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Supreme Court Decisions

Dicta Editorial Board

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Supreme Court Decisions

HUSBAND AND WIFE—SEPARATION AGREEMENT—MONTHLY SUPPORT TO WIFE—EFFECT OF DEATH OF HUSBAND—*In the Matter of the Estate of Charles Russell Wise et al. vs. Wise et al.*—No. 13932—Decided January 11, 1937—Opinion by Mr. Justice Holland.

Wise and his wife separated and entered into a separation agreement whereby the wife, in addition to receiving certain property, was to receive monthly payments for her support during her lifetime and whereby she waived all claims against the husband's estate as his wife or heir and the husband unconditionally waived all his rights to her estate. The husband thereafter died and the wife filed a claim against his estate for her monthly support and upon objection of other heirs her claim was disallowed.

1. The parties clearly had a right to enter into an agreement for the equitable disposition of their property one to the other.

2. A provision for the support and maintenance of the wife during her lifetime was a proper subject to be considered.

3. The husband had a lawful right to obligate himself and his estate to that end.

4. The contract here executed by the husband was not an obligation of a personal nature, but one in furtherance of his legal and moral duty enforceable against him in his lifetime and therefore enforceable against his estate.

5. The question of death of either of the parties was contemplated by the parties according to the agreement.

6. The agreement shows that the husband unconditionally waived the right to make any claim against the wife's estate, but the waiver of the wife against the husband's estate was not unconditional, but was conditionally made in that she was permitted to reserve to herself the right to claim the monthly support.—*Judgment reversed with instructions to allow the wife's claim.*

MUNICIPAL CORPORATIONS—EMPLOYMENT OF ATTORNEY—NECESSITY OF ACTION BY COUNCIL—PAROLE EVIDENCE NOT ADMISSIBLE TO CHANGE COUNCIL RECORD—*Kinzie vs. Town of Haxtun*—No. 14069—Decided January 25, 1937—Opinion by Mr. Justice Bakke.

Kinzie sought to recover attorney's fees on a special contract with the town council of Haxtun. The court below dismissed the case.

1. Where an attorney claims compensation under a special contract with the municipality, such contract is void unless the city council complies with Section 9171, C. L. 1921, which, among other things, provides that every resolution or order to enter into a contract the vote

must be properly recorded and concurrence of a majority of the council members is required.

2. A contract for professional services comes within the above requirement.

3. The provisions in regard to recording the vote are mandatory.

4. Parole evidence is not admissible to alter or change the minutes or record of the council.—*Judgment affirmed.*

PLEADING—MOTION FOR NEW TRIAL MUST BE FILED WITHIN TEN DAYS—WAIVER—*Martin vs. Bower*—No. 14080—*Decided February 1, 1937*—*Opinion by Mr. Justice Knous.*

1. Failure to file a motion for new trial within ten days after judgment is fatal to right of review.

2. Where parties consented to two continuances after motion for new trial was filed too late, such circumstances alone do not establish waiver.

3. One contending that objections to filing a motion for new trial have been waived, has the burden of showing waiver.

4. Motion to dismiss writ of error sustained.

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