

By: Giddings

H.B. No. 3109

Substitute the following for H.B. No. 3109:

By: Minjarez

C.S.H.B. No. 3109

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the appointment of a guardian ad litem or an attorney ad
3 litem for a child in the conservatorship of the Department of Family
4 and Protective Services.

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

6 SECTION 1. Section 107.016, Family Code, is amended to read
7 as follows:

8 Sec. 107.016. CONTINUED REPRESENTATION; DURATION OF
9 APPOINTMENT. In a suit filed by a governmental entity in which
10 termination of the parent-child relationship or appointment of the
11 entity as conservator of the child is requested:

12 (1) an order appointing the Department of Family and
13 Protective Services as the child's managing conservator may provide
14 for the continuation of the appointment of the guardian ad litem [~~or~~
15 ~~attorney ad litem~~] for the child for any period during the time the
16 child remains in the conservatorship of the department, as set by
17 the court; [~~and~~]

18 (2) subject to Section 263.4042, an order appointing
19 the Department of Family and Protective Services as the child's
20 managing conservator shall provide for the continuation of the
21 appointment of the attorney ad litem for the child as long as the
22 child remains in the conservatorship of the department; and

23 (3) an attorney appointed under this subchapter to
24 serve as an attorney ad litem for a parent or an alleged father

1 continues to serve in that capacity until the earliest of:

2 (A) the date the suit affecting the parent-child
3 relationship is dismissed;

4 (B) the date all appeals in relation to any final
5 order terminating parental rights are exhausted or waived; or

6 (C) the date the attorney is relieved of the
7 attorney's duties or replaced by another attorney after a finding
8 of good cause is rendered by the court on the record.

9 SECTION 2. Subchapter E, Chapter 263, Family Code, is
10 amended by adding Section 263.4042 to read as follows:

11 Sec. 263.4042. CONTINUED APPOINTMENT OF ATTORNEY AD LITEM
12 AFTER FINAL ORDER. (a) On the entry of a final order terminating
13 the parent-child relationship and naming the Department of Family
14 and Protective Services as the child's managing conservator, the
15 court may discharge the attorney ad litem appointed for the child if
16 the court finds that:

17 (1) the child has a representative authorized by the
18 court to represent the legal interests of the child and discharge of
19 the attorney ad litem is in the child's best interest; or

20 (2) the child:

21 (A) resides in the home identified in the child's
22 permanency plan as the child's permanent home;

23 (B) has an attorney ad litem or guardian ad litem
24 who does not object to the child's permanency plan; and

25 (C) has resided in the home described by
26 Paragraph (A) for at least three months.

27 (b) If a court renders an order discharging a child's

1 attorney ad litem under Subsection (a), at each permanency hearing
2 following the final order held under Section 263.501, the court
3 shall make the findings required by Section 263.5031.

4 SECTION 3. Section 263.5031, Family Code, is amended to
5 read as follows:

6 Sec. 263.5031. PERMANENCY HEARINGS FOLLOWING FINAL ORDER.

7 (a) At each permanency hearing after the court renders a final
8 order, the court shall:

9 (1) identify all persons and parties present at the
10 hearing;

11 (2) review the efforts of the department or other
12 agency in notifying persons entitled to notice under Section
13 263.0021; and

14 (3) review the permanency progress report to
15 determine:

16 (A) the safety and well-being of the child and
17 whether the child's needs, including any medical or special needs,
18 are being adequately addressed;

19 (B) the continuing necessity and appropriateness
20 of the placement of the child, including with respect to a child who
21 has been placed outside of this state, whether the placement
22 continues to be in the best interest of the child;

23 (C) if the child is placed in institutional care,
24 whether efforts have been made to ensure that the child is placed in
25 the least restrictive environment consistent with the child's best
26 interest and special needs;

27 (D) the appropriateness of the primary and

1 alternative permanency goals for the child, whether the department
2 has made reasonable efforts to finalize the permanency plan,
3 including the concurrent permanency goals, in effect for the child,
4 and whether:

5 (i) the department has exercised due
6 diligence in attempting to place the child for adoption if parental
7 rights to the child have been terminated and the child is eligible
8 for adoption; or

9 (ii) another permanent placement,
10 including appointing a relative as permanent managing conservator
11 or returning the child to a parent, is appropriate for the child;

12 (E) for a child whose permanency goal is another
13 planned permanent living arrangement:

14 (i) the desired permanency outcome for the
15 child, by asking the child; and

16 (ii) whether, as of the date of the hearing,
17 another planned permanent living arrangement is the best permanency
18 plan for the child and, if so, provide compelling reasons why it
19 continues to not be in the best interest of the child to:

20 (a) return home;

21 (b) be placed for adoption;

22 (c) be placed with a legal guardian;

23 or

24 (d) be placed with a fit and willing
25 relative;

26 (F) if the child is 14 years of age or older,
27 whether services that are needed to assist the child in

1 transitioning from substitute care to independent living are
2 available in the child's community;

3 (G) whether the child is receiving appropriate
4 medical care and has been provided the opportunity, in a
5 developmentally appropriate manner, to express the child's opinion
6 on any medical care provided;

7 (H) for a child receiving psychotropic
8 medication, whether the child:

9 (i) has been provided appropriate
10 nonpharmacological interventions, therapies, or strategies to meet
11 the child's needs; or

12 (ii) has been seen by the prescribing
13 physician, physician assistant, or advanced practice nurse at least
14 once every 90 days;

15 (I) whether an education decision-maker for the
16 child has been identified, the child's education needs and goals
17 have been identified and addressed, and there are major changes in
18 the child's school performance or there have been serious
19 disciplinary events;

20 (J) for a child for whom the department has been
21 named managing conservator in a final order that does not include
22 termination of parental rights, whether to order the department to
23 provide services to a parent for not more than six months after the
24 date of the permanency hearing if:

25 (i) the child has not been placed with a
26 relative or other individual, including a foster parent, who is
27 seeking permanent managing conservatorship of the child; and

1 (ii) the court determines that further
2 efforts at reunification with a parent are:

3 (a) in the best interest of the child;
4 and

5 (b) likely to result in the child's
6 safe return to the child's parent; and

7 (K) whether the department has identified a
8 family or other caring adult who has made a permanent commitment to
9 the child.

10 (b) At each permanency hearing after the court renders a
11 final order, the court:

12 (1) for a child who is not represented by an attorney
13 ad litem shall:

14 (A) determine whether the child requires
15 representation by an attorney ad litem under Section 107.016; and

16 (B) if the court declines to appoint an attorney
17 ad litem for the child, state the reason for declining to appoint an
18 attorney ad litem; and

19 (2) for a child who is represented by an attorney ad
20 litem:

21 (A) shall consider the need for continued
22 appointment of the attorney ad litem for the child; and

23 (B) may discharge the attorney ad litem appointed
24 for the child if the court finds that:

25 (i) the child is eligible for adoption and
26 living in the home identified in the permanency plan as the child's
27 permanent home;

1 (ii) the child's attorney ad litem or
2 guardian ad litem does not object to the child's permanency plan;
3 and

4 (iii) the child has resided in the home
5 described by Subparagraph (i) for at least three months.

6 SECTION 4. The changes in law made by this Act apply to a
7 suit affecting the parent-child relationship filed before, on, or
8 after the effective date of this Act.

9 SECTION 5. This Act takes effect September 1, 2017.