

Senate Judiciary Committee

Jennifer Horgan 271-3092

HB 136, clarifying the equity jurisdiction of the judicial branch family division.

Hearing Date: April 25, 2017

Time Opened: 10:54 a.m.

Time Closed: 12:18 p.m.

Members of the Committee Present: Senators Carson, Lasky, French, Gannon and Hennessey

Members of the Committee Absent : None

Bill Analysis : This bill clarifies the equity jurisdiction of the judicial branch family division.

Sponsors :

Rep. Itse
Rep. Burt
Sen. Reagan

Rep. Hoell
Rep. Baldasaro

Rep. Spillane
Sen. Daniels

Who supports the bill: Representative Itse; Senator Daniels; Representative Wall; Representative Baldasaro; Daryl W. Perry (Liberty Lobby LLC); Gregory Fedor (Victims of Family Court); Bill Alleman; Janet DeFuoco; Sam Gowd; Eva Stillay; Thomas McCarthy; Tim Sanborn

Who opposes the bill: Representative Horrigan; Representative Keans; Howard Zibel (Judicial Branch)

Summary of testimony presented in support :

Representative Itse

- Last term, the legislature passed legislation requiring both parties in a hearing to submit financial affidavits, codifying court rules.
- Family Court Rule 1.2 says the judge may waive any rule not in statute.
- Equity jurisdiction is the power of the court to order you to do something, i.e. to issue a stay of action, to tell someone to sell their house and distribute the assets, etc.
- The equity jurisdiction statute states that 'law to the contrary notwithstanding, the judicial branch family division shall have the powers of a court in equity cases where subject matter jurisdiction is in the judicial branch family division.'
- This means that no matter what restrictions the legislature puts on their actions this court has the literal power to say, 'okay, unless I believe equity is served by something else.'
- If in a particular case a judge decides to not require both parties to submit financial affidavits, they would be within their legitimate power to do so.
- The probate courts and superior courts have equity jurisdiction, but they have pages of restrictions on them.
- There are also restrictions on divorce and alimony.
- This made sense in 1995 when the Family Court was an experimental pilot program because they were changing the rules.

- In 2005 the Family Courts went statewide, but the legislature neglected to remove “law to the contrary notwithstanding”.
- This means that when hearing petitions for redress there were issues because the court has to notify someone 10 days before a hearing, but people would get letters postmarked less than 10 days before the hearing.
- Equity jurisdiction allows for workarounds of statute.
- This bill removes ‘law to the contrary notwithstanding’ and adds ‘where no other special provision has been made by law’
- This means that when we make a law that is the law.
- Senator Lasky asked if the language struck out in line 2 achieves what he is trying to do.
 - What that phrase means that in spite of any law contrary to it, it doesn’t matter. If there is a statute that is in conflict with what we just did it doesn’t stop it.

Eva Stilkey (provided written testimony)

- Shared her personal experience with the Family Court System and the judges involved.
- Children in the state have been wronged because of this.
- Judges are writing their own laws and not following protocols.
- These judges apply their personal bias to cases.
- Children who have been through this will turn 18 soon and will be able to make a claim against the state as adult children victims.
- This will finally start to rear its head in a couple years because of what has been going on in these courts.
- The legislature has the opportunity to change this before it gets any worse.
- The power these few words hold is overwhelming.

Janet Delfuoco (provided written testimony)

- Shared her personal experience with these courts.
- Reviewed the parental rights statute.
- Has been doing interviews worldwide on what she has been through.
- Her ex-husband’s girlfriend is friends with the head of the Bar Association, who called the judge, and that is why she keeps losing and is being battered by the judge.
- Her ex-husband committed bank fraud, but she is the one going to jail and that is what is wrong with the system.
- Senator French asked how this legislation would change anything about her situation.
 - There are laws in place that should allow individuals to go to the judicial conduct committee, but they are not doing their jobs. Hopes that this will result in bringing back the Redress Committee and bring in people from outside the judicial branch. Hopes this will mean judges will start to be held accountable.

Sam Gowd/Delfuoco

- Representing all of the kids who have gone through this.
- Is a Boy Scout working on his Eagle Scout Rank, is part of the Naval Sea Cadets, and is a Fire Explorer.
- Has no communication with his dad.
- Does not have a lot of communication with his brother because of the courts.
- His mom is a fit parent.

- Juries should decide who is a fit parent and kids should decide who they want to live with.
- Senator Carson asked how old he is.
 - 15 years old

Tim Sanborn

- Shared his personal experience.
- Divorced in 2006 and was issued a final decree in 2009, which he had never signed.
- Rule 2.238 states that all stipulations and agreements must be signed by the parties.
- Rule 1.97 says financial affidavits must be submitted at every hearing regarding assets.
- Rule 1.24 says financial affidavits must be submitted within 30 days of the issuance of a final divorce decree. That never happened
- Is still in litigation in 2017 for something that started in 2006.
- Received an order from the Complex Court that states 'even if in the court's judgment in the original instance was flawed or failed to take into account certain facts relating to the parties negotiations underlying the original divorce decree, I will not be able to consider at a final hearing anything that has already been finally ruled upon, whether it is 100% fair or not. It is the law
- If the Family Court is a court of equity then it is supposed to include fairness.
- What is the purpose of a justice system if it does not include fairness?
- How can courts just overlook rules?

Gregory Fedor

- When you grow up, you learn to play by certain rules, and if those rules change it is not a fair playing field,
- This is very important and words have meaning.
- Shared his personal experience.
- Judges need to follow the rules and a lot of judges are making things up as they go.
- There needs to be teeth in our laws, so judges know what they are dealing with.
- There are victims who are angry because the rules have been violated.
- If decisions are based on preferences or prejudices that is not appropriate.
- Wants everyone on the same playing field
- This will make our lives and the lives of children better.

Thomas McCarthy

- Shared his personal experience.
- Spoke to the injustice of the judicial system.

Summary of testimony presented in opposition :

Howard Zibel (Judicial Branch)

- This bill has come forward many times and it is a bill in search of a problem.
- Does not know off any court that would ignore a law knowingly and use the defense that they have equitable jurisdiction.
- Equity follows the law and equitable jurisdiction has to follow the law.
- Does not know of any case before the Supreme Court where this has gone on.
- The origin of the statute goes back to the superior courts, RSA 491:14.
- This section was Section 3 in the pilot program and then became Section 3 in Family Division statute in 2005.
- Sees no reason to amend the statute as a court cannot disregard the law.
- Senator Hennessey asked what the difference is between 'any law to the contrary notwithstanding' and 'where no other special provision has been made by law'.

- Doesn't know if there is any difference between the two.

Future Action: Pending

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Date Hearing Report completed: April 28, 2017