

SUPREME COURT OF NEVADA

Martin v. Martin

2022 NV 78 (Nev. 2022) · No. Nos. 81810 and 82517 · Decided December 1, 2022

SUMMARY

The Supreme Court of Nevada affirmed orders enforcing a divorce decree that required a military veteran to reimburse the former spouse for reductions in military retirement benefits resulting from an election to receive disability pay. The court held that federal law, including *Howell v. Howell* and *Mansell v. Mansell*, did not preempt enforcement of the parties' negotiated indemnification provision under contract principles and *res judicata*. The court also upheld a pendente lite attorney-fee award under NRS 125.040 without requiring analysis of the Brunzell factors because the award concerned prospective appellate work.

CASE DETAILS

COURT	Supreme Court of Nevada
WRITING FOR THE COURT	Justice Stiglich; Justice Parraguirre; Justice Hardesty; Justice Herndon; Justice Cadish; Justice Pickering
JURISDICTION	Nevada
DECIDED	December 1, 2022
DOCKET	Nos. 81810 and 82517
DISPOSITION	affirmed
PROCEDURAL POSTURE	Consolidated appeals from district court orders enforcing a divorce decree and awarding pendente lite attorney fees. The Nevada Supreme Court granted review of the Nevada Court of Appeals' decision affirming in part, reversing in part, and remanding.
STANDARD OF REVIEW	Questions of law, statutory construction, federal preemption, contract interpretation, and <i>res judicata</i> are reviewed de novo. Awards of pendente lite attorney fees are reviewed for abuse of discretion.
PRECEDENTIAL VALUE	Published, precedential Nevada Supreme Court en banc opinion
PARTIES	Erich M. Martin v. Raina L. Martin

TOPICS

- family law procedure
- divorce
- community property
- veterans benefits
- appellate procedure

PRACTICE AREAS

family law

military law

veterans benefits

federalism

appellate procedure

QUESTIONS PRESENTED

1. Whether federal law, including the Uniformed Services Former Spouses' Protection Act and *Howell v. Howell*, preempts enforcement of a negotiated divorce-decree provision requiring a veteran to reimburse a former spouse for reductions in military retirement benefits caused by an election to receive disability pay.
2. Whether the negotiated divorce decree is enforceable under Nevada contract principles and *res judicata* or claim preclusion.
3. Whether the district court abused its discretion by awarding *pendente lite* attorney fees under NRS 125.040 without applying the Brunzell factors.

HOLDINGS

1. Federal law prohibits a state court from treating military disability pay as community property or directly dividing it to compensate a former spouse for reduced retirement pay, but it does not prevent a Nevada court from enforcing a negotiated property-settlement provision requiring the veteran to reimburse the former spouse.
2. The district court properly enforced the divorce decree because the parties' signed settlement created a valid, unambiguous contract and the final decree satisfied Nevada's requirements for *res judicata*.
3. A district court may award *pendente lite* attorney fees under NRS 125.040 based on the parties' financial circumstances without applying the Brunzell factors when the award concerns prospective legal work.

KEY QUOTATIONS

“Under federal law, state courts may not treat disability pay as community property that may be divided in allocating the parties' separate property. This prohibition does not prevent state courts, however, from enforcing an indemnification provision in a negotiated property settlement as res judicata.” (at 17)

“We further conclude that the award of pendente lite attorney fees does not require showing that the Brunzell factors are satisfied and that the district court did not abuse its discretion in awarding pendente lite attorney fees.” (at 17)

FACTUAL BACKGROUND

Erich and Raina Martin married while Erich was serving in the military and later entered into a signed marital settlement agreement. Their divorce decree awarded Raina a share of Erich's military retirement benefits and required Erich to reimburse her for any reduction caused by his election to receive disability pay instead of retirement pay. After Erich elected full disability pay, the Defense Finance and Accounting Service stopped paying Raina, and Erich refused to reimburse her. The district court enforced the decree and awarded Raina prospective appellate attorney fees based on the parties' financial circumstances.

PROCEDURAL HISTORY

The parties entered into a signed marital settlement agreement that was incorporated into a 2015 divorce decree. After Erich elected full military disability pay and Raina's military retirement payments ceased, Raina moved to enforce the decree's reimbursement provision. The district court enforced the decree and awarded Raina \$5,000 in pendente lite attorney fees. The court of appeals affirmed the fee award in part, reversed the enforcement order in part, and remanded. The Nevada Supreme Court granted Raina's petition for review and affirmed the district court orders.

DISPOSITION

affirmed

CASES CITED

- Brunzell v. Golden Gate National Bank, 85 Nev. 345, 455 P.2d 31 (1969)
- Howell v. Howell, 581 U.S. 214, 137 S. Ct. 1400 (2017)
- Mansell v. Mansell, 490 U.S. 581 (1989)
- Jones v. Jones, 505 P.3d 224 (Alaska 2022)
- Shelton v. Shelton, 119 Nev. 492, 78 P.3d 507 (2003)
- Nanopierce Technologies, Inc. v. Depository Trust & Clearing Corp., 123 Nev. 362, 168 P.3d 73 (2007)
- Hisquierdo v. Hisquierdo, 439 U.S. 572 (1979)
- May v. Anderson, 121 Nev. 668, 119 P.3d 1254 (2005)
- Grisham v. Grisham, 128 Nev. 679, 289 P.3d 230 (2012)
- Rivero v. Rivero, 125 Nev. 410, 216 P.3d 213 (2009)
- University of Nevada v. Tarkanian, 110 Nev. 581, 879 P.2d 1180 (1994)
- Five Star Capital Corp. v. Ruby, 124 Nev. 1048, 194 P.3d 709 (2008)
- Willerton v. Bassham, 111 Nev. 10, 889 P.2d 823 (1995)
- Kuptz-Blinkinsop v. Blinkinsop, 136 Nev. 360, 466 P.3d 1271 (2020)
- Griffith v. Gonzales-Alpizar, 132 Nev. 392, 373 P.3d 86 (2016)
- Miller v. Wilfong, 121 Nev. 619, 119 P.3d 727 (2005)
- Levinson v. Levinson, 74 Nev. 160, 325 P.2d 771 (1958)
- In re Marriage of Mansell, 265 Cal. Rptr. 227 (Ct. App. 1989), cert. denied, 498 U.S. 806 (1990)
- In re Marriage of Weiser, 475 P.3d 237 (Wash. Ct. App. 2020)
- Foster v. Foster, 949 N.W.2d 102 (Mich. 2020) (Viviano, J., concurring)
- Romano v. Romano, 138 Nev., Adv. Op. 1, 501 P.3d 980 (2022)
- Kramer v. Kramer, 96 Nev. 759, 616 P.2d 395 (1980)
- State v. Lloyd, 129 Nev. 739, 312 P.3d 467 (2013)
- Armenta-Carpio v. State, 129 Nev. 531, 306 P.3d 395 (2013)
- Pierson v. Pierson, 88 N.W.2d 500 (1958)

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