

1 STATE OF OKLAHOMA

2 2nd Session of the 53rd Legislature (2012)

3 SENATE BILL 1317

By: Anderson

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6 AS INTRODUCED

7 An Act relating to guardianship; amending 30 O.S.
8 2011, Sections 1-114, 1-115, 2-101 and 3-115, which
9 relate to powers of court, venue, petition and
10 notice, and special guardian; modifying certain time
11 period; modifying venue; authorizing transfer of
12 certain guardianship; requiring personal notice to
13 certain persons; clarifying applicability of
14 provision; and providing an effective date.

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

16 SECTION 1. AMENDATORY 30 O.S. 2011, Section 1-114, is
17 amended to read as follows:

18 Section 1-114. A. In all cases the court making the
19 appointment of a guardian has exclusive jurisdiction to control such
20 guardian in the management and disposition of the person and
21 property of the ward.

22 B. The court has jurisdiction over guardianship proceedings,
23 and has the following powers, which must be exercised in the manner
24 prescribed by statute, to:

1. Appoint and remove guardians for minors and for
incapacitated and partially incapacitated persons;

- 1 2. Issue and revoke letters of guardianship;
- 2 3. Control the conduct of guardians with regard to the care and
3 treatment provided to their wards;
- 4 4. Control the conduct of guardians with regard to the
5 management of the financial resources of their wards, including but
6 not limited to the power to:
 - 7 a. compel guardians to submit plans, reports, inventories
8 and accountings to the court,
 - 9 b. compel payment and delivery by guardians of property
10 belonging to their wards,
 - 11 c. order the payment of debts, the sale of property, and
12 order and regulate the distribution of property which
13 has been placed under the control or management of a
14 guardian, and
 - 15 d. settle the accounts of guardians;
- 16 5. Appoint appraisers of the property of wards;
- 17 6. Compel the attendance of witnesses and the production of
18 documents and property;
- 19 7. After a petition has been filed for appointment of a
20 guardian for a minor, make or modify any temporary order of
21 guardianship during the progress of the proceedings that would be in
22 the best interest of the ward. Any such temporary order may be
23 entered ex parte with written notice sent to all parties directing
24 them to appear before the court, at a time and place therein

1 specified, not more than ~~twenty (20)~~ thirty (30) days from the time
2 of making such order, with an additional thirty (30) days for good
3 cause shown, to show cause why the order should not be granted for
4 temporary guardianship; and

5 8. Exercise all powers conferred by the Oklahoma Guardianship
6 and Conservatorship Act, ~~Section 1-101 et seq. of this title,~~ and to
7 make such orders as may be necessary for the exercise of ~~said~~ the
8 powers.

9 C. The chief judge of each district court shall establish by
10 court rule a system for:

11 1. The filing of guardianship and conservatorship cases and
12 records which distinguish them from probate cases; and

13 2. Monitoring the filing of annual reports and inventories
14 required by this title for the purpose of assuring that the court
15 will be notified of annual reports as they fall due and whether or
16 not ~~said~~ the reports are filed.

17 SECTION 2. AMENDATORY 30 O.S. 2011, Section 1-115, is
18 amended to read as follows:

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

21 1. The district court of the county where the minor or the
22 incapacitated or partially incapacitated person resides. If the
23 person is a nonresident of this state, venue is in the county in
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1 which real property is located; if there is no real property, venue
2 is in the county in which personal property is located;

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

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

11 B. If a proceeding pursuant to the provisions of the Oklahoma
12 Guardianship and Conservatorship Act could be maintained in more
13 than one place in this state, the court in which the proceeding is
14 first commenced has the exclusive right to exercise jurisdiction
15 over the proceeding and proceed with the action. A court shall not
16 exercise jurisdiction over a proceeding for guardianship of a minor
17 pursuant to this title if, at the time the petition for guardianship
18 is filed, another court of this state is exercising jurisdiction
19 pursuant to Section 1-4-101 of Title 10A of the Oklahoma Statutes,
20 unless after notice to the parties in the deprived action, the
21 written consent of such court is obtained and filed in the
22 guardianship proceeding.

23 1. If proceedings concerning the same estate, minor, alleged
24 incapacitated or partially incapacitated person, or ward are

1 commenced in more than one court of this state, the court in which a
2 proceeding was first commenced shall continue to hear the matter and
3 determine venue. If the court where the proceeding was first filed
4 determines that venue is properly in another court, it shall
5 transfer the proceeding to the other court.

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

9 3. Upon request of a court-appointed guardian who is a relative
10 of the ward, a court may transfer the guardianship to the county of
11 the guardian's residence. If the guardian is not a relative of the
12 ward, a court may transfer the guardianship upon good cause shown.

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

16 SECTION 3. AMENDATORY 30 O.S. 2011, Section 2-101, is
17 amended to read as follows:

18 Section 2-101. A. The court of each county, when it appears
19 necessary or convenient, may appoint guardians for the persons and
20 estates, or either, or both of them, of minors.

21 B. Such appointment may be made on the verified petition of a
22 relative or other person in behalf of such minor.

23 C. 1. Before making the appointment, the court may receive an
24 investigation and report regarding the background and home of the

1 prospective guardian. The investigation and report of the
2 prospective guardian and placement restrictions and requirements
3 shall be made pursuant to the requirements of the Oklahoma Adoption
4 Code. In determining whether to require a home study pursuant to
5 the provisions of this paragraph, the court shall balance the need
6 for a home study to protect the best interests of the minor with the
7 ability of the prospective guardian to pay for the home study.

8 2. a. Costs of the home study shall be assessed against any
9 private child-placing agency having custody of the
10 child, or the person having legal custody of the child
11 or the prospective guardians of the child.

12 b. (1) For any child in the custody of the Department of
13 Human Services or the Department of Juvenile
14 Justice, the applicable Department shall conduct
15 or provide for the home study for such child as
16 required by the Oklahoma Children's Code or the
17 Oklahoma Juvenile Code.

18 (2) The Department of Human Services or the
19 Department of Juvenile Justice shall not be
20 required by any court to conduct or provide for a
21 home study and report to the court on
22 guardianship placements for any child that is not
23 in the custody of either Department.

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1 3. An order appointing a guardian of the minor who has a parent
2 living or other person legally responsible for the child shall
3 comply with the provisions of Section 2-108 of this title.

4 D. In addition, before making the appointment, the court must
5 cause notice of the hearing on the petition for appointment of a
6 guardian for a minor to be given in the form required by the court
7 to the minor if the minor has attained the age of fourteen (14) as
8 of the date the petition is filed. The court shall also cause
9 notice to be sent to the following persons:

10 1. The then-living parents of the minor and any other person
11 having custody of the minor, if such parent or person is not one of
12 the petitioners;

13 2. If the minor has no then-living parent, then to one of the
14 then-living grandparents who is not one of the petitioners and who
15 is not married to one of the petitioners; and

16 3. If there is no such then-living grandparent or if there is
17 no such then-living grandparent whose address is known to the
18 petitioner, then notice shall be given to an adult relative, if any,
19 of the minor residing in the county in which the petition was filed.

20 E. Such notice shall be mailed to each person, entitled to
21 notice pursuant to this section, at that person's address as last-
22 known to the petitioner, at least ten (10) days prior to the date
23 set by the court for hearing on the petition; provided, however,
24 notice to the parents of the minor shall be personally served.

1 Provided, the court may direct a shorter notice period if the court
2 deems such shorter notice period to be appropriate under the
3 circumstances. If there is no person other than the minor who is
4 entitled to notice, or if the address of any person, other than the
5 minor, who is entitled to notice is not known to the petitioner, the
6 petition shall so allege. The court may direct that notice, other
7 than notice to the minor if the minor has attained the age of
8 fourteen (14), be waived or be given to any person or persons other
9 than the minor in such manner as the court determines and directs.

10 SECTION 4. AMENDATORY 30 O.S. 2011, Section 3-115, is
11 amended to read as follows:

12 Section 3-115. A. The court may appoint a special guardian for
13 a person eighteen (18) years of age or older who appears to be or
14 has been found to be an incapacitated or partially incapacitated
15 person when it appears:

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

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

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

4 C. The court may appoint an attorney, separate and apart from
5 the petitioner's attorney, for the subject of the proceeding who
6 does not have legal representation and either cannot afford a
7 private attorney or cannot retain counsel due to incapacity and may
8 proceed to hear the petition as same pertains to appointment of a
9 special guardian with or without notice. If notice is required, the
10 notice shall set a time for hearing on the petition within seventy-
11 two (72) hours. Notice shall be served on:

12 1. The subject of the proceeding;

13 2. The attorney of the subject of the proceeding, if any;

14 3. The spouse of the subject of the proceeding, if any, and if
15 the spouse is not the petitioner; and

16 4. At least one other adult relative of the subject of the
17 proceeding or any other person who is not the petitioner, as
18 directed by the court.

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

22 D. The court may without notice appoint a special guardian upon
23 the filing of the petition, upon presentation of evidence of the
24 incapacity of the subject of the proceeding, upon a showing that an

1 immediate or reasonably foreseeable serious physical harm to the
2 subject of the proceeding or serious impairment of the financial
3 resources of ~~said~~ the person will result from a delay, and upon
4 presentation of a proposed emergency plan of care for the subject of
5 the proceeding. Whenever a special guardian is immediately
6 appointed as provided by this subsection, the court shall cause a
7 copy of the petition, order and letters of special guardianship to
8 be served on:

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

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

17 E. The court shall grant the special guardian only those powers
18 necessary to act with respect to the particular emergency, as
19 determined by the court. The special guardian shall be granted only
20 powers to accomplish acts that are both supported by the proposed
21 emergency plan of care and found necessary by the court. Power to
22 change the place of residence of the subject of the proceeding shall
23 be specifically granted by the court upon a showing that the needs
24 of the subject of the proceeding cannot be met within such subject's

1 present residential arrangements. The court's approval shall be
2 required for any changes in either the emergency plan of care or the
3 specified powers of the special guardian. The letters for a special
4 guardian shall state that the person is a special guardian, the date
5 of the expiration of the special guardianship, and the specific
6 power or powers of the special guardian.

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

11 G. The court shall not require bond if the appointment is over
12 the person only, and may require or waive bond if the appointment is
13 as to the property of the ward.

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

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

22 SECTION 5. This act shall become effective November 1, 2012.

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