

By: Truitt

H.B. No. 2260

Substitute the following for H.B. No. 2260:

By: Madden

C.S.H.B. No. 2260

A BILL TO BE ENTITLED

AN ACT

1
2 relating to a determination of whether a probate court of this state
3 is a more appropriate forum than a court of another state with
4 respect to guardianship proceedings involving adults.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Sections 894(a) and (d), Texas Probate Code, are
7 amended to read as follows:

8 (a) A court in which a guardianship proceeding is filed for
9 a minor and in which venue of the proceeding is proper may delay
10 further action in the proceeding in that court if:

11 (1) another guardianship proceeding involving a
12 matter at issue in the proceeding filed in the court is subsequently
13 filed in a court in a foreign jurisdiction; and

14 (2) venue of the proceeding in the foreign court is
15 proper.

16 (d) The court shall resume the guardianship proceeding
17 involving a minor if the court determines that venue is more
18 suitable in that court. If the court determines that venue is more
19 suitable in the foreign court, the court shall, with the consent of
20 the foreign court, transfer the proceeding to the foreign court.

21 SECTION 2. Subpart G, Part 5, Chapter XIII, Texas Probate
22 Code, is amended by adding Section 895 to read as follows:

23 Sec. 895. DETERMINATION OF MOST APPROPRIATE FORUM FOR
24 GUARDIANSHIP PROCEEDINGS FOR ADULTS. (a) This section applies

1 only to a guardianship proceeding in which an order for the
2 appointment of a guardian for an adult is sought or has been issued.

3 (b) In this section, "incapacitated adult" means an adult
4 ward or an adult for whom the appointment of a guardian is sought,
5 as applicable.

6 (c) A court of this state having jurisdiction under this
7 chapter or venue under Section 610 of this code to appoint a
8 guardian shall decline to exercise its jurisdiction if the court
9 determines at any time that a court of another state is a more
10 appropriate forum.

11 (d) If a court of this state declines to exercise its
12 jurisdiction under Subsection (c) of this section, the court shall
13 either dismiss or stay the guardianship proceeding. The court may
14 impose any condition the court considers just and proper, including
15 the condition that a petition for the appointment of a guardian or
16 issuance of a protective order be filed promptly in another state.

17 (e) In determining whether it is an appropriate forum, a
18 court of this state shall consider all relevant factors, including:

19 (1) any expressed preference of the incapacitated
20 adult;

21 (2) whether abuse, neglect, or exploitation of the
22 incapacitated adult has occurred or is likely to occur and which
23 state could best protect the adult from the abuse, neglect, or
24 exploitation;

25 (3) the length of time the incapacitated adult was
26 physically present in or was a legal resident of this or another
27 state;

1 (4) the distance of the incapacitated adult from the
2 court in each state;

3 (5) the financial circumstances of the incapacitated
4 adult's estate;

5 (6) the nature and location of the evidence;

6 (7) the ability of the court in each state to decide
7 the issue expeditiously and the procedures necessary to present
8 evidence;

9 (8) the familiarity of the court of each state with the
10 facts and issues in the proceeding; and

11 (9) if an appointment were made, the court's ability to
12 monitor the conduct of the guardian of the person or estate, or
13 both.

14 (f) If at any time a court of this state determines that it
15 acquired jurisdiction to appoint a guardian of the person or
16 estate, or both, of an adult ward because of unjustifiable conduct,
17 the court may:

18 (1) decline to exercise jurisdiction;

19 (2) exercise jurisdiction for the limited purpose of
20 fashioning an appropriate remedy to ensure the health, safety, and
21 welfare of the incapacitated adult or the protection of the
22 incapacitated adult's property or prevent a repetition of the
23 unjustifiable conduct, including staying the proceeding until a
24 petition for the appointment of a guardian or issuance of a
25 protective order is filed in a court of another state having
26 jurisdiction; or

27 (3) continue to exercise jurisdiction after

1 considering:

2 (A) the extent to which the incapacitated adult
3 and all persons required to be notified of the proceedings have
4 acquiesced in the exercise of the court's jurisdiction;

5 (B) whether the court of this state is a more
6 appropriate forum than the court of any other state under the
7 factors set forth in Subsection (e) of this section; and

8 (C) whether the court of any other state would
9 have jurisdiction under the factual circumstances of the matter.

10 (g) If a court of this state determines that it acquired
11 jurisdiction to appoint a guardian of the person or estate, or both,
12 of an adult ward because a party seeking to invoke its jurisdiction
13 engaged in unjustifiable conduct, it may assess against that party
14 necessary and reasonable expenses, including attorney's fees,
15 investigative fees, court costs, communication expenses, witness
16 fees and expenses, and travel expenses. The court may not assess
17 fees, costs, or expenses of any kind against this state or a
18 governmental subdivision, agency, or instrumentality of this state
19 unless authorized by other law.

20 SECTION 3. The changes in law made by this Act apply only to
21 a guardianship proceeding filed on or after the effective date of
22 this Act. A guardianship proceeding filed before the effective
23 date of this Act is governed by the law in effect on the date the
24 proceeding was filed, and the former law is continued in effect for
25 that purpose.

26 SECTION 4. This Act takes effect September 1, 2009.