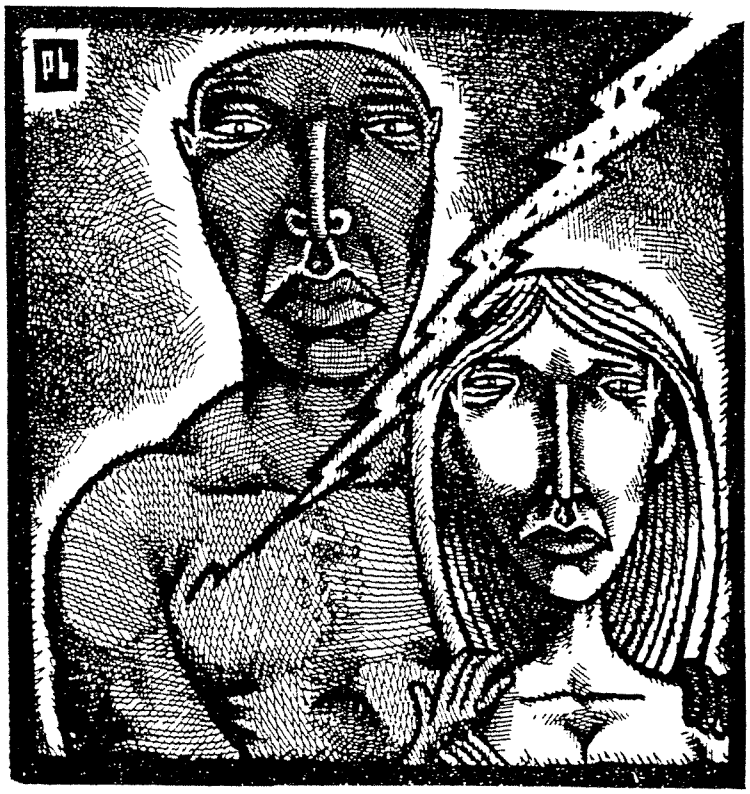
Financial Freedom After Divorce

Courts Must Tell Spouses How to Show Efforts to Be Self-Sufficient

By Fred Silberberg



It is California public policy that a spouse receiving spousal support become self-supporting in a reasonable period of time. In order to implement that goal, courts warn support recipients that they must become self-supporting in a given period of time or risk losing spousal support.

In practice, however, this warning is virtually meaningless; the warning does not state what constitutes noncompliance with the order to become self-sufficient, and the support recipient almost always can formulate an argument to justify more support. Moreover, most courts are loathe to terminate spousal support, except in the most egregious cases of abuse.

If self-sufficient women is one of the goals of California family law, then the warning should be enforced. If not, there is no point in bothering with it.

These warnings were ushered in by the case *In re Marriage of Gavron*, 203 Cal.App.3d 705 (1988), wherein Dr. Gavron sought termination of spousal support on a 25-year marriage after three years of payments. The trial court denied his request. Five years later, he again sought termination of support. The court gave Ms. Gavron five more months of support and then stopped the payments, only maintaining jurisdiction over the issue. The trial court found that Ms. Gavron did not make sufficient efforts to become employed. On appeal, however, the trial court decision was reversed on the basis that the wife was not given sufficient notice of her obligation to become self-supporting.

From that case came what is known to family law attorneys as the *Gavron* warning. It subsequently was codified by statute, where it was first made mandatory then modified to be optional. Family Code Section 4320(k) states that it is the goal of the state that a party become self-supporting in a reasonable period of time, defined as half the length of the marriage. Section 4330 states that the court may advise a recipient of support that failure to meet this goal may result in termination of support, although it is "deemed inadvisable" to give such a warning in a long-term marriage, which is considered a marriage that lasted longer than 10 years.

There are thousands of divorce cases in California in which the parties have been given such a warning. Not only are they present in court-ordered judgments, but they also are incorporated into judgments reached by agreement of the parties. However, from a practical standpoint they seem to serve little purpose. The reason for this is that the warning rarely specifies what is required of the recipient in order to become self-supporting. The court doesn't state what the recipient is supposed to do, how much money he or she should make, nor what efforts constitute sufficient efforts.

Take the following real-life example. Dean and Patricia are married for nine years. They incorporate a *Gavron* warning in their agreed-upon settlement. Seven years later, the parties renegotiate and restate the warning. Support continues. At the ninth year, Dean has a significant financial setback. He has paid her handsomely based on his income up to this time, but now he can't pay both the child and spousal support. Patricia won't take a cut in support voluntarily, so off to court they go.

Dean argues for a termination of spousal support based on his income, reminds the court of the *Gavron* warning and shows that Patricia hasn't done much to provide for her own support and hasn't used the assets she received prudently. The court reduces his support but orders another hearing one year later. The court gives yet another *Gavron* warning to Patricia and states that in one year it will consider terminating support.

In response to Dean's request, Patricia argued that she did what she could do but it didn't enable her to become self-supporting, at least not in the lifestyle that she had up until the time of the proposed cut. Therein lies another problem. Courts do not define what constitutes ability to support oneself. Although Patricia might have been able to support herself in a smaller apartment or townhouse, she wanted to keep her expensive, large, ocean-view property with a pool. She was not able to support her high living standards, and the court did not argue with her.

If, as case law and statutes claim, the goal of the state is self-supporting spouses, then we must take steps to further that goal. Courts need to fulfill the goal by making it clear to the support recipient what they need to do. If, for example, the court advised Patricia that she needed to earn $80,000 per year to become self-supporting, and that she would be expected to do so within four years' time or lose her support, she would have known what she had to do. Each *Gavron* warning should state specifically what is required of the recipient, including what level of income provides a sufficient standard of living, in order to determine whether the goal has been met. The vagueness and unenforceability of the *Gavron* warning also encourages extended litigation. Parties must return to court on multiple occasions so the judge can decide the issue again and again.

If we do nothing more than "warn" people in a vague manner, we might as well not "warn" them at all.

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