

STATE OF OKLAHOMA

2nd Session of the 43rd Legislature (1992)

HOUSE BILL NO. 7738

BY: VAUGHN (Ray)

AS INTRODUCED

AN ACT RELATING TO MARRIAGE AND FAMILY; AMENDING 43 O.S. 1991, SECTIONS 110, 111, 121, AND 134, WHICH RELATE TO DIVORCE; AUTHORIZING TEMPORARY RESTRAINING ORDERS; REMOVING CERTAIN LIMITATIONS FOR DETERMINATION OF COSTS OF ACTIONS; SPECIFYING APPLICATIONS FOR CERTAIN RELIEF; MODIFYING CERTAIN PROCEDURES; PROVIDING FOR EFFECTIVENESS OF CERTAIN ORDERS; PROVIDING FOR EMERGENCY ORDERS; REQUIRING CERTAIN HEARINGS; PROVIDING FOR CONTENT OF ORDERS; PROVIDING FOR VACATION AND MODIFICATION OF CERTAIN ORDERS; PROVIDING FOR CONTEMPT; PROVIDING FOR APPLICATIONS OF CERTAIN ORDERS; PROVIDING CLARIFICATION OF SECTION; MAKING CERTAIN DIVISION SUBJECT TO CERTAIN CONTRACTS; MODIFYING LIEN AUTHORIZATION; AND PROVIDING AN EFFECTIVE DATE.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 43 O.S. 1991, Section 110, is amended to read as follows:

Section 110. After a petition has been filed in an action for divorce and alimony, or for alimony alone, ~~the court, or a judge thereof in vacation, may make and enforce by attachment such order to restrain the disposition of the property of the parties or of~~

~~either of them, and for the use, management, and control thereof, or for the control of the children and support of the wife or husband during the pendency of the action, as may be right and proper; and may also make such order relative to the expenses of the suit as will insure an efficient preparation of the case; and, on either party may request a temporary order regarding attorney fees, spousal maintenance, possession of property, child support or child custody. All applications for temporary orders shall set forth the factual basis for the application and shall be verified by the party seeking relief. The application and a notice of hearing shall be served on the other party in any manner provided for in the Rules of Civil Procedure.~~

B. As part of an application for a temporary order, either party may request the court to issue a temporary order for any of the following relief:

1. Restraining any person from transferring, encumbering, concealing, or otherwise disposing of any property except in the usual course of business or for the necessities of life, and, if so restrained, requiring such person to notify the other party reasonably in advance of any proposed extraordinary expenditures made after the order is issued;

2. Enjoining a party from molesting or disturbing the peace of the other party or of any child;

3. Excluding a party from the family home or from the home of the other party;

4. Enjoining a party from removing a child from the jurisdiction of the court; and

5. Providing other injunctive relief proper in the circumstances.

C. The court may issue a temporary restraining order which shall become immediately effective, without requiring notice and opportunity to be heard to the other party only if it finds on the

basis of the verified application and testimony of witnesses that irreparable injury will result to the moving party, or a child of a party, if no order is issued before the adverse party or attorney for the adverse party can be heard in opposition. If a temporary restraining order is issued under this section, the motion for a temporary order shall be set down for hearing at the earliest possible time and takes precedence over all matters.

D. Except as otherwise provided in subsection C of this section, the court shall not issue a temporary order until at least five (5) days notice of hearing is given the other party.

E. After notice and hearing, a court may issue a temporary order for maintenance, child support, child custody, possession of property and expenses involved in maintaining the action, in addition to such other temporary relief as the court shall decide is just and proper in the circumstances.

G. Temporary orders may be vacated or modified before final decree on a showing by either party of facts necessary for vacation or modification. Temporary orders terminate when the final judgment on all issues, except attorney fees and costs, is rendered or when the action is dismissed. The court may reserve jurisdiction to rule on an application for a contempt citation for a violation of a temporary order which is filed anytime prior to the time the temporary order terminates.

H. Upon granting a divorce in favor of the wife or the husband, or both, the court may require the husband or wife to pay such reasonable expenses of the other in the prosecution or defense of the action as may be just and proper ~~considering the respective parties and the means and property of each; provided further, that~~ the.

I. The court may in its discretion make additional orders relative to the expenses of any such subsequent actions, including but not limited to writs of habeas corpus, brought by the parties or

their attorneys, for the enforcement or modification of any interlocutory or final orders in the divorce action made for the benefit of either party or their respective attorneys. ~~Provided, no ex parte orders shall be issued until the opposing party is granted an opportunity to be heard, unless such ex parte order provides that instead of performing thereunder the opposing party may appear on a date certain, not more than twenty (20) days thereafter, and show good cause as to why he should not comply with said order.~~

SECTION 2. AMENDATORY 43 O.S. 1991, Section 111, is amended to read as follows:

Section 111. Any order ~~for the payment of money as part of a~~ pertaining to the division of spousal property pursuant to a divorce or separate maintenance action, if willfully disobeyed, may be enforced as an indirect contempt of court.

SECTION 3. AMENDATORY 43 O.S. 1991, Section 121, is amended to read as follows:

Section 121. When a divorce is granted, the wife shall be restored to her maiden or former name if she so desires. The court shall enter its decree confirming in each spouse the property owned by him or her before marriage and the undisposed-of property acquired after marriage by him or her in his or her own right. Either spouse may be allowed such alimony out of real and personal property of the other as the court shall think reasonable, having due regard to the value of such property at the time of the divorce. Alimony may be allowed from real or personal property, or both, or in the form of money judgment, payable either in gross or in installments, as the court may deem just and equitable. As to such property, whether real or personal, which has been acquired by the parties jointly during their marriage, whether the title thereto be in either or both of said parties, the court shall, subject to a valid antenuptial contract in writing, make such division between the parties as may appear just and reasonable, by a division of the

property in kind, or by setting the same apart to one of the parties, and requiring the other thereof to be paid such sum as may be just and proper to effect a fair and just division thereof. The court may set apart a portion of the separate estate of a spouse to the other spouse for the support of the children of the marriage where custody resides with that spouse.

SECTION 4. AMENDATORY 43 O.S. 1991, Section 134, is amended to read as follows:

Section 134. A. In any divorce decree which provides for periodic alimony payments, the court shall plainly state, at the time of entering the original decree, the dollar amount of all or a portion of each payment which is designated as support and the dollar amount of all or a portion of the payment which is a payment pertaining to a division of property. The court shall specify in the decree that the payments pertaining to a division of property shall continue until completed. Payments pertaining to a division of property are irrevocable and not subject to subsequent modification by the court making the award. An order for the payment of money pursuant to a divorce decree, whether designated as support or designated as pertaining to a division of property shall not be a lien against the real property of the person ordered to make such payments unless the court order specifically provides for a lien on real property. An arrearage in payments of support reduced to a judgment may be a lien against the real property of the person ordered to make such payments.

B. The court shall also provide in the divorce decree that upon the death or remarriage of the recipient, the payments for support, if not already accrued, shall terminate. The court shall order the judgment for the payment of support to be terminated, and the lien released upon the presentation of proper proof of death of the recipient unless a proper claim is made for any amount of past-due support payments by an executor, administrator, or heir within

ninety (90) days from the date of death of the recipient. Upon proper application the court shall order payment of support terminated and the lien discharged after remarriage of the recipient, unless the recipient can make a proper showing that some amount of support is still needed and that circumstances have not rendered payment of the same inequitable, provided the recipient commences an action for such determination, within ninety (90) days of the date of such remarriage.

~~C. An order for the payment of money pursuant to a divorce decree, whether designated as support or designated as pertaining to a division of property shall not be a lien against the real property of the person ordered to make such payments unless the court order specifically provides for a lien on real property. An arrearage in payments of support reduced to a judgment may be a lien against the real property of the person ordered to make such payments.~~

~~D.~~ The voluntary cohabitation of a former spouse with a member of the opposite sex shall be a ground to modify provisions of a final judgment or order for alimony as support. If voluntary cohabitation is alleged in a motion to modify the payment of support, the court shall have jurisdiction to reduce or terminate future support payments upon proof of substantial change of circumstances of either party to the divorce relating to need for support or ability to support. As used in this subsection, the term cohabitation means the dwelling together continuously and habitually of a man and a woman who are in a private conjugal relationship not solemnized as a marriage according to law, or not necessarily meeting all the standards of a common-law marriage. The petitioner shall make application for modification and shall follow notification procedures used in other divorce decree modification actions. The court that entered the divorce decree shall have jurisdiction over the modification application.

~~E.~~ D. Except as otherwise provided in subsection ~~D~~ C of this section, the provisions of any divorce decree pertaining to the payment of alimony as support may be modified upon proof of changed circumstances relating to the need for support or ability to support which are substantial and continuing so as to make the terms of the decree unreasonable to either party. Only those installments accruing subsequent to the motion for modification may be modified.

~~F.~~ E. Pursuant to the federal Uniformed Services Former Spouse's Protection Act (PL 97-252), the provisions of subsection ~~E~~ D of this section shall have retrospective and prospective application with regards to modifications for the purpose of obtaining support or payments pertaining to a division of property on divorce decrees which become final after June 26, 1981.

~~G.~~ F. The provisions of subsections ~~D~~ C and ~~E~~ D of this section shall have retrospective and prospective application with regards to modifications of the provisions of a final judgment or order for alimony as support, or of a divorce decree pertaining to the payment of alimony as support, regardless of the date that the order, judgment, or decree was entered.

SECTION 5. This act shall become effective September 1, 1992.

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