By:  Zaffirini S.B. No. 1129

(In the Senate - Filed March 5, 2021; March 18, 2021, read first time and referred to Committee on Jurisprudence; April 12, 2021, reported adversely, with favorable Committee Substitute by the following vote: Yeas 5, Nays 0; April 12, 2021, sent to printer.)

COMMITTEE VOTE

                    Yea Nay Absent  PNV

Huffman           X

Hinojosa             X

Creighton            X

Hughes               X

Johnson              X

COMMITTEE SUBSTITUTE FOR S.B. No. 1129 By:  Huffman

A BILL TO BE ENTITLED

AN ACT

relating to guardianships, alternatives to guardianship, and supports and services for incapacitated persons.

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

SECTION 1.  Section 1023.005, Estates Code, is amended to read as follows:

Sec. 1023.005.  COURT ACTION. (a) On hearing an application or motion under Section 1023.003, if [~~good cause is not shown to deny the transfer and~~] it appears that transfer of the guardianship is in the best interests of the ward and either the ward has resided in the county to which the guardianship is to be transferred for at least six months or good cause is not otherwise shown to deny the transfer, the court shall enter an order:

(1)  authorizing the transfer on payment on behalf of the estate of all accrued costs; [~~and~~]

(2)  requiring that any existing bond of the guardian must remain in effect until a new bond has been given or a rider has been filed in accordance with Section 1023.010; and

(3)  certifying that the guardianship is in compliance with this code at the time of transfer.

(b)  In making a determination that the transfer is in the best interests of the ward under Subsection (a), the court may consider:

(1)  the interests of justice;

(2)  the convenience of the parties; and

(3)  the preference of the ward, if the ward is 12 years of age or older.

(c)  On receipt of an order described by Subsection (a), the county shall accept the transfer of the guardianship.

SECTION 2.  Section 1023.008, Estates Code, is amended to read as follows:

Sec. 1023.008.  CONTINUATION OF GUARDIANSHIP. (a) When a guardianship is transferred from one county to another in accordance with this chapter:

(1)  [~~,~~] the guardianship proceeds in the court to which it was transferred as if it had been originally commenced in that court;

(2)  the court to which the guardianship is transferred becomes the court of continuing, exclusive jurisdiction;

(3)  a proceeding relating to the guardianship that is commenced in the court ordering the transfer continues in the court to which the guardianship is transferred as if the proceeding commenced in the receiving court;

(4)  a judgment or order entered in the guardianship before the transfer has the same effect and must be enforced as a judgment or order entered by the court to which the guardianship is transferred; and

(5)  the court ordering the transfer does not retain:

(A)  jurisdiction of the ward who is the subject of the guardianship; and

(B)  the authority to enforce an order entered for a violation of this title that occurred before or after the transfer.

(b)  It is not necessary to record in the receiving court any of the papers in the case that were recorded in the court from which the case was transferred.

SECTION 3.  Chapter 1023, Estates Code, is amended by adding Section 1023.011 to read as follows:

Sec. 1023.011.  NO LIABILITY OF JUDGE. (a) When a guardianship is transferred from one county to another in accordance with this chapter, a judge of the court from which the guardianship is transferred may not be held civilly liable for any injury, damage, or loss to the ward or the ward's estate that occurs after the transfer.

(b)  A judge of the court to which a guardianship is transferred as described by Subsection (a) may not be held civilly liable for any injury, damage, or loss to the ward or the ward's estate that occurred before the transfer.

SECTION 4.  Subchapter D, Chapter 1055, Estates Code, is amended to read as follows:

SUBCHAPTER D. MEDIATION

Sec. 1055.151.  MEDIATION OF CONTESTED GUARDIANSHIP PROCEEDING. (a) Subject to Subsection (b), on [~~On~~] the written agreement of the parties or on the court's own motion, the court may refer a contested guardianship proceeding to mediation.

(b)  If the court refers to mediation a proceeding under Subsection (a) regarding the appointment of a guardian for a proposed ward:

(1)  a determination of incapacity of the proposed ward may be an issue to be mediated, but the applicant for guardianship must still prove to the court that the proposed ward is an incapacitated person in accordance with the requirements of Chapter 1101; and

(2)  all parties to the proceeding shall evaluate during the mediation alternatives to guardianship and supports and services available to the proposed ward, including whether the supports and services and alternatives to guardianship would be feasible to avoid the need for appointment of a guardian.

(c)  The cost of mediation shall be paid by the parties to the proceeding unless otherwise ordered by the court. If the parties are unable to pay the cost of mediation, the court may refer the parties to a local alternative dispute resolution center providing services as part of a system for resolution of disputes established under Section 152.002, Civil Practice and Remedies Code, if a system has been established in the county, and the local center may waive mediation costs as appropriate.

Sec. 1055.152.  MEDIATED SETTLEMENT AGREEMENTS. (a)  A mediated settlement agreement is binding on the parties if the agreement:

(1)  provides, in a prominently displayed statement that is in boldfaced type, in capital letters, or underlined, that the agreement is not subject to revocation by the parties;

(2)  is signed by each party to the agreement; and

(3)  is signed by the party's attorney, if any, who is present at the time the agreement is signed.

(b) [~~(c)~~]  If a mediated settlement agreement meets the requirements of this section, a party is entitled to judgment on the mediated settlement agreement notwithstanding Rule 11, Texas Rules of Civil Procedure, or another rule or law.

(c) [~~(d)~~]  Notwithstanding Subsections (a) and (b) [~~and (c)~~], a court may decline to enter a judgment on a mediated settlement agreement if the court finds that the agreement is not in the ward's or proposed ward's best interests.

SECTION 5.  Chapter 155, Government Code, is amended by adding Subchapter G to read as follows:

SUBCHAPTER G. GUARDIANSHIP MEDIATION TRAINING

Sec. 155.301.  TRAINING. (a) The office by rule shall establish a training course with at least 24 hours of training for persons facilitating mediations under Title 3, Estates Code, that may be provided by a mediation training provider approved by the office. A mediation training provider shall adhere to the established curriculum in providing the training course.

(b)  This section does not require a mediator facilitating a mediation under Title 3, Estates Code, to attend or be certified under a training course established under Subsection (a).

SECTION 6.  The changes in law made by this Act apply to a guardianship created before, on, or after the effective date of this Act.

SECTION 7.  The Office of Court Administration of the Texas Judicial System is required to implement a provision of this Act only if the legislature appropriates money specifically for that purpose. If the legislature does not appropriate money specifically for that purpose, the Office of Court Administration of the Texas Judicial System may, but is not required to, implement a provision of this Act using other appropriations available for that purpose.

SECTION 8.  This Act takes effect September 1, 2021.

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