

SUPREME COURT OF ARIZONA

Barron v. Barron, 246 Ariz. 449

440 P.3d 1136 (2019) · No. CV-18-0234-PR · Decided May 21, 2019

SUMMARY

The Arizona Supreme Court held that federal law does not permit a state court to order a military spouse who continues active-duty service past an eligible retirement date to make payments equivalent to the former spouse's share of military retirement pay. The court vacated the relevant portion of the dissolution decree and remanded for further proceedings, while allowing an award of a former spouse's share of military retirement pay that does not require payment until the service member retires.

CASE DETAILS

COURT	Supreme Court of Arizona
WRITING FOR THE COURT	Chief Justice Bales; Vice Chief Justice Brutinel; Justice Timmer; Justice Bolick; Justice Gould; Justice Lopez; Justice Pelander (retired)
JURISDICTION	Arizona
DECIDED	May 21, 2019
DOCKET	CV-18-0234-PR
DISPOSITION	vacated
PROCEDURAL POSTURE	Husband sought review of an Arizona Court of Appeals decision affirming the propriety of limiting an indemnification order concerning military retirement pay. The Arizona Supreme Court granted review and vacated in part the court of appeals' opinion and the corresponding portion of the dissolution decree.
STANDARD OF REVIEW	De novo review of the legal question concerning the scope of federal authorization to divide military retirement pay.
PRECEDENTIAL VALUE	Published opinion of the Supreme Court of Arizona; precedential.
PARTIES	Paul Roger Barron v. Shelly Rae Barron

TOPICS

[family law procedure](#)[dissolution of marriage](#)[military law](#)[statutory interpretation](#)[federalism](#)

PRACTICE AREAS

family law

military law

divorce

statutory interpretation

federalism

QUESTIONS PRESENTED

1. Whether federal law permits a state court to order a military spouse who continues active-duty service past an eligible retirement date to make payments equivalent to the former spouse's anticipated share of military retirement pay.
2. Whether the Uniformed Services Former Spouses' Protection Act permits state courts to divide military retirement pay before the military spouse has retired and become entitled to receive it.

HOLDINGS

1. Federal law does not permit a state court to order a military spouse to pay a former spouse the equivalent of military retirement benefits when the military spouse continues working past an eligible retirement date without retiring.
2. Before a military spouse retires, a state court may enter an order awarding a former spouse a share of military retirement pay, but the order cannot require payment until the military spouse retires and becomes entitled to receive the benefits.

KEY QUOTATIONS

“In this divorce case, we hold that federal law does not permit a state court to order a military spouse to pay the equivalent of military retirement benefits to a former spouse if the military spouse continues to work past an eligible retirement date.” (¶ 1)

“Because the USFSPA only permits state courts to divide “disposable retired pay,” and no entitlement to MRP exists until the member retires and is approved to receive such benefits, state courts cannot order service members to make MRP-based payments to former spouses before retirement.” (¶ 18)

FACTUAL BACKGROUND

The parties married in 2004 while Paul Barron was an active-duty United States Marine. They divorced in 2017 while he remained on active duty and had not yet applied for or been approved to receive military retirement pay. The superior court awarded Shelly Barron 29% of the anticipated military retirement pay and ordered Paul to make equivalent payments if he continued working beyond the date on which he would become eligible to retire.

PROCEDURAL HISTORY

The Yuma County Superior Court dissolved the parties' marriage, divided the husband's anticipated military retirement pay, and ordered him to make equivalent payments to the wife if he continued working past his retirement-eligibility date. The Arizona Court of Appeals reversed the indemnification order, concluding that federal law precluded it. The Arizona Supreme Court granted review, vacated the relevant portions of the court of appeals' opinion and decree, and remanded for further proceedings.

DISPOSITION

vacated

REMAND INSTRUCTIONS

The case was remanded to the superior court for further proceedings after vacatur of the portion of the dissolution decree providing for a Koelsch indemnification order. The court did not prescribe whether or how the superior court should adjust spousal support based on military-retirement-pay contingencies.

CASES CITED

- Howell v. Howell, 137 S. Ct. 1400 (2017)
- McCarty v. McCarty, 453 U.S. 210 (1981)
- Mansell v. Mansell, 490 U.S. 581 (1989)
- Van Loan v. Van Loan, 116 Ariz. 272 (1977)
- Edsall v. Superior Court, 143 Ariz. 240 (1984)
- Koelsch v. Koelsch, 148 Ariz. 176 (1986)
- In re Marriage of Howell, 238 Ariz. 407 (2015), rev'd, Howell v. Howell, 137 S. Ct. 1400 (2017)