

CHAPTER 518

MARRIAGE DISSOLUTION

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518.003 DEFINITIONS.

[For text of subds 1 and 2, see M.S.1980]

Subd. 3. **Custody.** Unless otherwise agreed by the parties:

(a) "Legal custody" means the right to determine the child's upbringing, including education, health care and religious training.

(b) "Joint legal custody" means that both parents have equal rights and responsibilities, including the right to participate in major decisions determining the child's upbringing, including education, health care and religious training.

(c) "Physical custody and residence" means the routine daily care and control and the residence of the child.

(d) "Joint physical custody" means that the routine daily care and control and the residence of the child is structured between the parties.

(e) Wherever used in this chapter, the term "custodial parent" or "custodian" means the person who has the physical custody of the child at any particular time.

History: 1981 c 349 s 2

518.09 PROCEEDING; HOW AND WHERE BROUGHT; VENUE.

A proceeding for dissolution or legal separation may be brought by either or both spouses and shall be commenced by personal service of the summons and petition venued in the county where either spouse resides. If neither party resides in the state and jurisdiction is based on the domicile of either spouse, the proceeding may be brought in the county where either party is domiciled. If neither party resides or is domiciled in this state and jurisdiction is premised upon one of the parties being a member of the armed services stationed in this state for not less than 180 days immediately preceding the commencement of the proceeding, the proceeding may be brought in the county where the member is stationed. This venue shall be subject to the power of the court to change the place of hearing by consent of the parties, or when it appears to the court that an impartial hearing cannot be had in the county where the proceedings are pending, or when the convenience of the parties or the ends of justice would be promoted by the change. No summons shall be required if a joint petition is filed.

History: 1981 c 349 s 3

518.145 DECREE.

A decree of dissolution of marriage or of legal separation is final when entered, subject to the right of appeal. When entered, the findings of fact and conclusions of law may constitute the judgment and decree. An appeal from the decree of dissolution that does not challenge the finding that the marriage is irretrievably broken does not delay the finality of that provision of the decree

which dissolves the marriage beyond the time for appealing from that provision. A party may remarry before the time for appeal has run if it is not contested that the marriage is irretrievably broken or if a stipulation that the marriage is irretrievably broken is incorporated in the decree of dissolution.

History: 1981 c 349 s 4

518.155 CUSTODY DETERMINATIONS.

Notwithstanding any law to the contrary, a court in which a proceeding for dissolution, legal separation, or child custody has been commenced shall not issue, revise, modify or amend any order, pursuant to sections 518.131, 518.165, 518.168, 518.17, 518.175 or 518.18, which affects the custody of a minor child or the visitation rights of a noncustodial parent unless the court has jurisdiction over the matter pursuant to the provisions of sections 518A.01 to 518A.25.

History: 1Sp1981 c 4 art 1 s 179

518.17 CUSTODY AND SUPPORT OF CHILDREN ON JUDGMENT.

Subdivision 1. **The best interests of the child.** "The best interests of the child" means all relevant factors to be considered and evaluated by the court including:

- (a) The wishes of the child's parent or parents as to his custody;
- (b) The reasonable preference of the child, if the court deems the child to be of sufficient age to express preference;
- (c) The interaction and interrelationship of the child with his parent or parents, his siblings, and any other person who may significantly affect the child's best interests;
- (d) The child's adjustment to his home, school, and community;
- (e) The length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity;
- (f) The permanence, as a family unit, of the existing or proposed custodial home;
- (g) The mental and physical health of all individuals involved;
- (h) The capacity and disposition of the parties to give the child love, affection, and guidance, and to continue educating and raising the child in his culture and religion or creed, if any; and
- (i) The child's cultural background.

The court shall not consider conduct of a proposed custodian that does not affect his relationship to the child.

Subd. 2. **Factors when joint custody is sought.** In addition to the factors listed in subdivision 1, where either joint legal or joint physical custody is contemplated or sought, the court shall consider the following relevant factors:

- (a) The ability of parents to cooperate in the rearing of their children;
- (b) Methods for resolving disputes regarding any major decision concerning the life of the child, and the parents' willingness to use those methods; and
- (c) Whether it would be detrimental to the child if one parent were to have sole authority over the child's upbringing.

Subd. 3. **Custody order.** Upon adjudging the nullity of a marriage, or a dissolution or separation, or a child custody proceeding, the court shall make such further order as it deems just and proper concerning: (a) the legal custody of the

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minor children of the parties which shall be sole or joint; (b) their physical custody and residence; and (c) their support. In determining custody, the court shall consider the best interests of the child and shall not prefer one parent over the other solely on the basis of the sex of the parent.

Subd. 4. **Child support.** The court may order either or both parents owing a duty of support to a child of the marriage to pay an amount reasonable or necessary for his support, without regard to marital misconduct, after considering all relevant factors including:

- (a) The financial resources and needs of the child;
- (b) The financial resources and needs of the custodial parent;
- (c) The standard of living the child would have enjoyed had the marriage not been dissolved;
- (d) The physical and emotional condition of the child, and his educational needs; and
- (e) The financial resources and needs of the noncustodial parent.

History: 1981 c 349 s 5

518.54 DEFINITIONS.

[For text of subds 1 to 5, see M.S.1980]

Subd. 6. **Income.** "Income" means any form of periodic payment to an individual including, but not limited to, wages, salaries, payments to an independent contractor, workers' compensation, unemployment compensation, annuity, military and naval retirement, pension and disability payments.

Subd. 7. **Obligee.** "Obligee" means a person to whom payments for maintenance or support are owed.

Subd. 8. **Obligor.** "Obligor" means a person obligated to pay maintenance or support.

Subd. 9. **Public authority.** "Public authority" means the public authority responsible for child support enforcement.

History: 1981 c 360 art 2 s 45

518.551 MAINTENANCE AND SUPPORT PAYMENTS MADE TO WELFARE AGENCIES.

Subdivision 1. **Order.** A court having jurisdiction over proceedings for dissolution, legal separation or determination of parentage shall direct that all payments ordered for maintenance and support shall be made to the public authority so long as the obligee is receiving or has applied for public assistance. Amounts received by the public authority greater than the amount granted to the obligee shall be remitted to the obligee.

Each order shall provide that the obligor's employer, trustee, or other payor of funds shall withhold from the obligor's income, regardless of source, an amount equal to the court's order for support or maintenance.

Subd. 2. **Notice of conditions.** Each order for withholding shall provide for a conspicuous notice to the obligor that withholding may result if the obligor fails to make maintenance or support payments, and that no withholding shall be made until the following conditions are met:

- (a) The public authority determines that the obligor is at least 30 days in arrears;

(b) The public authority serves written notice of its determination of arrearage on the obligor at least 15 days before service of the determination and a copy of the court's order for withholding on the payor of funds;

(c) Within the 15 day period, the obligor has failed either to pay all arrearages or to move the court, under section 518.64, to modify the order respecting the amount of maintenance or support and, ex parte, to stay service on the payor of funds until the motion to modify is heard; and

(d) The public authority serves a copy of its determination of arrearage and a copy of the court's withholding order on the payor of funds.

Subd. 3. **Modification orders.** An order modifying the amount of maintenance or support, issued after the hearing on the motion to modify, shall provide that payments be made by withholding.

Subd. 4. **Order becomes binding.** The order is binding on the employer, trustee or other payor of funds upon service upon him of a copy of the determination of arrearage and a copy of the court withholding order.

Subd. 5. **Notice to public authority.** The petitioner shall notify the public authority of all proceedings for dissolution, legal separation, determination of parentage or for the custody of a child, if either party is receiving aid to families of dependent children or applies for it subsequent to the commencement of the proceeding. After receipt of the notice, the public authority shall recommend to the court the support that is proper and adequate for the care and support of the child or children before the issuance of the order for judgment and decree in the proceeding.

Subd. 6. **Failure of notice.** If the court in a dissolution, legal separation or determination of parentage proceeding, finds before issuing the order for judgment and decree, that notification has not been given to the public authority, the court shall order that notification be made and shall not issue its order for judgment and decree until the public authority has made its recommendations. In those proceedings in which no notification has been made pursuant to this section and in which the public authority determines that the judgment is not proper and adequate for the care and support of the child or children, it may move the court for a redetermination of the support payments ordered.

Subd. 7. **Service fee.** When the public agency responsible for child support enforcement provides child support collection services either to a public assistance recipient or to a party who does not receive public assistance, the public agency may upon written notice to the obligor charge a monthly collection fee equivalent to the full monthly cost to the county of providing collection services, in addition to the amount of the child support which was ordered by the court. The fee shall be deposited in the county general fund. The service fee assessed is limited to ten percent of the monthly court ordered child support and shall not be assessed to obligors who are current in payment of the monthly court ordered child support. No fee shall be imposed on the party who requests child support collection services.

History: 1981 c 349 s 6; 1981 c 360 art 2 s 46

518.58 DISPOSITION OF MARITAL PROPERTY.

Upon a dissolution of a marriage, an annulment, or in a proceeding for disposition of property following a dissolution of marriage by a court which lacked personal jurisdiction over the absent spouse or lacked jurisdiction to dispose of the property and which has since acquired jurisdiction, the court shall make a just and

equitable disposition of the marital property of the parties without regard to marital misconduct, after making findings regarding the disposition of the property. The court shall base its findings on all relevant factors including the length of the marriage, any prior marriage of a party, the age, health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities, needs, and opportunity for future acquisition of capital assets, the amount of support, maintenance and income of each party, whether the property award is in lieu of or in addition to maintenance or support. The court shall also consider the contribution of each in the acquisition, preservation, depreciation or appreciation in the amount or value of the marital property, as well as the contribution of a spouse as a homemaker. It shall be presumed that each spouse made a substantial contribution to the acquisition of income and property while they were living together as husband and wife. The court may also award to either spouse the household goods and furniture of the parties, whether or not acquired during the marriage.

If the court finds that either spouse's resources or property, including his portion of the marital property as defined in section 518.54, subdivision 5 are so inadequate as to work an unfair hardship, considering all relevant circumstances, the court may, in addition to the marital property, apportion up to one-half of the property otherwise excluded under section 518.54, subdivision 5, clauses (a) to (d) to prevent the unfair hardship. If the court apportions property other than marital property, it shall make findings in support of the apportionment. The findings shall be based on all relevant factors including the length of the marriage, any prior marriage of a party, the age, health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities, needs, and opportunity for future acquisition of capital assets and income of each party.

If the court finds that it is necessary to preserve the marital assets of the parties, the court may order the sale of the homestead of the parties or the sale of other marital assets, as the individual circumstances may require, during the pendency of a proceeding for a dissolution of marriage or an annulment. If the court orders a sale, it may further provide for the disposition of the funds received from the sale during the pendency of the proceeding.

History: 1981 c 349 s 7

518.611 ASSIGNMENTS.

Subdivision 1. **Order to withhold income.** The obligee or the public authority may at any time move the court to order, and the court shall order the employer, trustee or other payor of funds to withhold from the obligor's income, regardless of source, an amount equal to the court's order for support or maintenance.

Subd. 2. **Notice to obligor of conditions.** Each order for withholding shall provide for a conspicuous notice to the obligor that withholding may result if the obligor fails to make the maintenance or support payments, and that no withholding shall be made until the following conditions are met:

(a) The obligee or the public authority determines that the obligor is at least 30 days in arrears;

(b) The obligee or the public authority serves written notice of its determination of arrearage on the obligor at least 15 days before service of the determination and a copy of the court's order for withholding on the payor of funds;

(c) Within the 15 day period, the obligor has either failed to pay all arrearages or to move the court, under section 518.64, to modify the order respecting the

amount of maintenance or support and, ex parte, to stay service on the payor of funds until the motion to modify is heard; and

(d) The obligee or the public authority serves a copy of the determination of arrearage and a copy of the court's withholding order on the payor of funds.

(e) The obligee shall also serve on the public authority a copy of the determination of arrearage, a copy of the court's withholding order and an application to use the public authority's collection services.

Subd. 3. Modification orders. An order modifying the amount of maintenance or support, issued after the hearing on the motion to modify, shall provide that payments be made by withholding.

Subd. 4. Effect of order. The order is binding on the employer, trustee, or other payor of the funds upon service upon him of notice that it has been made. The payor shall withhold from the income payable to the obligor the amount specified in the order and shall monthly or more frequently remit the amounts withheld to the public authority. Amounts received by the public authority which are in excess of public assistance expended for the party or for a child shall be remitted to the party. An employer shall not discharge or otherwise discipline an employee as a result of a wage or salary assignment authorized by this section.

History: 1981 c 360 art 2 s 47

518.64 MODIFICATION OF ORDERS OR DECREES.

Subdivision 1. After an order for maintenance or support money, temporary or permanent, or for the appointment of trustees to receive property awarded as maintenance or support money, the court may from time to time, on petition of either of the parties or on petition of the public authority responsible for support enforcement, modify the order respecting the amount of maintenance or support money, and the payment of it, and also respecting the appropriation and payment of the principal and income of property held in trust, and may make an order respecting these matters which it might have made in the original proceeding, except as herein otherwise provided.

[For text of subds 2 to 4, see M.S.1980]

Subd. 5. Form. The department of public welfare shall prepare and make available to courts and obligors a form to be submitted by the obligor in support of a motion for a modification of an order pursuant to this section or section 256.87. The rule-making provisions of chapter 15 shall not apply to the preparation of the form.

History: 1981 c 360 art 2 s 48,49

518.66 POWER OF COURT NOT LIMITED.

Nothing contained in sections 518.54 to 518.66 shall be construed as limiting the power of the court in appropriate cases to make adequate provision for the support and education of any children of the parties to any dissolution, legal separation or annulment action where such dissolution, legal separation or annulment is denied.

History: 1Sp1981 c 4 art 1 s 180