

SUPREME COURT OF CALIFORNIA

Lazar v. Superior Court

16 Cal. 2d 617 (1940) · No. S.F. No. 16387 · Decided November 26, 1940

SUMMARY

The California Supreme Court reviewed a contempt order against a husband for failing to make monthly payments required by a divorce decree. The court held that the payments, although originating in a property settlement agreement, were incorporated into the decree and intended as support, making them enforceable by contempt. It affirmed the contempt order.

CASE DETAILS

COURT	Supreme Court of California
WRITING FOR THE COURT	Carter; Shenk; Curtis; Edmonds; Gibson
JURISDICTION	California
DECIDED	November 26, 1940
DOCKET	S.F. No. 16387
DISPOSITION	affirmed
PROCEDURAL POSTURE	Original proceeding in certiorari to review an order of the Superior Court adjudging petitioner in contempt for refusing to make payments under a divorce decree.
STANDARD OF REVIEW	Whether the superior court exceeded its jurisdiction in enforcing the payment provision by contempt.
PRECEDENTIAL VALUE	Published
PARTIES	Siegbert Lazar v. Superior Court of the City and County of San Francisco

TOPICS

- divorce
- alimony
- contempt
- family law
- civil procedure

PRACTICE AREAS

- Family Law
- Civil Procedure

QUESTIONS PRESENTED

1. Whether the provision for payment of \$130 per month to the former wife is merely a part of an agreement between the parties under which only the usual contract remedies are available, or whether such provision is a part of the court's decree and, as such, an order for payment of support, maintenance or alimony which may be enforced by contempt proceedings.

HOLDINGS

1. A monthly payment provision in a property settlement agreement, when incorporated into a divorce decree, becomes an order of the court for support, maintenance, or alimony and may be enforced by contempt proceedings, even if the decree also states the wife is not entitled to maintenance, support, or alimony, because the entire decree must be construed as a whole.

KEY QUOTATIONS

“Wife shall have and Husband agrees to pay her as part of this property settlement, the sum of One Hundred and Thirty Dollars (\$130.00) on or before Dec. 31, 1936, and a like sum on or before the last day of each calendar month thereafter during the lifetime of Wife or until the remarriage of Wife, if she and Husband are divorced and she remarries.” (619)

“Each party hereto waives and relinquishes all rights, claims and demands of every nature and description which he or she has against the other for maintenance, support and alimony, and except as hereinbefore expressly provided, Wife hereby waives any and all claims and demands which she has or may have against Husband for counsel fees.” (621)

“It is agreed between the parties hereto that the Court, at any hearing, at any time, of the matters dealt with in this agreement shall take cognizance thereof, and shall, in any judgment or decree that may be rendered by said Court, incorporate therein the essential provisions of this agreement. Further, neither party hereto shall have the right to make application to the Court for the modification hereafter of any judgment or decree that may be made by the proper Court for the establishment of the property rights of the parties hereto as hereinafter set forth.” (621)

“It is further ordered, adjudged and decreed that that certain agreement in writing, dated Nov. 30, 1936, by and between the plaintiff and defendant be and it is hereby approved and made a part of this Decree, and the property rights of the parties as set forth in said agreement be, and they are hereby approved, and the community property of said parties is hereby distributed to them in accordance with the terms of said agreement, to wit:” (622)

“In addition, plaintiff shall have, and defendant shall pay to her, the sum of One Hundred and Thirty Dollars (\$130.00) on or before December 31, 1936, and a like sum on or before the last day of each calendar month thereafter during the lifetime of plaintiff, or until the remarriage of plaintiff; said monthly installments of One Hundred Thirty Dollars (\$130.00) shall be deposited by defendant to plaintiff's account in the San Francisco Bank--526 California Street, San Francisco, California.” (622)

FACTUAL BACKGROUND

On November 30, 1936, petitioner and his wife, then living apart, entered into a property settlement agreement intended to completely settle their property rights. The agreement provided that the husband would pay the wife

\$130 per month during her lifetime or until her remarriage. The agreement was incorporated into an interlocutory decree of divorce, which also stated that the wife was not entitled to maintenance, support, or alimony. After the final decree, the husband failed to make the monthly payments and was held in contempt.

PROCEDURAL HISTORY

Petitioner and his wife entered into a property settlement agreement providing for monthly payments. The agreement was incorporated into an interlocutory divorce decree. After the final decree, petitioner failed to make payments and was cited for contempt. The superior court ordered him to pay, he refused, and was adjudged in contempt. Petitioner sought certiorari.

DISPOSITION

affirmed

CASES CITED

- Huntsberger v. Huntsberger, 2 Cal. 2d 655
- Moog v. Moog, 203 Cal. 406
- Smith v. Smith, 94 Cal. App. 35
- Baxter v. Baxter, 3 Cal. App. 2d 676
- Schnerr v. Schnerr, 128 Cal. App. 363
- Tripp v. Superior Court, 61 Cal. App. 64
- Ex parte Weiler, 106 Cal. App. 485
- Miller v. Superior Court, 9 Cal. 2d 733
- Ex parte Ambrose, 72 Cal. 398
- Watson v. Lawson, 166 Cal. 235
- Boyer v. Crichton, 100 Cal. App. 24
- Rinaldo v. Board of Medical Examiners, 123 Cal. App. 712
- Security Trust & Sav. Bank v. Southern Pac. R. R. Co., 6 Cal. App. 2d 585