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NH SUPREME COURT ISSUES LANDMARK DECISION ON PROPERTY DIVISION

CONCORD, NH — On May 29, the New Hampshire Supreme Court issued their opinion [In the Matter of LeGault & LeGault](#), changing the manner in which pension benefits have been addressed in New Hampshire divorces for 40 years.

Attorneys Tracey Goyette Cote and Stephanie Annunziata from Shaheen & Gordon, P.A. argued on behalf of Lisa LeGault in her appeal of a final divorce decree that failed to include the premarital portion of her spouse's pension plan within the pool of marital assets.

The trial court's decision was based upon the 1985 Supreme Court decision in [Hodgins v. Hodgins](#), which established a formula for dividing pension benefits and stated that "only those pension benefits which are attributable to the retiree's employment during the marriage are subject to distribution". The "Hodgins Formula," as it became known, has been applied by attorneys and courts in this state to exclude pension benefits earned prior to marriage from the marital estate.

As argued by Lisa LeGault's attorneys though, the routine application of the Hodgins Formula was inconsistent with RSA 458:16-a, which clearly defined marital property for the first time and expressly includes all assets owned by either party at the time of divorce, regardless of whether the asset was acquired prior to the marriage.

The Supreme Court agreed, and in the [LeGault](#) decision they clarify limitations to the [Hodgins](#) formula in cases when pension benefits were earned prior to marriage.

Upon receiving the decision, Attorney Cote gave this statement:

"Three years ago, a divorce client first asked, 'why does my husband get half of my premarital retirement account, but I don't get half of his premarital pension?' I talked with my colleague, Stephanie Annunziata, and instead of the usual answer 'because that's what the law says', we began to dig deeper. We reviewed the case law—the Hodgins case—and started to believe that it had not been interpreted correctly for the last 40 years—a bold proposition, but one that never received a satisfactory rebuttal until now.

Everything about this, from our decision to take the client's question seriously, to the curious and persistent legal research and analysis, to the teamwork and support involved in this multi-year and multi-client issue, makes me proud of the work we do."

Read the full Supreme Court opinion [here](#).

Watch the oral arguments [here](#).

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