

1                   **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2                                   STATE OF OKLAHOMA

3                                   1st Session of the 54th Legislature (2013)

4   HOUSE BILL 1374

                                  By: Virgin

7                                   AS INTRODUCED

8           An Act relating to notice by publication; amending 10  
9           O.S. 2011, Section 7505-4.1, which relates to  
10          adoption without parental consent; providing for  
11          affidavit when parental identity is established but  
12          location of parent is unknown; providing for notice  
13          by publication; establishing due diligence actions to  
14          attempt to locate parent; amending 43 O.S. 2011,  
15          Section 105, which relates to dissolution of marriage  
16          petition and summons; providing for affidavit when  
17          location of respondent is unknown; providing for  
18          notice by publication; establishing due diligence  
19          actions to attempt to locate respondent; and  
20          providing an effective date.

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

22           SECTION 1.        AMENDATORY        10 O.S. 2011, Section 7505-4.1, is  
23   amended to read as follows:

24           Section 7505-4.1 A. If a consent to adoption or permanent  
          relinquishment for adoption has not been obtained from both parents  
          of a minor who is the subject of a petition for adoption, and the  
          rights of the nonconsenting parent or parents have not previously  
          been terminated, the petitioner for adoption, a consenting parent,

1 or a legal guardian or legal custodian of the minor to be adopted  
2 must file an application to the court stating the reason that the  
3 consent or relinquishment of the parent or parents is not necessary.  
4 In the alternative, if the nonconsenting parent is a putative father  
5 of a minor born out of wedlock, the petitioner for adoption, a  
6 consenting parent, or a legal guardian or legal custodian of the  
7 minor may file an application to terminate the parental rights of  
8 the putative father. The grounds for terminating a putative father  
9 pursuant to this section shall be identical to the grounds for  
10 permitting an adoption without the consent of a parent, pursuant to  
11 Section 7505-4.2 of this title.

12 B. A hearing on an application for adoption without consent or  
13 an application to terminate parental rights cannot be combined with  
14 the hearing on the application for a final decree of adoption. For  
15 good cause shown, a hearing on the application for a final decree of  
16 adoption may be heard as early as the same day as a hearing on an  
17 application to terminate parental rights, without prejudice to the  
18 rights of any parties to appeal from the order terminating parental  
19 rights.

20 C. 1. Prior to the hearing on the application to permit the  
21 adoption of the minor without the consent or relinquishment of a  
22 parent, or the application to terminate the rights of a putative  
23 father filed pursuant to this section, notice of the hearing on the  
24 application and a copy of the application shall be served upon the

1 parent or putative father who is the subject of the application in  
2 the same manner as summons is served in civil cases, not less than  
3 fifteen (15) days prior to the hearing.

4 2. The notice shall contain the name of the parent, putative  
5 father, or if the father is unknown, the name of the child, date of  
6 birth of the child, the date of the hearing, and the ground or  
7 grounds for which application for adoption without consent or  
8 relinquishment or termination of parental rights is sought. The  
9 notice shall apprise the parent or putative father of the parent's  
10 legal rights and shall include a clear statement that failure to  
11 appear at the hearing shall constitute a denial of interest in the  
12 child, which denial may result, without further notice of this  
13 proceeding or any subsequent proceeding, in the granting of the  
14 application for adoption without consent or permanent relinquishment  
15 or in the termination of the putative father's parental rights and  
16 in the child's adoption.

17 3. If the identity or whereabouts of a parent or putative  
18 father are unknown, the court ~~must~~ shall determine whether the  
19 parent or putative father can be identified or located. If the  
20 identity of a parent is established, but the whereabouts of the  
21 parent are unknown, the petitioner for adoption shall provide an  
22 affidavit verifying the efforts made by petitioner to locate the  
23 parent as provided by subsection D of this section. Following an  
24 inquiry pursuant to Section 7505-4.3 of this title, if the court

1 finds that the identity ~~or whereabouts~~ of the putative father cannot  
2 be ascertained, and this fact is attested to by affidavit of the  
3 consenting parent, legal guardian or legal custodian of the minor,  
4 it shall order that notice be given by publication ~~and, if the~~  
5 ~~identity is known, that a copy be mailed to the last-known address~~  
6 ~~of the parent or putative father.~~ The notice shall be published  
7 once pursuant to the laws relating to the service of notice by  
8 publication in the county in which the petition to adopt is filed,  
9 and the hearing shall not be held for at least fifteen (15) days  
10 after publication of the notice. When notice is given by  
11 publication, an order terminating parental rights shall not become  
12 final for a period of fifteen (15) days from the date of the order.

13 4. A parent or putative father may waive such person's right to  
14 notice pursuant to this section. The waiver, signed by the parent  
15 or putative father, shall include a statement affirming that the  
16 person signing the waiver understands that the waiver shall  
17 constitute grounds for ordering adoption without consent of the  
18 parent or for the termination of the parental rights of a putative  
19 father pursuant to the provisions of this section and Section 7505-  
20 4.2 of this title. A putative father may waive his right to notice  
21 under this section, by signing an extrajudicial consent pursuant to  
22 Section 7503-2.6 of this title, or by waiving notice on a form filed  
23 with the Paternity Registry of the Department of Human Services, or  
24 by failing to register with the Paternity Registry of the Department

1 of Human Services after receiving a Notice of Plan for Adoption  
2 pursuant to Section 7503-3.1 of this title.

3 D. If the whereabouts of a parent are not known, an adoption  
4 petitioner shall establish that service cannot be made in any other  
5 manner than notice by publication and that due diligence has been  
6 made by filing an affidavit with the court. The actions listed in  
7 paragraphs 1 through 10 of this subsection shall be included in the  
8 affidavit, and the adoption petitioner shall indicate which action  
9 or actions have been taken by verifying that the adoption petitioner  
10 has:

11 1. Attempted to serve the parent at the last-known address of  
12 the parent by certified mail, restricted delivery, return receipt  
13 requested;

14 2. Attempted to contact or question the friends and family of  
15 the parent as well as any employers known to the adoption  
16 petitioner;

17 3. Checked telephone directories of the area of the last-known  
18 residence of the parent;

19 4. Used a locate and search company or private investigator to  
20 find the parent;

21 5. Searched for the parent using people-finder services on the  
22 Internet, and by searching Internet social networks, such as  
23 Facebook;

24

1       6. Contacted utility companies or service providers in the area  
2 of the last-known residence of the parent;

3       7. Searched property tax listings in the area of the last-known  
4 residence of the parent;

5       8. Searched the Oklahoma State Courts Network, or requested  
6 relevant information from the court clerk of the county of the last-  
7 known residence of the parent for any court cases involving the  
8 parent;

9       9. Searched court records outside of the state in any  
10 jurisdiction there is reason to believe the parent may reside; and

11       10. Made any additional attempts or searches as listed and  
12 described in the petition.

13       E. When a parent or putative father appears at the hearing and  
14 desires counsel but is indigent and cannot for that reason employ  
15 counsel, the court shall appoint counsel. In all counties having  
16 county indigent defenders, the county's indigent defenders shall  
17 assume the duties of representation in such proceedings.

18       ~~E.~~ F. At the hearing on an application to permit adoption  
19 without the consent or relinquishment of a parent, the court may  
20 determine whether the minor is eligible for adoption pursuant to  
21 Section 7505-4.2 of this title. At the hearing on an application to  
22 terminate the parental rights of a putative father, the court may,  
23 if it is in the best interests of the minor, determine that the  
24 consent of the putative father to the adoption of the minor is not

1 required, and terminate any parental rights which the putative  
2 father may have, as provided in Section 7505-4.2 of this title.

3 ~~F.~~ G. The court shall terminate the parental rights of a  
4 putative father if he fails to appear at the hearing on the  
5 application to terminate his parental rights or if he has waived  
6 notice pursuant to paragraph 4 of subsection C of this section.

7 ~~G.~~ H. A proceeding pursuant to this section for determination  
8 of necessity of parental consent or for termination of parental  
9 rights shall be heard by the court without a jury.

10 ~~H.~~ I. No order of the court shall be vacated, set aside, or  
11 annulled upon the application of any person who was properly served  
12 with notice in accordance with this section but failed to appear,  
13 unless the applicant has established by clear and convincing  
14 evidence that such failure to appear was due to unavoidable  
15 circumstances. Such application must be filed within ten (10) days  
16 of the date of the hearing at which the applicant failed to appear.  
17 No order of the court shall be vacated, set aside or annulled upon  
18 the application of any person who waived notice pursuant to  
19 paragraph 4 of subsection C of this section.

20 ~~I.~~ J.

21 1. a. An appeal may be taken from any final order, judgment,  
22 or decree terminating parental rights rendered  
23 pursuant to this section to the Supreme Court by any  
24

1 person aggrieved thereby, in the manner provided for  
2 appeals from the court as provided in this subsection.

3 b. An appeal from an order determining a child eligible  
4 for adoption which does not terminate parental rights  
5 may be taken in the same manner provided for appeals  
6 from the court as provided in this subsection. The  
7 failure of a parent to appeal from an order declaring  
8 a child eligible for adoption without consent of the  
9 parent which does not terminate parental rights shall  
10 not preclude such parent from asserting error in the  
11 order after the final decree is rendered.

12 2. In an appeal concerning the termination of parental rights  
13 for purposes of adoption pursuant to this section or from an order  
14 determining a child eligible for adoption which does not terminate  
15 parental rights pursuant to this section, the appellant's  
16 designation of record shall be filed in the trial court within ten  
17 (10) days after the date of the judgment or order. Appellee's  
18 counter designation of record shall be filed in the trial court ten  
19 (10) days after appellant's designation of record is filed in the  
20 trial court.

21 3. All appeals of cases concerning the termination of parental  
22 rights for purposes of adoption or an order determining a child  
23 eligible for adoption which does not terminate parental rights  
24 pursuant to this section shall be initiated by filing a petition in

1 error in the Supreme Court within thirty (30) days of the filing of  
2 the order, judgment, or decree appealed from. The record on appeal  
3 shall be completed within thirty (30) days from the filing of the  
4 petition in error. Any response to the petition in error shall be  
5 filed within twenty (20) days from the filing of the petition in  
6 error.

7 4. The briefing schedule is established as follows:

8 a. appellant's brief in chief shall be filed twenty (20)  
9 days after the trial court clerk notifies all parties  
10 that the record is complete and such notice has been  
11 filed in the office of the Clerk of the Supreme Court,

12 b. appellant's answer brief shall be filed fifteen (15)  
13 days after the appellant's brief in chief is filed,  
14 and

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

17 ~~J.~~ K. Any appeal when docketed should have priority over all  
18 cases pending on said docket. Adjudication of appeals and any other  
19 proceedings concerning the termination of parental rights or the  
20 determination that a child is eligible for adoption without consent  
21 which does not terminate parental rights pursuant to this section  
22 shall be expedited by the Supreme Court.

23 ~~K.~~ L. The pendency of an appeal shall not suspend the order of  
24 the district court regarding a minor, nor shall it remove the minor

UNDERLINED language denotes Amendments to present Statutes.  
**BOLD FACE CAPITALIZED** language denotes Committee Amendments.  
~~Strike thru~~ language denotes deletion from present Statutes.

1 from the custody of that court or of the person, institution, or  
2 agency to whose care such minor has been committed, unless the  
3 Supreme Court shall so order.

4 ~~L.~~ M. 1. The termination of parental rights terminates the  
5 parent-child relationship, including the parent's right to the  
6 custody of the child and the parent's right to visit the child, the  
7 parent's right to control the child's training and education, the  
8 necessity for the parent to consent to the adoption of the child,  
9 the parent's right to the earnings of the child, and the parent's  
10 right to inherit from or through the child. Provided, that this  
11 subsection shall not in any way affect the right of the child to  
12 inherit from the parent.

13 2. Termination of parental rights pursuant to this section  
14 shall not terminate the duty of either parent to support the minor  
15 child of such parent. The duty of the parent to support the minor  
16 child shall not be terminated until such time as a final decree of  
17 adoption has been entered.

18 3. A determination that the consent to adoption is not required  
19 from the parent of a minor shall not, by itself, act to relieve such  
20 parent of the obligation to provide for the support of the minor as  
21 otherwise required by law. The duty of the parent to support the  
22 minor child shall not be terminated until such time as a final  
23 decree of adoption has been entered.

24

1 SECTION 2. AMENDATORY 43 O.S. 2011, Section 105, is  
2 amended to read as follows:

3 Section 105. A. A proceeding for dissolution of marriage, an  
4 annulment of a marriage, or a legal separation shall be titled "In  
5 re the Marriage of \_\_\_\_\_ and \_\_\_\_\_".

6 B. The initial pleading in all proceedings under this title  
7 shall be denominated a petition. The person filing the petition  
8 shall be called the petitioner. A responsive pleading shall be  
9 denominated a response. The person filing the responsive pleading  
10 shall be called the respondent. Other pleadings shall be  
11 denominated as provided in the Rules of Civil Procedure, except as  
12 otherwise provided in this section.

13 C. The petition must be verified as true, by the affidavit of  
14 the petitioner.

15 D. A summons may issue thereon, and shall be served, or  
16 publication made, as in other civil cases.

17 E. Wherever it occurs in this title or in any other title of  
18 the Oklahoma Statutes or in any forms or court documents prepared  
19 pursuant to the provisions of the Oklahoma Statutes, the term  
20 "divorce" shall mean and be deemed to refer to a "dissolution of  
21 marriage" unless the context or subject matter otherwise requires.

22 F. If the whereabouts of the respondent are not known, the  
23 petitioner may serve notice by publication, provided that due  
24 diligence is demonstrated by filing an affidavit with the court.

1        The actions listed in paragraphs 1 through 10 of this subsection  
2 shall be included in the affidavit, and the petitioner shall  
3 indicate which action or actions have been taken by verifying that  
4 the petitioner has:

5        1. Attempted to serve the respondent at the last-known address  
6 of the respondent by certified mail, restricted delivery, return  
7 receipt requested;

8        2. Attempted to contact or question the friends and family of  
9 the respondent as well as any employers known to the petitioner;

10       3. Checked telephone directories of the area of the last-known  
11 residence of the respondent;

12       4. Used a locate and search company or private investigator to  
13 find the respondent;

14       5. Searched for the respondent using people-finder services on  
15 the Internet, and by searching Internet social networks, such as  
16 Facebook;

17       6. Contacted utility companies or service providers in the area  
18 of the last-known residence of the respondent;

19       7. Searched property tax listings in the area of the last-known  
20 residence of the respondent;

21       8. Searched the Oklahoma State Courts Network, or requested  
22 relevant information from the court clerk of the county of the last-  
23 known residence of the respondent for any court cases involving the  
24 respondent;

1        9. Searched court records outside of the state in any  
2 jurisdiction there is reason to believe the respondent may reside;  
3 and

4        10. Made any additional attempts or searches as listed and  
5 described in the petition.

6        SECTION 3. This act shall become effective November 1, 2013.

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8 COMMITTEE REPORT BY: COMMITTEE ON HUMAN SERVICES, dated 02/12/2013 -  
9 DO PASS.

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