State of New Hampshire
Supreme Court

NO. 2011-0304

2012 TERM

FEBRUARY SESSION

In the Matter of Ronald Brownell

and

Irene Brownell

RULE 7 APPEAL OF FINAL DECISION OF
PLYMOUTH FAMILY DIVISION

BRIEF OF RESPONDENT/APPELLEE IRENE BROWNELL

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STATEMENT OF FACTS AND STATEMENT OF THE CASE

Irene Brownell and Ronald Brownell were married in 1998, making this a long-term marriage. Ronald[1] is 63 and Irene is 52. *Aug2010* at 7; *Feb2011* at 5, 103.[2] There are no children of the marriage.

I. Domestic Violence Broke the Marriage

During their 13 years together, Irene stayed at home and raised Ronald's children. FINDINGS OF FACT ¶ 50, *RonAppx*.[3] at 22; *Feb2011* at 94. Although she had sporadic employment, Ronald did not allow Irene to work outside the home, FINDINGS ¶ 48, *RonAppx*. at 22; *Aug2010* at 10, and Ronald was the primary provider. FINDINGS ¶ 46, *RonAppx*. at 22; ORDER (Nov. 29, 2010), *IreneAppx.* at 52. Ronald was in charge of family finances, paid the bills, kept the books, and controlled the financial data. FINDINGS ¶ 49, *RonAppx*. at 22; ORDER, *IreneAppx.* at 52; *Feb2011* at 95; *Aug2010* at 10-11. Irene's name was not on the mortgage for the marital home. *Feb2011* at 95; *Dec2010* at 9.

Irene testified that the marriage was repeatedly punctuated by domestic violence, *Aug2010* at 7, but that it irreconcilably broke down after a particular episode. This resulted in a permanent domestic violence no-contact order, FINDINGS ¶ 57, *RonAppx*. at 22, and criminal assault charges which were pending at the time of the final hearing. TEMPORARY DECREE ¶ 17, *IreneAppx.* at 48;ORDER, *IreneAppx.* at 52. It also resulted in the parties cross-filing for divorce, and Ronald having to move out.

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[1]To ease confusion, the parties are referred to here by their first names. No disrespect is intended.

[2]There are three transcripts in this appeal. The August 3, 2010, Temporary Hearing is referred to herein as *Aug2010*. The December 14, 2010, Pretrial Conference is referred to herein as *Dec2010*. The February 25, 2011, Final Hearing is referred to herein as *Feb2011*.

[3]Many of the documents cited in this brief are included in the appendix Ronald filed with his Memorandum of Law. They are cited to *RonAppx.* Additional documents are appended to this brief, *infra*, and are cited to *IreneAppx.*

II. Ronald Caused Loss of the House

Irene and Ronald owned a home in Alexandria, New Hampshire. In the temporary decree, Irene was awarded occupancy, and also the responsibility for paying the mortgage. TEMPORARY DECREE ¶ 14, *IreneAppx.* at 48. Ronald was ordered to pay temporary alimony in the amount of $1,250 per month, TEMPORARY DECREE ¶ 5, *IreneAppx.* at 48, which he refused to pay. When Ronald moved out he had the utilities turned off, *Feb2011* at 38, 97; ORDER, *IreneAppx.* at 52, and emptied the couple's bank accounts. ORDER, *IreneAppx.* at 52; *Aug2010* at 11. As a result, the State energy program had to pay for Irene's electricity and provided wood for her heat. *Feb2011* at 110, 117.

Also because Ronald refused to pay temporary alimony, Irene was not able to pay the mortgage, which resulted in foreclosure, loss of the house, FINDINGS ¶ 57-58, *RonAppx*. at 22; RULINGS OF LAW ¶ 9, *RonAppx*. at 26; *Dec2010* at 8-9, and abandonment of personal property. FINAL ORDER (Apr. 6, 2011), *RonAppx*. at 7.The court found that Ronald was unreasonable in not curing the mortgage default, and that had he paid temporary alimony, the marital estate would have been saved. FINAL ORDER, *RonAppx.* at 7.

III. Ronald is Able to Pay and Irene Needs Alimony

Ronald has been permanently disabled and thus has not worked since 1989. *Feb2011* at 17. Rather, he receives around $960 per month in social security disability benefits and approximately $2,500 per month in veterans disability benefits, FINAL ORDER, *RonAppx.* at 7, for a total reported monthly income of $3,795. ORDER, *IreneAppx.* at 52. Ronald testified that he used the money from his federal benefits to support himself, his wife, and his family. *Feb2011* at 14-15. The court found he has the ability to pay alimony. RULINGS ¶ 12, *RonAppx*. at 26.

Irene is destitute. Although she held some jobs, Irene did not work much outside the home during the marriage. FINDINGS ¶ 24, *RonAppx*. at 22; *Feb2011* at 16, 94. Currently she cannot work due to an injury, and therefore has no means of self-support. FINDINGS ¶ 52, *RonAppx*. at 22; RULINGS ¶ 11, *RonAppx*. at 26; *Feb2011* at 16, 96, 123. Because she was dependent on Ronald, she has no savings or retirement plan, and thus is penniless. FINDINGS ¶ 56, *RonAppx*. at 22; *Aug2010* at 11. Irene is sustained by food stamps, some welfare and disability benefits, town assistance, a food pantry, and medicaid. FINDINGS ¶ 55, *RonAppx*. at 22; *Feb2011* at 100-108; *Aug2010* at 11. She has no car, and thus no transportation. *Feb2011* at 100. As a result of the loss of the house, Irene is homeless and at the time of the final hearing was living in a shelter. FINDINGS ¶ 54, *RonAppx*. at 22; *Feb2011* at 94, 109; *Aug2010* at 11. Accordingly, the court found Irene has need for alimony. RULINGS ¶ 10, *RonAppx*. at 26.

IV. Ronald Squandered the Marital Estate

During the marriage Ronald's mother died. FINDINGS ¶ 2, *RonAppx*. at 22; *Feb2011* at 41, 43. She had substantial assets, which were left to Ronald and his four siblings, FINDINGS ¶ 5, *RonAppx*. at 22; *Feb2011* at 10, and some of which Ronald received before his separation from Irene. *Feb2011* at 95. The court found that "[t]he inheritance … is the only marital asset." RULINGS ¶ 4, *RonAppx*. at 26.

Although Ronald disclaims knowledge (or vastly deprecates) the amount to which he is entitled, *Feb2011* at 8, 11; *Dec2010* at 13; *Feb2011* at 56, the court found that at the time of trial he had already received $79,000 and would probably get $15,000 more. RULINGS ¶ 2, *RonAppx*. at 26; FINAL ORDER, *RonAppx*. at 7. Although the exact amount of future payments may be an estimate, there appears to be no question as to his entitlement. FINDINGS ¶ 41, *RonAppx*. at 22.

Because Ronald made clear he did not want Irene to share in the inheritance, FINDINGS ¶ 9, *RonAppx*. at 22, just four days after she was served with the divorce petition, Irene requested that proceeds from the inheritance be placed in escrow. MOTION FOR PROTECTION AND DISTRIBUTION OF FUNDS (June 8, 2010), *IreneAppx*. at 18; PROPOSED TEMPORARY DECREE (Aug. 3, 2010) (not in appendices). In its temporary decree, the court ordered:

> The parties are enjoined and restrained from selling, transferring, encumbering, hypothecating, concealing or in any other manner whatsoever disposing of any property, real or personal, belonging to either or both of them except by written agreement of the parties, for reasonable and necessary expenses of living or in the ordinary course of investing, or by further order of the Court.

TEMPORARY DECREE ¶ 16, *IreneAppx.* at 48.

Nonetheless, Ronald spent *all* the money. He conceded that after he was ordered not to, he spent nearly $20,000 thousand on a truck and travel-trailer that were luxuries. FINDINGS ¶ 15-16, *RonAppx*. at 22; *Feb2011* at 79. He admitted he gave $15,000 to his children. FINAL ORDER, *RonAppx*. at 27; *Feb2011* at 21-22, 71-72.

Most disturbing is that he spent the remainder of the $79,000 on illegal street drugs. FINAL ORDER, *RonAppx*. at 7. Ronald admitted that whatever the difference between documented costs and the total inheritance, "I spent the rest on drugs." *Feb2011* at 73. That amount is estimated to be around $38,000. *Feb2011* at 80. Ronald concedes he spent as much as $10,500 on illegal drugs in one 11-day period. *Feb2011* at 75-76. Ronald appears less than fully contrite, saying merely: "Sorry, but that's the way it is. I'm sorry." *Feb2011* at 73.

The ultimate result of this is that "through [Ronald's] stubbornness, illegal activities and refusal to comply with legitimate orders of this [c]ourt he has squandered the marital estate." FINAL ORDER, *RonAppx*. at 27.

V. Ronald Held in Contempt

The court found Ronald in contempt on a number of grounds. He had been ordered to account for the inheritance funds, but did not, and was thus found in contempt. MOTION FOR CONTEMPT - TEMPORARY ORDERS (Feb. 4, 2011) ("Granted"), *RonAppx*. at 15; FINAL ORDER ¶ 4, *RonAppx*. at 7. Ronald made a number of misrepresentations to the court under oath in his financial affidavits and interrogatory answers, and also sat silent allowing his attorney to make others on his behalf, and so was held in contempt for that. RULINGS ¶¶ 6-7, *RonAppx*. at 26. Ronald was also held in contempt for dissipating the inheritance after issuance of the anti-hypothecation order. MOTION FOR CONTEMPT OF ANTI-HYPOTHECATION ORDER (Feb. 4, 2011) ("Granted"), *RonAppx*. at 19; FINAL ORDER ¶ 5, *RonAppx*. at 7; RULINGS ¶ 5, *RonAppx*. at 26.

The court held that in order to purge the contempts, Ronald must pay Irene alimony arrearages, pay her alimony in accord with the court order, and reimburse her for attorneys' fees associated with prosecution of the contempts. FINAL ORDER ¶ 6, *RonAppx*. at 7.

VI. Provisions of the Divorce Decree

Regarding the more pedestrian provisions of the decree, the Plymouth Family Division (Thomas A. Rappa, Jr.) granted a divorce on the grounds of irreconcilable differences, awarded Irene alimony in the amount of $1,250 per month, and evenly split all assets, including Ronald's inheritance. FINAL ORDER, *RonAppx*. at 7; FINAL DECREE (Apr. 7, 2011), *RonAppx*. at 1. Ronald appealed.

SUMMARY OF ARGUMENT

Irene Brownell first argues that, contrary to Ronald Brownell's claim, federal law does not bar the use of veterans' benefits to pay alimony because veterans' benefits are for the purpose of supporting one's family.

Irene then argues that the property split was equitable, and therefore within the court's discretion. She also notes that in making its rulings, the court is required to consider, rather than required to ignore as Ronald urges, the fact that Ronald squandered the marital estate. Finally, Irene argues that there is no error in requiring Ronald to purge his contempts from future earning.

ARGUMENT

I. Federal Law Allows Alimony to be Paid from Veterans' Benefits

New Hampshire law provides that "[i]n determining amount and sources of income, the court … may consider veterans' disability benefits … to the extent permitted by federal law." RSA 458:19, IV(c). It must be noted that insofar as the statute operates as a limitation, it only addresses "veterans' disability benefits," not social security disability benefits, and Ronald has not advanced any argument that he is unable to pay Irene alimony from that source.

Nonetheless, contrary to Ronald's position, federal law *does not* disallow alimony to be paid from veterans' disability benefits. The federal law he cites provides that the benefits "shall be exempt from taxation, shall be exempt from the claim of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever." 38 U.S.C § 5301(a)(1). *Porter v. Aetna Cas. & Sur. Co.*, 370 U.S. 159, 160 (1962) ("Since 1873 it has been the policy of the Congress to exempt veterans' benefits from creditor actions as well as from taxation.").

Here there has been no "attachment, levy, or seizure."

Quoting the legislative record, the United States Supreme Court has determined that the federal bar against "attachment, levy, or seizure":

> recognizes two purposes: to "avoid the possibility of the Veterans' Administration … being placed in the position of a collection agency" and to "prevent the deprivation and depletion of the means of subsistence of veterans dependent upon these benefits as the main source of their income." Neither purpose is constrained by allowing [a] state court … to hold appellant in contempt for failing to pay child support. The contempt proceeding did not turn the Administrator into a collection agency; the Administrator was not obliged to participate in the proceeding or to pay benefits directly to appellee. Nor did the exercise of state-court jurisdiction over appellant's disability benefits deprive appellant of his means of subsistence contrary to Congress' intent, for these benefits are not provided to support appellant alone.

> Veterans' disability benefits compensate for impaired earning capacity, and are intended to "provide reasonable and adequate compensation for disabled veterans and their families."… Moreover, … Congress clearly intended veterans' disability benefits to be used, in part, for the support of veterans' dependents.

Rose v. Rose, 481 U.S. 619, 630 (1987) (citations to legislative record omitted).

In *Rose*, the United States Supreme Court cited *Wissner v. Wissner*, 338 U.S. 655 (1950). *Rose* noted that in *Wissner* "the Court was careful to identify a possible exception for alimony and child support cases" on the grounds that "family support obligations are deeply rooted moral responsibilities" and not merely "amoral business relationship[s]" addressed by the bar on "attachment, levy, or seizure." *Rose*, 481 U.S. at 631-32. Reiterating this view was the *Rose* concurrence, which noted:

> In my view, the bar against "levy, attachment, or seizure" is simply a means of enforcing the exemption from the claims of creditors. The plain intent of [the language] is to protect the veteran *and* his family against the claims of *creditors*. It is not intended to protect the veteran against claims *by* his family.

Rose, 481 U.S. at 637 (*O'Connor*, J., concurring) (emphasis in original).

Lower courts have repeatedly implemented *Rose*, and an "overwhelming majority of courts" have held that veterans' disability payments may be considered as income in awarding alimony.[4] *In re Marriage of Morales*, 214 P.3d 81, 85 (Or.App. 2009). *See, e.g., Tully v. Tully*, 34 N.E. 79, 79 (Mass. 1893) ("Pension money is designed in part to enable the pensioner to support his wife and family, and the statute of the United States … should not be strained to enable him to avoid this duty."); *Repash v. Repash*, 528 A.2d 744, 745 (Vt. 1987) ("Veterans' disability benefits may be

[4]Veterans' disability benefits are also available to courts awarding child support. *See, e.g., Cohen v. Murphy*, 330 N.E.2d 473 (Mass. 1975); *Dillard v. Dillard*, 341 S.W.2d 668 (Tex.App. 1960); *Gaskins v. Security-First Nat. Bank*, 86 P.2d 681, 685 (Cal.App. 1939).

considered for alimony or spousal maintenance payments."); *Clauson v. Clauson*, 831 P.2d 1257, 1263 (Alaska 1992); *Murphy v. Murphy*, 787 S.W.2d 684, 685 (Ark. 1990); *Hannah v. Hannah*, 11 S.E.2d 779 (Ga. 1940); *Riley v. Riley*, 571 A.2d 1261, 1266 (Md.App. 1990); *Steiner v. Steiner*, 788 So. 2d 771 (Miss. 2001); *Ray v. Ray*, 383 N.W.2d 752 (Neb. 1986); *Wheeler v. Wheeler*, 94 A. 85, 85 (N.J. Ch. 1912); *Parker v. Parker*, 484 A.2d 168, 169 (Pa.Super 1984); *Urbaniak v. Urbaniak*, _ N.W.2d. __, 2011 WL 6276005 (S.D. decided Dec. 7, 2011); *Holmes v. Holmes*, 375 S.E.2d 387, 395 (Va.App. 1988); *Bailey v. Bailey*, 56 A. 1014 (Vt. 1904); *Weberg v. Weberg*, 463 N.W.2d 382, 384 (Wis.App. 1990)

The result may be different in some community property states, where the pay may be considered property to be split. *Ex parte Billeck*, 777 So. 2d 105, 108 (Ala. 2000); *Mansell v. Mansell*, 490 U.S. 581, 590 (1989) (California); *In re Marriage of Morales*, 214 P.3d 81, 85 (2009) ("*Mansell* limits a state court's ability to treat military retirement pay that a retiree has waived in order to receive veterans' disability benefits as *property* that can be divided on the dissolution of a marriage.") (emphasis in original).

Although it did not occur here, it is possible that a family court could not ensure payment of alimony by requiring *attachment* of veterans' disability benefits. *See e.g., Repash v. Repash*, 528 A.2d 744, 745 (Vt. 1987); *Mims v. Mims*, 442 So.2d 102, 104 (Ala.Civ.App.1983); *Berg v. Berg*, 232 S.W.2d 783 (Tex.App. 1950).

Accordingly, Ronald's reliance on federal law is misplaced, and the family court here properly awarded Irene alimony, even if it is to be paid from money received from Ronald's veterans benefits.

II. Property Award was Within Court's Discretion

Ronald claims that the family court went beyond its discretion by awarding Irene one-half of the amount of his inheritance, on the grounds that he has not yet received the remaining $15,000.

As Ronald notes in his brief, the family court found that he "will receive" more money, and that it will "possibly" be in the amount of $15,000. Thus, even if the *amount* of Ronald's total inheritance is in doubt, his entitlement to it is not.

If there is error in these matters, it is Ronald's fault. Irene asked, through interrogatories, about the nature of his interest in the inheritance, but Ronald provided no useful information. INTERROGATORIES, exh. C ¶¶ 7-8 (Sept. 9, 2010), *IreneAppx.* at, 23, 26. In an effort to get the information, Irene filed pleadings with the court. MOTION FOR CONDITIONAL DEFAULT (Sept. 14, 2010), *IreneAppx.* at 42. She specifically asked for the inheritance-trust documents, MOTION TO COMPEL ANSWERS TO DISCOVERY REQUESTS (Nov. 3, 2010), *IreneAppx.* at 44, but Ronald refused to provide them. The court ordered Ronald to provide an accounting of the "funds received from the family trust as well as any expenditures of those funds," ORDER, *IreneAppx.* at 52, but he never did and was held in contempt for his failure. Ronald also repeatedly misrepresented the status and amount of his inheritance, and was held in contempt for that as well.

Divorce courts are permitted to "draw reasonable and proper inferences from all the circumstances in the case, and especially from [a party's] silence" regarding their financial status. *DeMauro v. DeMauro*, 142 N.H. 879, 888-89 (1998). A party "cannot be heard to argue that the disposition was unequal when [he] has effectively prevented the trial court from being able to determine whether the disposition was in fact equal or not." *In re Jones*, 146 N.H. 119, 123 (2001)

Even if the court's calculations are incorrect or based on Ronald's incomplete information,

the percentage it awarded Irene is nonetheless within reason. The court found and it is not disputed that Ronald already received $79,000. The court also found he would get an additional $15,000, for a total of inheritance of $94,000. RULINGS ¶ 2, *RonAppx.* at 26; FINAL ORDER, *RonAppx.* at 7. The court equally halved that amount, and awarded Irene $47,000. RULINGS ¶ 8, *RonAppx.* at 26. Thus, even if the total Ronald receives is the lower $79,000 and not the greater $94,000, the $47,000 Irene was awarded will be roughly 59 percent of Ronald's inheritance.

This court has repeatedly noted that an equitable division does necessarily not mean an equal division. *In re Valence*, 147 N.H. 663, 666 (2002) ("the court may determine that an equal division would not be appropriate or equitable"); *Holliday v. Holliday*, 139 N.H. 213 (1994); *Hanson v. Hanson*, 121 N.H. 719, 720 (1981) ("A master is not obliged to divide property equally, but must apportion the estate according to the equities of the circumstances."). An unequal division can take into account the circumstances:

> [T]to support an unequal distribution of assets due to a spouse's conduct which resulted in a diminution in value of property, a trial court must consider factors such as: conduct which contributed to the growth in value of property; the nature of the conduct; the other spouse's knowledge of the conduct; whether the conduct diminished the total marital assets to such an extent that the other spouse is unable to maintain a similar lifestyle following divorce; and any other factor the court deems relevant.

In re Martel, 157 N.H. 53, 59 (2008). Here, Ronald did nothing to contribute to the value of his inheritance, but his conduct surely contributed to its diminution. His conduct was illegal, arguably immoral, and there is no evidence Irene was aware of it. Thus, to the extent the division is unequal, it is nonetheless equitable.

Finally, this Court has approved non-fault property divisions with disparities in total award percentages greater than that here, even though the behavior was less egregious. *In re Maynard*, 155

N.H. 630, 633 (2007) (affirming "[w]ith respect to property division, the court ordered that the significant assets of the marital estate … be split between them with sixty percent awarded to the wife and forty percent awarded to the husband."). Thus even if Irene was awarded a greater than one-half share, the court was not outside its discretion. Given that the inheritance money is all gone, moreover, the likelihood that she will get even a penny is very low.

Accordingly, the court acted within its discretion and this Court should leave untouched the overall award.

III. Court is Required to Consider Squandered Estate

Ronald argues that because he squandered the parties' property, it cannot be divided. He suggest that the court is required to ignore his squandering, rather than consider it.

This issue was not presented to the trial court. As such it is not preserved for review.

New Hampshire's property division statute defines property to be divided among divorcing spouses as "all tangible and intangible property and assets, real or personal, belonging to either or both parties, whether title to the property is held in the name of either or both parties." Ronald argues that "belonging to" means only property that is in actual possession.

Here the inheritance was part of the marital estate – in fact it was "the only marital asset." RULINGS ¶ 4, *RonAppx.* at 26. Although Ronald's dissipation rendered it intangible, it "belonged" to Irene also.

> The primary meaning of the words "to belong" is "to be the property of." The primary meaning, and also the common and ordinary meaning, of the word "belong," is to be the property of.

In re Ostrowski's Estate, 122 N.E.2d 596, 598 (Ill. App. 1954), quoting *In re Churchfields Will*, 165 N.Y.S. 1073, 1074 (Sur. 1917); *Tucker v. Tucker*, 139 N.E. 609, 612 (Ill. 1923) ("The primary

meaning of that word, as given by lexicographers, is 'to be the property of.' Such, also, is the common and ordinary meaning of the word."). The "common and ordinary usage of the phrase "to whom the documents belong" connotes some form of ownership of or property interest in the documents." *Phillips v. Executive Dir., Colorado Dept. of Corr*., 251 P.3d 1176, 1178 (Colo. App. 2010) *citing* BLACK'S LAW DICTIONARY 164 (8th ed.2004) (defining "to belong" as "[t]o be the property of a person or thing" and specifically cross-referencing "ownership") *and also citing* WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 201 (2002) (similarly defining "to belong").

Nothing about the word "belong" restricts its meaning, as Ronald urges, to only current possession.

Moreover, divorce courts are *required* to consider "a spouse's conduct which resulted in a diminution in value of property," and "whether the conduct diminished the total marital assets to such an extent that the other spouse is unable to maintain a similar lifestyle following divorce." *In re Martel*, 157 N.H. 53, 59 (2008).

Unfortunately the distribution of dissipated assets in divorce is not uncommon. Annotation, *Spouse's Dissipation of Marital Assets Prior to Divorce as Factor in Divorce Court's Determination of Property Division*, 41 A.L.R.4TH 416. Although a few courts have held that assets not in existence cannot be divided, *id*. § 4[b], the vast majority hold that they can. *Id.* § 4[a].

In *A.I.D. v. P.M.D*., 408 A.2d 940 (Del. 1979), for instance, the husband inherited a fortune from his mother. He then "maintained an extremely extravagant standard of living and expended all of the funds" while "the wife received very little benefit from these monies and was forced to resort, at times, to welfare to survive." The court held that the inheritance was marital property and that here was no error in requiring the husband to pay the wife out of future income.

Finally, allowing any other result would be perverse. As the Ohio Supreme Court described it:

> Indeed, inequity would likely result if this court were to blindly equate the termination of a marriage to the dissolution of a business partnership, and accept the position that if marital assets can disappear before the entry of the final divorce decree, the trial court loses all jurisdiction to divide and determine the equities therein since said assets and liabilities must be in existence at the moment of distribution. If a trial court was rendered powerless to recognize and determine property rights in assets that do not exist at the time of the final decree, one party, from the time of separation to the time of the final decree, could withdraw all funds and, unilaterally and with impunity, squander the fruits of the marital labor. Such a position would not only be antithetical to public policy, but also to prior case law.

Berish v. Berish, 432 N.E.2d 183, 185 (Ohio 1982).

Thus, courts are required to divide even squandered marital estates, and may order payment to the other spouse out of future income. Accordingly the court here committed no error and the decree should be affirmed.

IV. Ronald Can Pay out of Future Income

Ronald's final argument is a claim of impossibility. He says that because the estate is squandered and the money gone, he cannot purge himself of his contempt.

The issue is nowhere preserved. Irene filed two motions for contempt: one for violation of the temporary orders regarding an accounting of Ronald's receipt of and spending of his inheritance, and complaining about the alimony arrearages; and the second for having depleted marital assets after being ordered not to. MOTION FOR CONTEMPT - TEMPORARY ORDERS, *RonAppx.* at 15; MOTION FOR CONTEMPT OF ANTI-HYPOTHECATION ORDER, *RonAppx.* at 19. Ronald objected to both. To the first he merely denied having hid or falsified any financial information; to the second he merely denied violation of the anti-hypothecation order. OBJECTION TO MOTION FOR CONTEMPT AND CROSS MOTION FOR CONTEMPT (Feb. 10, 2011), *IreneAppx.* at 55; OBJECTION TO MOTION FOR CONTEMPT

OF ANTI-HYPOTHECATION ORDER (Feb 10, 2011), *IreneAppx.* at 57. Nowhere did he mention impossibility.

Moreover, Ronald has his benefits income from which he can pay. Even though he is disabled, Ronald admitted that he works from time to time, and therefore is capable of earning and actually does. *Feb2011* at 49 ("And the 500 was for work that I did.").

Ronald owes the money and should pay it. Accordingly, the court committed no error.

CONCLUSION

In accord with the forgoing, this Court should affirm the judgment below.

Respectfully submitted,

Irene Brownell
By his Attorney,

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Dated: February 3, 2012

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REQUEST FOR ORAL ARGUMENT AND CERTIFICATION

Counsel for Irene Brownell requests that Attorney Joshua L. Gordon be allowed 15 minutes for oral argument because the issues raised in this case are novel in this jurisdiction, and because this Court should make clear by published opinion that a litigant cannot escape obligations merely by dissipating the asset from which those obligations are to be paid.

I hereby certify that on February 3, 2012, copies of the foregoing will be forwarded to Gordon R. Blakeney, Jr. Esq.

Dated: February 3, 2012

Joshua L. Gordon, Esq.

APPENDIX