

1989 Assembly Bill 63

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1989 WISCONSIN ACT 161

AN ACT *to renumber* 48.837 (6) (b); *to amend* 48.14 (2) (b), 48.185 (2), 48.428 (1) and (2), 48.81 (1), 48.83 (1), 48.837 (5), 48.837 (6) (a) and 948.24 (2); *to repeal and recreate* subchapter XIX (title) of chapter 48; and *to create* 48.462, 48.82 (6), 48.831, 48.832, 48.837 (1m), 48.837 (6) (b) and (c) and 48.837 (8) of the statutes, **relating to:** adoptions, termination of parental rights and the guardianship status of children.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 48.14 (2) (b) of the statutes is amended to read:

48.14 (2) (b) The appointment and removal of a guardian of the person for a child under ss. 48.427, 48.428, 48.43, 48.831, 48.832 and 48.839 (4) (a) and ch. 880 and for a child found to be in need of protection or services under s. 48.13 because the child is without parent or guardian.

SECTION 2. 48.185 (2) of the statutes is amended to read:

48.185 (2) In an action under s. 48.41, venue shall be in the county where the birth parent or child resides at the time that the petition is filed. Venue for any proceeding under s. 48.363 or 48.365, or any other proceeding under subch. VIII when the child has been placed outside the home pursuant to a dispositional order under s. 48.345, shall be in the county where the dispositional order was issued, unless the child's county of residence has changed, or the parent of the child has resided in a different county of this state for 6 months. In either case, the court may, upon a motion and for good cause shown, transfer the case, along with all appropriate records, to the county of residence of the child or parent.

SECTION 3. 48.428 (1) and (2) of the statutes are amended to read:

48.428 (1) A court may place a child in sustaining care ~~whenever~~ if the court has terminated the parental

rights of the parent or parents of the child or has appointed a guardian for the child under s. 48.831 and the court finds that the child is unlikely to be adopted or that adoption is not in the best interest of the child.

(2) When a court places a child in sustaining care after an order under s. 48.427, the court shall transfer legal custody of the child to the county department or a licensed child welfare agency, transfer guardianship of the child to an agency listed in s. 48.427 (3) (a) 1. to 4. and place the child in the home of a licensed foster parent with whom the child has resided for 6 months or longer. Pursuant to such a placement, this licensed foster parent shall be a sustaining parent with the powers and duties specified in sub. (3).

SECTION 4. 48.462 of the statutes is created to read:

48.462 Notice of appeal. A person who initiates or intends to initiate an appeal from an order under s. 48.43 for the voluntary or involuntary termination of a parent's rights shall serve copies of any notice required under s. 809.30 on the guardian and the custodian named under s. 48.427 (3) or 48.428 (2).

SECTION 5. Subchapter XIX (title) of chapter 48 of the statutes is repealed and recreated to read:

CHAPTER 48

SUBCHAPTER XIX

ADOPTION OF MINORS; GUARDIANSHIP

(TO PRECEDE S. 48.81)

SECTION 6. 48.81 (1) of the statutes is amended to read:

48.81 (1) Except as provided under s. 48.839 (3) (b) or if an appointment of guardianship has been made under s. 48.831, a minor whose parental rights have been terminated under subch. VIII or in another state or a foreign jurisdiction.

SECTION 6m. 48.82 (6) of the statutes is created to read:

48.82 (6) No otherwise qualified person may be denied the benefits of this subchapter because of his or her race, color, ancestry or national origin.

SECTION 7. 48.83 (1) of the statutes is amended to read:

48.83 (1) The court of the county where the proposed adoptive parent or child is resides, upon the filing of a petition for adoption or for the adoptive placement of a child, has jurisdiction over the child until the petition is withdrawn, denied or granted. Venue shall be in the county where the proposed adoptive parent or child is resides at the time the petition is filed. The court may transfer the case to a court in the county in which the proposed adoptive parents reside.

SECTION 8. 48.831 of the statutes is created to read:

48.831 Appointment of guardian for child without a living parent. (1) **TYPE OF GUARDIANSHIP.** This section may be used for the appointment of a guardian of a child who does not have a living parent if a finding as to the adoptability of a child is sought. Chapter 880 applies to the appointment of a guardian for a child who does not have a living parent for all other purposes. An appointment of a guardian of the estate of a child who does not have a living parent shall be conducted in accordance with the procedures specified in ch. 880.

(1m) **PETITION.** Any of the following may file a petition for appointment of a guardian for a child who is believed to be in need of protection or services because he or she is without a living parent as described under s. 48.13 (1):

- (a) The department.
- (b) A county department.
- (c) A child welfare agency licensed under s. 48.61 (5) to accept guardianship.
- (d) A relative or family member of the child or a person whom the child has resided with and who has also acted as a parent of the child.

(e) A guardian appointed under ch. 880 whose resignation as guardian has been accepted by a court under s. 880.17.

(2) **REPORT.** If the department, county department or child welfare agency files a petition, it shall submit a report to the court containing as much of the information specified under s. 48.425 (1) (a) and (am) as is reasonably ascertainable and, if applicable, the information specified under s. 48.425 (1) (g). If the petition is filed by a relative or other person specified under sub. (1m) (d), the court shall order the department or a child welfare agency, if the department or agency consents, or a county

department to file a report containing the information specified in this subsection. The department, county department or child welfare agency shall file the report at least 5 days before the date of the fact-finding hearing on the petition.

(3) **FACT-FINDING HEARING.** The court shall hold a fact-finding hearing on the petition, at which any party may present evidence relevant to the issue of whether the child has a living parent. If the court finds that the child has a living parent, the court shall dismiss the petition or grant the petitioner leave to amend the petition to a petition under s. 48.42 (1).

(4) **DISPOSITIONAL HEARING.** (a) If the court, at the conclusion of the fact-finding hearing, finds that the child has no living parent, the court shall proceed to a dispositional hearing. Any party may present evidence, including expert testimony, relevant to the issue of disposition. In determining the appropriate disposition, the court shall consider any factors under s. 48.426 (3) (a) to (d) that are applicable.

(b) If the court finds that adoption is in the child's best interest, the court shall order that the child be placed in the guardianship and custody of one of the following:

- 1. A county department authorized to accept guardianship under s. 48.57 (1) (e) or (hm).
- 2. A child welfare agency licensed under s. 48.61 (5) to accept guardianship.
- 3. The department.

(c) If the court finds that adoption is not in the child's best interest, the court shall order that the child be placed in the guardianship of the department and place the child in the custody of a county department.

(d) Section 48.43 (5), (5m) and (7) applies to orders under pars. (b) and (c).

(e) The court shall order the custodian appointed under par. (b) or (c) to prepare a permanency plan under s. 48.38 for the child within 60 days after the date of the order. A permanency plan ordered under this paragraph is subject to review under s. 48.38 (5). In preparing a permanency plan, the department, county department or child welfare agency need not include any information specified in s. 48.38 (4) that relates to the child's parents or returning the child to his or her home. In reviewing a permanency plan, a court or panel need not make any determination under s. 48.38 (5) (c) that relates to the child's parents or returning the child to his or her home.

SECTION 9. 48.832 of the statutes is created to read:
48.832 Transfer of guardianship upon revocation of guardian's license. If the department revokes the license of a county department licensed under s. 48.57 (1) (e) or (hm) to accept guardianship, or of a child welfare agency licensed under s. 48.61 (5) to accept guardianship, the department shall file a motion in the court that appointed the guardian for each child in the guardianship of the county department or agency, requesting that the court transfer guardianship and custody of the child. The

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motion may specify a county department or child welfare agency that has consented to accept guardianship of the child. The court shall transfer guardianship and custody of the child either to the county department or child welfare agency specified in the motion or to another county department under s. 48.57 (1) (e) or (hm) or a child welfare agency under s. 48.61 (5) which consents to the transfer. If no county department or child welfare agency consents, the court shall transfer guardianship and custody of the child to the department.

SECTION 10. 48.837 (1m) of the statutes is created to read:

48.837 (1m) WRITTEN AGREEMENT. Any agreement between the birth parent and adoptive parent that relates to the payment of any expenses described in sub. (2) (d) shall be in writing, with the amount and purpose of the expenses enumerated, and made part of the petition filed under sub. (2).

SECTION 11. 48.837 (5) of the statutes is amended to read:

48.837 (5) ATTENDANCE AT HEARING. The child, if he or she is 12 years of age or over, and each petitioner shall attend the ~~hearings~~ hearing on the ~~petitions~~ petition under ~~this section sub. (2).~~ The child, if he or she is 12 years of age or over, and each parent having custody of the child shall attend the hearing on the petition under sub. (3). If the parent who has custody of the child consents and the court approves, the proposed adoptive parents may be present at the hearing on the petition under sub. (3). The court may, for good cause, waive the requirement that the child attend either of the hearing hearings.

SECTION 12. 48.837 (6) (a) of the statutes is amended to read:

48.837 (6) (a) The court shall hold the hearing on the petition under sub. (2) before the hearing on the petition required under sub. (3). ~~After the hearing on the petition under sub. (2), the court shall make findings on the allegations of the petition and the report ordered under sub. (4) (c) and make a conclusion as to whether placement in the home is in the best interest of the child.~~

SECTION 13. 48.837 (6) (b) of the statutes is renumbered 48.837 (6) (d).

SECTION 14. 48.837 (6) (b) and (c) of the statutes are created to read:

48.837 (6) (b) At the beginning of the hearing held under sub. (2), the court shall review any agreement that is attached to the petition in accordance with sub. (1m). The court shall determine whether any conditions specified in the agreement are coercive to the birth parent. Making the payment of the birth parent's expenses that are permitted under s. 948.24 (1) (a) or (c) conditional in any part upon transfer or surrender of the child or the termination of parental rights or the finalization of the adoption creates a rebuttable presumption of coercion. Upon a finding of coercion, the court shall do one of the following:

1. Dismiss the petitions under subs. (2) and (3).
2. Amend the agreement under sub. (1m) to delete any coercive conditions, if the parties agree to the amendment.

(c) After the hearing on the petition under sub. (2), the court shall make findings on the allegations of the petition and the report ordered under sub. (4) (c) and make a conclusion as to whether placement in the home is in the best interest of the child.

SECTION 15. 48.837 (8) of the statutes is created to read:

48.837 (8) ATTORNEY REPRESENTATION. The same attorney may not represent the adoptive parents and the birth mother or birth father.

SECTION 16. 948.24 (2) of the statutes is amended to read:

948.24 (2) This section does not apply to placements under s. 48.839, ~~48.98 or 48.988.~~

SECTION 17. Initial applicability. (1) CIRCUIT COURTS. The treatment of sections 48.185 (2), 48.81 (1), 48.83 (1) and 48.837 (1m), (5), (6) (a) and (c) and (8) of the statutes and the creation of section 48.837 (6) (b) of the statutes first apply to termination of parental rights petitions and adoption petitions that are filed on the effective date of this subsection.