CHAPTER 247.

ACTIONS AFFECTING MARRIAGE.

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

247.01 Jurisdiction. The county courts, except in counties having a population of 500,000 or more, and all 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: 1961 c. 495.

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 the wife or her parent or the guardian of her person when she was under the age of 16 years at the time of the marriage, unless such marriage is validated by compliance with ch. 245.

(7) At the suit of the husband or his parent or the guardian of his person when he was under the age of 18 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 21 years if a male or 18 if a female 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.

Where a man is induced to marry a woman because of the woman's intentionally false representation that she is pregnant by him, when in fact she is not pregnant, and he would not have married her if she had not made such false representation, he is entitled to an annulment of the marriage on the ground of fraud. Masters v. Masters, 13 W (2d) 332, 108 NW (2d) 674.
See note to 245.24, citing Davidson v. Davidson, 35 W (2d) 401, 151 NW (2d) 53.

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) Such actions other than those specified in sub. (1) (e) to (h) shall be commenced within 10 years after the cause of action arose, except that 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.

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

See note to 247.055, citing Jezo v. Jezo, 19 W (2d) 78, 119 NW (2d) 471.
The provision for actions for annulment in (2) does not apply to a marriage as to which the prior 10-year statute of limitations (330.13 (4)) had run prior to the enactment of (2) in 1959. Ginkowski v. Ginkowski, 28 W (2d) 530, 137 NW (2d) 403.

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.

247.05 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 2 years 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.

Child custody; subject matter jurisdiction in Wisconsin. 1961 WLR 347.

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.

History: 1967 c. 198.

A court with divorce jurisdiction is not authorized to entertain actions for property division wholly independent of either a previous or contemporaneous granting of a divorce or legal separation. Jezo v. Jezo, 19 W (2d) 78, 119 NW (2d) 471.

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).

History: 1967 c. 198.

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) Makes a general appearance in the action.

History: 1967 c. 198.

247.061 Serving and filing summons and complaint where defendant served within the state. 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 the general provisions in ch. 262 for the service and filing of the complaint in regular civil actions shall apply.

History: 1961 c. 505; 1963 c. 194; 1965 c. 500.

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. 262.11 (1), without the complaint, as a class 3 notice, under ch. 985. The mailing to the defendant may be omitted if his 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: 1963 c. 194; 1965 c. 46, 118, 252, 500.

The requirement in (1) that the summons and complaint be filed in 10 days after service is not jurisdictional. Buenger v. Buenger, 22 W (2d) 451, 126 NW (2d) 21.

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. 262.06 (2) (a) or (b) upon a person designated therein.

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. 262, respecting the content and form of summons in regular civil actions, shall apply.

History: 1965 c. 500.

Discussion of procedures to be followed in making service in civil actions in order to conform with provisions of chapters 226 and 690, Laws 1959. 49 Atty. Gen. 154.

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 5 years 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 5 years 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.

Elements of desertion discussed. Cahill v. Cahill, 26 W (2d) 173, 131 NW (2d) 842.

Various acts of a husband do not constitute grounds under (4) if the wife was not seriously upset or disturbed by them and there was no physical abuse. Mecha v. Mecha, 36 W (2d) 29, 152 NW (2d) 923.

Single act of cruelty as grounds for divorce. 49 MLR 449.

247.08 Actions to compel support by husband. If any husband fails or refuses, without lawful or reasonable excuse, to provide for the support and maintenance of his wife or minor children, the wife may commence an action in any court having jurisdiction in actions for divorce, to compel such husband to provide for the support and maintenance of herself and such minor children as he may be legally required to support. The court, in such action, may determine and adjudge the amount such husband should reasonably contribute to the support and maintenance of said wife 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 the husband or wife 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 wife, 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 husband.

History: 1963 c. 426.

Where an ambiguous summons was issued, which the court construed as intending to start an action for support, and which was served in Texas and by publication, the court acquired no jurisdiction and had no power to amend the summons to refer to an action for legal separation. Rosenthal v. Rosenthal, 12 W (2d) 190, 107 NW (2d) 204.

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 emer-

gency 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.

History: 1961 c. 505; 1965 c. 500.

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 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.

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.

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, or has been guilty of adultery not condoned; 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.

247.101 Recrimination, when applicable; comparative rectitude. The equitable doctrine that the court shall not aid a wrongdoer is applicable to any party suing for divorce under s. 247.07 (1) to (5), except that where it appears from the evidence that both parties have been guilty of misconduct sufficiently grave to constitute cause for divorce, the court may in its discretion grant a judgment of legal separation to the party whose equities on the whole are found to be superior.

The supreme court is not foreclosed from considering the defense of recrimination (which is an equitable doctrine) even though raised for the first time on appeal if the facts are apparent from the record and if to do so would not result in any unfairness to the other spouse. The wife could not successfully rely on the defense of recrimination (raised for the first time on appeal) based on acts of alleged misconduct which the husband explained to the satisfaction of the trial court, especially where she failed to establish that her health was impaired thereby or that his conduct had a detrimental effect upon their marriage. Gauer v. Gauer, 34 W (2d) 451, 149 NW (2d) 533.

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 as otherwise required by s. 270.07 (1). The testimony shall be taken by the reporter and shall be written out and filed with the record if so ordered by the court.

Procedure whereby a family court commissioner pursuant to court direction took testimony and made recommendations as to whether plaintiff was a bona fide resident of the county for 30 days prior to commencement of the suit, the parties being afforded the right to present additional evidence and make argument to the court (which finally decided the issue, adopting the findings of fact and conclusions of the court commissioner), did not amount to a formal reference made in violation of 270.34 (1) (which expressly precludes directing a reference in actions for divorce or annulment of marriage). Strandberg v. Strandberg, 27 W (2d) 559, 135 NW (2d) 241.

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.

History: 1961 c. 505.

247.13 Family court commissioner (formerly divorce counsel); 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 judges of the circuit court 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 circuit judges of such county 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 a judge of the family court branch. In addition to the duties of such family court commissioner as defined in ch. 247, he shall perform such other duties as the circuit court of such county may direct.

(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 presiding over a family court branch in such county. Such temporary or temporary assistant family court commissioners shall be compensated by the county for their services at the rate of $25 per half day, but shall be considered officers of the court or courts appointing them and not employes of the county.

History: 1961 c. 495, 505.

County board may not restrict the circuit and county court judges from appointing a family court commissioner over 65 years old. (4) does not prohibit the appointment of a retired judge as full time commissioner. 54 Atty. Gen. 229.

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 anwer 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.

History: 1961 c. 505.

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. 269.45.

History: 1961 c. 505.

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.

History: 1965 c. 500.

Because the instant action for annulment was tried as a default matter in the circuit court, and no order was entered pursuant to (2) dispensing with the presence of the family court commissioner, the supreme court deems that it was proper for such family court commissioner to appear in behalf of the public in this appeal and to file a brief herein. Masters v. Masters, 13 W (2d) 332, 108 NW (2d) 674.

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.

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.

History: 1961 c. 505.

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 Former name of wife. The court, upon granting a divorce in which alimony jurisdiction is terminated, may allow the wife to resume her maiden name or the name of a former deceased husband, or the name of a husband of a former marriage of which there are children in her custody, unless there are children of the current marriage as to whom the parental rights of the wife have not been terminated.

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.

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.

Full faith and credit must be given a foreign state's divorce decree where defendant spouse has appeared or been personally served. Plaintiff wife (who was plaintiff in the Nevada action) cannot collaterally attack the judgment on the ground of domicile. Hartenstein v. Hartenstein, 18 W (2d) 505, 118 NW (2d) 881.

247.23 Temporary orders for support of wife and children; suit money; attorney's fees. (1) 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 the husband to pay such sums for the support of the wife and the minor children in her custody and enabling her to carry on or defend the action, and in relation to the persons or property of the

parties as in its discretion shall be deemed just and reasonable and may prohibit either spouse from imposing any restraint on the personal liberty of the other. 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 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: 1961 c. 505; 1965 c. 500.

Where the wife did not remarry and the trial court found her to be in debt, requiring her attorney's fees and expenses to be paid by the husband in a custody matter did not constitute an abuse of discretion. King v. King, 25 W (2d) 550, 131 NW (2d) 357.

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 the father under circumstances which would necessitate the issuance of a contempt order by the court, the family court commissioner may issue an order directing the father 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 weekly allowances for the maintenance of his wife 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: 1967 c. 220.

247.235 Wife to support children, when. In any action affecting marriage, when any minor child of the parties is not in the actual custody of the wife either before or after judgment, she may be ordered to pay such sums for the support and education of such minor child as is deemed just and reasonable considering the ability of the parties and all of the other circumstances of the case.

History: 1965 c. 55.

247.24 Judgment; care and custody, etc., of minor children. In rendering a judgment of annulment, divorce or legal separation, the court may 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, and give the care and custody of the children of such marriage to one of the parties to the action, or may, 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 state department of public welfare. The charges for such care shall be pursuant to the procedure under s. 48.27. 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.

History: 1961 c. 505.

The trial court has discretion to exclude evidence of habits and conduct occurring so long prior to the time of hearing as to shed little light on the present fitness of a party to have custody of a child. Bliffert v. Bliffert, 14 W (2d) 316, 111 NW (2d) 188.

The court can enter an order changing visitation rights of a parent based on mail service at his last-known address of the notice of hearing, where defendant cannot be found and personally served. Block v. Block, 15 W (2d) 291, 112 NW (2d) 923.

The court can require a public welfare department to accept custody of minor children, but cannot order a specific institution to accept custody. State v. Ramsay, 16 W (2d) 154, 114 NW (2d) 118.

No jurisdiction or authority is conferred on the court to provide in a divorce judgment, or in any proceeding in a divorce action, for the support of adult children of the parties. O'Neill v. O'Neill, 17 W (2d) 406, 117 NW (2d) 267.

An order allowing the father to have the child visit him in another state for extended periods each year does not amount to a grant of dual custody. The order is proper if consistent with the child's welfare. Patrick v. Patrick, 17 W (2d) 434, 117 NW (2d) 256.

A court may properly change custody of a child from the mother to the father when the father has remarried and the mother has not been able to actually care for the child herself. Greenlee v. Greenlee, 23 W (2d) 669, 127 NW (2d) 737.

Although "fit and proper" ordinarily connote moral fitness, lack of mental and emotional stability are also to be considered. Seelandt v. Seelandt, 24 W (2d) 73, 128 NW (2d) 66.

An award of custody to the father because the wife professed herself to be an agnostic, although expressing a qualified belief in deity, and because of other factors which had no significant effect upon her right to custody, constituted an abuse of discretion. Welker v. Welker, 24 W (2d) 570, 129 NW (2d) 134.

A court should not determine custody on the basis of a stipulation without taking testimony to determine the best interests of the children. A specific finding of unfitness is not required as a prerequisite to an order denying custody. King v. King, 25 W (2d) 550, 131 NW (2d) 357.

Immoral conduct per se does not make a person unfit to have custody of children. Guardian ad litem for children suggested. Wendland v. Wendland, 29 W (2d) 145, 138 NW (2d) 185.

Facts justifying denial of custody to mother discussed. If welfare reports are considered the welfare agent should be subject to examination and cross-examination and the report made part of the record. Larson v. Larson, 30 W (2d) 291, 140 NW (2d) 230.

The term "unable to adequately care for" a minor child is not limited to the parent's financial inability to support the child, but refers to circumstances other than those arising from moral unfitness, which could include the parent's physical, mental, or other conditions or circumstances which would make it difficult or impossible for a morally fit person to give proper care to a child. Sommers v. Sommers, 33 W (2d) 22, 146 NW (2d) 428.

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 her alleged husband as to his capacity to contract marriage by reason of not having a prior spouse living, or of having completed the one year waiting period for his divorce, or who married the alleged husband in good faith, because of his failure to inform her that he needed permission of the court as required in s. 245.10, the court may grant alimony payments to the injured party as it deems just and equitable.

History: 1961 c. 266; 1965 c. 121.

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.

This section, authorizing the trial court to revise and alter divorce judgments concerning the care, custody, maintenance, and education of the children, presupposes that the children referred to are the children of the parties, and the continuing jurisdiction of the court thereunder is limited to the purposes therein stated, and may not be used for a collateral attack on the status of the parties to the divorce action. Limberg v. Limberg, 10 W (2d) 63, 102 NW (2d) 103.

If a divorced parent who has the custody of a child has good reason for living in another state and such course of action is consistent with the welfare of the child, the courts will permit the removal. Peterson v. Peterson, 13 W (2d) 26, 108 NW (2d) 126.

The rule of res adjudicata, recognized by the supreme court in custody matters, does not apply where the fitness of a parent has not been determined. In matters of custody, the interest of the child and of the public in the child's welfare should not be concluded by the failure of the parents to bring relevant and important facts to the attention of the court. Bliffert v. Bliffert, 14 W (2d) 316, 111 NW (2d) 188.

When the question presented concerns the custody of the children of divorced parents, the trial judge must not be foreclosed from inquiring into matters antedating the preceding judgment, and the doctrine of res judicata is not a complete barrier in custody matters if circumstances exist which prompt the trial judge, in his discretion, to go behind the previous determination, but such re-examination should be had only under special conditions. Miller v. Miller, 15 W (2d) 583, 113 NW (2d) 403.

New needs arising out of the fact that the children have grown older may be deemed a substantial change in circumstances, justifying modification as to support payments; growing old enough to present the need for summer camp would be a sufficient change to justify a modification in the support payments, if other prerequisites were met. A further relevant factor relating to change in circumstances is the ability of the husband to pay the increased support payments sought; but it is not necessary for the party seeking the same to demonstrate that the husband's ability to pay had substantially increased, it being sufficient to demonstrate that the husband in his present economic position can absorb the increased expenditure. Kritzik v. Kritzik, 21 W (2d) 442, 124 NW (2d) 581.

There is no time limit on authority of a court to modify a judgment as to maintenance of children. Where the fact of pregnancy at the time of the divorce was not called to the court's attention, it could later order payments for the after-born child. Hutschenreuter v. Hutschenreuter, 23 W (2d) 318, 127 NW (2d) 47.

247.26 Alimony, property division. Upon every judgment of divorce or legal separation for any cause excepting that of adultery committed by the wife, the court may, subject to s. 247.20, further adjudge to the wife such alimony out of the property or income of the husband, for her support and maintenance, and such allowance for the support, maintenance and education of the minor children committed to her care and custody as it deems just and reasonable. The court may also finally divide and distribute the estate, both real and personal, of the husband, and so much of the estate of the wife as has been derived from the husband, 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 ability of the husband, the special estate of the wife, 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: 1961 c. 406.

Where a husband against whom a divorce was granted was steadily employed and had a salary of $10,000 per year plus overtime of $414, the divorce judgment, so far as requiring the husband to pay $150 per month alimony and $75 per month support money for each of the 2 children whose custody was awarded to the mother, and also requiring the husband to continue in force at a cost of $25.38 per month 2 life policies for the benefit of the 2 children, was not an abuse of discretion. Morris v. Morris, 13 W (2d) 92, 108 NW (2d) 124.

Even where the action is tried as a default, the court should consider the conduct of the parties as one of the circumstances in dividing the estate. Wagner v. Wagner, 14 W (2d) 23, 109 NW (2d) 507.

The holding of title in the names of both parties as to property which the wife had acquired but had the deed of conveyance name herself and husband as grantees in joint tenancy, plus the fact that the husband performed valuable labor in improving the property, prevented such property from constituting the wife's separate estate at the time of trial in determining the division of property. Van Erem v. Van Erem, 14 W (2d) 611, 111 NW (2d) 440.

Where defendant husband intentionally reduced his income to attempt to reduce the alimony allowed, the court could base the allowance on his earning capacity or prospective earnings. Knutson v. Knutson, 15 W (2d) 115, 111 NW (2d) 905.

Where the wife held title to an undivided half of the homestead real estate, but the greater amount of its value as improved had come from the husband's earnings, one half of the homestead did not constitute her separate estate so as to be excluded in making the division of estate. A division of estate should not be used as a means of punishment to a party guilty of bad conduct. Knutson v. Knutson, 15 W (2d) 115, 111 NW (2d) 905.

Health of parties, misconduct, life insurance, prospective receipt of trust assets, and out-of-state assets discussed as to property division and alimony. See also note to 247.32 citing this case. Trowbridge v. Trowbridge, 16 W (2d) 176, 114 NW (2d) 129.

A divorce decree may by its own force vest title to property in one of the parties, but it is not defective under this section because of ordering a party to convey title or because of adjudicating a division of property, leaving the implementation of the division to the parties. Estate of Massouras, 16 W (2d) 304, 114 NW (2d) 449.

The general principle is that alimony payments to a divorced wife cease on the death of the divorced husband; but this principle is subject to the rule that alimony can be given after the death of the husband if the spouses so agree by stipulation; and where ambiguity exists, view may be had to the surrounding circumstances in interpreting the judgment and stipulation as well as their express language. Estate of Rooney, 19 W (2d) 89, 119 NW (2d) 313.

Although arrearages under a temporary order for alimony and attorney fees and costs, which the husband is required to pay, do not constitute part of the wife's division of the estate, nevertheless, they are a charge against the entire estate and should be deducted either from the gross estate in determining the net estate available for distribution between the parties, or from the assets awarded to the husband. Kronforst v. Kronforst, 21 W (2d) 54, 123 NW (2d) 528.

Taking into consideration the 34-year duration of the marriage of the parties; the complete lack of any separate estate in the wife, coupled with her inability to support herself by employment in the future; that the legal separation was brought about by the husband's wrongful conduct; and that the wife is presently denied permanent alimony, an award of approximately 49 per cent of the $55,000 net estate of the parties to the wife is deemed not excessive. Kronforst v. Kronforst, 21 W (2d) 54, 123 NW (2d) 528.

Since in the instant case 3 of the 4 factors constituting special circumstances were present, i.e., long marriage, no separate estate and inability to support herself by her own efforts, and wrongful conduct on the part of the husband, with but one factor militating against such increase—the grant to her of substantial permanent alimony—an award not to exceed approximately one half of the whole marital estate was not inappropriate. Radandt v. Radandt, 30 W (2d) 108, 140 NW (2d) 293.

An antenuptial agreement limiting the wife's share of the estate may be considered in dividing the property on divorce but is not controlling. Strandberg v. Strandberg, 33 W (2d) 204, 147 NW (2d) 349.

An award for support of children may not include any items of personal and living expenses of the wife. Farwell v. Farwell, 33 W (2d) 324, 147 NW (2d) 289.

See note to 247.32, citing Sholund v. Sholund, 34 W (2d) 122, 148 NW (2d) 726.

In making a division of property or in granting alimony, or both, consideration should be given by the trial court to the tax consequences, for the tax impact is a matter which permeates the whole process. While tax considerations are not controlling, the trial court should be aware of the tax consequences of his rulings and take such consequences of any proposed division into consideration in making its ruling. Wetzel v. Wetzel, 35 W (2d) 103, 150 NW (2d) 482.

An award in a divorce action of $1 per year alimony was not void as being beyond the court's jurisdiction, though such provision, containing no statement of reasons for the nominal sum awarded, was vulnerable to attack as being possibly arbitrary if timely appeal were taken. It cannot be attacked collaterally after the time for appeal has expired. Kriesel v. Kriesel, 35 W (2d) 134, 150 NW (2d) 416.

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 father 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 the court where the judgment was granted, as will be sufficient to pay the allowance, as adjudged by the court, for the support, maintenance and education of the minor children of the parties. 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 he shall deduct from the money to be paid the employe. Section 241.09 shall not apply to assignments under this section. 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: 1965 c. 129; 1967 c. 220.

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 the wife and support of such children by the husband and out of his property or income, and may further make such order for the support of any child by the wife or out of her separate property or income, as the nature of the case may render just and reasonable.

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. 295.03 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 his 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. 260.13 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.

(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. 319.

History: 1961 c. 505; 1965 c. 295.

247.30 Alimony, payment of and security for. In all cases where alimony or other allowance shall be adjudged to the wife 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. 295.03 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.

247.31 Trustee may be appointed. The court may also appoint a trustee, when deemed expedient, to receive any money adjudged to the wife upon trust, to invest the same and pay over the income thereof for her maintenance 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.

247.32 Revision of judgment. After a judgment providing for alimony or other allowance for the wife 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. But when a final division of the property shall have been made under s. 247.26 no other provisions shall be thereafter made for the wife.

A party who asks modification of a judgment as to alimony must show substantial or material change in the circumstances of the parties, especially where the judgment was based on a stipulation. The court should consider not only changes in income but also other assets. Miner v. Miner, 10 W (2d) 438, 103 NW (2d) 4.

The trial court could include in the judgment in an action for divorce both a final division of property and an award of alimony, but it could not "freeze" the alimony by providing that the amount awarded should not be raised or reduced in any future proceeding, and hence such provision was a nullity. Trowbridge v. Trowbridge, 16 W (2d) 176, 114 NW (2d) 129.

If a modification of a divorce judgment rests on a factual determination it will be sustained unless the determination is contrary to the great weight of the evidence, whereas if it rests primarily on an exercise of discretion, the supreme court will not disturb it unless it finds an abuse of discretion. Chandler v. Chandler, 25 W (2d) 587, 131 NW (2d) 336.

A party who has been awarded the custody of a minor child should procure leave of court, by an order properly entered in the cause in which the custody was awarded, before taking the child out of the state. Except in instances where the trial court finds it would be contrary to the best interests of the children, or unduly restrictive or detrimental to the removing parent, the supreme court deems it advisable for the trial court to stay the execution of the order permitting the removal of the minor children pending the appeal from that order when an appropriate motion is made, because of the disrupting effect it may have upon the children if the order is reversed. Whitman v. Whitman, 28 W (2d) 50, 135 NW (2d) 835.

Where the trial court awarded the defendant wife a sum of money as a property settlement in lieu of alimony and in addition a sum payable monthly for 9 months as alimony, the judgment must be treated as awarding alimony and be subject to revision in the future if circumstances change. Sholund v. Sholund, 34 W (2d) 122, 148 NW (2d) 726.

Where divorce judgment is subject to modification during life of parties, no court has power to enter final judgment for arrearage in favor of wife, child or assignee. Final judgment can be entered under certain conditions. 55 Atty. Gen. 191.

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 the wife the whole or such part, as it deems just and reasonable, of any property which the husband may have received from her or the value thereof, and may compel him to disclose what property he has received and how the same has been disposed of. The court may in like manner provide for the restoration to the husband of any property which he has transferred to his wife.

247.35 Limit of judgment affecting property. No judgment of annulment, divorce or legal separation shall in any way affect the right of a wife to the possession and control of her separate property, real or personal, except as provided in this chapter; and nothing contained in this chapter shall authorize the court to divest any party of his title in any real estate further than is expressly provided therein.

Cross Reference: See 247.26 for authority to divide estate of wife which was derived from her husband.

See note to 247.26, citing Van Erem v. Van Erem, 14 W (2d) 611, 111 NW (2d) 440.

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 one year 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 the wife 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. 295.03 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 him 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 one year 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 one year 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 his custody, the judge shall inform him that he 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 one year from the date when such judgment was granted. At the expiration of such year, 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 an appeal is pending at the expiration of said year, such judgment shall not become final and conclusive until said appeal has been finally determined.

History: 1961 c. 505; 1965 c. 480, 625.

When the divorce court, pursuant to (2), vacated the judgment of divorce within one year from the date of such judgment, this did not terminate the divorce action and the court did not thereby lose jurisdiction over the marital relation or over the parties, and the court, under the circumstances, could thereafter grant permission to the husband to introduce further pleadings. Roddis v. Roddis, 18 W (2d) 118, 118 NW (2d) 109.

After judgment for legal separation is entered the court may within a year modify the judgment to grant an absolute divorce, but the modified judgment cannot be made retroactive. Time for appeal from the modified judgment runs from its date. Chase v. Chase, 20 W (2d) 258, 122 NW (2d) 44.

A judgment of divorce or legal separation is granted when it is pronounced from the bench. The time for appeal in both cases is one year. Holschbach v. Holschbach, 30 W (2d) 366, 141 NW (2d) 214.

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 the wife 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: 1963 c. 429.