

No. 1988-13

AN ACT

SB 409

Amending the act of April 2, 1980 (P.L.63, No.26), entitled "An act consolidating, revising and amending the divorce and annulment laws of the Commonwealth and making certain repeals," further providing for grounds for divorce, enforcement of foreign decrees, procedure, jurisdiction, marital property, relief and alimony; providing for agreements between parties; making editorial changes; and making a repeal.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. The definition of "separate and apart" in section 104 and sections 201, 301, 304 and 401 of the act of April 2, 1980 (P.L.63, No.26), known as the Divorce Code, are amended and section 104 is amended by adding a definition to read:

Section 104. Definitions.

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

* * *

"Separate and apart." Complete cessation of any and all cohabitation, *whether living in the same residence or not.*

"Spousal support." *Care, maintenance and financial assistance.*

Section 201. Grounds for divorce.

(a) It shall be lawful for the court to grant a divorce to the innocent and injured spouse whenever it shall be judged that the other spouse shall have:

(1) Committed willful and malicious desertion, and absence from the habitation of the injured and innocent spouse, without a reasonable cause, for the period of one or more years.

(2) Committed adultery.

(3) By cruel and barbarous treatment, endangered the life or health of the injured and innocent spouse.

(4) Knowingly entered into a bigamous marriage while a former marriage still is subsisting.

(5) Been sentenced to imprisonment for a term of two or more years upon conviction of having committed a crime.

(6) Offered such indignities to the innocent and injured spouse as to render his or her condition intolerable and life burdensome.

(b) It shall be lawful for the court to grant a divorce upon the ground that insanity or serious mental disorder has resulted in confinement in a mental institution for at least **[three years] 18 months** immediately before the filing of the complaint, and where there is no reasonable prospect of the defendant spouse's being discharged from inpatient care during the next **[three years] 18 months** subsequent to the filing of the complaint. A pre-

sumption that no such prospect of discharge exists shall be established by a certificate of the superintendent of such institution to that effect and which includes a supporting statement of a treating physician.

(c) It shall be lawful for the court to grant a divorce where a complaint has been filed alleging that the marriage is irretrievably broken and 90 days have elapsed from the date of filing of the complaint and an affidavit has been filed by each of the parties evidencing that each of the parties consents to the divorce.

(d) (1) It shall be lawful for the court to grant a divorce where a [party has filed a] complaint *has been filed alleging that the marriage is irretrievably broken* and an affidavit *has been filed* alleging that the parties have lived separate and apart for a period of at least [three] *two* years, and that the marriage is irretrievably broken, and:

(i) the respondent does not deny the allegations set forth in the affidavit; or

(ii) the respondent denies one or more of the allegations set forth in the affidavit, but after notice and hearing, the court determines that the parties have lived separate and apart for a period of at least [three years] *two years* and that the marriage is irretrievably broken.

(2) If a hearing has been held pursuant to paragraph (1)(ii), and the court determines that there is a reasonable prospect of reconciliation, then the court shall continue the matter for a period not less than 90 days nor more than 120 days, unless the parties agree to a period in excess of 120 days. During such period, the court shall require counseling as provided in section 202. If the parties have not reconciled at the expiration of the time period and one party states under oath that the marriage is irretrievably broken, the court shall determine whether the marriage is irretrievably broken. If the court determines that the marriage is irretrievably broken, the court shall grant the divorce. Otherwise, the court shall deny the divorce.

(e) If grounds for divorce alleged in the complaint or counterclaim are established under subsection (c) or (d), the court shall grant a divorce without requiring a hearing on any other grounds.

Section 301. Jurisdiction.

(a) The courts of this Commonwealth as defined in section 104 shall have original jurisdiction in cases of divorce and for the annulment of void or voidable marriages and, where they have jurisdiction, shall determine in conjunction with any decree granting a divorce or annulment the following matters, where raised in the [complaint or the answer] *pleadings* and issue appropriate decrees or orders with reference thereto and may retain continuing jurisdiction thereof:

(1) The determination and disposition of property rights and interests between spouses, including any rights created by any antenuptial, post-nuptial, or separation agreement and including the partition of property held as tenants by the entireties or otherwise and any accounting between them, and the order of any *spousal support*, alimony, alimony pendente lite, counsel fees, or costs authorized by law.

(2) The future care, custody and visitation rights as to children of such marriage or purported marriage.

(3) Any support or assistance which shall be paid for the benefit of any children of such marriage or purported marriage.

(4) Any property settlement, involving any of the matters set forth in paragraphs (1), (2) and (3) as submitted by the parties.

(5) Any other matters pertaining to such marriage and divorce or annulment authorized by law and which fairly and expeditiously may be determined and disposed of in such action.

(b) The said courts having power to grant divorces shall have authority to do so notwithstanding the fact that the marriage of the parties and the cause for divorce occurred outside of this Commonwealth and that both parties were at the time of such occurrence, domiciled **[without] outside** this Commonwealth. Said courts shall also have power to annul void or voidable marriages notwithstanding the fact such were celebrated **[without] outside** this Commonwealth at a time when neither party was domiciled within this Commonwealth.

(c) After the dissolution or annulment of a marriage in a foreign forum where a matter under subsection (a) has not been decided, a court of this Commonwealth shall have jurisdiction to determine a matter under subsection (a) to the fullest extent allowed under the Constitution of the United States.

(d) A proceeding for divorce or annulment may be brought in the county:

(1) where the defendant resides;

(2) if the defendant resides outside of this Commonwealth, where the plaintiff resides;

(3) of matrimonial domicile, if the plaintiff has continuously resided in the county;

(4) prior to six months after the date of final separation and with agreement of the defendant, where the plaintiff resides, or, if neither party continues to reside in the county of matrimonial domicile, where either party resides; or

(5) after six months after the date of final separation, where either party resides.

Section 304. Hearing by master.

A master may be appointed by the court to hear testimony on all or some issues, except issues of custody and paternity and return the record and a transcript of the testimony together with his report and recommendation as provided by the Rules of Civil Procedure, or a judge of the court in chambers may appoint a master to **[take testimony] hold a nonrecord hearing and to make recommendations** and return the same to the court, in which case, *either party may demand a hearing de novo before the court.*

Section 401. Decree of court.

(a) In all matrimonial causes, the court having jurisdiction may either dismiss the complaint or enter a decree of divorce or annulment of the marriage.

(b) Any decree granting a divorce or an annulment, shall include after a full hearing, where these matters are raised in **[the complaint, the answer or other petition] any pleadings**, an order or orders determining and disposing of existing property rights and interests between the parties, custody, *partial custody* and visitation rights, child support, alimony, *reasonable attorney fees, costs and expenses* and any other related matters including the enforcement of **[separation]** agreements voluntarily entered into between the parties. In the enforcement of the rights of any party to any such matters, the court shall have all necessary powers, including but not limited to, the power of contempt and the power to attach wages.

(b.1) In the event that the court is unable for any reason to determine and dispose of the matters provided for in **[this]** subsection (b) within 30 days after the master's report has been filed, it may enter a decree of divorce or annulment. **[The] Upon the request of either party and after a hearing, the court may order alimony pendente lite, reasonable counsel fees, costs and expenses and may make a temporary order necessary to protect the interests of the parties** pending final disposition of the matters **[provided for]** in this subsection **[and upon]**. Upon final disposition, the court may award costs to the party in whose favor the order or decree shall be entered, or may order that each party shall pay his or her own costs, or may order that *the costs be divided equitably as it shall appear just and reasonable. If one of the parties dies after the decree of divorce has been entered, but prior to the final determination in such proceeding of the property rights and interests of the parties under this act, the personal representative of the deceased party shall be substituted as a party as provided by law and the action shall proceed.*

(c) In all matrimonial causes, the court shall have full equity power and jurisdiction and may issue injunctions or other orders which are necessary to protect the interests of the parties or to effectuate the purposes of this act, and may grant such other relief or remedy as equity and justice require against either party or against any third person over whom the court has jurisdiction and who is involved in or concerned with the disposition of the cause.

(d) In a proceeding for divorce or annulment, the court shall, upon request of either party, equitably divide, distribute or assign, *in kind or otherwise*, the marital property between the parties without regard to marital misconduct in such proportions *and in such manner* as the court deems just after considering all relevant factors including:

- (1) The length of the marriage.
- (2) Any prior marriage of either party.
- (3) The age, health, station, amount and sources of income, vocational skills, employability, estate, liabilities and needs of each of the parties.
- (4) The contribution by one party to the education, training, or increased earning power of the other party.
- (5) The opportunity of each party for future acquisitions of capital assets and income.

(6) The sources of income of both parties, including but not limited to medical, retirement, insurance or other benefits.

(7) The contribution or dissipation of each party in the acquisition, preservation, depreciation or appreciation of the marital property, including the contribution of a party as homemaker.

(8) The value of the property set apart to each party.

(9) The standard of living of the parties established during the marriage.

(10) The economic circumstances of each party, *including Federal, State and local tax ramifications*, at the time the division of property is to become effective.

(11) Whether the party will be serving as the custodian of any dependent minor children.

(e) For purposes of this chapter only, "marital property" means all property acquired by either party during the marriage, *including the increase in value prior to the date of final separation of any nonmarital property acquired pursuant to paragraphs (1) and (3)*, except:

(1) Property acquired *prior to marriage or property acquired in exchange for property acquired prior to the marriage [except for the increase in value during the marriage]*.

(2) Property excluded by valid agreement of the parties entered into before, during or after the marriage.

(3) Property acquired by gift, *except between spouses*; bequest[,]; devise; or descent *[except for the increase in value during the marriage]*.

(4) Property acquired after *final* separation until the date of divorce[, provided however, if the parties separate and reconcile, all property acquired subsequent to the final separation until their divorce], *except for property acquired in exchange for marital assets*.

(5) Property which a party has sold, granted, conveyed or otherwise disposed of in good faith and for value prior to the *[time proceedings for the divorce are commenced] date of final separation*.

(6) Veterans' benefits exempt from attachment, levy or seizure pursuant to the act of September 2, 1958, Public Law 85-857, 72 Statute 1229, as amended, except for those benefits received by a veteran where such veteran has waived a portion of his military retirement pay in order to receive Veteran's Compensation.

(7) Property to the extent to which such property has been mortgaged or otherwise encumbered in good faith for value, prior to the *[time proceedings for the divorce are commenced.] date of final separation*.

(8) *Any payment received as a result of an award or settlement for any cause of action or claim which accrued prior to the marriage or after the date of final separation regardless of when the payment was received.*

(f) All property, whether real or personal, acquired by either party during the marriage is presumed to be marital property regardless of whether title is held individually or by the parties in some form of co-ownership such as joint tenancy, tenancy in common or tenancy by the entirety. The presumption of marital property is overcome by a showing that the property was acquired by a method listed in subsection (e).

(g) The court may impose a lien or charge upon the **[marital property assigned to] property of a party** as security for the payment of alimony or any other award for the other party.

(h) The court may award *during the pendency of the action or otherwise* to one **[, each,]** or both of the parties the right to **[live in the family home for reasonable periods of time] reside in the marital residence.**

(i) The court may **[also]** direct the continued maintenance and beneficiary designations of existing policies insuring the life *or health* of either party. **The court's power under this subsection shall extend only to policies] which were** originally purchased during the marriage and owned by or within the effective control of either party. *Where it is necessary to protect the interests of a party, the court may also direct the purchase of, and beneficiary designations on, a policy insuring the life or health of either party.*

(j) Whenever a decree or judgment is granted which nullifies or absolutely terminates the bonds of matrimony, any and all property rights which are dependent upon such marital relation, save those which are vested rights, are terminated unless the court otherwise expressly provides in its decree in accordance with subsection (b) *or (b.1)*. All duties, rights, and claims accruing to either of said parties at any time heretofore in pursuance of the said marriage, shall cease and the parties shall, severally, be at liberty to marry again in like manner as if they had never been married, except where otherwise provided by law.

(k) If, at any time, a party has failed to comply with an order of equitable distribution, as provided for in this section, or with the terms of an agreement as entered into between the parties, after hearing, the court may, in addition to any other remedy available under this act, in order to effect compliance with its order:

(1) enter judgment;

(2) authorize the taking and seizure of the goods and chattels and collection of the rents and profits of the real and personal, tangible and intangible property of the party;

(3) award interest on unpaid installments;

(4) order and direct the transfer or sale of any property required in order to comply with the court's order;

(5) require security to insure future payments in compliance with the court's order;

(6) issue attachment proceedings, directed to the sheriff or other proper officer of the county, directing that the person named as having failed to comply with the court order be brought before the court, at such time as the court may direct. If the court finds, after hearing, that the person willfully failed to comply with the court order, it may deem the person in civil contempt of court and, in its discretion, make an appropriate order, including, but not limited to, commitment of the person to the county jail for a period not to exceed six months;

(7) award counsel fees and costs;

(8) attach wages; or

(9) find the party in contempt.

Section 2. The act is amended by adding a section to read:

Section 401.1. Effect of agreement between parties.

(a) A party to an agreement regarding matters within the jurisdiction of the court under this act, whether or not the agreement has been merged or incorporated into the decree, may utilize a remedy or sanction set forth in this act to enforce the agreement to the same extent as though the agreement had been an order of the court except as provided to the contrary in the agreement.

(b) A provision of an agreement regarding child support, visitation or custody shall be subject to modification by the court upon a showing of changed circumstances.

(c) In the absence of a specific provision to the contrary appearing in the agreement, a provision regarding the disposition of existing property rights and interests between the parties, alimony, alimony pendente lite, counsel fees or expenses shall not be subject to modification by the court.

Section 3. Sections 403, 501(a), (b) and (c), 502 and 503 of the act are amended to read:

Section 403. Injunction against disposition of property pending suit and decree rendering fraudulent transfers null and void.

(a) Where it appears to the court that a party is about to remove himself or herself or his or her property from the jurisdiction of the court or is about to dispose of, alienate, or encumber property in order to defeat equitable distribution, alimony pendente lite, alimony, child and spousal support, or similar award, an injunction may issue to prevent such removal or disposition and such property may be attached as provided by the Rules of Civil Procedure. The court may also issue a writ of ne exeat to preclude such removal.

(b) Both parties shall submit to the court an inventory and appraisalment [of all property owned or possessed at the time action was commenced.], which shall contain all of the following:

(1) A list of the property owned or possessed by either or both of them as of:

(i) the date of separation; and

(ii) thirty days prior to the date of hearing on equitable distribution.

(2) A list of the value of the property owned or possessed by either or both of them as of:

(i) the date of acquisition;

(ii) the date of separation; and

(iii) thirty days prior to the date of hearing on equitable distribution.

(3) A list of the liabilities of either or both of them as of 30 days prior to the date of hearing on equitable distribution, whether or not the liabilities are related to the property set forth in the inventory and appraisalment.

(b.1) Discovery under this act shall be as provided for all other civil actions under the Pennsylvania Rules of Civil Procedure.

(c) If any party **[deliberately or negligently]** fails to disclose information required by subsection (b) and in consequence thereof any asset or assets with a fair market value of \$500 or more is omitted from the final distribution of property, the party aggrieved by such nondisclosure may at any time petition the court granting the **[annulment or divorce]** award to declare the creation of a constructive trust as to all undisclosed assets, for the benefit of the parties and their minor or dependent children, if any, with the party in whose name the assets are held declared the constructive trustee, said trust to include such terms and conditions as the court may determine. The court shall grant the petition upon a finding of a failure to disclose such assets as required under subsection (b).

(d) Any encumbrance or disposition of *marital* property to third persons **[who had notice of the pendency of the matrimonial action or]** who paid wholly inadequate consideration for such property may be deemed fraudulent and declared null and void.

Section 501. Alimony.

(a) **[The]** *Where a divorce decree has been entered, the* court may allow alimony, as it deems reasonable, to either party, only if it finds that **[the party seeking]** alimony[:

(1) **lacks sufficient property, including but not limited to any property distributed pursuant to Chapter 4, to provide for his or her reasonable needs; and**

(2) **is unable to support himself or herself through appropriate employment.] is necessary.**

(b) In determining whether alimony is necessary, and in determining the nature, amount, duration, and manner of payment of alimony, the court shall consider all relevant factors including:

(1) The relative earnings and earning capacities of the parties.

(2) The ages, and the physical, mental and emotional conditions of the parties.

(3) The sources of income of both parties including but not limited to medical, retirement, insurance or other benefits.

(4) The expectancies and inheritances of the parties.

(5) The duration of the marriage.

(6) The contribution by one party to the education, training or increased earning power of the other party.

[(7) The extent to which it would be inappropriate for a party, because said party will be custodian of a minor child, to seek employment outside the home.]

(7) The extent to which the earning power, expenses or financial obligations of a party will be affected by reason of serving as the custodian of a minor child.

(8) The standard of living of the parties established during the marriage.

(9) The relative education of the parties and the time necessary to acquire sufficient education or training to enable the party seeking alimony to find appropriate employment.

- (10) The relative assets and liabilities of the parties.
- (11) The property brought to the marriage by either party.
- (12) The contribution of a spouse as homemaker.
- (13) The relative needs of the parties.
- (14) The marital misconduct of either of the parties during the marriage; however, the marital misconduct of either of the parties **[during] from the date of final separation [subsequent to the filing of a divorce complaint]** shall not be considered by the court in its determinations relative to alimony.

(15) *The Federal, State and local tax ramifications of the alimony award.*

(16) *Whether the party seeking alimony lacks sufficient property, including, but not limited to, property distributed under Chapter 4, to provide for the party's reasonable needs.*

(17) *Whether the party seeking alimony is incapable of self-support through appropriate employment.*

(c) **[Unless the ability of the party seeking the alimony to provide for his or her reasonable needs through employment is substantially diminished by reason of age, physical, mental or emotional condition, custody of minor children, or other compelling impediment to gainful employment, the] *The* court in ordering alimony shall **[limit] *determine*** the duration of the order **[to a], which may be for a definite or an indefinite** period of time which is reasonable **[for the purpose of allowing the party seeking alimony to meet his or her reasonable needs by:****

(1) obtaining appropriate employment; or

(2) developing an appropriate employable skill] *under the circumstances.*

* * *

Section 502. Alimony pendente lite, counsel fees and expenses.

The court may, upon petition, in proper cases, allow a spouse reasonable alimony pendente lite, *spousal support* and reasonable counsel fees and expenses. *Reasonable counsel fees and expenses may be allowed pendente lite, and the court shall also have authority to direct that adequate health and hospitalization insurance coverage be maintained for the dependent spouse pendente lite.*

Section 503. Enforcement of arrearages.

If at any time a party is in arrears in the payment of alimony or alimony pendente lite as provided for in sections 501 and 502, after hearing, the court may, in order to effect payment of the arrearages:

(1) Enter judgment.

(2) Authorize the taking and seizure of the goods and chattels and collection of the rents and profits of the real estate of the party.

(3) Attach no more than 50% of the wages of the party.

(4) Award interest on unpaid installments.

(5) Require security to insure future payments.

(6) Issue attachment proceedings, directed to the sheriff or other proper officer of the county, directing that the person named as having

failed to comply with the court order be brought before the court at such time as the court may direct. If the court finds, after hearing, that the said person willfully failed to comply with the court order, it may deem said person in civil contempt of court and in its discretion make an appropriate order including, but not limited to, commitment of said person to the county jail for a period not to exceed six months.

(7) Award counsel fees and costs.

Section 4. Section 505 of the act is repealed.

Section 5. Section 506 of the act is amended to read:

Section 506. Enforcement of foreign decrees.

Whenever a person subject to a valid decree of a sister state or territory *for the distribution of marital property or* for the payment of alimony, temporary alimony, or alimony pendente lite, or his or her property is found within this Commonwealth, the obligee of such a decree may petition the court, where the obligor or his or her property is found, to register, adopt as its own, and to enforce the said decree as a duly issued and authenticated decree of a sister state or territory. Upon registration and adoption, such relief and process for enforcement as is provided for at law, in equity, or by court rule, in similar cases originally commenced in this Commonwealth, shall be available, and a copy of the decree and order shall be forwarded to the court of the state or territory which issued the original decree. The obligor, in such actions to register, adopt, and enforce, shall have such defenses and relief as are available to him in the state or territory which issued the original decree and may question the jurisdiction of that court if not otherwise barred. Interest may be awarded on unpaid installments and security may be required to insure future payments as in such cases originally commenced in this Commonwealth. Where property of the obligor, but not his person, is found within this Commonwealth, there shall be jurisdiction quasi in rem and, upon registration and adoption of the decree of the sister state or territory, such relief and enforcement of the decree shall be available as in other proceedings which are quasi in rem.

Section 6. The act is amended by adding a section to read:

Section 508. Effect of death of either party.

Upon the death of the payee party, the right to receive alimony pursuant to this chapter shall cease. Upon the death of the payor party, the obligation to pay alimony shall cease unless otherwise indicated in an agreement between the parties or an order of court.

Section 7. The reduced time period in section 1 (section 201(d)) shall apply to final separations which begin on or after the effective date of this act. For final separations beginning prior to the effective date of this act, the three-year time period shall apply.

Section 8. This act shall take effect immediately.

APPROVED—The 12th day of February, A. D. 1988.

ROBERT P. CASEY