



WISCONSIN LEGISLATIVE COUNCIL

CHILD GUARDIANSHIP AND CUSTODY

Room 412 East (Joint Finance Room), State Capitol
Madison, Wisconsin

October 20, 2004
10:00 a.m. - 12:30 p.m.

[The following is a summary of the October 20, 2004 meeting of the Special Committee on Child Guardianship and Custody. The file copy of this summary has appended to it a copy of each document prepared for or submitted to the committee during the meeting. A digital recording of the meeting is available on our Web site at <http://www.legis.state.wi.us/lc/2004studies.htm>.]

Call to Order and Roll Call

Chair Lasee called the meeting to order. The roll was called and a quorum was present.

COMMITTEE MEMBERS PRESENT: Sen. Alan Lasee, Chair; Reps. Sheryl Albers, Stephen Nass, Ann Nischke, Jeffrey Wood, and Bob Ziegelbauer; and Public Members Rosemary Albrecht, Thomas Donegan, Sandra Cardo Gorsuch, Mary Kasparek, Betty Klug, and Patti Seger.

COMMITTEE MEMBER ABSENT: Sen. Robert Jauch.

COUNCIL STAFF PRESENT: Russ Whitesel, Senior Staff Attorney; Philip Cardis, Staff Attorney; and Rachel Veum, Support Staff.

APPEARANCES: Theresa L. Roetter, Hill, Glowacki, Jaeger & Hughes, LLP, Madison; and Mark Mitchell and John Tuohy, Department of Health and Family Services, Madison.

Approval of the Minutes of the September 22, 2004 Meeting

Representative Nischke moved, seconded by Representative Albers, to approve the minutes of the committee's September 22, 2004 meeting. The motion carried on a voice vote.

Remarks From Chair Lasee

Chair Lasee told committee members that it is important that they focus on its assignment of: (1) determining the role of a guardian; and (2) adopting an updated interstate child custody law. Chair Lasee noted that the committee was not going to deal with general custody issues beyond our basic assignment or with issues relating to guardians ad litem. Chair Lasee explained that the committee's charge does not include those items and more importantly the committee's time does not permit consideration of those complex issues.

Chair Lasee told the committee that he would like for them to conclude their work in three or four meetings so the committee's recommendations could be introduced at the beginning of the next legislative session. Chair Lasee further stated that his goal was to reach consensus on proposals that are likely to be adopted and not likely to be controversial.

Description of Materials Distributed

Russ Whitesel, Senior Staff Attorney, Legislative Council staff, provided a description of the documents that were mailed to committee members and distributed at the meeting. Mr. Whitesel also noted that a copy of s. 48.023, Stats., which describes the duty and authority of a guardian under current law, was distributed for the committee to consider.

Presentations by Invited Speakers

Theresa L. Roetter, Hill, Glowacki, Jaeger & Hughes, LLP, Madison, gave a presentation about Wisconsin juvenile guardianships. Ms. Roetter discussed the basic components of guardianship in Wisconsin. Ms. Roetter noted that all minors may be subject to guardianship and that separate guardians can be appointed for an estate or person.

Ms. Roetter noted that guardianship does not terminate a parent's parental rights, but simply shares care, custody, and control of a child with the guardian. She also explained that anyone may petition for the appointment of a guardian of a minor. Also, Ms. Roetter noted that although they might be useful, currently no time restrictions exist on when a petition for guardianship of a minor must be heard.

Ms. Roetter briefly discussed ch. 48 guardianships which address specialized guardianship situations. Specifically, she discussed s. 48.977, which provides guardianship for children in need of protective services (CHIPS). Also, Ms. Roetter touched on s. 48.978, which provides for "standby guardians" for children. She noted this particular provision is generally used when a parent is terminally ill. In addition, Ms. Roetter discussed the relationship between ch. 48 and ch. 880 guardianships. She noted that a ch. 48 guardianship does not prevent someone from filing a ch. 880 guardianship for the same child. Also, she noted that a ch. 48 guardianship does not affect the rights or responsibilities of a ch. 880 guardianship.

Ms. Roetter explained current law with respect to the rights and responsibilities of a guardian. She noted that a guardian has the duty and authority to make important decisions in matters having a permanent effect on the life and development of the child and the duty to be concerned about the child's general welfare. She noted that this authority allows the guardian to consent to the following: (1) major

medical, psychiatric, and surgical treatment; (2) choice of school; (3) choice of religion; (4) consent to marry; (5) consent to enlistment in the U.S. Armed Forces; and (6) consent to apply for a motor vehicle operator's license. In addition, a guardian also has the right to have access to a child's records in order to make decisions. Further, the guardian has the right to represent the child in legal actions. Lastly, Ms. Roetter noted that a guardian has the right to make other decisions of substantial legal significance concerning the child, but not the authority to deny the child the assistance of legal counsel as required by ch. 48.

Ms. Roetter explained that a guardian has the right and duty of reasonable visitation with the child. Also, she noted that a guardian has the rights and responsibilities of legal custody, except when legal custody has been vested in another person. Also, Ms. Roetter discussed the standard a court considers in granting guardianship. She stated that a petitioner for guardianship must prove that a parent is either unfit or unable to adequately care for the child or that there are compelling reasons for awarding custody to a third party. Ms. Roetter further explained that "compelling reasons" include abandonment, persistent neglect of parental responsibilities, extended disruption of parental custody, or other similar extraordinary circumstances that would drastically affect the welfare of the child.

Ms. Roetter stated that two documents establish the legal authority of a guardian: (1) order in determination of guardianship; and (2) certified letters of guardianship. Also, Ms. Roetter stated that a guardian can be removed "for cause." In that circumstance, a notice and hearing is required for removal "for cause." To terminate a guardianship, Ms. Roetter explained that an order must be entered ending the legal relationship between a guardian and a minor. She noted that a court has some discretion in this instance and that there is some variability with respect to how certain courts in various counties treat these situations. Ms. Roetter also explained how a guardianship terminates in certain situations, such as when a minor ward lawfully marries or when a minor reaches the age of majority.

Mark Mitchell, Manager, Child Welfare Policy Development Section, Bureau of Programs and Policies, Division of Children and Family Services, Department of Health and Family Services (DHFS), and John Tuohy, Director, Office of Policy Evaluation and Planning, Division of Children and Family Services, DHFS, spoke to committee members about the Wisconsin subsidized guardianship program being developed by DHFS. The DHFS representatives stated that the subsidized guardianship program is part of a comprehensive guardianship permanency initiative to improve permanency outcomes for children in out-of-home care by promoting the use of permanent legal guardianship as a permanency option. DHFS stated that the program will be operated under a federal Title IV-E Waiver to provide ongoing payments to persons becoming legal guardians of children in foster care, similar to the adoption assistance program for children who are adopted. They stated that the targeted population for the subsidized guardianship program is children placed with relatives licensed as foster parents. DHFS stated that the subsidized guardianship program could make guardianship more feasible as a permanency outcome and improve the permanency options available for children placed with relatives.

DHFS noted that the federal waiver request for the program was initially submitted in September 2002 and resubmitted in January 2004. Also, DHFS stated that enabling state legislation was needed to clarify the use of guardianships as a permanency option and to establish the subsidized guardianship program. DHFS noted that they did introduce in the 2004 Legislative Session a bill which put forth the needed enabling legislation and establishment of the subsidized guardianship program; however, it was not acted upon during the session. DHFS stated that their intent was to reintroduce the bill, with some

modifications, in the 2005 Legislative Session. If that necessary legislation is passed, as either an individual bill or as part of the biennial budget bill, then DHFS intends to implement the subsidized guardianship program for July 2005.

DHFS stated that the subsidized guardianship program under the federal waiver will be implemented initially in Milwaukee County by the Bureau of Milwaukee Child Welfare. They stated that approximately 750 children in Milwaukee over the five-year period of the waiver are expected to receive subsidized guardianship payments. DHFS noted that the waiver request includes the potential to expand the program to the rest of the state. DHFS also noted that as a condition of the federal waiver, the guardianship program must be cost neutral and an independent program evaluation must be conducted.

Discussion of Committee Assignment

Mr. Whitesel provided a description of LRB-3592/1, which relates to the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA). Mr. Whitesel informed members that if they had any questions or further comments on the draft, to either contact the chair or Legislative Council staff with that feedback. Also, Mr. Whitesel stated that it is expected that the committee will look to consider voting on the revised draft at the next meeting.

After some discussion, Chair Lasee requested Legislative Council staff to create a drafting subcommittee to examine the possibility of creating a new subchapter that would specifically address juvenile guardianships or to make changes in the juvenile guardian appointment process to clarify the duties and responsibilities of a juvenile guardian. Chair Lasee stated that the drafting subcommittee should report back its suggestions to the full committee at the next scheduled meeting.

Other Business

There was no other business brought before the committee.

Plans for Future Meetings

The next meeting of the Special Committee will be held on *Tuesday, December 14, 2004, at 10:00 a.m., in Room 201 Southeast, State Capitol, Madison.*

Adjournment

The meeting was adjourned at 12:30 p.m.

PGC:rv