

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2010 CA 2331

VIDA K. FLOYD

VERSUS

ANDRE' L. MARSH

Judgment Rendered: June 10, 2011

**Appealed from the
Family Court**

**In and for the Parish of East Baton Rouge, Louisiana
Docket Number 169,875**

Honorable Pamela J. Baker, Judge Presiding

**Angela F. Lockett
Baton Rouge, LA**

**Counsel for Plaintiff/Appellant,
Vida K. Floyd**

**Amy E. Counce
Baton Rouge, LA**

**Counsel for Defendant/Appellee,
Andre' L. Marsh**

BEFORE: WHIPPLE, McDONALD, AND McCLENDON, JJ.

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WHIPPLE, J.

This is an appeal from an August 11, 2010 judgment of the Family Court of East Baton Rouge Parish, dismissing plaintiff's claims against the defendant herein, her former husband, for her separate share of his military retirement benefits, on the basis that she had already received the benefits. For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

On June 3, 2009, plaintiff, Vida K. Floyd, filed an ex parte petition for recognition of foreign judgments, seeking to have the family court recognize certain Texas judgments, including January 26, 2004 and May 8, 2007 divorce decrees. In the January 26, 2004 divorce decree, Floyd was divorced from the defendant herein, Andre' L. Marsh, and was awarded, among other things, 50% of Marsh's disposable military retired pay. The January 26, 2004 Texas divorce decree further ordered Marsh to pay Floyd her interest in the military retirement benefit until such time that he was notified that she was being directly paid her interest in the benefit by the Secretary of Defense.¹

Subsequent to the parties' divorce, they reconciled and eventually remarried in June 2005. However, the second marriage also ended in divorce, as ordered in the May 8, 2007 Texas divorce decree that Floyd also sought to have the family court below recognize. By order dated June 18, 2009, the family court decreed that the various Texas judgments, including the January 26, 2004 and May 8, 2007 divorce decrees, be made executory in Louisiana.

¹At the time of the parties' first divorce, Marsh was still on active duty with the United States Air Force. He did not retire until several months after their initial divorce.

Thereafter, Floyd filed a rule to show cause why Marsh should not be found in contempt for willful stoppage of payment to Floyd of her share of his military retirement benefit.² Specifically, Floyd contended that Marsh had “willfully” stopped paying her her portion of his retirement benefit during the entirety of the parties’ second marriage. She further contended that prior to the parties’ second marriage in June 2005, they had cohabited from January 2005 until their second marriage, and that Marsh had not paid her her portion of his retirement benefit while they cohabited as well. Thus, she contended that he had not paid her the retirement benefit from January 2005 through March 2007.³

A hearing on Floyd’s rule to show cause was conducted on April 12, 2010, at which time the parties testified and presented documentary evidence. Following the hearing, the family court issued written reasons for judgment, finding as a fact that Floyd “clearly received benefits from Mr. Marsh’s retirement account while the parties were co-habiting and remarried” and that “[t]his benefit far exceeded the amount of money she would have received in direct payments from his military retirement.” Thus, the family court further found as a fact that Marsh did not owe Floyd any arrearages of retirement pay. Accordingly, by judgment dated August 11, 2010, the family court dismissed Floyd’s claims at her costs.

From this judgment, Floyd appeals, contending in her sole assignment of error that the family court erred in determining that she was not entitled to

²The rule to show cause also sought a ruling on whether Marsh should be found in contempt for alleged continuous attempts to remove Floyd as the survivor plan beneficiary on his retirement benefit plan. However, at the hearing on her rule to show cause, counsel for Floyd stated that Floyd was withdrawing her claim with regard to Marsh’s alleged removal of her name as the former spouse beneficiary on his retirement plan. Thus, that issue is not before us on appeal.

³Eventually, Floyd applied to receive her share of Marsh’s retirement benefit directly, as had been contemplated by the January 26, 2004 Texas divorce decree, and the direct payments to her began in April 2007.

receive direct payments from Marsh, as ordered by the January 26, 2004 Texas divorce decree, during the period of time that they cohabited and were remarried.

DISCUSSION

Article 4, section 1 of the United States Constitution provides that "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State." Thus, it is well settled that Louisiana will give full faith and credit to divorce decrees of other states which are unassailable in those states. Brown v. Brown, 387 So. 2d 565, 566 (La. 1980), cert. denied, 450 U.S. 966, 101 S. Ct. 1482, 67 L. Ed. 2d 615 (1981). Indeed, as previously stated, the family court below entered an order dated June 18, 2009, recognizing and making executory in Louisiana the various Texas decrees relating to the parties' divorces and support obligations. Thus, the question presented to the family court was whether Marsh had fulfilled his obligations to Floyd as set forth in the Texas decrees, and specifically in the January 26, 2004 divorce decree.

The January 26, 2004 divorce decree provides as follows with regard to the parties' rights and obligations concerning Marsh's military retirement benefit:

IT IS ORDERED AND DECREED that the wife, VIDA MARSH, is awarded the following as her sole and separate property, and the husband is divested of all right, title, interest, and claim in and to that property:

* * *

W-5. All right, title, and interest in and to the sum equal to fifty percent (50%) of the disposable retired pay of a E-7 [sic] with 19 years and 7 months of creditable service to be paid as a result of ANDRE L. MARSH's service in the United States Armed Forces, and that share attributable to the interest awarded to VIDA MARSH of all increases in the United States Armed Forces disposable retired pay due to cost of living or other reasons, if, as, and when received by ANDRE L. MARSH.

* * *

7. It is intended by this Court that the Secretary of Defense or the Secretary's designee make the payments due to VIDA MARSH of her interest in the disposable retired pay awarded in this decree directly to VIDA MARSH.

IT IS THEREFORE ORDERED AND DECREED that VIDA MARSH have judgment against and recover from ANDRE L. MARSH the sum equal to fifty percent (50%) of the disposable retired pay of a E-7 [sic] with 19 years and 1 month of creditable service.

IT IS ORDERED that the Secretary of Defense or the Secretary's designated agent shall pay to VIDA MARSH directly, each month, her interest awarded in this decree in the United States Armed Forces disposable retired pay paid as a result of ANDRE L. MARSH's service in the United States Air Force....

IT IS FURTHER ORDERED AND DECREED that ANDRE L. MARSH be and is hereby designated a constructive trustee for the benefit of VIDA MARSH for the purpose of receiving the retired pay awarded herein to VIDA MARSH as VIDA MARSH's sole and separate property, and ANDRE L. MARSH be and is hereby ORDERED, on receipt thereof, to deliver by first-class mail to VIDA MARSH ... by negotiable instrument that portion of each monthly retired pay payments awarded to VIDA MARSH herein not paid directly (or by allotment) by the DFAS within three days of the receipt of any such payments by ANDRE L. MARSH. All payments made directly to VIDA MARSH by the DFAS shall be a credit against this obligation.

For purposes of this decree, ANDRE L. MARSH is specifically directed, on penalty of contempt, to pay VIDA MARSH's interest in the disposable retired pay as ordered in this decree. ANDRE L. MARSH is specifically directed that he is not relieved of that obligation except to the extent that he is specifically notified that 100 percent of VIDA MARSH's interest in the retirement benefit has been directly paid by the Secretary of Defense or the Secretary's designated agent.

IT IS ORDERED that the payment of the disposable retired pay awarded in this decree to VIDA MARSH shall continue until the death of ANDRE L. MARSH or VIDA MARSH.

In concluding that Marsh did not owe Floyd any arrearages of retirement benefit pay and, thus, in dismissing Floyd's claims against Marsh herein, the family court found as a fact that Floyd "clearly received benefits from Mr. Marsh's retirement account while the parties were co-habiting and remarried" and that "[t]his benefit **far exceeded** the amount of money

she would have received in direct payments from his military retirement.” (Emphasis added). Our review of the record herein reveals that the testimony and evidence of record abundantly supports the family court’s factual findings.

During the parties’ cohabitation and remarriage, Marsh made numerous cash payments and/or transfers to Floyd in addition to directly paying her separate obligation in the form of mortgage payments on her separate house, an obligation which alone far exceeded her separate property interest in Floyd’s military retirement benefit. Moreover, for a period of their second marriage, Marsh’s retirement benefit was deposited into the parties’ joint checking account, thereby giving Floyd direct access to those funds. Thus, given the abundant evidence of record, we find no manifest error in the family court’s factual finding that Floyd received the benefits to which she was entitled from Marsh’s military retirement pay as set forth in the January 26, 2004 Texas divorce decree, and that finding will not be disturbed on appeal.⁴ See Stobart v. State, Department of Transportation and Development, 617 So. 2d 880, 882 (La. 1993).

CONCLUSION

For the above and foregoing reasons, the August 11, 2010 judgment of the family court is affirmed. Costs of this appeal are assessed against Vida K. Floyd.

AFFIRMED.

⁴Moreover, we reject any argument by Floyd that the family court’s dismissal of her claim constituted a collateral attack on the January 26, 2004 Texas divorce decree. The family court below did not make any finding that Floyd was not entitled to any sums awarded to her by the Texas decree. Rather, the family court simply found as a fact that Floyd had received the benefits that she had been awarded in that Texas decree.