

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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HOUSE BILL 269

Committee Substitute Favorable 5/4/95

Senate Judiciary I/Constitution Committee Substitute Adopted 6/6/95

Short Title: Equit. Distrib./Sanction Delay.

(Public)

Sponsors:

Referred to:

February 23, 1995

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE DISTRICT COURT JUDGES TO SANCTION PARTIES TO EQUITABLE DISTRIBUTION PROCEEDINGS FOR PURPOSEFUL, PREJUDICIAL DELAY OF THE PROCEEDINGS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 50-21 reads as rewritten:

"§ 50-21. **Procedures in actions for equitable distribution of ~~property~~-property; sanctions for purposeful and prejudicial delay.**

(a) At any time after a husband and wife begin to live separate and apart from each other, a claim for equitable distribution may be filed, either as a separate civil action, or together with any other action brought pursuant to Chapter 50 of the General Statutes, or as a motion in the cause as provided by G.S. 50-11(e) or (f). Within 90 days after service of a claim for equitable distribution, the party who first asserts the claim shall prepare and serve upon the opposing party an equitable distribution inventory affidavit listing all property claimed by the party to be marital property and all property claimed by the party to be separate property, and the estimated date-of-separation fair market value of each item of marital and separate property. Within 30 days after service of the inventory affidavit, the party upon whom service is made shall prepare and serve an inventory

1 affidavit upon the other party. The inventory affidavits prepared and served pursuant to
2 this subsection shall be subject to amendment and shall not be binding at trial as to
3 completeness or value. The court may extend the time limits in this subsection for good
4 cause shown. The affidavits are subject to the requirements of G.S. 1A-1, Rule 11, and
5 are deemed to be in the nature of answers to interrogatories propounded to the parties.
6 Any party failing to supply the information required by this subsection in the affidavit is
7 subject to G.S. 1A-1, Rules 26, 33, and 37. During the pendency of the action for
8 equitable distribution, discovery may proceed, and the court ~~may~~ shall enter temporary
9 orders as appropriate and necessary for the purpose of preventing the disappearance,
10 waste, or destruction of marital or separate property or to secure the possession thereof.

11 A judgment for an equitable distribution shall not be entered prior to entry of a decree
12 of absolute divorce, except for a consent judgment, which may be entered at any time
13 during the pendency of the action, or except if the parties have been separated for at least
14 six months and they consent, in a pleading or other writing filed with the court, to an
15 equitable distribution trial prior to the entry of the decree for absolute divorce.

16 Real or personal property located outside of North Carolina is subject to equitable
17 distribution in accordance with the provisions of G.S. 50-20, and the court may include in
18 its order appropriate provisions to ensure compliance with the order of equitable
19 distribution.

20 (b) For purposes of equitable distribution, marital property shall be valued as of
21 the date of the separation of the parties.

22 (c) Nothing in G.S. 50-20 or this section shall restrict or extend the right to trial by
23 jury as provided by the Constitution of North Carolina.

24 (d) Within 120 days after the filing of the initial pleading or motion in the cause
25 for equitable distribution, the party first serving the pleading or application shall apply to
26 the court to conduct a scheduling and discovery conference. If that party fails to make
27 application, then the other party may do so. At the conference the court shall determine a
28 schedule of discovery as well as consider and rule upon any motions for appointment of
29 expert witnesses, or other applications, including applications to determine the date of
30 separation, and shall set a date for the disclosure of expert witnesses and a date on or
31 before which an initial pretrial conference shall be held.

32 At the initial pretrial conference the court shall make inquiry as to the status of the
33 case and shall enter a date for the completion of discovery, the completion of a mediated
34 settlement conference, if applicable, and the filing and service of motions, and shall
35 determine a date on or after which a final pretrial conference shall be held and a date on
36 or after which the case shall proceed to trial.

37 The final pretrial conference shall be conducted pursuant to the Rules of Civil
38 Procedure and the General Rules of Practice in the applicable district or superior court,
39 adopted pursuant to G.S. 7A-34. The court shall rule upon any matters reasonably
40 necessary to effect a fair and prompt disposition of the case in the interests of justice.

41 (e) Upon motion of either party or upon the court's own initiative, the court shall
42 impose an appropriate sanction on a party when the court finds that:

1 (1) The party has willfully obstructed or unreasonably delayed, or has
2 attempted to obstruct or unreasonably delay, discovery proceedings,
3 including failure to make discovery pursuant to G.S. 1A-1, Rule 37, or
4 has willfully obstructed or unreasonably delayed or attempted to
5 obstruct or unreasonably delay any pending equitable distribution
6 proceeding, and

7 (2) The willful obstruction or unreasonable delay of the proceedings is or
8 would be prejudicial to the interests of the opposing party.

9 Delay consented to by the parties is not grounds for sanctions. The sanction may include
10 an order to pay the other party the amount of the reasonable expenses and damages
11 incurred because of the willful obstruction or unreasonable delay, including a reasonable
12 attorneys' fee, and including appointment by the court, at the offending party's expense,
13 of an accountant, appraiser, or other expert whose services the court finds are necessary
14 to secure in order for the discovery or other equitable distribution proceeding to be timely
15 conducted."

16 Sec. 2. This act becomes effective October 1, 1995, and applies to claims for
17 equitable distribution filed on or after that date and to pending litigation as to G.S. 50-
18 21(e) only.