



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**SANDRA HOWELL v. JOHN HOWELL,
CV-15-0030-PR**

PARTIES:

Petitioner/Appellant: John Howell

Respondent/Appellee: Sandra Howell

FACTUAL AND PROCEDURAL HISTORY:

In a 1991 dissolution decree, the trial court awarded Sandra fifty percent of John's military retirement benefits to be paid by direct pay order. Payments began in 1993. In 2005, John received a twenty-percent disability rating from the Department of Veterans Affairs ("VA") pursuant to Title 38 of the United States Code, and he waived a portion of his retirement benefits in favor of disability payments, which caused a dollar for dollar reduction in his retirement benefit payments. As a result, the direct payments to Sandra on her share of the retirement benefits also were reduced.

In November 2013, Sandra filed a petition to enforce the military retirement provision in the decree. In response, John filed a motion to dismiss the petition, alleging that A.R.S. § 25-318.01 prohibited Sandra from seeking indemnification for any reduction in retirement pay resulting from John's receipt of disability benefits. The trial court denied the motion on the grounds that application of § 25-318.01 would retroactively change Sandra's vested property rights. After an evidentiary hearing, the court awarded Sandra arrearages and ordered that John "ensur[e Sandra] receive her full 50% of the military retirement without regard for disability" going forward. John timely appealed, arguing that the trial court erred under both state and federal law in awarding Sandra arrearages and ordering prospective payments from John to Sandra to reimburse her for any portion of the fifty percent she did not receive because John had waived a portion of his retirement benefits in favor of military disability pay.

In a memorandum decision filed December 18, 2014, the court of appeals affirmed. With respect to John's statutory argument, the court acknowledged that "Section 25-318.01 applies when the superior court 'mak[es] a disposition of property pursuant to [A.R.S. §]§ 25-318 or 25-327' and prohibits the court from considering 'any prejudgment or postjudgment waiver or reduction in military retired or retainer pay related to the receipt of disability benefits' awarded under Title 38, chapter 11 of the United States Code or 10 U.S.C. § 1413a." Mem. Dec. ¶ 7. However, the court held that the statute does not apply here because Sandra's action is an enforcement action rather than a modification action pursuant to § 25-327. The court distinguished its opinion in *Merrill v. Merrill*, 230 Ariz. 369, 284 P.3d 880 (App. 2012) (*Merrill I*), relied upon by John, as follows:

John points to language from our decision in *Merrill* to support his contention that § 25-318.01 prohibits the trial court from considering waiver or reduction due to

disability pay in any post-decree proceedings. In *Merrill*, we stated that the application of § 25-318.01 to a “postjudgment waiver or reduction in military retirement” suggested the statute applied to “‘postjudgment’ proceedings” as well as “an original decree of dissolution.” 230 Ariz. 369, ¶ 24, 284 P.3d at 886. But this statement is dictum. *Id.* ¶¶ 24-25; *see also Creach v. Angulo*, 186 Ariz. 548, 552, 925 P.2d 689, 693 (App. 1996) (“Dictum is not binding precedent . . .”). And we made it with reference to the statute’s application to proceedings under § 25-327, “which governs a court’s power, *inter alia*, to modify a dissolution decree’s distribution of community property.” *Merrill*, 230 Ariz. 360, ¶ 24, 284 P.3d at 886. As noted above, the reference in § 25-318.01 to § 25-327 indicates its applicability to post-decree proceedings for the modification or revocation of property distribution, not for the enforcement of a decree’s property settlement terms.

Mem. Dec. ¶ 10.

Next, the court of appeals rejected John’s federal preemption argument because John had not raised the issue below and thus waived it on appeal. *See Chopin v. Chopin*, 224 Ariz. 425, 431 ¶ 22, 232 P.3d 99, 105 (App. 2010).

In an order filed January 6, 2015, the court summarily denied John’s motion for reconsideration. On January 30, 2015, John filed his petition for review in this Court.

ISSUES FOR WHICH REVIEW WAS GRANTED:

1. Did the Trial Court and Court of Appeals err in finding that A.R.S. § 25-318.01 did not apply to the facts of this case?
2. On these facts, is there a distinction between this post-decree enforcement matter and a post-decree modification proceeding brought pursuant to A.R.S. § 25-327?

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