No. 124676

In the

Supreme Court of Illinois

LOUISE ZAMUDIA, f/k/a Louise Ochoa, *Plaintiff-Respondent,* vs. FRANK OCHOA, JR., *Defendant-Petitioner.*	)	From the Appellate Court of Illinois Third Judicial Circuit Appeal No. 1-16-0537 There on appeal from the Circuit Court of the Fourteenth Judicial Circuit, Whiteside County, No. 14 D 94 ST Honorable John L. Hauptman, Judge Presiding.

BRIEF AND ARGUMENT FOR RESPONDENT LOUISE ZAMUDIA, f/k/a/ LOUISE OCHOA

Allison B. Fagerman
Law Office of Allison B. Fagerman, P.C.
Attorney for Louise Zamudia, f/k/a Louise Ochoa
100 East Fifth Street
Rock Falls, Illinois 61071
(815) 632-3672
Email: fagermanlaw@hotmail.com

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POINTS AND AUTHORITIES

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STATEMENT OF FACTS

The facts of this case are relatively straightforward. Frank and Louise were married on January 25, 2000. (C. 2; C. 259). Prior to their marriage, Frank served in the military in active duty between 1974 to 1980. (C. 258-59). In 1989, Frank began his employment with the Illinois State Police. (C. 259). On August 1, 2011, and at the age of 57, Frank retired from the Illinois State Police with 320.0 months of service which included 263.5 months of actual service, 48 months of permissive service, 6 months of unused or unpaid sick time, and 2.5 months of sick or vacation time—with the military permissive service, and the sick and vacation time being purchased during the term of the marriage with marital funds. (C. 259). The parties agreed that Frank earned 138.0 months of regular service credit with the Illinois State Police during the marriage, in other words, for 11.5 years. (C. 258-60). During their marriage, Frank began to collect his pension. (C. 259-60).

The trial court's initial ruling concerning the distribution of Frank's enhancement, i.e, whether the enhancement was marital or not, was that because Frank acquired the military permissive service to increase the number of months of service in order to enhance the benefit he would receive from his state pension during the term of the marriage, those months were earned during the marriage and would be included in the numerator of the fraction to determine the marital share of the pension. (C. 261). In clarifying its ruling that the permissive service credits were marital assets, the Court found Frank's military service, while obtained before the marriage, was actually purchased to enhance Frank's state pension during the term of the marriage as opposed to after the marriage was resolved. (C. 261). The court also initially found that although

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Frank's enhanced state benefits were not solely derivative, and that the portion of the enhancement not derived from the right to receive the pension itself is not Frank's sole property, because the enhancement was created through the use of marital funds. (C. 261). In addition, the court found that the decision to purchase these permissive service credits was made during the term of the marriage "and conceivably, as Louise testified, was the culmination of financial planning discussed and decided by the parties in contemplation of their future." (C. 261).

In reconsidering its initial decision on the distribution of Frank's pension enhancement, the trial court found that it had failed to apply *In re Marriage of Ramsey*, 339 Ill.App.3d 752 (2003), in its April 22, 2016 Order. (C. 298). The Court ruled that while the enhancement was purchased during the term of the marriage, the enhancement purchased was not "purely derivative" of Frank's right to receive his state pension because what was purchased to enhance the pension sought to be collected was military time earned prior to the marriage. (C. 298). The court further found that marital funds in the amount of $9,626.40 were used to purchase the enhancement, and that Frank should therefore reimburse Louise for her marital share of these funds, i.e, $4,813.20. (C. 299).

In reversing the trial court's decision on the distribution of the enhancement of Frank's state pension, the court set forth in its decision on the appeal of this matter, in *In re Marriage of Louise Zamudio, f/k/a Louise Ochoa and Frank Ochoa, Jr.*, 2019 Ill.App.(3d) 160537, the circumstances in the *Ramsey opinion*, which was relied upon heavily by both Frank and Louise. *(In re Marriage of Ramsey, at par. 15-18).* The court found that *Ramsey* was instructive but not dispositive because *Ramsey* dealt with the valuation of a pension benefit of an unknown value when the enhancement was

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purchased eleven years after the parties' divorce. *(Id. at par. 17).* In contrast, the Third District found that Frank's enhancement was both purchased during the marriage and that he and Louise received 56 annuity payments during the marriage. *(Id. at par. 6 and 17).* The appellate court found that Frank's receipt of 56 annuity payments during the marriage was significant in that "as the *Ramsey* court observed, '[i[f the pension enhancements are a separate and distinct benefit that came into existence after the dissolution, they are not a part of the pension check to be divided." *(Id. at par. 18, citing In re Marriage of Ramsey, 339 Ill. App.3d at 757, citing Hannan v. Hannan, 761 So.2d 700, 707 (La. App.2000)).*

The Third District then discussed that if, as is the situation between Frank and Louise, the enhancement came into existence during the marriage, "the court must look to whether the enhancement is derivative of the right to receive the pension in the first place or if the enhancement is non-derivative in the sense that the enhanced portion is directly and solely attributable to non-marital contributions and not subject to division." *(Id. at par. 18, citing In re Marriage of Ramsey, 339 Ill.App.3d at 763).* Citing *Ramsey*, the appellate court noted that "the right to receive an early retirement incentive package necessarily depends upon the right to receive the pension", and that "[t]he right to pension enhancements can have no existence independent of the right to receive a pension." *(Id. at par. 18, citing In re Marriage of Ramsey, at 763).* The court found that to the extent that a pension benefit is a marital asset, any enhancement in value obtained during the marriage is also a marital asset subject to apportionment on an equitable basis. *(Id).*

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The appellate court rejected Frank's argument that his pension enhancement is solely derivative of his pre-marital military service since his right to receive the benefit in the first place was due to his participation in the pension program, which provided the enhancement to a member meeting the enhancement criteria. *(Id. at par. 19).* The court further rejected Frank's argument that his active duty military service was non-marital property, since it was not property in the first instance. *(Id. at par. 21).* The court found that Frank's pre-marital military service had no relationship to his pension benefit unless and until he exercised his option of purchasing the 48-months of permissive credits, which was purchased during the marriage with marital funds. *(Id. at par. 20).*

Frank requests relief from this court asking that 1) that the 48 months of permissive military service credit be determined to be non-marital and therefore not included in the marital portion of Frank's pension; and 2) that the monetary contribution made to purchase the permissive military credit creates a right to reimbursement to the marital estate. *(See Frank's brief, pages 13-14).*

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STATUTES INVOLVED

750 ILCS 5/503(a)(1)-(a)(8) (West 2019)

(a) For purposes of this Act, "marital property" means all property, including debts and other obligations, acquired by either spouse subsequent to the marriage, except the following, which is known as "non-martial property":

(1) property acquired by gift, legacy, or descent or property acquired in exchange for such property;

(2) property acquired in exchange for property acquired before the marriage;

(3) property acquired by a spouse after a judgment of legal separation;

(4) property excluded by valid agreement of the parties, including a premarital agreement or a postnuptial agreement;

(5) any judgment or property obtained by judgment awarded to a spouse from the other spouse except, however, when a spouse is required to sue the other spouse in order to obtain insurance coverage or otherwise recover from a third party and the recovery is directly related to amounts advanced by the marital estate, the judgment shall be considered marital property;

(6) property acquired before the marriage, except as it relates to retirement plans that may have both marital and non-marital characteristics;

(6.5) all property acquired by a spouse by the sole use of non-marital property as collateral for a loan that then is used to acquire property during the marriage; to the extent that the marital estate repays any portion of the loan, it shall be considered a contribution from the marital estate to the non-marital estate subject to reimbursement.

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(7) the increase in value of non-marital property, irrespective of whether the increase results from a contribution of marital property, non-marital property, the personal effort of a spouse, or otherwise, subject to the right of reimbursement provided in subsection (c) of this Section; and

(8) income from property acquired by a method listed in paragraphs (1) through (7) of this subsection if the income is not attributable to the personal effort of a spouse.

Property acquired prior to a marriage that would otherwise be non-marital property shall not be deemed to be marital property solely because the property was acquired in contemplation of marriage. The court shall make specific factual findings as to its classification of assets as marital or non-marital property, values, and other factual findings supporting its property award.

750 ILCS 5/503(b)(1) (West 2019)

For purposes of distribution of property, all property acquired by either spouse after the marriage and before a judgment of dissolution of marriage or declaration of invalidity of marriage is presumed marital property. This presumption includes non-marital property transferred into some form of co-ownership between the spouses, regardless of whether title is held individually or by the spouses in some form of co-ownership such as joint tenancy, tenancy in common, tenancy by the entirety, or community property. The presumption of marital property is overcome by showing through clear and convincing evidence that the property was acquired by a method listed in subsection (a) of this Section or was done for estate or tax planning purposes or for other reasons that establish that a transfer between spouses was not intended to be a gift.

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750 ILCS 5/503(c)(2)(a) (West 2019)

When one estate of property makes a contribution to another estate of property, the contributing estate shall be reimbursed from the estate receiving the contribution notwithstanding any transmutation. No such reimbursement shall be made with respect to a contribution that is not traceable by clear and convincing evidence or that was a gift. The court may provide for reimbursement out of the marital property to be divided or by imposing a lien against the non-marital property that received the contribution.

40 ILCS 5/14-107(b) (West 2019)

In relevant part, states:

A member upon or after attainment of age 55 having at least 25 years of creditable service (30 years if retirement if before January 2, 2001) may elect to receive the lower retirement annuity provided in paragraph (c) of Section 14-108 of this Code.

40 ILCS 103.13 (West 2019)

"Membership service": Service rendered while a member of the System for which credit is allowable under this Article, and for persons entering service on or after January 1, 1984, or after July 1, 1982, in the case of an emergency or temporary employee as defined in Section 8b.8 and 8b.9 of the Personnel Code, service rendered as an employee before becoming a member, if credit for such service is received pursuant to Section 14-104.5.

40 ILCS 5/14-103.15 (West 2019)

Defines creditable service as "[m]embership service and the total service certified in prior or military service certificates, if any"

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40 ILCS 5/14-104(j) (West 2019)

By paying the contributions otherwise required under this Section, plus an amount determined by the Board to be equal to the employer's normal cost of the benefit plus interest, but with all the interest calculated from the date the employee last became a member of the System or November 19, 1991, whichever is later, to the date of payment, an employee may establish service credit for a period of up to 4 years spent in active military service for which he does not qualify for credit under Section 14-105, provided that (1) he was not dishonorably discharged from such military service; and (2) the amount of service credit established by a member under this subsection (j), when added to the amount of military service granted to the member under subsection (b) of Section 14-105, shall not exceed 5 years. The change in the manner of calculating interest under this subjection (j) made by this amendatory Act of the 92nd General Assembly applies to credit purchased by an employee on or after its effective date and does not entitle any person to a refund of contribution or interest already paid. In compliance with Section 14-152.1 of this Act concerning new benefit increases, any new benefit increase as a result of the changes to this subsection (j) made by Public Act 95-483 is funded through the employee contributions provided for in this subsection (j). Any new benefit increase as a result of the changes made to this subsection (j) by the Public Act 95-483 is exempt from the provisions of subsection (d) of Section 14-152.1.

40 ILCS 5/14-106(a) (West 2019)

In relevant part: "memberships service credit" includes all service of a member since he last became a member with respect to which contributions are made shall count as membership service.

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40 ILCS 5/14-107(b) (West 2019)

In relevant part states: "A member upon or after attainment of age 55 having at least 25 years of creditable service (30 years if retirement if before January 1, 2001) may elect to receive the lower retirement annuity provided in paragraph (c) of Section 14-108 of this Code."

40 ILCS 5/14-108© (West 2019)

"For a member retiring after the age of 55 but before age 60 with at least 30 but less than 35 years of creditable service if retirement is before January 2, 2001, or with at least 25 but less than 30 years of creditable service if retirement is on or after January 1, 2001, or with at least 25 but less than 30 years of creditable service if retirement is on or after January 1, 2001, the retirement annuity shall be reduced by ½ of 1% for each month that the member's age is under 50 at the time of retirement."

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ARGUMENT

THE PENSION ENHANCEMENT IS MARITAL PROPERTY BECAUSE IT WAS PURCHASED WITH MARITAL FUNDS DURING THE MARRIAGE AND BECAUSE FRANK'S PREMARITAL MILITARY SERVICE IS NOT PROPERTY.

Louise is entitled to her marital share of Frank's state pension enhancement, and requests that this court affirm the appellate court's decision requiring that the 48-months of permissive service credit be included in the numerator of the fraction for the division of that asset because it is marital property.

A. Background:

As stated in the statement of facts herein, the circumstances surrounding the purchase of the permissive service credits are straightforward. Frank was married to Louise when he bought them; Frank used marital funds to purchase them; Frank and Louise, as the trial court found, discussed and executed the decision to enhance the pension in contemplation of their financial future while married; and Frank and Louise enjoyed the receipt of the pension as enhanced for 56-months while married (that's 4.67 years). (C. 2; C. 259-61). Frank was able to retire early as a result of the pension enhancement, while married to Louise, at 57 years of age. (C. 259). Frank served in active duty in the military in the 70's well before the parties entered into their matrimonial bonds. (C. 258-59). There are 138.0 months of regular service credit earned by Frank during the marriage, that is, there are 11.5 years of Frank's pension that are not in dispute and that Frank agrees with Louise that she is entitled to her marital share. (C. 258-60).

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B. Frank does not and cannot dispute that 11.5 years of regular service credit were earned while he was married to Louise during which the pension enhancement was purchased with marital funds:

The 138.0 months of regular service credit earned by Frank is a significant fact, because at the end of the day, it shows that that Louise is entitled to share in the benefit of Frank's pension in the first place, because 138.0 months or 11.5 years of it were earned while married. (C. 259-60). The pension itself then is the property of both Frank and Louise. As Louise argued previously, the pension enhancement is also marital property because it was purchased during the course of her marriage to Frank, with marital funds. (C. 261). As Frank argued "[h]ere, the sum of $9,626.40 was contributed during the marriage to establish eligibility for permissive service credit for Frank's years of active duty military service." *(See Frank's Brief, page 10).* In addition, Frank and Louise presumably in contemplation of their financial future together made the marital purchase of the pension enhancement. (C. 261). They enjoyed the benefit of that enhancement for 56-months while still married. (C, 261). Put it another way, the pension enhancement has every conceivable characteristic of marital property. Frank's argument to the contrary is without merit.

C. Frank's military service in the mid-70's is not property:

Frank argues that because his active duty military service was performed in the 70's, well before the parties married, Louise's entitlement to the enhancement is non-existent. *(See Frank's Brief, at pages 10-13).* Frank urges this court to adopt his stance that but for Frank's active duty military service, there would be no enhancement to enjoy. *(See Frank's Brief, at pages 10-13).* As stated in Louise's initial brief on appeal, Frank

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misses the point. Frank's prior military service is not property, even by the broadest sense of the term. *(See 750 ILCS 5/503(a) (West 2019) defining "marital property" as all property, including debts and other obligations,* ***acquired*** *by either spouse subsequent to the marriage, unless one of the eight listed exceptions apply,* ***emphasis added****).* Frank is incorrect when he argues that his military service was *acquired* or *earned* prior to his marrying Louise—that is because as those terms are used in the statute or in the *Hunt* opinion to which he cites—those terms are used in reference to property. *(750 ILCS 5/503(a)(West 2019); 750 ILCS 5/503(b)(1)(West 2019); see also In re Marriage of Hunt, 78 Ill.App.3d 653, 657 (1979), indicating that "[u]nder section 503, all "property" which is 'acquired' after marriage and before divorce is 'marital property' unless specifically excepted and marital property is to be divided between spouses 'without regard to marital misconduct in just proportions considering all relevant factors").* Frank served in the military prior to his marriage to Louise but did not earn or ***acquire*** any military property interest relative to his state retirement before he married her. Frank ***acquired*** his property right in his enhanced state benefit when he bought the permissive military credits while married to Louise. At that exact moment, Louise ***acquired*** her interest in the enhanced pension. In addition to that, Frank enjoyed the benefit of that purchase with his wife when he was able to retire early at the age of 57 and thereafter receive 56 annuity payments during their marriage. (C. 259). So, for 4.67 years after Frank retired, he and Louise enjoyed their joint decision to pay the monies required to purchase the permissive military service credits. Frank's argument now that Louise is not entitled to the enhanced benefit is without basis in the law or fact. Both Louise and the Third District are correct when they find that pension enhancement is marital property.

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D. The pension enhancement purchased with marital funds during the marriage is presumed to be marital property. The record is devoid of evidence which clearly and convincingly shows that the purchase of the pension enhancement is non-marital.

Notably missing from Frank's argument is any reference to 750 ILCS 5/503(b)(1) which, in relevant part, states "[f]or purposes of distribution of property, all property acquired by either spouse after the marriage and before a judgment of dissolution of marriage or declaration of invalidity of marriage is presumed marital property", and that "[t]he presumption of marital property is overcome by showing through clear and convincing evidence that the property was acquired by a method listed in subsection (a) of this Section or was done for estate or tax planning purposes or for other reasons that establish that a transfer between spouses was not intended to be a gift." Presumably, Frank does not point this statutory provision out because it does not help his case. The pension enhancement purchased during the course of the party's marriage with marital funds is ***presumed*** to be marital property. The fact that Frank served in the military prior to the party's marriage does not change that fact and does not make Frank's military service property. Frank's military service relates to the pension enhancement at issue here only because he and Louise paid the requisite monies to purchase the permissive service credits which made the enhancement marital property. *(See In re Marriage of Ramsey, 339 Ill.App.3d at 763-764 quoting In re Marriage of Hunt, 78 Ill.App.3d at 661 quoting DeRevere v. DeRevere, 5 Wash.App.741, 745-746 (1971), stating "[t]here is no distinction between a retirement plan financed through employee salary deduction[s] and one financed exclusively by the employer. If the employee is married, the plan is*

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financed and rights are being purchased either by community funds or community labor.'" (Emphases added). Frank's argument to the contrary fails.

E. Frank's military service was not acquired or earned prior to the marriage because those terms relate to property, and Frank's military service is not property.

Frank requests this court to: 1) determine that the 48-months of permissive military service credit be determined to be non-marital and therefor not included in the marital portion of Frank's pension; and 2) that the monetary contribution made to purchase the permissive military credit creates a right of reimbursement to the marital estate. *(See Frank's Brief, page 13).* Frank argues, in other words, that the purchase of the 48-months permissive military service credit flows ***entirely*** from his military service prior to the marriage, and not from his years of actual service nor requisite monetary contribution to purchase the permissive credits, i.e., that the permissive service credit is non-derivative of his right to receive the pension in the first place. Like John, who was the pension earner in the *Ramsey* case, and who argued to the 5th district that his pension should be held to be entirely non-derivative, Frank's argument based on similar logic must be rejected. *(In re Marriage of Ramsey, 339 Ill.App.3d at 763-64).* In *Ramsey*, John argued that his pension enhancement should be held to be entirely non-derivative because the requisite monetary contributions were paid for *after* the parties divorce. *(Id.)*. The 5th District rejected the argument because in order to accept John's argument, the court would have to completely ignore John's years of regular service--60% of which was earned during the party's marriage. At the same time, the 5th District in *Ramsey* also rejected Mary's argument that the pension enhancement should be held to be solely derivative based on her stance that the monetary contribution paid by John after their

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divorce was *de minimus*. *(Id.)*. The 5th District in refusing to accept Mary's stance indicated essentially that on an annual teacher's salary of $35,226.00 per year, a lump sum payment of $13,788.00 paid by John to secure the enhancement was not insubstantial. *(Id)*. The court found that the pension was therefore partially derivative, flowing both from John's years of service which were earned 60% during the marriage to Mary *as well as from* his monetary contribution after their divorce. *(Id. at 765-767)*. In the instant case, in order to accept Frank's argument that the pension enhancement is entirely non-derivative of his right to receive the pension in the first place, this court would have to ignore 11.5 years of regular service credit earned during the marriage as well as ignore the purchase of the pension enhancement by Frank and Louise with marital funds during the course of their marriage. Such request by Frank must be rejected, **as it is because of Frank's years of regular service credit and the purchase of the military service credits during the marriage with marital funds, that the enhancement came into fruition in the first place.** Again, Frank's prior military service having no property interest relative to the pension until and unless it was purchased per the terms set forth in the relevant pension statute. That property interest was acquired while Frank and Louise were married.

F. The statutory scheme which creates the right of an enhanced pension benefit does not support Frank's position.

Frank argues that the statute which creates the right of an enhanced pension benefit requires two components, one of which he says necessitates a conclusion that the enhancement is non-derivative. *(See Frank's Brief, pages 9-10)*. Frank further argues that because the statute allows for permissive military service credit up to four years, it is

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a condition precedent to purchasing the enhancement in the first instance. Frank is only partially correct. The statutory scheme allows an employee to purchase permissive service credit of up to four years for active duty service in the military. (See 40 ILCS 5/14-104(j) (West 2019)). However, the permissive military service credits must be purchased "by paying the contributions otherwise required under this Section, plus an amount determined by the Board to be equal to the employer's normal cost of the benefit plus interest, but with all the interest calculated from the date the employee last became a member of the System or November 19, 1991, whichever is later, to the date of payment." *(Id.)* Frank must have been an employee at the time he exercised his right to the enhancement option, have had some active duty military service (four years is not required, but rather such service credit shall not exceed four years in total), and he had to pay interest since the date he last became a member (1989 is when he started employment with the state police) or November 19, 1991 whichever was later. (C. 259). Frank's eligibility for the permissive military service credit, i.e., his active duty military service has no bearing without the statutory prerequisite plus his also paying the monetary contribution required. That monetary contribution for permissive military service credit was purchased by he and Louise during their marriage and while he was still employed with the state police, with the use of marital funds.

Furthermore, the relevant statutes, 40 ILCS 5/14-107(b) (West 2019) and 40 ILCS 5/14-108 (West 2019), describe the retirement benefit for persons over the age of 55 with at least 25 years of creditable service, with creditable service being defined as "membership service and the total service certified in prior or military service certificates, if any". These provisions set forth a minimum age and early retirement

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penalties. In any event, Frank could only retire once he attained the age of 55 (he retired at age 57), with at least 25 years of creditable service. (C. 259-261).

G. The TRS pension described in the Ramsey opinion and which was at issue in that case, does not change the marital character of the pension enhancement.

Frank's argument that because the TRS pension described in and at issue in *Ramsey* is "fundamentally different" than that the one at issue in the instant case, the pension enhancement is non-marital. *(See Frank's Brief, page 11).* Frank's argument fails. As stated previously, the pension at issue in this case requires a monetary contribution to the pension program in order to give meaning to Frank's prior active duty military service. *(See 40 ILCS 5/14-104(j) (West 2019)).* That monetary contribution to secure the pension enhancement was purchased with marital funds by Frank and Louise during their marriage. (C. 261). The enhancement is presumed to be marital property. *(See 750 ILCS 5/503(b)(1) (West 2019)).* The fact that the TRS system which Frank contrasts requires 20-years of regular service as a prerequisite along with the purchase of the enhancement does not render the 11.5 years of regular service credit that Frank earned while married to Louise meaningless. *(See In re Marriage of Ramsey, 339 Ill.App.3d at 763-764, with the 5th District rejecting John Ramsey's argument that his monetary contribution and not his years of service rendered his pension enhancement nonderivative).* The 11.5 years of regular service credit that Frank earned while married to Louise resulted in Louise having a marital property right in the pension unenhanced. Combined with the purchase of military service credits during the marriage with marital funds, the pension as enhanced is presumed to be marital property. Frank's argument that because the state pension at issue in the instant case ***does not require*** any length of

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regular service credit as a prerequisite to purchasing the permissive service credits is flawed.

Furthermore, Frank retired when he was 57 years of age, and in the year 2011. (C. 259). Frank started his employment with the state police in 1989. (C. 259). In other words, Frank bought four years of service, in part, to retire early, as he did not have 25 years of regular service credit under his belt. (See C. 259, wherein it is stated that Frank retired with 263.5 months or 21.95 years of actual service credit). The relevant statutes, 40 ILCS 5/14-107(b) (West 2019) and 40 ILCS 5/14-108 (West 2019), describe the retirement benefit for persons over the age of 55 with at least 25 years of creditable service, with creditable service being defined as "membership service and the total service certified in prior or military service certificates, if any". Frank's retirement annuity does not exist in the vaccuum of 40 ILCS 5/14-104(j) (West 2019), as he urges and argues to this court. Frank's retirement annuity involves these different provisions as well. In other words, it is an interplay of these provisions which together describe Frank's pension and the enhancement incentive—and Frank was not going to retire without having at least 25 years of creditable service.

It is disingenuous then for Frank to argue that because he could have made the purchase of the permissive credits at the outset of his employment, the enhanced pension is nonderivative and non-marital. Frank did not make the purchase before he married Louise-- he made it while married to her. In addition, Frank's prior military service is not property. The pension enhancement only came into existence upon its purchase and that occurred while he was married to Louise. Frank is incorrect to suggest that an enhancement incentive must be non-marital because it does not require any length of

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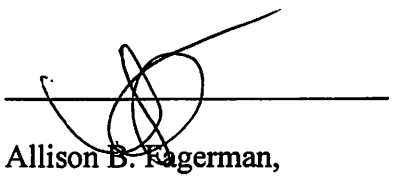
regular service on an employee's part. Frank is throwing a red herring to the court, and Louise urges the court not to catch it. These circumstances do not change the character of the enhanced pension-- that character being marital property.

In conclusion, and for the foregoing reasons, Louise asks this court to affirm the judgment of the 3rd District, and find that the purchase of the pension enhancement with marital funds during the course of the marriage is in fact marital property, and therefore is to be included in the numerator of the fraction to determine her marital share of the pension.

Respectfully submitted,



Allison B. Fagerman,

Attorney for Louise Zamudia

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CERTIFICATE OF COMPLIANCE WITH SUPREME COURT RULE 341(c)

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 19 pages.

Allison B. Fagerman

One of the Attorneys for
Plaintiff-Respondent, in Case No.
124676

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No. 124676

In the

Supreme Court of Illinois

LOUISE ZAMUDIA f/k/a Louise Ochoa,

Plaintiff-Respondent,

v.

FRANK OCHOA, JR.,

Defendant-Petitioner.

NOTICE OF FILING

TO:

PAUL A. OSBORN
WARD, MURRAY, PACE & JOHNSON, P.C.
Attorneys for Defendant-Petitioner
202 E. Fifth Street
P.O. Box 400
Sterling, IL 61081-0400
osborn@wmpj.com

Louis F. Pignatelli
Pignatelli & Associates, P.C.
Attorney for Plaintiff-Respondent
102 E. Route 30
Rock Falls, IL 61071
lpigantelli@nilawyers.com

PLEASE TAKE NOTICE that on July 31, 2019, Plaintiff-Respondent, LOUISE ZAMUDIA f/k/a Louise Ochoa, by and through one of her attorneys, caused to be filed with the Supreme Court of Illinois, a *Brief and Argument for Respondent Louise Zamudia, f/k/a Louise Ochoa*, a copy of which is hereby served upon you.

Respectfully submitted,

By: _____
Allison B. Fagerman,
Attorney for Plaintiff-Respondent

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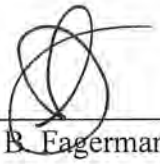
PROOF OF SERVICE

The undersigned, being first duly sworn, deposes and states that on July 31, 2019, there was electronically filed and served upon the Clerk of the above court the foregoing *Notice of Filing* and *Brief and Argument for Respondent Louise Zamudia, f/k/a Louise Ochoa*. Service of the Notice of Filing and Brief and Argument for Respondent Louise Zamudia, f/k/a Louise Ochoa, will be accomplished by email as well as electronically through the filing manager, Odyssey EfileIL, to the following counsel of record:

Paul A. Osborn
Ward, Murray, Pace & Johnson, P.C.
Attorneys for Defendant-etitioner
202 E. Fifth Street
P.O. Box 400
Sterling, IL 61081-0400
osborn@wmpj.com

Louis F. Pignatelli
Pignatelli & Associates, P.C.
Attorney for Plaintiff-Respondent
102 E. Route 30
Rock Falls, IL 61071
lpignatelli@nilawyers.com

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct.



Allison B. Fagerman

Allison B. Fagerman
PIGNATELLI & ASSOCIATES, P.C.
Attorneys for Plaintiff-Respondent
102 East Route 30
Rock Falls, Illinois 61071
Telephone: (815) 626-0500
Facsimile: (815) 626-0526
afagerman@nilawyers.com

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