

Second Supplement to Memorandum 2004-51

Enforcement of Money Judgment Under Family Code: Comments of Richard Wilcox

The Commission's current examination of the rules governing enforcement of judgments under the Family Code was prompted by a letter from Richard Wilcox. That letter was attached to Memorandum 2004-34 (available at www.clrc.ca.gov). Mr. Wilcox is the appellant in a case involving the interpretation of Family Code Section 291 (relating to enforcement of Family Code judgments). That appeal has now been decided. See *Wilcox v. Wilcox*, 21 Cal. Rptr. 3d 315 (2004).

This memorandum presents a letter from Mr. Wilcox and briefly discusses the relevance of the appeal to this study.

Background

As discussed in Memorandum 2004-51 (available at www.clrc.ca.gov), the Enforcement of Judgments Law provides a 10-year period for the enforcement of a money judgment or judgment for possession or sale of property. Code Civ. Proc. § 683.020. That period can be extended if the judgment is renewed before it expires. See generally Code Civ. Proc. §§ 683.110-683.220. The judgment enforcement period and renewal procedure do not apply to a Family Code judgment except as provided by the Family Code itself. Code Civ. Proc. § 683.310. The Family Code applies the judgment enforcement period and renewal procedure to a judgment for possession or sale of property. See Fam. Code § 291. However, the Family Code does not expressly apply the judgment enforcement period and renewal procedure to a money judgment.

This presents a potential inconsistency in the treatment of judgments arising from marital property division. For example, a judgment in marital property division that awards the family home to one spouse would be subject to the judgment enforcement period. An order to make an equalizing payment of money would not.

That is essentially the dispute underlying Mr. Wilcox's appeal. His marriage was dissolved in 1991. As part of the marital property division, he was ordered

to pay his former spouse approximately \$250,000. He did not make the payment and in 2003 his former spouse sought to renew the judgment. The court renewed the judgment and added accrued interest, bringing the amount owed on the judgment to approximately \$580,000.

Mr. Wilcox sought to vacate the renewal, on the grounds that the 10-year period for enforcement or renewal of the judgment had expired, rendering the judgment unenforceable. He argued that the judgment was governed by Family Code Section 291, because an order to pay money is an award of “property.”

The court was unconvinced: “The plain language of Family Code section 291 leaves no doubt that the Legislature did not intend to subject Family Code money judgments to the 10-year time limit for renewal under section 683.130.” *Wilcox* at 320. This confirms the existence of the problem discussed in Memorandum 2004-51 — a money judgment arising from marital property division is subject to different enforcement rules than apply to a judgment for possession or sale of property.

Renewal of Judgment that is Exempt from Enforcement Period

Wilcox also illustrates another problem described in Memorandum 2004-51: the need for a procedure to “renew” a Family Code judgment, even if that judgment is not subject to a fixed enforcement period. Besides extending the enforcement period before it expires, renewal can be used to update the amount owing on a judgment to include accrued interest and installment payments that have come due. In *Wilcox*, the trial court renewed the money judgment to update the amount owed, but it isn’t clear what authority the court had to do so. Recall that Code of Civil Procedure Section 683.310 exempts a Family Code money judgment from both the judgment enforcement period *and* the judgment renewal procedure.

The law should provide a procedure to update the amount owed on a judgment, even if the judgment is not subject to a fixed enforcement period.

Narrow Approach

In his most recent letter, Mr. Wilcox urges the Commission to take the “narrow approach” described in Memorandum 2004-51. That is, the Commission should only address the law governing money judgments arising from marital property division. The rules governing enforcement of other Family Code money judgments would be left unchanged:

Whereas your comprehensive approach might be good in theory for some future cases that may arise, your narrow approach would be timely in addressing existing litigation. Your narrow approach would also take less time and effort on the part of the Commission, solicit far less comments from other sources, if any at all, and correct an oversight created when the Commission made its recommendations to the Legislature in 1999 and 2000 when the Family Code was revised.

Exhibit p. 2.

Declaratory of Existing Law?

The Commission may eventually conclude that a Family Code money judgment arising from marital property division should be subject to the judgment enforcement period and renewal procedure. If so, Mr. Wilcox suggests that the Commission's recommendation describe that change as being declaratory of existing law. See Exhibit p. 2.

Mr. Wilcox's suggestion is based on his belief that "it was not the intention of the Commission or the Legislature to create this inconsistency in the code when the Family Code was revised in 2000...." *Id.*

Unfortunately, things are not so clear-cut. When the Commission recommended amendment of Family Code Section 291 it was in response to a specific problem involving judgments for possession or sale of property. That was the focus of the Commission's analysis and recommendation. The Commission concluded that the special policy favoring liberalized enforcement of support judgments did not apply to a judgment for possession or sale of property. Therefore, a judgment for possession or sale of property under the Family Code should be subject to the same enforcement rules that govern other similar judgments. The Commission might have reached a similar conclusion with respect to a money judgment arising from marital property division, *if that issue had been specifically considered*. From the record, it appears that it was not.

The staff does not believe that it would be accurate to say that the Commission intended to recommend that the 10-year judgment enforcement period and renewal procedure apply to a money judgment arising from marital property division. Nor would it be accurate to claim that such a rule is declaratory of existing law. This is especially true in light of unanswered questions about whether the 2000 amendment of Family Code Section 291 was intended to apply retrospectively and, if so, whether that application would be

constitutional in the absence of a reasonable grace period. See Memorandum 2004-51 at 14.

The staff recommends against characterizing any change we might recommend as being declaratory of existing law. The fact that we might have recommended a particular result, if we had thought to do so, does not affect what was actually enacted into law.

Respectfully submitted,

Brian Hebert
Assistant Executive Secretary

Exhibit

EMAIL FROM RICHARD WILCOX (12/1/04)

Mr. Hebert:

I sincerely appreciate the fact that the Commission is looking into the confusing language and the apparent gap in the law governing the enforcement of judgments under the Family Code Section 291.

When the Family Code was revised in 2000 it was obviously the clear intention of the Commission and the Legislature to change the Family Code and define the difference between how judgments for marital property divisions and judgments for support should be treated. Section 291 was revised and included in the Family Code solely to define how judgments involving the division of marital property should be handled.

Unfortunately the Commission and Legislature in the wording of this section did not take into consideration that when the court makes a division in marital property that this property might be awarded as a “money judgment” and not a judgment for sale of property. With, I am sure, the unintentional wording that was placed in Section 291 (“for the possession or sale of property”) an inconsistency in the code was created. I am sure that it was not the intent of the Commission or Legislature to create two separate rules governing a judgment for the division of marital property, however this is exactly what they have done.

The problem that has arisen in this case is that the trial court and Court of Appeals have both read the exact and literal wording in Section 291 “for possession or sale of property” to not include “money” as property, thus a “money” judgment for the division of marital property does not fall under Section 291 in their eyes. They are basically saying that a community property equalization judgment never expires, because it is not a judgment for the “possession or sale of property” under Family Code Section 291. This certainly was not the result that the Commission and Legislature intended when Section 291 was revised in 2000.

It would be my suggestion, and hope, that the Commission take your narrow approach to the specific problem of the inconsistency in the enforcement rules governing these types of judgments, and as you suggested add wording such as

“money judgments that are entered as part of a marital property division” into Section 291.

It would also be my hope that since it was not the intention of the Commission or the Legislature to create this inconsistency in the code when the Family Code was revised in 2000 that if this inconsistency were to be corrected and Section 291 amended, that language be included in your recommendations to the Legislature that this change was intended to be only declarative of the existing law and not a change in the law. I would not suggest that any retroactive clause be included if and when Section 291 is amended.

If the Commission were to decide to take your comprehensive approach and delve into all of the other types of judgments that fall within the Family Code, which might be appropriate if you had excess time and money to peruse that direction, I would hope that any changes made regarding “money judgments for division of marital property divisions” be declared in your working papers as declarative to existing law as I covered in the previous paragraph.

Whereas your comprehensive approach might be good in theory for some future cases that may arise, your narrow approach would be timely in addressing existing litigation. Your narrow approach would also take less time and effort on the part of the Commission, solicit far less comments from other sources, if any at all, and correct an oversight created when the Commission made its recommendations to the Legislature in 1999 and 2000 when the Family Code was revised.

I sincerely appreciate your efforts to make these corrections in the Family Code, which will be in line with the original intentions of the Commission, and if there is any way to put this on a fast-track since it is not really a change in the code but rather a declaration of what was originally intended it would be greatly appreciated.

Richard Wilcox