

CHAPTER 751

TEMPORARY CUSTODY OF MINOR CHILDREN BY EXTENDED FAMILY

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751.01 Purpose of act.--The purposes of ss. 751.01-751.05 are to:

(1) Recognize that many minor children in this state live with and are well cared for by members of their extended families. The parents of these children have often provided for their care by placing them temporarily with another family member who is better able to care for them. Because of the care being provided the children by their extended families, they are not dependent children.

(2) Provide for the welfare of a minor child who is living with extended family members. At present, such family members are unable to give complete care to the child in their custody because they lack a legal document that explains and defines their relationship to the child, and they are unable effectively to consent to the care of the child by third parties.

(3) Provide temporary custody of a minor child to a family member having physical custody of the minor child to enable the custodian to:

(a) Consent to all necessary and reasonable medical and dental care for the child, including nonemergency surgery and psychiatric care;

(b) Secure copies of the child's records, held by third parties, that are necessary to the care of the child, including, but not limited to:

1. Medical, dental, and psychiatric records;

2. Birth certificates and other records; and

3. Educational records;

(c) Enroll the child in school and grant or withhold consent for a child to be tested or placed in special school programs, including exceptional education; and

(d) Do all other things necessary for the care of the child.

History.--s. 1, ch. 93-104; s. 1, ch. 2006-167.

751.011 Definitions.--As used in ss. 751.01-751.05, the term "extended family member" is any person who is:

(1) A relative within the third degree by blood or marriage to the parent; or

(2) The stepparent of a child if the stepparent is currently married to the parent of the child and is not a party in a pending dissolution, separate maintenance, domestic violence, or other civil or criminal proceeding in any court of competent jurisdiction involving one or both of the child's parents as an adverse party.

History.--s. 2, ch. 93-104; s. 4, ch. 96-305; s. 2, ch. 2006-167.

751.02 Determination of temporary custody proceedings; jurisdiction.--The following individuals may bring proceedings in the circuit court to determine the temporary custody of a minor child:

- (1) Any extended family member who has the signed, notarized consent of the child's legal parents; or
- (2) Any extended family member who is caring full time for the child in the role of a substitute parent and with whom the child is presently living.

History.--s. 3, ch. 93-104; s. 3, ch. 2006-167.

751.03 Petition for temporary custody; contents.--Each petition for temporary custody of a minor child must be verified by the petitioner and must contain statements, to the best of petitioner's knowledge and belief, showing:

- (1) The name, date of birth, and current address of the child;
- (2) The names and current addresses of the child's parents;
- (3) The names and current addresses of the persons with whom the child has lived during the past 5 years;
- (4) The places where the child has lived during the past 5 years;
- (5) Information concerning any custody proceeding in this or any other state with respect to the child;
- (6) The residence and post office address of the petitioner;
- (7) The petitioner's relationship to the child;
- (8) The consent of the child's parents, or the specific acts or omissions of the parents which demonstrate that the parents have abused, abandoned, or neglected the child as defined in chapter 39;
- (9) Any temporary or permanent orders for child support, the court entering the order, and the case number;
- (10) Any temporary or permanent order for protection entered on behalf of or against either parent, the petitioner, or the child; the court entering the order; and the case number;
- (11) That it is in the best interest of the child for the petitioner to have custody of the child; and
- (12) A statement of the period of time the petitioner is requesting temporary custody, including a statement of the reasons supporting that request.

Only an extended family member may file a petition under this chapter.

History.--s. 4, ch. 93-104; s. 4, ch. 2006-167.

751.04 Notice and opportunity to be heard.--Before a decree is made under ss. 751.01-751.05, reasonable notice and opportunity to be heard must be given to the parents of the minor child by service of process, either personal or constructive.

History.--s. 5, ch. 93-104.

751.05 Order granting temporary custody.--

(1) At the hearing on the petition for temporary custody, the court must hear the evidence concerning a minor child's need for care by the petitioner, all other matters required to be set forth in the petition, and the objections or other testimony of the child's parents, if present.

(2) Unless the minor child's parents object, the court shall award the temporary custody of the child to the petitioner when it is in the best interest of the child to do so.

(3) If one of the minor child's parents objects to the granting of temporary custody to the petitioner, the court shall grant the petition only upon a finding, by clear and convincing evidence, that the child's parent or parents are unfit to provide the care and control of the child. In determining that a parent is unfit, the court must find that the parent has abused, abandoned, or neglected the child, as defined in chapter 39.

(4) The order granting temporary custody of the minor child to the petitioner may also grant visitation rights to the child's parent or parents, if it is in the best interest of the child to do so.

(5)(a) The order granting temporary custody of the minor child to the petitioner may not include an order for the support of the child unless the parent has received personal or substituted service of process, the petition requests an order for the support of the child, and there is evidence of the parent's ability to pay the support ordered.

(b) The order granting temporary custody may redirect all or part of an existing child support obligation to be paid to the extended family member who is granted temporary custody of the child. If the court redirects an existing child support obligation, the order granting temporary custody must include, if possible, the determination of arrearages owed to the obligee and the person awarded temporary custody and must order payment of the arrearages. The clerk of the circuit court in which the temporary custody order is entered shall transmit a certified copy thereof to the court originally entering the child support order. The temporary custody order shall be recorded and filed in the original action in which child support was determined and become a part thereof. A copy of the temporary custody order shall be filed with the depository that serves as the official recordkeeper for support payments due under the support order. The depository shall maintain separate accounts and separate account numbers for individual obligees.

(6) At any time, either or both of the child's parents may petition the court to modify or terminate the order granting temporary custody. The court shall terminate the order upon a finding that the parent is a fit parent, or by consent of the parties. The court may modify an order granting temporary custody if the parties consent or if modification is in the best interest of the child.

History.--s. 6, ch. 93-104; s. 5, ch. 2006-167.