implemented a variety of methods to do so, e.g., *Foster*, *supra* (holding that res judicata and/or collateral estoppel prohibits a court from revisiting a consent decree that was clearly in violation of *Howell* and 38 U.S.C. § 5301); *Hammond*, *supra* (holding that divorcing spouses may negotiate an arrangement requiring the former military spouse to pay alimony *in futuro* in the same amount as the waived portion of retirement, whether or not that means that the military spouse must obligate his or her protected military benefits to satisfy the agreement). Whatever the reasoning, all of these decisions have the same effect, i.e., they force the veteran to part with federal benefits which have *not only not* been expressly granted by Congress for

disposition to another beneficiary, but which are also *always* protected from all legal and equitable process whatever, and which cannot be the subject of contractually agreed to divestment. See 38 U.S.C. § 5301(a)(1) and (3)(A) and (C).

Thus, the state courts have begun to do, again, exactly what this Court admonished them for doing in the first place – counting the amount of federal benefits that are off limits because they are not expressly authorized by statute to be considered disposable and therefore divisible, and adding that amount back into the available divisible funds subject to a negotiated property settlement agreement or simply awarding that same amount to be paid in alimony or spousal support. The result is the same. The veteran is dispossessed of his or her personal entitlement.

It is not that these federal benefits are available to be divided and disposed of if there is no federal law that prohibits such disposition. It is that they are strictly off limits and cannot be divided and disposed of *unless* Congress has expressly and precisely provided for such court authority.

The former proposition is a fundamental misconception among the states and practitioners in general that continuously misinforms their understanding concerning the propriety of division of federal benefits in state domestic relations proceedings. The state cannot invade the federal interest created by the federal legislation and force a distribution thereof to a beneficiary other than that found in the federal statutes. *Hillman*, 569 U.S. at 494, citing *Ridgway*, 454 U.S. at 55.

Furthermore, if there was any doubt, 38 U.S.C. § 5301 affirmatively protects a military veteran's benefits from any "legal or equitable process whatever," expressly

prohibits such forced distribution "either before or after" their receipt by the veteran beneficiary, expressly prohibits contractual agreements by which the veteran beneficiary agrees to dispossess himself or herself of these benefits, and *voids from inception* any such agreement. See 38 U.S.C. § 5301(a)(1) and (3)(A) and (C).

State courts cannot do indirectly what they are prohibited by federal law from doing directly. The simple expedient of an offsetting award or equalizing agreement (whether that be enforcement of a past or future divorce agreement) is incompatible with the Supremacy Clause's absolute federal preemption in this area and, more directly, contrary to the express and affirmative prohibitions articulated in 38 U.S.C. § 5301. See, e.g., *Howell*, *supra*; *Hillman*, 569 U.S. at 491, *McCarty*, 453 U.S. at 227, n.21; and *Ridgway*, *supra*. Indeed, principles of state contract law, *res judicata*, and collateral estoppel do not apply when it is determined that there is an agreement dispossessing the veteran of his personal entitlement because in addition to prohibiting them, § 5301 voids any such agreement from their inception.

The court below ruled with those states that have continued to ignore the clear import of the Supremacy Clause and absolute federal preemption in this area of the law. As a result, Petitioner has been deprived of his personal entitlement to federally appropriated and specifically designated federal benefits.

5. This case also raises the issue of a violation of Petitioner's personal constitutional rights. VA disability benefits are constitutionally protected property interests under the Fifth and Fourteenth Amendments to the Constitution. See, e.g., *Cushman v. Shinseki*, 576 F.3d 1290 (Fed. Cir. 2009) and *Robinson v. McDonald*, 28

Vet. App. 178, 185 (2016) (federal veterans' benefits are constitutionally protected property rights). See also *Morris v. Shinseki*, 26 Vet. App. 494, 508 (2014) (same). The Illinois Supreme Court's decision affirming the lower court decisions effectively deprives Petitioner of his constitutionally protected benefits.

6. This case is yet another example of a state court's continued and persistent defiance of federal law, notwithstanding the absolute preemption of federal law concerning the disposition of federal veterans' benefits by virtue of the enumerated Article I "Military Powers" of Congress. The Supremacy Clause provides that federal laws passed pursuant to Congress' enumerated Article I powers absolutely preempt all state law. Congress has affirmatively legislated that veterans' disability benefits are a personal entitlement for the veteran and must remain inviolate. See, e.g., *Porter v. Aetna Cas. Co.*, 370 U.S. 159, 162 (1962) (interpreting 38 U.S.C. § 3101 (renumbered as currently at 38 U.S.C. § 5301) and noting that this provision is to be liberally construed "to protect the funds granted by the Congress for the maintenance and support of the beneficiaries thereof" and these benefits "should remain inviolate."). Section 5301(a)(1) therefore protects *all veterans' benefits* from any equitable or legal process, unless Congress provides otherwise. *Id*. This Court has confirmed, time and again, that unless Congress passes legislation expressly allowing these benefits to be considered disposable and therefore divisible among the veteran beneficiary and non-beneficiaries, the default rule is that federal preemption applies. See, e.g., *Howell*, 581 U.S. at 218, 220-22; *Hillman*, 569 U.S. at 491, Ridgway, 454 U.S. at 55.

These protected benefits are federal appropriations made by Congress pursuant to its enumerated powers under Article I, and they are to be used for a specific and defined federal purpose – for the maintenance and sustenance of the disabled veteran. Any disposition of these pre-appropriated federal benefits without express, precise, and limited federal statutory authorization is preempted, being contrary to federal law, *inter alia*, 38 U.S.C. § 5301(a)(1) and (3), and therefore void.

No legal process may be used to deprive veterans of their disability benefits. 38 U.S.C. § 5301(a)(1). This includes a state court decision approving of an indemnification clause (or divorce agreement provision) whereby the disabled veteran agrees to dispossess himself or herself of benefits that are considered "inviolate" and affirmatively protected. See 38 U.S.C. § 5301(a)(3)(A) and (C). The latter provision expressly "voids from inception" any such agreement.

As this Court has ruled on multiple occasions, unless Congress has, by express legislation, *lifted* the absolute preemption provided by federal law in this area, state courts and state agencies simply have no authority, or jurisdiction, to direct or hold that such benefits be seized and/or paid over to someone other than their intended beneficiary. See, e.g., *McCarty v. McCarty*, 453 U.S. 210 (1981); *Ridgway v. Ridgway*, 454 U.S. 46 (1981); *Mansell v. Mansell*, 490 U.S. 581 (1989); *Hillman v. Maretta*, 569 U.S. 483 (2013); *Howell v. Howell*, 137 S. Ct. 1400 (2017); *Torres v Texas Dep't of Pub. Safety*, 142 S. Ct. 2455 (2022) (noting the total occupation by federal law in areas of Congress' express enumerated powers and highlighting Congress' "military powers"

as a lead example). In such cases, the states have no authority or jurisdiction in the premises. *Howell*, *supra* at 221-22, citing 38 U.S.C. § 5301.

Congress has lifted this absolute preemption in a small subset of cases: (1) for marital property through the Uniformed Services Former Spouses Protection Act (USFSPA), 10 U.S.C. § 1408 (defining "disposable retired pay" for purposes of division in state court divorce proceedings); and (2) for spousal support and child support from disability pension (retirement pay (not disability benefits)), through the Child Support Enforcement Act (CSEA), 42 U.S.C. § 659(a), (h)(1)(A)(ii)(V).

Thus, if there is no federal statute authorizing the states to consider federal benefits in state court domestic relations proceedings, they are simply and expressly prohibited from doing so.

These protected benefits include those that Petitioner is being forced to consider disposable income available to Respondent by virtue of the Illinois Supreme Court's ruling. There is no federal statute that would expressly allow the disposition of Petitioner's benefits in the manner in which the Circuit Court and Illinois Supreme Court ruled that they could be considered. Further, 38 U.S.C. § 5301(a)(1) and (a)(3)(A) and (C) respectively prohibits the forced distribution of these benefits either "before or after" their receipt by the veteran and prohibits, and further voids from inception, all contracts entered into by the veteran beneficiary agreeing to pay them to another.

7. The state court's decision, being preempted by federal law, is *void* and of no effect, and it must be rectified to effect justice. The Illinois Supreme Court's opinion

in this case directly usurps Congress's exercise of its enumerated Article I powers. Where a state court is preempted by controlling federal law, the state court has no authority to issue an order that exceeds its authority or jurisdiction. See, e.g., *Hines v. Lowrey*, 305 U.S. 85, 91 (1938) ("Congressional enactments in pursuance of constitutional authority are the supreme law of the land."); *Kalb v. Feuerstein*, 308 U.S. 433, 439 (1940) ("The States cannot, in the exercise of control over local laws and practice, vest state courts with power to violate the supreme law of the land."). This is especially the case where Congress has provided exclusive jurisdiction to a federal agency over persons and property. *Kalb*, *supra.*

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

such power, any attempt by state courts to impede the operation of federal laws must be considered a nullity and void. *Kalb*, *supra*.

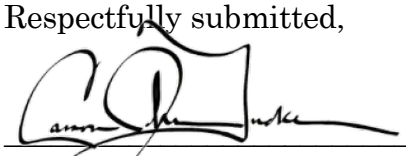
When federal law, through the Supremacy Clause, preempts state law, as it does in the area of divorce and family law in regard to federal benefits, see, inter alia, *Hillman*, 569 U.S. at 491, then a state court lacks jurisdiction and authority to issue a ruling that contradicts the federally directed designation of these benefits, period.

CONCLUSION

It is Petitioner's desire that his petition for a writ of certiorari be granted so that the federal benefits to which he and other veterans in his situation across the country are entitled can be finally and ultimately restored. For the foregoing reasons, undersigned counsel requests additional time to prepare a full exposition of the important legal issues underlying Petitioner's case.

WHEREFORE, for the reasons stated herein, Petitioner applies to Your Honor and respectfully requests an extension of 60 days from the Wednesday, August 20, 2025, due date to file a Petition for a Writ of Certiorari to the Illinois Supreme Court, so that this Court may timely docket said petition on or before Monday, October 20, 2025.

Respectfully submitted,



Carson J. Tucker
Attorney for Petitioner

Dated: August 11, 2025

ATTACHMENT 1

In re Tronsrue,
unreported at 2025 IL 130596

2025 IL 130596

IN THE

SUPREME COURT

OF

THE STATE OF ILLINOIS

(Docket No. 130596, 130597 cons.)

In re MARRIAGE OF ELSA M. TRONSRUE, Appellee, and
GEORGE M. TRONSRUE III, Appellant.

Opinion filed May 22, 2025.

JUSTICE NEVILLE delivered the judgment of the court, with opinion.

Chief Justice Theis and Justices Overstreet, Holder White, Cunningham, Rochford, and O'Brien concurred in the judgment and opinion.

OPINION

¶ 1 The petitioner, Elsa M. Tronsrue, filed a petition for dissolution of marriage from her husband, George M. Tronsrue III, and George filed a counterpetition. In 1992, the Du Page County circuit court entered a judgment for dissolution of marriage incorporating a marital settlement agreement that obligated George to pay Elsa one-half of the marital portion of his federal veterans' disability payments as a property distribution. In 2019, George filed a petition to terminate the veterans'

disability payments, maintaining that the division of his benefits was void under federal law. Elsa moved to dismiss George's petition. The circuit court granted Elsa's motion to dismiss George's petition to terminate his veterans' disability payments, found George in contempt for failing to make the payments, and ordered him to pay Elsa's attorney fees.

¶ 2 The appellate court, with one justice dissenting, affirmed the judgment of the circuit court, finding that, because the circuit court had personal and subject-matter jurisdiction over the judgment of dissolution of marriage, the marital settlement agreement dividing George's veterans' disability benefits was not void even if it violates federal law. 2024 IL App (3d) 220125, ¶¶ 10-23 (*Tronsrue I*). Justice Albrecht dissented, reasoning that, although the circuit court had jurisdiction over the matter, pursuant to the supremacy clause, federal law preempts the marital settlement agreement provision in the judgment of dissolution of marriage where the parties agreed that George would pay Elsa a percentage of his veterans' disability benefits. Therefore, the judgment is void and unenforceable. *Id.* ¶¶ 25-32 (Albrecht, J., dissenting).

¶ 3 In a related order, the appellate court also affirmed the circuit court's contempt finding, reasoning that George was required to make the payments because the judgment was not void. 2024 IL App (3d) 220294-U, ¶¶ 13 (*Tronsrue II*). Justice Albrecht dissented from the contempt decision as well, reasoning that, because a provision in the judgment of dissolution of marriage was void with respect to the division of George's benefits, George had a compelling justification for refusing to comply. *Id.* ¶¶ 18-20 (Albrecht, J., dissenting).

¶ 4 We allowed George's petitions for leave to appeal from both cases and consolidated them pursuant to Illinois Supreme Court Rule 315 (eff. Dec. 7, 2023). For the following reasons, we affirm the judgments of the appellate court.

¶ 5 I. BACKGROUND

¶ 6 A. Circuit Court Proceedings

¶ 7 On May 7, 1990, the petitioner, Elsa Tronsrue, filed a petition for dissolution of marriage from her husband, George Tronsrue. George filed a counterpetition. On

July 6, 1992, the circuit court entered a judgment of dissolution of marriage, incorporating a marital settlement agreement with a provision that obligated George to pay to Elsa one-half the marital portion of his federal military disability payments as a property distribution. Specifically, the agreement provided, in relevant part, the following:

> "ARMY \ VETERANS' ADMINISTRATION DISABILITY RETIREMENT PAY—The Parties agree that based upon the Court's ruling[1] that 37.2% of Husband's Army Disability Retirement pay and V.A. disability pension is marital that Wife shall receive an amount equal to 18.6% of Husband's Army Disability Retirement pay and 18.6% of Husband's V.A. disability pension payable to Wife pursuant to the applicable sections of the Uniformed Services Former Spouses Protection Act. If for any reason the United States Army and the V.A. will not withhold the appropriate amounts and send them directly to Wife then Husband shall pay directly to Wife 18.6% of his Army Disability Retirement pay and 18.6% of his V.A. Disability Pension each and every month upon entry of Judgment For Dissolution for as long as he receives said pay.[2]
>
> The Husband specifically agrees that for purposes of the calculation of child support benefits, his share of the Army / Veterans' Administration Disability Retired Pay is includable as part of his net income against which to apply the Illinois Statutory child support guidelines."

¶ 8 On September 12, 2019, Elsa filed a petition for indirect civil contempt. In so doing, she alleged that she believed that George's federal Army disability and Veterans Affairs (V.A.) disability pay had increased. However, her payments had not. Specifically, she maintained that George continued to pay her the same $303

[1]We note, and subsequently discuss, that courts do not have the authority to award military benefits as marital property. However, a veteran may voluntarily agree to share his benefits after he has received them.

[2]We recognize that the language in the marital settlement agreement contemplates the Army and V.A. sending the payments to the wife and places the responsibility on the husband to send the payments directly to the wife where the Army and V.A. fail to do so. However, as discussed later in the opinion, the veteran must receive the benefits first.

each month that he had paid her at the time the judgment of dissolution of marriage was entered.

¶ 9 On November 26, 2019, George filed an amended petition to terminate his veterans' disability payments to Elsa, maintaining that the provision dividing his benefits was void under federal law. Specifically, George asserted that the circuit court did not have subject-matter jurisdiction to order the division of his veterans' disability benefits as an asset under federal law. Because the circuit court did not have jurisdiction to divide his veterans' disability benefits and treat the benefits as assets at the time of the judgment of dissolution, George maintains that the benefits should never have been divided. Therefore, he requested that the payments to Elsa be terminated immediately.

¶ 10 On December 19, 2019, Elsa moved to dismiss George's petition. On January 6, 2020, the circuit court granted Elsa's motion to dismiss George's petition to terminate the payments. On August 14, 2020, the circuit court entered an order denying George's motion to dismiss Elsa's petition for adjudication of indirect civil contempt. On November 2, 2020, the circuit court found George in indirect civil contempt for failing to make the veterans' disability payments. In so doing, the circuit court reasoned that Elsa established a *prima facie* case that George had not complied with the terms of the judgment of dissolution and George did not establish that his failure to abide by the court order was with compelling cause or justification. George asserted that the compelling cause or justification for failing to make the payments was that the circuit court did not have subject-matter jurisdiction over the preempted asset—George's veterans' disability payments. In other words, the marital settlement agreement ordering George to make veterans' disability payments to Elsa was void, and the circuit court had no subject-matter jurisdiction to enforce a void order.

¶ 11 The circuit court found that it had subject-matter jurisdiction over the dissolution proceedings and has subject-matter jurisdiction over "any subsequent actions necessary for enforcement of the Court's orders." It further found that, although it would not have jurisdiction to order the division of federal disability benefits, it does have jurisdiction to enforce a binding agreement of the parties. The court reasoned that there was a settlement agreement in place and it must ascertain whether the parties are living up to the terms of their agreement. It concluded that

George was in indirect civil contempt of court for failing to comply with the judgment to which he agreed and that he had not set forth a compelling cause or justification for failing to comply with the judgment of dissolution. The circuit court also ordered George, as a partial purge, to provide within 45 days documentation showing all amounts received from "V.A. disability retirement and pension" since July 6, 1992.

¶ 12 In compliance with the partial purge provision of the contempt order, lengthy discovery ensued to ascertain how much Elsa was owed due to cost-of-living adjustments based on the payments George had received since July 6, 1992. However, Elsa was not satisfied that George had provided clear evidence of the dollar amount he was receiving in disability benefits.

¶ 13 After a hearing on June 23, 2021, the circuit court issued an order requiring George to provide "ALL BANK STATEMENTS OR OTHER STATEMENTS FOR THE CALENDAR YEAR 2019 WHICH EVIDENCE PROOF OF ALL AMOUNTS RECEIVED BY HIM FROM THE V.A. DISABILITY RETIREMENT AND PENSION SYSTEM." Compliance with this order would satisfy the partial purge provision in the November 2, 2020, contempt order. At a hearing on January 24, 2022, Elsa's counsel conceded that George provided the necessary documents to satisfy the partial purge provision. At this point, all that remained was resolving the issue of the amount owed to Elsa.

¶ 14 On March 4, 2022, counsel for Elsa argued that George was $32,980.86 in arrears through September 12, 2020, and moved for 5% interest on each missed payment. That same day, George's counsel argued that the parties are bound by what they agreed to and that neither party agreed to charge interest on any unpaid amounts. Therefore, according to George's counsel, the parties should be bound by the simple purge amount—the $32,980.86 that George had not paid up to that time. At the conclusion of the hearing on March 4, 2022, the circuit court entered an order requiring George to pay Elsa $32,980.60[3] and denying Elsa's motion for interest. The circuit court also granted Elsa leave to file a petition for attorney fees.

[3]The parties do not contest that the circuit court entered an order awarding Elsa $32,980.60 as opposed to $32,980.86.

¶ 15 On March 31, 2022, George filed a notice of appeal from the January 6, 2020, order granting Elsa's motion to dismiss George's petition to terminate the payments made pursuant to the 1992 judgment of dissolution of marriage; the August 14, 2020, order denying George's motion to dismiss Elsa's petition for adjudication of indirect civil contempt; the November 2, 2020, order finding George to be in indirect civil contempt of court; and the March 4, 2022, order setting the purge amount. This appeal was docketed by the appellate court as number 3-22-0125 (*Tronsrue I*, 2024 IL App (3d) 220125).

¶ 16 On April 1, 2022, Elsa filed a petition for attorney fees related to the contempt finding pursuant to section 508(b) of the Illinois Marriage and Dissolution of Marriage Act (Marriage Act) (750 ILCS 5/508(b) (West 2018)). On June 22, 2022, the circuit court ordered George to pay $24,939 in attorney fees. On July 20, 2022, George filed a second notice of appeal from the order awarding Elsa attorney fees, which included a reference to all previous orders in his first notice of appeal. This appeal was docketed by the appellate court as number 3-22-0294 (*Tronsrue II*, 2024 IL App (3d) 220294-U).

¶ 17 B. Appellate Court Proceedings

¶ 18 1. *Tronsrue I*

¶ 19 On appeal, George argued that the circuit court erred when it enforced a provision in the marital settlement agreement that purported to divide George's Army and V.A. disability benefits because the circuit court lacked subject-matter jurisdiction to do so at the time of the parties' 1992 divorce, rendering that provision in the agreement void.

¶ 20 The appellate court affirmed the judgment of the circuit court, finding that, because the circuit court had both personal and subject-matter jurisdiction over the judgment of dissolution of marriage, the agreement dividing George's benefits was not void and George could not collaterally attack it, even if it violates federal law. *Tronsrue I*, 2024 IL App (3d) 220125, ¶¶ 10-23.

¶ 21 Justice Albrecht dissented. *Id.* ¶¶ 25-32 (Albrecht, J., dissenting). In so doing, she reasoned that, although the circuit court had jurisdiction over the matter,

pursuant to the supremacy clause (U.S. Const., art. VI), federal law preempts the marital settlement agreement provision in the judgment of dissolution of marriage where the parties agreed that George would pay veterans' disability benefits. *Tronsrue I*, 2024 IL App (3d) 220125, ¶ 26. Put simply, Justice Albrecht reasoned that the division of the disability benefits violated the anti-assignment provisions in section 5301 of the Veterans Benefits Act of 2003 (Act) (38 U.S.C. § 5301 (2018)). *Tronsrue I*, 2024 IL App (3d) 220125, ¶ 26. Therefore, the marital settlement agreement provision in the judgment of dissolution is void and unenforceable. *Id.* ¶¶ 25-32.

¶ 22 2. *Tronsrue II*

¶ 23 In this appeal, George argued that the circuit court erred when it ordered him to pay attorney fees related to the contempt finding. *Tronsrue II*, 2024 IL App (3d) 220294-U, ¶ 1. He asserted that he had a compelling reason not to comply with the 1992 judgment of dissolution of marriage—specifically, that the provision in the judgment related to his Army disability retirement pay and his V.A. disability benefits was void. *Id.* ¶ 11.

¶ 24 The appellate court affirmed the circuit court's contempt finding and the award of attorney fees, reasoning that George was required to make the payments because the judgment of dissolution of marriage was not void. *Id.* ¶ 13. Therefore, it was not error for the circuit court to find George in contempt of court (and subsequently award attorney fees) for his intentional failure to make the disability payments to Elsa. *Id.*

¶ 25 Justice Albrecht dissented from this decision as well, reasoning that, because the veterans' disability payments provision in the judgment of dissolution of marriage was void with respect to the division of George's benefits, George had a compelling justification for refusing to comply. *Id.* ¶ 20 (Albrecht, J., dissenting). Therefore, it was error for the court to award attorney fees and costs against George. *Id.* ¶¶ 18-20.

¶ 26 II. ANALYSIS

¶ 27 George presents two issues for this court to review: (1) whether the provision in the marital settlement agreement incorporated into the 1992 judgment of dissolution of marriage, dividing George's military disability benefits and treating them as marital property, is void and unenforceable because the state law authorizing the division is preempted by federal law and (2) whether the attorney fee award must be vacated if it was based on a void order.

¶ 28 A. Standard of Review

¶ 29 Here, because this case concerns issues of statutory interpretation, federal preemption, and other questions of law, our review is *de novo*. *Haage v. Zavala*, 2021 IL 125918, ¶ 41 ("Issues of statutory construction present questions of law that we review *de novo*."); *Carter v. SSC Odin Operating Co.*, 237 Ill. 2d 30, 39 (2010) ("Questions of federal preemption and statutory interpretation present questions of law that are subject to *de novo* review."). We review a circuit court's entry of an attorney fee award for an abuse of discretion. *In re Marriage of Heroy*, 2017 IL 120205, ¶ 13 ("The circuit court's decision to award attorney fees will not be disturbed absent an abuse of discretion.").

¶ 30 B. Enforcement of the Disability Payment Provision of the Marital Settlement Agreement

¶ 31 George first argues that the circuit court erred in finding that the provision in the marital settlement agreement enforcing the distribution of his disability benefits to Elsa was not void, specifically because federal law prohibits the distribution of those benefits to anyone other than the veteran. Consequently, he argues that, because of federal preemption, the provision in the marital settlement agreement was void and the circuit court could not enforce a void order.

¶ 32 George concedes that, in 1992, the circuit court had subject-matter and personal jurisdiction; however, he calls for this court to "create an exception" to the general principle that subject-matter jurisdiction may not be relitigated except in

circumstances like this case, specifically to "account for federal preemption in our laws on subject matter jurisdiction."

¶ 33 In a civil lawsuit not involving an administrative tribunal or administrative review, jurisdiction consists solely of subject-matter and personal jurisdiction. *LVNV Funding, LLC v. Trice*, 2015 IL 116129, ¶ 39. Subject-matter jurisdiction refers to the power of a court to "hear and determine cases of the general class to which the proceeding in question belongs." *Belleville Toyota, Inc. v. Toyota Motor Sales, U.S.A., Inc.*, 199 Ill. 2d 325, 334 (2002). Personal jurisdiction refers to the power of a court " ' "to bring a person into its adjudicative process." ' " *People v. Castleberry*, 2015 IL 116916, ¶ 12 (quoting *In re M.W.*, 232 Ill. 2d 408, 415 (2009), quoting Black's Law Dictionary 870 (8th ed. 2004)). A void judgment is one that is entered without the court having jurisdiction (*LVNV Funding, LLC*, 2015 IL 116129, ¶ 38), while a voidable judgment is a judgment "entered erroneously by a court having jurisdiction and is not subject to collateral attack." *People v. Davis*, 156 Ill. 2d 149, 155-56 (1993). Void judgments may be challenged at any time, "either directly or collaterally, and the challenge is not subject to forfeiture or other procedural restraints." *LVNV Funding, LLC*, 2015 IL 116129, ¶ 38. In an effort to preserve the finality of judgments, only the most fundamental defect—a lack of personal jurisdiction or a lack of subject-matter jurisdiction—warrants declaring a judgment void. *Id.*; *Castleberry*, 2015 IL 116916, ¶ 15.

¶ 34 In the case under review, when the 1992 judgment of dissolution of marriage was entered, the circuit court possessed subject-matter jurisdiction because the circuit court had the power to hear and determine cases filed pursuant to the Marriage Act and divorce proceedings are justiciable matters. *In re M.W.*, 232 Ill. 2d at 424 (noting that the Illinois Constitution grants circuit courts general jurisdiction over all justiciable matters). The circuit court also had personal jurisdiction over the parties because Elsa filed a petition for dissolution of marriage in the circuit court and George consented to personal jurisdiction by filing an appearance. *Id.* at 426 (noting that "a petitioner or plaintiff submits to the jurisdiction of the court by filing a petition or complaint, 'thereby seeking to be bound to the court's resolution' " and a "respondent or defendant may consent to personal jurisdiction by his appearance" (quoting *Owens v. Snyder*, 349 Ill. App. 3d 35, 40 (2004))). Therefore, it follows that, once the circuit court obtained

jurisdiction, any judgment erroneously entered was a voidable judgment, not a void judgment. *Davis*, 156 Ill. 2d at 155-56.

¶ 35 Nevertheless, George's argument—that the 1992 judgment of dissolution of marriage was a void order because federal law preempts the state law (section 502 of the Marriage Act (750 ILCS 5/502 (West 2018))) that authorizes the circuit court to enforce a provision in the marital settlement agreement that divided veterans disability benefits—requires this court to answer the following questions: (1) Does federal law preempt enforcement of the marital settlement agreement? (2) If so, does federal preemption divest the circuit court of jurisdiction, thereby rendering the judgment of dissolution, which incorporated the marital settlement agreement, void? We answer both questions in the negative.

¶ 36 In resolving these two questions, we note that section 502(a) of the Marriage Act provides that, "[t]o promote amicable settlement of disputes between parties to a marriage attendant upon the dissolution of their marriage, the parties may enter into an agreement containing provisions for disposition of any property owned by either of them." *Id.* § 502(a). Section 502(b) also provides that the terms of the agreement incorporated into the judgment are binding on the court. See *id.* § 502(b). Finally, section 502(e) provides that the terms of the agreement set forth in the judgment are enforceable by all remedies available for enforcement of a judgment, including contempt, and are enforceable as contract terms. See *id.* § 502(e).

¶ 37 1. Federal Preemption

¶ 38 Article VI of the United States Constitution provides that federal law, including the constitution itself, treaties, and laws passed by Congress, is the supreme law of the land. See U.S. Const., art. VI.

¶ 39 Pursuant to the supremacy clause of the United States Constitution, in any one of the following three circumstances, a federal statute will preempt state law: " '(1) express preemption—where Congress has expressly preempted state action; (2) implied field preemption—where Congress has implemented a comprehensive regulatory scheme in an area, thus removing the entire field from the state realm; or (3) implied conflict preemption—where state action actually conflicts with federal law.' " *Performance Marketing Ass'n v. Hamer*, 2013 IL 114496, ¶ 14

(quoting *Carter*, 237 Ill. 2d at 39-40). A state law conflicts with federal law when it "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *English v. General Electric Co.*, 496 U.S. 72, 79 (1990) (quoting *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941)). If a state law conflicts with federal law, it is null and void. *Performance Marketing*, 2013 IL 114496, ¶ 14.

¶ 40 The federal statute that is at issue in this case is section 5301(a)(1) of the Act, which provides:

> "Payments of benefits due or to become due under any law administered by the Secretary shall not be assignable except to the extent specifically authorized by law, and such payments made to, or on account of, a beneficiary shall be exempt from taxation, shall be exempt from the claim of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary." 38 U.S.C. § 5301(a)(1) (2018).

¶ 41 Section 5301(a)(3)(A) clarifies that, "in any case where a beneficiary entitled to compensation *** enters into an agreement with another person under which agreement such other person acquires for consideration the right to receive such benefit ***, such agreement shall be deemed to be an assignment and is prohibited." *Id.* § 5301(a)(3)(A).

¶ 42 Relying primarily on two United States Supreme Court cases, *Mansell v. Mansell*, 490 U.S. 581, 588 (1989), and *Howell v. Howell*, 581 U.S. 214, 222 (2017), George asserts that the plain language of the Act preempts any state law concerning the disposition of veterans' disability benefits in state domestic relations proceedings and prohibits states "from using 'any legal or equitable process whatever' to dispossess a veteran of these benefits."

¶ 43 However, *Mansell* and *Howell* are distinguishable from the facts in this case. *Mansell* and *Howell* hold (1) that federal law preempts the application of state community property law to military retirement pay and (2) that states cannot treat disability benefits as community property that may be divided to reimburse a divorcing spouse for a lost or diminished share of retirement pay. See *Howell*, 581 U.S. at 220; *Mansell*, 490 U.S. at 594-95.

¶ 44 Neither of these cases involved parties agreeing to an indemnification provision in a judgment of dissolution property settlement agreement. In addition, neither of these cases involved one party entering into a marital settlement agreement and agreeing to use those benefits however he wants after he has received them, including to pay his former spouse. Finally, neither *Howell* nor *Mansell* can be read as addressing the enforceability of such a provision in a marital settlement agreement.

¶ 45 *Mansell* involved a state court declining to modify a divorce decree where the parties divided disability benefits as community property. See *Mansell*, 490 U.S. at 586. In other words, *Mansell* prevents state courts from "treating military retirement pay that had been waived to receive disability benefits as community property."[4] *Id. Howell* involved a state court ordering a husband to pay his wife the original amount established in the divorce decree after waiving some of his military retirement pay for disability benefits. See *Howell*, 581 U.S. at 216. *Howell* establishes that state courts cannot order a veteran who elects to waive retirement pay for disability pay to indemnify a former spouse. *Id.* at 222. *Howell* does not bar a spouse from choosing to use his disability benefits however he wants after receiving them, including paying a former spouse.

¶ 46 In this case, the record reveals that the parties entered into a marital settlement agreement where George agreed to pay Elsa a portion of his disability benefits after receiving them. A marital settlement agreement is a contract, and therefore, we must treat it as such. See *In re Marriage of Dynako*, 2021 IL 126835, ¶ 15 ("A marital settlement agreement is construed in the same manner as any other contract" and the court "must therefore ascertain the parties' intent from the language of the agreement itself."); see also 750 ILCS 5/502(e) (West 2018) ("Terms of the agreement set forth in the judgment are enforceable *** as contract terms."). The express language of the marital settlement agreement was that the disability benefits

[4]We note that the *Mansell* decision is not limited to only community property states, as the *Mansell* Court explained in a footnote,

> "[t]he language of the Act covers both community property and equitable distribution States, as does our decision today. Because this case concerns a community property State, for the sake of simplicity we refer to § 1408(c)(1) as authorizing state courts to treat 'disposable retired or retainer pay' as community property." *Mansell*, 490 U.S. at 584 n.2.

were marital property and that, if the federal government did not send the payments directly to Elsa, George "shall pay directly to" Elsa "as long as he receives said pay." It matters not that the marital settlement agreement did not contain a specific indemnification provision, as there is no question of the voluntariness of the agreement and the language expressed a clear intent on the part of George to pay to Elsa benefits that he received after he received them.

¶ 47 The circuit court did not order George to make these payments; instead, George agreed to use his disability benefits how he saw fit after receiving them. Because *Mansell* does not prevent George from entering into a marital settlement agreement, it does not preempt the circuit court from entering an order incorporating such a provision in an agreement. Nor can it be argued that the circuit court is required to reopen an agreement that had been final for nearly 30 years at the time of the initiation of these proceedings. In fact, the *Mansell* Court expressly noted that a circuit court's decision about whether it should reopen a final settlement agreement or whether that final judgment was *res judicata* was an issue of state law over which the United States Supreme Court had no jurisdiction. *Mansell*, 490 U.S. at 586 n.5. Finally, the United States Supreme Court denied review after the California Court of Appeals later held that the divorce judgment containing the agreement would not be reopened. See *In re Marriage of Mansell*, 265 Cal. Rptr. 227 (Ct. App. 1989), *cert. denied*, 498 U.S. 806 (1990).

¶ 48 Based on our review of these cases, we see no limitation by the United States Supreme Court on how a veteran can use his benefits once he receives them. Put simply, federal law does not prohibit a veteran from using the disability payments he receives in any way he chooses, as long as the funds are first paid to the veteran. In fact, the Act expressly indicates the liberty a veteran has in the usage of his disability payments after receiving them. See 38 U.S.C. § 5301(a)(3)(B) (permitting a veteran to use disability benefits to repay loans, as long as the payments are "separately and voluntarily executed by the [veteran]").

¶ 49 Additionally, courts from other jurisdictions have concluded that federal law does not preempt a veteran from using his disability benefits to pay a former spouse. See *Yourko v. Yourko*, 884 S.E.2d 799, 804 (Va. 2023) (upholding an agreement between the former spouses where the veteran husband agreed to pay disability payments to his former wife because "federal law does not prohibit a veteran from

using military disability pay in any manner he or she sees fit, provided the money is paid directly to the veteran first"); *Martin v. Martin*, 520 P.3d 813, 817-20 (Nev. 2022) (upholding a settlement agreement between former spouses where disability payments were paid to a former spouse, finding that federal law does not preempt enforcement of the divorce decree); *Jones v. Jones*, 505 P.3d 224, 230 (Alaska 2022) (finding that federal law does not preclude state courts from enforcing a negotiated settlement agreement in which a military spouse promised to pay another a share of the military spouse's disability benefits, reasoning that " '[i]t's one thing to argue about a judge's power to require *** a duty to indemnify,' but 'another matter entirely to require a litigant to perform what he has promised in a contract' " (quoting 2 Mark E. Sullivan, *The Military Divorce Handbook: A Practical Guide to Representing Military Personnel and Their Families* 670, 691 n.7 (3d ed. 2019))).

¶ 50 The decisions in the aforementioned cases reveal the importance of contract law and reinforce the value of allowing divorcing spouses to agree to certain terms, regardless of whether those terms reflect what a court could or would be able to order. We find *Yourko*, *Martin*, and *Jones* instructive and hold that, in this case, federal law did not preempt section 502, the agreement section in the Marriage Act, which authorized the circuit court to enter a judgment incorporating a marital settlement agreement that George voluntarily executed to use the disability payments that he received for a purpose that he chose—to pay Elsa pursuant to the marital settlement agreement. Therefore, we will require him to make the payments to Elsa that he agreed to make in the marital settlement agreement. See *Jones*, 505 P.3d at 230.

¶ 51 2. Jurisdiction

¶ 52 In general, a final judgment is conclusive after the passage of 30 days. *Waggoner v. Waggoner*, 78 Ill. 2d 50, 53 (1979). "However, a court in a divorce proceeding retains jurisdiction for the purpose of enforcing its decrees." *Id.* According to the doctrine of *res judicata* " ' "a final judgment rendered by a court of competent jurisdiction on the merits is conclusive as to the rights of the parties and their privies, and, as to them, constitutes an absolute bar to a subsequent action involving the same claim, demand or cause of action." ' " *Spiller v. Continental*

Tube Co., 95 Ill. 2d 423, 432 (1983) (quoting *La Salle National Bank v. County Board of School Trustees of Du Page County*, 61 Ill. 2d 524, 528 (1975), quoting *People v. Kidd*, 398 Ill. 405, 408 (1947)). " '*Res judicata* promotes judicial economy by preventing repetitive litigation and also protects parties from being forced to bear the unjust burden of relitigating essentially the same case.' " *Hayashi v. Illinois Department of Financial & Professional Regulation*, 2014 IL 116023, ¶ 45 (quoting *Arvia v. Madigan*, 209 Ill. 2d 520, 533 (2004)).

¶ 53 We note that George waited nearly 30 years before collaterally challenging the agreement he voluntarily executed. This court has held that collateral attacks on divorce decrees involving property settlements are subject to *res judicata*. See *Waggoner*, 78 Ill. 2d at 55 (finding the divorce decree was *res judicata*, as the "plaintiff has not made any demonstration that circumstances have changed so as to warrant a modification of the child-support provisions of the decree"); *Roe v. Roe*, 28 Ill. 2d 232, 236 (1963) (upholding the validity of a divorce decree where husband waited 10 years to collaterally challenge, as void, the property settlement portion of the divorce decree that was "complete and valid on its face").

¶ 54 In this case, George and Elsa negotiated and signed a marital settlement agreement, which was incorporated into their judgment of dissolution of marriage. In so doing, they executed a valid, unambiguous, and legally binding contract. The marital settlement agreement provided that George would pay Elsa a portion of his military disability payments that he received. Based on our review of *Mansell* and *Howell*, this provision of the marital settlement agreement may be enforced based on contract principles. Moreover, the circuit court retained jurisdiction of the cause to enforce all terms of the judgment of dissolution of marriage.

¶ 55 We reiterate that federal preemption is not applicable in a case where the circuit court did not order payment but, instead, the parties entered into an agreement that required George to pay Elsa disability benefits that he received. Additionally, we find, pursuant to the express authority granted to state courts by *Mansell*, 490 U.S. at 586 n.5, that *res judicata* applies and the agreed-upon obligations cannot now be relitigated because (1) George and Elsa are the same parties in the original proceedings, (2) the judgment of dissolution of marriage containing the marital settlement agreement is a valid final judgment, and (3) the present action enforces the original judgment for dissolution without modifying the judgment or

introducing new matters that could not have been addressed in the original proceeding. See *Martin*, 520 P.3d at 815 (holding that "state courts do not improperly divide disability pay when they enforce the terms of a negotiated property settlement as res judicata, even if the parties agreed on a reimbursement provision that the state court would lack authority to otherwise mandate"); see also *In re Marriage of Weiser*, 475 P.3d 237, 248-49 (Wash. Ct. App. 2020) (finding *res judicata* applied to enforcement of a divorce decree where the lower court enforced the original terms of the decree and did not modify the property disposition and rejecting the argument that *Howell* barred the distribution of military disability pay).

¶ 56 Accordingly, we find that the federal preemption doctrine does not apply, the circuit court was not divested of jurisdiction, and the marital settlement agreement was not void, as the circuit court possessed both subject-matter and personal jurisdiction at the time the judgment of dissolution was entered and it retained jurisdiction. *LVNV Funding, LLC*, 2015 IL 116129, ¶ 38 (void judgment is one entered without the court having jurisdiction).

¶ 57 C. Attorney Fee Award

¶ 58 Lastly, George argues that the circuit court erred when it entered the attorney fees award pursuant to the order of contempt because it was based on a void order, the marital settlement agreement incorporated in the judgment of dissolution of marriage. We disagree.

¶ 59 Section 502(e) of the Marriage Act permits the terms of the parties' agreement set forth in the judgment to be enforced by all remedies available for the enforcement of the judgment, including contempt. 750 ILCS 5/502(e) (West 2018). Section 508(b) of the Marriage Act authorizes the recovery of costs and legal fees from a party who, without a compelling cause or justification, refuses to comply with an order or judgment. *Id.* § 508(b); see *Nottage v. Jeka*, 172 Ill. 2d 386, 391 (1996). A circuit court has discretion to determine the attorney fee award. *In re Marriage of Heroy*, 2017 IL 120205, ¶ 13 ("The circuit court's decision to award attorney fees will not be disturbed absent an abuse of discretion."). Because the attorney fees were not awarded pursuant to a void order but were instead based on the circuit court enforcing a valid judgment incorporating a settlement agreement

that George voluntarily executed, the court did not err in entering an attorney fee award for George's failure to comply with that agreement.

¶ 60 III. CONCLUSION

¶ 61 We find that the circuit court did not err when it enforced the marital settlement agreement between the parties because federal law did not preempt state law (section 502, the agreement section, in the Marriage Act) or prevent George from agreeing to pay to Elsa a portion of his veterans' disability benefits after he had received them. Moreover, because the circuit court retained jurisdiction to enforce all terms of the judgment of dissolution, the judgment was not void, and the circuit court did not err when it awarded Elsa attorney fees for George's failure to comply with the terms of the marital settlement agreement. Accordingly, we affirm the judgments of the appellate court and the circuit court.

¶ 62 Judgments affirmed.

ATTACHMENT 2

In re Marriage of Tronsrue,
reported at 2024 IL App (3d) 220125, 476 Ill. Dec. 1, 239 N.E.3d 1199 (2024)

In re Marriage of Tronsrue

Appellate Court of Illinois, Third District

March 7, 2024, Opinion Filed

Appeal No. 3-22-0125

Reporter
2024 IL App (3d) 220125 *; 239 N.E.3d 1199 **; 2024 Ill. App. LEXIS 510 ***; 476 Ill. Dec. 1 ****; 2024 LX 17598

In re MARRIAGE OF ELSA TRONSRUE, n/k/a Elsa Toledo, Petitioner-Appellee, and GEORGE TRONSRUE, Respondent-Appellant.

Subsequent History: Appeal granted by In re Marriage of Tronsrue, 2024 Ill. LEXIS 505, 477 Ill. Dec. 806, 244 N.E.3d 232, 2024 WL 4328998 (Sept. 25, 2024)

Affirmed by In re Tronsrue, 2025 Il. 130596, 2025 Ill. LEXIS 347 (May 22, 2025)

Prior History: [***1] Appeal from the Circuit Court of the 18th Judicial Circuit, Du Page County, Illinois. Appeal No. 3-22-0125. The Honorable Alexander F. McGimpsey III, Judge, presiding.

In re Tronsrue, 2024 IL App (3d) 220294-U, 2024 Ill. App. Unpub. LEXIS 475, 2024 WL 984825 (Mar. 7, 2024)

Disposition: Affirmed.

Counsel: Michael G. DiDomenico and Sean M. Hamann, of Lake Toback DiDomenico, of Chicago, for appellant.

Robert D. Boyd, of The Stogsdill Law Firm, P.C., of Wheaton, for appellee.

Judges: PRESIDING JUSTICE McDADE delivered the judgment of the court, with opinion. Justice Holdridge concurred in the judgment and opinion. Justice Albrecht dissented, with opinion.

Opinion by: McDADE

Opinion

[****3] [**1201] PRESIDING JUSTICE McDADE delivered the judgment of the court, with opinion.

Justice Holdridge concurred in the judgment and opinion.

Justice Albrecht dissented, with opinion.

OPINION

[*P1] In 1990, the petitioner, Elsa Tronsrue, filed for a dissolution of her marriage to the respondent, George Tronsrue. The dissolution was finalized in 1992, and the order included an agreement by the parties that Elsa would receive monthly payments equal to a percentage of George's Army disability retirement pay and Veterans Administration disability benefits. Twenty-seven years later, in 2019, George petitioned the circuit court to terminate the monthly payments, alleging that

the order was void [***2] because the court lacked jurisdiction in 1992 to divide his federal benefits. The court granted Elsa's motion to dismiss George's petition. On appeal, George argues that the court erred when it granted Elsa's motion to dismiss. We affirm.

[*P2] I. BACKGROUND

[*P3] Elsa and George married in 1978. Elsa filed for divorce in 1990. The circuit court's judgment for dissolution of marriage was entered in July 1992 and incorporated the parties' marital settlement agreement, which, among other things, addressed George's Army disability retirement pay and his Veterans Administration (VA) disability benefits, both of which he began to draw during the parties' marriage. In part, that section of the agreement stated:

> "The Parties agree that based upon the Court's ruling that 37.2% of Husband's Army Disability Retirement pay and V.A. disability pension is marital that Wife shall receive an amount equal to 18.6% of Husband's Army Disability Retirement pay and 18.6% of Husband's V.A. disability pension payable to Wife pursuant to the applicable sections of the Uniformed Services Former Spouses Protection Act. If for any reason the United States Army and the V.A. will not withhold the appropriate amounts and send [***3] them directly to Wife then Husband shall pay directly to Wife 18.6% of his Army Disability Retirement pay and 18.6% of his V.A. Disability Pension each and every month upon en [**1202] [****4] try of Judgment For Dissolution for as long as he receives said pay."

George did not timely appeal any issue regarding the order of dissolution.

[*P4] In 2019, George filed a petition to modify or terminate the monthly payments. In part, the petition alleged that George suffered a line of duty accident in 1983 and that the Army's medical review board determined him to be unfit for active duty. He was placed on temporary disability retirement until 1985, when the medical review board found he was 60% disabled and therefore ordered his permanent disability retirement. He noted that since 1984, he had also been receiving VA disability benefits after being "awarded a 40% VA Disability rating." Then, citing two federal cases and one Illinois appellate court case from the Second District, George's petition alleged that the circuit court "did not have jurisdiction to order the division" of his federal benefits.

[*P5] In response, Elsa filed a motion to dismiss, alleging in part that George's petition was an untimely collateral attack [***4] on the 1992 judgment. She also filed a petition for adjudication of indirect civil contempt, in which she alleged that George never adjusted his monthly payments to her despite his Army disability retirement pay and Veterans disability benefits increasing over time.

[*P6] The circuit court held a hearing on Elsa's motion to dismiss on January 6, 2020. During argument, counsel for George asserted that the court had jurisdiction to modify the 1992 order under section 510(b) of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/510(b) (West 2018)). In part, counsel for George stated:

> "510(b) says that the provisions as to property distribution may not be revoked or modified unless the Court finds the existence of conditions that justify the reopening of a judgment under the laws of this state. And our position is, is that, inasmuch as our allegations are that there is a lack of subject matter jurisdiction, that this Court doesn't have to reopen the judgment, this Court can just find and modify or terminate the judgment with

> respect to those things over which the Court, at the entry of judgment for dissolution of marriage, would do sometime ago, never had the jurisdiction to do anyway."

The court and attorneys then began to discuss whether the provision regarding George's [***5] disability retirement pay in the 1992 order was via agreement of the parties or via a specific ruling of the court that divided military benefits. However, nothing was resolved on the record because the court and the attorneys continued the discussion in chambers, off the record.

[*P7] The circuit court issued its written order the same day as the hearing. In relevant part, the order stated "[t]hat for the reasons stated by the Court, the Petitioner's Motion to Strike and Dismiss Respondent's Amended Petition to Modify or Terminate Payments Made Pursuant to Judgment for Dissolution of Marriage Entered On July 6, 1992, is granted." Thus, the record does not indicate why the circuit court granted Elsa's motion to dismiss George's petition.

[*P8] George filed an appeal from the circuit court's dismissal order. Subsequently, the circuit court held a hearing on Elsa's petition for adjudication of indirect civil contempt, which resulted in the court entering a contempt order against George. George filed a separate appeal from that order in appeal No. 3-22-0294.

[*P9] II. ANALYSIS

[*P10] Taken directly from George's brief, the sole question presented for review in this case is:

> [**1203] [****5] "Whether the circuit court erred when [***6] it enforced a portion of the Tronsrue marital settlement agreement which purported to divide George's Army and VA disability benefits *where the court lacked subject matter jurisdiction to do so at the time of the parties' divorce, rendering that portion of the agreement void*." (Emphasis added.)

George then phrases his sole argument as follows: "The portion of the Tronsrue marital settlement agreement purporting to divide George's federal military disability benefits is void and unenforceable." His entire argument is based on attacking the circuit court's subject-matter jurisdiction *in 1992*.

[*P11] This appeal involves the circuit court's grant of Elsa's motion to dismiss. We review a circuit court's decision to dismiss a case *de novo*. *Bouton v. Bailie*, 2014 IL App (3d) 130406, ¶ 7, 386 Ill. Dec. 371, 20 N.E.3d 533.

[*P12] It is critical in this case to understand the following regarding how a party can challenge dissolution orders of the circuit court:

> "Although a court clearly retains jurisdiction to *enforce* its judgments indefinitely (*Waggoner v. Waggoner* (1979), 78 Ill. 2d 50, 53, 398 N.E.2d 5, 34 Ill. Dec. 330), it loses jurisdiction *over a matter* once 30 days have passed after the entry of a final and appealable order. (*Northern Illinois Gas Co. v. Midwest Mole, Inc.* (1990), 199 Ill. App. 3d 109, 115, 556 N.E.2d 1276, 145 Ill. Dec. 374.) Provisions in a judgment of dissolution relating to maintenance, support and property disposition may be modified in some circumstances, [***7] however, pursuant to section 510 of the Act." (Emphases added.) *In re Marriage of Hubbard*, 215 Ill. App. 3d 113, 116, 574 N.E.2d 860, 158 Ill. Dec. 747 (1991).

[*P13] The painfully obvious reason why George has phrased his argument in terms of subject-matter jurisdiction is that an order that

is beyond the timeline of a direct appeal or a section 2-1401 petition (see 735 ILCS 5/2-1401 (West 2018)) cannot be assailed *unless it is void*. There is no ambiguity in Illinois regarding the ways in which a court order is void. "Judgments entered in a civil proceeding may be collaterally attacked as void only where there is a total want of jurisdiction in the court which entered the judgment, either as to the subject matter or as to the parties." *Johnston v. City of Bloomington*, 77 Ill. 2d 108, 112, 395 N.E.2d 549, 32 Ill. Dec. 319 (1979). While our supreme court has recognized that a voidness challenge can also be "based on a facially unconstitutional statute that is void *ab initio*" (*People v. Thompson*, 2015 IL 118151, ¶ 32, 398 Ill. Dec. 74, 43 N.E.3d 984), that exception is not relevant in this case. Further, George obviously cannot attack the 1992 order on the basis of personal jurisdiction because the parties were properly before the court. Thus, he is limited to arguing that the 1992 order is void due to a lack of subject-matter jurisdiction.

[*P14] Jurisdiction forms the entire basis of this appeal, not only in the principles guiding appellate review of the circuit court's order, but also in the [***8] specific argument posited by George. Whether an order is void is entirely a question of jurisdiction. *Johnston*, 77 Ill. 2d at 112.

[*P15] George's specific subject-matter jurisdiction argument reflects a fundamental misunderstanding of the concept. "Simply stated, 'subject matter jurisdiction' refers to the power of a court to hear and determine cases of the *general class* to which the proceeding in question belongs." (Emphasis added.) *Belleville Toyota, Inc. v. Toyota Motor Sales, [**1204] [****6] U.S.A., Inc.*, 199 Ill. 2d 325, 334, 770 N.E.2d 177, 264 Ill. Dec. 283 (2002). With one exception[1] that is not relevant in this case, subject-matter jurisdiction originates from section 9 of article VI of the Illinois Constitution (Ill. Const. 1970, art. VI, § 9), which grants circuit courts subject-matter jurisdiction over "justiciable matters." *In re M.W.*, 232 Ill. 2d 408, 424, 905 N.E.2d 757, 328 Ill. Dec. 868 (2009). "Generally, a 'justiciable matter' is a controversy appropriate for review by the court, in that it is definite and concrete, as opposed to hypothetical or moot, touching upon the legal relations of parties having adverse legal interests." *Belleville Toyota*, 199 Ill. 2d at 335.

[*P16] It is beyond dispute that dissolution of marriage actions present justiciable matters. See *id.*; see also, *e.g., In re Marriage of Panozzo*, 93 Ill. App. 3d 1085, 1088, 418 N.E.2d 16, 49 Ill. Dec. 372 (1981) (holding that "[t]he issue of dissolution of marriage is justiciable so that the circuit court had jurisdiction over the subject matter of the judgment"). In this case, Elsa filed a petition for dissolution of marriage with the circuit court in 1990. [***9] Therefore, the circuit court had subject-matter jurisdiction in the case. See *Belleville Toyota*, 199 Ill. 2d at 335. Accordingly, it is indisputable that the 1992 order is not void. *Johnston*, 77 Ill. 2d at 112; see also *Steinbrecher v. Steinbrecher*, 197 Ill. 2d 514, 531, 759 N.E.2d 509, 259 Ill. Dec. 729 (2001) (holding that when a circuit court has personal and subject-matter jurisdiction in a case, the resulting judgment cannot be void, even if the court failed to strictly follow statutory requirements).

[*P17] In sum, we emphasize the following points. First, the circuit court had both personal and subject-matter jurisdiction in 1990-92 to

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[1] The exception not relevant here is the circuit court's power to review the actions of administrative agencies, which derives from statute rather than the constitution. *In re M.W.*, 232 Ill. 2d 408, 424, 905 N.E.2d 757, 328 Ill. Dec. 868 (2009).

enter the order it did, and the order, therefore, is not void. Second, the 1992 order was final and appealable, but George did not appeal it. Accordingly, at the end of 30 days, the circuit court lost jurisdiction to ever revisit the *merits* of the order, and George lost all rights to challenge its *merits*. Third, the circuit court did retain, and therefore had, jurisdiction in 2020-22 to modify/enforce the orders it had entered, including the 1992 order, if modification was warranted. Fourth, to obtain modification at this late stage, George had to show that the 1992 order could be modified pursuant to section 510 of the Act or that it was void. He did not do so. Thus, clearly *under state law*, the 1992 judgment cannot [***10] be reopened. The circuit court therefore *had* to enforce its 1992 order in its 2022 ruling, *even if* the 1992 order were somehow erroneous. See, *e.g., In re Marriage of Betts*, 200 Ill. App. 3d 26, 62, 558 N.E.2d 404, 146 Ill. Dec. 441 (1990) (holding that "even an erroneous court order must be obeyed until it is reversed or vacated"); *Welch v. City of Evanston*, 181 Ill. App. 3d 49, 54, 536 N.E.2d 866, 129 Ill. Dec. 816 (1989) (acknowledging that even if a court order is erroneous, the parties are legally obligated to follow it unless the order itself is reversed and noting that "[f]or this court to rule otherwise would completely undermine the judicial system"); *Foster v. Foster*, 509 Mich. 109, 983 N.W.2d 373, 382-84 (Mich. 2022) (holding that because a judgment is void only if it is entered without personal or subject-matter jurisdiction, even if a trial court's dissolution order conflicts with federal law, that fact by itself would not render the order void).

[*P18] [****7] [**1205] Moreover, to the extent that George actually argues that the 1992 order was void because it was entered without statutory authority, we hold that his argument is legally incorrect. Prior to 1964, the legislature possessed the power to statutorily define the circuit court's jurisdiction. See *M.W.*, 232 Ill. 2d at 425. However, with the 1964 amendments to the judicial article of the 1870 constitution, that power was limited to administrative review cases. *Id.* The abandonment of the "inherent power" [***11] basis for jurisdiction was best described by our supreme court in *LVNV Funding, LLC v. Trice*, 2015 IL 116129, ¶¶ 27-32, 392 Ill. Dec. 245, 32 N.E.3d 553:

> "As this court has held, whether a judgment is void or voidable presents a question of jurisdiction. *In re Marriage of Mitchell*, 181 Ill. 2d 169, 174, 692 N.E.2d 281, 229 Ill. Dec. 508 (1998). 'If jurisdiction is lacking, any subsequent judgment of the court is rendered void and may be attacked collaterally.' *Id.* A voidable judgment, on the other hand, is an erroneous judgment entered by a court that possesses jurisdiction. *Id.*
>
> In holding that the circuit court's January 15, 2009, judgment would be void if LVNV lacked a debt collection license, the appellate court in this case appeared to rely on the definition of jurisdiction as the '"inherent power"' to enter the judgment involved. 2011 IL App (1st) 092773, ¶ 13, 952 N.E.2d 1232, 352 Ill. Dec. 6 (quoting [*Ford Motor Credit Co. v. Sperry*, 214 Ill. 2d 371, 379-80, 827 N.E.2d 422, 292 Ill. Dec. 893 (2005)]). Applying that definition here, the appellate court reasoned that, if a debt collection agency does not have the appropriate license, then the circuit court lacks the inherent power or 'authority' to entertain a debt collection lawsuit by that agency. *Id.* ¶ 19. Any judgment entered by the circuit court in the lawsuit would therefore be void for lack of jurisdiction and could be attacked in a collateral proceeding on that basis.
>
> The problem with this reasoning is that the concept of 'inherent power' relied upon by the appellate [***12] court was rejected by

this court in *Steinbrecher v. Steinbrecher*, 197 Ill. 2d 514, 759 N.E.2d 509, 259 Ill. Dec. 729 (2001). A lack of 'inherent power' refers to the idea that if a certain statutory requirement or prerequisite—such as obtaining a debt collection license—is not satisfied, then the circuit court loses 'power' or jurisdiction to consider the cause of action at issue. In other words, the circuit court's jurisdiction depends on whether the court properly follows certain statutory requirements. *Steinbrecher* concluded that this idea of jurisdiction is at odds with the grant of jurisdiction given to the circuit courts under our state constitution.

Steinbrecher noted that a 1964 constitutional amendment significantly altered the basis of circuit court jurisdiction, granting circuit courts 'original jurisdiction of all justiciable matters, and such powers of review of administrative action as may be provided by law.' Ill. Const. 1870, art. VI (amended 1964), § 9. The current Illinois Constitution, adopted in 1970, retained this amendment and provides that 'Circuit Courts shall have original jurisdiction of all justiciable matters' and that 'Circuit Courts shall have such power to review administrative action as provided by law.' Ill. Const. 1970, art. VI, § 9. *Steinbrecher* reasoned that, because circuit court jurisdiction is granted by [***13] the constitution, it cannot be the case that the failure to satisfy a certain statutory requirement or prerequisite can deprive the circuit court of its 'power' or jurisdiction to hear a cause of action. *Steinbrecher*, 197 Ill. 2d at 529-32 [****8] [**1206] .

In so holding, *Steinbrecher* emphasized the difference between an administrative agency and a circuit court. An administrative agency, *Steinbrecher* observed, is a purely statutory creature and is powerless to act unless statutory authority exists. *Id.* at 530 (citing *City of Chicago v. Fair Employment Practices Comm'n*, 65 Ill. 2d 108, 112, 357 N.E.2d 1154, 2 Ill. Dec. 711 (1976)). A circuit court, on the other hand, 'is a court of general jurisdiction, which need not look to the statute for its jurisdictional authority.' *Id.* Thus, *Steinbrecher* concluded that the '"inherent power" requirement applies to courts of limited jurisdiction and administrative agencies' but *not* to circuit courts. *Id.*

> As *Steinbrecher* makes clear, following the 1964 constitutional amendment and the adoption of the 1970 Constitution, *whether a judgment is void in a civil lawsuit that does not involve an administrative tribunal or administrative review depends solely on whether the circuit court which entered the challenged judgment possessed jurisdiction over the parties and the subject matter*. 'Inherent power' as a separate or third [***14] type of jurisdiction applies only to courts of limited jurisdiction or in administrative matters. It has no place in civil actions in the circuit courts, since these courts are granted general jurisdictional authority by the constitution." (Emphasis added and in original.)

[*P19] Any attempt by George to claim that the circuit court lacked the authority to incorporate the parties' agreement on his disability retirement pay into the 1992 dissolution order is nothing more than an attempt to resurrect the long-abandoned "inherent power" theory of jurisdiction. Thus, to the extent he tries to make such a claim, we reject it.

[*P20] Because the circuit court in this case had both personal and subject-matter jurisdiction in the dissolution proceeding and because there is no facially unconstitutional

statute at issue here, George's voidness challenge fails and cannot serve as a basis for reversing the circuit court's judgment. See, *e.g., In re Marriage of Herrera*, 2021 IL App (1st) 200850, ¶ 37, 457 Ill. Dec. 322, 194 N.E.3d 1107 (holding that "[o]nce a court has acquired jurisdiction, an order will not be rendered void merely because of an error or impropriety in the issuing court's determination of the law"). Accordingly, we hold that the circuit court did not err when it granted Elsa's motion [***15] to dismiss.

[*P21] III. CONCLUSION

[*P22] The judgment of the circuit court of Du Page County is affirmed.

[*P23] Affirmed.

Dissent by: ALBRECHT

Dissent

[*P24] JUSTICE ALBRECHT, dissenting:

[*P25] I respectfully dissent from the majority's ruling. The issue here is not whether the court had subject matter jurisdiction over the dissolution case in order to enter the judgment, but whether the court now has the power to enforce a marriage settlement agreement that contains a provision prohibited under federal law. I would hold that it does not have such authority and would therefore reverse the court's ruling.

[*P26] It is well established that, under the supremacy clause, federal law preempts conflicting state law, nullifying it [**1207] [****9] to the extent that it actually conflicts with the federal law. U.S. Const., art. VI; *In re Marriage of Hulstrom*, 342 Ill. App. 3d 262, 266, 794 N.E.2d 980, 276 Ill. Dec. 730 (2003). It is also settled that military disability benefits may not be considered marital assets by the court in a dissolution proceeding. *In re Marriage of Wojcik*, 362 Ill. App. 3d 144, 159, 838 N.E.2d 282, 297 Ill. Dec. 795 (2005). Therefore, the start of our inquiry should begin with whether the supremacy clause of the United States Constitution preempts a division of George's military disability benefits by way of a marital settlement agreement. Section 5301(a)(1) of the Veterans Benefits Act of 2003 (Veterans Benefits Act) provides that:

> "Payments of benefits due or to become due under any law administered by the Secretary shall not be assignable except to the extent specifically authorized [***16] by law, and such payments made to, or on account of, a beneficiary shall be exempt from taxation, shall be exempt from the claim of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary." 38 U.S.C. § 5301(a)(1) (2018).

[*P27] Section 5301(a)(3)(A) later added the clarification that "in any case where a beneficiary entitled to compensation *** enters into an agreement with another person under which agreement such other person acquires for consideration the right to receive such benefit *** such agreement shall be deemed to be an assignment and is prohibited." *Id.* § 5301(a)(3)(A). Additionally, while the parties' marital settlement agreement refers to the applicability of the Uniformed Services Former Spouses' Protection Act (10 U.S.C. § 1401 *et seq.* (1988)), the act applies to the classification of retirement payments as marital property, not the disability payments at issue here. See, *e.g., Clauson v. Clauson*, 831 P.2d 1257, 1264 (Alaska 1992) (holding disability benefits should not be treated as marital property subject to division upon dissolution); *In re Marriage of Franz*, 831 P.2d 917, 918

(Colo. App. 1992) (a veteran's disability retirement pay is precluded from being divided as marital property). Thus, Congress clearly contemplated the circumstance where a beneficiary may enter into an agreement that would require payment [***17] of his military disability benefit and chose to prohibit the act. Such is the case here, where George agreed to pay Elsa a portion of his disability benefits.

[*P28] Illinois courts have already analyzed the supremacy clause as it pertains to enforcing a marital settlement agreement that divides a spouse's social security benefits in contradiction to federal law. See *Hulstrom*, 342 Ill. App. 3d at 266. Section 407(a) of the Social Security Act, as amended (42 U.S.C. § 407(a) (2000)), like the Veterans Benefits Act, contains an anti-assignment provision that conflicted with a provision of the parties' settlement agreement in their dissolution proceeding. See *Hulstrom*, 342 Ill. App. 3d at 266. In determining whether the trial court had jurisdiction to enforce the settlement agreement, the court in *Hulstrom* found the principles of the Restatement (Second) of Judgments § 12 (1982) instructive. *Hulstrom*, 342 Ill. App. 3d at 271. The Restatement provided that

> "'[w]hen a court has rendered a judgment in a contested action, the judgment precludes the parties from litigating the question of the court's subject matter jurisdiction in subsequent litigation except if: *** (2) Allowing the judgment to stand would substantially infringe the authority of another tribunal or agency of government[.]'" (Emphasis omitted.) [****10] *Id.* [**1208] (quoting Restatement (Second) of Judgments § 12 (1982)).

The court followed this proposition to conclude that the provision in the settlement [***18] agreement that divided the social security benefits substantially infringed on federal law; thus, the trial court did not have jurisdiction to enforce that provision of the agreement. *Id.* at 272.

[*P29] Several courts have addressed similar situations relating to the Veterans Benefits Act and other statutes with identical provisions. See, *e.g., Wissner v. Wissner*, 338 U.S. 655, 660-61, 70 S. Ct. 398, 94 L. Ed. 424 (1950) (the National Service Life Insurance Act of 1940 (currently codified at 38 U.S.C. § 1901 *et seq.* (2018)) precluded state law requiring division under community property laws); *Hisquierdo v. Hisquierdo*, 439 U.S. 572, 584-87, 99 S. Ct. 802, 59 L. Ed. 2d 1 (1979) (non-assignability of retirement benefits under Railroad Retirement Act of 1974 (Railroad Retirement Act) (45 U.S.C. § 231 *et seq.* (1976)) precludes community property interest in spouse); *Ex parte Johnson*, 591 S.W.2d 453, 456 (Tex. 1979) (disability benefits from the Veterans Administration may not be considered in spousal awards); *Boulter v. Boulter*, 113 Nev. 74, 930 P.2d 112, 114 (Nev. 1997) (*per curiam*) (property settlement agreement created an invalid contract transferring retirement benefits to spouse when the federal Social Security Act provision barred such transfer, and the court's divorce decree created state action preempted by federal law). Illinois courts have also provided authority to aid in our analysis. See *Hulstrom*, 342 Ill. App. 3d at 272; *Wojcik*, 362 Ill. App. 3d at 159. I find these authorities persuasive.

[*P30] Moreover, the court in *Wojcik*, 362 Ill. App. 3d 144, furthered the decision made by the United States Supreme Court regarding the division of benefits under the Veterans Benefits Act through a dissolution proceeding in the case of *Mansell v. Mansell*, 490 U.S. 581, 109 S. Ct. 2023, 104 L. Ed. 2d 675 (1989). In *Mansell [***19]* , the Court implicitly found that state courts did not have the power to divide military disability benefits upon dissolution of marriage due to federal

preemption. *Id.* at 594-95. This principle was followed in *Wojcik*, where the court held that the supremacy clause precluded Illinois courts from dividing Veteran's Administration disability benefits through dissolution proceedings. *Wojcik*, 362 Ill. App. 3d at 159. The court further held that section 5301(a)(1) of the Veterans Benefits Act is indistinguishable from the anti-assignment provisions in the Railroad Retirement Act and the Social Security Act, and because the Supreme Court already determined these statutes preempted state law, the Veterans Benefits Act must also. *Id.*

[*P31] Applying the precedent outlined above, I would decide that the Veterans Benefits Act precludes state courts from treating military disability benefits as assignable property. See *id.* Moreover, state courts are without power to enforce a private agreement, such as a marriage settlement agreement, from dividing such payments when that agreement violates the prohibition against transfer or assignment of benefits. See 38 U.S.C. § 5301(a)(3)(A) (2018); *Hulstrom*, 342 Ill. App. 3d at 266. As in *Hulstrom*, I would find that the court's enforcement of the provision that requires George to divide his military disability benefits with Elsa "'substantially [***20] infringe[d] the authority of another tribunal or agency of government,'" namely, the federal government. (Emphasis omitted.) [****11] 342 Ill. App. 3d at 271 [**1209] (quoting Restatement (Second) of Judgments § 12 (1982)). The fact that the parties agreed to the contents of the agreement is immaterial; it is the court's actions in enforcing the provision after George filed his petition that is relevant here. See *id.* at 266; *Boulter*, 930 P.2d at 114.

[*P32] While the circuit court generally had jurisdiction over the parties and the dissolution proceedings, it lacked the authority to incorporate a provision of the settlement agreement into the judgment that is contrary to federal law. Therefore, I would hold that the circuit court erred by enforcing a marital settlement agreement that required George to assign his military disability benefits to Elsa when such an agreement violates section 5301 of the Veterans Benefits Act (38 U.S.C. § 5301(a)(1) (2018)).