

Enrolled House Bill 2433

Sponsored by Representative GELSER; Representatives DEMBROW, FREDERICK, GREENLICK, TOMEI (Pre-session filed.)

CHAPTER

AN ACT

Relating to parties with disabilities in domestic relations proceedings; creating new provisions; and amending ORS 107.105 and 107.137.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 107.137 is amended to read:

107.137. (1) Except as provided in subsection [(5)] (6) of this section, in determining custody of a minor child under ORS 107.105 or 107.135, the court shall give primary consideration to the best interests and welfare of the child. In determining the best interests and welfare of the child, the court shall consider the following relevant factors:

- (a) The emotional ties between the child and other family members;
- (b) The interest of the parties in and attitude toward the child;
- (c) The desirability of continuing an existing relationship;
- (d) The abuse of one parent by the other;
- (e) The preference for the primary caregiver of the child, if the caregiver is deemed fit by the court; and
- (f) The willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the other parent and the child. However, the court may not consider such willingness and ability if one parent shows that the other parent has sexually assaulted or engaged in a pattern of behavior of abuse against the parent or a child and that a continuing relationship with the other parent will endanger the health or safety of either parent or the child.

(2) The best interests and welfare of the child in a custody matter shall not be determined by isolating any one of the relevant factors referred to in subsection (1) of this section, or any other relevant factor, and relying on it to the exclusion of other factors. However, if a parent has committed abuse as defined in ORS 107.705, other than as described in subsection [(5)] (6) of this section, there is a rebuttable presumption that it is not in the best interests and welfare of the child to award sole or joint custody of the child to the parent who committed the abuse.

(3) If a party has a disability as defined by the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.), the court may not consider that party's disability in determining custody unless the court finds that behaviors or limitations of the party that are related to the party's disability are endangering or will likely endanger the health, safety or welfare of the child.

[(3)] (4) In determining custody of a minor child under ORS 107.105 or 107.135, the court shall consider the conduct, marital status, income, social environment or lifestyle of either party only if

it is shown that any of these factors are causing or may cause emotional or physical damage to the child.

[(4)] (5) No preference in custody shall be given to the mother over the father for the sole reason that she is the mother, nor shall any preference be given to the father over the mother for the sole reason that he is the father.

[(5)(a)] (6)(a) The court determining custody of a minor child under ORS 107.105 or 107.135 shall not award sole or joint custody of the child to a parent if:

(A) The court finds that the parent has been convicted of rape under ORS 163.365 or 163.375 or other comparable law of another jurisdiction; and

(B) The rape resulted in the conception of the child.

(b) A denial of custody under this subsection does not relieve the parent of any obligation to pay child support.

SECTION 2. ORS 107.105 is amended to read:

107.105. (1) Whenever the court renders a judgment of marital annulment, dissolution or separation, the court may provide in the judgment:

(a) For the future care and custody, by one party or jointly, of all minor children of the parties born, adopted or conceived during the marriage and for minor children born to the parties prior to the marriage, as the court may deem just and proper under ORS 107.137. The court may hold a hearing to decide the custody issue prior to any other issues. When appropriate, the court shall recognize the value of close contact with both parents and encourage joint parental custody and joint responsibility for the welfare of the children.

(b) For parenting time rights of the parent not having custody of such children and for visitation rights pursuant to a petition filed under ORS 109.119. When a parenting plan has been developed as required by ORS 107.102, the court shall review the parenting plan and, if approved, incorporate the parenting plan into the court's final order. When incorporated into a final order, the parenting plan is determinative of parenting time rights. If the parents have been unable to develop a parenting plan or if either of the parents requests the court to develop a detailed parenting plan, the court shall develop the parenting plan in the best interest of the child, ensuring the noncustodial parent sufficient access to the child to provide for appropriate quality parenting time and ensuring the safety of the parties, if implicated. The court shall deny parenting time to a parent under this paragraph if the court finds that the parent has been convicted of rape under ORS 163.365 or 163.375 or other comparable law of another jurisdiction and the rape resulted in the conception of the child. Otherwise, the court may deny parenting time to the noncustodial parent under this subsection only if the court finds that parenting time would endanger the health or safety of the child. **In the case of a noncustodial parent who has a disability as defined by the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.), the court may consider the noncustodial parent's disability in determining parenting time only if the court finds that behaviors or limitations related to the noncustodial parent's disability are endangering or will likely endanger the health, safety or welfare of the child.** The court shall recognize the value of close contact with both parents and encourage, when practicable, joint responsibility for the welfare of such children and extensive contact between the minor children of the divided marriage and the parties. If the court awards parenting time to a noncustodial parent who has committed abuse, other than being convicted for rape as described in this paragraph, the court shall make adequate provision for the safety of the child and the other parent in accordance with the provisions of ORS 107.718 (6).

(c) For the support of the children of the marriage by the parties. In ordering child support, the formula established under ORS 25.275 shall apply. The court may at any time require an accounting from the custodial parent with reference to the use of the money received as child support. The court is not required to order support for any minor child who has become self-supporting, emancipated or married or for any child who has ceased to attend school after becoming 18 years of age. A general judgment entered under this section may include an amount for support as requested in a petition filed under ORS 107.085 or under a motion for relief made pursuant to ORS 107.095 (1)(b) for which a limited judgment was not entered, payment of which commences no earlier

than the date the petition or motion was served on the nonrequesting party, and the amount shall be considered a request for relief that has been decided by the general judgment for purposes of ORS 18.082 (3).

(d) For spousal support, an amount of money for a period of time as may be just and equitable for one party to contribute to the other, in gross or in installments or both. The court may approve an agreement for the entry of an order for the support of a party. A general judgment entered under this section may include an amount for support as requested in a petition filed under ORS 107.085 or under a motion for relief made pursuant to ORS 107.095 (1)(b) for which a limited judgment was not entered, payment of which commences no earlier than the date the petition or motion was served on the nonrequesting party, and the amount shall be considered a request for relief that has been decided by the general judgment for purposes of ORS 18.082 (3). In making the spousal support order, the court shall designate one or more categories of spousal support and shall make findings of the relevant factors in the decision. The court may order:

(A) Transitional spousal support as needed for a party to attain education and training necessary to allow the party to prepare for reentry into the job market or for advancement therein. The factors to be considered by the court in awarding transitional spousal support include but are not limited to:

- (i) The duration of the marriage;
- (ii) A party's training and employment skills;
- (iii) A party's work experience;
- (iv) The financial needs and resources of each party;
- (v) The tax consequences to each party;
- (vi) A party's custodial and child support responsibilities; and
- (vii) Any other factors the court deems just and equitable.

(B) Compensatory spousal support when there has been a significant financial or other contribution by one party to the education, training, vocational skills, career or earning capacity of the other party and when an order for compensatory spousal support is otherwise just and equitable in all of the circumstances. The factors to be considered by the court in awarding compensatory spousal support include but are not limited to:

- (i) The amount, duration and nature of the contribution;
- (ii) The duration of the marriage;
- (iii) The relative earning capacity of the parties;
- (iv) The extent to which the marital estate has already benefited from the contribution;
- (v) The tax consequences to each party; and
- (vi) Any other factors the court deems just and equitable.

(C) Spousal maintenance as a contribution by one spouse to the support of the other for either a specified or an indefinite period. The factors to be considered by the court in awarding spousal maintenance include but are not limited to:

- (i) The duration of the marriage;
- (ii) The age of the parties;
- (iii) The health of the parties, including their physical, mental and emotional condition;
- (iv) The standard of living established during the marriage;
- (v) The relative income and earning capacity of the parties, recognizing that the wage earner's continuing income may be a basis for support distinct from the income that the supported spouse may receive from the distribution of marital property;
- (vi) A party's training and employment skills;
- (vii) A party's work experience;
- (viii) The financial needs and resources of each party;
- (ix) The tax consequences to each party;
- (x) A party's custodial and child support responsibilities; and
- (xi) Any other factors the court deems just and equitable.

(e) For the delivery to one party of such party's personal property in the possession or control of the other at the time of the giving of the judgment.

(f) For the division or other disposition between the parties of the real or personal property, or both, of either or both of the parties as may be just and proper in all the circumstances. In determining the division of property under this paragraph, the following apply:

(A) A retirement plan or pension or an interest therein shall be considered as property.

(B) The court shall consider the contribution of a party as a homemaker as a contribution to the acquisition of marital assets.

(C) Except as provided in subparagraph (D) of this paragraph, there is a rebuttable presumption that both parties have contributed equally to the acquisition of property during the marriage, whether such property is jointly or separately held.

(D)(i) Property acquired by gift to one party during the marriage and separately held by that party on a continuing basis from the time of receipt is not subject to a presumption of equal contribution under subparagraph (C) of this paragraph.

(ii) For purposes of this subparagraph, "property acquired by gift" means property acquired by one party through gift, devise, bequest, operation of law, beneficiary designation or inheritance.

(E) Subsequent to the filing of a petition for annulment or dissolution of marriage or separation, the rights of the parties in the marital assets shall be considered a species of co-ownership, and a transfer of marital assets under a judgment of annulment or dissolution of marriage or of separation entered on or after October 4, 1977, shall be considered a partitioning of jointly owned property.

(F) The court shall require full disclosure of all assets by the parties in arriving at a just property division.

(G) In arriving at a just and proper division of property, the court shall consider reasonable costs of sale of assets, taxes and any other costs reasonably anticipated by the parties.

(H)(i) If a party has been awarded spousal support in lieu of a share of property, the court shall so state on the record and shall order the obligor to provide for and maintain life insurance in an amount commensurate with the obligation and designating the obligee as beneficiary for the duration of the obligation.

(ii) If the obligor dies prior to the termination of spousal support and life insurance is not in force as provided in sub-subparagraph (i) of this subparagraph, the court may modify the method of payment of spousal support under the judgment or order of support from installments to a lump sum payment to the obligee from the estate of the obligor in an amount commensurate with the present value of the spousal support at the time of death.

(iii) The obligee or attorney of the obligee shall cause a certified copy of the judgment to be delivered to the life insurance company or companies.

(iv) If the obligee or the attorney of the obligee delivers a true copy of the judgment to the life insurance company or companies, identifying the policies involved and requesting such notification under this section, the company or companies shall notify the obligee, as beneficiary of the insurance policy, whenever the policyholder takes any action that will change the beneficiary or reduce the benefits of the policy. Either party may request notification by the insurer when premium payments have not been made. If the obligor is ordered to provide for and maintain life insurance, the obligor shall provide to the obligee a true copy of the policy. The obligor shall also provide to the obligee written notice of any action that will reduce the benefits or change the designation of the beneficiaries under the policy.

(g) For the creation of trusts as follows:

(A) For the appointment of one or more trustees to hold, control and manage for the benefit of the children of the parties, of the marriage or otherwise such of the real or personal property of either or both of the parties, as the court may order to be allocated or appropriated to their support and welfare, and to collect, receive, expend, manage or invest any sum of money awarded for the support and welfare of minor children of the parties.

(B) For the appointment of one or more trustees to hold, manage and control such amount of money or such real or personal property of either or both of the parties, as may be set aside, allocated or appropriated for the support of a party.

(C) For the establishment of the terms of the trust and provisions for the disposition or distribution of such money or property to or between the parties, their successors, heirs and assigns after the purpose of the trust has been accomplished. Upon petition of a party or a person having an interest in the trust showing a change of circumstances warranting a change in the terms of the trust, the court may make and direct reasonable modifications in its terms.

(h) To change the name of either spouse to a name the spouse held before the marriage. The court shall order a change if it is requested by the affected party.

(i) For a money award for any sums of money found to be then remaining unpaid upon any order or limited judgment entered under ORS 107.095. If a limited judgment was entered under ORS 107.095, the limited judgment shall continue to be enforceable for any amounts not paid under the limited judgment unless those amounts are included in the money award made by the general judgment.

(j) For an award of reasonable attorney fees and costs and expenses reasonably incurred in the action in favor of a party or in favor of a party's attorney.

(2) In determining the proper amount of support and the proper division of property under subsection (1)(c), (d) and (f) of this section, the court may consider evidence of the tax consequences on the parties of its proposed judgment.

(3) Upon the filing of the judgment, the property division ordered shall be deemed effective for all purposes. This transfer by judgment, which shall affect solely owned property transferred to the other spouse as well as commonly owned property in the same manner as would a declaration of a resulting trust in favor of the spouse to whom the property is awarded, is not a taxable sale or exchange.

(4) If an appeal is taken from a judgment of annulment or dissolution of marriage or of separation or from any part of a judgment rendered in pursuance of the provisions of ORS 107.005 to 107.086, 107.095, 107.105, 107.115 to 107.174, 107.405, 107.425, 107.445 to 107.520, 107.540 and 107.610, the court rendering the judgment may provide in a supplemental judgment for any relief provided for in ORS 107.095 and shall provide that the relief granted in the judgment is to be in effect only during the pendency of the appeal. A supplemental judgment under this subsection may be enforced as provided in ORS 33.015 to 33.155 and ORS chapter 18. A supplemental judgment under this subsection may be appealed in the same manner as provided for supplemental judgments modifying a domestic relations judgment under ORS 19.275.

(5) If an appeal is taken from the judgment or other appealable order in a suit for annulment or dissolution of a marriage or for separation and the appellate court awards costs and disbursements to a party, the court may also award to that party, as part of the costs, such additional sum of money as it may adjudge reasonable as an attorney fee on the appeal.

(6) If, as a result of a suit for the annulment or dissolution of a marriage or for separation, the parties to such suit become owners of an undivided interest in any real or personal property, or both, either party may maintain supplemental proceedings by filing a petition in such suit for the partition of such real or personal property, or both, within two years from the entry of the judgment, showing among other things that the original parties to the judgment and their joint or several creditors having a lien upon any such real or personal property, if any there be, constitute the sole and only necessary parties to such supplemental proceedings. The procedure in the supplemental proceedings, so far as applicable, shall be the procedure provided in ORS 105.405 for the partition of real property, and the court granting the judgment shall have in the first instance and retain jurisdiction in equity therefor.

SECTION 3. The amendments to ORS 107.105 and 107.137 by sections 1 and 2 of this 2013 Act apply to child custody and parenting time proceedings commenced on or after the effective date of this 2013 Act.

Passed by House March 19, 2013

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Ramona J. Line, Chief Clerk of House

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Tina Kotek, Speaker of House

Passed by Senate April 30, 2013

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Peter Courtney, President of Senate

Received by Governor:

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Approved:

.....M,....., 2013

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John Kitzhaber, Governor

Filed in Office of Secretary of State:

.....M,....., 2013

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Kate Brown, Secretary of State