STATE OF OKLAHOMA

1st Session of the 50th Legislature (2005)

SENATE BILL 328 By: Laster

AS INTRODUCED

An Act relating to children and guardianship; amending 10 O.S. 2001, Sections 7002-1.1 and 7502-1.1, which relate to jurisdiction; modifying personal jurisdiction in certain proceeding; prohibiting certain jurisdiction without required consent; amending 30 O.S. 2001, Section 1-115, which relates to venue and jurisdiction; prohibiting certain jurisdiction without required consent; and providing an effective date.

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

SECTION 1. AMENDATORY 10 O.S. 2001, Section 7002-1.1, is amended to read as follows:

Section 7002-1.1 A. 1. Upon the filing of a petition, or upon the assumption of custody pursuant to the provisions of Article III of the Oklahoma Children's Code, the district court ~~of~~ with juvenile or domestic docket responsibility in the county in which an alleged deprived child:

a. resides,

b. is found, ~~or~~

c. where the alleged acts of deprivation occurred, or

d. where a parent or sibling has a deprived proceeding pending,

shall have jurisdiction of any child who is or is alleged to be deprived, shall have jurisdiction of the parent, legal guardian, custodian or stepparent of such child, regardless of where such parent, legal guardian, custodian, or stepparent is found, and shall have jurisdiction of any other adult person living in the home of such child.

2. When jurisdiction has been obtained over a child who is or is alleged to be a deprived child, such jurisdiction may be retained until the child becomes eighteen (18) years of age.

3. For the convenience of the parties and in the interest of justice, a proceeding under this chapter may be transferred to the district court in any other county.

4. When it is in the best interests of the child, the court shall transfer a proceeding under this chapter to the district court in another county.

B. The district court in which a petition is filed which alleges that a child is deprived or which assumes custody pursuant to Article III of this Code may issue any temporary order or grant any interlocutory relief authorized by this chapter in an emergency, regardless of whether another district court within the state has jurisdiction of the child or has jurisdiction to determine the custody or support of the child.

C. If the district court ~~in which a petition is~~ presiding over a deprived action filed pursuant to subsection B of this section sustains the petition or assumes custody pursuant to Article III of this Code, that district court shall have the jurisdiction to make a final determination on the matter or to transfer the proceedings to a court having prior jurisdiction over the child. If the judges to whom the cases have been assigned are unable to agree on the procedure that should be followed, the determination of whether the proceeding should be consolidated and, if consolidated, which judge shall try the issues shall be determined as follows:

1. If the other proceeding is pending in the same judicial district in which the deprived petition is filed or custody is assumed, the determination shall be made by the ~~chief~~ presiding judge of that judicial district;

2. If the other proceeding is pending in a different judicial district but within the same judicial administrative district in

which the deprived petition is filed or custody is assumed, the determination shall be made by the presiding judge of that judicial administrative district;

3. If the other proceeding is pending in a judicial district not within the same judicial administrative district in which the deprived petition is filed or custody is assumed, the determination shall be made by the ~~chief~~ presiding judge of the judicial district where the other proceeding is pending.

SECTION 2. AMENDATORY 10 O.S. 2001, Section 7502-1.1, is amended to read as follows:

Section 7502-1.1 A. Except as otherwise provided in this section, a court of this state has jurisdiction over proceedings to terminate parental rights and proceedings for the adoption of a minor commenced pursuant to the Oklahoma Adoption Code if:

1. a. Immediately preceding commencement of the proceeding, the minor lived in this state with a parent, a guardian, a prospective adoptive parent, or another person acting as parent, for at least six (6) consecutive months, excluding periods of temporary absence,

   b. In the case of a minor under six (6) months of age, the minor lived in this state from soon after birth with any of those individuals listed in subparagraph a of this paragraph and there is available in this state substantial evidence concerning the minor's present or future care, or

   c. A child is born in this state and the mother of the child has been a legal resident of this state for six (6) months prior to the birth or, if not a legal resident for six (6) months prior to birth, verifies compliance with or exemption from the Interstate Compact on the Placement of Children and executes her

consent or permanent relinquishment before a judge of a court of this state;

2. Immediately preceding commencement of the proceeding, the prospective adoptive parent lived in this state for at least six (6) consecutive months, excluding periods of temporary absence, and there is available in this state substantial evidence concerning the minor's present or future care;

3. The child-placing agency that placed the minor for adoption is located in this state and it is in the best interest of the minor that a court of this state, assume jurisdiction because:

a. the minor and the minor's parents, or the minor and the prospective adoptive parent, have a significant connection with this state, and

b. there is available in this state substantial evidence concerning the minor's present or future care;

4. The minor and the prospective adoptive parent are physically present in this state, and the minor has been abandoned or it is necessary in an emergency to protect the minor because the minor has been subjected to or threatened with mistreatment or abuse or is otherwise neglected; or

5. It appears that no other state would have jurisdiction under prerequisites substantially in accordance with paragraphs 1 through 4 of this subsection, or another state has declined to exercise jurisdiction on the ground that this state is the more appropriate forum to hear a petition for adoption of the minor, and it is in the best interest of the minor that a court of this state assume jurisdiction.

B. 1. If a child is born in this state and the mother of the child executes her consent or permanent relinquishment before a judge of a court of this state, a court of this state may exercise jurisdiction over a proceeding for the termination of parental

rights of a putative father pursuant to Section 7505-2.1 of this title.

2. If a parent has signed a permanent relinquishment in the presence of a court of this state pursuant to Section 7503-2.3 of this title, the court may exercise jurisdiction to issue an order terminating the parental rights of the parent to the child pursuant to Section 7503-2.3 of this title.

3. A court of this state may exercise jurisdiction to issue a temporary order of custody pursuant to Section 7503-4.1 of this title for:

a. a minor born in this state, or

b. a minor brought into this state in compliance with the Interstate Compact on the Placement of Children, if the court is exercising jurisdiction pursuant to this section over an adoption proceeding concerning the minor that is pending before the court.

4. If the court does not have jurisdiction over an adoption proceeding pursuant to subsection A of this section, any order issued pursuant to this subsection shall include a finding by the court that states that the court is declining jurisdiction over the adoption proceeding and is deferring jurisdiction to the more appropriate state.

C. Except as otherwise provided by this section, a court of this state shall not exercise jurisdiction over a proceeding for adoption of a minor or for termination of parental rights brought pursuant to Section 7505-2.1 or 7505-4.1 of this title if, at the time the petition for adoption or termination is filed:

1. Another court of this state is exercising jurisdiction pursuant to Section 7002-1.1 of this title, unless after notice to the parties to such deprived action, the written consent of such court is obtained and filed in the adoption proceeding, or,

2. ~~a~~ A proceeding concerning the custody or adoption of the minor is pending in a court of another state exercising jurisdiction substantially in conformity with the Uniform Child Custody Jurisdiction Act, the Uniform Child Custody Jurisdiction and Enforcement Act or the Oklahoma Adoption Code, unless the proceeding is stayed by the court of the other state because this state is a more appropriate forum or for another reason.

D. In any instance when a court of this state is exercising jurisdiction over a proceeding for adoption of a minor who is a resident of this state by adoptive parents who are not legal residents of this state at the time of the filing of the petition for adoption, the court shall require, prior to the granting of a final decree of adoption, either proof of compliance with the Interstate Compact on the Placement of Children or verification that this adoptive placement is otherwise exempt from the Interstate Compact on the Placement of Children.

E. If a court of another state has issued a decree or order concerning the custody of a minor who may be the subject of a proceeding for adoption or for termination of parental rights brought pursuant to Section 7505-2.1 or 7505-4.1 of this title in this state, a court of this state shall not exercise jurisdiction over a proceeding for adoption or termination of parental rights of the minor unless:

1. The court of this state finds that the court of the state which issued the decree or order:

a. does not have continuing jurisdiction to modify the decree or order under the law of the state which issued the decree or order or has declined to assume jurisdiction to modify the decree or order, or

b. does not have jurisdiction over a proceeding for adoption substantially in conformity with paragraphs 1 through 4 of subsection A of this section or has

declined to assume jurisdiction over a proceeding for adoption; and

2. The court of this state has jurisdiction pursuant to this section over the proceeding for adoption or termination of parental rights.

SECTION 3. AMENDATORY 30 O.S. 2001, Section 1-115, is amended to read as follows:

Section 1-115. A. The venue for a guardianship proceeding is in:

1. The district court of the county where the minor or the incapacitated or partially incapacitated person resides;

2. The district court of the county where the proposed guardian resides if the proposed guardian is a member of the minor's or incapacitated person's family; or

3. The district court of the county to which the cause is transferred by a judge of the court in which the petition was filed or the cause is pending. Provided, venue to appoint the guardian of a nonresident minor or incapacitated person shall be in a county where the nonresident has property.

B. If a proceeding pursuant to the provisions of the Oklahoma Guardianship and Conservatorship Act could be maintained in more than one place in this state, the court in which the proceeding is first commenced has the exclusive right to exercise jurisdiction over the proceeding and proceed with the action. A court shall not exercise jurisdiction over a proceeding for guardianship of a minor pursuant to this title if, at the time the petition for guardianship is filed, another court of this state is exercising jurisdiction pursuant to Section 7002-1.1 of Title 10 of the Oklahoma Statutes, unless after notice to the parties in the deprived action, the written consent of such court is obtained and filed in the guardianship proceeding.

1. If proceedings concerning the same estate, minor, alleged incapacitated or partially incapacitated person, or ward are commenced in more than one court of this state, the court in which a proceeding was first commenced shall continue to hear the matter and determine venue. If the court where the proceeding was first filed determines that venue is properly in another court, it shall transfer the proceeding to the other court.

2. If the court finds that in the interest of justice a proceeding should be conducted in another court of this state, the court may transfer the proceeding to the other court.

C. If both guardianship and conservatorship proceedings as to the same person are commenced or pending in the same court, the proceedings may be consolidated.

SECTION 4. This act shall become effective November 1, 2005.

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