

LEGISLATIVE BILL 375

Approved by the Governor March 24, 1999

Introduced by Thompson, 14

AN ACT relating to court records; to amend section 43-102, Reissue Revised Statutes of Nebraska, and section 30-2608, Revised Statutes Supplement, 1998; to provide for all guardianship and adoption filings to be kept by the clerk of the county court; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 30-2608, Revised Statutes Supplement, 1998, is amended to read:

30-2608. (a) The father and mother are the natural guardians of their minor children and are duly entitled to their custody and to direct their education, being themselves competent to transact their own business and not otherwise unsuitable. If either dies or is disqualified for acting, or has abandoned his or her family, the guardianship devolves upon the other except as otherwise provided in this section.

(b) In the appointment of a parent as a guardian when the other parent has died and the child was born out of wedlock, the court shall consider the wishes of the deceased parent as expressed in a valid will executed by the deceased parent. If in such valid will the deceased parent designates someone other than the other natural parent as guardian for the minor children, the court shall take into consideration the designation by the deceased parent. In determining whether or not the natural parent should be given priority in awarding custody, the court shall also consider the natural parent's acknowledgment of paternity, payment of child support, and whether the natural parent is a fit, proper, and suitable custodial parent for the child.

(c) The court may appoint a standby guardian for a minor whose parent is chronically ill or near death. The appointment of a guardian under this subsection does not suspend or terminate the parent's parental rights of custody to the minor. The standby guardian's authority would take effect, if the minor is left without a remaining parent, upon (1) the death of the parent, (2) the mental incapacity of the parent, or (3) the physical debilitation and consent of the parent.

(d) The court may appoint a guardian for a minor if all parental rights of custody have been terminated or suspended by prior or current circumstances or prior court order. A guardian appointed by will as provided in section 30-2606 whose appointment has not been prevented or nullified under section 30-2607 has priority over any guardian who may be appointed by the court but the court may proceed with an appointment upon a finding that the testamentary guardian has failed to accept the testamentary appointment within thirty days after notice of the guardianship proceeding.

(e) The petition and all other court filings for a guardianship proceeding shall be filed with the clerk of the county court. The party shall state in the petition whether such party requests that the proceeding be heard by the county court or, in cases in which a separate juvenile court already has jurisdiction over the child in need of a guardian under the Nebraska Juvenile Code, such separate juvenile court. Such proceeding is considered a county court proceeding even if heard by a separate juvenile court judge and an order of the separate juvenile court in such guardianship proceeding has the force and effect of a county court order. The testimony in a guardianship proceeding heard before a separate juvenile court judge shall be preserved as in any other separate juvenile court proceeding. The clerks of the district courts shall transfer all guardianship petitions and other guardianship filings which were filed with such clerks prior to the effective date of this act to the clerk of the county court where the separate juvenile court which heard the proceeding is situated. The clerk of such county court shall file and docket such petitions and other filings.

Sec. 2. Section 43-102, Reissue Revised Statutes of Nebraska, is amended to read:

43-102. Except as otherwise provided in the Nebraska Indian Child Welfare Act, any person or persons desiring to adopt a minor child or an adult child of such person's spouse shall file a petition for adoption signed and sworn to by the person or persons desiring to adopt. The consent or consents required by sections 43-104 and 43-105 or section 43-104.07, the documents required by section 43-104.07 or the documents required by sections 43-104.08

to 43-104.24, and a completed preplacement adoptive home study if required by section 43-107 shall be filed prior to the hearing required in section 43-103.

The county court of the county in which the person or persons desiring to adopt the child reside has jurisdiction of adoption proceedings, except that if a separate juvenile court already has jurisdiction over the child to be adopted under the Nebraska Juvenile Code, such separate juvenile court has concurrent jurisdiction with the county court in such adoption proceeding. The petition and all other court filings for an adoption proceeding shall be filed with the clerk of the county court. The party shall state in the petition whether such party requests that the proceeding be heard by the county court or, in cases in which a separate juvenile court already has jurisdiction over the child to be adopted under the Nebraska Juvenile Code, such separate juvenile court. Such proceeding is considered a county court proceeding even if heard by a separate juvenile court judge and an order of the separate juvenile court in such adoption proceeding has the force and effect of a county court order. The testimony in an adoption proceeding heard before a separate juvenile court judge shall be preserved as in any other separate juvenile court proceeding. The clerks of the district courts shall transfer all adoption petitions and other adoption filings which were filed with such clerks prior to the effective date of this act to the clerk of the county court where the separate juvenile court which heard the proceeding is situated. The clerk of such county court shall file and docket such petitions and other filings.

Except as set out in subdivisions (1)(b)(ii), (iii), and (iv) of section 43-107, an adoption decree shall not be issued until at least six months after an adoptive home study has been completed by the department or a licensed child placement agency.

Sec. 3. Original section 43-102, Reissue Revised Statutes of Nebraska, and section 30-2608, Revised Statutes Supplement, 1998, are repealed.