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1. [In re Marriage of Cassinelli, 2018 Cal. App. LEXIS 177](#)

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## In re Marriage of Cassinelli

Court of Appeal of California, Fourth Appellate District, Division Two

March 2, 2018, Opinion Filed

E063769

### Reporter

2018 Cal. App. LEXIS 177 \*; 2018 WL 1128159

In re the Marriage of JANICE R. and ROBERT J. CASSINELLI. JANICE R. CASSINELLI, Respondent, v. ROBERT J. CASSINELLI, Appellant.

**Notice:** CERTIFIED FOR PARTIAL PUBLICATION\*

**Prior History:** [\*1] APPEAL from the Superior Court of Riverside County, No. D54420, Christopher B. Harmon, Judge.

*Cassinelli v. Cassinelli*, 138 S. Ct. 69, 199 L. Ed. 2d 2, 2017 U.S. LEXIS 6006 (U.S., Oct. 2, 2017)

**Disposition:** Affirmed in part, reversed in part, and remanded with directions.

### Core Terms

disability benefits, retired pay, trial court, spousal support, veteran's, military, spouse, waived, retirement pay, disability, election, retired, community property, Marriage, federal law, state court, eligible, exempt, non-modifiable, reimbursement, teacher's, civilian, factors, pension

### Case Summary

#### Overview

**HOLDINGS:** [1]-Federal law prohibited the trial court from compensating an ex-wife, in the form of spousal support or otherwise, for the loss of her share of her ex-husband's military retired pay; [2]-However, the trial court could properly modify spousal support, provided it did so based on the relevant factors and not as compensation; [3]-Because combat-related special

compensation (CRSC) is not retired pay, a state court does not have jurisdiction to treat CRSC as community property; [4]-Although some of the ex-husband's income would be exempt from an ordinary money judgment, they would not be exempt from a spousal support order.

### Outcome

Affirmed in part, reversed in part, and remanded with directions.

### LexisNexis® Headnotes

Military & Veterans Law > ... > General Benefits > Compensation for Service Connected Death & Disability > Pensions

#### HN1 [↓] **Compensation for Service Connected Death & Disability, Pensions**

A member of the armed services who retires based on length of service becomes entitled to retired pay. 10 U.S.C. §§ 1401 (Army), 6333 (Navy), 8991 (Air Force). Meanwhile, a veteran who becomes disabled as a result of an injury suffered or a disease contracted in the line of duty becomes entitled to disability benefits. 38 U.S.C. § 1110 (wartime disability), 1131 (peacetime disability). In order to prevent double dipping, a military retiree may receive disability benefits only to the extent that the retiree waives a corresponding amount of his or her military retirement pay. For example, if a military retiree is eligible for \$1500 a month in retirement pay and \$500 a month in disability benefits, the retiree must waive \$500 of retirement pay before he or she can receive any disability benefits. Unlike retired pay, veteran's disability benefits are not taxable. 38 U.S.C. § 5301(a). Thus, normally a retiree is better off by making such a waiver.

\* Pursuant to [California Rules of Court, rules 8.1105\(b\)](#) and [8.1110](#), this opinion is certified for publication with the exception of parts II, IV, V, and VIII.

Family Law > ... > Property  
Distribution > Characterization > Community  
Property

Military & Veterans Law > ... > General  
Benefits > Compensation for Service Connected  
Death & Disability > Pensions

Family Law > ... > Classification > Retirement  
Benefits > Military Benefits

## [HN2](#) **Characterization, Community Property**

Under California law, military retired pay that accrues based on service during marriage is community property. Moreover, as a matter of federal law, the Uniformed Services Former Spouses Protection Act allows a state court in a community property jurisdiction to treat disposable retired pay as community property. *10 U.S.C. § 1408(c)(1)*. However, its definition of "disposable retired pay" excludes any retired pay that has been waived in order to receive disability benefits. *§ 1408(a)(4)(A)(ii)*. Accordingly, in *Mansell v. Mansell*, the United States Supreme Court held that federal law prohibits a state court from treating the waived portion of military retired pay as community property. More recently, in *Howell v. Howell*, the Supreme Court held that a state court cannot order a veteran to indemnify the divorced spouse for the loss caused by the veteran's waiver. Federal law completely preempts the states from treating waived military retirement pay as divisible community property.

Family Law > ... > Classification > Retirement  
Benefits > Military Benefits

Military & Veterans Law > ... > General  
Benefits > Compensation for Service Connected  
Death & Disability > Pensions

Family Law > Marital Termination & Spousal  
Support > Spousal Support

## [HN3](#) **Retirement Benefits, Military Benefits**

A family court, when it first determines the value of a family's assets, remains free to take account of the contingency that some military retirement pay might be waived, or take account of reductions in value when it calculates or recalculates the need for spousal support.

## Headnotes/Syllabus

## Summary

### CALIFORNIA OFFICIAL REPORTS SUMMARY

It was determined that an ex-husband had a combat-related disability. As a result, he became eligible to receive both veteran's disability benefits and combat-related special compensation (CRSC); to do so, however, he had to waive his military retired pay. Before the waiver, the ex-husband received \$791 a month and his ex-wife received \$541 in retired pay (taxable). After the waiver, the ex-husband received \$1,743 a month in veteran's disability benefits and \$1,389 a month in CRSC, for a total of \$3,132 (tax-free), but the ex-wife received zero. As a result, the trial court ordered the ex-husband to start paying the ex-wife \$541 a month in permanent and nonmodifiable spousal support. The trial court also awarded the ex-wife \$7,180 in attorney fees against the ex-husband. (Superior Court of Riverside County, No. D54420, Christopher B. Harmon, Judge.)

The Court of Appeal affirmed the order appealed from with respect to attorney fees, but reversed with respect to spousal support, and remanded the case with directions. The court concluded that federal law prohibited the trial court from compensating the ex-wife, in the form of spousal support or otherwise, for the loss of her share of her ex-husband's military retired pay. However, the trial court could properly modify spousal support, provided it did so based on the relevant factors and not as compensation. Because combat-related special compensation (CRSC) is not retired pay, a state court does not have jurisdiction to treat CRSC as community property. Although some of the ex-husband's income would be exempt from an ordinary money judgment, they would not be exempt from a spousal support order. (Opinion by Ramirez, P. J., with McKinster and Codrington, JJ., concurring.)

## Headnotes

### CALIFORNIA OFFICIAL REPORTS HEADNOTES

## [CA\(1\)](#) (1)

### **Dissolution of Marriage § 61—Spousal Support— Military Retirement Pay—Modification—Factors.**

Although federal law prohibited the trial court from compensating an ex-wife, in the form of spousal support

or otherwise, for the loss of her share of her ex-husband's military retirement pay as a result of his decision to waive such pay in order to receive both veteran's disability benefits and combat-related special compensation, the trial court could properly modify spousal support, provided it did so based on the relevant factors and not as compensation.

[Cal. Forms of Pleading and Practice (2018) ch. 225, Dissolution of Marriage: Spousal Support, § 225.82.]

### [CA\(2\)](#) [↓] (2)

#### **Veterans § 1—Military Retirement Pay—Disability Benefits—Prevention of Double Dipping.**

A member of the armed services who retires based on length of service becomes entitled to retired pay (10 U.S.C. §§ 1401 (Army), [6333](#) (Navy), [8991](#) (Air Force)). Meanwhile, a veteran who becomes disabled as a result of an injury suffered or a disease contracted in the line of duty becomes entitled to disability benefits ([38 U.S.C. § 1110](#) (wartime disability), [1131](#) (peacetime disability)). In order to prevent double dipping, a military retiree may receive disability benefits only to the extent that the retiree waives a corresponding amount of his or her military retirement pay. For example, if a military retiree is eligible for \$1500 a month in retirement pay and \$500 a month in disability benefits, the retiree must waive \$500 of retirement pay before he or she can receive any disability benefits. Unlike retired pay, veteran's disability benefits are not taxable ([38 U.S.C. § 5301\(a\)](#)). Thus, normally a retiree is better off by making such a waiver.

### [CA\(3\)](#) [↓] (3)

#### **Dissolution of Marriage § 48—Community Property—Disposable Retired Pay—Waiver—Disability Benefits.**

Under California law, military retired pay that accrues based on service during marriage is community property. Moreover, as a matter of federal law, the Uniformed Services Former Spouses Protection Act allows a state court in a community property jurisdiction to treat disposable retired pay as community property (10 U.S.C. § 1408(c)(1)). However, its definition of “disposable retired pay” excludes any retired pay that has been waived in order to receive disability benefits (§ 1408(a)(4)(A)(ii)). Accordingly, in *Mansell v. Mansell*, the United States Supreme Court held that federal law prohibits a state court from treating the waived portion of

military retired pay as community property. More recently, in *Howell v. Howell*, the Supreme Court held that a state court cannot order a veteran to indemnify the divorced spouse for the loss caused by the veteran's waiver. Federal law completely preempts the states from treating waived military retirement pay as divisible community property.

### [CA\(4\)](#) [↓] (4)

#### **Dissolution of Marriage § 61—Spousal Support—Military Retirement Pay.**

A family court, when it first determines the value of a family's assets, remains free to take account of the contingency that some military retirement pay might be waived, or take account of reductions in value when it calculates or recalculates the need for spousal support.

**Counsel:** Law Offices of Ellen C. Dove and Ellen C. Dove for Appellant.

Julie M. Clark for Respondent.

**Judges:** Opinion by Ramirez, P. J. with McKinster and Codrington, JJ., concurring.

**Opinion by:** Ramirez, P. J.

## **Opinion**

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**RAMIREZ, P. J.**—In 1964, Robert J. Cassinelli and Janice R. Cassinelli were married; in 1986, they were divorced. In the meantime, after 20 years of service, Robert had retired from the United States Air Force. In a stipulated judgment, the trial court awarded Janice her community property interest in Robert's military retired pay.

Fast-forward 26 years. In 2012, it was determined that Robert had a combat-related disability. As a result, he became eligible to receive both veteran's disability benefits and combat-related special compensation (CRSC); to do so, however, he had to waive his retired pay. Before the waiver, Robert received \$791 a month and Janice received \$541 in retired pay (taxable). After the waiver, Robert received \$1,743 a month in veteran's disability benefits and \$1,389 a month in CRSC, for a total of \$3,132 (tax-free); Janice received zero. As a result, the [\*2] trial court ordered Robert to start paying Janice \$541 a month in permanent and nonmodifiable

spousal support.

Robert appeals. Among other things, he contends:

(1) Under overriding federal law, the trial court lacked jurisdiction to make any award to Janice based on Robert's receipt of either veteran's disability benefits or CRSC.

(2) The trial court erred by using spousal support as a remedy for the loss of a community property interest.

(3) The trial court erred by making its award of spousal support nonmodifiable.

(4) Because the judgment dividing the community property was long since final, the trial court could not give Janice any remedy for the loss of her community property interest in the retired pay.

(5) All of Robert's income was "non-attachable" (i.e., exempt), and therefore he could not be required to use it to satisfy Janice's claim.

(6) Based on the relevant factors (see [Fam. Code, § 4320](#)), Janice was not entitled to spousal support, and the trial court abused its discretion by finding otherwise.

[CA\(1\)](#)<sup>[↑]</sup> (1) We agree that federal law prohibited the trial court from compensating Janice, in the form of spousal support or otherwise, for the loss of her share of Robert's retired pay. However, it could properly modify [\*3] spousal support, provided it did so based on the relevant factors and not as compensation. Accordingly, we will reverse and remand with directions to hold a new trial on Janice's request for a modification of spousal support.

I

#### FACTUAL AND PROCEDURAL BACKGROUND

Janice and Robert were married in 1964. At that time, Robert was on active duty as a member of the United States Air Force. After 20 years of service, he retired from the military with the rank of technical sergeant.

In 1985, after 21 years of marriage, the parties separated. Janice then filed this marital dissolution proceeding.

In August 1986, pursuant to stipulation, the trial court entered a final judgment. It provided: "The Court finds that [Janice] has a 43.1% interest in [Robert]'s United States Air Force Pension, and that she shall receive the sum of Two Hundred Thirty (\$230) Dollars per month, or

43.1% of said pension, whichever sum is greater. Said payments to commence on May 1, 1986, providing that [Robert] shall make such payments to [Janice] until such time as the United States Air Force is able to process [Janice]'s claims so that her share of the military pension can be paid directly to her." The judgment reserved [\*4] jurisdiction over the issue of spousal support.

Thereafter, Robert held several jobs, primarily as a teacher. He developed ischemic heart disease; in 2011, he had a quadruple bypass. In 2012, he took a medical retirement from teaching. His ischemic heart disease was presumed to be due to his exposure to Agent Orange in Vietnam. (See [38 C.F.R. § 3.309 \(2016\)](#).) Thus, also in 2012, the Department of Veterans Affairs determined that he had a service-connected disability, making him eligible for disability benefits. It was further determined that his disability was combat related, making him eligible for CRSC.

In 2013, Robert elected to receive CRSC. Before his election, he was receiving \$791 a month of his retired pay and Janice was receiving \$541 a month of his retired pay. After his election, he received \$1,743 a month in veteran's disability benefits and \$1,389 a month in CRSC, for a total of \$3,132 a month. These benefits were nontaxable. Janice received zero. However, when Robert made his election, he was not aware that it would affect Janice.

At the time of trial, Robert was 72 years old. His monthly income consisted of:

 [Go to table 1](#)

His total monthly expenses were \$5,577.

Janice was 71 years old. She worked part time for Rite Aid. Her monthly income consisted of \$1,673 in wages and \$1,568 in social security, for a total of \$3,286. After paying her monthly expenses, she testified, "[s]ome months I have [\$]100, some months I have \$50 [left over]."

If and when Janice stopped working, she would lose more than half her income, although she could get another \$200 a month ("if I'm lucky") by drawing on \$44,000 in a 401(k) account and \$15,000 in an annuity.

In January 2014, Janice filed a motion to modify the judgment by ordering Robert to pay the amount of her share of his retired pay as "non-modifiable spousal support."



In opposition, Robert argued: (1) the property division in the judgment was final and could not be reopened; (2) “[f]ederal law which supersedes state law ... prohibits the non-military spouse[']s participation in the member's disability combat pay”; (3) “some or all of [Robert's] income is protected from attachment”; and (4) the relevant statutory factors militated against an award of spousal support.

In August 2014, Janice filed a motion for attorney fees.

In January 2015, the [\*6] trial court held a trial on both pending motions. After the trial, at the trial court's invitation, both parties filed supplemental declarations.

In April 2015, the trial court issued a written ruling. It acknowledged that, under federal law, it could not treat Robert's retired pay as community property. However, it ruled that it was not precluded from “tak[ing] equitable action” to compensate Janice.

It found that “[Robert's] voluntary election and the resulting termination of [Janice's] share of the military retirement” was a material change of circumstances. It further found that it would be a “miscarriage of justice” to allow Robert, acting unilaterally, to increase his military-source income from \$791 (taxable) to \$3,132 (tax-free) while reducing Janice's military-source income from \$541 to zero. After discussing each of the factors listed in [Family Code section 4320](#), it concluded that Janice was entitled to receive \$541 a month in spousal support.

The trial court further found that, in 1986, when the original judgment was entered, Janice had a reasonable belief that her share of Robert's retired pay was non-modifiable. It therefore made its award of spousal support non-modifiable.

Finally, it awarded Janice \$7,180 [\*7] in attorney fees against Robert.

Robert filed a motion for reconsideration. The trial court denied the motion. Robert filed a timely notice of appeal.

II\* [NOT CERTIFIED FOR PUBLICATION]

III

#### FEDERAL LAW REGARDING MILITARY RETIRED PAY IN A DIVORCE

Robert contends that, as a matter of federal law, the trial court erred by awarding Janice spousal support to

replace her interest in his retired pay.

[HN1](#) [CA\(2\)](#) (2) A member of the armed services who retires based on length of service becomes entitled to retired pay. (*10 U.S.C. §§ 1401* [Army], [6333](#) [Navy], [8991](#) [Air Force].)

Meanwhile, a veteran who becomes disabled as a result of an injury suffered or a disease contracted in the line of duty becomes entitled to disability benefits. ([38 U.S.C. §§ 1110](#) [wartime disability], [1131](#) [peacetime disability].)<sup>1</sup>

“In order to prevent double dipping, a military retiree may receive disability benefits only to the extent that he waives a corresponding amount of his military retirement pay. [Citation.]” (*Mansell v. Mansell (1989) 490 U.S. 581, 583, fn. omitted [104 L. Ed. 2d 675, 109 S. Ct. 2023]*; see [38 U.S.C. §§ 5304–5305](#).) “For example, if a military retiree is eligible for \$1500 a month in retirement pay and \$500 a month in disability benefits, he must waive \$500 of retirement pay before he can receive any disability benefits.” (*Mansell v. Mansell, supra, at p. 583, fn. 1*.) Unlike retired [\*8] pay, veteran's disability benefits are not taxable. ([38 U.S.C. § 5301\(a\)](#); *Haas v. United States (Fed.Cl. 2012) 107 Fed.Cl. 1, 3*.) Thus, normally a retiree is better off by making such a waiver.

[HN2](#) [CA\(3\)](#) (3) Under California law, military retired pay that accrues based on service during marriage is community property. (*In re Marriage of Barnes (1987) 43 Cal.3d 1371, 1374–1375 [240 Cal. Rptr. 855, 743 P.2d 915]*; *In re Marriage of Stenquist (1978) 21 Cal.3d 779, 782 [148 Cal. Rptr. 9, 582 P.2d 96]*.) Moreover, as a matter of federal law, the *Uniformed Services Former Spouses' Protection Act (Pub.L. No. 97-252 (Sept. 8, 1982) 96 Stat. 730; FUSFSPA)* allows a state court in a community property jurisdiction to treat “disposable retired pay” as community property. (*10 U.S.C. § 1408(c)(1)*.) However, its definition of “disposable retired pay” excludes any retired pay that has been waived in order to receive disability benefits. (*10 U.S.C. § 1408(a)(4)(A)(ii)*.)

Accordingly, in *Mansell v. Mansell, supra, 490 U.S. 581*,

<sup>1</sup> Any discussion of disability benefits in this opinion is limited to disability benefits under title 38, United States Code. Title 10, chapter 61, United States Code ([10 U.S.C. § 1201 et seq.](#)) provides a separate scheme of military disability benefits that is beyond the scope of our opinion.

\* See footnote, *ante*, page \_\_\_\_.

the United States Supreme Court held that federal law prohibits a state court from treating the waived portion of military retired pay as community property. (*Id. at pp. 594–595.*) It acknowledged that its holding “may inflict economic harm on many former spouses,” but it felt constrained by “the plain language of the statute” as well as by the statute’s legislative history. (*Id. at p. 594.*)

More recently, in *Howell v. Howell* (2017) 581 U.S. [197 L. Ed. 2d 781, 137 S.Ct. 1400], the Supreme Court held that a state court cannot order a veteran “to indemnify the divorced spouse for the loss caused by the veteran’s waiver.” (*Id. at p. \_\_\_ [137 S.Ct. at p. 1402].*) It explained: “[F]ederal law completely pre-empts [\*9] the States from treating waived military retirement pay as divisible community property.” (*Id. at p. \_\_\_ [137 S.Ct. at p. 1405].*) “The principal reason the state courts have given for ordering reimbursement or indemnification is that they wish to restore the amount previously awarded as community property, *i.e.*, to restore that portion of retirement pay lost due to the postdivorce waiver. ... Regardless of their form, such reimbursement and indemnification orders displace the federal rule and stand as an obstacle to the accomplishment and execution of the purposes and objectives of Congress.” (*Id. at p. \_\_\_ [137 S.Ct. at p. 1406].*)

CA(4) [↑] (4) The court concluded: “We recognize, as we recognized in *Mansell*, the hardship that congressional preemption can sometimes work on divorcing spouses. [Citation.] But we note that HN3 [↑] a family court, when it first determines the value of a family’s assets, remains free to take account of the contingency that some military retirement pay might be waived, or ... take account of reductions in value when it calculates or recalculates the need for spousal support. [Citations.]” (*Howell v. Howell, supra*, 581 U.S. at p. \_\_\_, italics added [137 S.Ct. at p. 1406].)<sup>2</sup>

<sup>2</sup> While *Howell* was pending, we issued an opinion in this case. (*In re Marriage of Cassinelli* (2016) 4 Cal.App.5th 1285 [210 Cal. Rptr. 3d 311].) Robert filed a petition for certiorari. After the Supreme Court decided *Howell*, it granted the petition, vacated our opinion, and remanded for reconsideration in light of *Howell*. (*Cassinelli v. Cassinelli* (2017) 583 U.S. \_\_\_ [199 L. Ed. 2d 2, 138 S.Ct. 69].)

*Howell* also effectively overruled *In re Marriage of Chapman* (2016) 3 Cal.App.5th 719 [207 Cal. Rptr. 3d 798] [trial court could require military spouse to compensate civilian spouse for lost retired pay] and *In re Marriage of Krempin* (1999) 70 Cal.App.4th 1008 [83 Cal. Rptr. 2d 134] [same].

In fairness to the trial court, it ruled before *Howell* was decided. Nevertheless, [\*10] in light of *Howell*, it is now clear that it erred. Admittedly, it awarded Janice spousal support, rather than reimbursement or indemnification. Moreover, it purported to consider all of the factors listed in *Family Code section 4320*, and it made detailed findings with respect to each of these factors. Nevertheless, it came up with a support amount that was identical—down to the penny—to the amount of retired pay that Janice had lost. We cannot help but conclude that this was, in substance, reimbursement or indemnification. *Howell* was particularly critical of an award that “mirrors the waived retirement pay, dollar for dollar.” (*Howell v. Howell, supra*, 581 U.S. at p. \_\_\_, italics added [137 S.Ct. at p. 1406].)

We do not mean to say that the trial court was wholly barred from awarding Janice spousal support as a result of Robert’s waiver. His waiver, and the resulting reduction in her income, were changed circumstances which would tend—*ceteris paribus*—to increase her need for support. *Howell* specifically permitted a state court to take account of a military spouse’s waiver of retirement pay in recalculating spousal support.

Before *Howell*, *In re Marriage of Perkins* (2001) 107 Wn.App. 313 [26 P.3d 989] held that a military spouse’s waiver of retirement pay can properly trigger a modification of the civilian spouse’s support. [\*11] There, the trial court had ordered the military spouse to pay the civilian spouse the same amount as her lost share of his retired pay, as “permanent compensatory spousal maintenance ... .” (*Id.*, 26 P.3d at p. 991, italics omitted.) The appellate court accepted that *Mansell* prohibited any order for “dollar-for-dollar” reimbursement of the lost retired pay, even if it was labeled “maintenance.” (*Id. at pp. 995–996.*) However, a “dissolution court ... may consider a spouse’s entitlement to an *undivided* veterans’ disability pension ... as one factor relevant to an award of maintenance ... , provided of course that it follows the usual state-law rules ... .” (*Id. at p. 994*, fns. omitted.) In other words, “a trial court may award maintenance after considering all relevant factors, of which a military disability pension may be one.” (*Id. at p. 997.*) Thus, it remanded “for reconsideration of maintenance.” (*Ibid.*)

And in the wake of *Howell*, *Jennings v. Jennings* (2017) 2017 Ohio 8974 [2017 Ohio App. Lexis 5406]<sup>3</sup> similarly

<sup>3</sup> Ohio court of appeals decisions since May 1, 2002, are fully precedential, even if unpublished. (*Ohio S. Ct. Rep. Op. Rule*,

held that the trial court could take the military spouse's disability benefits into account in awarding support to the civilian spouse. (*Id. at pp. \*5–\*10.*) It noted that “the United States Supreme Court’s comments in *Howell* ... support the conclusion that a court may include VA disability benefits as a source of income to be considered [\*12] in awarding spousal support.” (*Id. at p. \*9.*)

We agree with *Perkins* and *Jennings*. We conclude that we must reverse the trial court’s award of spousal support in lieu of the waived retirement pay but remand with directions to hold a new trial on Janice’s request for a modification of spousal support.

IV, V\* [NOT CERTIFIED FOR PUBLICATION]

VI

#### COMBAT-RELATED SPECIAL COMPENSATION (CRSC)

In addition to veteran’s disability benefits, Robert was also receiving CRSC. Both parties make much of this fact. Robert takes the position that the principles stated in *Mansell* and *Howard* also apply to CRSC. Accordingly, we will discuss what CRSC is and how it is involved in this case. We will conclude, however, that it is largely irrelevant.

CRSC is relatively new; it was first enacted in 2002. (*10 U.S.C. § 1413a*; *Pub.L. No. 107-314 (Dec. 2, 2002) 116 Stat. 2574.*)

For purposes of this opinion, CRSC may be viewed as a bonus payment that effectively eliminates the double-dipping penalty for those disabled veterans whose disabilities are combat related. To be eligible for CRSC, a veteran must be eligible for both retired pay and disability benefits. (*10 U.S.C. § 1413a(c)(1), (e).*) It follows that, under the rule against [\*13] double-dipping (*38 U.S.C. §§ 5304–5305*), the veteran must waive all retired pay up to the amount of the disability benefits. CRSC then basically restores the waived amount of retired pay (*10 U.S.C. § 1413a(b)(1), (2)*)—but as “special compensation,” and specifically *not* as retired pay. (See *10 U.S.C. § 1413a(g).*) Like disability benefits, CRSC is nontaxable. (*26 U.S.C. § 104(a)(4)*; Dept. of

Defense Financial Management Reg. 7000.14—R, vol. 7B, ch. 63 (Oct. 2017) (Financial Management Reg.),<sup>4</sup> § 630101.D.)

Because CRSC is not retired pay—just as veteran’s disability benefits are not retired pay—under FUSFSPA as construed in *Mansell*, a state court does not have jurisdiction to treat CRSC as community property. (*10 U.S.C. §§ 1408(a)(4), (c)(1), 1413a(g)*; Financial Management Reg., *supra*, § 630101.C.1.)

In this case, however, the trial court did not even arguably award Janice any interest in Robert’s CRSC. Before Robert’s election to receive CRSC, he was receiving \$791 a month in retired pay and Janice was receiving \$541 a month in retired pay, for a total of \$1,332. After his election, they received no retirement pay, but Robert received \$1,743 a month in veteran’s disability benefits. In other words, the retired pay was more than wiped out by the disability benefits alone. Robert’s election to receive CRSC did not cause any additional reduction in retired pay.

In many cases, an election [\*14] to receive CRSC is the event that triggers a waiver of retired pay. As mentioned, a veteran cannot receive CRSC unless he or she also (1) receives disability benefits and (2) waives retired pay. Thus, when the civilian spouse asks why his or her flow of retirement benefits has suddenly dried up, he or she may be told it is because the military spouse has elected CRSC. That appears to be what happened here. Nevertheless, subject to one exception, CRSC is irrelevant to all of the issues before us.

The one exception is Robert’s contention that the trial court erred because all of his income—veteran’s disability benefits, state teacher’s disability benefits, social security, *and* CRSC—is exempt from creditor’s claims. We will discuss this in part VII, *post*.

VII

#### INCOME THAT IS EXEMPT FROM CREDITOR’S CLAIMS

Robert contends that his income is exempt from creditor’s claims.<sup>5</sup> However, he cites no supporting

*rule 3.4*; see also *Lebrilla v. Farmers Group, Inc. (2004) 119 Cal.App.4th 1070, 1077 [16 Cal. Rptr. 3d 25]* [“Opinions from other jurisdictions can be cited without regard to their publication status.”].)

\* See footnote, *ante*, page \_\_\_\_.

<sup>4</sup> Available at [http://comptroller.defense.gov/Portals/45/documents/fmr/curr/ent/07b/07b\\_63.pdf](http://comptroller.defense.gov/Portals/45/documents/fmr/curr/ent/07b/07b_63.pdf) (as of Mar. 2, 2018).

<sup>5</sup> Robert tends to conflate the issue of nondivisibility under *Mansell* with what he calls “non-attachability.” Nevertheless,



authority.

As already noted, Robert's income consists of veteran's disability benefits, state teacher's disability benefits, Social Security, and CRSC. Arguably some or all of these funds would be exempt from an ordinary money judgment. However, they are not exempt from a spousal support [\*15] order. Specifically, a spousal support order would be enforceable against Robert's:

(1) Veteran's disability benefits (although only up to the amount of his waiver of retired pay). (*42 U.S.C. §§ 659(a), (h)(1)(A)(ii)(V), (B)(iii); 5 C.F.R. § 581.103 (2018); U.S. v. Murray (1981) 158 Ga.App. 781, 785 [282 S.E.2d 372, 375].*)

(2) CRSC. (Financial Management Reg., *supra*, § 630101.C.2.)

(3) Social security benefits. (*42 U.S.C. §§ 659(a), (h)(1)(A)(ii)(I); DeTienne v. DeTienne (D.Kan. 1993) 815 F.Supp. 394, 396–397.*)

(4) State teacher's disability benefits. (*Code Civ. Proc., § 704.110, subd. (c); Ed. Code, § 22006.*)

VIII\* [NOT CERTIFIED FOR PUBLICATION]

IX

#### DISPOSITION

The order appealed from is affirmed with respect to attorney fees but reversed with respect to spousal support. On remand, the trial court must hold a new trial on Janice's request for a modification of spousal support. Because relevant circumstances may have been changed since this appeal was filed, it must give the parties an opportunity to submit new evidence. In the interest of justice, each side shall bear its own costs.

McKinster, J., and Codrington, J., concurred.

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they are distinct and we discuss them separately.

\* See footnote, *ante*, page \_\_\_\_.

**Table1** ([Return to related document text](#))

Veteran's disability benefits	\$1,743
CRSC	\$1,389
State teacher's disability benefits	\$1,433
	<b>[*5]</b>
Social security benefits	\$1,105
Total	\$5,670

**Table1** ([Return to related document text](#))

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