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Community Property - California's Quasi - Community Property Legislation, Which Subjects Marital Property Acquired by a Spouse While Domiciled in Another State to Distribution According to the Discretion of the Trial Court Upon a Divorce Decree, Held Constitutional. Addison v. Addison (Cal. 1965)

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COMMUNITY PROPERTY—CALIFORNIA'S QUASI-COMMUNITY PROPERTY LEGISLATION, WHICH SUBJECTS MARITAL PROPERTY ACQUIRED BY A SPOUSE WHILE DOMICILED IN ANOTHER STATE TO DISTRIBUTION ACCORDING TO THE DISCRETION OF THE TRIAL COURT UPON A DIVORCE DECREE, HELD CONSTITUTIONAL. *Addison v. Addison* (Cal. 1965).

In a divorce action on the ground of adultery, the plaintiff wife contended that all property located in California in the name of the husband was derived from personal property acquired while residing in a common law state and that it should be regarded as quasi-community property as defined in Civil Code section 140.5.[1] The wife asked for distribution of the property in accordance with Civil Code section 146(a),[2] which is applicable when divorces are granted on the grounds of adultery, incurable insanity, or extreme cruelty and which provides that the community property[3] and quasi-community

1 "As used in Sections 140.7 [separate property does not include quasi-community property], 141 [enforcement of decree, etc., against property: resort to community property, quasi-community property then separate property], 142 [withholding of allowance to prevailing party: when allowance not to be made from separate estate of other party], 143 [community, quasi-community and separate property may be subjected to support and education of children], 146 [*infra* note 2], 148 [disposition of property subject to revision on appeal], 149 [jurisdiction of court over community and quasi-community real property of spouse served by summons] and 176 [when wife must support husband] of this code 'quasi-community property' means all personal property wherever situated and all real property situated in this State heretofore or hereafter acquired: (a) By either spouse while domiciled elsewhere which would have been community property of the husband and wife had the spouse acquiring the property been domiciled in this State at the time of acquisition; or (b) In exchange for real or personal property, wherever situated, acquired other than by gift, devise, bequest or descent by either spouse during the marriage while domiciled elsewhere. For the purposes of this section, personal property does not include and real property does include leasehold interests in real property." CAL. CIV. CODE § 140.5. Statutory quasi-community property is thus distinguishable from the equitable doctrine of quasi-community property which extends to putative spouses the benefits of the community property system and is analogous to it. The leading case establishing the equitable quasi-community property doctrine in California is Coats v. Coats, 160 Cal. 671, 118 Pac. 441 (1911).

2 "In case of the dissolution of the marriage by decree of a court of competent jurisdiction or in the case of judgement or decree for separate maintenance of the husband or the wife without dissolution of the marriage, the court shall make an order for disposition of the community property and the quasi-community property and for the assignment of the homestead as follows: (a) If the decree is rendered on the ground of adultery, incurable insanity or extreme cruelty, the community property and quasi-community property shall be assigned to the respective parties in such proportions as the court, from all the facts of the case, and the condition of the parties, may deem just. (b) If the decree be rendered on any other ground than that of adultery, incurable insanity or extreme cruelty, the community property and quasi-community property shall be equally divided between the parties. . . ." CAL. CIV. CODE § 146.

3 "Community property is property acquired by husband and wife, or either, during marriage, when not acquired as the separate property of either." CAL. CIV. CODE § 687. "[A]ll property not held as community property must, for the want of a better name,

property in such cases shall be assigned to the respective parties in such proportions as the court may deem just. The trial court held, *inter alia*, that the quasi-community property legislation was unconstitutional. The district court of appeal affirmed on the ground that *Estate of Thornton*[4] was controlling but suggested that "it may be that a reconsideration of the governing principles of constitutional law would lead to a qualification of the reasoning exemplified in the *Thornton* case so as to sustain the legislative concept of quasi-community property with respect to the determination of property rights in the event of divorce."[5] However, the court stated that any such reconsideration should be undertaken by the California Supreme Court.

On appeal, the California Supreme Court reversed and remanded the case. The court determined that: (1) the *Thornton* decision was not controlling; (2) the husband was not deprived of a vested right without due process of law; (3) the husband's rights under the privileges and immunities clause of the fourteenth amendment of the United States Constitution were not abridged; (4) the quasi-community property legislation was not violative of the privileges and immunities clause of article IV, section 2 of the United States Constitution; (5) the legislation was being applied prospectively in this case; and (6) the contention that the legislation was not applicable to this case because it was enacted subsequent to the filing of the divorce action was untenable. The court held that the California quasi-community property legislation is constitutional by virtue of the state's legitimate concern regarding the property interests of married persons domiciled within the state upon dissolution of the marriage. *Addison v. Addison*, 62 Cal. 2d 558, 399 P.2d 897, 43 Cal. Rptr. 95 (1965).

The *Thornton* case, relied upon by the husband in *Addison*, involved a widow who sought to establish community property rights in the estate of her husband by application of Civil Code section 164[6]

be classed as separate property." Siberell v. Siberell, 214 Cal. 767, 770, 7 P.2d 1003, 1004 (1932).

[4] 1 Cal. 2d 1, 33 P.2d 1 (1934).

[5] Addison v. Addison, 40 Cal. Rptr. 330, 333 (1964), *vacated*, Addison v. Addison, 62 Cal. 2d 558, 399 P.2d 897, 43 Cal. Rptr. 97 (1965).

[6] CAL. CIV. CODE § 164, before being amended in 1961, included the following: "All other property acquired after marriage by either husband or wife, or both, including real property located in this State and personal property wherever situated, heretofore or hereafter acquired while domiciled elsewhere, which would not have been the separate property of either if acquired while domiciled in this State, is community property . . . ."

as amended in 1923. The husband's estate consisted of property which had been acquired for the most part during their former domicile in Montana. The *Thornton* court held Civil Code section 164 unconstitutional on the grounds that the husband had obtained vested rights in the property which could not constitutionally be altered without violation of the privileges and immunities accorded to him and ". . . to take the property of A and transfer it to B because of his citizenship and domicile, is also to take his property without due process of law. This is true regardless of the place of acquisition or the state of his residence."[7]

The *Thornton* court relied upon *Spreckles v. Spreckles*,[8] which established by a concession of counsel that legislation changing the community property system could not constitutionally be applied retroactively to affect vested property interests and must be limited to prospective application. The *Spreckles* rule is an expression of the fundamental rule of property law that the character of property is determined by its status at the time of acquisition.[9] Hence, any subsequent legislation that varies the character of the property, *i.e.*, diminishes the interest of the owner therein, is considered to be "retroactive," and unconstitutional unless limited to act only on property interests acquired after enactment of the legislation. It was pointed out by Justice Traynor in his concurring opinion in *Boyd v. Oser*[10] that this "rule of property" protecting vested property

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[7] 1 Cal. 2d at 5, 33 P.2d at 3, 92 A.L.R. 1343. *Thornton* held section 146 unconstitutional insofar as the amendment attempted to affect personal property brought to California which was the separate property of one of the spouses while domiciled outside this state. Addison v. Addison, 62 Cal. 2d at 563, 399 P.2d at 900, 43 Cal. Rptr. at 100, states that the amendment's effect upon real property had never been tested before it was repealed in 1961. California courts have uniformly held that the removal of acquired wealth from one state to another does not change the classification of the property from separate to community or from community to separate property. Rozan v. Rozan, 49 Cal. 2d 322, 317 P.2d 11 (1957); Schecter v. Superior Court, 49 Cal. 2d 3, 314 P.2d 10 (1957); Tomaier v. Tomaier, 23 Cal. 2d 754, 146 P.2d 905 (1944); Estate of Warner, 167 Cal. 686, 140 Pac. 583 (1914); Estate of Burrows, 136 Cal. 113, 68 Pac. 488 (1902); Kraemer v. Kraemer, 52 Cal. 302 (1877); VERRAL, CASES AND MATERIALS ON CALIFORNIA COMMUNITY PROPERTY 4 (1960); Leflar, *Community Property and Conflict of Laws*, 21 CALIF. L. REV. 221 (1933).

[8] 116 Cal. 339, 48 Pac. 228 (1897). "[C]ounsel admit that if the husband is the owner of the property, then a statute which makes the exercise of the right to dispose of it subject to the will of another is unconstitutional. . . . It is clear, I think, that the operation of the amendment [to Civil Code § 172] must be confined, *at least*, to community property acquired after its passage." 116 Cal. at 349, 48 Pac. at 231.

[9] *In re* Miller, 31 Cal. 2d 191, 197, 187 P.2d 722, 726 (1947); Grolemund v. Cafferata, 17 Cal. 2d 679, 683, 111 P.2d 641, 643 (1941); Roberts v. Wehmeyer, 191 Cal. 601, 605, 218 Pac. 22, 23 (1923); Palen v. Palen, 28 Cal. App. 2d 602, 604, 83 P.2d 36, 37 (1938).

[10] 23 Cal. 2d 613, 145 P.2d 312 (1944). Justice Traynor stated in his concurring

interests was based upon an unsound constitutional theory. Both the *Thornton* and *Spreckles* cases have been the subject of considerable adverse criticism[11] which is summarized by the court in *Addison*.[12]

In this regard, it is important to note that Civil Code section 140.5 classifies as quasi-community property such separate property as has been "heretofore or hereafter" acquired, and Civil Code section 146(a) substantially modifies the owner's rights therein at the time of a divorce or separate maintenance decree. Since the property in *Addison* was acquired by the husband prior to enactment of the legislation, it would seem to follow that the quasi-community property legislation must be "retroactive," in that it deprived the husband of a prior "vested" interest in his property. However, the court in *Addison* did not feel compelled to follow the *Spreckles* rule or the constitutional theory laid down in *Thornton*. Referring to *Thornton*, the *Addison* court stated: "But even if the rule of that case be accepted as sound, it is not here controlling. . . . The legislation under discussion [Civil Code sections 140.5, 146] unlike old section 164, makes no attempt to alter property rights merely upon crossing the boundary into California. . . . Instead, the concept of quasi-community property is applicable only if a divorce or separate maintenance action is filed here after the parties have become domiciled in California . . . the concept is applicable only if . . . certain acts or events occur which give rise to an action for divorce or separate maintenance."[13]

By this rationale the court disposed of the husband's assertion that the quasi-community property legislation was an abridgment of the privileges and immunities clause of the fourteenth amendment because the legislation impinged upon his right to maintain a domicile in any state of his choice without the loss of valuable property rights. The court held that the legislation did not cause a loss of valuable

opinion: "[T]he decisions that existing statutes changing the rights of husbands and wives in community property can have no retroactive application have become a rule of property in this state and should not now be overruled. It is my opinion, however, that the constitutional theory on which they are based is unsound. . . . That theory has not become a rule of property and should not invalidate future legislation in this field intended by the Legislature to operate retroactively." (Citations omitted.) 23 Cal. 2d at 623, 145 P.2d at 318.

11 Articles cited in *Addison* include the following: Armstrong, *"Prospective" Application of Charges in Community Property Control—Rule of Property or Constitutional Necessity?* 33 CALIF. L. REV. 476 (1945); Schreter, *"Quasi-Community Property" in the Conflict of Laws*, 50 CALIF. L. REV. 206 (1962); Comment, 27 CALIF. L. REV. 49, 51-55 (1938); Comment, 15 CALIF. L. REV. 399 (1927).

12 62 Cal. 2d at 565, 399 P.2d at 901, 43 Cal. Rptr. at 101.

13 *Id.* at 566, 399 P.2d at 901-02, 43 Cal. Rptr. at 101-02.

property rights merely through change of domicile; only when certain acts or events occurred, completely unconnected with a change of domicile, which gave rise to an action for divorce or separate maintenance in California, would the legislation affect rights.[14]

The husband also contended that California, under the rule of *Spreckles*, has refused to interfere with the vested property rights of its own citizens and must therefore accord him the same treatment under the privileges and immunities clause of article IV, section 2 of the United States Constitution. The court pointed out that the privileges and immunities clause is not absolute and that rational discrimination was not precluded where there is a valid reason for it, independent of the fact that individuals affected are citizens of another state. The court reasoned that since the wife had lost the protection afforded her in her own state when she moved to California she was in need of protection from California, hence "the discrimination, if there be such, is reasonable and not of the type article IV of the federal constitution seeks to enjoin."[15]

In regard to the due process issue raised in *Addison*, the court held that such a substantial interest on the part of the state exists upon dissolution of the marriage relationship as to give the state the right to interfere with vested property rights in order to protect the property interests of domiciliaries and enforce marital responsibilities. The court went on to state:

> In the case at bar it was Leona who was granted a divorce from Morton on the ground of the latter's adultery and hence it is the spouse guilty of marital infidelity from whom the otherwise separate property is sought by the operation of the quasi-community property legislation. We are of the opinion that where the innocent party would otherwise be left unprotected the state has a very substantial interest and one sufficient to provide for a fair and equitable distribution of the marital property without running afoul of the due process clause of the Fourteenth Amendment. For the same reasons sections 1 and 13 of article 1 of the California Constitution, substantially similar in language, are not here applicable.[16]

This rationale supports only the provisions of Civil Code section 146(a) since it would apply only where the property of an adulterous spouse is being divided. Thus, the constitutionality of other provisions of the quasi-community property legislation, such as Civil Code

[14] *Id.* at 566, 399 P.2d at 902, 43 Cal. Rptr. at 102.
[15] *Id.* at 569, 399 P.2d at 904, 43 Cal. Rptr. at 104.
[16] *Id.* at 567, 399 P.2d at 903, 43 Cal. Rptr. at 103.

section 146(b),[17] which distributes quasi-community property equally when divorce decrees are based on other grounds, has yet to be decided. However, in view of the underlying theme of *Addison*, it would be surprising if future decisions hold the quasi-community property legislation unconstitutional even where the relative fault of the parties is not in issue.

Aside from distinguishing *Thornton* on the basis of the substantial difference in the effect of former Civil Code section 164 and that of the legislation under consideration in *Addison*, it is not clear from the opinion why the *Spreckles* rule should not be controlling in *Addison*. In the closing portion of the opinion, the court states: "Nor is the statute being applied retroactively. That is so because the legislation here involved neither creates nor alters rights except upon divorce or separate maintenance. The judgment of divorce was granted after the effective date of the legislation. Hence the statute is being applied prospectively."[18] There are several possible interpretations of this rationale. One view is that it may have been included in the opinion to further distinguish the legislation considered in *Thornton* and *Spreckles* from the quasi-community property legislation considered in *Addison* on the basis of applicability. If this view is correct, it may then be inferred that the court in *Addison* is announcing a different criterion for the determination of the prospective or retroactive effect of legislation. But, if the court meant that the statute was "prospective" in that it did not alter the vested interest of the husband which had been acquired prior to enactment of the legislation, the statement would seem to be inconsistent with the rationale of the rest of the opinion, which is to the effect that it is within the legislature's power to pass retroactive statutes and, as applied in *Addison*, it is not unconstitutional to deprive the husband of a prior vested property interest.

Another view regarding the *Addison* court's determination that the legislation was being applied prospectively is that since the divorce action had been filed prior to the effective date of legislation it can be assumed that the court was emphasizing that only the *divorce decree* altered the rights of the parties while Civil Code section 140.5 was merely definitional in its effect. Therefore, the statute was being applied prospectively rather than retroactively in this particular case, even though the effective date of the legislation was after the filing of the cause of action.

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[17] See statute cited note 2 *supra*.

[18] 62 Cal. 2d at 569, 399 P.2d at 904, 43 Cal. Rptr. at 104.

By either view, the opinion seems to indicate that, although constitutionally unsound, the rule in *Spreckles* is an established rule of property as to cases previously decided under then existing community property legislation but that the *Spreckles* rule will not necessarily govern the judicial determination of the constitutionality of future community property legislation.[19]

It is clear that *Addison* did not overrule the rule of property laid down by *Spreckles*, *Thornton*, and successive decisions. Therefore, the community property code sections construed by these decisions[20] should continue to have only "prospective" effect in that they affect only interests in property acquired after the effective date of legislation. However, *Addison* does attack the constitutional theory upon which these cases were based, *i.e.*, that the state cannot change or interfere with vested property interests in community property without abridging the citizen's privileges and immunities and violating his right to due process of law. It is therefore concluded that future legislation, even if it interferes with vested property rights, will be found constitutional if it is determined that the state's interest is so substantial as to warrant the interference and, that the intent of the legislature is clear that the legislation should operate retroactively.[21]

Addison is the first case construing the quasi-community property legislation, which is unique in community property law. The fact that the legislature can modify the vested property interests of a

[19] *Id.* at 565-66, 399 P.2d at 901, 43 Cal. Rptr. at 101.

[20] The following community property statutes have been construed to have only prospective application, *i.e.*, are ineffectual as to property acquired prior to passage of the legislation: CAL. CIV. CODE § 161a (enacted 1927), which defines the interests of husband and wife in community property. Grolemund v. Cafferata, 17 Cal. 2d 679, 111 P.2d 641 (1941); Stewart v. Stewart, 204 Cal. 546, 269 Pac. 439 (1928). CAL. CIV. CODE § 164 (1917 amendment), redefining community property. Estate of Frees, 187 Cal. 150, 201 Pac. 112 (1921); Estate of Arms, 186 Cal. 554, 199 Pac. 1053 (1921). CAL. CIV. CODE § 164 (1923 amendment), see statute cited note 6, *supra*. Estate of Drishaus, 199 Cal. 369, 249 Pac. 515 (1926). CAL. CIV. CODE § 169.1 (enacted 1951), which made earnings and accumulations separate property after judgement of divorce or decree for separate maintenance. Jacquemart v. Jacquemart, 125 Cal. App. 2d 122, 269 P.2d 951 (1954). CAL. CIV. CODE § 169.2 (enacted 1959), which made earnings and accumulations separate property after interlocutory judgement of divorce. Fritschi v. Teed, 213 Cal. App. 2d 718, 29 Cal. Rptr. 114 (1963). CAL. CIV. CODE § 172 (1891 amendment). Scott v. Austin, 58 Cal. App. 643, 209 Pac. 251 (1922); Spreckles v. Spreckles, 116 Cal. 343, 48 Pac. 228 (1897). CAL. CIV. CODE § 172 (1917 amendment), which limited the husband's management and control of community personal property. Spreng v. Spreng, 119 Cal. App. 155, 6 P.2d 104 (1931). CAL. CIV. CODE § 172(a) (enacted 1917), which provided that a wife can set aside a husband's gratuitous conveyance of community property in which she does not join. Stewart v. Stewart, 199 Cal. 318, 249 Pac. 197 (1926); Roberts v. Wehmeyer, 191 Cal. 601, 218 Pac. 22 (1923). CAL. CIV. CODE § 1401 (1923 amendment, now CAL. PROB. CODE § 201), which is a succession statute. McKay v. Lauriston, 204 Cal. 557, 269 Pac. 519 (1928).

[21] 62 Cal. 2d at 565, 399 P.2d at 901, 43 Cal. Rptr. at 101.

living spouse[22] by subsequent legislative enactments is an important conceptual change in California community property law. The commendable result of the decision in *Addison* is that, with respect to the kinds of property described in Civil Code section 140.5, all California domiciliaries, regardless of their origin, receive equal treatment in judgments of divorce. At least one authority[23] has suggested that the California legislature should consider amending section 140.5 to include real property located outside California as a logical development of community property law which would further equalize the treatment of all California domiciliaries.

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22 CAL. PROB. CODE § 201.5 gives to the surviving spouse one half of all the personal property wherever situated and the real property located in California which would not have been the separate property of the acquiring spouse had it been acquired while domiciled in California. *In re* Miller, 31 Cal. 2d 191, 187 P.2d 722 (1947), upheld the constitutionality of § 201.5 on the theory that the state of domicile of the decedent had full power to control rights of succession. Addison v. Addison, 62 Cal. 2d at 564, 399 P.2d at 900, 43 Cal. Rptr. at 100, states: ". . . no one has a vested right to succeed to another's property rights, and no one has a vested right in the distribution of his estate upon his death. Hence succession rights may be constitutionally altered."

23 "If the thesis is accepted that California may constitutionally reclassify property brought into the state by persons who become domiciled there, then it follows that California may reclassify property left behind." Schreter, *supra* note 9, at 238. However, there may be serious conflict of laws problems involved, with which this case note does not deal. See Marsh, *A Study Relating to Inter Vivos Rights in Property Acquired by Spouse While Domiciled Elsewhere*, 3 CAL. L. REVISION COMM'N, REPORTS RECOMMENDATIONS AND STUDIES I (1961).