CHAPTER 247

ACTIONS AFFECTING MARRIAGE

247.01 Jurisdiction. The county courts and circuit courts have jurisdiction of all actions affecting marriage and of all actions under s. 52.10 (or concurrent jurisdiction where other courts are vested with like jurisdiction), and have authority to do all acts and things necessary and proper in such actions and to carry their orders and judgments into execution as hereinafter prescribed. All such actions shall be commenced and conducted and the orders and judgments therein enforced according to these statutes in respect to actions in courts of record, as far as applicable, except as provided in this chapter and in s. 52.10. Whenever any court is presiding in any such action affecting marriage it shall be known as the "Family Court Branch".

History: 1975 c. 39.

Cross Reference: See 245.001 for provision as to intent and construction of this chapter.

247.015 Child custody jurisdiction. All proceedings relating to the custody of children shall comply with the requirements of ch. 822.

History: 1975 c. 283.

247.02 Marriages, how voided; annulment; causes for. No marriage shall be annulled or held void except pursuant to judicial proceedings. A marriage may be annulled for any of the following causes existing at the time of marriage:

(1) Incurable physical impotency or incapacity of copulation, at the suit of either party, provided that the party making the application was ignorant of such impotency or incapacity at the time of marriage.

(2) Consanguinity where the parties are nearer of kin than second cousins as computed by the rule of civil law, whether of the half or of the whole blood, at the suit of either party except as provided in s. 245.03 (1); but when any such marriage has not been annulled during the lifetime of the parties, the validity thereof shall not be inquired into after the death of either party.

(3) When such marriage was contracted while either of the parties thereto had a husband or wife living, at the suit of either party.

(4) Fraud, force or coercion, at the suit of the innocent and injured party, unless the marriage has been confirmed by the acts of the injured party.

(5) Such want of understanding as renders either party incapable of assenting to marriage, whether by reason of insanity, idiocy or other causes, at the suit of the other, or at the suit of a guardian of the insane or incompetent person, or of the insane or incompetent person on regaining reason, unless such insane or incompetent person, after regaining reason, has confirmed the marriage; provided that where the party compos mentis is the applicant, such party was ignorant of the other's insanity or mental incompetency at the time of the marriage, and has not confirmed it subsequent to such person's having gained or regained reason.

(6) At the suit of either spouse or the spouse's parent or guardian when the spouse was under the age of 16 years at the time of the marriage, unless such marriage is validated by compliance with ch. 245.

(8) At the suit of the parent or the guardian of the person of a party marrying without the consent of said parent or guardian where such consent is required by s. 245.02, provided the action is commenced before said party reaches the age of 18 years and within one year after the marriage.

(9) When such marriage is prohibited or declared void under ch. 245 for any cause not enumerated herein.

History: 1971 c. 213; 1975 c. 94.

247.03 Actions affecting marriage. (1) Actions affecting marriage are:

(a) To affirm marriage.

(b) Annulment.

(c) Divorce.

(d) Legal separation (formerly divorce from bed and board).

(e) Custody.

(f) For support.

(g) For alimony.

(h) For property division.

(2) Except as otherwise provided in this subsection, such actions specified in sub. (1) (a) to (d) shall be commenced within a period of 10 years after the cause of action arose. The provisions of ss. 893.33, 893.37 and 893.38 relating to limitations of commencement of actions by persons under disability shall apply to actions affecting marriage under this chapter. An action for annulment under s. 247.02 (3) may be commenced at any time while either of the parties has a husband or wife living. In an action for divorce the court, in determining whether the action can be maintained after said 10-year period, may make such order excluding any time, during which either party has been committed as a patient in a mental institution, from the computation of said period as in its discretion shall be found just and reasonable after considering the respective equities of the parties and the liability under s. 46.10 for future maintenance of the patient who has been so committed.

(3) "Divorce" means divorce from the bonds of matrimony or absolute divorce, when used in this chapter.

247.04 Actions to affirm marriage. When the validity of any marriage shall be denied or doubted by either of the parties the other party may commence an action to affirm the marriage, and the judgment in such action shall declare such marriage valid or annul the same, and be conclusive upon all persons concerned.

247.045 Guardian ad litem for minor children. In any action for an annulment, divorce, legal separation, or otherwise affecting marriage, when the court has reason for special concern as to the future welfare of the minor children, the court shall appoint a guardian ad litem to represent such children. If a guardian ad litem is appointed, the court shall direct either or both parties to pay the fee of the guardian ad litem, the amount of which fee shall be approved by the court. In the event of indigency on the part of both parties the court, in its discretion, may direct that the fee of the guardian ad litem be paid by the county of venue.

History: Sup. Ct. Order, 50 W (2d) vii.

Comment of Judicial Council, 1971: This section provides that in any action for an annulment, divorce, legal separation, or otherwise, where the court determines there is reason for special concern for future welfare of the minor children, the court shall appoint a guardian ad litem for representation of the children. If a guardian ad litem is appointed, the court shall direct payment of fees by either or both parties. If the parties are indigent, the court, in its discretion, may direct that the fee be paid by the county. In all cases the court shall approve the amount of the fee of the guardian ad litem. [Re Order effective July 1, 1971]

The trial court's omission to appoint a guardian ad litem to represent the children, does not constitute grounds for reversal of its custody determination. Pfeifer v. Pfeifer, 62 W (2d) 417, 215 NW (2d) 419.

Trial court direction that the husband pay the entire fee of the guardian ad litem is held to be an abuse of discretion, requiring modification, so as to charge the wife with 50%. Tesch v. Tesch, 63 W (2d) 320, 217 NW (2d) 647.

The trial court should have appointed a guardian ad litem for the children to aid in ascertaining whether the welfare of the children might best be served by their remaining in their grandparents' home. LaChapell v. Mawhinney, 66 W (2d) 679, 225 NW (2d) 501.

While some proceedings affecting marriage will have little effect upon the welfare of the children and thus involve no special concern therefor, a petition for change of custody by definition raises a question of "special concern" within the meaning of this section, and requires a trial judge to sua sponte appoint a guardian ad litem to represent the interests of the minor children. de Montigny v. de Montigny, 70 W (2d) 131, 233 NW (2d) 463.

The "why" behind appointing guardians ad litem for children in divorce proceedings. Podell, 57 MLR 103.

247.05 Jurisdiction in actions to determine questions of status. A court of this state having jurisdiction to hear actions affecting marriage may exercise jurisdiction quasi in rem by service of a summons and complaint pursuant to ss. 247.061, 247.062 or 247.063 to determine questions of status under any of the following circumstances:

(1) ACTIONS BY OR AGAINST RESIDENTS TO AFFIRM OR ANNUL MARRIAGE OR TO OBTAIN LEGAL SEPARATION. Actions to affirm or annul marriage or to obtain a legal separation shall be commenced in the county of this state in which at least one of the parties has been a bona fide resident for not less than 30 days preceding the commencement of the action; or

(2) ACTIONS BY NONRESIDENTS TO AFFIRM OR ANNUL MARRIAGE CONTRACTED WITHIN THIS STATE. Actions to affirm or annul a marriage contracted within this state may be commenced in any county of this state when both parties are nonresidents of the state provided the action is commenced within a year after such marriage; or

(3) ACTIONS BY OR AGAINST RESIDENTS FOR DIVORCE. Regardless of where the cause of action arose, an action for divorce by or against a person who has been a bona fide resident of this state for at least 6 months next preceding the commencement of the action shall be commenced in the county of this state in which at least one of the parties has been a bona fide resident for not less than 30 days next preceding the commencement of the action.

(4) ACTIONS FOR CUSTODY OF CHILDREN. The question of a child's custody may be determined as an incident of any action properly commenced under sub. (1), (2) or (3); or under s. 247.055; or an independent action for custody may be commenced in any county of this state in which the child is present. The effect of any determination of a child's custody shall not be binding personally against a defendant parent or guardian unless the defendant has been made personally subject to the jurisdiction of the court in the action as provided in s. 247.06.

History: 1971 c. 220

In a child custody dispute between the children's father, who was divorced by his wife, and the wife's parents, subsequent to her death, the trial court erred in concluding that it had no choice but to award custody to the surviving natural parent unless it found him unfit or unable to care for the children. LaChapell v. Mawhinney, 66 W (2d) 679, 225 NW (2d) 501

247.055 Jurisdiction over claims for support, alimony or property division. A court of this state having jurisdiction to hear actions affecting marriage may, by service of a summons and complaint pursuant to ss. 247.061, 247.062 or 247.063, hear actions or determine claims against the defendant for support, alimony or property division under any of the following circumstances:

(1) PERSONAL JURISDICTION. If personal jurisdiction over the defendant is acquired under s. 247.06, the court may determine claims and enter a judgment in personam against the defendant either in an action to determine a question of status under s. 247.05 or in an independent action for support, alimony or property division. Such independent actions shall be commenced in the county in which either party resides at the commencement of the action or, if neither party resides in the state, in any county which the plaintiff designates in the complaint.

(1m) PERSONAL JURISDICTION OVER NONDOMICILED DEFENDANT. If personal jurisdiction over the defendant is acquired under s. 247.057, the court may determine claims and enter a judgment in personam against the defendant in an action to determine a question of status under s. 247.05 (1), (2) and (3), or in an independent action for support, alimony or property division. Such independent action must be commenced in the county in which the plaintiff resides at the commencement of the action.

(2) JURISDICTION OVER PROPERTY OF DEFENDANT. If, with reasonable diligence, personal jurisdiction over the defendant cannot be acquired under s. 247.06, but property belonging to the defendant is found within the state when the action is commenced, the court may enter a judgment quasi in rem determining the claims and ordering them satisfied out of such property either in an action to determine a question of status under s. 247.05 or in an independent action for support, alimony or property division. Such independent actions shall be commenced in the county in which either party resides at the commencement of the action or, if neither party resides in the state, in any county which the plaintiff designates in the complaint.

247.057 Actions in which personal claims are asserted against nondomiciled defendant. If a personal claim is asserted against the defendant in an action under s. 247.05 (1), (2) or (3) or 247.055 (1m), the court has jurisdiction to grant such relief if:

(1) The defendant resided in this state in marital relationship with the plaintiff for not less than 6 consecutive months within the 6 years next preceding the commencement of the action;

(2) After the defendant left the state the plaintiff continued to reside in this state;

(3) The defendant cannot be served under s. 247.06; and

(4) The defendant is served under s. 247.062 (1).

247.057, Stats. 1967, is constitutional; 6 months' consecutive residence within 6 years provides sufficient minimum contacts to allow personal jurisdiction to attach. The question of plaintiff's continued residence should not be determined by affidavits. Dillon v. Dillon, 46 W (2d) 659, 176 NW (2d) 362.

247.06 Jurisdiction in actions in which personal claims are asserted against defendant. If a personal claim is asserted against the defendant in any action under s. 247.05 or 247.055 (1), the court has jurisdiction to grant such relief only if the defendant:

(1) Pursuant to s. 247.061 or 247.063:

(a) Is personally served with a summons within the state; or

(b) Being domiciled within the state, cannot with reasonable diligence be personally served under par. (a), is served by having a copy of the summons left at his usual place of abode within the state in the presence of some competent member of the family of at least 14 years of age, who shall be informed of the contents thereof; or

(2) Being domiciled within the state, cannot with reasonable diligence be served under sub. (1), is personally served with a summons without the state pursuant to s. 247.062 or 247.063; or

(3) Comes under the court's jurisdiction under s. 247.057.

(4) Appears in the action without objecting to the jurisdiction of the court over the defendant's person.

History: Sup. Ct. Order, 67 W (2d) 756; 1975 c. 218.

247.061 Serving and filing summons and complaint where defendant served within the state. Section 801.02 (1) to (5) does not apply to s. 247.061 (1). When the defendant can with reasonable diligence be served personally within the state pursuant to s. 247.06 (1) (a) or at his usual place of abode therein pursuant to s. 247.06 (1) (b), actions under ss. 247.05 and 247.055 shall be commenced by such service. Within 20 days thereafter a copy of the summons shall be served upon the family court commissioner, but this requirement of service upon such commissioner within the time specified shall not affect the jurisdiction of the action; and after such copy has been served, the summons must be filed with the clerk of court before any proceeding or hearing prior to trial is held by either the court or the family court commissioner, or in the absence thereof as soon as the action is noticed or scheduled for trial. If the summons is not filed, the defendant may file his copy of the summons served upon him and within 5 days thereafter the defendant shall serve a copy thereof upon the family court commissioner or the action shall be dismissed on motion of the defendant. Service and filing of the complaint shall be as follows:

(1) ACTIONS FOR DIVORCE OR LEGAL SEPARATION. (a) In every action for divorce or legal separation there shall be a waiting period of 60 days after service of the summons upon the defendant before the complaint may be served upon him or filed in court unless the court, upon good cause shown that such waiting period will be injurious to the health or safety of either of the parties or any child of the marriage or that some other emergency exists, and after consideration of the recommendation of the family court commissioner, issues an order waiving such waiting period. When a defendant appears in an action by an attorney of record, service of the complaint shall be made upon such attorney; when a defendant has not appeared by an attorney of record, service of the complaint shall be made upon defendant, and if the complaint cannot with reasonable diligence be served personally upon the defendant either within or without the state or at his usual place of abode, it may be served upon the defendant by sending a copy thereof by certified or registered mail to his last known post-office address and by filing the original complaint in court with both a postal sender's receipt and either a completed return receipt or an affidavit of mailing attached thereto. Such affidavit shall set forth the name and address of the defendant and state that the complaint was mailed thereto, giving the date of mailing.

(b) If after 60 days have passed following service of the summons a copy of the complaint is not served upon the defendant or upon defendant's attorney of record, the defendant, in person or by attorney may thereafter serve a demand in writing on the plaintiff's attorney for a copy of the complaint, specifying a place embracing a post-office address within this state, where the complaint may be served and a copy of the complaint shall be served within 20 days thereafter accordingly.

(c) Within 20 days following the service of a copy of the complaint upon the defendant a copy thereof shall also be served upon the family court commissioner, and then the complaint shall be filed promptly in court.

(d) If the complaint is not served within 120 days after service of the summons upon the defendant, the action may be dismissed upon motion of either party or the family court commissioner, or the defendant may prior to any order of dismissal, serve upon plaintiff's attorney a pleading for relief under s. 247.05 or 247.055 which shall be designated a counterclaim and the defendant within 20 days thereafter shall serve a copy thereof on the family court commissioner and file the original counterclaim in court.

(2) OTHER ACTIONS AFFECTING MARRIAGE, OR FOR SUPPORT, ALIMONY, PROPERTY DIVISION

OR CUSTODY OF CHILDREN. In all other actions affecting marriage s. 801.02 for commencement of an action shall apply.

History: Sup. Ct. Order, 67 W (2d) 775; Sup. Ct. Order, eff. 1-1-77.

Judicial Council Committee's Note, 1976: Section 801.02 pertaining to the commencement of a civil action does not apply to divorce actions commenced under s. 247.061 (1). Section 801.02 (6) pertaining to payment of clerk's fee and suit tax does apply to ch. 247.

Sub. (2) corrects a cross-reference error by replacing a no longer applicable reference to ch. 262 with the appropriate new reference in ch. 801 for commencement of an action. [Re Order effective Jan. 1, 1977]

247.062 Serving and filing summons and complaint where defendant not personally served within the state. When the defendant cannot with reasonable diligence be served personally within the state under s. 247.061, service may be made as follows:

(1) PERSONAL SERVICE WITHOUT THE STATE. By personally serving the summons and a copy of the verified complaint upon the defendant without the state and within 20 days thereafter filing the summons and verified complaint in court and serving copies of the summons and verified complaint on the family court commissioner; or

(2) MAILING AND PUBLICATION. If with reasonable diligence the defendant cannot be served under sub. (1), service may be made by mailing a copy of the summons and verified complaint and publication of the summons. Prior to mailing and publication the summons and verified complaint shall be filed in court. Prior to trial the plaintiff or plaintiff's counsel shall file an affidavit in court describing efforts to make personal service upon the defendant within or without the state. If the defendant's post-office address is known or can with reasonable diligence be ascertained, copies of the summons and the verified complaint shall be mailed to the defendant, at or immediately prior to the first publication. Publication shall consist of publishing the summons as prescribed by s. 801.09, without the complaint, as a class 3 notice, under ch. 985. The mailing to the defendant may be omitted if the defendant's post-office address cannot be ascertained with reasonable diligence. Within 20 days following the first publication, copies of the summons and verified complaint shall be served upon the family court commissioner.

History: Sup. Ct. Order, 67 W (2d) 775; 1975 c. 218.

An Illinois sheriff's return on a summons stating "Unable to locate", accompanied by an unsworn worksheet noting various attempts to make service, is not sufficient proof of reasonable diligence to support publication of the summons. Span v. Span, 52 W (2d) 786, 191 NW (2d) 209.

Service by mailing and publication only sustains a judgment as to status. Such service will not support determination of alimony, support, property division or custody. Span v. Span, 52 W (2d) 786, 191 NW (2d) 209.

247.063 Serving and filing summons and complaint where defendant is a person under disability. In actions commenced under ss. 247.05 and 247.055 service on a person under disability shall be by serving the summons and complaint as provided by ss. 247.061 and 247.062 and, in addition, where prescribed by s. 801.11 (2) (a) or (b) upon a person designated therein.

History: Sup. Ct. Order, 67 W (2d) 775.

247.066 Summons, content and form. (1) ACTIONS FOR DIVORCE OR LEGAL SEPARATION, SUMMONS SERVED WITHIN STATE. When in an action for divorce or legal separation the summons is served within the state either personally upon the defendant or at his usual place of abode therein, the summons shall specify whether the action is for divorce or legal separation, shall be approved in writing by the plaintiff and shall be substantially in the following form:

..... Court,
..... County.
A. B., Plaintiff,
P. O. Address .....
V.
C. D., Defendant,
P. O. Address .....

The State of Wisconsin, to said defendant:

You are hereby summoned and required to serve upon ..... , plaintiff's attorney, whose address is ..... , an answer or other pleading to the complaint for [divorce] [legal separation] within 20 days after such complaint is served upon you. In the absence of a court order to the contrary, service of such complaint upon you shall be delayed for 60 days after service of this summons. If no copy of the complaint is served upon you or upon your attorney of record after such 60 days have passed, you may thereafter demand in writing of the plaintiff's attorney a copy of the complaint. If you fail to answer or defend the above entitled action in the court aforesaid, judgment will be rendered against you according to the demand of the complaint.

E. F.
Plaintiff's Attorney
P. O. Address .....
..... County, Wisconsin

Approved:

.....
A. B., Plaintiff

(2) OTHER ACTIONS AFFECTING MARRIAGE. In all other actions affecting marriage the general provisions in ch. 801, respecting the content and form of summons in regular civil actions, shall apply.

History: Sup. Ct. Order, 67 W (2d) 775.

247.07 Causes for divorce or legal separation. A divorce, or a legal separation for a limited time or forever, may be adjudged for any of the following causes:

(1) For adultery.

(2) When either party, subsequent to the marriage, has been sentenced and committed to imprisonment for 3 years or more; and no pardon granted after a divorce for that cause shall restore the party sentenced to his or her conjugal rights.

(3) For the wilful desertion of one party by the other for the term of one year next preceding the commencement of the action.

(4) When the treatment of one spouse by the other has been cruel and inhuman, whether practiced by using personal violence or by any other means.

(5) When the husband or wife shall have been a habitual drunkard for the space of one year immediately preceding the commencement of the action.

(6) Whenever the husband and wife have voluntarily lived entirely separate for one year next preceding the commencement of the action, at the suit of either party.

(7) Whenever the husband and wife, pursuant to a judgment of legal separation, have lived entirely apart for one year next preceding the commencement of the action a divorce may be granted at the suit of either party.

(8) On the complaint of the wife, when the husband, being of sufficient ability, refuses or neglects to adequately provide for her.

(9) When either party, subsequent to the marriage, has been involuntarily committed under ch. 51 to any mental institution and has remained there for at least one year, at the suit of the party who has not been committed.

History: 1971 c. 220.

While condonation is not abrogated when the recrudescence of the objectionable conduct is provoked by offensive conduct of the person seeking the divorce, subsequent misconduct constituting a lesser degree of cruel and inhuman treatment than that prior to condonation, as in the instant case, may revive a cause of action. Lasnicka v. Lasnicka, 46 W (2d) 614, 176 NW (2d) 297.

To constitute cruel and inhuman treatment the conduct must: (a) Be unreasonable and unwarranted; (b) render the parties incapable of performing their martial duties; and (c) have a detrimental effect on the mental or physical health of the offended spouse. Williams v. Williams, 51 W (2d) 453, 187 NW (2d) 208.

In an action for divorce alleging cruel and inhuman treatment, which neither party could prove, the divorce may not be granted simply because reconciliation was impossible and there were no children to be harmed. McMurtrie v. McMurtrie, 52 W (2d) 577, 191 NW (2d) 43.

It is recognized as a matter of common knowledge that the same unwarranted and unreasonable conduct, charged as cruel and inhuman treatment, can cause varying reactions in different persons in that the same conduct can cause grave physical or mental distress in one person and not another. Heiting v. Heiting, 64 W (2d) 110, 218 NW (2d) 334.

Voluntary separation as grounds for divorce in Wisconsin. Gibson, 1972 WLR 1215.

247.08 Actions to compel support by spouse. (1) If either spouse fails or refuses, without lawful or reasonable excuse, to provide for the support and maintenance of the other spouse or minor children, the other spouse may commence an action in any court having jurisdiction in actions for divorce, to compel the spouse to provide such support and maintenance as may be legally required. The court, in such action, may determine and adjudge the amount the spouse should reasonably contribute to the support and maintenance of the other spouse or children and how such sum should be paid. The amount so ordered to be paid may be changed or modified by the court upon notice of motion or order to show cause by either spouse upon sufficient evidence. Such determination may be enforced by contempt proceedings. In any such support action there shall be no filing fee, suit tax or other costs taxable to the other spouse, but after the action has been commenced and filed the court in its discretion may direct that any part of or all fees and costs incurred shall be paid by the spouse.

(2) If the state or any subdivision thereof furnishes public aid to a spouse or dependent children for support and maintenance and such spouse fails or refuses to institute an appropriate court action under this chapter to provide for the same, the person in charge of county welfare activities, the county child support agency or the state department of health and social services shall have the same right as the individual spouse to initiate an action pursuant to this section, for the purpose of securing reimbursement for support and maintenance furnished and of obtaining continued support and maintenance. The title of the action shall be substantially in the following form:

A. B. (Welfare official), on behalf of
C.D. (Spouse)
v.
E.F. (Other spouse)

In counties having a population of 500,000 or more, counsel employed by the department of public welfare, the county child support agency or the department of health and social services shall represent the director or department thereof in any such action and may petition the court to be appointed as guardian ad litem for any minor or incompetent children.

History: 1971 c. 220; 1971 c. 307 s. 116; 1973 c. 237; 1975 c. 82.

247.081 Reconciliation effort; waiting period for trial of actions for divorce or legal separation. (1) In every action for divorce or legal separation the family court commissioner shall cause an effort to be made to effect a reconciliation between the parties, either by his

own efforts and the efforts of a family court conciliation department if it exists or by referring such parties to and having them voluntarily consult the director of the town, village, city or county public welfare department, a county mental health or guidance clinic, a clergyman, or a child welfare agency licensed under ss. 48.66 to 48.73, or by other suitable means. The person so consulted shall not disclose any statement made to him by either party without the consent of such party.

(2) No action for divorce or legal separation, contested or uncontested, shall be brought to trial until the family court commissioner has, within 120 days after service of the summons upon the family court commissioner or 5 days after the action is set for trial, whichever is sooner, certified to the court that a reconciliation effort has been made, which certification shall be filed and entered in the court record book, and until the happening of whichever of the following events occurs first:

(a) The expiration of 60 days after the filing of the complaint when the summons is served within the state under s. 247.061; or

(b) The expiration of 120 days after the filing of the complaint when the summons is served personally without the state under s. 247.062 (1); or

(c) The expiration of 120 days after the first day of publication when the summons is served by mailing and publication under s. 247.062 (2); or

(d) An order by the court, after consideration of the recommendation of the family court commissioner, directing immediate trial of such action for the protection of the health or safety of either of the parties or any child of the marriage or for other emergency reasons. The court shall upon granting such order specify the grounds therefor.

(3) In a contested action no report other than the reconciliation certification specified in sub. (2) shall be made by the family court commissioner to the court.

247.082 Suspension of proceedings to effect reconciliation. During the pendency of any action for divorce or legal separation, the court may, upon written stipulation of both parties that they desire to attempt a reconciliation, enter an order suspending any and all orders and proceedings for such period, not exceeding 90 days, as the court determines advisable so as to permit the parties to attempt a reconciliation without prejudice to their respective rights. During the period of suspension the parties may resume living together as husband and wife and their acts and conduct shall not constitute condonation of prior misconduct or a defense to existing grounds for divorce or legal separation. Suspension may be revoked upon motion of either party by order of the court. If the parties become reconciled, the court shall dismiss the action. If the parties are not reconciled after the period of suspension, the action shall proceed as though no reconciliation period was attempted.

History: 1971 c. 220

247.085 Contents of complaint or counterclaim. (1) In any action affecting marriage the complaint shall specifically allege:

(a) The name and age of the parties, the social security number of the husband and wife, the date and place of marriage and the facts relating to the residence of both parties.

(b) The name and date of birth of the minor and dependent children of the parties.

(c) Whether or not an action for obtaining a divorce or legal separation by either of the parties was or has been at any time commenced, or is pending in any other court or before any judge thereof, in this state or elsewhere, and if either party was previously divorced, the name of the court in which the divorce was granted and the time and place the divorce was granted.

(2) In an action for divorce or legal separation, the complaint or counterclaim shall state the statutory ground for the action without detailing allegations which constitute the basis for such ground. The facts relied upon as the statutory ground for the action shall be furnished in a verified bill of particulars within 10 days after a written demand therefor. Such demand shall be deemed waived unless made within 20 days after the service of the complaint or counterclaim. If the bill of particulars is not furnished within such time the complaint or counterclaim may be dismissed upon motion of any party or of the family court commissioner. Where a bill of particulars has been demanded, the time to answer or reply shall begin to run from the time such bill of particulars is furnished. The court, upon motion therefor, may order either party to furnish such verified bill of particulars, or if the bill of particulars furnished is insufficient, may require additional facts to be supplied so as to advise the other party of the facts relied upon as the statutory ground for the action.

(3) In an action for divorce or legal separation, adultery shall be pleaded as a separate cause of action and not as an instance of cruel and inhuman treatment.

(4) When the demand of the complaint or counterclaim is for a legal separation, such pleading shall allege the specific reason why such remedy is demanded. If such reason is conscientious objection to divorce, it shall be so stated.

History: 1971 c. 220

247.09 Power of court in divorce and legal separation actions. When the court grants a judgment in any action for divorce or legal separation the kind of judgment granted shall be in accordance with the demand of the complaint or counterclaim of the prevailing party, except that a divorce or legal separation may be adjudged regardless of such demand whenever the court finds that it would not be in the best interests of the parties or the children of the marriage to grant such demand and also states the reason therefor. Conscientious objection to divorce shall be deemed a sufficient reason for granting a judgment of legal separation if such objection is confirmed at the trial by the party making such demand.

Factors to be considered in ordering a divorce where plaintiff has asked for only a separation discussed. Husting v. Husting, 54 W (2d) 87, 194 NW (2d) 801.

247.10 Collusion; procurement; connivance; condonation; stipulation; property rights. No judgment of annulment, divorce or legal separation shall be granted if it appears to the satisfaction of the court that the suit has been brought by collusion, and no judgment of divorce or legal separation shall be granted if it likewise appears that the plaintiff has procured or connived at the offense charged, or has condoned it; but the parties may, subject to the approval of the court, stipulate for a division of estate, for alimony, or for the support of children, in case a divorce or legal separation is granted or a marriage annulled.

History: 1971 c. 220.

A trial court is not required to give effect to a property division agreement entered into before divorce proceedings are instituted; it should make its own determination as to whether the agreement adequately provides for the parties. Ray v. Ray, 57 W (2d) 77, 203 NW (2d) 724.

Legislative reduction of the age of majority to 18 years in effect emancipated children of the divorced father who had reached that age and terminated both his parental rights and his legal obligation to provide support under the divorce judgment, since parental support past the age of majority is not a concept accepted in Wisconsin. Schmitz v. Schmitz, 70 W (2d) 882, 236 NW (2d) 657.

247.101 Comparative rectitude. In any action for divorce or legal separation under s. 247.07 (1) to (5) where it appears from the evidence that both parties have been guilty of misconduct sufficiently grave to constitute cause for divorce or legal separation, the court may grant a judgment of divorce or legal separation to the party whose equities on the whole are found to be superior. Neither the doctrine of comparative rectitude nor misconduct of a party shall be considered in actions brought under s. 247.07 (6), (7) and (8).

History: 1971 c. 220.

247.11 Accomplice to be interpleaded. Any one charged as a particeps criminis shall be made a party, upon his or her application to the court, subject to such terms and conditions as the court may prescribe.

247.12 Trial procedure. In actions affecting marriage, all hearings and trials to determine whether judgment shall be granted shall be before the court except that actions for divorce or legal separation on the ground of adultery must be tried by a jury unless jury trial is waived. The testimony shall be taken by the reporter and shall be written out and filed with the record if so ordered by the court.

History: Sup. Ct. Order, 67 W (2d) 756.

247.125 Order for appearance of litigants. Unless nonresidence in the state is shown by competent evidence, or unless the court shall for other good cause otherwise order, both parties in actions affecting marriage shall be required to appear upon the trial. An order of the court or family court commissioner to that effect shall accordingly be procured by the party seeking the judgment, and shall be served upon the opposite party personally before the trial.

247.13 Family court commissioner; appointment; powers; oaths; assistants; Menominee county. (1) In each county of the state, except in counties having a population of 500,000 or more, the circuit and county judges in and for such county shall, by order filed in the office of the clerk of the circuit court on or before the first Monday of July of each year, appoint some reputable attorney of recognized ability and standing at the bar family court commissioner (formerly divorce counsel) for such county. Such commissioner shall, by virtue of his office and to the extent required for the performance of his duties, have the powers of a court commissioner. Such court commissioner shall be in addition to the maximum number of court commissioners permitted by s. 252.14. The office of the family court commissioner, or any assistant commissioner, may be placed under a county civil service system by resolution of the county board. Before entering upon the discharge of his duties such commissioner shall take and file the official oath. The person so appointed shall continue to act until his successor is appointed and qualified, except that in the event of his disability or extended absence said judges may appoint another reputable attorney to act as temporary family court commissioner, and except that the county board may provide that one or more assistant family court commissioners shall be appointed by the judges of the county. Such assistants shall have the same qualifications as the commissioner and shall take and file the official oath.

(2) In counties having a population of 500,000 or more, there is created in the classified civil service the office of family court commissioner and such additional assistant family court commissioners as the county board shall determine and authorize, who shall be appointed from the membership of the bar residing in such county by the chief judge of such county, pursuant to ss. 63.01 to 63.17. Before entering upon the performance of their duties, such family court commissioner and assistant family court commissioners shall take and file the official oath. Such family court commissioner and assistant family court commissioners shall, by virtue of their respective positions and to the extent required for the performance of their duties, each have the powers of a court commissioner. They shall receive such salary as may be fixed by the county board, shall perform their duties under the direction of the chief judge of such county or a designee and shall be furnished with quarters and necessary office furnishings and supplies. The county board shall provide them their necessary stenographic and investigational service. When the family court commissioner is unavailable, any assistant family court commissioner shall perform all the duties and have all the powers of the family court commissioner as directed by the latter or by the chief judge or such other judge as the chief judge may designate. In addition to the duties of such family court commissioner as defined in ch. 247, the family court commissioner shall perform such other duties as the chief judge, or such other judge as the chief judge may designate, directs.

(3) Menominee county shall be attached to Shawano county to the extent of office and functions of the family court commissioner, and the duly appointed family court commissioner of Shawano county shall serve as family court commissioner for Menominee county with all the duties, rights and power of the family court commissioner therein; and no family court commissioner shall be appointed in Menominee county, the county not being organized for that purpose.

(4) In any county one or more retired or former judges may be appointed as temporary or temporary assistant family court commissioners by a majority of the judges of such county. Such temporary or temporary assistant family court commissioners shall be compensated by the county.

History: 1975 c. 39, 199.

Family court commissioners, except those appointed under (4), are county employes and subject to mandatory retirement. State ex rel Sheets v Fay, 54 W (2d) 642, 196 NW (2d) 651.

Family court commissioner is without authority to charge $15 fee to hear order to show cause in domestic relations case 61 Atty. Gen. 358.

247.14 Service on and appearance by family court commissioner. In any action affecting marriage, the plaintiff and defendant shall, either within 20 days after making service on the opposite party of any pleading or before filing such pleading in court, serve a copy of the same upon the family court commissioner of the county in which the action is begun, whether such action is contested or not. No judgment in any such action shall be granted unless this section is complied with, or unless the parties have responded to the family court commissioner's inquiries under s. 247.15 except when otherwise ordered by the court. Such commissioner shall appear in the action when the defendant fails to answer or withdraws his answer before trial; also, when the defendant interposes a counterclaim and the plaintiff thereupon neither supports his complaint nor opposes the counterclaim by proof; and when otherwise requested by the court.

247.145 Enlargement of time. After the expiration of the period specified by the statute, the court may in its discretion, upon petition and without notice, extend the time within which service shall be made upon the family court commissioner. Extension of time under any other circumstances will be governed by s. 801.15 (2).

History: Sup. Ct. Order, 67 W (2d) 775.

247.15 Default actions; family court commissioner to appear. (1) No judgment in any action in which the family court commissioner is required by s. 247.081 (1) or 247.14 to appear or otherwise discharge his duties under this chapter shall be granted until such commissioner in behalf of the public has made a fair and impartial investigation of the case and fully advised the court as to the merits of the case and the rights and interests of the parties and the public and the efforts made toward reconciliation of the parties or the reason such reconciliation attempt has not been made. Such family court commissioner is empowered to cause witnesses to be subpoenaed on behalf of the state when in his judgment their testimony is necessary to fully advise the court as to the merits of the case and as to the rights and interests of the parties and of the public. No statement of the family court commissioner shall be considered by the court except when based upon facts which have been established by competent evidence at the trial of the action. The fees of such witnesses shall be paid out of the county treasury as fees of witnesses in criminal cases are paid. The court may order that such fees be repaid to the county by one of the parties to the action, in which case it is the duty of the family court commissioner to enforce such order.

(2) Except as otherwise provided under ss. 247.081 (1) and 247.14, in any county having a population of 500,000 or more in any action for divorce or for the annulment of a marriage in which the defendant has appeared and has interposed an answer or an answer and counterclaim and in which one of the parties thereto informs the court that he or she will not oppose the prayer of the other party and if the court is satisfied from the facts submitted that the withdrawal of such opposition is done in good faith and without collusion, the court may then order such action to be tried as a default without the presence or appearance of the family court commissioner.

247.16 Family court commissioner or law partner; when interested; procedure. Neither such family court commissioner nor his partner or partners shall appear in any action affecting marriage in any court held in the county in which he shall be acting, except when authorized to appear by s. 247.14. In case he or his partner shall be in any way interested in such action, the presiding judge shall appoint some reputable attorney to perform the services enjoined upon such family court commissioner and such attorney, so appointed, shall take and file the oath and receive the compensation provided by law.

247.17 Family court commissioner; salary. In counties having a population of less than 500,000, the county board shall by resolution provide an annual salary for the family court commissioner whether he is on a full or part-time basis and may furnish an office with necessary office furnishings, supplies and stenographic services and may also by resolution prescribe such other duties to be performed by him not in conflict with his duties as family court commissioner.

See note to 59.47, citing 61 Atty. Gen. 443.

247.18 Corroboration required; defaults. (1) No judgment of annulment, divorce or legal separation shall be granted in any action in which the defendant does not appear and defend the same in good faith unless the cause is shown by affirmative proof aside from any admission to the plaintiff on the part of the defendant.

(2) No judgment of annulment, divorce or legal separation shall be granted on the testimony of the party, unless the grounds therefor and required residence are corroborated by evidence other than the testimony of the parties, except the ground of cruel and inhuman treatment when no corroborating evidence is available. No stipulation by the parties shall satisfy the requirements of this subsection.

Corroboration as to the effect of the cruel and inhuman treatment inflicted upon the wife met the requirement of 247.18 (2), which consisted of testimony of the daughter as to her mother's mental condition resulting from the husband's abuse and the doctor's opinion as to the imminence of a nervous breakdown if a divorce was not procured. Lasnicka v. Lasnicka, 46 W (2d) 614, 176 NW (2d) 297.

247.19 Record; impounding. No record or evidence in any case shall be impounded, or access thereto refused, except by special written order of the court made in its discretion in the interests of public morals. And when impounded no officer or other person shall permit a copy of any of the testimony or pleadings, or the substance thereof, to be taken by any person other than a party to the action, or his attorney of record, without the special order of the court.

247.20 Name of spouse. The court, upon granting a divorce, shall allow either spouse, upon request, to resume a former legal surname, if any.

History: 1975 c. 94.

Women's names in Wisconsin: In Re Petition of Kruzel MacDougall, 1975 WBB No. 4.

247.21 Foreign decrees; comity of states; divorce abroad to circumvent laws. Full faith and credit shall be given in all the courts of this state to a judgment of annulment of marriage, divorce or legal separation by a court of competent jurisdiction in another state, territory or possession of the United States, when the jurisdiction of such court was obtained in the manner and in substantial conformity with the conditions prescribed in s. 247.05. Nothing herein contained shall be construed to limit the power of any court to give such effect to a judgment of annulment, divorce or legal separation, by a court of a foreign country as may be justified by the rules of international comity. No person domiciled in this state shall go into another state, territory or country for the purpose of obtaining a judgment of annulment, divorce or legal separation for a cause which occurred while the parties resided in this state, or for a cause which is not ground for annulment, divorce or legal separation under the laws of this state and a judgment so obtained shall be of no effect in this state.

Full faith and credit is not applicable where a decree or judgment is obtained in a jurisdiction outside of the U.S. estate of Steffke, 65 W (2d) 199, 222 NW (2d) 628.

247.22 Uniform divorce recognition act. (1) A divorce obtained in another jurisdiction shall be of no force or effect in this state, if both parties to the marriage were domiciled in this state at the time the proceeding for the divorce was commenced.

(2) Proof that a person obtaining a divorce in another jurisdiction was (a) domiciled in this

state within 12 months prior to the commencement of the proceeding therefor, and resumed residence in this state within 18 months after the date of his departure therefrom, or (b) at all times after his departure from this state, and until his return maintained a place of residence within this state, shall be prima facie evidence that the person was domiciled in this state when the divorce proceeding was commenced.

(3) This section shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

(4) This section may be cited as the Uniform Divorce Recognition Act.

Comity cannot be accorded a Mexican decree where no domicile existed in that foreign jurisdiction Estate of Steffke, 65 W (2d) 199, 222 NW (2d) 628.

247.23 Temporary orders for support of spouse and children; suit money; attorney's fees. (1) Except as provided in ch. 822, in every action affecting marriage, the court or family court commissioner may, during the pendency thereof, make such temporary orders concerning the care, custody and suitable maintenance of the minor children, requiring either party to pay such sums for the support of the other party and enabling the other party to carry on or defend the action, and requiring either party or both to pay such sums for the support of the minor children, and in relation to the persons or property of the parties as in its discretion shall be deemed just and reasonable in light of all circumstances, including the incomes and estates of the parties, and may prohibit either spouse from imposing any restraint on the personal liberty of the other. The award of custody of a child under this subsection shall give to the custodian: a) the power and duty to authorize necessary medical, surgical, hospital, dental, institutional or psychiatric care for such child where there is no existing guardian for the child appointed under ch. 48 or 880; and b) the right to give or withhold consent for such child to marry under s. 245.02 (2), in addition to the consent of the parents or guardian of such child required therein. Any such order may be based upon the written stipulation of the parties, subject to the approval of the family court commissioner or the court.

(2) Notice of motion for an order or order to show cause under sub. (1) may be served at the time the action is commenced or at any time thereafter. If the action is commenced by service of a summons without the complaint, the relief sought shall be based upon an affidavit of the party seeking the relief; the affidavit shall not set forth any of the grounds for divorce or any details which form the basis for such grounds, but shall state only that it is necessary and for the best interests of the affiant and any minor children of the parties that the relief specified in the affidavit be granted.

(3) Upon making any order for dismissal of an action affecting marriage or for vacation of a judgment theretofore granted in any such action, the court shall prior to or in its order render and grant separate judgment in favor of any attorney who has appeared for a party to such action and in favor of any guardian ad litem for a party or a child for the amount of fees and disbursements to which such attorney or guardian ad litem is, in the court's judgment, entitled and against the party responsible therefor.

History: 1971 c. 149; 1971 c. 211 s. 126; 1971 c. 220, 307; 1975 c. 283; Sup. Ct. Order, eff. 1-1-77.

Judicial Council Committee's Note, 1976: An order to show cause procedure may be used under s. 247.23 in actions affecting marriage notwithstanding s. 802.01 (2) (a). [Re Order effective Jan. 1, 1977]

Where a guardian ad litem is appointed where the issue of custody of a child is disputed, his fee should be divided between both parties when their ability to pay is equal. Lacey v. Lacey, 45 W (2d) 378, 173 NW (2d) 142.

An order for attorney's fees is enforceable by contempt; if the judgment only refers to a stipulation for attorney's fees, it is not so enforceable. The court cannot enter a judgment in favor of the attorneys directly. Before a contempt order is issued the defendant must have notice of an application for it which must be made by the wife to whom the fees are payable. O'Connor v. O'Connor, 48 W (2d) 535, 180 NW (2d) 735.

Order directing the husband to contribute $2,000 to the wife's attorney's fees is not an abuse of discretion. Tesch v. Tesch, 63 W (2d) 320, 217 NW (2d) 647.

Denial of the wife's motion for attorneys' fees to prosecute the wife's appeal is held to constitute an abuse of discretion, since the issues in the case were vigorously contested and in no way frivolous. Markham v. Markham, 65 W (2d) 735, 223 NW (2d) 616.

The federal tax consequences of divorce. Meldman, Ryan, 57 MLR 229.

247.232 Wage assignment by family court commissioner. After an order for the support of minor children of the parties has been entered in an action affecting marriage, and there has been a failure to comply with such order by either spouse under circumstances which would necessitate the issuance of a contempt order by the court, the family court commissioner may issue an order directing the spouse to assign such salary or wages due him or to be due him in the future from his employer or successor employers to the clerk of court, where the action is pending, as will be sufficient to pay allowances for the maintenance of the other spouse and the support, maintenance and education of their minor children. The assignment shall be binding upon the employer and successor employers immediately upon personal service on the employer of a copy of the assignment signed by the employe and annexed to a copy of the order, until further order of the family court commissioner or the court. For each payment the employer shall receive $1 which he shall deduct from the money to be paid the employe. Section 241.09 shall not apply to assignments under this section. The employer may not use such assignment as a basis

for the discharge of an employe or for any disciplinary action against the employe. Compliance by an employer with the order operates as a discharge of the employer's liability to the employe as to that portion of the employe's wages so affected.

History: 1971 c. 110, 220.

247.24 Judgment; care and custody of minor children. (1) In rendering a judgment of annulment, divorce or legal separation, the court may:

(a) Make such further provisions therein as it deems just and reasonable concerning the care, custody, maintenance and education of the minor children of the parties.

(b) Give the care and custody of the children of such marriage to one of the parties to the action, or, if the interest of any such child demands it, and if the court finds either that the parents are unable to adequately care for any such child or are not fit and proper persons to have the care and custody thereof, may declare such child a dependent and give the care and custody of such child to a relative (as defined in ch. 48) of the child, a county agency specified in s. 48.56 (1), a licensed child welfare agency, or the department of health and social services, if the department agrees to accept custody of the child. The charges for such care shall be pursuant to the procedure under s. 48.27. All custody proceedings shall comply with the requirements of ch. 822.

(c) Grant reasonable visitation privileges to a grandparent of any minor child if the court determines that it is in the best interest and welfare of the child and issue any necessary order to enforce the same.

(2) Whenever the welfare of any such child will be promoted thereby, the court granting such judgment shall always have the power to change the care and custody of any such child, either by giving it to or taking it from such parent, relative or agency, provided that no order changing the custody of any child shall be entered until after notice of such application has been given the parents of such child, if they can be found, and also to the relative or agency that then has the custody of such child. The court may order custody transferred to the department of health and social services only in those cases where that department agrees to accept custody. The award of custody of a child under this section shall give to the custodian; a) the power and duty to authorize necessary medical, surgical, hospital, dental, institutional or psychiatric care for such child where there is no existing guardian for the child appointed under ch. 48 or 880; and b) the right to give or withhold consent for such child to marry under s. 245.02 (2), in addition to the consent of the parents or guardian of such child required therein.

(3) In determining the parent with whom a child shall remain, the court shall consider all facts in the best interest of the child and shall not prefer one parent over the other solely on the basis of the sex of the parent.

History: 1971 c. 149, 157, 211; 1975 c. 39, 122, 200, 283.

Before natural parents may be deprived of custody the evidence must show that both natural parents are either unfit or unable to adequately care for the children. Sommers v. Sommers, 33 W (2d) 22, 146 NW (2d) 428.

The supreme court cannot review a judgment unless adequate findings of fact are made and will reverse where there are none. Cary v. Cary, 47 W (2d) 689, 177 NW (2d) 924.

There must be an adequate hearing on the issue of visitation rights where one party contends the welfare of the child is being impaired. Weichman v. Weichman, 50 W (2d) 731, 184 NW (2d) 882.

Visitation rights can be granted to grandparents if in the best interest of the child. Ponsford v. Crute, 56 W (2d) 407, 202 NW (2d) 5.

The trial court, in determining the best interests of the children, did not abuse its discretion in awarding custody to the husband. Pfeifer v. Pfeifer, 62 W (2d) 417, 215 NW (2d) 419.

Sub. (2) does not support the mother's contention that she is entitled to change of custody of the child without establishing it would redound to the child's best interests. Kurz v. Kurz, 62 W (2d) 677, 215 NW (2d) 555.

Impropriety of the award of custody of the child to the mother cannot be predicated on the guardian ad litem's contrary recommendation. Heiting v. Heiting, 64 W (2d) 110, 218 NW (2d) 334.

The award of custody to the father was reversible error where the trial court should have recognized the rule of comity and declined to exercise its jurisdiction. Sheridan v. Sheridan, 65 W (2d) 504, 223 NW (2d) 557.

See note to 247.05, citing LaChapell v. Mawhinney, 66 W (2d) 679, 225 NW (2d) 501.

While (3) forbids the award of a child's custody to a parent solely on the basis of sex, it does not preclude consideration by the trial court of a natural preference for the mother as one of the factors to be considered in determining the best interests of the child. Scolman v. Scolman, 66 W (2d) 761, 226 NW (2d) 388.

Court authority to order a spouse to provide child support is limited by (1) to the minor children of the parties—those under the age of 18—absent a stipulation between the parties incorporated in the divorce judgment requiring support past the children's age of majority. Miller v. Miller, 67 W (2d) 435, 227 NW (2d) 626.

Legislative reduction of the age of majority to 18 years in effect emancipated children of the divorced father who had reached that age and terminated both his parental rights and his legal obligation to provide support under the divorce judgment, since parental support past the age of majority is not a concept accepted in Wisconsin. Schmitz v. Schmitz, 70 W (2d) 882, 236 NW (2d) 657.

Custody—to which parent? Podell, Peck, First, 56 MLR 51.

247.245 Annulment; alimony. Whenever a judgment of annulment is granted in favor of or against an innocent spouse who has relied upon the representations made by the alleged spouse as to capacity to contract marriage by reason of not having a prior spouse living, or of having completed the 6-month waiting period for divorce, or who married the alleged spouse in good faith, because of failure to reveal that permission of the court was required pursuant to s. 245.10, the court may grant alimony payments to the injured party as it deems just and equitable.

History: 1971 c. 220.

247.25 Revision of judgment. The court may from time to time afterwards, on the petition of either of the parties and upon notice to the family court commissioner, revise and alter such judgment concerning the care, custody, maintenance and education of any of the children, and make a new judgment concerning the same as the circumstances of the parents and the benefit of the children shall require. Any change in child support because of alleged change in circumstances shall take into consideration the earning capacity of each parent and the parent's spouse, if any.

History: 1971 c 157.

Remarriage of the wife does not justify a reduction of support payments for the children, in the absence of a showing that the 2nd husband is willing to support them or that the first husband is less able to pay. Thies v MacDonald, 51 W (2d) 296, 187 NW (2d) 186.

Where the original award of custody was based on a stipulation without a full scale inquiry into what was in the best interest of the child, it is error for the court to apply the "change of circumstances" test, rather than examining all relevant facts anew. Freye v Freye, 56 W (2d) 193, 201 NW (2d) 504.

See note to 247.37, citing E. v E., 57 W (2d) 436, 204 NW (2d) 503.

This section, requiring a court to consider the earning capacity of both divorced parents' present spouses, if any, in determining whether to modify child support payments, does not deny due process by creating an unconstitutional presumption that a custodial parent's spouse will support stepchildren. Miller v Miller, 67 W (2d) 435, 227 NW (2d) 626.

247.26 Alimony, property division. Upon every judgment of divorce or legal separation, the court may, subject to s. 247.20, further adjudge for a limited period of time to either party such alimony out of the property or income of the other party for support and maintenance, except no alimony shall be granted to a party guilty of adultery not condoned, and the court may further grant such allowance to be paid by either or both parties for the support, maintenance and education of the minor children committed to the other party's care and custody as it deems just and reasonable. The court may also finally divide and distribute the estate, both real and personal, of either party between the parties and divest and transfer the title of any thereof accordingly, after having given due regard to the legal and equitable rights of each party, the length of the marriage, the age and health of the parties, the liability of either party for debts or support of children, their respective abilities and estates, whether the property award is in lieu of or in addition to alimony, the character and situation of the parties and all the circumstances of the case; but no such final division shall impair the power of the court in respect to revision of allowances for minor children under s. 247.25. A certified copy of such judgment which affects title to real estate shall be recorded in the office of the register of deeds of the county in which the lands so affected are situated.

History: 1971 c 220; 1973 c 12 s 37.

Factors involved in proper determination of alimony or property division discussed. The trial court must in its findings or decision indicate the factors considered and found material and the property values determined. Lacey v Lacey, 45 W (2d) 378, 173 NW (2d) 142.

Allowance of $2,300 as a contribution to the wife's attorney's fees incurred in the litigation is not deemed excessive where it was obvious that the trial court reasonably believed that a considerable portion of the attorney-fee liability was attributable to the husband who, represented by 4 successive attorneys or firms, caused a needlessly protracted trial, made numerous defense motions, and prosecuted a meritless appeal—an element which, together with others, constituted a firm basis for fixing such contribution. Martin v Martin, 46 W (2d) 218, 174 NW (2d) 468.

Award of 40% of $45,000 estate approved. Leeder v Leeder, 46 W (2d) 464, 175 NW (2d) 262.

Award in lieu of alimony to the wife from the total assets of the parties (amounting to some $28,000) of a large percentage of the marital estate was not excessive, where the record revealed that the marriage had endured for 17 years, the wife was dying of cancer, was hospitalized several times and in need of medical treatment for the rest of her life, and by such an award the husband was freed from paying the substantial medical expenses she would thereafter incur. Lasnicka v Lasnicka, 46 W (2d) 614, 176 NW (2d) 297.

The burden of proof in respect to adultery is stated in terms of clear, satisfactory and convincing evidence; it is frequently circumstantial; if one party invokes the Fifth amendment a prejudicial inference should be considered by the court. Molloy v Molloy, 46 W (2d) 682, 176 NW (2d) 292.

A provision in a judgment as to education of children past 21, inserted pursuant to stipulation of the parties, cannot later be challenged and can be enforced by contempt proceedings. Bliwas v. Bliwas, 47 W (2d) 635, 178 NW (2d) 35.

The Wetzel case (35 W (2d) 103) held only that the tax consequences of alimony or property settlement is only one factor in determining the fairness of the judgment, not that a wife should never have to pay taxes on what she receives. Seiler v Seiler, 48 W (2d) 400, 180 NW (2d) 627.

The husband's ability to pay is determined at the time of trial, subject to revision if his income decreases or increases. It is only if he deliberately reduces his income that earning capacity may be considered. Balaam v Balaam, 52 W (2d) 20, 187 NW (2d) 867.

Although an antenuptial agreement is against public policy and void in respect to a division of the estate in the event of divorce, such an agreement may be considered for the limited purpose as one of the circumstances in determining the equities of the division. In a divorce action between parties who were in their sixties when they both married for the 2nd time, each having a separate estate protected by an antenuptial agreement, and after a marriage of 5 years accumulated $14,500 of joint property, the trial court did not err in considering the joint property as the only divisible property in light of the antenuptial agreement, as well as their independent financial circumstances. Kunde v Kunde, 52 W (2d) 559, 191 NW (2d) 41.

An award of approximately one half of the husband's net income for the support of 4 children sustained. Dittberner v Dittberner, 54 W (2d) 671, 196 NW (2d) 643.

While the supreme court in Lacey, 45 W (2d) 378, admonished trial courts to indicate in the decision the basis on which the property was to be divided and the reasons for doing so, failure is not deemed reversible error if the division was reasonable. Vier v Vier, 62 W (2d) 636, 215 NW (2d) 432.

Award to the wife of approximately 22% of the husband's assets was not inappropriate. Rosenheimer v Rosenheimer, 63 W (2d) 1, 216 NW (2d) 25.

While arrearages under a temporary order for alimony and attorney fees and costs which the husband is required to pay do not constitute part of a wife's division of the estate, they are, nevertheless, a charge against the entire estate. Tesch v Tesch, 63 W (2d) 320, 217 NW (2d) 647.

Necessitated by modification herein of the values found by the trial court, the cash award to the wife of $17,000, which represented approximately one third of the marital estate based on the trial court's figures, is increased to $25,000. Markham v Markham, 65 W (2d) 735, 223 NW (2d) 616.

The present value of a spouse's retirement or pension plan is an asset to be included in the division of property pursuant to

judgment of divorce. Pinkowski v. Pinkowski, 67 W (2d) 176, 226 NW (2d) 518.

In a divorce action between a husband and wife married 26 years and both in their late forties, where the wife was employed during the first 4 or 5 years of marriage while the husband completed his medical education and thereafter tended the parties' home and 3 children, one of whom still lives with the wife, the trial court abused its discretion in awarding her an amount constituting 39% of the net estate, and the wife's award is raised to an amount approximating 48% thereof. Parsons v. Parsons, 68 W (2d) 744, 229 NW (2d) 629.

The federal tax consequences of divorce. Meldman, Ryan, 57 MLR 229.

247.265 Assignment by employe for support. At any time after judgment in any action affecting marriage, as designated in s. 247.03, the court may make an order directing the parent to assign such salary or wages due or to be due in the future from his or her employer or successor employers to the clerk of the court where the judgment was granted, as will be sufficient to pay the allowance, as adjudged by the court, for his or her spouse or for the support, maintenance and education of the minor children of the parties or both. Such assignment shall be binding upon the employer and successor employers one week after service upon the employer of a true copy of the assignment signed by the employe and annexed to a copy of the order, by personal service or by registered or certified mail until further order of the court. For each payment the employer shall receive $1 which the employer shall deduct from the money to be paid the employe. Section 241.09 shall not apply to assignments under this section. The employer may not use such assignments as a basis for the discharge of an employe or for any disciplinary action against the employe. Compliance by an employer with the order operates as a discharge of the employer's liability to the employe as to that portion of the employe's wages so affected.

History: 1971 c. 110; 1975 c. 94 s. 91 (3); 1975 c. 199.

247.28 Maintenance, custody and support when divorce or separation denied. In a judgment in an action for divorce or legal separation, although such divorce or legal separation is denied, the court may make such order for the custody of any of the minor children and for the maintenance of either spouse and support of such children by either spouse out of property or income, as the nature of the case may render just and reasonable.

History: 1971 c. 220.

247.29 Alimony, clerk of court, family court commissioner, fees and compensation. (1) All orders or judgments providing for temporary or permanent alimony or support of children shall direct the payment of all such sums to the clerk of the court for the use of the person for whom the same has been awarded. A party securing an order for temporary alimony or support money shall forthwith file said order, together with all pleadings in the action, with the clerk of the court. Said clerk shall disburse the money so received pursuant to said judgment or order and take receipts therefor. All moneys received or disbursed under this section shall be entered in a record book kept by said clerk, which shall be open to inspection by the parties to the action, their attorneys, and the family court commissioner. If the alimony or support money adjudged or ordered to be paid shall not be paid to the clerk at the time provided in said judgment or order, the clerk or the family court commissioner of said county shall take such proceedings as either of them deems advisable to secure the payment of such sum including enforcement by contempt proceedings under s. 295.02 or by other means. Copies of any order issued to compel such payment shall be mailed to counsel who represented each party when such alimony or support money was awarded. In case any fees of officers in any of said proceedings including the compensation of the family court commissioner at the rate of $50 per day unless such commissioner is on a salaried basis, be not collected from the person proceeded against, the same shall be paid out of the county treasury upon the order of the presiding judge and the certificate of the clerk of the court.

(2) If any party entitled to alimony or support money, or both, is receiving public assistance under ch. 49, such party may assign the party's right thereto to the county department of public welfare or municipal relief agency granting such assistance. Such assignment shall be approved by order of the court granting such alimony or support money, and may be terminated in like manner; except that it shall not be terminated in cases where there is any delinquency in the amount of alimony and support money previously ordered or adjudged to be paid to such assignee without the written consent of the assignee or upon notice to the assignee and hearing. When an assignment of alimony or support money, or both, has been approved by such order, the assignee shall be deemed a real party in interest within s. 803.01 but solely for the purpose of securing payment of unpaid alimony or support money adjudged or ordered to be paid, by participating in proceedings to secure the payment thereof. This provision for a voluntary assignment does not apply to child support paid in behalf of recipients of assistance under s. 49.19.

(3) If alimony or support money, or both, is ordered to be paid for the benefit of any person, who is committed by court order to an institution or is in confinement, or whose legal custody is vested by court order under ch. 48 in an agency,

department or relative, the court or family court commissioner may order such alimony or support money to be paid to the relative or agency, institution, welfare department or other entity having the legal or actual custody of said person, and to be used for the latter's care and maintenance, without the appointment of a guardian under ch. 880.

History: 1971 c. 41 s. 12; Sup. Ct. Order, 67 W (2d) 775; 1975 c. 82, 200; 1975 c. 401 s. 4.

247.30 Alimony, payment of and security for. In all cases where alimony or other allowance shall be adjudged to either party or for the support or education of the children the court may provide that the same shall be paid in such sums and at such times as shall be deemed expedient, and may impose the same as a charge upon any specific real estate of the party liable or may require sufficient security to be given for payment according to the judgment; and upon neglect or refusal to give such security or upon the failure to pay such alimony or allowance the court may enforce the payment thereof by execution or under s. 295.02 or otherwise as in other cases. No such judgment shall become effectual as a charge upon specific real estate until the judgment or a certified copy thereof is recorded in the office of the register of deeds in the county in which the real estate is situated.

History: 1971 c. 220; 1975 c. 401 s. 4.

A court is justified in requiring the creation of a trust to secure the payment of support money where the husband has a record of failing to obey prior court orders. Foregger v. Foregger, 48 W (2d) 512, 180 NW (2d) 578.

247.31 Trustee may be appointed. The court may also appoint a trustee, when deemed expedient, to receive any money adjudged to either spouse upon trust, to invest the same and pay over the income thereof for the maintenance of the spouse entitled thereto or the support and education of any of the minor children, or to pay over the principal sum in such proportions and at such times as the court directs. The trustee shall give such bond, with such sureties as the court requires, for the faithful performance of his trust.

History: 1971 c. 220.

247.32 Revision of judgment. After a judgment providing for alimony or other allowance for a spouse and children, or either of them, or for the appointment of trustees as aforesaid the court may, from time to time, on the petition of either of the parties and upon notice to the family court commissioner, revise and alter such judgment respecting the amount of such alimony or allowance and the payment thereof, and also respecting the appropriation and payment of the principal and income of the property so held in trust, and may make any judgment respecting any of the said matters which such court might have made in the original action, except that a judgment which either fails to provide alimony for either party or provides alimony for either party for a limited period only under s. 247.26 shall not thereafter be revised or altered in either respect nor shall the provisions of a judgment with respect to final division of property be subject to revision or modification.

History: 1971 c. 220.

The fact that a child needs more support at 6 than at 2 is sufficient to justify an increase in payments if the father is able to make them. Klipstein v. Klipstein, 47 W (2d) 314, 177 NW (2d) 57.

One to whom alimony is due is not entitled to a money judgment since divorce judgments can be modified. An order of modification entered without proof of changed circumstances can be set aside in a later action to enforce it. Rust v. Rust, 47 W (2d) 565, 177 NW (2d) 888.

Even though the mother took the children out of the state without court approval or letting the father know where he could visit them, the court may not suspend payment of a support allowance without a hearing as to the effect on the children. Krause v. Krause, 58 W (2d) 499, 206 NW (2d) 589.

Even assuming the parties' agreement as to child support gave rise to contractual obligations, these obligations remained subject to modification by the court under this section. Vaccaro v. Vaccaro, 67 W (2d) 477, 227 NW (2d) 62.

While a divorced party owes no duty of sexual fidelity to the former spouse, cohabitation by the party can be acknowledged as a change of circumstances affecting the former spouse's responsibility to provide alimony, with the manner and extent of the cohabitation and surrounding circumstances to be considered in determining whether such alimony payments should be modified. Taake v. Taake, 70 W (2d) 115, 233 NW (2d) 449.

247.33 Judgment for legal separation; revocation. In all cases of legal separation for any of the causes specified in s. 247.07, the court may decree a separation for a limited time or forever, as shall seem just and reasonable, with a provision that in case of a reconciliation at any time thereafter, the parties may apply for a revocation of the judgment; and upon such application the court shall make such order as may be just and reasonable.

247.34 Restoring property upon annulment. Upon rendering a judgment of annulment the court may make provision for restoring to either party the whole or such part, as it deems just and reasonable, of any property which the other party may have received from him or the value thereof, and may compel him to disclose what property he has received and how the same has been disposed of.

History: 1971 c. 220.

247.36 Dower and curtesy rights. When a judgment of divorce is granted, and also when the court, upon granting a legal separation, makes a final division of the estate under s. 247.26, neither party shall be entitled to dower or curtesy in any lands of the other.

247.37 Effect of judgment of divorce. (1) (a) When a judgment of divorce is granted it shall not be effective so far as it affects the marital status of the parties until the expiration of 6 months from the date of the granting of such judgment, except that it shall immediately bar the parties from cohabitation together and except that it may be reviewed on appeal during said period. But in case either party dies within said period, such judgment, unless vacated or reversed, shall be deemed to have entirely severed the marriage relation immediately before such death. The written judgment shall include the substance of the preceding language; and if the court orders alimony or other allowances for a party or children or retains jurisdiction in such matters, the written judgment shall include a provision that disobedience of the court order with respect to the same is punishable under s. 295.02 by commitment to the county jail or house of correction until such judgment is complied with and the costs and expenses of the proceedings are paid or until the party committed is otherwise discharged, according to law. The findings of fact and conclusions of law and the written judgment shall be drafted by the attorney for the prevailing party, and shall be submitted to the court and filed with the clerk of the court within 30 days after judgment is granted; but if the action has been uncontested, they shall first be submitted to opposing counsel, if any, and if the family court commissioner has appeared in the action, such original papers, together with copies thereof, shall also be sent to the family court commissioner for examination before submission of the same to the court.

(b) When a judgment of divorce is granted, the written judgment of divorce shall state, in a separate paragraph, that where either party to the marriage being so dissolved is obligated under such judgment or by other judgment or court order to support any minor issue of the marriage not in his custody, he is prohibited by s. 245.10 from marrying again in this state or elsewhere after such judgment becomes final unless permission to marry is granted by order of either the court of this state which granted such judgment or support order, or the court having divorce jurisdiction in the county of this state where such minor issue resides or where the marriage license application is made.

(c) At the time of filing any judgment for a divorce or legal separation, the attorney for the prevailing party shall present to the clerk of court 2 true copies thereof in addition to the original judgment, and until such copies are presented the clerk may refuse to accept such judgment for filing. After the judgment is filed, the clerk shall mail a copy forthwith to each party to the action at his last known address, and the court record shall show such mailing.

(2) So far as said judgment affects the marital status of the parties the court has the power to vacate or modify the same for sufficient cause shown, upon its own motion, or upon the application of either party to the action, at any time within 6 months from the granting of such judgment, provided both parties are then living. But no such judgment shall be vacated or modified without service of notice of motion, or order to show cause on the family court commissioner, and on the parties to the action, if they are found. The court may direct the family court commissioner or appoint some other attorney, to bring appropriate proceedings for the vacation of said judgment. The compensation of the family court commissioner when not on a salaried basis or other attorney for performing such services shall be at the rate of $50 per day, which shall be paid out of the county treasury upon order of the presiding judge and the certificate of the clerk of the court. If the judgment is vacated it shall restore the parties to the marital relation that existed before the granting of such judgment. If after vacation of the judgment either of the parties shall bring an action in this state for divorce against the other the court may order the plaintiff in such action to reimburse the county the amount paid by it to the family court commissioner or other attorney in connection with such vacation proceedings. Whenever a judgment of divorce is set aside pursuant to this subsection, the court shall order the record in the action impounded without regard to s. 247.19; and thereafter neither the record nor any part thereof shall be offered or admitted into evidence in any action or proceeding except by special order of the court of jurisdiction upon good cause shown in any paternity proceedings under ss. 52.21 to 52.45 or by special order of any court of record upon a showing of necessity to clear title to real estate.

(3) Every judge who grants a judgment of divorce shall inform the parties appearing in court that the judgment, so far as it affects the marital status of the parties except to bar cohabitation, will not become effective until 6 months from the date when such judgment is granted; and where either party to the marriage being so dissolved is obligated under such judgment or by other judgment or court order to support any minor issue of the marriage not in the party's custody, the judge shall inform the party that the party is prohibited from marrying again in this state or elsewhere after such judgment becomes final unless permission to marry is granted by order of either the court of this state which granted such judgment or support order, or the court having divorce

jurisdiction in the county of this state where such minor issue resides or where the marriage license application is made.

(4) Such judgment, or any provision of the same, may be reviewed by an appeal taken within 6 months from the date when such judgment was granted. At the expiration of such period, such judgment shall become final and conclusive without further proceedings, unless an appeal is pending, or the court, for sufficient cause shown, upon its own motion, or that of the family court commissioner, or upon the application of a party to the action, shall otherwise order before the expiration of said period. If any appeal is pending at the expiration of said period, such judgment shall not become final and conclusive until said appeal has been finally determined.

History: 1971 c 220; 1975 c 41, 199, 200; 1975 c 401 s 4; 1975 c 421.

Neither this section nor 247.25 allows reopening or modifying a judgment as to paternity of children determined in the original judgment E... v E..., 57 W (2d) 436, 204 NW (2d) 503.

Under (4), it is the court's pronouncement or granting of judgment that constitutes the event from which an appeal may be taken and commences the period within which an appeal must be taken; hence, plaintiff wife's June 24, 1974, appeal from a decision transferring child custody granted on June 11, 1974, was timely although judgment was not entered until subsequent to the filing of the appeal. de Montigny v de Montigny, 70 W (2d) 131, 233 NW (2d) 463.

247.375 Sale of realty before final decree. (1) Between the date of a judgment of divorce and the date on which it becomes final, a party to whom real estate has been awarded pursuant to s. 247.26 may apply to the court by verified petition for an order authorizing him or her to sell, mortgage, lease or otherwise dispose of such real estate free of any claim or interest of the opposite party. The court or presiding judge shall thereupon enter an order fixing a time for hearing such petition, which shall be not more than 60 days nor less than 10 days from the filing thereof. At least 8 days prior to the date fixed for hearing, a copy of the petition and order shall be served on the opposite party and the family court commissioner, in the manner prescribed by law for the service of a summons. The opposite party or the family court commissioner may answer the petition and present evidence at the hearing in opposition thereto.

(2) Upon the hearing if it appears to the court that the petition is made in good faith and that it will be for the best interests of the petitioner and not in violation of any rights of the opposite party to grant the petition, the court may enter an order authorizing the execution of a deed, mortgage, lease or other instrument affecting the real estate described in the petition and in the order; and such instrument shall be effectual to convey, mortgage, lease or otherwise dispose of the real estate free and clear of any interest of the opposite party to the action. As a condition of granting the petition the court may require that there be secured, in such manner as the court directs, out of the proceeds of the sale, mortgage or other disposition of the real estate, or by bond in such amount and with such surety as the court approves, such sum for the benefit of the parties to the action or either of them, or the children of the parties, as the court deems just under all the circumstances.

(3) A sale, mortgage, lease or other disposition of real estate by the party to whom it is awarded in a divorce judgment shall be effectual, free and clear of any interest of the opposite party to the action, without a proceeding under subs. (1) and (2), if expressly authorized or directed in the divorce judgment or if both parties to the divorce action join in the conveyance.

247.38 Judgment revoked on remarriage. When a judgment of divorce has been granted and the parties shall afterwards intermarry, the court, upon their joint application and upon satisfactory proof of such marriage, may revoke all judgments and orders of divorce, alimony and subsistence which will not affect the right of third persons and order the record impounded without regard to s. 247.19; and thereafter neither the record nor any part thereof shall be offered or admitted into evidence in any action or proceeding except by special order of the court of jurisdiction upon good cause shown in any paternity proceedings under ss. 52.21 to 52.45 or by special order of any court of record upon a showing of necessity to clear title to real estate. After a final judgment of divorce has been rendered, the court, upon the application of the party paying alimony, on notice to, and on proof of the marriage, after such final judgment, of the party receiving such alimony, shall by order modify such final judgment and any orders made with respect thereto, by annulling the provisions of such final judgment or orders, or of both, directing payment of such alimony.

247.39 Alimony or other allowance pending appeal. Alimony or other allowance for a spouse or children when an appeal of a divorce or legal separation action is pending before the supreme court may be allowed under Supreme Court Rule 251.72.

History: 1971 c. 307 s. 117.

An allowance of $1,000 attorneys fees on appeal, after the award of a generous property settlement, constitutes a penalty for appealing. Molloy v. Molloy, 46 W (2d) 682, 176 NW (2d) 292.

Attorney fees on appeal depend on the wife's need, the husband's ability to pay and whether there is reasonable ground for the appeal. Klipstein v. Klipstein, 47 W (2d) 314, 177 NW (2d) 57.