

## CHAPTER 6

### SPOUSAL SUPPORT AND CHILD SUPPORT

#### 6.1 INTRODUCTION

Virginia support law has undergone significant changes during the past 30 years. Child support laws have moved toward the application of mathematical guidelines. Different guidelines have been developed to address family configurations such as “split custody” and “shared custody.” Trial courts have been granted the authority to refer support matters to mediation.<sup>1</sup> An administrative agency, the Division of Child Support Enforcement of the Department of Social Services, has taken the lead in establishing and enforcing support obligations. Statutes have been amended frequently in a continuing effort to strengthen the enforcement of child support orders. The General Assembly significantly altered the spousal support laws to give the courts authority to award “rehabilitative alimony” in contrast to the traditional awards of either a lump sum or periodic support payments. The spousal support laws also provide rules governing the reservation of jurisdiction to award spousal support in the future. Both child and spousal support files are confidential and protected from public view in some circumstances.<sup>2</sup>

#### 6.2 JURISDICTION

**6.201 Juvenile and Domestic Relations District Court.** The juvenile and domestic relations district court has jurisdiction to hear original actions for spousal support where spouses have separated.<sup>3</sup> A decision of the juvenile and domestic relations district court is not *res judicata* in any subsequent action for spousal support in a circuit court. The district court order remains in effect until the circuit court rules on the issue.<sup>4</sup>

---

<sup>1</sup> Va. Code § 20-124.4. Form DC-604 is an order of referral and mediator appointment form that may be used by a juvenile and domestic relations district court or a circuit court. *See* Appendix 4-1 to Chapter 4 of this book.

<sup>2</sup> Va. Code §§ 16.1-302, -305.01 (addressing confidentiality in both the juvenile and domestic relations district courts and the circuit courts).

<sup>3</sup> Va. Code § 16.1-241(L); *see also* Va. Code § 16.1-278.17.

<sup>4</sup> Va. Code § 16.1-244(A).

The juvenile and domestic relations district court has jurisdiction to make initial determinations regarding child support in cases filed in that court.<sup>5</sup> The court also has jurisdiction over several other petitions related to the support of a child, such as petitions to modify or enforce its orders, petitions to enforce administrative support orders, petitions to determine parentage, and petitions charging individuals with the criminal offense of failing to provide support in violation of law.

The juvenile and domestic relations district court also may share concurrent jurisdiction with the circuit court concerning issues of support and maintenance of a spouse and maintenance, support, care, and custody of a child or children.<sup>6</sup> Paragraph 6.203 below describes the circumstances under which the two courts share concurrent jurisdiction and the types of issues that may be determined by the juvenile and domestic relations district court.

**6.202 Circuit Court.** Circuit court jurisdiction in spousal support and child support matters may be obtained in the following ways:

**A. Appeal from Juvenile and Domestic Relations District Court.** An appeal from a decision of the juvenile and domestic relations district court goes to the circuit court, where the case is tried de novo.<sup>7</sup> The procedure conforms to equity practice, and evidence is heard ore tenus. The burden of proof is on the petitioning party, which may not be the appellant. On appeal, the circuit court can exercise “all the powers and authority” given to the juvenile and domestic relations district court in the disposition of the case.<sup>8</sup>

**B. Incidental to Divorce and Other Proceedings.** The circuit court may enter decrees concerning spousal support and child support upon:

1. Decreeing the dissolution of a marriage;
2. Decreeing a divorce from bed and board;
3. Decreeing a divorce from the bond of matrimony;

---

<sup>5</sup> Va. Code § 16.1-241(A)(3).

<sup>6</sup> Va. Code §§ 16.1-244, 20-79.

<sup>7</sup> *Box v. Talley*, 1 Va. App. 289, 338 S.E.2d 349 (1986).

<sup>8</sup> Va. Code § 16.1-296(I).

4. Decreeing that neither party is entitled to a divorce;  
or
5. Decreeing separate maintenance.<sup>9</sup>

**C. Action for Separate Maintenance.** An independent action for “separate maintenance” is an equitable claim within the jurisdiction of the circuit court.<sup>10</sup> This is a common law action that recognizes that a court of equity has the inherent power to award separate maintenance to a spouse independent of any statutory powers.<sup>11</sup> The suit for separate maintenance does not share the jurisdictional requirements of a divorce suit. Neither party need be domiciled in the state for any length of time before commencing the suit, because the cause of action is a transitory one.<sup>12</sup> In an action for separate maintenance, the circuit court may also grant an award of child support if it has been requested to do so and the facts warrant an award.<sup>13</sup>

**6.203 Concurrent Jurisdiction.** Sections 16.1-244 and 20-79 of the Virginia Code provide a framework for the concurrent jurisdictional relationship between the circuit court and the juvenile and domestic relations district court in spousal support and child support matters. The circuit court has concurrent original jurisdiction with the juvenile and domestic relations district court over cases in which the parentage of a child is at issue in any matter otherwise before the circuit court.<sup>14</sup> Section 16.1-244(A) provides for a situation in which a suit for divorce has been filed in a circuit court, spousal support, child support, or both forms of support are put at issue in the pleadings, and a hearing, including a pendente lite hearing, is set by the circuit court on any such issue for a date certain or the matter has been placed on a motions docket to be heard within 21 days of the filing, though the hearing itself may occur after that 21-day period. When this occurs, the juvenile and domestic relations district court is “divested” of the right to enter any further decrees or orders, and the circuit court will decide the matter, unless both parties agree to refer the matter to the juvenile and domestic relations district court.<sup>15</sup>

---

<sup>9</sup> See Va. Code §§ 20-107.1(A), -107.2.

<sup>10</sup> See Va. Code § 20-96; *Wilson v. Wilson*, 178 Va. 427, 17 S.E.2d 397 (1941); *Bray v. Landergren*, 161 Va. 699, 172 S.E. 252 (1934).

<sup>11</sup> *Bray*, 161 Va. at 706, 172 S.E. at 254.

<sup>12</sup> *White v. White*, 181 Va. 162, 168, 24 S.E.2d 448, 451 (1943).

<sup>13</sup> *Id.* at 169, 24 S.E.2d at 451-52.

<sup>14</sup> See Va. Code §§ 16.1-241(Q), 20-49.2.

<sup>15</sup> Va. Code § 16.1-244(A).

Where a suit for divorce or suit for maintenance and support is pending in circuit court, issues concerning support and maintenance of a spouse and maintenance, support, care, and custody of the child or children may be transferred from the circuit court to the juvenile and domestic relations district court following the procedures set forth in section 20-79(c). The circuit court is authorized to transfer a matter to the juvenile and domestic relations district court where the only relief sought is the enforcement of an order. However, the circuit court may not transfer a matter to the juvenile and domestic relations district court for modification of an order except upon motion. If the request is made *before* entry of a final decree, the circuit court may transfer the case only upon the motion of both parties. If the request is made *after* entry of a final decree, the circuit court may transfer the case for modification of an order upon motion of either party. But the circuit court cannot transfer a case for modification to the juvenile and domestic relations district court on its own motion, nor can it require transfer of a case for modification by the parties as a condition of entry of a final decree of divorce.

A circuit court that acquires jurisdiction over a support matter in the context of a divorce does not lose its concurrent jurisdiction by transferring the support matter to the juvenile and domestic relations district court. In contrast, a circuit court that acquires jurisdiction over a support matter on direct appeal from a juvenile and domestic relations district court loses its jurisdiction after determining the appeal and remanding the matter to the juvenile and domestic relations district court. Following the remand, the juvenile and domestic relations district court<sup>16</sup> continues to exercise its “exclusive original jurisdiction” over the matter.<sup>17</sup>

The divestiture provision of section 16.1-244(A) does not annul the judgment of the juvenile and domestic relations district court as if no previous hearing had occurred. Rather, the judgment of the juvenile and domestic relations district court remains in full force and effect until it is modified by the circuit court to which jurisdiction has been transferred. The juvenile and domestic relations district court retains jurisdiction to enforce its valid orders before the entry of a conflicting order of any circuit court for any period during which the order was in effect.<sup>18</sup> Moreover, if no final support order has been

---

<sup>16</sup> *Calfee v. Calfee*, 29 Va. App. 88, 509 S.E.2d 552 (1999).

<sup>17</sup> *Id.* at 92-93, 509 S.E.2d at 554.

<sup>18</sup> Va. Code § 16.1-244; *see also Martin v. Bales*, 7 Va. App. 141, 371 S.E.2d 823 (1988).

entered, any support order will be retroactive to the date on which the proceeding was commenced in the juvenile and domestic relations district court, provided due diligence was exercised in the service upon the respondent.<sup>19</sup>

A pendente lite support order has no presumptive effect on the determinations made by the court in its final decree.<sup>20</sup> It is an interlocutory order that does not adjudicate the principles of a cause.<sup>21</sup> A pendente lite order will remain in effect as long as the suit is pending and a final decree has not yet been entered. If the divorce suit is dismissed, either voluntarily or involuntarily, any pendente lite order entered while the suit was pending will abate.<sup>22</sup> If the divorce suit proceeds on the merits and a final decree is entered, the relief granted in the pendente lite order will end and be superseded by the court's determination in the final decree that relief will be granted or denied.

Because a pendente lite award is interlocutory, it can be retroactively modified by the final award.<sup>23</sup> Likewise, if both pendente lite and permanent spousal support were sought in the pleadings, the final award of spousal support may be retroactively made to relate back to the commencement of the lawsuit even if a pendente lite award was not sought.<sup>24</sup>

**6.204 Division of Child Support Enforcement.** The Department of Social Services, through its Division of Child Support Enforcement (DCSE), is authorized to issue administrative orders establishing child support obligations. Unless a court has ordered otherwise, DCSE has the authority to issue orders directing the payment of child support and to require health care coverage for the dependent children of the parents.<sup>25</sup>

---

<sup>19</sup> Va. Code §§ 16.1-244(A), 20-103(A2).

<sup>20</sup> Va. Code § 20-103(J).

<sup>21</sup> *Beatty v. Beatty*, 105 Va. 213, 53 S.E. 2 (1906).

<sup>22</sup> Va. Code § 20-79; *Harrell v. Harrell*, 272 Va. 652, 636 S.E.2d 391 (2006) (dismissed by court); *Ipsen v. Moxley*, 49 Va. App. 555, 642 S.E.2d 798 (2007) (voluntary nonsuit). If an order was entered by the juvenile and domestic relations district court before the commencement of the circuit court suit, the juvenile and domestic relations district court order will revive following dismissal of the circuit court suit. *Ipsen* at 560, 561.

<sup>23</sup> *Everett v. Tawes*, 298 Va. 25, 833 S.E.2d 876 (2019).

<sup>24</sup> *Chaudhry v. Chaudhry*, No. 0896-19-4, 2020 Va. App. LEXIS 27, 2020 WL 420805 (Va. Ct. App. Jan. 28, 2020).

<sup>25</sup> See Va. Code § 63.2-1900 *et seq.*

### 6.3 VENUE

**6.301 Juvenile and Domestic Relations District Court.** Venue in civil spousal support or child support matters lies in the city or county where either party resides or in the city or county where the respondent is present when the proceeding commences.<sup>26</sup> When the support proceeding is a companion case to a child custody or visitation proceeding, the provisions governing venue in the child custody or visitation case govern.<sup>27</sup>

The juvenile and domestic relations district court may transfer a support proceeding to the city or county where the respondent resides on its own motion or a motion of a party for good cause shown or by agreement of the parties.<sup>28</sup> For the purpose of determining venue under section 16.1-243(B)(3), the respondent's "residence" includes any city or county in which the respondent has resided within the last six months before the commencement of the proceeding or in which the respondent is residing at the time that the motion for transfer of venue is made.

#### 6.302 Circuit Court.

**A. Incidental to Divorce.** Venue for spousal support and child support cases incident to divorce, annulment, or affirmation of marriage suits is governed by section 8.01-261(19) of the Virginia Code. The plaintiff may choose to file suit in the city or county where the parties last cohabited or where the defendant resides. If the defendant is a nonresident of Virginia, venue is in the city or county where the plaintiff resides.

On appeal from a juvenile and domestic relations district court order, venue lies in the circuit court of the same city or county. In any case that has been referred or transferred from a circuit court to a juvenile and domestic relations district court, the appeal must be taken to the circuit court in the same locality as the juvenile and domestic relations district court to which the case had been referred or transferred.<sup>29</sup>

**B. Action for Separate Maintenance.** An action for separate maintenance is not governed by the venue rules governing actions for divorce, annulment, or affirmation of marriage. It is a common law cause of action that

---

<sup>26</sup> Va. Code § 16.1-243(A)(2).

<sup>27</sup> Va. Code § 16.1-243(B)(3). See ¶ 8.301 of Chapter 8 of this book.

<sup>28</sup> Va. Code § 16.1-243(B)(3).

<sup>29</sup> Va. Code § 16.1-296(J).