

STATE OF OKLAHOMA

1st Session of the 49th Legislature (2003)

COMMITTEE SUBSTITUTE
FOR ENGROSSED
HOUSE BILL 1043

By: Leist of the House

and

Shurden of the Senate

COMMITTEE SUBSTITUTE

An Act relating to children; amending 10 O.S. 2001, Section 5A, which relates to visitation rights of siblings; creating a rebuttable presumption that visitation of siblings is in their best interests; deleting certain restrictions; setting conditions for determining best interests of a child; expanding certain visitation; modifying definition; providing for certain placement of siblings; setting forth conditions; amending 10 O.S. 2001, Section 7510-1.5, as amended by Section 14, Chapter 445, O.S.L. 2002 (10 O.S. Supp. 2002, Section 7510-1.5), which relates to adoption assistance; modifying certain conditions for eligibility; defining term; providing for codification; providing for recodification; and providing an effective date.

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

SECTION 1. AMENDATORY 10 O.S. 2001, Section 5A, is amended to read as follows:

Section 5A. A. ~~Upon the death of a parent of an unmarried minor child, a parent of the unmarried minor child or a parent of a minor sibling of the unmarried minor child may file a verified petition to commence an action requesting rights of visitation between the siblings. The court may award reasonable rights of visitation between the siblings if the court determines that visitation is in the best interests of the siblings~~ 1. There shall be a rebuttable presumption that visitation between biological and/or legally related minor siblings shall be in the best interests of such minor siblings.

2. Pursuant to the provisions of this section, in any action relating to the custody of a minor child who is placed apart from his or her siblings, the court shall require or provide for the reasonable visitation between the biological and/or legally related siblings of the child unless the court determines that the visitation is not in the best interest of any of the biological or legally related siblings of the child.

B. In determining whether visitation is in the best interests of the siblings, the court shall ~~consider~~ determine:

~~1. The willingness of the parents of the siblings to encourage or maintain a relationship between the siblings;~~

~~2. The length and quality of the relationship between the siblings including, but not limited to, whether the siblings previously resided together in the same household;~~

~~3. The time which has elapsed since the siblings last had contact;~~

~~4. The preference of the siblings, if they are of sufficient maturity to express a preference;~~

~~5. The effect that visitation will have on the relationship between the siblings and their parents;~~

~~6.~~ 2. The mental and physical health of the siblings; ~~and~~

~~7.~~ 3. Whether one sibling may physically, mentally, or emotionally harm another during a visit, and supervision would be inadequate to eliminate the risk of such harm; and

4. All other factors appropriate to the particular circumstances.

C. The district courts are vested with jurisdiction to issue orders granting visitation between siblings and to modify and enforce ~~these~~ the orders.

D. Notice as required by Section 2004 of Title 12 of the Oklahoma Statutes shall be given to all parents of the siblings.

E. Venue of an action under this section shall be in the county where the siblings reside or, if the siblings reside in different counties, in the county where the respondent resides.

F. The court may determine the location for visitation ordered pursuant to this section and require any transportation costs or other costs arising from visitation to be paid by a parent or parents of the siblings as the court deems equitable.

G. Any visitation rights granted pursuant to this section before the adoption of a sibling shall automatically terminate if the sibling is adopted by a person other than a stepparent or grandparent of the sibling or other person related to the sibling by blood, marriage, or adoption.

H. In any action for sibling visitation pursuant to this section, the court may award attorney fees and costs, as the court deems equitable.

I. As used in this section:

1. "Sibling" means sister, brother, stepsister, stepbrother, halfsister, halfbrother, adopted sister, or adopted brother; and

2. "Parent" means biological parent, stepparent, adoptive parent, legal custodian, or legal guardian of a minor.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 21.1A of Title 10, unless there is created a duplication in numbering, reads as follows:

In every case involving the nonparental custody or guardianship of two or more children who are siblings, every reasonable attempt should be made to place them in the same home. If the siblings are separated, each sibling shall be allowed contact or visitation with the other siblings pursuant to Section 5A of Title 10 of the Oklahoma Statutes; provided, however, the best interests of each sibling shall be the standard for determining whether they should be placed in the same home, or allowed contact or visitation with other siblings.

SECTION 3. AMENDATORY 10 O.S. 2001, Section 7510-1.5, as amended by Section 14, Chapter 445, O.S.L. 2002 (10 O.S. Supp. 2002, Section 7510-1.5), is amended to read as follows:

Section 7510-1.5 A. 1. When a parent or parents are found and approved for adoption of a child who is determined by the Department of Human Services to be eligible for adoption assistance pursuant to the Oklahoma Adoption Assistance Act, and before the final decree of adoption is entered, there must be a signed written agreement between the prospective adoptive parent or parents and the Department.

2. Adoption assistance in individual cases may commence with the adoptive placement or at the time of finalization of the adoption. Adoption assistance may be for special services only, or for monthly money payments, and either for a limited period, or for a long term, or for any combination of the foregoing.

Eligibility for and the rate of monthly adoption assistance payments shall be determined by the Department in accordance with rules promulgated by the Commission for Human Services.

B. When an otherwise eligible child is determined to have a causative, preexisting condition which was not identified or known prior to the legal finalization of the adoption and which has resulted in a severe medical or psychiatric condition that requires extensive treatment, hospitalization, or institutionalization, an adoption assistance agreement may be approved by the Department after the final decree of adoption has been entered. In the event an adoption assistance agreement is approved that provides for monthly adoption assistance payments, the adoptive parents may also be entitled to receive retroactive adoption assistance payments for a period not to exceed the two (2) months prior to the date the adoption assistance agreement was approved.

C. Any child who met the requirements of the provisions of Sections 7510-1.2 and 7510-1.4 of this title, and was determined

eligible for Oklahoma adoption assistance with respect to a prior adoption, and is available for adoption because the prior adoption has been dissolved and the parental rights of the adoptive parents have been terminated or because the child's adoptive parents have died, shall be eligible for Oklahoma adoption assistance with respect to any subsequent adoption.

D. 1. When adoption assistance benefits are for more than one (1) year, the adoptive parent or parents shall present an annual sworn certification that the adopted child remains under their care and that the conditions that caused the child to be initially approved for benefits continue to exist.

2. The adoptive parent or parents shall at all times keep the Department informed of circumstances which would make them ineligible for such assistance payments or eligible for assistance payments in a different amount.

3. The Department is authorized and directed to make a review of each adoption assistance agreement annually to assure that the parents are fulfilling their obligations under the agreement.

4. No payment may be made to any parents with respect to any child who has attained the age of eighteen (18) years, except where the Department determines that the child has a physical or mental handicap which warrants the continuation of assistance until the child reaches the age of ~~twenty one (21)~~ nineteen (19) years.

5. Termination or modification of the adoption assistance agreement may be requested by the adoptive parent or parents at any time.

6. No payment may be made to adoptive parents if the Department determines that the parents are no longer legally responsible for the support of the child or that the child is no longer receiving any financial support from such parents.

E. A child for whom an adoption assistance agreement has been reached with the Department shall remain eligible and receive

adoption assistance benefits regardless of the domicile or residence of the adopting parent or parents at any given time.

F. All records regarding adoption assistance shall be confidential and may be disclosed only in accordance with the provisions of the Oklahoma Adoption Code.

SECTION 4. RECODIFICATION 43 O.S. 2001, Sections 112.2, as last amended by Enrolled House Bill No. 1816 of the 1st Session of the 49th Oklahoma Legislature, Section 8, Chapter 400, O.S.L. 2002 and 113, as amended by Section 1, Chapter 373, O.S.L. 2002 (43 O.S. Supp. 2002, Sections 112.3 and 113), shall be renumbered as Sections 110.2, 110.3 and 110.4, respectively, of Title 43 of the Oklahoma Statutes, unless there is created a duplication in numbering.

SECTION 5. This act shall become effective November 1, 2003.

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