

RULE 75. Divorce, Annulment, and Legal Separation Actions

(A) Applicability. The Rules of Civil Procedure shall apply in actions for divorce, annulment, legal separation, and related proceedings, with the modifications or exceptions set forth in this rule.

(B) Joinder of parties. Civ.R. 14, 19, 19.1, and 24 shall not apply in divorce, annulment, or legal separation actions, however:

(1) A person or corporation having possession of, control of, or claiming an interest in property, whether real, personal, or mixed, out of which a party seeks a division of marital property, a distributive award, or an award of spousal support or other support, may be made a party defendant;

(2) When it is essential to protect the interests of a child, the court may join the child of the parties as a party defendant and appoint a guardian ad litem and legal counsel, if necessary, for the child and tax the costs;

(3) The court may make any person or agency claiming to have an interest in or rights to a child by rule or statute, including but not limited to R.C. 3109.04 and R.C. 3109.051, a party defendant;

(4) When child support is ordered, the court, on its own motion or that of an interested person, after notice to the party ordered to pay child support and to his or her employer, may make the employer a party defendant.

(C) Trial by court or magistrate. In proceedings under this rule there shall be no right to trial by jury. All issues may be heard either by the court or by a magistrate as the court on the request of any party or on its own motion, may direct. Civ. R. 53 shall apply to all cases or issues directed to be heard by a magistrate.

(D) Investigation. On the filing of a complaint for divorce, annulment, or legal separation, where minor children are involved, or on the filing of a motion for the modification of a decree allocating parental rights and responsibilities for the care of children, the court may cause an investigation to be made as to the character, family relations, past conduct, earning ability, and financial worth of the parties to the action. The report of the investigation shall be made available to either party or their counsel of record upon written request not less than seven days before trial. The report shall be signed by the investigator and the investigator shall be subject to cross-examination by either party concerning the contents of the report. The court may tax as costs all or any part of the expenses for each investigation.

(E) Subpoena where custody involved. In any case involving the allocation of parental rights and responsibilities for the care of children, the court, on its own motion, may cite a party to the action from any point within the state to appear in court and testify.

(F) Judgment. The provisions of Civ.R. 55 shall not apply in actions for divorce, annulment, legal separation, or civil protection orders. For purposes of Civ.R. 54(B), the court shall not enter final judgment as to a claim for divorce, dissolution of marriage, annulment, or legal separation unless one of the following applies:

(1) The judgment also divides the property of the parties, determines the appropriateness of an order of spousal support, and, where applicable, either allocates parental rights and responsibilities, including payment of child support, between the parties or orders shared parenting of minor children;

(2) Issues of property division, spousal support, and allocation of parental rights and responsibilities or shared parenting have been finally determined in orders, previously entered by the court, that are incorporated into the judgment;

(3) The court includes in the judgment the express determination required by Civ.R. 54(B) and a final determination that either of the following applies:

(a) The court lacks jurisdiction to determine such issues;

(b) In a legal separation action, the division of the property of the parties would be inappropriate at that time.

(G) Civil protection order. A claim for a civil protection order based upon an allegation of domestic violence shall be a separate claim from a claim for divorce, dissolution of marriage, annulment, or legal separation.

(H) Relief pending appeal. A motion to modify, pending appeal, either a decree allocating parental rights and responsibilities for the care of children, a spousal or other support order, shall be made to the trial court in the first instance, whether made before or after a notice of appeal is filed. The trial court may grant relief upon terms as to bond or otherwise as it considers proper for the security of the rights of the adverse party and in the best interests of the children involved. Civ. R. 62(B) does not apply to orders allocating parental rights and responsibilities for the care of children or a spousal or other support order. An order entered upon motion under this rule may be vacated or modified by the appellate court. The appellate court has authority to enter like orders pending appeal, but an application to the appellate court for relief shall disclose what has occurred in the trial court regarding the relief.

(I) Temporary restraining orders.

(1) **Restraining order: exclusion.** The provisions of Civ. R. 65(A) shall not apply in divorce, annulment, or legal separation actions.

(2) **Restraining order: grounds, procedure.** When it is made to appear to the court by affidavit of a party sworn to absolutely that a party is about to dispose of or encumber property, or any part thereof of property, so as to defeat another party in obtaining an equitable

division of marital property, a distributive award, or spousal or other support, or that a party to the action or a child of any party is about to suffer physical abuse, annoyance, or bodily injury by the other party, the court may allow a temporary restraining order, with or without bond, to prevent that action. A temporary restraining order may be issued without notice and shall remain in force during the pendency of the action unless the court or magistrate otherwise orders.

(J) Continuing jurisdiction. The continuing jurisdiction of the court shall be invoked by motion filed in the original action, notice of which shall be served in the manner provided for the service of process under Civ. R. 4 to 4.6. When the continuing jurisdiction of the court is invoked pursuant to this division, the discovery procedures set forth in Civ. R. 26 to 37 shall apply.

(K) Hearing. No action for divorce, annulment, or legal separation may be heard and decided until the expiration of forty-two days after the service of process or twenty-eight days after the last publication of notice of the complaint, and no action for divorce, annulment, or legal separation shall be heard and decided earlier than twenty-eight days after the service of a counterclaim, which under this rule may be designated a cross-complaint, unless the plaintiff files a written waiver of the twenty-eight day period.

(L) Notice of trial. In all cases where there is no counsel of record for the adverse party, the court shall give the adverse party notice of the trial upon the merits. The notice shall be made by regular mail to the party's last known address, and shall be mailed at least seven days prior to the commencement of trial.

(M) Testimony. Judgment for divorce, annulment, or legal separation shall not be granted upon the testimony or admission of a party not supported by other credible evidence. No admission shall be received that the court has reason to believe was obtained by fraud, connivance, coercion, or other improper means. The parties, notwithstanding their marital relations, shall be competent to testify in the proceeding to the same extent as other witnesses.

(N) Temporary Orders of spousal support, child support, and custody.

(1) When requested in the complaint, answer, or counterclaim, or by motion served with the pleading, upon satisfactory proof by affidavit duly filed with the clerk of the court, the court or magistrate, without oral hearing and for good cause shown, may grant a temporary order regarding spousal support to either of the parties for the party's sustenance and expenses during the suit and may make a temporary order regarding the support, maintenance, and allocation of parental rights and responsibilities for the care of children of the marriage, whether natural or adopted, during the pendency of the action for divorce, annulment, or legal separation.

(2) Counter affidavits may be filed by the other party within fourteen days from the service of the complaint, answer, counterclaim, or motion, all affidavits to be used by the court or magistrate in making a temporary spousal support order, child support order, and order allocating parental rights and responsibilities for the care of children. Upon request, in writing, after any temporary spousal support, child support, or order allocating parental rights and responsibilities

for the care of children is journalized, the court shall grant the party so requesting an oral hearing within twenty-eight days to modify the temporary order. A request for oral hearing shall not suspend or delay the commencement of spousal support or other support payments previously ordered or change the allocation of parental rights and responsibilities until the order is modified by journal entry after the oral hearing.

(O) Delay of decree. When a party who is entitled to a decree of divorce or annulment is ordered to pay spousal support or child support for a child not in his or her custody, or to deliver a child to the party to whom parental rights and responsibilities for the care of the child are allocated, the court may delay entering a decree for divorce or annulment until the party, to the satisfaction of the court, secures the payment of the spousal support or the child support for the child, or delivers custody of the child to the party to whom parental rights and responsibilities are allocated.

[Effective: July 1, 1970; amended effective July 1, 1971; July 1, 1972; July 1, 1977; July 1, 1978; July 1, 1991; July 1, 1996; July 1, 1997; July 1, 1998; July 1, 2001; July 1, 2014; July 1, 2018.]

Staff Note (July 1, 2018 Amendment)

Division (N): Temporary Orders.

Reflecting contemporary terminology, the former term “pendente lite” is replaced with the term “temporary.”

Staff Note (July 1, 2014 Amendments)

The rule is amended by inserting a new Civ.R. 75(B)(3) and renumbering the following provision. The new provision expressly grants courts the authority and discretion to join persons or agencies claiming to have an interest in or rights with respect to a child. This would include agencies such as child support enforcement and children services boards. This would also include third parties seeking the designation of residential parent or being granted parenting time rights.

Staff Note (July 1, 2001 Amendment)

Civil Rule 75(B) Joinder of parties

Civ. R. 75(B) provides that Civ. R. 14 (third-party practice), Civ. R. 19 (joinder of parties needed for just adjudication), Civ. R. 19.1 (compulsory joinder), and Civ. R. 24 (intervention) are generally inapplicable in divorce, annulment, or legal separation actions. Division (1) of Rule 75(B), however, permits a corporation or person to be made a party defendant to such an action if that corporation or person has possession or control of or claims an interest in property out of which another seeks an award. Civ. R. 75(B)(1) thus permits the court to protect both the person seeking an award and the corporation or person who has possession or control of or claims an interest in property. See *Huener v. Huener*, 110 Ohio App. 3d 322, 327, 674 N.E. 2d 389, 393 (1996) (trial court abused its discretion by attempting to divest parents of party of legal title to property without joining them as parties; purpose of Civ. R. 75(B)(1) joinder “is to allow individuals to join whose interests need to be protected”).

Division (B)(1) was amended effective July 1, 2001 to track more precisely the language of R.C. 3105.171, which provides for division of marital property and, in appropriate circumstances, a distributive

award, and R.C. 3105.18, which provides for spousal support. The amendment is intended to make clear that the joinder of a corporation or person is proper whether a division of marital property, a distributive award, or an award of spousal support is the underlying issue. The reference to "other support" is retained in order to avoid foreclosing the use of Civ. R. 75(B)(1) when, e.g., child support is the underlying issue.

Rule 75(I) Temporary restraining orders

Civ. R. 75(I)(1) provides that Civ. R. 65(A), which prescribes general conditions for the issuance of a temporary restraining order, is inapplicable to divorce, annulment, or legal separation actions. Civ. R. 75(I)(2), however, permits a court to issue a temporary restraining order in such an action without notice, which order may remain in effect during the pendency of the action, so as to protect a party from action by another party who is about to dispose of or encumber property so as to defeat the other party in obtaining a fair award. See *Addy v. Addy*, 97 Ohio App. 3d 204, 210, 646 N.E. 2d 513, 517 (1994) (“Rule 75(H) [now 75(I)] is intended to protect the interests of the parties and preserve the authority of the court to make meaningful final orders for support”); see also Civ. R. 53(C)(3) (power of magistrate to enter orders; Civ. R. 75(I) incorporated by reference).

Civ. R. 75(I)(2) was amended effective July 1, 2001 to track more precisely the language of R.C. 3105.171, which provides for division of marital property and, in appropriate circumstances, a distributive award, and R.C. 3105.18, which provides for spousal support. Though courts appear properly to have rejected an overly-literal reading of Civ. R. 75(I)(2), see *Sherban v. Sherban*, 1985 WL 4710, Nos. CA-6688, CA-6695, CA-6696, and CA-6683 (5th Dist. Ct. App., Stark, 12-23-85) (restraining order under Civ. R. 75(H) [now 75(I)] proper in support of division of property), the amendment is intended to make clear that a temporary restraining order may properly be entered if necessary to prevent a party from defeating another party’s right to an equitable division of marital property, a distributive award, or an award of spousal support. The reference to “other support” is retained in order to avoid foreclosing the use of Civ. R. 75(I)(2) to prevent a party from defeating the right of another party to, e.g., child support.

Staff Note (July 1, 1998 Amendment)

Rule 75(F) Judgment

Division (F) was amended to require that the final judgment in a domestic relations case include all relevant claims except the domestic violence protection order: divorce, property settlement, and parental rights and responsibilities. The amendment was suggested by the Ohio State Bar Association Family Law Committee and the Ohio Gender Fairness Task Force. The amendment also changed the title of this division from “Default.” Division (G) was added and the remainder of the divisions were relettered accordingly.

Staff Note (July 1, 1997 Amendment)

Rule 75(G) Relief pending appeal.

The amendment clarifies the procedure to be followed when parental rights, spousal support, and similar issues are sought to be modified while an appeal is pending. The rule prior to the amendment was unclear on which court or courts had authority to entertain motions to modify such orders, leading to a split of authority among Ohio courts. Compare *Rahm v. Rahm* (1974), 39 Ohio App.2d 74, 315 N.E. 2d 495 (trial court could only grant such relief prior to the filing of an appeal) with *Buckles v. Buckles* (1988), 46 Ohio App.3d 118, 546 N.E.2d 950 (declines to follow *Rahm*, holds that trial court retains jurisdiction to grant relief pending appeal as long as the exercise of that jurisdiction did not interfere with appellate review).

The amendment follows the *Buckles* case by requiring a motion to modify to be made in the first instance to the trial court, with that court’s decision subject to review and modification, if appropriate, in the appellate court. The trial court is the most appropriate forum to consider such a motion in the first instance, given that the trial judge is already familiar with the issues, and the likelihood that further factual presentations and inquiry will be necessary for the court to dispose of the motion.

Staff Note (July 1, 1996 Amendment)

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The amendment changed the rule's reference from "referee" to "magistrate" in divisions (C), (H)(2), and (M) in order to harmonize the rule with the language adopted in the 1995 amendments to Civ. R. 53. Also, in divisions (B), (C), (F), (H)(1), and (I) the style used for citations to other rules was amended. The amendment is technical only and no substantive change is intended.