

CHAPTER 802

S.B. No. 455

An Act relating to procedures and practices in suits affecting the parent-child relationship; amending the Family Code, as amended, by amending Section 11.03, Subsections (a) and (c) of Section 11.04, Subsection (j) and the heading of Section 11.06, Subsection (c) of Section 11.07, Subsection (c) of Section 11.09, Subsection (c) of Section 11.12, Subsection (b) of Section 14.05, and Subsections (b) and (g) of Section 14.08; redesignating and amending Subsections (b) of Section 11.15, (e) and (f) of Section 14.03, and (e) of Section 14.09; adding Subsection (i) to Section 14.09; and repealing Chapter 447, Acts of the 56th Legislature, Regular Session, 1959 (Article 4639c, Vernon's Texas Civil Statutes).

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Section 11.03, Family Code, as amended, is amended to read as follows:

"Section 11.03. WHO MAY BRING SUIT. (a) An original [A] suit affecting the parent-child relationship may be brought at any time by:

"(1) a parent of the child;

"(2) [any person with an interest in the child, including] the child (through a representative authorized by the court);

"(3) a custodian or person having rights of visitation with or access to the child appointed by an order of a court of another state or country or by a court of this state before January 1, 1974;

"(4) a guardian of the person or of the estate of the child;

"(5) a governmental entity;

"(6); any agency of the state or of a political subdivision of the state, and] any authorized agency;

"(7) the alleged or probable father of an illegitimate child filing in accordance with Chapter 13 of this code, but not otherwise;

"(8) a[- A] person who has had actual [an interest in a child if the person has had] possession and control of the child for at least six months immediately preceding the filing of the petition; or [is named in Section 11.00(a) of this code as being entitled to service by citation]

"(9) a person designated as the managing conservator in a revoked or unrevoked affidavit of relinquishment under Section 15.03 of this code or to whom consent to adoption has been given in writing under Section 16.05 of this code.

"(b) An original suit affecting the parent-child relationship seeking managing conservatorship may be brought by a grandparent or by any other person deemed by the court to have had substantial past contact with the child sufficient to warrant standing to do so, if there is satisfactory proof to the court that:

"(1) the child's environment with the parent or parents, the managing conservator, or the custodian may endanger the child's physical health or significantly impair the child's emotional development; or

"(2) both parents, the surviving parent, or the managing conservator or custodian either filed the petition or consented to the suit.

"(c) An original suit affecting the parent-child relationship seeking possessory conservatorship may be brought by a grandparent or other person deemed by the court to have had substantial past contact with the child sufficient to warrant standing to do so only by intervening in a pending suit affecting the parent-child relationship filed by a person authorized to do so under Subsection (a) or (b) of this section. However, access to the child by a grandparent is governed by the standards established by Section 14.03 of this code.

"(d) An original suit affecting the parent-child relationship seeking only an adoption, or for termination of the parent-child relationship joined with a petition for adoption, may be brought by:

"(1) a stepparent of the child;

"(2) an adult who, as the result of a placement for adoption, has had actual possession and control of the child at any time during the 30-day period immediately preceding the filing of the petition;

"(3) an adult who has had actual possession and control of the child for at least two months during the three-month period immediately preceding the filing of the petition; or

"(4) another adult whom the court determines to have had substantial past contact with the child sufficient to warrant standing to do so.

"(e) A petition for further action may be brought by a managing or a possessory conservator or by any person or entity who would be authorized to file an original suit affecting the parent-child relationship as provided by this section.

"(f) A motion to modify under Section 14.08 of this code may be filed by any party affected by the prior order or the portion of the decree to be modified.

"(g) Except as provided by Subsection (h) of this section, if the parent-child relationship between the child and every living parent of the child has been terminated, a suit affecting the parent-child relationship may not be brought by:

"(1) a former parent whose parent-child relationship with the child has been terminated by court decree;

"(2) the biological father of the child; or

"(3) a family member or relative, by blood, adoption, or marriage, of either a former parent whose parent-child relationship has been terminated or of the biological father of the child.

“(h) The limitations on filing suit imposed by Subsection (g) of this section do not apply to any person who:

“(1) has a continuing right to possession of or access to the child under an existing court order; or

“(2) has the consent of the child’s managing conservator, guardian, or legal custodian to bring the suit.”

SECTION 2. Subsections (a) and (c), Section 11.04, Family Code, as amended, are amended to read as follows:

“(a) Except as otherwise provided in this subtitle, an original [a] suit affecting the parent-child relationship shall be brought in the county where the child resides, unless:

“(1) another court has continuing exclusive jurisdiction under Section 11.05 of this code; or

“(2) venue is fixed by Section 3.55 of this code.”

“(c) A child resides in the county where his parents (or parent if only one parent is living) reside, except that:

“(1) ~~if a managing conservator has been appointed by court order or designated in an affidavit of relinquishment, or~~ if a custodian for the child has been appointed by order of a court of this state before January 1, 1974, the child resides in the county where the ~~managing conservator or~~ custodian resides;

“(2) if a guardian of the person has been appointed by order of a county or probate court and a managing conservator has not been appointed, the child resides in the county where the guardian of the person resides;

“(3) if the parents of the child do not reside in the same county and if ~~neither~~ a managing conservator, a custodian, or ~~nor~~ a guardian of the person has not been appointed, the child resides in the county where the parent having care and control of the child resides;

“(4) if the child is under the care and control of an adult other than a parent and (A) ~~neither~~ a managing conservator, a custodian, or ~~nor~~ a guardian of the son has not been appointed or (B) the whereabouts of the parent and ~~managing conservator or~~ the guardian of the person is unknown or (C) the person whose residence would otherwise determine ~~determines~~ the residence of the child under this section has left the child under the care and control of the adult, the child resides where the adult has actual possession, care, and control of the child resides;

“(5) if a guardian or custodian of the child has been appointed by order of a court of another state or nation, the child resides in the county where the guardian or custodian resides if that person resides in this state; or

“(6) if it appears that the child is not under the care and control of an adult, the child resides where he is found.”

SECTION 3. Subsection (j), Section 11.06, Family Code, as amended, is amended to read as follows:

“(j) The court transferring a proceeding shall send to the proper court in the county to which transfer is made the complete files in all matters affecting the child, certified copies of all entries in the minutes, and a certified copy of any decree of dissolution of marriage issued in a suit joined with the suit affecting the parent-child relationship. *The transferring court shall keep a copy of the transferred files.* If the transferring court retains jurisdiction of another child who was the subject of the suit, the court shall send a copy of the complete files to the court to which the transfer is made and shall keep the original files.”

SECTION 4. Subsection (c), Section 11.07, Family Code, as amended, is amended to read as follows:

“(c) On the receipt by a court of continuing jurisdiction of a petition requesting further action concerning the child, a motion to modify the decree, or a contempt motion with respect to a court order concerning the child ~~in the court of continuing jurisdiction~~, the clerk shall file the petition or motion and all other papers relating to the request for further action or to the motion in the file of the suit affecting the parent-child relationship under the same docket number as the prior proceeding without additional letters, digits, or special designations, except that if the petition requests the adoption of the child and if the petition alleges that the child has been placed for adoption with the petitioners by the Texas Department of Human Resources or by an agency authorized by the department to place children for adoption, the clerk shall file the petition and all other papers relating to the suit in a new file having a new docket number.”

SECTION 5. Subsection (c), Section 11.09, Family Code, is amended to read as follows:

“(c) Citation ~~is~~ ~~except in a suit in which termination of the parent-child relationship is sought, citation~~ on the filing of an original [a] petition in a suit affecting the parent-child relationship, a petition requesting further action under Section 11.07 of this code, or a motion to

modify under Section 14.08 of this code [~~or notice of a hearing~~] shall be issued and served as in other civil cases [~~except that citation or notice may be given by registered or certified mail; return receipt requested. In such cases, the clerk shall mail the citation and a copy of the petition to the person so notified marked for delivery to the addressee only. The filing of the returned receipt indicating delivery by registered or certified mail to the proper person shall be sufficient proof of the fact of service.~~

“(iii) *In a suit in which termination of the parent/child relationship is sought, citation on the filing of a petition or notice of a hearing shall be issued and served as in other civil cases.*”

SECTION 6. Subsection (c), Section 11.12, Family Code, is amended to read as follows:

“(c) The agency or person making the social study shall file its findings and conclusions with the court on a date set by the court. The report shall be made a part of the record of the suit; however, the disclosure of its contents to the jury is subject to the rules of evidence. *In a contested case, the agency or person making the social study shall furnish copies of the study to the attorneys for the parties before the earlier of:*

“(1) *the seventh day after the day the social study is completed; or*

“(2) *the fifth day before the date of commencement of the trial.*”

SECTION 7. Subsection (b), Section 11.15, Family Code, as added by Section 5, Chapter 424, Acts of the 68th Legislature, Regular Session, 1983, is redesignated as Section 11.155, Family Code, without affecting Subsection (b), Section 11.15, Family Code, as added by Section 2, Chapter 298, Acts of the 68th Legislature, Regular Session, 1983, and is amended to read as follows:

“*Section 11.155. INCLUSION OF SOCIAL SECURITY NUMBERS IN DECREE.* [(b)] A decree in a suit affecting the parent-child relationship [~~; in which any person is ordered to pay child support;~~] must contain the social security number of each party to the suit, including the child, *except that the child's social security number is not required if the child has not been assigned a social security number.*”

SECTION 8. Subsection (e), Section 14.03, Family Code, as amended by Section 4, Chapter 402, Acts of the 68th Legislature, Regular Session, 1983, is redesignated as Subsection (f) to read as follows:

“(f) [(e)] If the court finds that it is in the best interests of the child as provided in Section 14.07 of this code, the court may grant reasonable access rights to either the maternal or paternal grandparents of the child; and to either the natural maternal or paternal grandparents of the child whose parent-child relationship has been terminated or who has been adopted before or after the effective date of this code. This relief may not be granted unless one of the child's legal parents at the time the relief is requested is the child's natural parent. The court may issue any necessary orders to enforce the decree.”

SECTION 9. Subsections (e) and (f), Section 14.03, Family Code, as added by Section 2, Chapter 328, Acts of the 68th Legislature, Regular Session, 1983, are redesignated as Subsections (g) and (h) to read as follows:

“(g) [(e)] In any decree providing for possessory interests in a child the court may, if it finds that it is in the best interests of the child because of a history of conflicts and difficulties in resolving the issue of conservatorship or possession of or access to the child, order any party to participate in counseling with persons appointed or approved by the court for the purpose of facilitating compliance with the court order. The court may order the party to pay the costs of counseling.

“(h) [(f)] On the motion of any party or on the court's own motion, the court may order any person who has possessory interests in a child, and who the court finds may violate the court order relating to the possessory interests in a child, to file a bond or to place security with the court in an amount set by the court and conditioned on the faithful performance of the person's duties and obligations under the court order with respect to the possessory interests in a child.”

SECTION 10. Subsection (b), Section 14.05, Family Code, is amended to read as follows:

“(b) If the court finds that the child, whether institutionalized or not, requires continuous care and personal supervision because of a mental or physical disability and will not be able to support himself, the court may order that payments for the support of the child shall be continued after the 18th birthday and extended for an indefinite period. *The court may enter an order under this subsection only if a request for an order of extended support under this subsection has been made in the original suit, a petition requesting further action under Section 11.07 of this code, or a motion to modify under Section 14.08 of this code filed before the child's 18th birthday.*”

SECTION 11. Subsections (b) and (g), Section 14.08, Family Code, are amended to read as follows:

“(b) *The provisions of the Texas Rules of Civil Procedure applicable to the filing of an original lawsuit apply to a motion to modify under this section and to a petition requesting further action under Section 11.07 of this code. Each party whose rights, privileges, duties, or powers may be affected by the motion to modify or by the petition requesting further action is entitled to receive [at least 30 days-] notice by the service of citation commanding the person to appear by filing a written answer. After the filing of an answer, the proceedings are conducted in the same general manner as in other civil cases [of a hearing on the motion to modify].*”

“(g) While a motion to modify or a petition for further action is pending, the court may not issue temporary orders under Section 11.11 of this code that have the effect of changing the designation of the managing conservator unless:

“(1) the order is necessary because there is a serious, immediate question concerning the welfare of the child; or

“(2) *the child’s managing conservator has voluntarily relinquished the actual care, control, and possession of a child for more than 12 months and the temporary order is in the best interest of the child.*”

SECTION 12. Subsection (e), Section 14.09, Family Code, as added by Section 3, Chapter 328, Acts of the 68th Legislature, Regular Session, 1983, is redesignated as Subsection (g) to read as follows:

“(g) [(e)] A suit for damages under Chapter 36 of this code may be joined with any proceeding under this section for the enforcement of a court order relating to the possession of or access to a child.”

SECTION 13. Subsection (e), Section 14.09, Family Code, as added by Section 3, Chapter 402, Acts of the 68th Legislature, Regular Session, 1983, is redesignated as Subsection (h) and a new Subsection (i) is added to that Section 14.09 both to read as follows:

“(h) [(e)] If a self-employed person, or a person employed by an employer not subject to the jurisdiction of the court, or a person to whom the application of Sec. 14.091 is impracticable fails to make two or more child support payments as required by court order, the court, in addition to other remedies provided by this chapter, may order the person to execute a bond, subject to the approval of the court, or pay security to the court, the bond or security to be conditioned on the payment of past-due and future child support payments as required by the court order. If the person fails to make a child support payment as required by the court order after having executed a bond or having paid security to the court, the court may collect on the bond or may forfeit all or a portion of the security. An amount collected from a bond or an amount of forfeited security shall be paid to the person entitled to receive the support payment for the benefit of the child and shall be applied to the outstanding indebtedness of the person. The application of bond or security funds to the person’s indebtedness is not a defense in a contempt of court proceeding. In this subsection, ‘self-employed person’ means an individual who received 80 percent or more of his annual income from sources other than wages or salary.

“(i) *The court in which a motion to enforce a child support order under this section, Section 14.091 of this code, or Rule 308-A, Texas Rules of Civil Procedure, is pending shall give preference to the pending motion in setting a date for a hearing and may not continue or postpone the hearing because of a motion under Section 14.08 of this code to modify the order on which the support obligation is founded.*”

SECTION 14. The section heading of Section 11.06, Family Code, is amended to read as follows:

“Section 11.06. TRANSFER OF PROCEEDINGS WITHIN THE STATE.”

SECTION 15. Chapter 447, Acts of the 56th Legislature, Regular Session, 1959 (Article 4639c, Vernon’s Texas Civil Statutes), is repealed.

SECTION 16. This Act takes effect September 1, 1985.

SECTION 17. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed the Senate on March 20, 1985, by a viva-voce vote; Senate concurred in House amendments on May 25, 1985, by a viva-voce vote; passed the House, with amendments, on May 22, 1985, by a non-record vote.

Approved: June 15, 1985

Effective: September 1, 1985