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Final Analysis
Legislative Service Commission

Sub. H.B. 36

125th General Assembly
(As Passed by the General Assembly)

Reps. Willamowski, Core, Latta, Book, Harwood, Schlichter, Seitz, Chandler, Cirelli, C. Evans, Flowers, Hagan, Hughes, Otterman, Reidelbach, Schmidt, J. Stewart

Sens. Blessing, Dann

Effective date: *

ACT SUMMARY

- Eliminates the restriction on a court in divorce or legal separation proceedings that it may award reasonable attorney's fees only if it determines that the party ordered to pay attorney's fees has the ability to do so.
- Eliminates the requirement that a court must determine whether either party will be prevented from fully litigating that party's rights and adequately protecting that party's interests if the court does not award reasonable attorney's fees in divorce or legal separation proceedings.
- Permits a court, in an action for divorce, dissolution, annulment of marriage, or legal separation or an appeal of that action to award reasonable attorney's fees and litigation expenses to either party if the court finds the award equitable.
- Permits the court, in determining whether an award is equitable, to consider the parties' marital assets and income, any award of temporary spousal support, the conduct of the parties, and any other relevant factors the court deems appropriate.

* *The Legislative Service Commission had not received formal notification of the effective date at the time this analysis was prepared. Additionally, the analysis may not reflect action taken by the Governor.*

- Permits a court, in any post-decree motion or proceeding arising from a divorce, dissolution, legal separation, or annulment of marriage or an appeal of that motion or proceeding, to award all or part of reasonable attorney's fees and litigation expenses to either party if the court finds the award equitable.
- Permits the court, in determining whether an award is equitable, in a post-decree motion or proceeding to consider the parties' income, the conduct of the parties, and any other relevant factors the court deems appropriate, but may not consider the parties' assets.
- Permits the court to make its award of attorney's fees and litigation expenses payable in gross or by installments.

CONTENT AND OPERATION

Award of reasonable attorney's fees

Prior law provided that, in divorce or legal separation proceedings, the court of common pleas could award reasonable attorney's fees to either party at any stage of the proceedings if the court determined that the other party had the ability to pay the attorney's fees that the court awarded. The proceedings included, but were not limited to, any appeal, any proceeding arising from a motion to modify a prior order or decree, and any proceeding to enforce a prior order or decree. When the court determined whether to award reasonable attorney's fees to any party as described above, the court had to determine whether either party would be prevented from fully litigating that party's rights and adequately protecting that party's interests if it did not award reasonable attorney's fees. (R.C. 3105.18(H).)

Operation of the act

The act eliminates the prior statutory procedure and the prior statutory requirements for awarding attorney's fees in divorce or legal separation proceedings. It replaces that procedure and those requirements with new procedures for awarding attorney's fees and litigation expenses in an action for divorce, legal separation, or annulment of marriage or in any post-decree action or proceeding arising from a divorce, legal separation, annulment, or dissolution of marriage.

Therefore, the act eliminates the restriction on a court in divorce or legal separation proceedings that it may award reasonable attorney's fees only if it determines that the party ordered to pay attorney's fees has the ability to do so.

The act also eliminates the requirement that the court, when determining whether to order attorney's fees in such cases, must determine whether either party will be prevented from fully litigating the party's rights and adequately protecting the party's interests if the court does not award reasonable attorney's fees in divorce or legal separation proceedings.

The act, in its new procedures, permits a court to award reasonable attorney's fees and litigation expenses to either party in an action for divorce, dissolution, legal separation, or annulment of marriage or in an appeal of that action if the court finds the award equitable. In determining whether an award is equitable, the court may consider the parties' marital assets and income, any award of temporary spousal support, the conduct of the parties, and any other relevant factors the court deems appropriate. (R.C. 3105.73(A).)

The act permits the court, in any post-decree motion or proceeding that arises out of an action for divorce, dissolution, legal separation, or annulment of marriage or an appeal of that motion or proceeding, to award all or part of reasonable attorney's fees and litigation expenses to either party if the court finds the award equitable. The act also permits the court, in determining whether an award is equitable, to consider the parties' income, the conduct of the parties, and any other relevant factors the court deems appropriate, but the court may not consider the parties' assets. (R.C. 3105.73(B).)

Under the act, the court may specify whether the award of attorney's fees and litigation expenses is payable in gross or by installments. The act also permits the court to make an award of attorney's fees and litigation expenses under the act's provisions in addition to making an award of attorney's fees and litigation expenses under any other provision of the Revised Code or of the Rules of Civil Procedure. (R.C. 3105.73(C).)

The act provides that nothing in its provisions prevents an award of attorney's fees and litigation expenses from being designated as *spousal support* (see **COMMENT**) (R.C. 3105.73(D)).

Application of Revised Code sections

Section 3 of the act states that R.C. 3105.18, as amended by the act, and R.C. 3105.73, as enacted by the act (the elimination of the prior procedure for awarding attorney's fees in divorce or legal separation proceedings and the enactment of new procedures for awarding attorney's fees and litigation expenses in divorce, legal separation, or annulment of marriage actions or post-decree actions or proceedings) apply to any action for divorce, legal separation, or annulment of marriage or any post-decree action or proceeding arising from a divorce, legal separation annulment, or dissolution of marriage if any of the following apply:

(1) The action or proceeding is brought, or a notice of appeal in the action or proceeding is filed, on or after the effective date of the act.

(2) The action or proceeding is brought, or a notice of appeal in the action or proceeding is filed, prior to the effective date of the act, and the action or proceeding is pending in a trial or appellate court on the effective date of the act.

(3) Any proceeding arising from a motion to modify a prior order or decree in the action or proceeding is pending in a trial or appellate court on the effective date of the act.

COMMENT

For the purposes of the new procedures for awarding attorney's fees and litigation expenses in the cases specified in the act, "spousal support" has the same meaning as in R.C. 3105.18(A), which defines the term as any payment or payments to be made to a spouse or former spouse, or to a third party for the benefit of a spouse or a former spouse, that is both for sustenance and for support of the spouse or former spouse. "Spousal support" does not include any payment made to a spouse or former spouse, or to a third party for the benefit of a spouse or former spouse, that is made as part of a division or distribution of property or a distributive award under R.C. 3105.171. (R.C. 3105.73(C).)

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	02-03-03	p. 85
Reported, H. Civil & Commercial Law	03-19-03	pp. 264-265
Passed House (97-0)	04-01-03	p. 312
Reported, S. Judiciary on Civil Justice	06-25-03	pp. 871-872
Recommitted, S. Judiciary on Civil Justice	01-14-04	p. 1392
Re-reported, S. Civil Justice	12-08-04	p. 2434
Passed Senate (32-0)	12-08-04	pp. 2455-2456
House concurred in Senate amendments (95-0)	12-14-04	pp. 2678-2679

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