

VIRGINIA ACTS OF ASSEMBLY -- 1994 SESSION

CHAPTER 518

An Act to amend and reenact §§ 20-103, 20-107.1 and 20-109 of the Code of Virginia, relating to suits for separate maintenance.

[S 481]

Approved April 9, 1994

Be it enacted by the General Assembly of Virginia:

1. That §§ 20-103, 20-107.1 and 20-109 of the Code of Virginia are amended and reenacted as follows:

§ 20-103. Court may make orders pending the suit, etc.

In suits for divorce, annulment and separate maintenance, and in proceedings arising under subdivision A 3 or L of § 16.1-241, the court having jurisdiction of the matter may, at any time pending the suit, in the discretion of such court, make any order that may be proper (i) to compel a spouse to pay any sums necessary for the maintenance and support of the petitioning spouse, including an order that the other spouse provide health care coverage for the petitioning spouse, unless it is shown that such coverage cannot be obtained, (ii) to enable such spouse to carry on the suit, (iii) to prevent either spouse from imposing any restraint on the personal liberty of the other spouse, (iv) to provide for the custody and maintenance of the minor children of the parties, including an order that either party provide health care coverage for the children, (v) to provide support for any child of the parties under the age of nineteen who is a full-time high school student and who otherwise meets the requirements set forth in § 20-107.2, (vi) for the exclusive use and possession of the family residence during the pendency of the suit, (vii) to preserve the estate of either spouse, so that it be forthcoming to meet any decree which may be made in the suit or (viii) to compel either spouse to give security to abide such decree.

Upon a showing by a party of reasonable apprehension of physical harm to that party by such party's spouse, and consistent with rules of the Supreme Court of Virginia, the court may enter an order excluding that party's spouse from the jointly owned or jointly rented family dwelling. In any case where an order is entered under this paragraph, pursuant to an ex parte hearing, the order shall not exclude a spouse from the family dwelling for a period in excess of fifteen days from the date the order is served, in person, upon the spouse so excluded. The order may provide for an extension of time beyond the fifteen days, to become effective automatically. The spouse served may at any time file a written motion in the clerk's office requesting a hearing to dissolve or modify the order. Nothing in this section shall be construed to prohibit the court from extending an order entered under this paragraph for such longer period of time as is deemed appropriate, after a hearing on notice to the parties.

§ 20-107.1. Court may decree as to maintenance and support of spouses.

~~Upon decreeing entry of a decree providing (i) for the dissolution of a marriage, and also upon decreeing (ii) for a divorce, whether from the bond of matrimony or from bed and board, and upon decreeing (iii) that neither party is entitled to a divorce, or (iv) for separate maintenance,~~ the court may make such further decree as it shall deem expedient concerning the maintenance and support of the spouses. However, the court shall have no authority to decree maintenance and support payable by the estate of a deceased spouse.

Any maintenance and support shall be subject to the limitations set forth in § 20-109, and no permanent maintenance and support shall be awarded from a spouse if there exists in such spouse's favor a ground of divorce under the provisions of § 20-91 (1). However, the court may make such an award notwithstanding the existence of such ground if the court determines from clear and convincing evidence, that a denial of support and maintenance would constitute a manifest injustice, based upon the respective degrees of fault during the marriage and the relative economic circumstances of the parties. The court, in its discretion, may decree that maintenance and support of a spouse be made in periodic payments, or in a lump sum award, or both.

The court, in determining whether to award support and maintenance for a spouse, shall consider the circumstances and factors which contributed to the dissolution of the marriage, specifically including adultery and any other ground for divorce under the provisions of § 20-91 (3) or (6) or § 20-95. If the court determines that an award should be made, it shall, in determining the amount, consider the following:

1. The earning capacity, obligations, needs and financial resources of the parties, including but not limited to income from all pension, profit sharing or retirement plans, of whatever nature;
2. The education and training of the parties and the ability and opportunity of the parties to secure such education and training;
3. The standard of living established during the marriage;
4. The duration of the marriage;

5. The age and physical and mental condition of the parties;
6. The contributions, monetary and nonmonetary, of each party to the well-being of the family;
7. The property interests of the parties, both real and personal, tangible and intangible;
8. The provisions made with regard to the marital property under § 20-107.3; and
9. Such other factors, including the tax consequences to each party, as are necessary to consider the equities between the parties.

§ 20-109. Changing maintenance and support for a spouse; effect of stipulations as to maintenance and support for a spouse; cessation upon remarriage or death.

Upon petition of either party the court may increase, decrease, or terminate spousal support and maintenance that may thereafter accrue, whether previously or hereafter awarded, as the circumstances may make proper. However, *in suits for divorce, annulment and separate maintenance, and in proceedings arising under subdivision A 3 or L of § 16.1-241*, if a stipulation or contract signed by the party to whom such relief might otherwise be awarded is filed before entry of a final decree, no decree or order directing the payment of support and maintenance for the spouse, suit money, or counsel fee or establishing or imposing any other condition or consideration, monetary or nonmonetary, shall be entered except in accordance with that stipulation or contract. Upon the death or remarriage of the spouse receiving support, spousal support shall terminate unless otherwise provided by stipulation or contract. If such a stipulation or contract is filed after entry of a final decree and if any party so moves, the court shall modify its decree to conform to such stipulation or contract.