Spousal Support & Vocational Examinations: Gavron Warnings, Richmond Orders, and the Morrison Rule*

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Gavron Warnings

The Gavron case (1988) 203 Cal.App.3d 705, 711-712, involved a modification of a spousal support order after a 25-year marriage. Although the trial court granted the requested modification, the appellate court reversed explaining that the supported spouse needed to be affirmatively advised of the need to take steps to become self-supporting or possibly face termination of spousal support. This admonishment became known as a "Gavron warning," notifying recipients of spousal support that they are expected to work towards becoming self-supporting. This Gavron warning was codified by Family Code Section 4330. In 1999, the Gavron warning became discretionary.

The Gavron warning states that "each party shall make reasonable good faith efforts to become self-supporting." The Gavron warning may lead to a stipulation or a motion that supported spouse undergo a vocational examination to determine current and future employability and earning capacity, as well as the duration and costs of education and training needed.

The intent of the warning is to put the supported spouse on notice that there is an expectation that they will work towards becoming self-sufficient. The burden then shifts to supported spouse to give judges good reasons for continuing spousal support.

If supported parties want to extend support, they need to demonstrate good faith and best efforts to become self-supporting and to maximize their earning capacity.

Further, the supported spouse must have been put on notice of that expectation to become self-sufficient under a Richmond order.

Richmond Orders (Contingent Events and Step-Downs)

Gavron, Richmond, and Schmir (11/16/05, Div7, B175397) present options for the termination of spousal support after a long-term marriage. A Richmond order (Marriage of Richmond (1980) 105 Cal.App.3d 352, 356) can provide step-downs, end the supporting spouse's obligation to make support payments, and terminate the trial court's jurisdiction to award spousal support once the termination date has passed. Step-down orders can be based on evidence from a vocational examination report that documents the supported spouse's current earning capacity and future earning potential and the length of time needed for training or education as well as for job search. Unlike an open-ended order on spousal support jurisdiction, a Richmond order encourages a supported spouse to seek suitable education, training, and employment. In essence, a Richmond order is an order terminating spousal support jurisdiction on a specified date unless, before the specified date, the supported spouse shows the court good cause to modify the amount and/or duration of support.

A Richmond order expects that with reasonable diligence, the supported party will be self-supporting by the date set for support payments to end (Marriage of Berland (1989) 215 Cal.App.3d 1257, 1260). The Richmond order places the burden on the supported spouse to show why the expectations that the trial judge had in mind when making the order were not realized (Marriage of Prietsch & Calhoun (1987) 190 Cal.App.3d 645, 665-666). Typically, the petition to extend

support must demonstrate that certain assumptions made by the trial judge never materialized, and these "unrealized expectations" were not the recipient's or supported spouse's fault. Thus, Richmond orders make the supported spouse responsible for providing evidence of why spousal support should continue.

A party who wants to modify or extend support needs to show that there has been a material change in circumstances. Examples of "change of circumstances" include retirement at over age 65, the death of the supporting spouse or remarriage of the supported spouse among others.

The effect of a Richmond order is to put each spouse on notice that the supported spouse has a specific, reasonable time period based on the circumstances to become self-supporting. Often, information contained in a vocational examination report or from testimony of a vocational expert can provide information about the reasonable time period it will take for the supported spouse to make a meaningful contribution to his or her own support.

Further, a Richmond order accommodates the public policy goal of self-support or that both spouses get on with their lives, free from obligations to each other. Because of this practical policy, courts may consider and grant a Richmond order with step-down orders, or a contingent future spousal support jurisdiction termination order.

Richmond orders are more common when a supported spouse is enrolled in an educational program or is being trained for a career as recommended and documented in a vocational examination report. In some cases, for good reason, supported spouses fail to complete anticipated education or training or are unable to find adequate employment despite significant, diligent efforts to find work. If this occurs, supported spouses may, prior to the termination date, file a motion to

modify the amount and/or duration of spousal support awarded in the original order.

A Recent Case

However, in the recent case of Marriage of Khera & Sameer (2012) (filed from the 6th Dist. on June 19, 2012), the wife in this seventeen year marriage that ended in 2003 filed a request to extend and modify spousal support in 2010. In Khera & Sameer, there were annual step-down orders that automatically decreased the spousal support amount of $2,650 at specified intervals from June 1, 2007 until June 1, 2010 when support would be reduced to zero. Wife in Khera & Sameer argued that changed circumstances can be grounded on a showing of "unrealized expectations" if she showed she made reasonable efforts to become self-supporting (Marriage of Beust (1994) 23 Cal.App.4th 29). Wife blamed her failure to become self supporting on her declining health and the depressed economy. Wife, a social worker, explained that despite full-time enrollment in a doctoral program in clinical psychology, she had not yet met all of the necessary requirements to graduate. It should be noted that the judgment implied that Wife would enroll in a Master's degree in Social Work (MSW). The trial court denied Wife's motion saying there was no change in circumstances. In this case, the Court of Appeal affirmed the trial court's decision and decided that wife did not provide evidence of her efforts to obtain employment or become self-supporting as a social worker and instead enrolled in a Ph.D. program in clinical psychology.

The Morrison Rule

Another major principal in spousal support is the Morrison rule. In the context of lengthy marriages, a court's failure to expressly reserve jurisdiction to extend

future support is an appealable abuse of discretion, unless the record clearly indicates that the supported spouse will be able to adequately meet his or her financial needs at the date set for expiration of the order (Marriage of Morrison (1978) 20 Cal. 3d 437, 453). This rule, codified in Family Law C. §4336(a), states, "Except upon written agreement of the parties to the contrary or a court order terminating spousal support, the court retains jurisdiction indefinitely in a proceeding for dissolution of marriage or for legal separation of the parties where the marriage is of long duration."

The court's statutory duty under §4336(a) to retain spousal support jurisdiction for "lengthy" marriages does not eliminate the court's discretion to create a date certain for termination of spousal support at trial or in a post-judgment OSC hearing. However, based on a showing of changed circumstances of either of the parties (e.g. the supported spouse is now fully self-supporting) and based on Family Law C. §4320 spousal support determination factors, many of which are addressed at a vocational examination and documented in a vocational examination report, spousal support can either be extended or terminated.

The difference between an order that reduces support to zero or terminates support and one that terminates jurisdiction is significant (Marriage of Schaffer, (1999) 69 Cal. App.4th 801). Absent a stipulation to the contrary, the court retains jurisdiction over spousal support in long-term marriages, but an order terminating jurisdiction prevents the court from dealing with spousal support issues after the termination date.

A Recent Case

A recent appellate case, Marriage of Jenkins, an unpublished opinion of District 5 filed January 20, 2012, is a good example of the need for Gavron warnings and

Richmond orders. In this case, the judgment of dissolution terminating a 21-year marriage was entered in 1994; in 2009 husband filed an OSC to modify spousal support. At the time of the post dissolution hearing, wife was working three days per week, for a total of 31 hours as a nanny and was paid $10 per hour. The trial court did find a change in circumstances in that wife could work an additional eight hours per week as a nanny, and they lowered her spousal support. However, the trial court found that wife's earning capacity was not sufficient to maintain the standard of living during the marriage, and husband had the ability to continue paying spousal support. The trial court did not determine a termination date using a Richmond order; there was nothing in the judgment or settlement agreement that called for wife to become self-supporting, and she was never given a Gavron warning. In fact, the judgment specifically provided that spousal support would continue until wife's remarriage or death of one of the parties. The appellate court affirmed the trial court's decisions.

Conclusions

Gavron, Richmond, Schmir, and Morrison should all be taken into account in spousal support awards. Although spousal support cannot be abruptly terminated (Schmir), especially in a long-term marriage, the appellate court indicated that public policy regarding spousal support following a long-term marriage has progressed from one which "entitled some women to life-long alimony as a condition of the marital contract of support to one that entitles either spouse to post-dissolution support for only so long as is necessary to become self-supporting" (Marriage of Pendleton & Fireman (2000) 24, Cal.4th 39, 53). However, in Schmir the court indicated that along with this change in attitude about spousal support came the judicial recognition that before spousal support can be terminated or reduced, the supported spouse must be given fair notice of the

expectation of some self-sufficiency and a reasonable opportunity to achieve such goals.

The vocational examination in Family Law can strengthen the Gavron warning in providing fair notice of the expectation for a supported spouse to work towards becoming self-sufficient. Further, the vocational examination report documents the ability of and employment opportunities for a supported spouse. A vocational examination report typically provides a roadmap and resources for supported spouses that include the duration and costs of education and training options to enhance current and future employability and earning capacity.

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