

ASSEMBLY BILL NO. 362—ASSEMBLYWOMAN SWANK

MARCH 17, 2015

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to domestic relations.
(BDR 11-745)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in **bolded italics** is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to domestic relations; authorizing a party in certain domestic relations actions to file a postjudgment motion to obtain adjudication of certain property and liabilities that were omitted from the final decree or judgment as the result of fraud or mistake; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Under existing law, in granting a divorce, a court must, to the extent practicable, make an equal disposition of the community property of the parties, unless the action is contrary to a valid premarital agreement between the parties or the court makes written findings setting forth a compelling reason for making an unequal disposition of the community property. (NRS 125.150) The Nevada Supreme Court has held that under Rule 60(b) of the Nevada Rules of Civil Procedure, relief from a divorce decree dividing community property between the parties may be obtained by: (1) filing within 6 months after the final decree a motion for relief or modification from the decree because of mistake, newly discovered evidence or fraud; or (2) showing exceptional circumstances justifying equitable relief in an independent civil action. (*Kramer v. Kramer*, 96 Nev. 759, 762 (1980); *Amie v. Amie*, 106 Nev. 541, 542 (1990)) In *Doan v. Wilkerson*, 130 Nev. Adv. Op. 48, 328 P.3d 498 (2014), the Nevada Supreme Court held that exceptional circumstances justifying equitable relief do not exist when a particular item of community property was disclosed and considered in a divorce action but omitted from the divorce decree.

This bill authorizes a party in an action for divorce, separate maintenance or annulment to file a postjudgment motion to obtain an adjudication of any community property or liability that was omitted from the final decree or judgment as the result of fraud or mistake. Under this bill, such a motion must be filed within 3 years after the aggrieved party discovers the facts constituting the fraud or mistake. This bill further provides that the court has continuing jurisdiction to hear



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23 such a motion and must make an equal disposition of the omitted community
24 property or liability unless the court finds that certain exceptions apply.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 **Section 1.** NRS 125.150 is hereby amended to read as follows:

2 125.150 Except as otherwise provided in NRS 125.155 and
3 unless the action is contrary to a premarital agreement between the
4 parties which is enforceable pursuant to chapter 123A of NRS:

5 1. In granting a divorce, the court:

6 (a) May award such alimony to the wife or to the husband, in a
7 specified principal sum or as specified periodic payments, as
8 appears just and equitable; and

9 (b) Shall, to the extent practicable, make an equal disposition of
10 the community property of the parties, except that the court may
11 make an unequal disposition of the community property in such
12 proportions as it deems just if the court finds a compelling reason to
13 do so and sets forth in writing the reasons for making the unequal
14 disposition.

15 2. Except as otherwise provided in this subsection, in granting
16 a divorce, the court shall dispose of any property held in joint
17 tenancy in the manner set forth in subsection 1 for the disposition of
18 community property. If a party has made a contribution of separate
19 property to the acquisition or improvement of property held in joint
20 tenancy, the court may provide for the reimbursement of that party
21 for his or her contribution. The amount of reimbursement must not
22 exceed the amount of the contribution of separate property that can
23 be traced to the acquisition or improvement of property held in joint
24 tenancy, without interest or any adjustment because of an increase in
25 the value of the property held in joint tenancy. The amount of
26 reimbursement must not exceed the value, at the time of the
27 disposition, of the property held in joint tenancy for which the
28 contribution of separate property was made. In determining whether
29 to provide for the reimbursement, in whole or in part, of a party who
30 has contributed separate property, the court shall consider:

31 (a) The intention of the parties in placing the property in joint
32 tenancy;

33 (b) The length of the marriage; and

34 (c) Any other factor which the court deems relevant in making a
35 just and equitable disposition of that property.

36 ↪ As used in this subsection, "contribution" includes, without
37 limitation, a down payment, a payment for the acquisition or
38 improvement of property, and a payment reducing the principal of a
39 loan used to finance the purchase or improvement of property. The



term does not include a payment of interest on a loan used to finance the purchase or improvement of property, or a payment made for maintenance, insurance or taxes on property.

3. *A party may file a postjudgment motion in any action for divorce, annulment or separate maintenance to obtain adjudication of any community property or liability omitted from the decree or judgment as the result of fraud or mistake. A motion pursuant to this subsection must be filed within 3 years after the discovery by the aggrieved party of the facts constituting the fraud or mistake. The court has continuing jurisdiction to hear such a motion and shall equally divide the omitted community property or liability between the parties unless the court finds that:*

(a) *The community property or liability was included in a prior equal disposition of the community property of the parties or in an unequal disposition of the community property of the parties which was made pursuant to written findings of a compelling reason for making that unequal disposition; or*

(b) *The court determines a compelling reason in the interests of justice to make an unequal disposition of the community property or liability and sets forth in writing the reasons for making the unequal disposition.*

↪ *If a motion pursuant to this subsection results in a judgment dividing a defined benefit pension plan, the judgment may not be enforced against an installment payment made by the plan more than 6 years after the installment payment.*

4. Except as otherwise provided in NRS 125.141, whether or not application for suit money has been made under the provisions of NRS 125.040, the court may award a reasonable attorney's fee to either party to an action for divorce.

~~14.1~~ 5. In granting a divorce, the court may also set apart such portion of the husband's separate property for the wife's support, the wife's separate property for the husband's support or the separate property of either spouse for the support of their children as is deemed just and equitable.

~~15.1~~ 6. In the event of the death of either party or the subsequent remarriage of the spouse to whom specified periodic payments were to be made, all the payments required by the decree must cease, unless it was otherwise ordered by the court.

~~16.1~~ 7. If the court adjudicates the property rights of the parties, or an agreement by the parties settling their property rights has been approved by the court, whether or not the court has retained jurisdiction to modify them, the adjudication of property rights, and the agreements settling property rights, may nevertheless at any time thereafter be modified by the court upon written



1 stipulation signed and acknowledged by the parties to the action,
2 and in accordance with the terms thereof.

3 ~~17~~ 8. If a decree of divorce, or an agreement between the
4 parties which was ratified, adopted or approved in a decree of
5 divorce, provides for specified periodic payments of alimony, the
6 decree or agreement is not subject to modification by the court as to
7 accrued payments. Payments pursuant to a decree entered on or after
8 July 1, 1975, which have not accrued at the time a motion for
9 modification is filed may be modified upon a showing of changed
10 circumstances, whether or not the court has expressly retained
11 jurisdiction for the modification. In addition to any other factors the
12 court considers relevant in determining whether to modify the order,
13 the court shall consider whether the income of the spouse who is
14 ordered to pay alimony, as indicated on the spouse's federal income
15 tax return for the preceding calendar year, has been reduced to such
16 a level that the spouse is financially unable to pay the amount of
17 alimony the spouse has been ordered to pay.

18 ~~18~~ 9. In addition to any other factors the court considers
19 relevant in determining whether to award alimony and the amount
20 of such an award, the court shall consider:

- 21 (a) The financial condition of each spouse;
- 22 (b) The nature and value of the respective property of each
23 spouse;
- 24 (c) The contribution of each spouse to any property held by the
25 spouses pursuant to NRS 123.030;
- 26 (d) The duration of the marriage;
- 27 (e) The income, earning capacity, age and health of each spouse;
- 28 (f) The standard of living during the marriage;
- 29 (g) The career before the marriage of the spouse who would
30 receive the alimony;
- 31 (h) The existence of specialized education or training or the
32 level of marketable skills attained by each spouse during the
33 marriage;
- 34 (i) The contribution of either spouse as homemaker;
- 35 (j) The award of property granted by the court in the divorce,
36 other than child support and alimony, to the spouse who would
37 receive the alimony; and

38 (k) The physical and mental condition of each party as it relates
39 to the financial condition, health and ability to work of that spouse.

40 ~~19~~ 10. In granting a divorce, the court shall consider the need
41 to grant alimony to a spouse for the purpose of obtaining training or
42 education relating to a job, career or profession. In addition to any
43 other factors the court considers relevant in determining whether
44 such alimony should be granted, the court shall consider:



(a) Whether the spouse who would pay such alimony has obtained greater job skills or education during the marriage; and

(b) Whether the spouse who would receive such alimony provided financial support while the other spouse obtained job skills or education.

~~10:~~ 11. If the court determines that alimony should be awarded pursuant to the provisions of subsection ~~9:~~ 10:

(a) The court, in its order, shall provide for the time within which the spouse who is the recipient of the alimony must commence the training or education relating to a job, career or profession.

(b) The spouse who is ordered to pay the alimony may, upon changed circumstances, file a motion to modify the order.

(c) The spouse who is the recipient of the alimony may be granted, in addition to any other alimony granted by the court, money to provide for:

(1) Testing of the recipient's skills relating to a job, career or profession;

(2) Evaluation of the recipient's abilities and goals relating to a job, career or profession;

(3) Guidance for the recipient in establishing a specific plan for training or education relating to a job, career or profession;

(4) Subsidization of an employer's costs incurred in training the recipient;

(5) Assisting the recipient to search for a job; or

(6) Payment of the costs of tuition, books and fees for:

(I) The equivalent of a high school diploma;

(II) College courses which are directly applicable to the recipient's goals for his or her career; or

(III) Courses of training in skills desirable for employment.

~~11:~~ 12. For the purposes of this section, a change of 20 percent or more in the gross monthly income of a spouse who is ordered to pay alimony shall be deemed to constitute changed circumstances requiring a review for modification of the payments of alimony. As used in this subsection, "gross monthly income" has the meaning ascribed to it in NRS 125B.070.

