

1 STATE OF OKLAHOMA

2 2nd Session of the 56th Legislature (2018)

3 HOUSE BILL 3657

By: McDugle

6 AS INTRODUCED

7 An Act relating to divorce; amending 43 O.S. 2011,
8 Section 110, which relates to orders concerning
9 property, children, support and expenses; directing
10 court to set hearing for temporary child custody,
11 support or visitation order within specified time;
12 and providing an effective date.

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

13 SECTION 1. AMENDATORY 43 O.S. 2011, Section 110, is
14 amended to read as follows:

15 Section 110. A. 1. Except as otherwise provided by this
16 subsection, upon the filing of a petition for dissolution of
17 marriage, annulment of a marriage or legal separation by the
18 petitioner and upon personal service of the petition and summons on
19 the respondent, or upon waiver and acceptance of service by the
20 respondent, an automatic temporary injunction shall be in effect
21 against both parties pursuant to the provisions of this section:

22 a. restraining the parties from transferring,
23 encumbering, concealing, or in any way disposing of,
24 without the written consent of the other party or an

1 order of the court, any marital property, except in
2 the usual course of business, for the purpose of
3 retaining an attorney for the case or for the
4 necessities of life and requiring each party to notify
5 the other party of any proposed extraordinary
6 expenditures and to account to the court for all
7 extraordinary expenditures made after the injunction
8 is in effect,

9 b. restraining the parties from:

- 10 (1) intentionally or knowingly damaging or destroying
11 the tangible property of the parties, or of
12 either of them, specifically including, but not
13 limited to, any electronically stored materials,
14 electronic communications, social network data,
15 financial records, and any document that
16 represents or embodies anything of value,
17 (2) making any withdrawal for any purpose from any
18 retirement, profit-sharing, pension, death, or
19 other employee benefit plan or employee savings
20 plan or from any individual retirement account or
21 Keogh account,
22 (3) withdrawing or borrowing in any manner all or any
23 part of the cash surrender value of any life
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1 insurance policies on either party or their
2 children,

3 (4) changing or in any manner altering the
4 beneficiary designation on any life insurance
5 policies on the life of either party or any of
6 their children,

7 (5) canceling, altering, or in any manner affecting
8 any casualty, automobile, or health insurance
9 policies insuring the parties' property or
10 persons,

11 (6) opening or diverting mail addressed to the other
12 party, and

13 (7) signing or endorsing the other party's name on
14 any negotiable instrument, check, or draft, such
15 as tax refunds, insurance payments, and
16 dividends, or attempting to negotiate any
17 negotiable instruments payable to either party
18 without the personal signature of the other
19 party,

20 c. requiring the parties to maintain all presently
21 existing health, property, life and other insurance
22 which the individual is presently carrying on any
23 member of this family unit, and to cooperate as
24 necessary in the filing and processing of claims. Any

1 employer-provided health insurance currently in
2 existence shall remain in full force and effect for
3 all family members,

4 d. enjoining both parties from molesting or disturbing
5 the peace of the other party or of the children to the
6 marriage,

7 e. restraining both parties from disrupting or
8 withdrawing their children from an educational
9 facility and programs where the children historically
10 have been enrolled, or day care,

11 f. restraining both parties from hiding or secreting
12 their children from the other party,

13 g. restraining both parties from removing the minor
14 children of the parties, if any, beyond the
15 jurisdiction of the State of Oklahoma, acting directly
16 or in concert with others, except for vacations of two
17 (2) weeks or less duration, without the prior written
18 consent of the other party, which shall not be
19 unreasonably withheld, and

20 h. requiring, unless otherwise agreed upon by the parties
21 in writing, the delivery by each party to the other
22 within thirty (30) days from the earlier of either the
23 date of service of the summons or the filing of an
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1 initial pleading by the respondent, the following
2 documents:

- 3 (1) the federal and state income tax returns of each
4 party for the past two (2) years and any
5 nonpublic, limited partnership and privately held
6 corporate returns for any entity in which either
7 party has an interest, together with all
8 supporting documentation for the tax returns,
9 including but not limited to W-2 forms, 1099
10 forms, K-1 forms, Schedule C and Schedule E. If
11 a return is not completed at the time of
12 disclosure, the parties shall provide the
13 documents necessary to prepare the tax return of
14 the party, to include W-2 forms, 1099 forms, K-1
15 forms, copies of extension requests and estimated
16 tax payments,
- 17 (2) two (2) months of the most recent pay stubs from
18 each employer for whom the party worked,
- 19 (3) statements for the past six (6) months for all
20 bank accounts held in the name of either party
21 individually or jointly, or in the name of
22 another person for the benefit of either party,
23 or held by either party for the benefit of the
24 minor child or children of the parties,

1 (4) documentation regarding the cost and nature of
2 available health insurance coverage for the
3 benefit of either party or the minor child or
4 children of the parties,

5 (5) documentation regarding the cost and nature of
6 employment or educationally related child care
7 expenses incurred for the benefit of the minor
8 child or children of the parties, and

9 (6) documentation regarding all debts in the name of
10 either party individually or jointly, showing the
11 most recent balance due and payment terms.

12 2. If either party is not in possession of a document required
13 pursuant to subparagraph h of paragraph 1 of this subsection or has
14 not been able to obtain the document in a timely fashion, the party
15 shall state in verified writing, under the penalty of perjury, the
16 specific document which is not available, the reasons the document
17 is not available, and what efforts have been made to obtain the
18 document. As more information becomes available, there is a
19 continuing duty to supplement the disclosures.

20 3. Nothing in this subsection shall prohibit a party from
21 conducting further discovery pursuant to the Oklahoma Discovery
22 Code.

23 4. a. The provisions of the automatic temporary injunction
24 shall be printed as an attachment to the summons and

1 the petition and entitled "Automatic Temporary
2 Injunction Notice".

3 b. The automatic temporary injunction notice shall
4 contain a provision which will allow the parties to
5 waive the automatic temporary injunction. In
6 addition, the provision must state that unless both
7 parties have agreed and have signed their names in the
8 space provided, that the automatic temporary
9 injunction will be effective. Along with the waiver
10 provision, the notice shall contain a check box and
11 space available for the signatures of the parties.

12 5. The automatic temporary injunction shall become an order of
13 the court upon fulfillment of the requirements of paragraph 1 of
14 this subsection unless and until:

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

21 b. a party, no later than three (3) days after service on
22 the party, files an objection to the injunction and
23 requests a hearing. Provided, the automatic temporary
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1 injunction shall remain in effect until the hearing
2 and a judge orders the injunction removed.

3 6. The automatic temporary injunction shall be dissolved upon
4 the granting of the dissolution of marriage, final order of legal
5 separation or other final order.

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

10 8. a. With regard to an automatic temporary injunction, when
11 a petition for dissolution of marriage, annulment of a
12 marriage, or a legal separation is filed and served, a
13 peace officer shall use every reasonable means to
14 enforce the injunction which enjoins both parties from
15 molesting or disturbing the peace of the other party
16 or the children of the marriage against a petitioner
17 or respondent, whenever:

18 (1) there is exhibited by a respondent or by the
19 petitioner to the peace officer a copy of the
20 petition or summons, with an attached Temporary
21 Injunction Notice, duly filed and issued pursuant
22 to this section, together with a certified copy
23 of the affidavit of service of process or a
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1 certified copy of the waiver and acceptance of
2 service, and

3 (2) the peace officer has cause to believe that a
4 violation of the automatic temporary injunction
5 has occurred.

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

10 B. After a petition has been filed in an action for dissolution
11 of marriage or legal separation either party may request the court
12 to issue:

13 1. A temporary order:

- 14 a. regarding child custody, support or visitation,
- 15 b. regarding spousal maintenance,
- 16 c. regarding payment of debt,
- 17 d. regarding possession of property,
- 18 e. regarding attorney fees, and
- 19 f. providing other injunctive relief proper in the
20 circumstances.

21 All applications for temporary orders shall set forth the
22 factual basis for the application and shall be verified by the party
23 seeking relief. The court shall set a hearing for a temporary order
24 regarding child custody, support or visitation no later than thirty

1 (30) days after filing of a petition for dissolution of marriage,
2 annulment of a marriage or legal separation. The application and a
3 notice of hearing shall be served on the other party in any manner
4 provided for in the Rules of Civil Procedure.

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

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

9 2. A temporary restraining order. If the court finds on the
10 basis of a verified application and testimony of witnesses that
11 irreparable harm will result to the moving party, or a child of a
12 party if no order is issued before the adverse party or attorney for
13 the adverse party can be heard in opposition, the court may issue a
14 temporary restraining order which shall become immediately effective
15 and enforceable without requiring notice and opportunity to be heard
16 to the other party. Provided, for the purposes of this section, no
17 minor child or children temporarily residing in a licensed,
18 certified domestic violence shelter in the state shall be removed by
19 an ex parte order. If a temporary restraining order is issued
20 pursuant to this paragraph, the motion for a temporary order shall
21 be set within ten (10) days.

22 C. Any temporary orders and the automatic temporary injunction,
23 or specific terms thereof, may be vacated or modified prior to or in
24 conjunction with a final decree on a showing by either party of

1 facts necessary for vacation or modification. Temporary orders and
2 the automatic temporary injunction terminate when the final judgment
3 on all issues, except attorney fees and costs, is rendered or when
4 the action is dismissed. The court may reserve jurisdiction to rule
5 on an application for a contempt citation for a violation of a
6 temporary order or the automatic temporary injunction which is filed
7 any time prior to the time the temporary order or injunction
8 terminates.

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

13 E. The court may in its discretion make additional orders
14 relative to the expenses of any such subsequent actions, including
15 but not limited to writs of habeas corpus, brought by the parties or
16 their attorneys, for the enforcement or modification of any
17 interlocutory or final orders in the dissolution of marriage action
18 made for the benefit of either party or their respective attorneys.

19 SECTION 2. This act shall become effective November 1, 2018.
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