

STATE OF OKLAHOMA

1st Session of the 44th Legislature (1993)

COMMITTEE SUBSTITUTE

FOR

HOUSE BILL NO. 1211

By: Todd

COMMITTEE SUBSTITUTE

An Act relating to guardian and ward; amending 30 O.S. 1991, Section 3-115, which relates to special guardians; providing for court appointment of attorney; modifying procedures for appointment; modifying bonding requirements; providing certain limitations; modifying powers and duties of special guardian; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 30 O.S. 1991, Section 3-115, is amended to read as follows:

Section 3-115. A. The court may appoint a special guardian for a person who appears to be or has been found to be an incapacitated or partially incapacitated person when it appears:

1. There is imminent danger that the health or safety of said person will be seriously impaired or that the financial resources of said person will be seriously damaged or dissipated unless immediate action is taken; and

2. No other person appears to have authority to act in the circumstances or the guardian previously appointed is unable to or refuses to take action.

Except as otherwise provided by this section, the appointment of a special guardian shall be for a period not to exceed ten (10) days.

B. The request for appointment of a special guardian may be included in the petition to appoint a guardian or by separate petition, either of which must be verified.

C. The court shall appoint an attorney, separate and apart from the petitioner's attorney, for the subject of the proceeding

who does not have legal representation and either cannot afford a private attorney or cannot retain counsel due to incapacity and may proceed to hear the petition as same pertains to appointment of a special guardian with or without notice. If notice is required, the notice shall set a time for hearing on the petition within seventy-two (72) hours. Notice shall be served on:

1. The subject of the proceeding;
2. The attorney of the subject of the proceeding, if any;
3. The spouse of the subject of the proceeding, if any, and if the spouse is not the petitioner; and
4. At least one other adult relative of the subject of the proceeding or any other person who is not the petitioner, as directed by the court.

Notice shall be personally served in the manner as the court directs on the subject of the proceeding and on other persons receiving notice as directed by the court.

D. The court may without notice appoint a special guardian upon the filing of the petition ~~and~~, upon presentation of evidence of the incapacity of the subject of the proceeding, upon a showing that an immediate or reasonably foreseeable serious physical harm to the subject of the proceeding or serious impairment of the financial resources of said person will result from a delay, and upon presentation of a proposed emergency plan of care for the subject of the proceeding. Whenever a special guardian is immediately appointed as provided by this subsection, the court shall cause a copy of the petition, order and letters of special guardianship to be served on:

1. The subject of the proceeding;
2. The spouse of the subject of the proceeding, if any, if the spouse is not the petitioner; and
3. At least one other adult relative of the subject of the proceeding, if such relative is known or can be ascertained with reasonable diligence, or by any other person who is not the petitioner, as directed by the court.

The notice shall be served in the manner the court directs.

E. The court shall grant the special guardian only those powers necessary to act with respect to the particular emergency, as determined by the court. The special guardian shall be granted only powers to accomplish acts that are both supported by the proposed emergency plan of care and found necessary by the court. Power to change the place of residence of the subject of the proceeding shall be specifically granted by the court upon a showing that the needs of the subject of the proceeding cannot be met within such subject's present residential arrangements. The court's approval shall be required for any changes in either the emergency plan of care or the specified powers of the special guardian. The letters for a special guardian shall state that the person is a special guardian, the date of the expiration of the special guardianship, and the specific power or powers of the special guardian.

F. The appointment of a special guardian shall be effective from the date of appointment until a guardian is appointed pursuant to Section 1-112 of this title, or for thirty (30) days, whichever is less.

G. The court shall ~~not~~ require bond if ~~such~~ the appointment ~~is over the person only, and may require or waive bond if the appointment is as to the property of the ward~~ grants the guardian powers over the property of the ward who possesses an estate valued in excess of Forty Thousand Dollars (\$40,000.00).

H. The authority of any guardian or limited guardian previously appointed by the court is suspended with regard to the powers granted to the special guardian, but not otherwise, for as long as a special guardian has authority as provided by this section.

I. The court may remove a special guardian at any time. The special guardian shall file a report showing all actions taken during the special guardianship and shall make any other report the court requires.

SECTION 2. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take
Req. No. 6599Page 3

effect and be in full force from and after its passage and approval.

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