
CHAMBERS GLOBAL PRACTICE GUIDES

Family Law 2023

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comparative analysis from top-ranked lawyers

**Oklahoma: Law & Practice
and
Oklahoma: Trends & Developments**

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Bundy Law

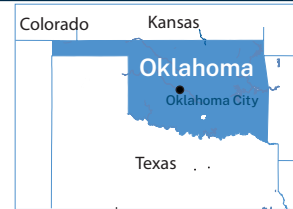
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Law and Practice

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1. Divorce

1.1 Jurisdiction

In order to commence a divorce or annulment proceeding in Oklahoma, at least one of the spouses must have been “an actual resident, in good faith”, for six months immediately preceding the filing of the petition. If neither spouse meets this requirement, an Oklahoma court will not have jurisdiction to grant a divorce. In cases where there is a dispute about jurisdiction, the analysis becomes extremely fact sensitive.

Appellate law addressing the residency requirement tends to use the terms “residence” and “domicile” interchangeably, even though the words may have legally significant, independent definitions for other purposes. By itself, nationality is not a factor for determining residency; however, in the event of a robust inquiry following a jurisdictional challenge, nationality could be relevant, depending on the circumstances.

Domicile has been described by an appellate court as “the inherent element upon which the jurisdiction must rest”. As the question of jurisdiction is fundamental in every matter, jurisdiction may be challenged by either party or by the court. When a jurisdictional challenge is made while a divorce proceeding is pending in a foreign jurisdiction, a stay of Oklahoma proceedings may be requested. When a stay has been requested, the court must consider:

- whether there is an alternate forum (such as a court in a foreign jurisdiction) where the case may be tried;
- whether the alternate forum provides an adequate remedy;
- whether maintaining the case would cause a substantial injustice to the party requesting a stay;

- whether the alternate forum can exercise jurisdiction over the parties;
- whether the balance of the private interests of the parties and the public interests of the state predominate in favour of the action being brought in the alternate forum; and
- whether the stay would prevent unreasonable duplication or proliferation of litigation.

1.2 Divorce Process

Oklahoma remains a fault state. There are twelve grounds for divorce:

- abandonment for one year;
- adultery;
- impotency;
- when the wife at the time of her marriage was pregnant by another than her husband;
- extreme cruelty;
- fraudulent contract;
- incompatibility;
- habitual drunkenness;
- gross neglect of duty;
- imprisonment of the other party in a state or federal penal institution under sentence thereto for the commission of a felony at the time the petition is filed;
- the procurement of a final divorce decree without this state by a husband or wife which does not in this state release the other party from the obligations of the marriage;
- insanity for a period of five years, the insane person having been an inmate of a state institution for the insane in the State of Oklahoma, or inmate of a state institution for the insane in some other state for such period, or of a private sanitarium, and affected with a type of insanity with a poor prognosis for recovery.

The most common, least-controversial basis for divorce is incompatibility. Incompatibility has been determined by Oklahoma’s appellate

courts to be a “mutual” concept that describes the state of relation between both spouses. Incompatibility may be viewed as synonymous with the concept of irreconcilable differences.

To obtain a divorce, a court proceeding must be commenced by petition, setting forth the statutory grounds and reason for the divorce. In cases where there are no minor children involved and there is a complete agreement memorialised in a divorce decree, there is no minimum separation period. If all the paperwork is prepared correctly, a divorce may be granted within a few days after the petition is filed. In cases involving minor children, there is a waiting period of 90 days. Courts have the power to waive the 90-day waiting period in special circumstances, but such a waiver is unusual.

Divorce proceedings must be served in the same manner as other civil lawsuits. The divorce petition must be accompanied by a summons and a notice of the automatic temporary injunction and served upon the respondent by certified mail, return receipt requested and delivery restricted to the addressee, by commercial courier, by a sheriff, or by personal service using a licensed process server who serves the papers upon the respondent or a person residing with the respondent who is over 15 years old. Service may be made by publication if the petitioner first demonstrates that with due diligence service could not be made by any other method. Service of process must be made within 180 days after the filing of the petition.

Generally, each person must be at least 18 years old to marry. However, courts have the authority to permit minors to marry in certain circumstances, including in the event of pregnancy or with parental consent. Oklahoma recognises common law marriage, which broadly defined means

that both parties are competent to marry and agree to be married to one another. There is no ceremonial or licence requirement for common law marriage. Divorce is viewed as part of the authority of the state government, and a divorce may be granted even when one spouse objects to a divorce on religious or moral grounds.

The residency requirement for divorce also applies to actions for annulment. There is no residency requirement for legal separation. The law applicable to legal separation is the same as in divorce; however, unlike divorce, in an action for legal separation, the marriage is not dissolved. Likewise, in the case of an annulment where the court determines that the marriage was void, the court retains the authority to make an equitable division of property jointly accumulated during the period of time that the parties lived as husband and wife, as well as to determine child custody matters.

2. Finances

2.1 Jurisdiction

Oklahoma has adopted the Uniform Interstate Family Support Act, which was created with the principle that there should only be one court order for child support at a time. The definition of “support” in the Act includes orders for spousal support. In a proceeding to establish or enforce a support order, a court may exercise jurisdiction over a non-resident person if:

- the individual is personally served with summons within this state;
- the individual submits to the jurisdiction of this state by consent in a record, by entering a general appearance, or by filing a responsive document having the effect of waiving any contest to personal jurisdiction;

- the individual resided with the child in this state;
- the individual resided in this state and provided prenatal expenses or support for the child;
- the child resides in this state as a result of the acts or directives of the individual;
- the individual engaged in sexual intercourse in this state and the child may have been conceived by that act of intercourse;
- the individual asserted parentage of a child in the putative father registry maintained in this state by the Oklahoma Department of Human Services; or
- there is any other basis consistent with the constitutions of this state and the United States for the exercise of personal jurisdiction.

In the event of simultaneous proceedings in multiple jurisdictions, a contesting party may request a stay if there is a pending challenge to the exercise of jurisdiction. Factors considered for a stay request include the timeliness of the jurisdictional challenge together with the facts pertaining to jurisdiction, including which state is the home state of the child in a child support case.

Oklahoma courts may hear financial claims after a foreign divorce; however, Oklahoma does not have the ability to modify a spousal support order issued by a foreign court so long as the foreign court has continuing, exclusive jurisdiction over the order under that jurisdiction's laws. Oklahoma may modify foreign child support orders in certain circumstances.

2.2 Court Process

Service in financial proceedings must be made in the same manner as other civil lawsuits: a petition and summons must be served by certified mail, return receipt requested and delivery

restricted to the addressee, by commercial courier, by a sheriff, or by personal service using a licensed process server. There is no statutory timeframe or waiting period for a financial proceeding, so each case must be prosecuted and defended like any civil lawsuit.

2.3 Division of Assets

In a divorce or annulment proceeding, the court has a statutory duty to determine what is each party's separate, non-marital property, and to make a just and reasonable division of all property acquired by the parties jointly during the marriage. The "just and reasonable" standard is also characterized as fair and equitable, and it does not necessarily mean an equal, 50/50 division. The sole exception to the just and reasonable standard is where there is a valid prenuptial agreement that provides for an alternative method of division of jointly acquired property.

Courts have broad discretion to divide and allocate marital assets and funds. Property may be divided in kind or requiring payments necessary to effect a fair division. Even when property has been determined to be one spouse's separate, non-marital property, the court may invade that separate property for alimony or child support payments.

While there are some disclosure obligations early in a divorce or annulment case, the disclosure requirements generally pertain to income and debt. Each spouse is entitled to engage in the full range of discovery permitted by the rules of civil procedure, including written discovery requests to the other party, depositions of witnesses, and subpoenas. The court can enforce discovery requests and subpoenas, but it will rarely involve itself in the discovery process absent a request by one of the parties demonstrating that private efforts to resolve a discovery

dispute without judicial intervention have been unsuccessful.

2.4 Spousal Maintenance

Courts have broad authority to award spousal support (alimony) in divorce proceedings. Oklahoma does not have a fixed mathematical formula for calculating spousal support. Broadly, alimony may be awarded on a temporary or final basis when one spouse demonstrates both a financial need for support and that the other spouse has the ability to pay the needed support. Spousal support claims are highly fact sensitive. Appellate courts have recognised the following factors:

- demonstrated need during the post-matrimonial economic readjustment period;
- the parties' station in life;
- the length of the marriage and the ages of the parties;
- the earning capacity of each spouse;
- the parties' physical condition and financial means;
- the mode of living to which each spouse has become accustomed during the marriage; and
- evidence of a spouse's own income-producing capacity and the time necessary to make the transition for self support.

When substantial marital property is awarded, the accompanying claim for spousal support must be supported by proof of excess monetary need to cushion the economic impact of transition and readjustment to gainful employment. Oklahoma has a "fixed sum" rule, meaning that the court must determine the total amount of spousal support awarded, and there is no indefinite or permanent spousal support. Due to the variety of factors and the vague nature of both "need" and "ability to pay", spousal support

awards are sometimes viewed as products of the subjective whims and philosophies of each individual trial judge.

2.5 Prenuptial and Postnuptial Agreements

Prenuptial agreements are briefly referred to in Oklahoma's statutes as "a valid antenuptial contract in writing". That reference has led to a body of case law upholding prenuptial agreements in a variety of circumstances. Prenuptial agreements remain the most effective way to deviate from the subjective nature of spousal support awards and the uncertainty of the "just and equitable" property division standard. Oklahoma law is not clear concerning the validity of postnuptial agreements, as there is a split in authority. Appellate courts have confirmed that spouses may contract with one another, transfer property to one another and even modify a prenuptial agreement after the marriage. However, at least one court has held that there is no legal basis for a postnuptial agreement.

2.6 Cohabitation

Unmarried couples with assets must look to property and contract law to determine and enforce their rights. An unmarried individual does not acquire a legal or equitable interest in the property of their romantic partner or significant other simply by virtue of cohabitation.

2.7 Enforcement

Compliance with a financial order for child or spousal support may be enforced through the applicable provisions of the Uniform Interstate Family Support Act. The Act specifically recognises the Convention on the International Recovery of Child Support and Other Forms of Family Maintenance and the Hague Conference on Private International Law, and it provides for the registration and enforcement of foreign orders,

including support orders issued by international courts.

2.8 Media Access and Transparency

Except for cases heard by an arbitrator, divorce proceedings are open to the public. As a result, the media may be present in the courtroom. Local newspapers routinely publish the names of parties when marriage licences are issued and when divorces are granted. The scope of media reporting may be limited for sensitive matters including the identity of minor children, domestic violence victims and the presentation of medical records. There are a few ways to remove matters from the public eye. Most courts permit the use of abbreviating first names to limit public searches. Venue may be waived by agreement, so filing a proceeding in a remote venue by agreement may be a strategy. Following a settlement, the decree may incorporate a settlement agreement by reference that is not filed in the publicly accessible court file. Properly done, unfiled settlement agreements may remove most of the details of a settlement from the public record while retaining all the enforceability and weight of a court order.

2.9 Alternative Dispute Resolution

Oklahoma's civil statutes include a Dispute Resolution Act and a Uniform Arbitration Act. Parties to a dispute, including a divorce, may agree for their matter to be heard by an arbitrator. The rules governing arbitration include the right to counsel and the right to conduct discovery. Arbitration can be a powerful tool to ensure privacy and to provide scheduling flexibility and controls to both sides and their counsel. In many cases, an arbitrator may hear and decide a contested matter months before a public judicial officer would be able to hear it. Once an arbitration decision is issued, either party may apply for a court to confirm the award and make it an enforceable

order of the court. Parties to an arbitration also have the right to appeal.

3. Children

3.1 Jurisdiction

Oklahoma has adopted the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), which applies to all matters involving minor children. The UCCJEA gives Oklahoma the authority to make an initial child custody determination only in specific circumstances, as set out below.

“1. This state is the home state of the child on the date of the commencement of the proceeding, or was the home state of the child within six months before the commencement of the proceeding and the child is absent from this state, but a parent or person acting as a parent continues to live in this state;

2. A court of another state does not have jurisdiction under paragraph 1 of this subsection, or a court of the home state of the child has declined to exercise jurisdiction on the ground that this state is the more appropriate forum under Section 19 or 20 of this Act; and:

- a) the child and the child's parents, or the child and at least one parent or a person acting as a parent, have a significant connection with this state other than mere physical presence; and
- b) substantial evidence is available in this state concerning the child's care, protection, training, and personal relationships;

3. All courts having jurisdiction under paragraph 1 or 2 of this subsection have declined to exercise jurisdiction on the ground that a court of this state is the more appropriate forum to determine

the custody of the child under Section 19 or 20 of this Act; or

4. No court of any other state would have jurisdiction under the criteria specified in paragraph 1, 2, or 3 of this subsection.”

As the UCCJEA has been adopted by 49 US States, the District of Columbia, Guam, Puerto Rico and the US Virgin Islands, it provides a consistent basis for courts to assess and determine whether jurisdiction over any minor is proper.

3.2 Court Process: Child Arrangements and Child Support

3.2.1 Child Arrangements

Each party has a right to ask the appropriate court to make decisions concerning custody and parenting time. If no prior proceeding exists, a request is made by petition; otherwise, either parent may file a motion for the court to address a child-related dispute or to modify a prior order concerning child custody. Parents in a divorce have equal rights to their minor children, pending a judicial decision, and unmarried parents may also have equal rights if the biological father has been appropriately recognised in legal documents. Courts have broad discretion to make decisions concerning the welfare of minor children – discretion and authority that continue even while an appeal of a contested decision is pending.

3.2.2 Child Support

Child support is calculated as a percentage of the combined gross income of both parents pursuant to a formula. While in most cases child support is determined by a statutory schedule that is presumptively the appropriate amount, courts have broad discretion in matters related to child support. The statutory child support schedule’s top income is USD15,000, which

may be inadequate in cases where one or both parents are high net worth individuals. In matters where the parents’ combined incomes exceed the amounts anticipated by the child support guidelines, the court may consider other factors, including the child’s reasonable expenses and lifestyle, in setting child support. Parents have some ability to deviate from the child support guidelines, but deviations draw scrutiny, particularly when one parent proposes paying less than the formula would require. A child is entitled to support by both parents until the child reaches the age of 18. The law provides for additional support through the age of 20, so long as the child is enrolled in and attending high school. There is no authority for child support beyond high school and the age of 20 years unless the child has a qualifying disability that would trigger the application of other laws for support.

3.3 Other

Courts have broad discretion over all child-related matters and may make an order addressing specific issues. In high-conflict cases, courts may delegate decision-making authority to a custodial parent, entrusting them with the decision-making authority necessary to raise and parent the child. Courts may also appoint other professionals, including parenting co-ordinators, to assist parents with communication and decision-making. When parents cannot agree on specific issues, such as education or medical treatment, courts may defer to the opinion of professionals involved with the child. Oklahoma law requires courts hearing child custody disputes to consider which parent will foster a relationship between the child and the other parent.

Children may give preference testimony and other information to a court. There are detailed procedures for judicial interviews of minor children set out both in a statute and in case law. Even

with express procedures, judicial philosophies and attitudes towards interviewing children vary widely. Some judges will readily interview children in their office, while others will always require the appointment of a guardian ad litem or a counsellor for the child to relay the child preference information to the court.

3.4 Alternative Dispute Resolution

See 2.9 Alternative Dispute Resolution (ADR).

3.5 Media Access and Transparency

See 2.8 Media Access and Transparency.

4. Reform

4.1 Upcoming Reform and Areas of Debate

Recent legislative acts have confirmed a state-wide policy for equal access to minor children by each parent. In the recent past, courts had standard visitation schedules providing for limited parenting time by the parent determined to be the non-custodial or non-primary parent. Now, courts are treating equal time and access as the default standard, and it may be difficult to persuade a judge to deviate from it.

With a controversial 2016 statutory amendment, the Oklahoma legislature reduced the interest rate for past-due child support to just 2% per year. In the current economic climate of ongoing interest rate hikes, the child support interest rate is drawing renewed attention and may be the subject of future reform.

Contributed by: Aaron Bundy and Danya Bundy, **Bundy Law**

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Trends and Developments

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Evolving relationship roles

Presumptions and stereotypes about gender roles and the division of labour in relationships are changing rapidly. Historically, there were assumptions and even unwritten rules that following a divorce, the wife would have custody of the children and receive financial support from the husband. Those notions are largely a thing of the past. There are a number of reasons for the shifts:

- the perception of the value of marriage is evolving;
- marriage rates are on the decline;
- birth rates are on the decline;
- due to economic conditions and changes in social norms, both partners are more likely to work;
- more women than men are earning college degrees; and
- the percentage of wives earning more than their husbands continues to grow.

The evolution of household dynamics directly impacts outcomes available in the event of separation or divorce. When both spouses work, neither may have an advantage over the other in the event of a child custody dispute. As more women become the primary earners in their relationships, their partners may have a more hands-on role in daily child care.

Planning is critical

Many successful professional women are surprised at their financial exposure when their marriage dissolves. The law has not changed with the times and, on its face, is gender neutral. As a

result, many women find themselves faced with the prospect of paying child support and even spousal support after a divorce. Even where family duties have been shared, and all other factors are equal, income alone may determine who is obligated to pay support and who will receive it. Whether planning a traditional marriage or entering into a domestic partnership, planning is critical to establish expectations and reduce risk in the event of a breakup.

Historically, prenuptial agreements were viewed by some as a tool for a wealthy individual to exclude a spouse of lesser means and as a precursor to an inevitable divorce. Now, prenuptial agreements are more widely accepted and recognised as an appropriate, even necessary instrument for two equals entering a marital contract. While divorce rates nationally are slightly down, they still approach 50%, meaning that it is naive for anyone to believe that a divorce could never happen to them. A prenuptial agreement may define what is and will be separate property and marital property, whether spousal support will be paid and the formula for calculating it, and even payment of attorney fees. A prenuptial agreement can minimise and even entirely eliminate the ability of a public judicial officer to make an uneven division of property or require property payments based on equitable principles. As second marriages involve blending families and incorporating children from prior relationships, a prenuptial agreement is an essential part of a streamlined estate plan to protect assets designated for inheritance.

Contributed by: Aaron Bundy and Danya Bundy, **Bundy Law**

Recent breakthroughs in psychological research have been applied to human behaviour and attitudes toward financial matters. Scientists and economists have confirmed that almost every individual's approach to money is shaped early in life and may be difficult to change. During a divorce, competent advisors are necessary to counter habits and biases and to work on revising a budget that changes with the end of the relationship. Unfortunately, women have been found to be more likely to improve spending habits and seek financial advice after divorce, but studies show that many women do not use a financial advisor when actually going through a divorce. Once separation appears likely, it is critical to start building a cohesive team of advisors for planning and strategy as early as possible. Early intervention and planning can assist with a comprehensive assessment of the financial status, needs, and even exposure while laying the groundwork for a successful exit from the relationship.

Privacy is an asset

In addition to financial concerns, privacy is an important factor to consider in the event of divorce. In cases involving substantial assets or high incomes, collaborative divorce, mediation, and even trial through arbitration are valid options for case resolution that remove financial details from public access. These private dispute resolution alternatives can be a critical piece of protecting information about the disposition of marital and separate property addressed in a divorce. There are other strategies available for reducing public access, including pre-filing negotiation and resolution, the use of abbreviated given names, and alternative venue selection. Virtually all privacy options require the consent of both parties, so a level of understanding and communication is required to effectively execute a plan to keep a divorce out of the public eye.

Information is power

Even with a variety of options for dispute resolution, many disputes are still resolved in a public forum. In disputed matters with no prenuptial agreement, it is important to understand the court's broad discretion over all domestic relations matters. Divorce and child custody matters are decided by a single judge, and due to the discretion given to trial courts, the assigned judge's subjective philosophies and preferences may be determining factors in the outcome of a case. A team of advisors that includes experienced legal counsel, a financial advisor and an accountant, can help you assess your standing and determine what information you may need to access through the discovery process to make a fair attempt at settlement and a full presentation to the court in the event of trial. Taking shortcuts in the information-gathering and assessment stages of a divorce may result in an irreversible, inadequate property and support outcome.

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The logo for Bundy Law, featuring a large, stylized, dark blue letter 'B' followed by the words 'UNDY LAW' in a dark blue, all-caps, serif font.

CHAMBERS GLOBAL PRACTICE GUIDES

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