House
Legislative
Analysis
Section

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GUARDIANSHIP OF MINOR

House Bill 4859 as introduced
First Analysis (9-22-93)

Sponsor: Rep. David M. Gubow
Committee: Judiciary

THE APPARENT PROBLEM:

In response to various criticisms of the law on guardianships, among them concerns raised by the tragic death of young Antwon Dumas, the legislature enacted Public Act 313 of 1990, which explicitly allowed the probate court to appoint a guardian when the parent(s) had allowed a minor to reside with another person and had not provided the other person with legal authority for the minor's care. Companion legislation, Public Act 315, gave a guardian standing to seek custody of the child from the circuit court. Public Act 313 also required placement plans for children placed under limited guardianships, required annual court review of guardianship placements for children under six years of age, specified procedures for termination of both limited and regular guardianships for children, and authorized the probate court to order various investigations and evaluations in child guardianship situations. (For further details on the circumstances leading to enactment of Public Act 313, see Background Information.)

Various shortcomings of the current law on guardianships have been identified, however. Under the new procedures, when a parent petitions the probate court to have a guardianship dissolved, the court may do either of two things, depending on the best interests of the minor: terminate the guardianship and return the child to the parent, or continue the guardianship for one year and order compliance with a placement plan. At the end of the year, the court is to either return the child to the parent(s) or refer the matter to the Department of Social Services (DSS) for further action (this could be the first step in foster care placement or termination of parental rights). However, many situations exist where there may be good reason to continue the guardianship. For example, there may be a situation where parental fitness is questionable (but to attempt termination of parental rights would be inappropriate), and the child is doing comparatively well with the guardian, but the guardian cannot afford to exercise the option to petition for custody. To address situations such as this, which are not uncommon in some jurisdictions, it has been suggested that the probate court be allowed to continue a guardianship indefinitely if certain conditions are met.

Another fairly common difficulty arises when a custodial parent dies or disappears, and a child has been taken in by family members. For example, an unmarried mother may die and her parents take her child into their home, but if a man (who may have until that point been a stranger to the child) claims paternity and commences a custody action, the informal guardianship with the maternal family is thrown into question. To preserve a stable situation pending the outcome of a custody dispute, it has been suggested that the probate court be authorized to appoint a family member as guardian for a child when the child's mother dies or disappears.

THE CONTENT OF THE BILL:

The bill would amend the probate code's provisions on guardians of minors to do the following:

** authorize the probate court to appoint a family member as guardian when the parent with custody of a minor dies or is missing, and the other parent had not been granted legal custody. This provision would not apply if the minor's parents were married at the time of the death or disappearance.

** expand on a provision that states that the probate court may order reasonable visitation and contact of the minor ward with his or her parents. The bill would in addition specify that the court must grant visitation in accordance with the best interests of the minor. The court would have to presume that the best interests of the minor would be to have a strong relationship with both parents. The bill would state that a minor has the right to visitation with a parent in frequency, duration, and type reasonably calculated to promote a strong relationship with the parent, unless clear and

convincing evidence on the record indicated that the visitation terms were not in the best interests of the minor. (The bill's language on visitation echoes Section 7a of the Child Custody Act, MCL 722.27a.)

** authorize the probate court to continue a guardianship indefinitely under certain circumstances. At present, when a petition is filed to terminate a guardianship (other than certain limited guardianships), the court must either terminate the guardianship or continue it for one year after the date of the hearing. Under the bill, the court would have a third option, to continue the guardianship, if the minor had resided with the guardian for at least one year and the parent(s) had failed to provide the minor with parental care, love, guidance, and attention appropriate to the child's age and individual needs, with the result that the parent-child relationship had been disrupted.

** amend a section that refers to a section of the Child Custody Act to conform to a proposed version of House Bill 4064 (which is at present in conference committee). This amendment would take effect only if House Bill 4064 was enacted.

MCL 700.424

BACKGROUND INFORMATION:

In 1990, while the legislature deliberated and subsequently enacted Public Acts 313 and 315, reports were that the numbers of children living with their parents' relatives or friends, rather than with their parents, had been increasing dramatically in recent years, and this rise highlighted a number of deficiencies in the law on guardianships and child custody. In one of the saddest and most publicized examples, an aunt and uncle were granted limited guardianship of an infant upon his mother's request. Five years later, the child's mother petitioned the probate court to end the guardianship, the state supreme court held that a limited guardianship must be terminated upon petition of the parent at whose request the limited guardianship was created, and the child, Antwon Dumas, was returned to his mother. Although the supreme court also held that the probate court could issue various orders to assist the child in the transition from the home of the guardian to the home of the parent, no transition plan was devised for Antwon Dumas. Less than a year after the supreme court issued its decision (In re Rankin, In re Dumas, 433 Mich. 592 [1989]), Antwon Dumas was beaten to death; his mother and her boyfriend plead guilty to a reduced charge of manslaughter on October 25, 1990. (The plea bargain reportedly was offered to avoid having another child in the home testify against her mother.)

The Dumas case illustrated a trend in the use of limited guardianships. Such guardianships originally functioned to enable a child to receive medical care and be enrolled in school while a parent was away for a fixed period of time--say away at school ore receiving military training. However, more recently it appeared that limited guardianships were being used to place unwanted children with family members, or to forestall action by the authorities investigating allegations of abuse or neglect in the parent's home. Such children were perceived to be at risk, but the probate code offered little to ensure adequate monitoring of the creation or termination of limited guardianships.

Problems with the law on guardianships were not confined to those of limited guardianships, however. A regular guardianship for a minor could be created only when parental rights had been terminated or suspended or when necessary for the immediate physical well-being of the minor. Thus, when a grandmother who had long been caring for a child abandoned by its mother attempted to enroll the child in school, she discovered that she could not because she lacked the status of a guardian, and the court could not appoint her guardian if parental rights had not been terminated. Public Acts 313 and 315 were enacted to remedy these and other problems associated with the law on guardianships.

FISCAL IMPLICATIONS:

There is no fiscal information at present. (9-21-93)

ARGUMENTS:

For:

The bill would add some flexibility to the probate code's provisions on guardianships for minors. Current options are limited, and seem to presume that either the child should go to live with parents after a set period of time or parental rights should be terminated. There are many situations that occupy middle ground, where parents may not yet be ready to assume parental duties, and the guardianship is working well for the child, and where alternative placement or efforts to terminate parental rights would be ill-advised. In addition, the

bill would recognize and address situations such as that which recently arose in Oakland County, where a young mother disappeared and was declared dead based on the amount of her blood in her car, her mother and stepfather took in her young daughter, and the prime suspect in the murder case claimed paternity and sought custody of the child. In such situations, there should be clear authority for competent and loving family members to be appointed guardians at least until custody was established. Any concerns about the bill's potential to erode parental rights would be addressed with stronger provisions for parental visitation; parents would not be left out of the equation. With the bill, the law on guardianships would better reflect the realities of many child-rearing situations, and would better accommodate the needs of children.

For:

Until the legislature resolves questions over how the Child Custody Act should provide for third-party custody, guardianships must be used in assuring that children are not unnecessarily removed from stable and loving homes. The bill thus would expand statutory provisions for guardianships, while continuing to subordinate guardianship arrangements to any custody orders that might be issued.

Against:

Guardianships are supposed to be temporary arrangements that ratify parental wishes. Some might argue that the bill would tend to subvert this intent and intrude on parental rights.

POSITIONS:

The Domestic Violence Project of Ann Arbor supports the concept of the bill. (9-21-93)

The Grandparents Rights Organization supports the concept of the bill. (9-21-93)

The Michigan Probate Judges Association supports the concept of the bill. (9-21-93)