GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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HOUSE BILL 589
PROPOSED COMMITTEE SUBSTITUTE H589-PCS50335-RK-48

Short Title: Divorce/DVPO/Child Support Changes. (Public)

Sponsors:

Referred to:

April 5, 2011

A BILL TO BE ENTITLED

AN ACT TO ELIMINATE THE PROVISION OF LAW THAT STATES ALLEGATIONS IN A DIVORCE COMPLAINT ARE DEEMED DENIED REGARDLESS OF WHETHER THE DEFENDANT FILES A PLEADING DENYING THE ALLEGATIONS, AND TO AMEND THE LAWS RELATING TO DOMESTIC VIOLENCE PROTECTIVE ORDERS, AS RECOMMENDED BY THE NORTH CAROLINA BAR ASSOCIATION; AND TO PROVIDE FOR TERMINATION OF CHILD SUPPORT WHEN A CHILD IS ENROLLED IN AN EARLY COLLEGE PROGRAM.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 50-10 reads as rewritten:

"**§ 50-10. Material facts found by judge or jury in ~~divorce or~~ annulment proceedings; when notice of trial not required; procedure same as ordinary civil actions.**

(a) Except as provided for in subsection (e) of this section, the material facts in every complaint asking for ~~a divorce or for~~ an annulment shall be deemed to be denied by the defendant, whether the same shall be actually denied by pleading or not, and no judgment shall be given in favor of the plaintiff in any such complaint until such facts have been found by a judge or jury.

(b) Nothing herein shall require notice of trial to be given to a defendant who has not made an appearance in the action.

(c) The determination of whether there is to be a jury trial or a trial before the judge without a jury shall be made in accordance with G.S. 1A-1, Rules 38 and 39.

(d) The provisions of G.S. 1A-1, Rule 56, shall be applicable to actions for absolute divorce pursuant to G.S. 50-6, for the purpose of determining whether any genuine issue of material fact remains for trial by jury, but in the event the court determines that no genuine issue of material fact remains for trial by jury, the court must find the facts as provided herein. The court may enter a judgment of absolute divorce pursuant to the procedures set forth in G.S. 1A-1, Rule 56, finding all requisite facts from nontestimonial evidence presented by affidavit, verified motion or other verified pleading.

(e) The clerk of superior court, upon request of the plaintiff, may enter judgment in cases in which the plaintiff's only claim against the defendant is for absolute divorce, or absolute divorce and the resumption of a former name, and the defendant has been defaulted for failure to appear, the defendant has answered admitting the allegations of the complaint, or the defendant has filed a waiver of the right to answer, and the defendant is not an infant or incompetent person."

SECTION 2. G.S. 50B-2(c) reads as rewritten:

"(c) Ex Parte ~~Orders. —~~ Orders.

(1) Prior to the hearing, if it clearly appears to the court from specific facts shown, that there is a danger of acts of domestic violence against the aggrieved party or a minor child, the court may enter orders as it deems necessary to protect the aggrieved party or minor children from those ~~acts~~ acts. ~~provided, however, that a~~

(2) A temporary order for custody ex parte and prior to service of process and notice shall not be entered unless the court finds that the child is exposed to a substantial risk of physical or emotional injury or sexual abuse.

(3) If the court finds that the child is exposed to a substantial risk of physical or emotional injury or sexual abuse, upon request of the aggrieved party, the court shall consider and may order the other party to (i) stay away from a minor child, or (ii) ~~to~~ return a minor child to, or not remove a minor child from, the physical care of a parent or person in loco parentis, if the court finds that the order is in the best interest of the minor child and is necessary for the safety of the minor child.

(4) If the court determines that it is in the best interest of the minor child for the other party to have contact with the minor child or children, the court shall issue an order designed to protect the safety and well-being of the minor child and the aggrieved party. The order shall specify the terms of contact between the other party and the minor child and may include a specific schedule of time and location of exchange of the minor child, supervision by a third party or supervised visitation center, and any other conditions that will ensure both the well-being of the minor child and the aggrieved party.

(5) Upon the issuance of an ex parte order under this subsection, a hearing shall be held within 10 days from the date of issuance of the order or within seven days from the date of service of process on the other party, whichever occurs later. A continuance shall be limited to one extension of no more than 10 days unless all parties consent. The hearing shall have priority on the court calendar.

(6) If an aggrieved party acting pro se requests ex parte relief, the clerk of superior court shall schedule an ex parte hearing with the district court division of the General Court of Justice within 72 hours of the filing for said relief, or by the end of the next day on which the district court is in session in the county in which the action was filed, whichever shall first occur. If the district court is not in session in said county, the aggrieved party may contact the clerk of superior court in any other county within the same judicial district who shall schedule an ex parte hearing with the district court division of the General Court of Justice by the end of the next day on which said court division is in session in that county.

(7) Upon the issuance of an ex parte order under this subsection, if the party is proceeding pro se, the Clerk shall set a date for hearing and issue a notice of hearing within the time periods provided in this subsection, and shall effect service of the summons, complaint, notice, order and other papers through the appropriate law enforcement agency where the defendant is to be served."

SECTION 3. G.S. 50-13.4(c) reads as rewritten:

"(c) Payments ordered for the support of a minor child shall be in such amount as to meet the reasonable needs of the child for health, education, and maintenance, having due regard to the estates, earnings, conditions, accustomed standard of living of the child and the

parties, the child care and homemaker contributions of each party, and other facts of the particular case. Payments ordered for the support of a minor child shall be on a monthly basis, due and payable on the first day of each month. The requirement that orders be established on a monthly basis does not affect the availability of garnishment of disposable earnings based on an obligor's pay period.

The court shall determine the amount of child support payments by applying the presumptive guidelines established pursuant to subsection (c1) of this section. However, upon request of any party, the Court shall hear evidence, and from the evidence, find the facts relating to the reasonable needs of the child for support and the relative ability of each parent to provide support. If, after considering the evidence, the Court finds by the greater weight of the evidence that the application of the guidelines would not meet or would exceed the reasonable needs of the child considering the relative ability of each parent to provide support or would be otherwise unjust or inappropriate the Court may vary from the guidelines. If the court orders an amount other than the amount determined by application of the presumptive guidelines, the court shall make findings of fact as to the criteria that justify varying from the guidelines and the basis for the amount ordered.

Payments ordered for the support of a child shall terminate when the child reaches the age of 18 except:

(1) If the child is otherwise emancipated, payments shall terminate at that time;

(2) If the child is still in primary or secondary school when the child reaches age 18, support payments shall continue until the child graduates, otherwise ceases to attend school on a regular basis, fails to make satisfactory academic progress towards graduation, or reaches age 20, whichever comes first, unless the court in its discretion orders that payments cease at age 18 or prior to high school graduation.

(3) If the child is enrolled in a cooperative innovative high school program authorized under Part 9 of Article 16 of Chapter 115C of the General Statutes, then payments shall terminate when the child completes his or her fourth year of enrollment or when the child reaches the age of 18, whichever occurs later.

In the case of graduation, or attaining age 20, payments shall terminate without order by the court, subject to the right of the party receiving support to show, upon motion and with notice to the opposing party, that the child has not graduated or attained the age of 20.

If an arrearage for child support or fees due exists at the time that a child support obligation terminates, payments shall continue in the same total amount that was due under the terms of the previous court order or income withholding in effect at the time of the support obligation. The total amount of these payments is to be applied to the arrearage until all arrearages and fees are satisfied or until further order of the court."

SECTION 4. This act is effective when it becomes law and applies to actions filed on or after that date.