PROPOSED

STATE OF VERMONT
VERMONT SUPREME COURT
_____ TERM, 2023

Order Amending Rule 4.3(a) of the Vermont Rules for Family Proceedings

Pursuant to the Vermont Constitution, Chapter II, § 37, and 12 V.S.A. § 1, it is hereby ordered:

1. That Rule 4.3(a) of the Vermont Rules for Family Proceedings be amended to read as follows (deleted matter struck through; new matter underlined):

RULE 4.3. SPECIAL PROCEDURES

(a) **Procedure Where ~~Divorce, Annulment,~~ Actions Subject to Rule 4.0 and Abuse Prevention Actions Are Pending.**

(1) *Pending Abuse Prevention Action*. If an abuse prevention action brought under Rule 9 is pending in the family division when the complaint ~~for divorce~~ in an action subject to Rule 4.0 is filed, the plaintiff must so indicate in the complaint.

(2) *Prior Abuse Prevention Action*. Notwithstanding V.R.C.P. 42(a), if a party to an abuse prevention action subsequently files a complaint ~~for divorce or annulment~~ in an action subject to Rule 4.0, the court where the subsequent complaint is filed will immediately consolidate the abuse prevention action with the ~~divorce or annulment~~ action subject to Rule 4.0. All orders in effect in the abuse prevention action will continue in effect after consolidation until expressly discharged or modified by the court. For the purposes of 15 V.S.A. § 1108 (enforcement), a temporary or final order issued as part of the consolidated action will be considered an abuse prevention order to the extent that it orders relief provided in 15 V.S.A. §§ 1103 or 1104.

(3) *Prior ~~Divorce or Annulment~~ Action Subject to Rule 4.0*.

(A) Expedited and Ex Parte Relief. If a party to ~~a Vermont divorce or annulment action~~ an action subject to Rule 4.0 subsequently files an abuse prevention action, the court where the abuse prevention action was filed will act on any requests for relief without notice to the other party or for expedited relief pursuant to Rule 9.

(B) Automatic Consolidation. If a temporary order is issued under (3)(A) or, in the event of a denial, a request for hearing is filed, the court where the subsequent complaint is filed will immediately consolidate the abuse prevention action with the action subject to Rule 4.0 if:

(i) the complaint in the action subject to Rule 4.0 is pending;

(ii) there is a pending post-judgment motion in the action subject to Rule 4.0; or

(iii) the requests for relief in the abuse-prevention action modify a provision of an outstanding order in the action subject to Rule 4.0.

(C) Consolidation by Motion. If consolidation is not automatic, the court will consolidate only ~~On~~ on motion of either party or the court's own motion. ~~the court will consolidate the abuse prevention action with the prior divorce or annulment action.~~

(D) Effect of Orders. Upon consolidation, where temporary or final orders are outstanding between the parties in the ~~divorce or annulment~~ action subject to Rule 4.0, the abuse prevention complaint will be treated as a motion to modify the outstanding orders.

(4) *Motions to Consolidate*. In lieu of filing a separate abuse prevention complaint, any party to ~~a divorce under this rule~~ an action subject to Rule 4.0 may invoke the court's authority as provided by 15 V.S.A. ch. 21, and may seek any of the relief provided by that chapter, upon motion pursuant to these rules. If relief is granted pursuant to that chapter, the actions will be deemed to have been consolidated.

(5) *Orders in Consolidated Actions*. When an abuse prevention action is consolidated with ~~a divorce or annulment action~~ an action subject to Rule 4.0 under this subdivision, the abuse prevention provisions of the temporary or final order of the consolidated action will also be entered on the Temporary or Final Order for Relief from Abuse form provided by the Court Administrator's office. The appropriate order form will be signed by the judge and attached to the front of the order issued pursuant to the consolidated action. Copies of these orders will be filed with the appropriate police and sheriffs departments and the state police district offices in accordance with 15 V.S.A. § 1107. The party at whose request the order was issued may deliver the order for filing to the appropriate law enforcement agencies; the court also will mail copies to each agency. All orders in effect in the abuse prevention action will continue in effect after consolidation until expressly discharged or modified by the court. For the purposes of 15 V.S.A.§1108 (enforcement), a temporary or final order issued as part of the consolidated action will be considered an abuse prevention order to the extent that it orders relief provided in 15 V.S.A. §§ 1103 or 1104.

(6) *Extensions of Abuse Orders in Consolidated Actions*. In any consolidated action, at the expiration of the fixed period of time set forth in 15 V.S.A. § 1103(e), in anticipation of that expiration, or after the time period has expired, regardless of the status of the ~~divorce~~ action subject to Rule 4.0, the court may extend the abuse order for whatever period of time it deems necessary to protect a party or a party's child and it may subsequently extend such an order. No showing of change of circumstances is required for an extension. Orders will be entered, signed, and filed as set forth in paragraph (5) of this subdivision.

Reporter's Notes—2023 Amendment

Rule 4.3(a) is amended to make clear that the provisions related to consolidation apply to all actions subject to Rule 4.0 where a relief from abuse action is filed either prior to or following the filing of the action subject to Rule 4.0. The actions subject to Rule 4.0 are set forth in Rule 4.0(a)(1). In addition to divorce and annulment actions, they include legal separation, dissolution of a civil union, parentage, desertion, and nonsupport.

PROPOSED

Rule 4.3(a)(3) is further amended to provide for automatic consolidation in cases where a relief from abuse action is filed after the Rule 4.0 action and a temporary order is issued or, in the case of a denial, a request for hearing is filed, when one of the following three circumstances exists: (1) the complaint in that action is still pending; (2) there are pending post-judgement motions; or (3) the requests for relief in the abuse-prevention action conflict with an outstanding order in the action subject to Rule 4.0. Otherwise, consolidation would occur only upon motion of a party or the court's own motion. The amendment recognizes that while automatic consolidation is appropriate in cases where disputes between the parties are pending before the court or there is a conflict between the requests in the abuse action and outstanding orders in the actions subject to Rule 4.0, there are instances where automatic consolidation may not be appropriate because so much time has elapsed between the resolution of the issues in the action subject to Rule 4.0 and the filing of the relief from abuse order and there is no possibility of conflicting orders.

2. That this rule as amended is prescribed and promulgated, effective on _____. The Reporter's Notes are advisory.

3. That the Chief Justice is authorized to report these amendments to the General Assembly in accordance with the provisions of 12 V.S.A. § 1, as amended.

Dated in Chambers at Montpelier, Vermont, this ___ day of _____, 2023.

_____
Paul L. Reiber, Chief Justice

_____
Harold E. Eaton, Jr., Associate Justice

_____
Karen R. Carroll, Associate Justice

_____
William D. Cohen, Associate Justice

_____
Nancy Waples, Associate Justice

PROPOSED