

## COA Opinion: Trial courts may not treat social security benefits as a marital asset when dividing up a marital estate.

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In *Biondo v Biondo*, the Court of Appeals determined that § 407(a) of the Social Security Act, preempts state law regarding the division of marital assets in a consent divorce judgment. Mr. and Mrs. Biondo entered a consent judgment of divorce after 40 years of marriage. The consent judgment equally divided the marital estate and required the parties to “equalize their social security benefits.” When Mrs. Biondo sought enforcement of the social security term, Mr. Biondo asserted that federal law preempted its enforcement. The trial court declined to strike the social security term. The Court of Appeals reversed, determining that 42 USC § 407(a)’s prohibition on transfer, assignment, “execution, levy, attachment, garnishment” or application of “other legal process” preempted the social security term. The Court remanded the case, stating that the trial court may modify the judgment’s property settlement provisions because the inclusion of the social security term was a mutual mistake.

In reversing the trial court, the Court of Appeals relied on *Hisquierdo v Hisquierdo*, 439 US 572, 581; 99 S Ct 802; 59 L Ed 2d 1 (1979), which addressed the railroad retirement act’s (RRA) ( 45 USC 231 *et seq*) affect on property division in a California divorce judgment. In *Hisquierdo*, the United States Supreme Court reversed the California Supreme Court, holding that 45 USC 231m preempted California’s community property law. The United States Supreme Court reasoned that RRA’s “critical terms” prohibiting assignment, garnishment, attachment or subjection to legal process “prevent[] the vagaries of state law from disrupting the national scheme, and guarantee[] a national uniformity that enhances the effectiveness of congressional policy.” *Id.* at 582, 584. In applying the *Hisquierdo* rationale, the Court of Appeals noted that the RRA provision at issue in *Hisquierdo* is strikingly similar to the Social Security Act provision and that in *Hisquierdo* the Supreme Court specifically analogized the RRA to the Social Security Act.

While the Court of Appeals concluded that social security benefits may not be treated as a marital asset, it did indicate that social security benefits may be taken into account when addressing the *Sparks* factors for dividing up marital property.