

Commonwealth of Kentucky
Court of Appeals

NO. 2014-CA-001503-MR

BLAIR VEIT

APPELLANT

v. APPEAL FROM CARTER CIRCUIT COURT
HONORABLE DAVID FLATT, JUDGE
ACTION NO. 12-CI-00378

TERESA VEIT

APPELLEE

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: COMBS, D. LAMBERT, AND VANMETER, JUDGES.

COMBS, JUDGE: Blair Veit appeals an order of the Carter Family Court entered on August 14, 2014. The post-dissolution order addressed provisions of the Uniformed Services Former Spouses' Protection Act and Teresa Veit's right to collect a portion of her former husband's retirement pay should he predecease her. We affirm.

Teresa and Blair Veit had been married for more than sixteen years when their marriage was dissolved by the family court's decree in May 2013. The couple had one child during the marriage. At the time of the dissolution, this child was a minor. He lived with Teresa in Carter County. Blair was retired from the United States Navy and resided in Chesapeake, Virginia.

This case involves the division of federal retirement benefits by a state court. That issue was addressed in *McCarty v. McCarty*, 453 U.S. 210, 101 S.Ct 2728, 69 S.Ed.2d 589 (1981), where the Supreme Court of the United States observed that the application of state family law, under some narrow circumstances, must yield to federal law under the Constitution's Supremacy Clause. Ultimately, the Court held that state law could not be applied to divide a military retiree's retirement pay in divorce proceedings. In response, Congress passed the Uniformed Services Former Spouses' Protection Act, which governs the case before us.

Ever since Congress enacted the Uniformed Services Former Spouses' Protection Act (the Act), state courts have had the option to classify a United States armed forces member's disposable military retirement pay as property divisible upon divorce. 10 U.S.C. § 1408. With respect to Blair's military retirement benefits, the Carter Family Court's decree provided as follows:

[Teresa] is awarded that part up to the amount of 50% of [Blair's] pension from the United States Navy is (sic) much as federal and military regulations allow.

Nearly a year later, in April 2014, Teresa filed a motion to modify the decree to add a specific provision indicating that she is entitled to the survivor benefit

coverage associated with Blair's retirement pay in order to protect her interest in the retirement plan. The family court granted the motion, and its order of August 14, 2014, clarified the original degree and ordered Blair to elect to provide an annuity to his former spouse under the provisions of his retirement plan. This appeal followed.

On appeal, Blair contends that the family court erred by ordering him to elect the former spouse coverage of his Navy retirement's Survivor Benefit Plan. He concedes that provisions of the Act permit military retirees to elect former spouse coverage for a spouse who was a beneficiary under the Survivor Benefit Plan when divorce occurs after retirement -- but only **within one year of the divorce decree**. Blair argues that he cannot now be ordered to make the election since more than a year has elapsed since entry of the divorce decree in May 2013. However, Blair has raised no argument that the family court acted outside its jurisdiction by awarding Teresa survivor benefits in the post-dissolution order.

Analysis of this very narrow issue requires a brief survey of specific provisions of the Act. The Survivor Benefit Plan (SBP) was established by Congress at 10 U.S.C. §§ 1447-1455. It is an annuity plan under which a surviving spouse or other designated beneficiary can continue to receive a monthly benefit following the death of a service member. 10 U.S.C. § 1448. A service member may voluntarily elect to name a former spouse as the SBP beneficiary. 10 U.S.C. § 1448(b)(3). However, that election must be made **within one year of the divorce decree**. *Id.*

A service member may also *be required by court order* to elect under section 1448(b) to provide an annuity to a former spouse. 10 U.S.C. § 1450. If a service member is required by court order to provide an SBP annuity to a former spouse and he fails or refuses to make such an election, the service member shall *be deemed* to have made such an election under certain circumstances. *Id.* Where a service member's former spouse files a written request with the Secretary of the Navy and -- within one year of the date of the court order requiring such an election -- submits a copy of the relevant court order, then the service member will be deemed to have made the required election. 10 U.S.C. § 1450(f)(3)(A).

The language of the original decree contemplated that Teresa receive “as much as federal and military regulations allow”; *i.e.* SPB benefits. The post-dissolution order clarified any ambiguity in the original order. We are persuaded that the family court did not err by ordering Blair to make the required election to provide an annuity to Teresa. Since he failed or refused to make the election in compliance with the court order, Teresa was compelled by the provisions of the Act to submit a timely request to the Secretary of the Navy and to provide a copy of the court order now under appeal. The proper resolution of this dispute lies with the Department of Defense. Any decision of the Department with respect to this issue is beyond the jurisdiction of the courts of the Commonwealth.

The order of the Carter Family Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Brandon M. Music
Grayson, Kentucky

BRIEF FOR APPELLEE:

John Preston Thompson
Grayson, Kentucky