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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-NINTH SESSION

H. F. No. 518

02/02/2015 Authored by Scott, Norton, Laine and Mahoney

The bill was read for the first time and referred to the Committee on Civil Law and Data Practices

03/10/2015 Adoption of Report: Re-referred to the Committee on Public Safety and Crime Prevention Policy and Finance

1.1 A bill for an act
1.2 relating to family law; clarifying parenting time rebuttable presumption;
1.3 modifying remedies following denial of court-ordered parenting time or other
1.4 agreements; allowing post-decree modification of maintenance; requiring
1.5 disclosure of income information; allowing an alternate effective date for
1.6 modification of child support; amending Minnesota Statutes 2014, sections
1.7 518.175, subdivisions 1, 6; 518.552, subdivision 5; 518A.28; 518A.39,
1.8 subdivision 2.

1.9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.10 Section 1. Minnesota Statutes 2014, section 518.175, subdivision 1, is amended to read:

1.11 Subdivision 1. **General.** (a) In all proceedings for dissolution or legal separation,
1.12 subsequent to the commencement of the proceeding and continuing thereafter during
1.13 the minority of the child, the court shall, upon the request of either parent, grant such
1.14 parenting time on behalf of the child and a parent as will enable the child and the parent to
1.15 maintain a child to parent relationship that will be in the best interests of the child. The
1.16 court, when issuing a parenting time order, may reserve a determination as to the future
1.17 establishment or expansion of a parent's parenting time. In that event, the best interest
1.18 standard set forth in subdivision 5, paragraph (a), shall be applied to a subsequent motion
1.19 to establish or expand parenting time.

1.20 (b) If the court finds, after a hearing, that parenting time with a parent is likely
1.21 to endanger the child's physical or emotional health or impair the child's emotional
1.22 development, the court shall restrict parenting time with that parent as to time, place,
1.23 duration, or supervision and may deny parenting time entirely, as the circumstances
1.24 warrant. The court shall consider the age of the child and the child's relationship with the
1.25 parent prior to the commencement of the proceeding.

(c) A parent's failure to pay support because of the parent's inability to do so shall not be sufficient cause for denial of parenting time.

(d) The court may provide that a law enforcement officer or other appropriate person will accompany a party seeking to enforce or comply with parenting time.

(e) Upon request of either party, to the extent practicable an order for parenting time must include a specific schedule for parenting time, including the frequency and duration of visitation and visitation during holidays and vacations, unless parenting time is restricted, denied, or reserved.

(f) The court administrator shall provide a form for a pro se motion regarding parenting time disputes, which includes provisions for indicating the relief requested, an affidavit in which the party may state the facts of the dispute, and a brief description of the parenting time expeditor process under section 518.1751. The form may not include a request for a change of custody. The court shall provide instructions on serving and filing the motion.

(g) In the absence of other evidence, there is a rebuttable presumption that a parent is entitled to receive at least a minimum of 25 percent of the parenting time for the child. For purposes of this paragraph, the percentage of parenting time may be determined by calculating the number of overnights that a child spends with a parent or by using a method other than overnights if the parent has significant time periods on separate days when the child is in the parent's physical custody but does not stay overnight. The court may consider the age of the child in determining whether a child is with a parent for a significant period of time.

Sec. 2. Minnesota Statutes 2014, section 518.175, subdivision 6, is amended to read:

Subd. 6. **Remedies.** (a) The court may provide compensatory parenting time when a substantial amount of court-ordered parenting time has been made unavailable to one parent unless providing the compensatory parenting time is not consistent with the child's best interests.

(a) (b) The court may shall provide for one or more of the following remedies as provided under this subdivision for (1) a repeated and intentional denial of or interference with court-ordered parenting time as provided under this subdivision. All parenting time orders must include notice of the provisions of this subdivision, or (2) a repeated and intentional failure to comply with a binding agreement or decision under section 518.1751.

(b) (c) If the court finds that a person has been deprived of court-ordered parenting time under paragraph (b), the court shall order the parent who has interfered to allow compensatory parenting time to the other parent or the court shall make specific findings

as to why a request for compensatory parenting time is denied. If When compensatory parenting time is awarded, additional parenting time must be:

(1) at least of the same type and duration as the deprived parenting time and, at the discretion of the court, may be in excess of or of a different type than the deprived parenting time;

(2) taken within one year after the deprived parenting time; and

(3) at a time acceptable to the parent deprived of parenting time.

~~(e)~~ (d) If the court finds that a party has ~~wrongfully failed to comply with a parenting time order~~ repeatedly and intentionally denied or interfered with court-ordered parenting time or failed to comply with a binding agreement or decision under section 518.1751, the court may in addition to awarding compensatory parenting time under paragraph (c):

(1) impose a civil penalty of up to \$500 on the party;

(2) require the party to post a bond with the court for a specified period of time to secure the party's compliance;

(3) award reasonable attorney's fees and costs;

(4) require the party who violated the parenting time order or binding agreement or decision of the parenting time expeditor to reimburse the other party for costs incurred as a result of the violation of the order or agreement or decision; or

(5) award any other remedy that the court finds to be in the best interests of the children involved.

A civil penalty imposed under this paragraph must be deposited in the county general fund and must be used to fund the costs of a parenting time expeditor program in a county with this program. In other counties, the civil penalty must be deposited in the state general fund.

(e) The court shall provide one or more of the remedies available in paragraph (d), clauses (1) to (5), if one of the following occurs:

(1) the court finds that a party has repeatedly and intentionally denied or interfered with court-ordered parenting time after a previous finding that the party repeatedly and intentionally denied or interfered with court-ordered parenting time; or

(2) the court finds that a party has failed to comply with a binding agreement or decision under section 518.1751 after a previous finding that the party failed to comply with a binding agreement or decision under section 518.1751.

(f) If the court makes written findings that any denial of or interference with court-ordered parenting time or the failure to comply with a binding agreement or decision under section 518.1751 was necessary to protect a child's physical or emotional health, the court is not required to comply with paragraphs (b) to (e).

4.1 ~~(d)~~ (g) If the court finds that a party has been denied parenting time and has incurred
4.2 expenses in connection with the denied parenting time, the court may require the party
4.3 who denied parenting time to post a bond in favor of the other party in the amount of
4.4 prepaid expenses associated with upcoming planned parenting time.

4.5 ~~(e)~~ (h) Proof of an unwarranted denial of or interference with duly established
4.6 parenting time may constitute contempt of court and may be sufficient cause for reversal
4.7 of custody.

4.8 (i) All parenting time orders must include notice of the provisions of this subdivision.

4.9 Sec. 3. Minnesota Statutes 2014, section 518.552, subdivision 5, is amended to read:

4.10 Subd. 5. **Private agreements.** The parties may expressly preclude or limit
4.11 modification of maintenance through a stipulation, if the court makes specific findings
4.12 that the stipulation is fair and equitable, is supported by consideration described in the
4.13 findings, and that full disclosure of each party's financial circumstances has occurred. The
4.14 stipulation must be made a part of the judgment and decree or a post-decree stipulated
4.15 order. The parties may restore the court's authority or jurisdiction to award or modify
4.16 maintenance through a binding stipulation.

4.17 Sec. 4. Minnesota Statutes 2014, section 518A.28, is amended to read:

4.18 **518A.28 PROVIDING INCOME INFORMATION.**

4.19 (a) In any case where the parties have joint children for which a child support
4.20 order must be determined, the parties shall serve and file with their initial pleadings
4.21 or motion documents, a financial affidavit, disclosing all sources of gross income for
4.22 purposes of section 518A.29. The financial affidavit shall include relevant supporting
4.23 documentation necessary to calculate the parental income for child support under section
4.24 518A.26, subdivision 15, including, but not limited to, pay stubs for the most recent three
4.25 months, employer statements, or statements of receipts and expenses if self-employed.
4.26 Documentation of earnings and income also include relevant copies of each parent's
4.27 most recent federal tax returns, including W-2 forms, 1099 forms, unemployment benefit
4.28 statements, workers' compensation statements, and all other documents evidencing
4.29 earnings or income as received that provide verification for the financial affidavit. The
4.30 state court administrator shall prepare a financial affidavit form that may be used by
4.31 the parties for disclosing information under this section. The parties may provide the
4.32 information required under this section in a substantially similar affidavit form.

(b) In addition to the requirements of paragraph (a), at any time after an action seeking child support has been commenced or when a child support order is in effect, a party or the public authority may require the other party to give them a copy of:

(1) the party's ~~most recent~~ complete federal tax returns for the preceding year that were filed with the Internal Revenue Service; or

(2) if the party's federal tax returns have not been filed for that year, one or more of the following:

(i) the party's 1099 form;

(ii) the party's W-2 form; or

(iii) the party's K-1 form.

The party shall provide a copy of the tax returns or forms within 30 days of receipt of the request unless the request is not made in good faith. A request under this paragraph may not be made more than once every two years, in the absence of good cause.

(c) If a parent under the jurisdiction of the court does not serve and file the financial affidavit with the parent's initial pleading or motion documents, the court shall set income for that parent based on credible evidence before the court or in accordance with section 518A.32. Credible evidence may include documentation of current or recent income, testimony of the other parent concerning recent earnings and income levels, and the parent's wage reports filed with the Minnesota Department of Employment and Economic Development under section 268.044. The court may consider credible evidence from one party that the financial affidavit submitted by the other party is false or inaccurate.

(d) If the court determines that a party does not have access to documents that are required to be disclosed under this section, the court may consider the testimony of that party as credible evidence of that party's income.

Sec. 5. Minnesota Statutes 2014, section 518A.39, subdivision 2, is amended to read:

Subd. 2. **Modification.** (a) The terms of an order respecting maintenance or support may be modified upon a showing of one or more of the following, any of which makes the terms unreasonable and unfair: (1) substantially increased or decreased gross income of an obligor or obligee; (2) substantially increased or decreased need of an obligor or obligee or the child or children that are the subject of these proceedings; (3) receipt of assistance under the AFDC program formerly codified under sections 256.72 to 256.87 or 256B.01 to 256B.40, or chapter 256J or 256K; (4) a change in the cost of living for either party as measured by the Federal Bureau of Labor Statistics; (5) extraordinary medical expenses of the child not provided for under section 518A.41; (6) a change in the availability of appropriate health care coverage or a substantial increase or decrease

in health care coverage costs; (7) the addition of work-related or education-related child care expenses of the obligee or a substantial increase or decrease in existing work-related or education-related child care expenses; or (8) upon the emancipation of the child, as provided in subdivision 5.

(b) It is presumed that there has been a substantial change in circumstances under paragraph (a) and the terms of a current support order shall be rebuttably presumed to be unreasonable and unfair if:

(1) the application of the child support guidelines in section 518A.35, to the current circumstances of the parties results in a calculated court order that is at least 20 percent and at least \$75 per month higher or lower than the current support order or, if the current support order is less than \$75, it results in a calculated court order that is at least 20 percent per month higher or lower;

(2) the medical support provisions of the order established under section 518A.41 are not enforceable by the public authority or the obligee;

(3) health coverage ordered under section 518A.41 is not available to the child for whom the order is established by the parent ordered to provide;

(4) the existing support obligation is in the form of a statement of percentage and not a specific dollar amount;

(5) the gross income of an obligor or obligee has decreased by at least 20 percent through no fault or choice of the party; or

(6) a deviation was granted based on the factor in section 518A.43, subdivision 1, clause (4), and the child no longer resides in a foreign country or the factor is otherwise no longer applicable.

(c) A child support order is not presumptively modifiable solely because an obligor or obligee becomes responsible for the support of an additional nonjoint child, which is born after an existing order. Section 518A.33 shall be considered if other grounds are alleged which allow a modification of support.

(d) On a motion for modification of maintenance, including a motion for the extension of the duration of a maintenance award, the court shall apply, in addition to all other relevant factors, the factors for an award of maintenance under section 518.552 that exist at the time of the motion. On a motion for modification of support, the court:

(1) shall apply section 518A.35, and shall not consider the financial circumstances of each party's spouse, if any; and

(2) shall not consider compensation received by a party for employment in excess of a 40-hour work week, provided that the party demonstrates, and the court finds, that:

(i) the excess employment began after entry of the existing support order;

- 7.1 (ii) the excess employment is voluntary and not a condition of employment;
- 7.2 (iii) the excess employment is in the nature of additional, part-time employment, or
- 7.3 overtime employment compensable by the hour or fractions of an hour;
- 7.4 (iv) the party's compensation structure has not been changed for the purpose of
- 7.5 affecting a support or maintenance obligation;
- 7.6 (v) in the case of an obligor, current child support payments are at least equal to the
- 7.7 guidelines amount based on income not excluded under this clause; and
- 7.8 (vi) in the case of an obligor who is in arrears in child support payments to the
- 7.9 obligee, any net income from excess employment must be used to pay the arrearages
- 7.10 until the arrearages are paid in full.
- 7.11 (e) A modification of support or maintenance, including interest that accrued
- 7.12 pursuant to section 548.091, may be made retroactive only with respect to any period
- 7.13 during which the petitioning party has pending a motion for modification but only from
- 7.14 the date of service of notice of the motion on the responding party and on the public
- 7.15 authority if public assistance is being furnished or the county attorney is the attorney of
- 7.16 record, unless the court adopts an alternative effective date under paragraph (l). The
- 7.17 court's adoption of an alternative effective date under paragraph (l) shall not be considered
- 7.18 a retroactive modification of maintenance or support.
- 7.19 (f) Except for an award of the right of occupancy of the homestead, provided in
- 7.20 section 518.63, all divisions of real and personal property provided by section 518.58
- 7.21 shall be final, and may be revoked or modified only where the court finds the existence
- 7.22 of conditions that justify reopening a judgment under the laws of this state, including
- 7.23 motions under section 518.145, subdivision 2. The court may impose a lien or charge on
- 7.24 the divided property at any time while the property, or subsequently acquired property, is
- 7.25 owned by the parties or either of them, for the payment of maintenance or support money,
- 7.26 or may sequester the property as is provided by section 518A.71.
- 7.27 (g) The court need not hold an evidentiary hearing on a motion for modification of
- 7.28 maintenance or support.
- 7.29 (h) Sections 518.14 and 518A.735 shall govern the award of attorney fees for
- 7.30 motions brought under this subdivision.
- 7.31 (i) Except as expressly provided, an enactment, amendment, or repeal of law does
- 7.32 not constitute a substantial change in the circumstances for purposes of modifying a
- 7.33 child support order.
- 7.34 (j) MS 2006 [Expired]

8.1 (k) On the first modification under the income shares method of calculation, the
8.2 modification of basic support may be limited if the amount of the full variance would
8.3 create hardship for either the obligor or the obligee.

8.4 (l) The court may select an alternative effective date for a maintenance or support
8.5 order if:

8.6 (1) the parties enter into a binding agreement for an alternative effective date;

8.7 (2) one party fails to provide income information reasonably requested pursuant to
8.8 section 518A.28; or

8.9 (3) the court finds that one party violated a court order requiring the party to disclose
8.10 income or employment information and any changes to that information and the other
8.11 party acted reasonably and to that party's detriment in reliance on the court order.