

STATE OF OKLAHOMA

1st Session of the 50th Legislature (2005)

HOUSE BILL 1250

By: Young

AS INTRODUCED

An Act relating to children; amending 10 O.S. 2001, Section 7505-2.1, which relates to preadoption termination of parental rights; expanding custody options for certain purposes; and providing an effective date.

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

SECTION 1. AMENDATORY 10 O.S. 2001, Section 7505-2.1, is amended to read as follows:

Section 7505-2.1 A. 1. Prior to the filing of a petition for adoption, an agency, attorney, or prospective adoptive parent to whom a mother has permanently relinquished a minor born out of wedlock may file a petition for the termination of the parental rights of a putative father of the child. The petition shall be filed with the district court of the county in which the relinquishment was executed or in the county in which the putative father, the petitioner, or the minor resides at the time of the filing of the petition.

2. The affidavit of expenses required by subsection A of Section 7505-3.2 of this title is not required to be attached to a petition filed pursuant to this section, nor must it be filed prior to issuance of an order terminating parental rights entered in a proceeding brought under this section.

B. 1. Notice of the hearing on the petition to terminate parental rights and a copy of the petition shall be served upon the putative father in the same manner as summons is served in civil cases, not less than fifteen (15) days prior to the hearing.

2. The notice shall contain the name of the putative father, or if unknown, the name of the minor, the date of birth of the minor, the date of the hearing, and the ground or grounds for which termination of parental rights is sought. The notice shall apprise the putative father of his legal rights and shall include a clear statement that failure to appear at the hearing shall constitute a denial of interest in the minor which denial may result, without further notice of this proceeding or any subsequent proceeding, in the termination of his parental rights and the transfer of the minor's care, custody or guardianship or in the minor's adoption.

3. If the identity or whereabouts of a putative father is unknown, the court must determine whether the putative father can be identified or located. Following an inquiry pursuant to Section 7505-4.3 of this title, if the court finds that the identity or whereabouts of the putative father cannot be ascertained, and this fact is attested to by affidavit of the permanently relinquishing mother or the legal custodian or guardian of the child, it shall order that notice be given by publication and, if the identity is known, that a copy be mailed to the last-known address of the putative father. The notice shall be published once pursuant to the laws relating to service of notice by publication, in the county in which the action to terminate parental rights is brought, and the hearing shall not be held for at least fifteen (15) days after publication of the notice. When notice is given by publication, the order terminating parental rights shall not become final for a period of fifteen (15) days from the date of the order.

4. A putative father may waive his right to notice pursuant to this section. The waiver signed by the putative father shall include a statement affirming that the putative father signing the waiver understands that the waiver shall constitute grounds for the termination of the parental rights of such putative father pursuant to the provisions of this section and Section 7505-4.2 of this

title. A putative father may also waive his right to notice pursuant to this section, by signing an extrajudicial consent pursuant to Section 7503-2.6 of this title, or by waiving notice on a form filed with the Paternity Registry of the Department of Human Services, or by failing to register with the Paternity Registry of the Department of Human Services after receiving a Notice of Plan for Adoption pursuant to Section 7503-3.1 of this title.

C. When a putative father appears at the hearing and desires counsel but is indigent and cannot for that reason employ counsel, the court shall appoint counsel. In all counties having county indigent defenders, the county indigent defenders shall assume the duties of the representation in such proceedings.

D. At the hearing on the petition to terminate parental rights brought pursuant to this section, the court may, if it is in the best interest of the minor:

1. Accept a permanent relinquishment or consent to adoption executed by the putative father of the minor pursuant to Sections 7503-2.1, 7503-2.3 and 7503-2.4 of this title; or

2. Terminate any parental rights which the putative father may have upon any of the grounds provided in Section 7505-4.2 of this title for declaring a consent unnecessary.

E. 1. If the court at the hearing determines that the putative father is the biological father of the minor, that the adoption requires the consent of the putative father, that the putative father will not consent, and the court does not terminate the parental rights of the putative father, then the court shall schedule a separate hearing to issue an appropriate order for the legal and physical custody of the minor according to the best interests of the minor, if the court has jurisdiction to issue a custody order. Provided, no such hearing shall be scheduled if a preexisting custody order remains in effect.

2. The court shall certify that the child-placing agency or the attorney who filed the petition to terminate parental rights, the putative father, and any prospective adoptive parents have received notice of the date of the custody hearing at least fifteen (15) days prior to the date of the hearing. A biological mother who has signed a consent or permanent relinquishment must be served with notice of the date of the custody hearing, by the party who filed the petition for termination, in the same manner as summons is served in civil cases at least fifteen (15) days prior to the date of the hearing.

3. Upon motion to intervene, the court shall join any person or entity entitled to notice under paragraph 2 of this subsection who is not already a party to the proceeding.

4. At the hearing, the court may award custody to the biological mother, the biological father, the biological parents, if they are married, the prospective adoptive parent, the foster parent, or the Department of Human Services or other licensed child-placing agency, if the Department or agency had legal custody when the petition was filed, according to Section 21.1 of this title, in the best interests of the child.

5. The child shall be represented at this hearing by an attorney pursuant to Section 7505-1.2 of this title.

F. The court shall terminate the rights of a putative father if he fails to appear at the hearing on the petition to terminate his parental rights or if he has waived notice pursuant to paragraph 4 of subsection B of this section.

G. No order of the court shall be vacated, set aside, or annulled upon the application of any person who was properly served with notice in accordance with this section but failed to appear unless the applicant can establish by clear and convincing evidence that such failure to appear was due to unavoidable circumstances. Such application must be filed within ten (10) days of the date of

the hearing at which the applicant failed to appear. No order of the court shall be vacated, set aside, or annulled upon the application of any person who waived notice pursuant to paragraph 4 of subsection B of this section.

H. A proceeding pursuant to this section for termination of parental rights shall be heard by the court without a jury.

I. An appeal may be taken from any final order, judgment, or decree rendered pursuant to this section to the Supreme Court by any person aggrieved thereby, in the manner provided for appeals from the court as provided in this subsection.

1. In an appeal concerning the termination of parental rights pursuant to this section, the appellant's designation of record shall be filed in the trial court within ten (10) days after the date of the judgment. Appellee's counter designation of record shall be filed in the trial court ten (10) days after appellant's designation of record is filed in the trial court.

2. All appeals of cases concerning the termination of parental rights pursuant to this section shall be initiated by filing a petition in error in the Supreme Court within thirty (30) days of the filing of the order, judgment, or decree appealed from. The record on appeal shall be completed within thirty (30) days from the filing of the petition in error. Any response to the petition in error shall be filed within twenty (20) days from the filing of the petition in error.

3. The briefing schedule is established as follows:

- a. appellant's brief in chief shall be filed twenty (20) days after the trial court clerk notifies all parties that the record is complete and such notice has been filed in the office of the Clerk of the Supreme Court,
- b. appellee's answer brief shall be filed fifteen (15) days after the appellant's brief in chief is filed,
and

c. appellant's reply brief may be filed within ten (10) days after the appellee's answer brief is filed.

J. The pendency of an appeal shall not suspend the order of the district court regarding a minor, nor shall it remove the minor from the custody of that court or of the person, institution, or agency to whose care such minor has been committed, unless the Supreme Court shall so order.

K. Any appeal when docketed should have priority over all cases pending on said docket. Adjudication of the appeals and in any other proceedings concerning the relinquishment of the child or the termination of parental rights pursuant to this section shall be expedited by the Supreme Court.

L. 1. The preadoption termination of parental rights pursuant to this section terminates the parent-child relationship, including the parent's right to the custody of the child and the parent's right to visit the child, the parent's right to control the child's training and education, the necessity for the parent to consent to the adoption of the child, the parent's right to the earnings of the child, and the parent's right to inherit from or through the child. Provided, that this subsection shall not in any way affect the right of the child to inherit from the parent.

2. Termination of parental rights shall not terminate the duty of the putative father whose rights have been terminated to support the child unless the court determines he is not the biological father. The duty of a putative father to support his minor child shall not be terminated until such time as a final decree of adoption has been entered.

SECTION 2. This act shall become effective November 1, 2005.

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