

West's Tennessee Code Annotated

Title 36. Domestic Relations

Chapter 1. Adoption (Refs & Annos)

Part 1. General Provisions (Refs & Annos)

T. C. A. § 36-1-117

§ 36-1-117. Parties to proceedings; termination of rights of putative father; consent of parent or guardian; service of process

Currentness

(a) Unless the legal parent or the guardian, or, as provided in subsections (b) and (c), the putative biological father of the child has surrendered parental or guardianship rights to the child, has executed a parental consent that has been confirmed by the court, has waived the person's rights pursuant to § 36-1-111(w), or unless the person's rights have been terminated by the order of a court of competent jurisdiction, the legal parents, guardian of the person of the child or of an adult, the biological mother, and the established father or putative father of the child must be made parties to the adoption proceeding or to a separate proceeding seeking the termination of those rights, and their rights to the child must be terminated by a court to authorize the court to order the adoption of the child or adult by other persons.

(b)(1) If a petition has been filed to establish paternity of the child who is the subject of the adoption proceeding, the adoption court shall have exclusive jurisdiction to hear and decide any paternity petition filed in the adoption proceeding or that has been transferred to it pursuant to § 36-2-307.

(2) The paternity petition shall be heard and concluded prior to any action by the adoption court to determine whether to grant the petition for adoption.

(3)(A) The petition shall be granted if it is shown by a preponderance of the evidence that the person alleged to be the father of the child is the father of the child; provided, that the entry of such an order shall not prevent the filing and consideration of a petition pursuant to § 36-1-113.

(B) If the petition to establish paternity is granted, then the parental rights of the legal father must be terminated as provided by § 36-1-113 or as otherwise provided by law, or the legal father must execute a surrender under the provisions of § 36-1-111, file a parental consent, or the legal father must co-sign the petition for adoption pursuant to the provisions of subsection (f) before the court may be authorized to order an adoption of the child.

(4) If grounds for termination of parental rights do not exist, then the child's legal father shall be granted custody of the child, unless the court determines, upon clear and convincing evidence, that the legal father is unable currently to provide proper custodial care for the child, in which case the court shall make such orders as may be necessary for the child's care and supervision pursuant to § 37-1-140; or unless the child's mother's rights have not been previously terminated, in which case the court shall make a determination of the custodial status of the child between the legal father and the mother, and the court may make such other orders as are necessary to provide for the child's care and supervision. If the court determines that neither parent is suitable to provide for the care of the child, it shall make such other orders as it may determine are necessary for the child's care and supervision.

(5) If the petition to establish paternity is not granted by the court after a hearing and determination based upon subdivision (3), then the court may enter an order to that effect specifying the basis for the determination, and may proceed with the adoption proceeding without further need to terminate the rights of that putative father.

(6) The provisions of the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), compiled in chapter 6, part 2 of this title shall govern jurisdiction of the adoption court in this state if a paternity proceeding has been filed by the putative father in another state, territory, or foreign country.

(c) The parental rights of the putative biological father of a child who has not filed a petition to establish paternity of the child or who has not established paternity of the child who is the subject of an adoption proceeding and who meets any of the following criteria shall be terminated by surrender, parental consent, termination of parental rights pursuant to § 36-1-113, or by waiver of interest, before the court may enter an order of adoption concerning that child:

(1) The biological father of a child has filed with the putative father registry, pursuant to § 36-2-318 a statement of an intent to claim paternity of the child at any time prior to or within thirty (30) days after the child's birth and has notified the registry of all address changes;

(2) The biological father has been specifically identified to the petitioners or their attorney, or to the department, the licensed child-placing agency, or the licensed clinical social worker involved in the care, placement, supervision, or study of the child as the child's father by the child's biological mother in a sworn, written statement or by other information that the court determines to be credible and reliable;

(3) The biological father has claimed to the child's biological mother, or to the petitioners or their attorney, or to the department, a licensed child-placing agency, or a licensed clinical social worker who or that is involved in the care, placement, supervision, or study of the child that the biological father believes that the biological father is the father of the child; provided, that if the biological father has previously notified the department of the biological father's claim to paternity of the child pursuant to the provisions of the putative father registry, § 36-2-318(e)(3), the biological father shall be subject to all the requirements for waiver of notice provisions of § 36-2-318(f)(2) and to all requirements for filing a paternity petition;

(4) The biological father is recorded on the child's birth certificate as the father of the child;

(5) The biological father is openly living with the child at the time the adoption proceeding is commenced and is holding himself out as the father of the child; provided that, if custody of the child has been removed from the biological mother by court order, notice shall be given to any man who was openly living with the child at time of the initiation of the custody or guardianship proceeding that resulted in the removal of the custody or guardianship of the child from the biological mother or biological father, if the man held himself out to be the father of the child at the time of the removal; or

(6) The biological father has entered a permanency plan under the provisions of title 37, chapter 2, part 4, or under similar provisions of any other state or territory in which the biological father acknowledges paternity of the child.

(d)(1) Other biological or legal relatives of the child or the adult are not necessary parties to the proceeding and shall not be entitled to notice of the adoption proceedings unless they are legal guardians as defined in § 36-1-102 or legal custodians of the person of the child or adult at the time the petition is filed.

(2) The legal custodian of the child may only receive notice of the proceeding and may only present evidence as to the child's best interests.

(e) Any public or private agency that may have custody or complete or partial guardianship of the child and that has not given consent as provided under this part shall be made a defendant and given notice of the filing of the adoption or termination of parental or guardian rights petition filed under this part or under title 37, and shall be permitted to assert its rights to custody or guardianship of the child.

(f) When the child is related to one (1) of the petitioners or is the stepchild of the petitioner, and the legal or biological parent(s) or guardian(s) of the child signs the adoption petition as a co-petitioner for the specific purpose, as stated in the petition, of giving consent to the adoption, no further surrender, parental consent, or termination of parental rights shall be required as to that parent or guardian, as the act of joining in the adoption petition shall be deemed a complete surrender, notwithstanding

the provisions of subsection (g), and no further notice or service of process need be made to that person; provided, that where the stepparent of a stepchild seeks to adopt a stepchild, the co-signing of the petition by the child's parent who is the spouse of the petitioner shall not affect the existing parent/child legal relationship between that parent and the parent's child who is the subject of the adoption petition by the stepparent of the child.

(g)(1) A parent may sign a petition for adoption as provided by § 36-1-102 for the purpose of giving parental consent to the adoption of the parent's child by unrelated persons. The petition must state that the parent understands that the entry of an order confirming the parental consent, without revoking the parental consent prior to the entry of such order, will terminate that parent's parental rights to the child forever and that the parent will have no legal rights to the custody, control, or to visitation with the child in the future.

(2) It is specifically and expressly declared that the act of signing the adoption petition shall not terminate the parental rights of such parent until the court where the adoption petition is filed has entered an order confirming the parental consent and until the court shall have required such parent to answer, under oath, each of the questions required of parents pursuant to § 36-1-111(k), including the question regarding the contact veto required by § 36-1-111(k)(3).

(3) The parent signing the petition for the purpose of giving parental consent shall be provided ten (10) calendar days' written notice by the court of the appearance date for the required response to the court pursuant to § 36-1-111 before entry of the order confirming the parental consent is entered by the court. Unless the parent is disabled or the parent's appearance is impracticable as determined by the court, that parent must personally attend the hearing before the court in chambers. If the parent is disabled or the parent's appearance is impracticable as determined by the court, the answers shall be taken under oath at the parent's location by the court or by any person appointed by an order of the court to do so. If the parent executing the parental consent cannot be found or does not appear at the time of such hearing, the court may terminate that parent's rights upon any grounds available pursuant to § 36-1-113.

(4) Following the satisfactory completion of such questions, which shall be recorded on the forms required pursuant to § 36-1-111, the court shall enter an order that confirms the parental consent, and the court shall then, and only then, be authorized to enter an order terminating such parent's rights to the child who is the subject of the adoption petition; provided, that a parental consent may be revoked at any time prior to the entry of an order of confirmation of the parental consent by the court by executing a revocation form as provided in § 36-1-112, and such revocation shall negate and void the parental consent executed pursuant to this subsection (g).

(5) The death of the consenting parent or termination of parental rights of such parent by a validly executed surrender or by court action prior to the entry of the adoption order will make any requirements for the parental consent contained herein unnecessary.

(6) Upon entry of the order of confirmation, the clerk shall send certified copies of the order to the adoptions unit in the state office of the department in Nashville.

(h) The department, through any authorized person, or the executive head of such licensed child-placing agency may give consent to the adoption of the child by the petitioners for whom it holds complete or partial guardianship.

(i)(1) When the child who is the subject of the adoption is fourteen (14) years of age or older at any time before the granting of the petition, the adoption court must receive the sworn, written consent of such child to the adoption, which shall be filed with the record, and the consent of such minor shall be recited in the order of adoption. The court shall receive the consent and testimony from the child in chambers with only the child and a guardian ad litem if required and appointed by the court for the child present.

(2) If the child is mentally disabled, the court shall appoint a guardian ad litem to give or withhold consent for the child to the adoption and the court shall follow the procedure of subdivisions (j)(2)(B) and (C).

(j)(1) When the person sought to be adopted is eighteen (18) years of age or older, only the sworn, written consent of the person sought to be adopted shall be required and no order of reference or any home studies need be issued.

(2)(A) If the adult person to be adopted has been adjudicated incompetent, then the written consent of the adult person's guardian or conservator of the person shall be required.

(B) If the person is without a guardian or conservator and the court has reason to believe that the person is incompetent to give consent, then the court shall appoint a guardian ad litem who shall investigate the person's circumstances and that guardian ad litem shall give or withhold consent.

(C) The guardian ad litem shall file a written report stating the basis for the decision and the court shall afford a hearing to all parties to present evidence as to the best interests of the person, and if the court determines upon clear and convincing evidence that the decision to withhold consent by the guardian ad litem is arbitrary and is not in the best interests of the incompetent person, it may proceed to make any other orders it deems necessary for the person's welfare, including granting the adoption petition.

(3) In all other situations under this subsection (j) for adult persons who are the subject of an adoption petition, no order of reference, social investigation, report to the court by a licensed child-placing agency or licensed clinical social worker or the department, or the waiting period under § 36-1-119 shall be required.

(k) When the child has been surrendered or parental rights have been relinquished to an agency operating under the laws of another state, territory, or foreign country, or such agency has received guardianship or the right to place a child for adoption pursuant to the laws of its jurisdiction, the surrender or relinquishment, or any order terminating parental rights, and the written consent of the agency pursuant to the laws of its jurisdiction or pursuant to its procedures shall be filed with the adoption petition and shall be sufficient for the purposes of providing the necessary consent required by this part.

(l) If a person has surrendered that parent's parental rights or guardianship rights, if a person has filed a parental consent and the consent has been confirmed as provided herein, if a person has executed a waiver of interest pursuant to this part, if a person or agency has consented to the adoption of the child who is the subject of the adoption proceeding, or if a person's parental or guardianship rights to the child have been properly terminated, no notice of the adoption proceeding or service of process shall be made to that person or agency.

(m)(1) Service of process for adoption proceedings and termination proceedings in chancery and circuit courts pursuant to this part shall be made pursuant to the Tennessee Rules of Civil Procedure and the statutes governing substituted service.

(2) Service of process for proceedings to terminate parental rights in juvenile court shall be pursuant to the Tennessee Rules of Civil Procedure, unless a finding is made pursuant to Tennessee Rules of Juvenile Procedure Rule 1 that the interests of justice require otherwise, the statutory requirements of title 37, chapter 1, part 1, where not otherwise in conflict with this part, and the statutes governing substituted service.

(3) Any motion for an order for publication in these proceedings shall be accompanied by an affidavit of the petitioners or their legal counsel attesting, in detail, to all efforts to determine the identity and whereabouts of the parties against whom substituted service is sought.

(n) The court may enter a default judgment against any party to the adoption or termination proceeding upon a finding that service of process has been validly made against that party in accordance with the Tennessee Rules of Civil or Juvenile Procedure and the statutes concerning substituted service; however, in termination proceedings, proof must be presented as to legal grounds and best interest pursuant to § 36-1-113.

Credits

1951 Pub.Acts, c. 202, § 7; 1955 Pub.Acts, c. 320, § 2; 1955 Pub.Acts, c. 345, § 1; 1959 Pub.Acts, c. 223, § 3; 1961 Pub.Acts, c. 150, § 2; impl. am. by 1975 Pub.Acts, c. 219, § 1; 1976 Pub.Acts, c. 455, § 1; 1995 Pub.Acts, c. 532, § 1, eff. Jan. 1, 1996; 1996 Pub.Acts, c. 1054, §§ 53 to 56, 113, eff. May 15, 1996; 1997 Pub.Acts, c. 551, §§ 57 to 65, eff. July 1, 1997; 1998 Pub.Acts, c. 1098, §§ 5 to 7, eff. May 19, 1998; 2003 Pub.Acts, c. 231, § 14, eff. June 2, 2003; 2007 Pub.Acts, c. 199, §§ 1, 2, eff. July

1, 2007; 2008 Pub.Acts, c. 1059, § 5, eff. Jan. 1, 2009; 2008 Pub.Acts, c. 1162, § 1, eff. July 1, 2008; 2010 Pub.Acts, c. 842, § 2, eff. July 1, 2010; 2010 Pub.Acts, c. 849, § 1, eff. April 30, 2010.

Formerly Williams' Code, § 9572.21; § 36-108; § 36-1-108.

[Notes of Decisions \(35\)](#)

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