LEGISLATURE OF THE STATE OF IDAHO

Sixtieth Legislature First Regular Session - 2009

IN THE SENATE

SENATE BILL NO. 1048

BY JUDICIARY AND RULES COMMITTEE

AN ACT

RELATING TO THE PROTECTION OF PERSONS WITH DISABILITIES; AMENDING SECTION 15-5-206, IDAHO CODE, TO PROHIBIT CERTAIN PERSONS FROM BEING APPOINTED AS A GUARDIAN OF A MINOR WITH AN EXCEPTION; AMENDING SECTION 15-5-207, IDAHO CODE, TO PROVIDE FOR PETITION CONTENTS; AMENDING SECTION 15-5-209, IDAHO CODE, TO REQUIRE THE GUARDIAN TO TAKE CERTAIN REASONABLE MEASURES AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 15-5-303, IDAHO CODE, TO PROVIDE FOR ADDITIONAL PETITION CONTENTS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 15-5-404, IDAHO CODE, TO PROVIDE FOR ADDITIONAL PETITION CONTENTS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 15-5-407, IDAHO CODE, TO PROVIDE FOR CLOSED HEARINGS AND TO MAKE TECHNICAL CORRECTIONS; AND AMENDING SECTION 15-5-409a, IDAHO CODE, TO CLARIFY LANGUAGE, TO PROVIDE COURT DISCRETION REGARDING THE COMPROMISE OF A DISPUTED CLAIM FOR MONEY AGAINST A THIRD PERSON AND TO MAKE TECHNICAL CORRECTIONS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 15-5-206, Idaho Code, be, and the same is hereby amended to read as follows:

15-5-206. COURT APPOINTMENT OF GUARDIAN OF MINOR – QUALIFICATIONS – PRIORITY OF MINOR'S NOMINEE. The court may appoint as guardian any person whose appointment would be in the best interests of the minor. The court shall appoint a person nominated by the minor, if the minor is fourteen (14) years of age or older, unless the court finds the appointment contrary to the best interests of the minor. No convicted felon, or person whose residence is the minor's proposed residence or will be frequented by the minor and is frequented by a convicted felon, shall be appointed as a guardian of the minor, unless the court finds by clear and convincing evidence that such appointment is in the best interest of the minor.

SECTION 2. That Section 15-5-207, Idaho Code, be, and the same is hereby amended to read as follows:

15-5-207. COURT APPOINTMENT OF GUARDIAN OF MINOR – PROCEDURE. (1) Proceedings for the appointment of a guardian may be initiated by any relative of the minor, the minor if he is fourteen (14) years of age, a de facto custodian of the minor, or any person interested in the welfare of the minor. The petition shall include a statement:

(a) Whether the person who is the proposed guardian is a convicted felon; and

(b) Whether a convicted felon other than the proposed guardian resides at or frequents the residence which is the minor's proposed residence, the full legal name of such convicted felon and any details regarding such felony reasonably known to the petitioner.

(2) Notice of the time and place of hearing of a petition for the appointment of a guardian of a minor is to be given by the petitioner in the manner prescribed by section 15-1-401 of this code to:

(a) The minor, if he is fourteen (14) or more years of age;

(b) The person who has had the principal care and custody of the minor during the sixty (60) days preceding the date of the petition;

(c) The de facto custodian of the minor, if any; and

(d) Any living parent of the minor; provided however, that the court may waive notice to a living parent of the minor who is, or is alleged to be, the father of the minor if:

(i) The father was never married to the mother of the minor and has failed to register his paternity as provided in section 16-1504(4), Idaho Code; or

(ii) The court has been shown to its satisfaction circumstances that would allow the entry of an order of termination of parental rights pursuant to section 16-2005, Idaho Code, even though termination of parental rights is not being sought as to such father.

(3) Upon hearing, if the court finds that a qualified person seeks appointment, venue is proper, the required notices have been given, the requirements of section 15-5-204 of this part have been met, and the welfare and best interests of the minor will be served by the requested appointment, it shall make the appointment. In other cases the court may dismiss the proceedings, or make any other disposition of the matter that will best serve the interest of the minor.

(4) If necessary, the court may appoint a temporary guardian, with the status of an ordinary guardian of a minor, but the authority of a temporary guardian shall not last longer than six (6) months.

(5) The court shall appoint an attorney to represent the minor if the court determines that the minor possesses sufficient maturity to direct the attorney. If the court finds that the minor is not mature enough to direct an attorney, the court shall appoint a guardian ad litem for the minor. The court may decline to appoint an attorney or guardian ad litem if it finds in writing that such appointment is not necessary to serve the best interests of the minor or if the Idaho department of health and welfare has legal custody of the child.

(6) Letters of guardianship must indicate whether the guardian was appointed by will or by court order.

SECTION 3. That Section 15-5-209, Idaho Code, be, and the same is hereby amended to read as follows:

15-5-209. POWERS AND DUTIES OF GUARDIAN OF MINOR. A guardian of a minor has the powers and responsibilities of a parent who has not been deprived of custody of his minor and unemancipated child, except that a guardian is not legally obligated to provide from his own funds for the ward and is not liable to third persons by reason of the parental relationship for acts of the ward. In particular, and without qualifying the foregoing, a guardian has the following powers and duties:

(~~a~~1) He must take reasonable care of his ward's personal effects and commence protective proceedings if necessary to protect other property of the ward.

(~~b~~2) He may receive money payable for the support of the ward to the ward's parent, guardian or custodian under the terms of any statutory benefit or insurance system, or any private contract, devise, trust, conservatorship or custodianship. He also may receive money or property of the ward paid or delivered by virtue of section 15-5-103 of this code. Any sums so received shall be applied to the ward's current needs for support, care and education. He must exercise due care to conserve any excess for the ward's future needs unless a conservator has been appointed for the estate of the ward, in which case excess shall be paid over at least annually to the conservator. Sums so received by the guardian are not to be used for compensation for his services except as approved by order of court or as determined by a duly appointed conservator other than the guardian. A guardian may institute proceedings to compel the performance by any person of a duty to support the ward or to pay sums for the welfare of the ward.

(~~c~~3) The guardian is empowered to facilitate the ward's education, social, or other activities and to authorize medical or other professional care, treatment, or advice. A guardian is not liable by reason of this consent for injury to the ward resulting from the negligence or acts of third persons unless it would have been illegal for a parent to have consented. A guardian may consent to the marriage or adoption of his ward.

(~~d~~4) A guardian must report the condition of his ward and of the ward's estate which has been subject to his possession or control, as ordered by court on petition of any person interested in the minor's welfare or as required by court rule.

(5) The guardian shall take reasonable measures to ensure that a convicted felon does not reside with, care for or visit the minor without court approval.

SECTION 4. That Section 15-5-303, Idaho Code, be, and the same is hereby amended to read as follows:

15-5-303. PROCEDURE FOR COURT APPOINTMENT OF A GUARDIAN OF AN INCAPACITATED PERSON. (~~a~~1) The incapacitated person or any person interested in his welfare may petition for a finding of incapacity and appointment of a guardian, limited or general. It is desirable to make available the least restrictive form of guardianship to assist persons who are only partially incapable of caring for their own needs. Recognizing that every individual has unique needs and differing abilities, the public welfare should be promoted by establishing a guardianship that permits incapacitated persons to participate as fully as possible in all decisions affecting them; that assists such persons in meeting the essential requirements for their physical health and safety, in protecting their rights, in managing their financial resources, and in developing or regaining their abilities to the maximum extent possible; and that accomplishes these objectives through providing, in each case, the form of guardianship that least interferes with legal capacity of a person to act in his own behalf. The petition shall include:

(a) ~~a~~A plan in reasonable detail for the proposed actions of the guardian regarding the affairs of the ward after appointment of the guardian, to the extent reasonably known to the petitioner at the time of filing of the petition. If the complete mental, physical and emotional status, and the health care needs and other needs of the ward are not reasonably known to the petitioner at the time the petition is filed, or if the petitioner is not the proposed guardian, then the guardian shall submit to the court, and to all interested persons, in writing, within thirty (30) days after appointment of the guardian, a reasonably detailed plan covering such matters. Such plan must also be given to any person who

has filed a request for notice under section 15-5-406, Idaho Code, and to other persons as the court may direct. Such plan shall be given to all such persons in accordance with the methods set forth in section 15-1-401, Idaho Code. If the plan changes during any time period between the periodic reports of the guardian, the modified plan shall be filed with the next report as a part thereof;

(b) A statement:

(i) Whether the person who is the proposed guardian is a convicted felon; and

(ii) Whether a convicted felon other than the proposed guardian resides at or frequents the residence which is the incapacitated person's proposed residence, the full legal name of such convicted felon and any details regarding such felony reasonably known to the petitioner; and

(c) A full description of any and all:

(i) Existing medical or financial powers executed by the incapacitated person; and

(ii) Trusts of any nature executed by the incapacitated person, or of which the incapacitated person is a beneficiary.

(~~b~~2) Upon the filing of a petition, the court shall set a date for hearing on the issues of incapacity and unless the allegedly incapacitated person has counsel of his own choice, it shall appoint an attorney to represent him in the proceeding, who shall have the powers and duties of a guardian ad litem. The person alleged to be incapacitated shall be examined by a physician or other qualified person appointed by the court who shall submit his report in writing to the court. The court may, in appropriate cases, appoint a mental health professional, defined as a psychiatrist, psychologist, gerontologist, licensed social worker, or licensed counselor, to examine the proposed ward and submit a written report to the court. The person alleged to be incapacitated also shall be interviewed by a visitor sent by the court. The visitor shall also interview the person who appears to have caused the petition to be filed and any person who is nominated to serve as guardian, and visit the present place of abode of the person alleged to be incapacitated and the place it is proposed that he will be detained or reside if the requested appointment is made and submit his report in writing to the court. Where possible without undue delay and expenses beyond the ability to pay of the allegedly incapacitated person, the court, in formulating the judgment, may utilize the service of any public or charitable agency that offers or is willing to evaluate the condition of the allegedly incapacitated person and make recommendations to the court regarding the most appropriate form of state intervention in his affairs.

(~~c~~3) Unless excused by the court for good cause, the proposed guardian shall attend the hearing. The person alleged to be incapacitated is entitled to be present at the hearing in person, and to see or hear all evidence bearing upon his condition. He is entitled to be represented by counsel, to present evidence and subpoena witnesses and documents, to examine witnesses, including the court-appointed physician, mental health professional, or other person qualified to evaluate the alleged impairment, as well as the court-appointed visitor, and otherwise participate in the hearing. The hearing may be a closed hearing upon the request of the person alleged to be incapacitated or his counsel and a showing of good cause. After appointment, the guardian shall immediately provide written notice of any proposed change in the permanent address of the ward to the court and all interested parties.

SECTION 5. That Section 15-5-404, Idaho Code, be, and the same is hereby amended to read as follows:

15-5-404. ORIGINAL PETITION FOR APPOINTMENT OR PROTECTIVE ORDER. (~~a~~1) The person to be protected, any person who is interested in his estate, affairs or welfare including his parent, guardian, or custodian, or any person who would be adversely affected by lack of effective management of his property and affairs may petition for the appointment of a conservator or for other appropriate protective order.

(~~b~~2) The petition shall set forth to the extent known~~:~~:

(a) ~~t~~The interest of the petitioner;

(b) ~~t~~The name, age, residence and address of the person to be protected;

(c) ~~t~~The name and address of his guardian, if any;

(d) ~~t~~The name and address of his nearest relative known to the petitioner;

(e) ~~a~~A general statement of his property with an estimate of the value thereof, including any compensation, insurance, pension or allowance to which he is entitled; ~~and~~

(f) A statement:

(i) Whether the person who is the proposed conservator is a convicted felon; and

(ii) Whether a convicted felon other than the proposed conservator resides at or frequents the residence which is the incapacitated person's proposed residence, the full legal name of such convicted felon and any details regarding such felony reasonably known to the petitioner;

(g) A full description of any and all:

(i) Existing medical or financial powers executed by the incapacitated person; and

(ii) Trusts of any nature executed by the incapacitated person, or of which the incapacitated person is a beneficiary;

(h) ~~t~~The reason why appointment of a conservator or other protective order is necessary~~:~~; and

(i) If the appointment of a conservator is requested, the petition also shall set forth the name and address of the person whose appointment is sought and the basis of his priority for appointment.

(~~c~~3) The petition shall include a financial plan for the proposed actions of the conservator regarding the financial affairs of the protected person after appointment of the conservator, to the extent reasonably known to the petitioner at the time of filing of the petition. If the complete assets, income, expenses, debts and other financial concerns of the protected person are not reasonably known to the petitioner at the time the petition is filed, or if the petitioner is not the proposed conservator, then the conservator shall submit to the court, and to all interested persons, in writing, within the ninety (90) day inventory, as a part thereof, a financial plan covering all of the assets, income, expenses, debts and other financial concerns of the protected person. Such financial plan must also be given to any person who has filed a request for notice under section 15-5-406, Idaho Code, and to other persons as the court may direct. Such financial plan shall be given to all such persons in accordance with the methods set forth in section 15-1-401, Idaho Code. If the financial plan changes during any time period between the periodic reports of the conservator, the modified financial plan shall be filed with the next report as a part thereof.

SECTION 6. That Section 15-5-407, Idaho Code, be, and the same is hereby amended to read as follows:

15-5-407. PROCEDURE CONCERNING HEARING AND ORDER ON ORIGINAL PETITION. (~~a~~1) Upon receipt of a petition for appointment of a conservator or other protective order because of minority, the court shall set a date for hearing on the matters alleged in the petition. If, at any time in the proceeding, the court determines that the interests of the minor are or may be inadequately represented, it must appoint an attorney to represent the minor, giving consideration to the choice of the minor if fourteen (14) years of age or older. A lawyer appointed by the court to represent a minor has the powers and duties of a guardian ad litem. The hearing may be a closed hearing upon the court's own motion, by request of the minor, if fourteen (14) years of age or older, by request of counsel for the minor regardless of age or by request of the guardian ad litem, and upon a showing of good cause.

(~~b~~2) Upon receipt of a petition for appointment of a conservator or other protective order for reasons other than minority, the court shall set a date for hearing.

Unless the person to be protected has counsel of his own choice, the court may appoint a lawyer to represent him who then has the powers and duties of a guardian ad litem. If the alleged disability is mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs, or chronic intoxication, the court may direct that the person to be protected be examined by a physician designated by the court, preferably a physician who is not connected with any institution in which the person is a patient or is detained. The court may send a visitor to interview the person to be protected. The visitor may be a guardian ad litem or an officer or employee of the court. The hearing may be a closed hearing upon the court's own motion, by request of the person alleged to be incapacitated, by request of his counsel, by request of an interested person or by request of the guardian ad litem, and upon a showing of good cause.

(~~c~~3) After hearing, upon finding that a basis of the appointment of a conservator or other protective order has been established, the court shall make an appointment or other appropriate order.

SECTION 7. That Section 15-5-409a, Idaho Code, be, and the same is hereby amended to read as follows:

15-5-409a. COMPROMISE OF DISPUTED CLAIM OF MINOR – PROCEDURE. (1) When a minor shall have a disputed claim for money against a third person, the father or mother or both with whom the minor resides and who has the care and custody of such minor shall have the right to compromise such claim, but before the compromise shall be valid or of any effect the same shall be approved by the court of the county where the minor resides upon a verified petition in writing, regularly filed with said court. If the court approves such compromise ~~he~~:

(a) The court may direct the money paid to the father or mother of said minor to be subject to the provisions of section 15-5-103, Idaho Code~~, or he~~;

(b) The court, or any other court of competent jurisdiction, may direct the money be paid subject to the provisions of an appropriate protective order which ~~he~~ the court, or any other court of competent jurisdiction, may issue~~, or he~~;

(c) The court may require that the money be paid to a conservator appointed pursuant to chapter 5, part 4, of this code; or ~~he~~

(d) The court may approve the compromise under the provisions of chapter 14, title 68, Idaho Code.

(2) The court may require that, if funds are distributed to either of the minor's parents, the parent post a bond using the parent's funds for the bond, or the court may require that the funds be deposited with a corporate or professional fiduciary selected by the court or that the funds be placed in a sequestered or blocked account in the minor's name and social security number and that no funds can be withdrawn from any of these accounts unless there is a court order or the minor reaches the age of eighteen (18) years, or the age of twenty-one (21) years if such age is so provided in a conservatorship proceeding regarding the minor.

(3) No filing fee shall be charged for the filing of any petition for leave to compromise as provided herein.