

STATE OF OKLAHOMA

1st Session of the 49th Legislature (2003)

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 1358

By: Vaughn

COMMITTEE SUBSTITUTE

An Act relating to marriage and divorce; amending 43 O.S. 2001, Sections 105, as amended by Section 3, Chapter 400, O.S.L. 2002, 106, as amended by Section 4, Chapter 400, O.S.L. 2002 and 110, as amended by Section 6, Chapter 400, O.S.L. 2002 (43 O.S. Supp. 2002, Sections 105, 106 and 110), which relate to dissolution of marriage proceedings; clarifying and updating language; changing the term dissolution of marriage to divorce; providing for effectiveness of automatic injunctions; providing for dissolution of certain injunction; amending 43 O.S. 2001, Sections 120.1, 120.2, 120.3, 120.4, 120.5 and 120.6, which relate to the Parenting Coordinator Act; changing name of act; clarifying definitions; modifying and clarifying duties and responsibilities; prohibiting certain actions; providing for removal of family coordinator; providing minimum qualifications; and declaring an emergency.

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

SECTION 1. AMENDATORY 43 O.S. 2001, Section 105, as amended by Section 3, Chapter 400, O.S.L. 2002 (43 O.S. Supp. 2002, Section 105), is amended to read as follows:

Section 105. A. A proceeding for ~~dissolution of marriage~~ divorce, an annulment of a marriage, or a legal separation shall be titled "In re the Marriage of _____ and _____".

B. The initial pleading in all proceedings under this title shall be denominated a petition. The person filing the petition shall be called the petitioner. A responsive pleading shall be denominated a response. The person filing the responsive pleading shall be called the respondent. Other pleadings shall be

denominated as provided in the Rules of Civil Procedure, except as otherwise provided in this section.

C. The petition must be verified as true, by the affidavit of the petitioner.

D. A summons may issue thereon, and shall be served, or publication made, as in other civil cases.

SECTION 2. AMENDATORY 43 O.S. 2001, Section 106, as amended by Section 4, Chapter 400, O.S.L. 2002 (43 O.S. Supp. 2002, Section 106), is amended to read as follows:

Section 106. A. The respondent, in his or her ~~answer~~ response, may allege a cause for a divorce, annulment of the marriage or legal separation against the petitioner, and may have the same relief thereupon as he or she would be entitled to for a like cause if he or she were the petitioner.

B. When new matter is set up in the answer, it shall be verified as to such new matter by the affidavit of the respondent.

SECTION 3. AMENDATORY 43 O.S. 2001, Section 110, as amended by Section 6, Chapter 400, O.S.L. 2002 (43 O.S. Supp. 2002, Section 110), is amended to read as follows:

Section 110. A. 1. ~~Upon~~ Except as otherwise provided by this subsection, upon the filing of a petition for ~~dissolution of marriage~~ divorce, annulment of a marriage, or legal separation by the petitioner and upon personal service of the petition and summons on the respondent, or upon waiver and acceptance of service by the respondent, an automatic temporary injunction shall be in effect against both parties pursuant to the provisions of this section ~~unless the automatic temporary injunction has been waived pursuant to this section:~~

- a. restraining the parties from transferring, encumbering, concealing, or in any way disposing of, without the written consent of the other party or an order of the court, any marital property, except in

the usual course of business, for the purpose of retaining an attorney for the case or for the necessities of life and requiring each party to notify the other party of any proposed extraordinary expenditures and to account to the court for all extraordinary expenditures made after the injunction is in effect,

- b. restraining the parties from:
- (1) intentionally or knowingly damaging or destroying the tangible property of the parties, or of either of them, including, but not limited to, any document that represents or embodies anything of value,
 - (2) making any withdrawal for any purpose from any retirement, profit-sharing, pension, death, or other employee benefit plan or employee savings plan or from any individual retirement account or Keogh account,
 - (3) withdrawing or borrowing in any manner all or any part of the cash surrender value of any life insurance policies on either party or their children,
 - (4) changing or in any manner altering the beneficiary designation on any life insurance policies on the life of either party or any of their children,
 - (5) canceling, altering, or in any manner affecting any casualty, automobile, or health insurance policies insuring the parties' property or persons,
 - (6) opening or diverting mail addressed to the other party, and

- (7) signing or endorsing the other party's name on any negotiable instrument, check, or draft, such as tax refunds, insurance payments, and dividends, or attempting to negotiate any negotiable instruments payable to either party without the personal signature of the other party,
- c. requiring the parties to maintain all presently existing health, property, life and other insurance which ~~he or she~~ the individual is presently carrying on any member of this family unit, and to cooperate as necessary in the filing and processing of claims. Any employer-provided health insurance currently in existence shall remain in full force and effect for all family members,
- d. enjoining both parties from molesting or disturbing the peace of the other party or of the children to the marriage,
- e. restraining both parties from disrupting or withdrawing their children from an educational facility and programs where the children historically have been enrolled, or day care,
- f. restraining both parties from hiding or secreting their children from the other party, and
- g. restraining both parties from removing the minor children of the parties, if any, beyond the jurisdiction of the State of Oklahoma, acting directly or in concert with others, except for vacations of two (2) weeks or less duration, without the prior written consent of the other party, which shall not be unreasonably withheld.

2. a. ~~The provisions of the automatic temporary injunction may be waived by the parties if both parties have indicated on the automatic temporary injunction notice in the space provided that the parties have both agreed to waive the automatic temporary injunction. Each party must sign his or her own name on the notice in the space provided shall be printed as an attachment to the summons and the petition and entitled "Automatic Temporary Injunction Notice".~~
- b. The automatic temporary injunction notice shall contain a provision which will allow the parties to waive the automatic temporary injunction. In addition, the provision must state that unless both parties have agreed and have signed their names in the space provided, that the automatic temporary injunction will be effective. Along with the waiver provision, the notice shall contain a check box and space available for the signatures of the parties.

3. ~~The provisions of the automatic temporary injunction shall be printed as an attachment to the summons and the petition and entitled "Automatic Temporary Injunction Notice".~~ The automatic temporary injunction shall become an order of the court upon fulfillment of the requirements of paragraph 1 of this subsection unless and until:

- a. the automatic temporary injunction is waived by the parties. Both parties must indicate on the automatic temporary injunction notice in the space provided that the parties have both agreed to waive the automatic temporary injunction. Each party must sign his or her own name on the notice in the space provided, or

b. a party, ~~within~~ no later than three (3) days ~~of~~ after service on the party, files an objection to the injunction and requests a hearing, ~~or~~

~~b.~~ ~~the automatic temporary injunction is waived as provided in paragraph 2 of this subsection.~~ Provided, the automatic temporary injunction shall remain in effect until the hearing and a judge orders the injunction removed.

4. The automatic temporary injunction shall be dissolved upon the granting of the divorce, final order of legal separation or other final order.

5. Nothing in this subsection shall preclude either party from applying to the court for further temporary orders, pursuant to this section, an expanded automatic temporary injunction, or modification or revocation thereto.

~~5.~~ 6. With regard to an automatic temporary injunction, when a petition for ~~dissolution of marriage~~ divorce, annulment of a marriage, or a legal separation is filed and served:

~~a.~~ a peace officer shall use every reasonable means to enforce the injunction which enjoins both parties from molesting or disturbing the peace of the other party or the children of the marriage against a petitioner or respondent, whenever:

a. there is exhibited by a respondent or by the petitioner to the peace officer a copy of the petition or summons, with an attached Temporary Injunction Notice, duly filed and issued pursuant to this section, together with a certified copy of the affidavit of service of process or a certified copy of the waiver and acceptance of service, and

b. the peace officer has cause to believe that a violation of the automatic temporary injunction has

occurred. A peace officer shall not be held civilly or criminally liable for his or her action pursuant to this paragraph if his or her action is in good faith and without malice.

B. After a petition has been filed in an action for divorce or legal separation either party may request the court to issue:

1. A temporary order:
 - a. regarding child custody, support or visitation,
 - b. regarding spousal maintenance,
 - c. regarding payment of debt,
 - d. regarding possession of property,
 - e. regarding attorney fees, and
 - f. providing other injunctive relief proper in the circumstances.

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.

The court shall not issue a temporary order until at least five (5) days' notice of hearing is given to the other party.

After notice and hearing, a court may issue a temporary order granting the relief as provided by this paragraph; and/or

2. A temporary restraining order. If the court finds on the basis of a verified application and testimony of witnesses that irreparable harm 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, the court may issue a temporary restraining order which shall become immediately effective and enforceable without requiring notice and opportunity to be heard to the other party. If a temporary restraining order is issued

pursuant to this paragraph, the motion for a temporary order shall be set within ten (10) days.

C. Any temporary orders and the automatic temporary injunction, or specific terms thereof, may be vacated or modified prior to or in conjunction with a final decree on a showing by either party of facts necessary for vacation or modification. Temporary orders and the automatic temporary injunction 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 or the automatic temporary injunction which is filed any time prior to the time the temporary order or injunction terminates.

D. Upon granting a decree of divorce, annulment of a marriage, or legal separation, the court may require either party to pay such reasonable expenses of the other as may be just and proper under the circumstances.

E. 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.

SECTION 4. AMENDATORY 43 O.S. 2001, Section 120.1, is amended to read as follows:

Section 120.1 Sections ~~8~~ 120.1 through ~~12~~ 120.5 of this ~~act~~ title shall be known and may be cited as the "Parenting Family Coordinator Act".

SECTION 5. AMENDATORY 43 O.S. 2001, Section 120.2, is amended to read as follows:

Section 120.2 As used in the ~~Parenting~~ Parenting Family Coordinator Act:

1. "~~Parenting~~ Family Coordinator" means ~~a neutral~~ an impartial third party qualified pursuant to subsection A of Section ~~43~~ 120.6 of this act ~~to hear and decide issues of dispute authorized in an order by the court appointing the parenting coordinator~~ title appointed by the court to assist parties in resolving issues and deciding disputed issues pursuant to the provisions of the Family Coordinator Act relating to parenting and other family issues in any action for divorce, paternity, or guardianship where a minor ~~children are~~ child is involved; and

2. "High-conflict case" means any action for divorce, paternity, or guardianship where minor children are involved and the parties demonstrate a pattern of ongoing:

- a. litigation,
- b. anger and distrust,
- c. verbal abuse,
- d. physical aggression or threats of physical aggression,
- e. difficulty in communicating about and cooperating in the care of their children, or
- f. conditions that in the discretion of the court warrant the appointment of a ~~parenting~~ family coordinator.

SECTION 6. AMENDATORY 43 O.S. 2001, Section 120.3, is amended to read as follows:

Section 120.3 A. In any action for divorce, paternity, or guardianship where minor children are involved, the court may, upon its own motion, or by motion or agreement of the parties, appoint a ~~parenting~~ family coordinator ~~to hear and decide disputed issues relating to the minor children~~ assist the parties in resolving issues and decide disputed issues pursuant to the provisions of the Family Coordinator Act related to parenting or other family issues in the case except as provided in subsection B of this section, and subsection A of Section ~~42~~ 120.5 of this ~~act~~ title.

B. The court shall not appoint a ~~parenting~~ family coordinator if any party objects, unless:

1. The court makes specific findings that the case is a high-conflict case; ~~or~~ and

2. The court makes specific findings that the appointment of a ~~parenting~~ family coordinator is in the best interest of the any minor child in the case.

C. 1. The authority of a ~~parenting~~ family coordinator shall be specified in the order appointing the ~~parenting~~ family coordinator and limited to matters that ~~aid in the communication of the parties and the enforcement of~~ will aid the parties in:

- a. identifying disputed issues,
- b. reducing misunderstandings,
- c. clarifying priorities,
- d. exploring possibilities for compromise,
- e. developing methods of collaboration in parenting, and
- f. complying with the court's order of custody, visitation, or guardianship.

2. The appointment of a family coordinator shall not divest the court of its exclusive jurisdiction to determine fundamental issues of custody, visitation, and support, and the authority to exercise management and control of the case.

3. The family coordinator shall not make any modification to any order, judgment or decree; however, the family coordinator may allow the parties to make minor temporary departures from a parenting plan if authorized by the court to do so. The appointment order should specifically specify those matters which the family coordinator is authorized to determine. The order shall specify which determinations will be immediately effective and which will require an opportunity for court review prior to taking effect.

D. The parties may limit the decision-making authority of the ~~parenting~~ family coordinator to specific issues or areas if the

~~parenting~~ family coordinator is being appointed pursuant to agreement of the parties.

E. Meetings between the ~~parenting~~ family coordinator and the parties need not follow any specific procedures and the meetings may be informal. All communication between the parties and the ~~parenting~~ family coordinator shall not be confidential.

F. Nothing in the ~~Parenting~~ Family Coordinator Act shall abrogate the custodial or noncustodial parent's rights or any court order visitation given to grandparents or other persons except as specifically addressed in the order appointing the ~~parenting~~ family coordinator.

G. 1. Except as otherwise provided by this subsection, the court shall reserve the right to remove the family coordinator in its own discretion.

2. The court shall remove the family coordinator upon the request and agreement of both parties. Upon the motion of either party and good cause shown, the court shall remove the family coordinator.

SECTION 7. AMENDATORY 43 O.S. 2001, Section 120.4, is amended to read as follows:

Section 120.4 A. A report of the decisions and recommendations made by the ~~parenting~~ family coordinator shall be filed with the court within twenty (20) days, with copies of the report provided to the parties or their counsel. There shall be no ex parte communication with the court.

B. ~~The parenting coordinator's decision~~ Any decisions made by the family coordinator authorized by the court order and issued pursuant to the provisions of the Family Coordinator Act shall be binding on the parties until further order of the court.

C. 1. Any party may file with the court and serve on the ~~parenting~~ family coordinator and all other parties an objection to the ~~parenting~~ family coordinator's report within ten (10) days after

the ~~parenting~~ family coordinator provides the report to the parties, or within another time as the court may direct.

2. Responses to the objections shall be filed with the court and served on the ~~parenting~~ family coordinator and all other parties within ten (10) days after the objection is served.

D. The court shall review any objections to the report and any responses submitted to those objections to the report and shall thereafter enter appropriate orders.

SECTION 8. AMENDATORY 43 O.S. 2001, Section 120.5, is amended to read as follows:

Section 120.5 A. No ~~parenting~~ family coordinator shall be appointed unless the court finds that the parties have the means to pay the fees of the ~~parenting~~ family coordinator. This state shall assume no financial responsibility for payment of fees to the ~~parenting~~ family coordinator; except that, in cases of hardship, the court, if feasible, may appoint a ~~parenting~~ family coordinator to serve on a volunteer basis.

B. The ~~parenting~~ family coordinator's fees shall be allocated between the parties with the relative percentages determined pursuant to the child support guidelines. The court may allocate the fees between the parties differently upon a finding of good cause by the court or good cause set forth in the ~~parenting~~ family coordinator's report.

SECTION 9. AMENDATORY 43 O.S. 2001, Section 120.6, is amended to read as follows:

Section 120.6 A. Each judicial district shall adopt local rules governing the qualifications of a ~~parenting~~ family coordinator; provided, the minimum qualifications for a family coordinator shall be as follows:

1. A master's degree in social work and one (1) year of experience in children's services;

2. A member of the Academy of Certified Social Workers (ACSW) and one (1) year of experience in children's services;

3. A master's degree in a behavioral or social science and two (2) years' experience in children's services;

4. A doctorate in a behavioral or social science and one (1) year of experience in children's services;

5. Is a member of the clergy with two (2) years of experience in family counseling; or

6. Is an attorney with at least two (2) years' experience in family law.

B. A ~~parenting~~ family coordinator who is not an attorney shall not constitute the practice of law without a license.

SECTION 10. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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