

DOMESTIC RELATIONS CODE (23 PA.C.S.) - AMEND STANDBY GUARDIANS

Act of Nov. 24, 1998, P.L. 811, No. 103

CL. 23

Session of 1998

No. 1998-103

SB 1051

AN ACT

Amending Title 23 (Domestic Relations) of the Pennsylvania Consolidated Statutes, providing for standby guardians for minors.

The General Assembly finds and declares as follows:

(1) Existing law does not provide adequately for the needs of a parent who is terminally ill or who is periodically incapable of caring for the needs of a minor due to the parent's incapacity or debilitation resulting from illness and who desires to make long-term plans for the future of a minor without terminating or limiting in any way the parent's legal rights.

(2) It is the intent of the General Assembly to create an expeditious procedure which will enable a parent who is terminally ill or periodically incapable or debilitated to make long-term plans for a minor without terminating or limiting in any manner parental rights.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Title 23 of the Pennsylvania Consolidated Statutes is amended by adding a chapter to read:

CHAPTER 56

STANDBY GUARDIANSHIP

Subchapter

- A. Preliminary Provisions
- B. General Provisions

SUBCHAPTER A

PRELIMINARY PROVISIONS

Sec.

5601. Short title of chapter.

5602. Definitions.

5603. Scope.

§ 5601. Short title of chapter.

This chapter shall be known and may be cited as the Standby Guardianship Act.

§ 5602. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Alternate." A person with all the rights, responsibilities and qualifications of a standby guardian who shall become a standby guardian only in the event that the currently designated standby guardian is unable or refuses to fulfill his obligation.

"Attending physician." A physician who has primary responsibility for the treatment and care of the designator. If physicians share responsibility, another physician is acting on the attending physician's behalf or no physician has primary responsibility, any physician who is familiar with the designator's medical condition may act as an attending physician under this chapter.

"Coguardian." A person who along with a parent shares physical or legal custody, or both, of a child.

"Consent." A written authorization signed by the designator in the presence of two witnesses who shall also sign the writing. The witnesses must be 18 years of age or older and not named in the designation.

"Court." Family Court Division or domestic relations section of a court of common pleas unless otherwise provided by local rules of court.

"Debilitation." A person's chronic and substantial inability as a result of a physically incapacitating disease or injury to care for a dependent minor.

"Designation." A written document naming the standby guardian. A parent may designate an alternate standby guardian in the same writing.

"Designator." A parent or a legal guardian who appoints a standby guardian.

"Determination of debilitation." A written finding made by an attending physician which states that the designator suffers from a physically incapacitating disease or injury. No identification of the illness in question is required.

"Determination of incapacity." A written finding made by an attending physician which states the nature, extent and probable duration of the designator's mental or organic incapacity.

"Incapacity." A chronic and substantial inability, resulting from a mental or organic impairment, to understand the nature and consequences of decisions concerning the care of the designator's dependent minor and a consequent inability to care for the minor.

"Standby guardian." A person named by a designator to assume the duties of coguardian or guardian of a minor and whose authority becomes effective upon the incapacity, debilitation and consent, or death of the minor's parent.

"Triggering event." A specified occurrence stated in the designation which empowers a standby guardian to assume the powers, duties and responsibilities of guardian or coguardian.

§ 5603. Scope.

The provisions of Chapter 53 (relating to custody) and 20 Pa.C.S. Ch. 25 (relating to wills) shall apply to standby guardians, coguardians, guardians and any alternates unless otherwise specified in this chapter. Nothing in this chapter shall be construed to deprive any parent, custodial or noncustodial, of legal parental rights. Nothing in this chapter shall be construed to relieve any parent, custodial or noncustodial, of a duty to support a child under the provisions of Chapter 43 (relating to support matters generally).

SUBCHAPTER B GENERAL PROVISIONS

Sec.

5611. Designation.

5612. Petition for approval of a designation.

5613. Authority of standby guardian.

5614. Revocation.

5615. Conflicting documents.

5616. Bond.

§ 5611. Designation.

(a) General rule.--A custodial parent or legal guardian may designate a standby guardian by means of a written designation unless the minor has another parent or adoptive parent:

(1) whose parental rights have not been terminated or relinquished;

(2) whose whereabouts are known; and

(3) who is willing and able to make and carry out the day-to-day child-care decisions concerning the minor.

(b) Exception where other parent consents.--Notwithstanding subsection (a), a parent or legal guardian may designate a standby guardian with the consent of the other parent.

(c) Contents.--

(1) A designation of a standby guardianship shall identify the custodial parent or legal guardian making the designation, the minor or minors, any other parent, the standby guardian and the triggering event or events upon which a named standby guardian shall become a coguardian or guardian. If desired, different standby guardians may be designated for different triggering events. The designation shall also include the signed consent of the standby guardian and the signed consent of any other parent or an indication why the other parent's consent is not necessary.

(2) The designation shall be signed by the designating parent or legal guardian in the presence of two witnesses who are 18 years of age or older and not otherwise named in the designation, who shall also sign the designation. If the parent or legal guardian is physically unable to sign the designation, the parent or legal guardian may direct another person not named in the designation to sign on the parent's or the legal guardian's behalf in the presence of the parent or legal guardian and the witnesses.

(3) A parent or legal guardian may also but need not designate an alternate in the designation.

(4) A designation may but need not be in the following form:

I (insert name of designator) do hereby appoint (insert name, address and telephone number of standby guardian) as the standby guardian of (insert name(s) of minor(s)) to take effect upon the occurrence of the following triggering event or events (insert specific triggering events).

I hereby revoke all former wills and codicils to the extent that there is a conflict between those formerly executed documents and this, my duly executed standby guardian designation.

I am the (insert designator's relationship to minor(s)) of (insert name(s) of minor(s)).

(Insert name(s) of minor(s)'s other parent(s)) is the father/mother of (insert name(s) of minor(s)).

His/her address is: _____

(Check all that apply):

- _____ He/she died on (insert date of death).
_____ His/her parental rights were terminated or
relinquished on (insert date of termination or
relinquishment).
_____ His/her whereabouts are unknown. I understand that
all living parents whose rights have not been
terminated must be given notice of this designation
pursuant to the Pennsylvania Rules of Civil
Procedure or a petition to approve this designation
may not be granted by the court.
_____ He/she is unwilling and unable to make and carry
out day-to-day child-care decisions concerning the
minor.
_____ He/she consents to this designation and has signed
this form below.

By this designation I am granting (insert name of
standby guardian) the authority to act for 60 days
following the occurrence of the triggering event as a
coguardian with me or, in the event of my death, as
guardian of my minor child(ren).

Optional: I hereby nominate (insert name, address
and telephone number of alternate standby guardian) as
the alternate standby guardian to assume the duties of
the standby guardian named above in the event the standby
guardian is unable or refuses to act as a standby
guardian.

If I have indicated more than one triggering event,
it is my intent that the triggering event which occurs
first shall take precedence. If I have indicated "my
death" as the triggering event, it is my intent that the
person named in the designation to be standby guardian
for my minor child(ren) in the event of my death shall be
appointed as guardian of my minor child(ren) when I die.

It is my intention to retain full parental rights to
the extent consistent with my condition and to retain the
authority to revoke the standby guardianship if I so
choose.

This designation is made after careful reflection,
while I am of sound mind.

(Date)

(Designator's signature)

(Witness's signature)

(Witness's signature)

(Number and Street)

(Number and Street)

(City, State and Zip Code)

(City, State and Zip Code)

(If applicable: I (insert name of other parent)
hereby consent to this designation.

(Date)

(Signature of other parent)

(Address of other parent)

I, (insert name of standby guardian) hereby accept my nomination as standby guardian of (insert minor(s)'s name(s)). I understand that my rights and responsibilities toward the minor child(ren) named above will become effective upon the occurrence of the above-stated triggering event or events. I further understand that in order to continue caring for the child(ren), I must file a petition with the court within 60 days of the occurrence of the triggering event.

(Date)

(Signature of standby guardian)

§ 5612. Petition for approval of a designation.

(a) General rule.--A petition for court approval of a designation under this chapter may be made at any time by filing with the court a copy of the designation. If the triggering event has not occurred on or before the time of filing, only the designator may file the petition. If the triggering event has occurred on or before the time of filing, the standby guardian named in the designation may file the petition, and the petition shall also contain one of the following:

- (1) A determination of the designator's incapacity.
- (2) A determination of the designator's debilitation and the designator's signed and dated consent.
- (3) A copy of the designator's death certificate.

(b) Notice.--

(1) The petitioner shall notify any person named in the designation within ten days of the filing of the petition and of any hearing thereon.

(2) If the petition alleges that a nondesignating parent cannot be located, that parent shall be notified in accordance with the notice provisions of the Pennsylvania Rules of Civil Procedure in Custody Matters. No notice is necessary to a parent whose parental rights have previously been terminated or relinquished.

(c) Jurisdiction.--For purposes of determining jurisdiction under this chapter, the provisions of Subchapter B of Chapter 53 (relating to child custody jurisdiction) shall apply.

(d) Presumptions.--In a proceeding for judicial appointment of a standby guardian, a designation shall constitute a rebuttable presumption that the designated standby guardian is capable of serving as coguardian or guardian. When the designator is the sole surviving parent, when the parental rights of any noncustodial parent have been terminated or relinquished or when all parties consent to the designation, there shall be a rebuttable presumption that entry of the approval order is in the best interest of the child. In any case, if the court finds entry of the approval order to be in the best interest of the child, the court shall enter an order approving the designation petition.

(e) Approval without hearing.--Approval of the designation without a hearing is permitted when the designator is the sole surviving parent, when the parental rights of any noncustodial

parent have been terminated or relinquished or when all parties consent to entry of the approval order.

(f) Hearing.--In the event a hearing is required, it shall be conducted in accordance with the proceedings set forth in Chapter 53 (relating to custody).

(g) Court appearance.--The designator need not appear in court if the designator is medically unable to appear.

§ 5613. Authority of standby guardian.

(a) General rule.--The standby guardian shall have authority to act as coguardian or guardian upon the occurrence of the triggering event. The commencement of the standby guardian's authority to act as coguardian pursuant to a determination of incapacity, a determination of debilitation and consent or the receipt of consent alone shall not itself divest the designator of any parental rights but shall confer upon the standby guardian concurrent or shared custody of the child. The commencement of the standby guardian's authority to act as guardian pursuant to the death of the designator shall not confer upon the standby guardian more than physical and legal custody of the child as defined in Chapter 53 (relating to custody). A coguardian shall assure frequent and continuing contact with and physical access to the child and shall further assure the involvement of the parent, to include, to the greatest extent possible, in the decision making on behalf of the child.

(b) Effect of filing.--The designator may file a petition for approval of a designation with the court at any time. If the petition is approved by the court before the occurrence of the triggering event, the standby guardian's authority will commence automatically upon the occurrence of the triggering event. No further petition or confirmation is necessary. If a designation has been made but the petition for approval of the designation has not been filed and a triggering event has occurred, the standby guardian shall have temporary legal authority to act as a coguardian or guardian of the minor without the direction of the court for a period of 60 days. The standby guardian shall within that period file a petition for approval in accordance with section 5612 (relating to petition for approval of a designation). If no petition is filed within the specified 60 days, the standby guardian shall lose all authority to act as coguardian or guardian. If a petition is filed but the court does not act upon it within the 60-day period, the temporary legal authority to act as coguardian or guardian shall continue until the court orders otherwise.

(c) Parental rights.--The commencement of a coguardian's or guardian's authority under this subchapter may not itself divest a parent or legal guardian of any parental or guardianship rights.

(d) Restored capacity.--If a licensed physician determines that the designator has regained capacity, the coguardian's authority which commenced pursuant to the occurrence of a triggering event shall become inactive, and the coguardian shall return to having no authority. Failure of a coguardian to comply with this provision and to immediately return the minor to the designator's care shall entitle the designator to an emergency

hearing in a court of competent jurisdiction.

§ 5614. Revocation.

(a) Prepetition.--Prior to a petition being filed under section 5612 (relating to petition for approval of a designation), the designator may revoke a standby guardianship by simple destruction of the designation and notification of the revocation to the standby guardian.

(b) Postpetition.--After a petition has been filed, the designator may revoke a standby guardianship by:

- (1) executing a written revocation;
- (2) filing the revocation with the court; and
- (3) notifying the persons named in the designation of the revocation in writing.

(c) Unwritten revocation.--Regardless of whether a petition has been filed, an unwritten revocation may be considered by the court if it can be proven by clear and convincing evidence.

§ 5615. Conflicting documents.

If a parent has appointed a testamentary guardian of the person or estate of a minor by will under 20 Pa.C.S. § 2519 (relating to testamentary guardian) and there is a conflict between that will and a duly executed written standby guardian designation, the document latest in date of execution shall prevail.

§ 5616. Bond.

In no event shall a standby guardian be required to post bond prior to the occurrence of the triggering event. The court may require a bond if the standby guardian is designated the coguardian or guardian of the estate of a minor but will not require a bond for the coguardianship or guardianship of the person of a minor.

Section 2. This act shall take effect in 60 days.

APPROVED--The 24th day of November, A. D. 1998.

THOMAS J. RIDGE