

Offered: 4/14/86
Referred: Rules

Original sponsor: Rules/Governor

1 IN THE HOUSE

BY THE FINANCE COMMITTEE

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CS FOR HOUSE BILL NO. 496 (Finance)

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IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6

For an Act entitled: "An Act relating to divorce, dissolution, and annulment; and amending Rule 84(a), Alaska Rules of Civil Procedure."

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BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

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* Section 1. AS 25.24.140 is repealed and reenacted to read:

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Sec. 25.24.140. ORDERS DURING ACTION. (a) During the pendency of the action, upon application a spouse may, in appropriate circumstances, be awarded expenses, including

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(1) attorney fees and costs that reasonably approximate the actual fees and costs required to prosecute or defend the action;

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(2) reasonable spousal support, including medical expenses;

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and

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(3) reasonable support for minor children in the care of the spouse, if there is a legal obligation of the other spouse to provide support.

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(b) During the pendency of the action, upon application a spouse is entitled to necessary protective orders, which may include orders

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(1) providing for the freedom of each spouse from the control of the other spouse;

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(2) restraining each spouse from subjecting the other spouse or another person living in the household to domestic violence, as defined in AS 25.35.060;

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(3) directing one spouse to vacate the marital residence or the home of the other spouse;

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1 (4) restraining a spouse from communicating directly or
2 indirectly with the other spouse;

3 (5) restraining a spouse from entering a propelled vehicle
4 in the possession of or occupied by the other spouse; and

5 (6) prohibiting a spouse from disposing of the property of
6 either spouse or marital property without the permission of the other
7 spouse or a court order.

8 (c) After a hearing, the court may also order that the parties
9 engage in personal or family counseling or mediation if both parties
10 agree. The court shall provide in the order for the payment of the
11 costs of counseling or mediation.

12 * Sec. 2. AS 25.24 is amended by adding a new section to read:

13 Sec. 25.24.165. CHANGE OF NAME IN DIVORCE ANNULMENT. (a) In a
14 judgment in an action for divorce or action declaring a marriage void,
15 the court may change the name of either of the parties.

16 (b) If a party seeks a change of name to a name other than a
17 prior name, the court shall set a date for hearing not less than 40
18 days after filing of the action. Notice of the application for a
19 change of name to a name other than a prior name and the date of the
20 hearing shall be published once each week for four consecutive calen-
21 dar weeks before the hearing in a newspaper of general circulation in
22 the judicial district. At the hearing, the court shall by judgment
23 authorize the party to assume the new name in not less than 30 days
24 after issuance of the judgment, if the court is satisfied that no
25 reasonable objection exists to assumption of the new name. Within 10
26 days after issuance of the judgment the party shall publish notice of
27 the approval of the name change in a newspaper of general circulation
28 in the judicial district.

29 * Sec. 3. AS 25.24.200(a) is amended to read:

1 (a) A husband and wife together may petition the superior court
2 for the dissolution of their marriage under AS 25.24.200 - 25.24.260
3 if the following conditions exist at the time of filing the petition:

4 (1) incompatibility of temperament has caused the irremedi-
5 able breakdown of the marriage;

6 (2) if there are minor children of the marriage or the wife
7 is pregnant, the spouses have agreed on which spouse or third party
8 shall be awarded custody of each minor child of the marriage and the
9 extent of visitation, including visitation by grandparents and other
10 persons, and support to be provided on the children's behalf, whether
11 the payments are to be made through the child support enforcement
12 agency, and the tax consequences of that agreement;

13 (3) the spouses have agreed as to the distribution of all
14 jointly owned real and personal property, including retirement bene-
15 fits and other career assets, and the payment of spousal support, if
16 any, and the tax consequences resulting from these payments; and

17 (4) the spouses have agreed as to the payment of all unpaid
18 obligations incurred by either or both of them, and as to payment of
19 obligations incurred jointly in the future.

20 * Sec. 4. AS 25.24.200(b) is amended to read:

21 (b) A husband or wife may separately petition for dissolution of
22 their marriage under AS 25.24.200 - 25.24.260 if the following con-
23 ditions exist at the time of filing the petition:

24 (1) incompatibility of temperament, as evidenced by extend-
25 ed absence or otherwise, has caused the irremediable breakdown of the
26 marriage;

27 (2) the petitioning spouse has been unable to ascertain the
28 other spouse's position in regard to the dissolution of their marriage
29 and in regard to the division of property, including retirement

1 benefits and other career assets, payment of debts, and custody,
2 support, and visitation because the whereabouts of the other spouse is
3 unknown to the petitioning spouse after reasonable efforts have been
4 made to locate the absent spouse; and

5 (3) the other spouse cannot be personally served with
6 process inside or outside the state.

7 * Sec. 5. AS 25.24.200(c) is amended to read:

8 (c) Except as provided in AS 25.24.220(i), [NOTHING IN THIS
9 SECTION PROHIBITS] a spouse who has been personally served with a copy
10 of a petition made under (a) of this section may execute [FROM EXECUT-
11 ING] an appearance, waiver of time to answer, and waiver of notice of
12 hearing. The appearance and waivers shall include an acknowledgment
13 signed before an officer authorized to administer an oath or affirma-
14 tion that the spouse being served has read the petition; assents to
15 the terms relating to custody of the children, child support, visita-
16 tion, spousal support and resultant tax consequences, division of
17 property, including retirement benefits and other career assets, and
18 allocation of debts; agrees that the conditions otherwise required by
19 (a) of this section exist; agrees that the petition constitutes the
20 entire agreement between the parties; understands fully the nature and
21 consequences of the action; and is not signing the appearance and
22 waivers under duress or coercion.

23 * Sec. 6. AS 25.24.210(d) is amended to read:

24 (d) The petition shall request that the marriage be dissolved
25 and that the [PRIOR] name of a spouse be changed [RESTORED], if de-
26 sired by that spouse.

27 * Sec. 7. AS 25.24.210(e) is amended to read:

28 (e) If the petition is brought by both spouses under AS 25.24.-
29 200(a), the petition shall state in detail the terms of agreement as

1 between the spouses with regard to the custody of children, child
2 support, visitation, spousal support and tax consequences, if any,
3 division of property, including retirement benefits and other career
4 assets, and allocation of debts, and, in addition, shall state

5 (1) the respective occupations of the spouses;

6 (2) the income, assets, and liabilities of the respective
7 spouses at the time of filing the petition;

8 (3) the date and place of the marriage;

9 (4) the name, date of birth, and current custodial status
10 of each minor child born of the marriage or adopted by the petition-
11 ers;

12 (5) whether the wife is pregnant;

13 (6) whether a domestic violence complaint has been filed
14 during the marriage by a member of the household;

15 (7) whether one of the petitioners has received the advice
16 of legal counsel regarding a divorce or dissolution and the other
17 petitioner has not received advice of legal counsel;

18 (8) other facts and circumstances which the petitioners
19 believe should be considered; [AND]

20 (9) that the petition constitutes the entire agreement
21 between the parties; and

22 (10) [(7)] any other relief sought by the spouses.

23 * Sec. 8. AS 25.24.220(b) is repealed and reenacted to read:

24 (b) Both spouses shall attend the hearing personally and not
25 through counsel. However, if the petition is brought by both spouses
26 under AS 25.24.200(a) and if the petition is not subject to (i) of
27 this section, one spouse may comply with AS 25.24.200(c). Either
28 spouse may have counsel at the hearing.

29 * Sec. 9. AS 25.24.220(d) is amended to read:

1 (d) If the petition is brought by both spouses under AS 25.24.-
2 200(a), the court shall examine the petitioners or petitioner present
3 and consider whether

4 (1) the spouses fully understand the nature and conse-
5 quences of their action;

6 (2) the written agreements between the spouses concerning
7 child custody, child support, and visitation are fair, just, and
8 equitable as between the spouses and in the best interests of the
9 children of the marriage;

10 (3) the written agreements between the spouses relating to
11 the division of property, including retirement benefits and other
12 career assets, spousal support, and the allocation of obligations are
13 fair, just, and equitable; [AND]

14 (4) the written agreements constitute the entire agreement
15 between the parties; and

16 (5) the conditions in AS 25.24.200(a) have been met.

17 * Sec. 10. AS 25.24.220(g) is amended to read:

18 (g) The court may amend the written agreements between the
19 spouses relating to child custody, child support, visitation, spousal
20 support, division of the property, including retirement benefits and
21 other career assets, and allocation of obligations, but only if both
22 petitioners concur in the amendment in writing or on the record.

23 * Sec. 11. AS 25.24.220 is amended by adding new subsections to read:

24 (h) In its examination of the petitioner or petitioners under
25 (d) of this section, the court shall use a heightened level of scruti-
26 ny of agreements if

27 (1) one party is represented by counsel and the other is
28 not;

29 (2) an unusually high or low amount of child support will

1 be awarded;

2 (3) a domestic violence complaint has been filed during the
3 marriage by a member of the household; or

4 (4) the petitioners have agreed to shared or split custody
5 of the children of the marriage.

6 (i) If the court finds that a higher level of scrutiny is re-
7 quired by (h) of this section, the court shall examine the written
8 agreements between the spouses to determine that they are fair, just,
9 and equitable, that they constitute the entire agreement between the
10 parties, and that the agreements concerning child custody, child
11 support, and visitation are in the best interest of the children of
12 the marriage, if any. The court shall require the presence of both
13 spouses at a hearing for this purpose unless the court finds on the
14 record that it would constitute a significant hardship on one of the
15 spouses to appear, and that a fair, just, and equitable agreement has
16 been reached.

17 * Sec. 12. AS 25.24.230(a) is amended to read:

18 (a) If the petition is brought by one or both spouses under
19 AS 25.24.200(a), the court may grant the spouses a final decree of
20 dissolution and shall order [PROVIDE THE] other relief as provided in
21 this section if the court, upon consideration of the information
22 contained in the petition and the testimony of the spouse or spouses
23 at the hearing, finds that

24 (1) the spouses understand fully the nature and conse-
25 quences of their action;

26 (2) the written agreements between the spouses concerning
27 child custody, child support, and visitation are in the best interest
28 of the children of the marriage, constitute the entire agreement of
29 the parties on child custody, child support, and visitation, and are

1 fair, just, and equitable as between the spouses;

2 (3) the written agreements between the spouses concerning
3 [CHILD CUSTODY, CHILD SUPPORT, VISITATION,] spousal support and tax
4 consequences, if any, division of property, including retirement
5 benefits and other career assets, and allocation of obligations are
6 fair, just, and equitable and constitute the entire agreement between
7 the parties; [NOT GROSSLY UNFAIR, UNJUST, OR INEQUITABLE AND ARE IN
8 THE BEST INTERESTS OF THE CHILDREN OF THE MARRIAGE, IF ANY; AND]

9 (4) each spouse entered into the agreement voluntarily and
10 free from the coercion of any person; and

11 (5) [(3)] the conditions in AS 25.24.200(a) have been met.

12 * Sec. 13. AS 25.24.230(e) is amended to read:

13 (e) If the petition is brought by both spouses under AS 25.24.-
14 200(a), the court shall change [RESTORE] either spouse's [PRIOR] name,
15 if the spouse seeking a change of name to a name other than a prior
16 name complies with AS 25.24.165(b), [SO REQUESTED, AND] shall fully
17 and specifically set out in the decree the written agreements of the
18 spouses, [RELATING TO CHILD CUSTODY, CHILD SUPPORT, VISITATION,
19 SPOUSAL SUPPORT, DIVISION OF PROPERTY, AND THE ALLOCATION OF THE
20 OBLIGATIONS OF THE SPOUSES;] and [THE COURT] shall order the perfor-
21 mance of those written agreements. The court shall also state, in the
22 decree, whether child support payments are to be made through the
23 child support enforcement agency. If the petition is brought by one
24 spouse under AS 25.24.200(b), the decree shall state that it does not
25 bar future action on the issues not resolved in the decree.

26 * Sec. 14. AS 25.24.250 is amended by adding a new subsection to read:

27 (c) Forms or instructions prepared under (a) of this section
28 must specify that the dissolution petition constitutes the entire
29 agreement between the parties and provide examples of kinds of

1 property and obligations that are subject to distribution.

2 * Sec. 15. AS 25.24 is amended by adding a new section to article 2 to
3 read:

4 Sec. 25.24.290. DEFINITIONS. In AS 25.24.200 - 25.24.290

5 (1) "career assets" means tangible and intangible assets
6 and obligations resulting from a spouse's education, profession, or
7 employment that were acquired at least in part as a result of direct
8 or indirect contributions made by the other spouse; a division of
9 career assets must take into consideration the extent to which each
10 spouse contributed to the acquisition of the career assets;

11 (2) "split custody" means a custody arrangement in which
12 the decision as to who has custody of each child is not the same for
13 all children of the marriage.

14 * Sec. 16. AS 25.24.165 as added by sec. 2 of this Act, AS 25.24.210(d)
15 as amended by sec. 6 of this Act, and AS 25.24.230(e) as amended by sec. 13
16 of this Act have the effect of amending Rule 84(a), Alaska Rules of Civil
17 Procedure, to allow a change of name to a name other than a prior name to
18 be commenced in a complaint for divorce or annulment or a petition for
19 dissolution of marriage.

20 * Sec. 17. AS 25.24.160(5) is repealed.