

CHAPTER 744

H.B. No. 617

AN ACT

relating to the appointment and the rights, privileges, duties, and powers of managing conservators.

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

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

(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 *presents a serious and immediate question concerning the welfare of the child* [~~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.

SECTION 2. Section 11.12(b), Family Code, is amended to read as follows:

(b) The social study may be made by any state agency, including the Texas Department of Human Services or any person appointed by the court. *The court may appoint an investigator to conduct the social study required by this section who has the qualifications established by the rules of the Texas Department of Human Services providing minimum qualifications for persons who may conduct social studies. If the Texas Department of Human Services, or another governmental agency, is appointed, the person who conducts the investigation and makes the report must also have those qualifications. A study made under this section must comply with the rules of the Texas Department of Human Services establishing minimum standards, guidelines, and procedures for social studies.* ~~[The social study shall be made according to criteria established by the court.]~~

SECTION 3. Section 11.13(b), Family Code, is amended to read as follows:

(b) The court may not enter a decree that contravenes the verdict of the jury, except with respect to the issues of the specific terms and conditions of access to the child, support of the child, and the rights, privileges, duties, and powers of *sole managing conservators, joint managing conservators, or possessory conservators*, on which the court may submit or refuse to submit issues to the jury as the court determines appropriate, and on which issues the jury verdict, if any, is advisory only.

SECTION 4. Sections 14.01(a) and (b), Family Code, are amended to read as follows:

(a) In any suit affecting the parent-child relationship, the court may appoint a *sole managing conservator or may appoint joint managing conservators, and shall order reasonable terms and conditions for the implementation of the managing conservatorship.* A managing conservator~~[, who]~~ must be a suitable, competent adult, or a parent, or an authorized agency. If the court finds that the parents are or will be separated, the court shall appoint *at least one joint or sole [a]* managing conservator.

(b) A parent shall be appointed *sole managing conservator or both parents shall be appointed as joint managing conservators* of the child unless the court finds that appointment of the parent *or parents* would not be in the best interest of the child *because the appointment would significantly impair the child's physical health or emotional development.* In determining which parent to appoint as *sole managing conservator*, the court shall consider the qualifications of the respective parents without regard to the sex of the parent.

SECTION 5. Section 14.02, Family Code, is amended by amending Subsections (a) and (b) and adding Subsection (e) to read as follows:

(a) Except as provided in Subsection (d) of this section, a parent appointed *as sole managing conservator* of the child retains all the rights, privileges, duties, and powers of a parent to the exclusion of the other parent, subject to the rights, privileges, duties, and powers of a possessory conservator as provided in Section 14.04 of this code and to any limitation imposed by court order in allowing access to the child.

(b) A managing conservator who is not the parent of the child has the following rights, privileges, duties, and powers, subject to the rights, privileges, duties, and powers of a possessory conservator as provided in Section 14.04 of this code, *to any rights, privileges, duties, and powers of any other managing conservator as provided in the decree*, and to any limitation imposed by court order in allowing access to the child:

- (1) the right to have physical possession of the child and to establish its legal domicile;
- (2) the duty of care, control, protection, moral and religious training, and reasonable discipline of the child;
- (3) the duty to provide the child with clothing, food, shelter, and education;
- (4) the right to the services and earnings of the child;

(5) the power to consent to marriage, to enlistment in the armed forces of the United States, and to medical, psychiatric, and surgical treatment;

(6) the power to represent the child in legal action and to make other decisions of substantial legal significance concerning the child including, except when a guardian of the child's estate or a guardian or attorney ad litem has been appointed for the child, a power as an agent of the child to act in relation to the child's estate if the child's action is required by a state, the United States, or a foreign government;

(7) the power to receive and give receipt for periodic payments for the support of the child and to hold or disburse these funds for the benefit of the child; and

(8) if the parent-child relationship has been terminated with respect to the parents, or only living parent, or if there is no living parent, the power to consent to the adoption of the child and to make any other decision concerning the child that a parent could make.

*(e) If both parents are appointed as joint managing conservators of the child as provided by Section 14.021 of this code, either by agreement between the parties or by court order, the court shall specify the rights, privileges, duties, and powers of a parent that are to be retained by both parents to be exercised jointly, and the rights, privileges, duties, and powers that are to be exercised exclusively by one parent. The court shall specify that the parents exchange information concerning the health, education, and welfare of the child, and, if possible, confer before making decisions concerning the health, education, and welfare of the child.*

SECTION 6. Chapter 14, Family Code, is amended by adding Section 14.021 to read as follows:

*Sec. 14.021. APPOINTMENT OF JOINT MANAGING CONSERVATORS. (a) It is the policy of this state to assure that children will have frequent and continuing contact with parents who have shown the ability to act in the best interest of the child and to encourage parents to share in the rights and responsibilities of raising their children after the parents have separated or dissolved their marriage.*

*(b) In this section, "joint managing conservatorship" means the sharing of the rights, privileges, duties, and powers of a parent by two parties, ordinarily the parents, even if the exclusive power to make certain decisions may be awarded to one party. Joint managing conservatorship does not require the award of equal or nearly equal periods of physical possession of and access to the child to each of the joint conservators; ordinarily the best interest of the child will require the court to designate a primary physical residence for the child.*

*(c) If a written agreement of the parents is filed with the court, the court shall appoint the parents as joint managing conservators of the child in its decree only if the court finds that the agreement:*

*(1) establishes the county of residence of the child until altered by further order of the court, or designates the conservator who has the sole legal right to determine the residence of the child;*

*(2) expressly states the rights and duties of each parent regarding the child's present and future physical care, support, and education;*

*(3) includes provisions to minimize disruption of the child's schooling, daily routine, and association with friends;*

*(4) assigns and apportions between the parents, solely, concurrently, or jointly, all of the remaining rights, privileges, duties, and powers of a parent as provided by Section 12.04 of this code;*

*(5) was entered into voluntarily and knowingly by each parent and has not been repudiated by either parent at the time the decree is rendered; and*

*(6) is in the best interest of the child.*

*(d) The agreement may contain a dispute resolution procedure that the parties agree to use before seeking enforcement or modification of the terms and conditions of*

*the joint conservatorship through litigation, except in emergency situations requiring ex parte orders to protect the child.*

*(e) If a written agreement of the parents is not filed with the court, the court may appoint the parents as joint managing conservators of the child in its decree only if the trier of fact finds by a preponderance of the evidence that the appointment is in the best interest of the child. In determining the best interest of a child, the trier of fact shall consider all of the following factors:*

*(1) whether the physical, psychological, or emotional needs and development of the child will benefit from the appointment of joint managing conservators;*

*(2) the ability of the parents to give first priority to the welfare of the child and reach shared decisions in the child's best interest;*

*(3) whether each parent can encourage and accept a positive relationship between the child and the other parent;*

*(4) whether both parents participated in child rearing before the filing of the suit;*

*(5) the geographical proximity of the homes of the parents;*

*(6) if the child is 14 years of age or older, any preference of the child for or against the appointment of joint managing conservators; and*

*(7) any other relevant factor.*

*(f) In a decree appointing joint managing conservators under Subsection (e) of this section, the court shall:*

*(1) establish the county of residence of the child until altered by further order of the court, or designate the conservator who has the sole legal right to determine the residence of the child;*

*(2) expressly state the rights and duties of each parent regarding the child's present and future physical care, support, and education;*

*(3) include provisions to minimize disruption of the child's schooling, daily routine, and association with friends;*

*(4) assign and apportion between the parents, solely, concurrently, or jointly, all of the remaining rights, privileges, duties, and powers of a parent as provided in Section 12.04 of this code; and*

*(5) if feasible, require or recommend that the parties attempt to settle future disputes by a dispute resolution method before seeking enforcement or modification of the terms and conditions of the joint conservatorship through litigation, except in emergency situations requiring ex parte orders to protect the child.*

*(g) The appointment of joint managing conservators does not impair or limit the authority of the court to order support of the child, including payments by one joint managing conservator to the other. An order of joint conservatorship, in and of itself, shall not constitute grounds for modifying a support order.*

*(h) The court may not appoint joint conservators if credible evidence is presented of a history or pattern of past or present child neglect, or physical or sexual abuse by one parent directed against the other parent, a spouse, or any child.*

*(i) If a child is receiving or qualifies for assistance under Chapter 31 or 32 or Title 4 or 5, Human Resources Code, at the request of either party, a parent shall be designated by the court as the primary caretaker and the home of that parent as the primary home of the child for the purpose of receiving public assistance on behalf of the child. If one parent receives public assistance on behalf of the child, the court shall designate that parent as the primary caretaking parent unless the court finds that it is in the best interest of the child to designate the other parent.*

*(j) The procedural and substantive standards established by this chapter apply also to a joint managing conservator who is not a parent of the child, subject to Section 14.02(b) of this code.*

SECTION 7. Section 14.06(a), Family Code, is amended to read as follows:

(a) To promote the amicable settlement of disputes between the parties to a suit under this chapter, the parties may enter into a written agreement containing provisions for conservatorship and support of the child, modifications of agreements or orders providing for conservatorship and support of the child, and appointment of joint managing conservators *under Section 14.021 of this code.*

SECTION 8. Section 14.08, Family Code, is amended by amending Subsection (c) and adding Subsection (h) to read as follows:

(c) After a hearing, the court may modify an order or portion of a decree that:

(1) designates a managing conservator if:

(A) the circumstances of the child, *sole* managing conservator, possessory conservator, or other party affected by the order or decree have materially and substantially changed since the entry of the order or decree to be modified; and

(B) the retention of the present *sole* managing conservator would be injurious to the welfare of the child; and

(C) the appointment of the new *sole* managing conservator would be a positive improvement for the child; or

~~[(D) the managing conservator has voluntarily relinquished possession and control of the child for a period of more than 12 months and the modification is in the best interest of the child; or]~~

(2) provides for the support of a child if the circumstances of the child or a person affected by the order or portion of the decree to be modified have materially and substantially changed since its entry, except that a support order may be modified only as to obligations accruing subsequent to the motion to modify; or

(3) sets the terms and conditions for possession of or access to a child, or prescribes the relative rights, privileges, duties, and powers of conservators if:

(A) the circumstances of the child or a person affected by the order or portion of the decree to be modified have materially and substantially changed since the entry of the order or decree; or

(B) the order or portion of the decree to be modified has become unworkable or inappropriate under existing circumstances; or

(C) the notice required by Section 14.031 of this code was not given, or there was a change in a conservator's residence to a place outside the jurisdiction of the court. If a change of residence results in increased expenses for any party having possession of or access to a child, the court may enter appropriate orders to allocate those increased costs on a fair and equitable basis, taking into account the cause of the increased costs and the best interests of the child. Such an order may be entered without regard to whether any other change in the terms and conditions of possession of or access to the child is made; or

*(4) designates a managing conservator if the sole managing conservator has voluntarily relinquished possession and control of the child for a period of more than 12 months and the modification is in the best interest of the child; or*

*(5) designates a managing conservator if a parent of the child requests appointment as a joint managing conservator, and the court finds that:*

*(A) the circumstances of the child or the sole managing conservator have materially and substantially changed since the entry of the order or decree to be modified;*

*(B) retention of a sole managing conservatorship would be detrimental to the welfare of the child; and*

*(C) the appointment of the parent as a joint managing conservator would be a positive improvement for and in the best interest of the child.*

*(h) The power of the court to order a joint managing conservatorship under Section 14.021 of this code is not a material and substantial change of circumstances sufficient to justify a modification of an existing sole managing conservatorship under this section.*

SECTION 9. Chapter 14, Family Code, is amended by adding Section 14.081 to read as follows:

*Sec. 14.081. MODIFICATION OF JOINT CONSERVATORSHIP. (a) Modification of a court decree that provides for joint conservatorship is subject to the procedural provisions of Sections 14.08(a), (b), and (g) of this code, but the standards to modify the joint conservatorship are established by this section.*

*(b) The joint managing conservators may enter into a written agreement to modify the terms and conditions of an existing decree, and the court may modify the existing decree according to the agreement if the court finds that the modification meets the standards under Section 14.021 of this code.*

*(c) After a hearing, the court may modify a decree that establishes a joint managing conservatorship if:*

*(1)(A) the circumstances of the child or one or both joint managing conservators have materially and substantially changed since the entry of the decree to be modified; or*

*(B) the decree has become unworkable or inappropriate under existing circumstances; and*

*(2) a modification of the terms and conditions of the decree would be a positive improvement for and in the best interest of the child.*

*(d) After a hearing, on the motion of one or both of the joint managing conservators or on the court's own motion, a court may modify a joint managing conservatorship by replacing it with a sole managing conservatorship if:*

*(1)(A) the welfare of the child is a matter of immediate and serious concern;*

*(B) there has been a substantial and unexcused violation of the terms and conditions established in the existing conservatorship decree; or*

*(C) the circumstances of the child or of one or both of the joint managing conservators have so materially and substantially changed since the entry of the decree that it has become unworkable or inappropriate under existing circumstances; and*

*(2) the modification would be a positive improvement for and in the best interest of the child.*

SECTION 10. Chapter 14, Family Code, is amended by adding Section 14.082 to read as follows:

*Sec. 14.082. FRIVOLOUS FILING OF MOTION TO MODIFY. If the court finds that a motion to modify under Section 14.081 of this code is filed frivolously or is designed to harass a party, the court shall tax attorney's fees as costs against the offending party as provided by Section 11.18 of this code.*

SECTION 11. This Act takes effect September 1, 1987.

SECTION 12. 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 by the House on April 1, 1987, by a non-record vote; and that the House concurred in Senate amendments to H.B. No. 617 on May 26, 1987, by a non-record vote. Passed by the Senate, with amendments, on May 23, 1987, by a viva-voce vote.

Approved June 20, 1987.

Effective Sept. 1, 1987.