



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**SHELLY RAE BARRON v. PAUL ROGER BARRON,
CV-18-0234-PR**

796 Ariz. Adv. Rep. 31, 2018 WL 3722815 (App. 2018)

PARTIES:

Petitioner: Shelly Rae Barron (“Wife”)

Respondent: Paul Roger Barron (“Husband”)

FACTS:

Husband and Wife were married in January 2004. They moved to Arizona in 2013, when Husband, an active duty U.S. Marine, was transferred to Yuma. In August 2015, Wife filed a petition for dissolution of their marriage. This dispute concerns the allocation of the community’s interest in military retirement pay (“MRP”). The superior court calculated that 29% of the MRP would be allocated to Wife based on the length of the marriage and the length of Husband’s military service. The superior court also provided that if Husband elected to continue military service after he is eligible to retire in February 2023, Husband was to pay Wife a sum equal to the 29% portion of the MRP he would receive and that those sums would be taxable to her.

The Court of Appeals reversed. It noted that in *Howell v. Howell*, 137 S. Ct. 1400, 1402-03 (2017), the U.S. Supreme Court held that 10 U.S.C. § 1408(c), allows division of military retirement pay but not disability benefits. *See Howell*, 137 S. Ct. at 1403, 1405 (citing *Mansell v. Mansell*, 490 U.S. 581, 589 (1989)). On appeal, Wife argued that under *Koelsch v. Koelsch*, 148 Ariz. 176 (1986), the Arizona Supreme Court addressed the division of a community property interest in public retirement benefits when the employee is vested but wants to continue working, thereby delaying the former spouse’s receipt of retirement pay. This Court held in *Koelsch* that the superior court may order the employee to pay the former spouse for what the former spouse would have received from the community’s share of the retirement. Wife also argued that *Howell* only applies to disability payments, which are not an issue here.

The Court of Appeals determined that *Koelsch* does not apply here because under *Howell*, “a state court may not do indirectly what 10 U.S.C. § 1408 directly forbids.” The Court of Appeals concluded that the trial court had no authority to order Husband to indemnify Wife in the event he does not decide to retire when eligible at 20 years.

ISSUE PRESENTED:

Does *Howell v. Howell*, 137 S. Ct. 1400 (2017), foreclose orders of indemnification under *Koelsch v. Koelsch*, 148 Ariz. 176 (1986), in the context of military

retirement?

APPLICABLE FEDERAL STATUTE:

10 U.S.C.A. § 1408. Payment of retired or retainer pay in compliance with court orders

(a)(4)(A) The term “disposable retired pay” means the total monthly retired pay to which a member is entitled less amounts which—

(i) are owed by that member to the United States for previous overpayments of retired pay and for recoupments required by law resulting from entitlement to retired pay;

(ii) are deducted from the retired pay of such member as a result of forfeitures of retired pay ordered by a court-marital or as a result of a waiver of retired pay required by law in order to receive compensation under title 5 or title 38;

(iii) in the case of a member entitled to retired pay under chapter 61 of this title, are equal to the amount of retired pay of the member under that chapter computed using the percentage of the member's disability on the date when the member was retired (or the date on which the member's name was placed on the temporary disability retired list); or

(iv) are deducted because of an election under chapter 73 of this title to provide an annuity to a spouse or former spouse to whom payment of a portion of such member's retired pay is being made pursuant to a court order under this section.

* * *

(c) Authority for court to treat retired pay as property of the member and spouse.

(1) Subject to the limitations of this section, a court may treat disposable retired pay payable to a member for pay periods beginning after June 25, 1981, either as property solely of the member or as property of the member and his spouse in accordance with the law of the jurisdiction of such court. ...

(3) This section does not authorize any court to order a member to apply for retirement or retire at a particular time in order to effectuate any payment under this section.

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