

SUPREME COURT OF ILLINOIS

In re Marriage of Zamudio

2019 IL 124676 (Ill. 2019) · No. 124676 · Decided November 2, 2020

SUMMARY

The Illinois Supreme Court held that permissive pension service credit based on prior military service is marital property when the credit is purchased during the marriage with marital funds. The court affirmed the appellate court, reversed the circuit court, and remanded for equitable apportionment of the pension.

CASE DETAILS

COURT	Supreme Court of Illinois
WRITING FOR THE COURT	Justice Kilbride; Chief Justice Burke; Justice Thomas; Justice Garman; Justice Karmeier; Justice Theis; Justice Neville
JURISDICTION	Illinois
DECIDED	November 2, 2020
DOCKET	124676
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Frank Ochoa Jr. appealed the appellate court's determination that permissive pension service credit based on his pre-marriage military service was marital property. The Illinois Supreme Court granted leave to appeal.
STANDARD OF REVIEW	Questions of statutory construction are reviewed de novo.
PRECEDENTIAL VALUE	Published Illinois Supreme Court opinion; precedential
PARTIES	Frank Ochoa Jr. v. Louise Zamudio

TOPICS

- dissolution of marriage
- equitable distribution
- statutory interpretation
- military law
- family law procedure

PRACTICE AREAS

- Family law
- Pension and retirement benefits
- Statutory interpretation
- Military law

QUESTIONS PRESENTED

1. Whether permissive pension service credit purchased during the marriage with marital funds, based in part on a spouse's pre-marriage active-duty military service, is marital or nonmarital property under the Illinois Marriage and Dissolution of Marriage Act and the Illinois Pension Code.

HOLDINGS

1. Permissive pension service credit is acquired only when all statutory requirements are satisfied, including payment of the required monetary contributions. Because the contributions were made during the marriage with marital funds, the credit was acquired during the marriage.
2. The permissive service credit is marital property because it was acquired during the marriage with marital funds.
3. Permissive service credit cannot be analogized to regular service or treated merely as an enhancement of a preexisting nonmarital asset under the statutory scheme.

KEY QUOTATIONS

“The military service, therefore, only made Frank eligible to purchase or “acquire” the permissive service credit through the monetary contribution required by the Pension Code.” (¶ 23)

“Accordingly, we conclude that the permissive service credit was acquired during the marriage and it is, therefore, marital property.” (¶ 31)

FACTUAL BACKGROUND

Frank Ochoa served in the United States Air Force from 1974 to 1980, before his January 2000 marriage to Louise Zamudio. During the marriage, the parties paid statutory contributions in 2006 and 2011 to purchase 48 months of permissive Illinois State Retirement System service credit based on Frank's prior military service. The purchased credit increased Frank's monthly pension annuity by \$1,363.33, and the parties disputed whether Louise's share of the marital pension included that increase.

PROCEDURAL HISTORY

The Whiteside County circuit court initially classified the permissive service credit as marital property, then reconsidered and classified it as nonmarital property, ordering Frank to reimburse Louise \$4,813.20. The appellate court reversed and remanded for equitable apportionment of the pension. The Illinois Supreme Court affirmed the appellate court, reversed the circuit court, and remanded for further proceedings.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The cause was remanded to the circuit court for further proceedings consistent with the determination that the permissive service credit is marital property, including equitable apportionment of the pension.

CASES CITED

- Accettura v. Vacationland, Inc., 2019 IL 124285, ¶ 11
- Palm v. Holocker, 2018 IL 123152, ¶ 21
- In re Marriage of Goesel, 2017 IL 122046, ¶ 13
- Bank of New York Mellon v. Laskowski, 2018 IL 121995, ¶ 12
- In re Ryan B., 212 Ill. 2d 226, 232 (2004)
- In re Marriage of Ramsey, 339 Ill. App. 3d 752 (2003)
- Michigan Avenue National Bank v. County of Cook, 191 Ill. 2d 493, 522 (2000)
- Bremer v. City of Rockford, 2016 IL 119889, ¶ 34

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