STATUTORY AND JUDICIAL EMANCIPATION OF MINORS

ALABAMA

TITLE 26. INFANTS AND INCOMPETENTS

CHAPTER 13. RELIEF OF MINOR CHILDREN FROM DISABILITIES OF NONAGE

SECTION 26

Section 26-13. When authorized; procedure generally.

The several juvenile courts of the state are authorized to relieve minors over 18 years of age from the disabilities of nonage in the following cases and none other:

(1) Whenever the father or the mother of such minor shall file a petition with the court, in writing, requesting that such minor be relieved from the disabilities of nonage, and the court shall be satisfied that it is to the best interest of such minor. The parent filing such petition shall aver whether he is the guardian of such minor.

(2) Whenever any such minor, having no father, mother or guardian, or if a parent is living but is insane or has abandoned such minor for one year, shall file a petition with the court to be relieved of the disabilities of nonage, and the court shall be satisfied that it is to the interest of such minor.

(3) Whenever any such minor, having no father or mother, or if a parent is living but is insane or has abandoned such minor for one year, but having a guardian, shall file a petition with the juvenile court to be relieved from the disabilities and the guardian shall join in such petition and the court shall be satisfied that it is to the interest of such minor.

Section 26-13-2. Filing of petition.

The petition must be filed in the county in which the parent or guardian of such minor resides or in the county in which the guardianship of such minor is pending when the petition is filed by the parent or guardian and in the county where the minor resides when the petition is filed by a minor who has no parents or guardian or whose parents reside beyond the limits of the state and such minor resides in this state. In the event that the parent, guardian or minor filing such petition resides beyond the limits of the State of Alabama, then the petition may be filed in the county in which the guardianship of such minor is pending or in the county where the minor owns any real or personal property.

Section 26-13-3. Notice of filing of petition.

Whenever the petition is filed by the minor and the guardian it shall be the duty of the clerk to give notice of the filing of such petition in some newspaper published in the county or, if no newspaper is published in such county, then in such manner as may be prescribed by the judge. Such notice shall be given once a week for three successive weeks before the time of hearing such petition. Whenever the petition is filed under subdivision (1) of Section 26-13-1, a copy of the petition must be served on the minor by the sheriff if the minor resides in this state or, if a nonresident or absent from the state, by registered or certified mail.

Section 26-13-4. Contests of petition; receipt of evidence as to petition.

Upon the hearing of such petition, any person may contest the granting of same upon giving security for costs of such contest. All evidence touching such petition shall be taken in such manner as may be directed by the court.

Section 26-13-5. Entry of judgment relieving minor from disabilities of nonage and effect thereof generally.

If on the hearing of the evidence adduced and upon such other evidence as may be required by the court, the court shall be satisfied that it will be to the interest of such minor to be relieved from the disabilities of nonage, the court shall thereupon enter judgment accordingly, and such judgment shall have the effect of investing such minor with

the right to sue and be sued, to contract, to buy, sell and convey real estate and generally to do and perform all acts which such minor could lawfully do if 19 years of age, except as provided in this chapter.

Section 26-13-6. Restriction of rights of minor by judgment of court.

The court, in its judgment, may, if it deems it advisable, restrict and qualify the rights of a minor relieved from the disabilities of nonage, as to acquittances to and contracts with guardians, executors, administrators, trustees and other persons indebted to such minor, to such an extent as to the court may seem proper in each particular case. Such restrictions shall be fully set forth in the judgment relieving such minor from the disabilities of nonage.

Section 26-13-7. Filing of copy of judgment with probate court; recordation, etc., of judgment by probate judge.

Every minor relieved of the disabilities of nonage under the provisions of this chapter must file a certified copy of the judgment relieving him from such disabilities in the office of the judge of probate in each of the counties in which such minor shall thereafter reside and in the office of the judge of probate of each county in the state where such minor shall do any business or make any contracts. It shall be the duty of the judge of probate to record the judgment and keep the same for the inspection of the public.

Section 26-13-8. Recordation of foreign judgments relieving minors of disabilities of nonage and effect thereof.

A copy of a judgment entered by a court of competent jurisdiction of another state of the United States, duly certified according to the acts of Congress of the United States, relieving a minor nonresident of this state of the disabilities of nonage may be recorded in the probate office of any county in this state where such minor owns property, and when so recorded the said judgment shall have the same force and effect throughout this state as in the state where entered.

ARIZONA

MATHEWS C. TENCZA AND GLADYS BONHARDT TENCZA, HUSBAND AND WIFE, GLADYS BONHARDT TENCZA, MOTHER AND SURVIVING RELATIVE OF THERESA BONHARDT, DECEASED, AND JOHN DOES 1 THROUGH 10, SURVIVING RELATIVES OF THERESA BONHARDT, DECEASED, APPELLANTS V. AETNA CASUALTY AND SURETY COMPANY, A CORPORATION, APPELLEE

No. 11606-PR

Supreme Court of Arizona

111 Ariz. 226; 527 P.2d 97; 1974 Ariz. LEXIS 401

October 15, 1974

DISPOSITION:

[*1]**

Opinion of Court of Appeals vacated; judgment of Superior Court affirmed.

CASE SUMMARY

PROCEDURAL POSTURE:

Appellant insurance carrier requested review of decision of the Court of Appeals (Arizona) that reversed trial court's decision that rendered judgment for appellant in declaratory judgment action to determine whether appellant was liable under an insurance policy for death of appellee insured's stepdaughter when she was struck by uninsured vehicle.

OVERVIEW:

Appellant brought a declaratory judgment action to determine whether it was liable under the policy for the death of appellee's stepdaughter, who was killed when struck by an uninsured vehicle. The trial court entered judgment in favor of appellant, but, on appeal, the appellate court reversed the decision of the trial court. The supreme court accepted appellant's petition for review. The policy's uninsured motorist clause provided coverage for any relative of the insured who was a resident of the same household. Appellant's contention was that the stepdaughter had become emancipated at the time of the accident. The supreme court agreed. The intent of the parties was implied from their conduct. Since appellee had never requested his stepdaughter to return home and the stepdaughter was in the process of moving into her own home, the court determined that the stepdaughter was emancipated and, therefore, did not live in appellee's household.

OUTCOME:

Supreme court vacated appellate court's opinion and affirmed judgment of trial court that found in favor of appellant insurance carrier when court found trial court had sufficient basis to conclude that appellee insured's stepdaughter was emancipated and not part of the household, hence she was not covered under the policy.

CORE CONCEPTS:

Family Law : Parental Rights & Duties : Emancipation of Minors

Although what constitutes emancipation is a question of law, whether there has been an actual emancipation is a question of fact, and the intention of the parents governs. Although the child alone generally may not accomplish emancipation, it can be done in certain cases, as by marriage, enlistment in the armed services, etc.

Family Law : Parental Rights & Duties : Emancipation of Minors

Emancipation is never presumed but must be proved, and the burden of proof is on the one asserting it to prove that fact by a preponderance of evidence. A child may sometimes be emancipated even though she continues to room and board with her parents. Intent may be implied from the conduct of the parents and the surrounding circumstances.

COUNSEL:

Laber, Lovallo & Colarich by Sidney F. Wolitzky, Tucson, for appellants.

Everett, Bury & Moeller by J. Michael Moeller, Tucson, for appellee.

JUDGES:

In Banc. Holohan, Justice. Hays, C. J., Cameron, V. C. J., and Struckmeyer and Lockwood, JJ., concur.

OPINION BY:

HOLOHAN

OPINION:

[*227] [98]** Aetna Casualty and Surety Company issued to Mathews Tencza an automobile liability policy containing uninsured motorist coverage. It brought this declaratory judgment action to determine whether it was liable under the policy for the death of the insured's stepdaughter, who was killed when she was struck by an uninsured pickup truck. Trial was to the court without a jury, and judgment was rendered for the plaintiff insurance carrier. On appeal, the Court of Appeals reversed the decision of the superior court. *21 Ariz.App. 552, 521 P.2d 1010 (1974).* We accepted the petition for review filed by the insurance carrier. The opinion of the Court of Appeals is vacated.

The policy's uninsured motorist clause provides coverage for any relative of the insured "who is a resident of the same household." The company does **[***2]** not deny that the stepdaughter is a relative; it disputes the allegation that she was, at the time of the accident, a resident of the insured's household, and that is the sole issue in this case.

For some time prior to September, 1971, Theresa Bonhardt had lived with her mother and stepfather, Mathews Tencza. In September, 1971, Theresa, an 18-year-old high school junior, quit school, took her dog, moved out of the house, and went to live with some friends in Brooklyn. After a few weeks there, she moved out and went to live with her aunt in the same city. A few weeks later she flew to Tucson and hitchhiked her way toward Sells, Arizona. Theresa moved into the home of Mr. and Mrs. Jerry Janc who were school-teachers in the Sells area. Theresa earned her room and board by doing the housework.

On December 3, 1971, Theresa was walking along the highway near Sells, Arizona and was struck and killed by an uninsured pickup truck.

At the trial only two witnesses testified -- Mr. Tencza and Mrs. Janc. Mr. Tencza testified that he and his wife planned on moving to Arizona, and that he had told his boss and Theresa about his plans. He testified that there were several reasons why Theresa **[***3]** left home. The immediate cause was friction with her brother which came to a head when the brother got drunk and stabbed her dog with an ice pick. Another reason was that she just "jumped the gun" -- i. e., decided not to wait for her parents to go to Arizona. A third reason, he testified, was that she had for some time wanted to live and work with Indians. Mr. Tencza pointed out that Theresa had kept in touch with her mother by telephone and letters. He also noted that she had not taken all her clothes when she left for Arizona although it was not clear whether the remainder of her clothes were at the farm or at her aunt's home. Mr. Tencza conceded that he didn't think that Theresa had any intention of returning to New York, but he was confident that she intended to live with the family when they moved to Arizona.

Mrs. Janc testified that Theresa, while living with them, tried to find a job but never succeeded. Her mother sent her a $ 200 Social Security check from her deceased natural father's funds, and an additional amount of $ 50 by personal check. Mrs. Janc got Theresa to bank the $ 200 check, but Theresa spent the $ 50 check on clothes.

Having failed to find a job **[***4]** she decided to go to school at Sells. The Jancs rented a house for her in an Indian village within the Sells school district so she could attend school there without paying tuition. They also bought her a bicycle. Her death occurred a day before she was to move into the house.

No formal findings of fact and conclusions of law were requested, and the **[*228] [**99]** trial court made none. The ruling of the trial court was that Theresa Bonhardt was not a member of the insured's household and therefore not covered by his policy of insurance. While an appellate court is not bound by the legal conclusion of a trial court it is bound by the facts found by the trial court. Where no findings of fact are made the trial court will be deemed to have made every finding of fact necessary to support its judgment, and such findings, whether specifically made or implied, will not be disturbed if supported by competent evidence. *In re Estate of Harber, 104 Ariz. 79, 449 P.2d 7 (1969).* When there is a conflict in the reasonable inferences that can be drawn from the facts, the findings of the trial court must be upheld. *DeSantis v. Dixon, 72 Ariz. 345, 236 P.2d 38 (1951).*

The trial court **[***5]** in effect concluded that Theresa Bonhardt had become an emancipated child. Although what constitutes emancipation is a question of law, whether there has been an actual emancipation is a question of fact, and the intention of the parents governs. *Wadoz v. United Nat. Indem. Co., 274 Wis. 383, 80 N.W.2d 262 (1957).* Although emancipation generally may not be accomplished by the child alone, it can be done in certain cases, as by marriage, enlistment in the armed services, etc.

Emancipation is never presumed but must be proved, and the burden of proof is on the one asserting it to prove that fact by a preponderance of evidence. 59 Am.Jur.2d, Parent and Child § 98. A child may sometimes be emancipated even though she continues to room and board with her parents. *Martinez v. So. Pac. Co., 45 Cal.2d 244, 288 P.2d 868 (1955).* See also *Carricato v. Carricato (Ky.), 384 S.W.2d 85 (1964).* Intent may be implied from the conduct of the parents and the surrounding circumstances. *Bates v. Bates, 62 Misc.2d 498, 310 N.Y.S.2d 26 (1970);* 59 Am.Jur.2d, Parent and Child § 95.

There was no evidence that Theresa's parents ever demanded or even requested that she return to the family abode. Everything **[***6]** pointed to a parental lack of objection to Theresa's remaining in Arizona, and a tacit approval of her leaving New York. If there was any reluctance beyond the usual reluctance of parents to see their child leave home, there is no evidence of it. Theresa had no intention of returning to New York. Her activities were without parental guidance or supervision. She was in the process, before her death, of moving into her own house. She was endeavoring to support herself. She received her financial support mainly through the Social Security payment payable as a result of her father's death. Her age was such that many young women of similar age are independent and considered by parents as emancipated.

The evidence presented in the case was subject to different interpretations, and reasonable men could reach different conclusions on the facts. Under such circumstances, we believe that the trial court had sufficient basis for concluding that Theresa Bonhardt was emancipated and was not a part of the household of her stepfather and mother; hence she was not covered by the policy of insurance.

The judgment of the superior court is affirmed.

CALIFORNIA

FAMILY CODE

DIVISION 11. MINORS

PART 6. EMANCIPATION OF MINORS LAW

CHAPTER 1. General Provisions.

7000. This part may be cited as the Emancipation of Minors Law.

7001. It is the purpose of this part to provide a clear statement defining emancipation and its consequences and to permit an emancipated minor to obtain a court declaration of the minor's status. This part is not intended to affect the status of minors who may become emancipated under the decisional case law that was in effect before the enactment of Chapter 1059 of the Statutes of 1978.

7002. A person under the age of 18 years is an emancipated minor if any of the following conditions is satisfied:

(a) The person has entered into a valid marriage, whether or not the marriage has been dissolved.

(b) The person is on active duty with the armed forces of the United States.

(c) The person has received a declaration of emancipation pursuant to Section 7122.

CHAPTER 2. Effect of Emancipation.

§ 7050. Emancipated minor considered an adult.

An emancipated minor shall be considered as being an adult for the following purposes:

(a) The minor's right to support by the minor's parents.

(b) The right of the minor's parents to the minor's earnings and to control the minor.

(c) The application of Sections 300 and 601 of the Welfare and Institutions Code.

(d) Ending all vicarious or imputed liability of the minor's parents or guardian for the minor's torts. Nothing in this section affects any liability of a parent, guardian, spouse, or employer imposed by the Vehicle Code, or any vicarious liability that arises from an agency relationship.

(e) The minor's capacity to do any of the following:

(1) Consent to medical, dental, or psychiatric care, without parental consent, knowledge, or liability.

(2) Enter into a binding contract or give a delegation of power.

(3) Buy, sell, lease, encumber, exchange, or transfer an interest in real or personal property, including, but not limited to, shares of stock in a domestic or foreign corporation or a membership in a nonprofit corporation.

(4) Sue or be sued in the minor's own name.

(5) Compromise, settle, arbitrate, or otherwise adjust a claim, action, or proceeding by or against the minor.

(6) Make or revoke a will.

(7) Make a gift, outright or in trust.

(8) Convey or release contingent or expectant interests in property, including marital property rights and any right of survivorship incident to joint tenancy, and consent to a transfer, encumbrance, or gift of marital property.

(9) Exercise or release the minor's powers as donee of a power of appointment unless the creating instrument otherwise provides.

(10) Create for the minor's own benefit or for the benefit of others a revocable or irrevocable trust.

(11) Revoke a revocable trust.

(12) Elect to take under or against a will.

(13) Renounce or disclaim any interest acquired by testate or intestate succession or by inter vivos transfer, including exercise of the right to surrender the right to revoke a revocable trust.

(14) Make an election referred to in Section 13502 of, or an election and agreement referred to in Section 13503 of, the Probate Code.

(15) Establish the minor's own residence.

(16) Apply for a work permit pursuant to Section 49110 of the Education Code without the request of the minor's parents.

(17) Enroll in a school or college.

§ 7051. Insurance contracts.

An insurance contract entered into by an emancipated minor has the same effect as if it were entered into by an adult and, with respect to that contract, the minor has the same rights, duties, and liabilities as an adult.

§ 7052. Stock, memberships, and property.

With respect to shares of stock in a domestic or foreign corporation held by an emancipated minor, a membership in a nonprofit corporation held by an emancipated minor, or other property held by an emancipated minor, the minor may do all of the following:

(a) Vote in person, and give proxies to exercise any voting rights, with respect to the shares, membership, or property.

(b) Waive notice of any meeting or give consent to the holding of any meeting.

(c) Authorize, ratify, approve, or confirm any action that could be taken by shareholders, members, or property owners.

CHAPTER 3. Court Declaration of Emancipation.

ARTICLE 1. General Provisions.

§ 7110. Legislative intent.

It is the intent of the Legislature that proceedings under this part be as simple and inexpensive as possible. To that end, the Judicial Council is requested to prepare and distribute to the clerks of the superior courts appropriate forms for the proceedings that are suitable for use by minors acting as their own counsel.

§ 7111. Effect of declaration on benefits.

The issuance of a declaration of emancipation does not entitle the minor to any benefits under Division 9 (commencing with Section 10000) of the Welfare and Institutions Code which would not otherwise accrue to an emancipated minor.

ARTICLE 2. Procedure for Declaration.

§ 7120. Petition.

(a) A minor may petition the superior court of the county in which the minor resides or is temporarily domiciled for a declaration of emancipation.

(b) The petition shall set forth with specificity all of the following facts:

(1) The minor is at least 14 years of age.

(2) The minor willingly lives separate and apart from the minor's parents or guardian with the consent or acquiescence of the minor's parents or guardian.

(3) The minor is managing his or her own financial affairs. As evidence of this, the minor shall complete and attach a declaration of income and expenses as provided in Section 1285.50 of the California Rules of Court.

(4) The source of the minor's income is not derived from any activity declared to be a crime by the laws of this state or the laws of the United States.

§ 7121. Notice.

(a) Before the petition for a declaration of emancipation is heard, notice the court determines is reasonable shall be given to the minor's parents, guardian, or other person entitled to the custody of the minor, or proof shall be made to the court that their addresses are unknown or that for other reasons the notice cannot be given.

(b) The clerk of the court shall also notify the district attorney of the county where the matter is to be heard of the proceeding. If the minor is a ward or dependent child of the court, notice shall be given to the probation department.

(c) The notice shall include a form whereby the minor's parents, guardian, or other person entitled to the custody of the minor may give their written consent to the petitioner's emancipation. The notice shall include a warning that a court may void or rescind the declaration of emancipation and the parents may become liable for support and medical insurance coverage pursuant to Chapter 2 (commencing with Section 4000) of Part 2 of Division 9 of this code and Sections 11350, 11350.1, 11475.1, and 11490 of the Welfare and Institutions Code.

§ 7122. Issuance of declaration of emancipation.

(a) The court shall sustain the petition if it finds that the minor is a person described by Section 7120 and that emancipation would not be contrary to the minor's best interest.

(b) If the petition is sustained, the court shall forthwith issue a declaration of emancipation, which shall be filed by the county clerk.

(c) A declaration is conclusive evidence that the minor is emancipated.

§ 7123. Writ of mandate.

(a) If the petition is denied, the minor has a right to file a petition for a writ of mandate.

(b) If the petition is sustained, the parents or guardian have a right to file a petition for a writ of mandate if they have appeared in the proceeding and opposed the granting of the petition.

ARTICLE 3. Voiding or Rescinding Declaration

§ 7130. Grounds for voiding or rescinding.

(a) A declaration of emancipation obtained by fraud or by the withholding of material information is voidable.

(b) A declaration of emancipation of a minor who is indigent and has no means of support is subject to rescission.

§ 7131. Petition to void declaration.

A petition to void a declaration of emancipation on the ground that the declaration was obtained by fraud or by the withholding of material information may be filed by any person or by any public or private agency. The petition shall be filed in the court that made the declaration.

§ 7132. Petition to rescind declaration.

(a) A petition to rescind a declaration of emancipation on the ground that the minor is indigent and has no means of support may be filed by the minor declared emancipated, by the minor's conservator, or by the district attorney of the county in which the minor resides. The petition shall be filed in the county in which the minor or the conservator resides.

(b) The minor may be considered indigent if the minor's only source of income is from public assistance benefits. The court shall consider the impact of the rescission of the declaration of emancipation on the minor and shall find the rescission of the declaration of emancipation will not be contrary to the best interest of the minor before granting the order to rescind.

§ 7133. Notice.

(a) Before a petition under this article is heard, notice the court determines is reasonable shall be given to the minor's parents or guardian, or proof shall be made to the court that their addresses are unknown or that for other reasons the notice cannot be given.

(b) The notice to parents shall state that if the declaration of emancipation is voided or rescinded, the parents may be liable to provide support and medical insurance coverage for the child pursuant to Chapter 2 (commencing with Section 4000) of Part 2 of Division 9 of this code and Sections 11350, 11350.1, 11475.1, and 11490 of the Welfare and Institutions Code.

(c) No liability accrues to a parent or guardian not given actual notice, as a result of voiding or rescinding the declaration of emancipation, until that parent or guardian is given actual notice.

§ 7134. Court order.

If the petition is sustained, the court shall forthwith issue an order voiding or rescinding the declaration of emancipation, which shall be filed by the county clerk.

§ 7135. Effect of voiding or rescission on contract and property rights.

Voiding or rescission of the declaration of emancipation does not alter any contractual obligation or right or any property right or interest that arose during the period that the declaration was in effect.

ARTICLE 4. Identification Cards and Information.

§ 7140. Department of Motor Vehicles records system and identification cards.

On application of a minor declared emancipated under this chapter, the Department of Motor Vehicles shall enter identifying information in its law enforcement computer network, and the fact of emancipation shall be stated on the department's identification card issued to the emancipated minor.

§ 7141. Good faith reliance on identification card.

A person who, in good faith, has examined a minor's identification card and relies on a minor's representation that the minor is emancipated, has the same rights and obligations as if the minor were in fact emancipated at the time of the representation.

§ 7142. Protection of public entities and public employees..

No public entity or employee is liable for any loss or injury resulting directly or indirectly from false or inaccurate information contained in the Department of Motor Vehicles records system or identification cards as provided in this part.

§ 7143. Notice of Department of Motor Vehicles if declaration voided or rescinded.

If a declaration of emancipation is voided or rescinded, notice shall be sent immediately to the Department of Motor Vehicles which shall remove the information relating to emancipation in its law enforcement computer network. Any identification card issued stating emancipation shall be invalidated.

MICHIGAN

CHAPTER 722. CHILDREN

MINORS

§ 722.4. Emancipation by operation of law or pursuant to petition filed by minor with family division of circuit court.

Sec. 4. (1) Emancipation may occur by operation of law or pursuant to a petition filed by a minor with the family division of circuit court as provided in this act.

(2) An emancipation occurs by operation of law under any of the following circumstances:

(a) When a minor is validly married.

(b) When a person reaches the age of 18 years.

(c) During the period when the minor is on active duty with the armed forces of the United States.

(d) For the purposes of consenting to routine, nonsurgical medical care or emergency medical treatment to a minor, when the minor is in the custody of a law enforcement agency and the minor's parent or guardian cannot be promptly located. The minor or the minor's parent shall remain responsible for the cost of any medical care or treatment rendered pursuant to this subdivision. An emancipation pursuant to this subdivision shall end upon the termination of medical care or treatment or upon the minor's release from custody, whichever occurs first.

(e) For the purposes of consenting to his or her own preventive health care or medical care including surgery, dental care, or mental health care, except vasectomies or any procedure related to reproduction, during the period when the minor is a prisoner committed to the jurisdiction of the department of corrections and is housed in a state correctional facility operated by the department of corrections or in a youth correctional facility operated by the department of corrections or a private vendor under section 20g of 1953 PA 232, MCL 791.220g; or the period when the minor is a probationer residing in a special alternative incarceration unit established under the special alternative incarceration act, 1988 PA 287, MCL 798.11 to 798.18. This subdivision applies only if a parent or guardian of the minor cannot promptly be located by the department of corrections or, in the case of a youth correctional facility operated by a private vendor, by the responsible official of the youth correctional facility.

(3) An emancipation occurs by court order pursuant to a petition filed by a minor with the family division of circuit court as provided in sections 4a to 4e.

§ 722.4a. Petition; filing; signature; verification; contents; affidavit; service on parents or guardian; notice of hearing.

Sec. 4a. (1) A minor seeking emancipation shall file a petition for emancipation in the family division of circuit court in the county where the minor resides. The petition shall be signed and verified by the minor, and shall include all of the following information:

(a) The minor's full name and birth date, and the county and state where the minor was born.

(b) A certified copy of the minor's birth certificate.

(c) The name and last known address of the minor's parents, guardian, or custodian.

(d) The minor's present address, and length of residency at that address.

(e) A declaration by the minor indicating that he or she has demonstrated the ability to manage his or her financial affairs. The minor may include any information he or she considers necessary to support the declaration.

(f) A declaration by the minor indicating that he or she has the ability to manage his or her personal and social affairs. The minor may include in this section any information he or she considers necessary to support the declaration.

(2) The petition shall include an affidavit by any of the following individuals declaring that the individual has personal knowledge of the minor's circumstances and believes that under those circumstances emancipation is in the best interests of the minor:

(a) Physician.

(b) Nurse.

(c) Member of the clergy.

(d) Psychologist.

(e) Family therapist.

(f) Certified social worker.

(g) Social worker.

(h) Social work technician.

(i) School administrator.

(j) School counselor.

(k) Teacher.

(l) Law enforcement officer.

(m) Duly regulated child care provider.

(3) A copy of the petition and a summons to appear at the hearing shall be served on the minor's parents or guardian. A notice of hearing shall be sent to the individual who provided the affidavit required under subsection (2).

§ 722.4b. Powers of court.

Sec. 4b. After a petition is filed, the court may do 1 or more of the following:

(a) Assign an employee of the court to investigate the allegations of the petition and to file a report containing the results of the investigation with the court.

(b) Appoint legal counsel for the minor.

(c) Appoint legal counsel for the minor's parents or guardian if they are indigent and if they oppose the petition.

(d) Dismiss the petition if the minor's custodial parent does not consent and is providing support.

§ 722.4c. Hearing.

Sec. 4c. (1) The hearing shall be before a judge or referee sitting without a jury. If the minor requests that the hearing be before a judge, the hearing shall be before a judge and not before a referee.

Issuance of emancipation order.

(2) The court shall issue an emancipation order if it determines that emancipation is in the best interest of the minor and the minor establishes all of the following:

(a) That the minor's parent or guardian does not object to the petition; or if a parent or guardian objects to the petition, that the objecting parent or guardian is not providing the minor with support.

(b) That the minor is at least 16 years of age.

(c) That the minor is a resident of the state.

(d) That the minor has demonstrated the ability to manage his or her financial affairs, including proof of employment or other means of support. "Other means of support" does not include general assistance or aid to families with dependent children administered under the social welfare act, Act No. 280 of the Public Acts of 1939, being sections 400.1 to 400.121 of the Michigan Compiled Laws.

(e) That the minor has the ability to manage his or her personal and social affairs, including, but not limited to, proof of housing.

(f) That the minor understands his or her rights and responsibilities under this act as an emancipated minor.

Petitioner's burden of proof.

(3) A minor who petitions the court for emancipation shall have the burden of showing by a preponderance of evidence that emancipation should be ordered.

Copy of order, retention.

(4) If the court issues an emancipation order, the court shall retain a copy of the order until the emancipated minor becomes 25 years of age.

Emancipation obtained by fraud, voidability.

(5) An emancipation obtained by fraud is voidable. Voiding such an order does not affect an obligation, responsibility, right, or interest that arose during the period of time the order was in effect.

Appeal.

(6) The minor or a parent or guardian of the minor may file an appeal from the court's grant or denial of an emancipation petition. The appeal shall be filed in the court of appeals.

§ 722.4d. Petition for rescission; service of copy and summons; determinations; order; effect of rescission on obligations, rights, or interests; appeal.

Sec. 4d. (1) A parent of a minor emancipated by court order or a minor emancipated by court order may petition the family division of circuit court that issued the order to rescind the order. If the order of emancipation is entered by the probate court before January 1, 1998, the parent or minor may petition the family division of the circuit court in the county in which the order was entered to rescind the order.

(2) A copy of the petition for rescission and a summons shall be served on the minor or the minor's parents.

(3) The court shall grant the petition and rescind the order of emancipation if it determines 1 or more of the following:

(a) That the minor is indigent and has no means of support.

(b) That the minor and the minor's parents agree that the order should be rescinded.

(c) That there is a resumption of family relations inconsistent with the existing emancipation order.

(4) If a petition for rescission is granted, the court shall issue an order rescinding the emancipation order and retain a copy of the order until the minor becomes 25 years of age.

(5) Rescission of an emancipation order does not alter any contractual obligations or rights or any property rights or interests that arose during the period of time that the emancipation order was in effect.

(6) The minor or a parent of the minor may file an appeal from the court's grant or denial of a petition for rescission of an emancipation order. The appeal shall be filed in the court of appeals.

§ 722.4e. Rights and responsibilities of emancipated minor; obligation and liability of parents.

Sec. 4e. (1) A minor emancipated by operation of law or by court order shall be considered to have the rights and responsibilities of an adult, except for those specific constitutional and statutory age requirements regarding voting, use of alcoholic beverages, and other health and safety regulations relevant to him or her because of his or her age. A minor shall be considered emancipated for the purposes of, but not limited to, all of the following:

(a) The right to enter into enforceable contracts, including apartment leases.

(b) The right to sue or be sued in his or her own name.

(c) The right to retain his or her own earnings.

(d) The right to establish a separate domicile.

(e) The right to act autonomously, and with the rights and responsibilities of an adult, in all business relationships, including, but not limited to, property transactions and obtaining accounts for utilities, except for those estate or property matters that the court determines may require a conservator or guardian ad litem.

(f) The right to earn a living, subject only to the health and safety regulations designed to protect those under the age of majority regardless of their legal status.

(g) The right to authorize his or her own preventive health care, medical care, dental care, and mental health care, without parental knowledge or liability.

(h) The right to apply for a driver's license or other state licenses for which he or she might be eligible.

(i) The right to register for school.

(j) The right to marry.

(k) The right to apply to the medical assistance program administered under the social welfare act, Act No. 280 of the Public Acts of 1939, being sections 400.1 to 400.121 of the Michigan Compiled Laws, if needed.

(l) The right to apply for other welfare assistance, including general assistance and aid to families with dependent children administered under Act No. 280 of the Public Acts of 1939, if needed.

(m) The right, if a parent, to make decisions and give authority in caring for his or her own minor child.

(n) The right to make a will.

(2) The parents of a minor emancipated by court order are jointly and severally obligated to support the minor. However, the parents of a minor emancipated by court order are not liable for any debts incurred by the minor during the period of emancipation.

MINNESOTA

IN RE APPLICATION OF COUNTY OF ST. LOUIS TO DETERMINE SETTLEMENT OF LADEAN FIIHR. COUNTY OF ST. LOUIS V. COUNTY OF SCOTT

No. 42371

Supreme Court of Minnesota

289 Minn. 322; 184 N.W.2d 22; 1971 Minn. LEXIS 1227

February 12, 1971

PRIOR HISTORY:

[*1]**

Petition in the St. Louis County District Court by said county to determine the settlement for poor-relief purposes of LaDean Fiihr. After findings, C. L. Eckman, Judge, that Scott County is the legal settlement within the State of Minnesota, said county appealed from said order.

DISPOSITION:

Affirmed.

HEADNOTES:

Parent and child -- emancipation -- determination.

1. Emancipation is the act of the parent and need not be in writing or in express words. It may be implied from conduct. Whether a child has been emancipated must be determined largely upon the peculiar facts and circumstances of each case.

Pauper -- proceeding to determine poor-relief settlement -- memorandum from Department of Public Welfare -- effect.

2. In a proceeding between two counties to determine the legal settlement for poor relief purposes of the mother of an illegitimate child, the county initiating the proceeding was not bound by a memorandum, introduced by it into evidence, which expressed the opinion of the State Department of Public Welfare that the mother had not acquired a poor-relief settlement in Minnesota.

COUNSEL:

Robert O. O'Neill, County Attorney, and *Robert J. Goggins*, Assistant **[***2]** County Attorney, for appellant.

John Arko, County Attorney, *Keith M. Brownell* and *Bruce L. Anderson*, Assistant County Attorneys, for respondent.

JUDGES:

Knutson, C.J., and Nelson, Murphy, Peterson, and Rosengren, JJ.

OPINION BY:

NELSON

OPINION:

[*323] [23]** Appeal by Scott County from an order of the District Court of St. Louis County whereby Scott County was adjudicated the legal settlement for poor relief purposes within the State of Minnesota of LaDean Fiihr and her minor child, Julie Fiihr, and was ordered to assume the expenses of care and support of Julie Fiihr. The appeal results from an action initiated by respondent, St. Louis County, to determine whether respondent or appellant, Scott County, would ultimately bear the expense of caring for Julie Fiihr, born out of wedlock to LaDean Fiihr on April 18, 1968.

The mother, LaDean Fiihr, was born near Brookings, South Dakota, on October 15, 1947, and lived with her parents until November 25, 1966, when she moved to Shakopee, Scott County, Minnesota. In Shakopee she lived with her brother and spent the first three weeks of her stay babysitting for his family and looking for a job. She eventually obtained a job **[***3]** in Golden Valley, and a short time later moved out of her brother's house but continued to reside in Shakopee.

Sometime during the fall of 1967, LaDean became pregnant and was sent by the putative father to the Bethel Home for unmarried expectant mothers in Duluth to await the birth of her illegitimate child. On April 18, 1968, LaDean gave birth to a baby girl, Julie Fiihr, at the Bethel Home. LaDean gave up the baby while she was at the **[**24]** home, and her parental rights were subsequently terminated. She returned to Shakopee on April 27, 1968, to resume her residence there, leaving the child in St. Louis County under the care and support of the St. Louis County **[*324]** Welfare Department. Unfortunately, the child was born a hydrocephalic with serious mental deficiencies. Substantial expense has already been incurred for her care, treatment, and support, and the outlook is that Julie will probably require full support and care during her entire lifetime.

Respondent petitioned the district court pursuant to Minn. St. 261.08 to affix and determine the legal settlement for poor-relief purposes for LaDean Fiihr, there being a dispute between the two counties as to which **[***4]** county was responsible under the law for the care and maintenance of Julie Fiihr. Both parties stipulated that the Bethel Home, situs of LaDean's residence while in St. Louis County, is a public institution under § 261.07, n1 so that all of the time LaDean spent in St. Louis County was excluded time and could not be used for purposes of determining settlement; and that her only purpose for going to Duluth was to have the child, leave it, and return to Shakopee.

n1 See, Minn. St. 261.07, subds. 1, 2, and 3.

After hearing testimony and receiving other evidence, the court issued findings of fact, conclusions of law, and an order determining that Scott County was the legal settlement for poor-relief purposes of LaDean Fiihr and Julie Fiihr and that Scott County must assume the expense of care and support for the minor child.

The issues involved here are: (1) Was LaDean an emancipated minor from November 27, 1966, to November 27, 1967, the time during which she lived in Scott County, and therefore eligible for **[***5]** a legal settlement for poor-relief purposes in Scott County? (2) Is a proponent of evidence bound by the evidence he introduces?

1. Appellant contends that LaDean was an unemancipated minor between November 27, 1966, and November 27, 1967, when she was 19 years old and resided in Scott County before the birth of her child. As such, appellant contends, she never obtained settlement in the State of Minnesota and thus could not gain settlement in Scott County. The district court found that **[*325]** LaDean settled in Scott County in her own right, lived apart from and was not supported by her parents, and was an emancipated minor during the time in question.

Appellant argues that the great weight of evidence adduced at the hearing showed that LaDean was not an emancipated minor. In its brief, it cites evidence that she lived with her brother, who acted as agent for her parents in looking after her; that she planned to return home if things did not work out in Shakopee; that she left most of her clothing with her parents when she came to Shakopee; that she returned home three or four times for visits during the year in question; and that she received gifts from her parents on **[***6]** holidays.

The foregoing evidence is by no means conclusive on the question of LaDean's status as a minor. Appellant in its brief admitted that after finding employment LaDean moved out of her brother's home and lived elsewhere in Shakopee. The fact that she planned to return home if things did not work out in Shakopee seems quite insignificant in light of subsequent events. Of more persuasive force is the fact that when she became pregnant, instead of going home, she went to Duluth to have her child, and after the baby was born, she did not return to South Dakota but returned to Shakopee. Also, when she went to South Dakota for the Christmas holidays in 1966, she collected all of her clothing and belongings and took them to Shakopee with her after Christmas. Making occasional visits to one's parents and receiving birthday and Christmas gifts from them are certainly not indicative of continuing dependence

on them, but rather of parental-filial esteem and love which both parents and children may share throughout their lives.

[25]** This court has had but few occasions to discuss and legally define an emancipated minor. In *Taubert v. Taubert, 103 Minn. 247, 249, 114 N.W.* **[***7]** *763, 764,* a tort action by a minor against his parent, this court stated:

"*** The general rule is that a minor cannot sue his parent for a tort; but, if he has been emancipated, he can. A mere **[*326]** waiver, however, by the parent of the right to the earnings of his minor child, does not alone constitute such emancipation. There must be a surrender by the parent of the right to the services of his minor child, and also the right to the custody and control of his person."

In *Lufkin v. Harvey, 131 Minn. 238, 240, 154 N.W. 1097, 1098,* this court said:

"*** In the United States the doctrine of emancipation has been applied with some liberality. Emancipation is not, however, to be presumed. It must be proved. *** A minor may be emancipated by an instrument in writing, by verbal agreement, or by implication from the conduct of the parties. *** There may be complete emancipation, even though the minor continues to reside with his parents. ***

"Complete emancipation gives to the minor his time and earnings and gives up the parents' custody and control, and in fact works an absolute destruction of the filial relation."

In *In re Settlement of Horton, 212 Minn.* **[***8]** *7, 9, 2 N.W. (2d) 149, 150,* we stated:

"*** Emancipation is the act of the parent * * *. Emancipation need not be in writing or in express words. It may be implied from conduct. These considerations apply in whatever form of action or proceeding emancipation is for determination."

Other courts have held that a parent's consent to a child's departure from the parental home to make his own way in the world is an emancipation of the child. See, *Spurgeon v. Mission State Bank (8 Cir.) 151 F. (2d) 702; Rounds Bros. v. McDaniel, 133 Ky. 669, 118 S.W. 956; Holland v. Hartley, 171 N.C. 376, 88 S.E. 507.* In *Swenson v. Swenson, 241 Mo. App. 21, 227 S.W. (2d) 103, 20 A.L.R. (2d) 1409,* the Kansas City Court of Appeals held that emancipation of a child is the relinquishment by the parent of control and authority over the child, conferring **[*327]** on him the right to his earnings and terminating the parent's legal duty to support the child.

In 39 Am. Jur., Parent and Child, § 64, it is stated:

"Whether a child has been emancipated must be determined largely upon the peculiar facts and circumstances of each case and is ordinarily a question for the jury."

In reviewing the abbreviated **[***9]** record submitted on this appeal, and in the light of the authorities cited above, this court is satisfied that the trial court, as sole arbiter of the facts and circumstances, committed no error when it found that LaDean Fiihr became an emancipated minor when she left her home in South Dakota and came to live in Shakopee. As an emancipated minor with a year's residence in Scott County, LaDean acquired legal settlement for poor-relief purposes in Scott County pursuant to § 261.07, subd. 1. Appellant argues that her first three weeks in Shakopee, spent with her brother, gave her only the status of a visitor and, therefore, she did not have the full year of residence required by the statute. Appellant, however, cites no authority for this proposition, and the wording of § 261.07, subd. 1, "Every person except those hereinafter mentioned, who has resided one year continuously in any county, shall be deemed to have settlement therein," does nothing to strengthen its argument. The evidence is clear that LaDean was a resident of Scott County for the period of November 27, 1966, to November 27, 1967.

[26]** 2. Appellant further contends that respondent is bound by a memorandum **[***10]** of the State Department of Public Welfare which respondent attached to its petition and which respondent later offered and had received into evidence. It is difficult to see how appellant's contention is a real issue in this case. The memorandum was in response to the Scott County Welfare Department's inquiry as to whether LaDean had obtained a settlement for poor-relief purposes in Minnesota. The memorandum, in effect, stated that in the state department's opinion LaDean was not **[*328]** an emancipated minor and had not gained a poor-relief settlement in Minnesota, but that if she were found to be in need of relief assistance in Minnesota, the county where she was presently residing had the obligation of supplying her emergency needs. Scott County, relying on this memorandum, refused to provide support or expenses for the care of Julie Fiihr, who was under the legal custody of the St. Louis County Welfare Department. It is this memorandum which caused respondent to petition the court to determine who was to provide support for the child.

The court below determined, contrary to the memorandum, that LaDean was an emancipated minor; that she acquired legal settlement for poor-relief **[***11]** purposes in Scott County pursuant to § 261.07, subd. 1; and that Julie, an unemancipated minor, had the same legal settlement as her mother pursuant to § 261.07, subd. 3. The evidence supports this determination.

The position of the welfare department's memorandum at the hearing was not one of uncontradicted and unimpeached evidence, binding respondent, but only of an opinion rendered by a state agency which respondent, under § 261.08, was entitled to challenge in the district court proceeding.

The order of the district court is affirmed.

Affirmed.

WASHINGTON

TITLE 13. JUVENILE COURTS AND JUVENILE OFFENDERS

CHAPTER 13.64. EMANCIPATION OF MINORS

§ 13.64.010. Declaration of emancipation.

Any minor who is sixteen years of age or older and who is a resident of this state may petition in the superior court for a declaration of emancipation.

§ 13.64.020. Petition for emancipation -- Filing fees.

(1) A petition for emancipation shall be signed and verified by the petitioner, and shall include the following information: (a) The full name of the petitioner, the petitioner's birthdate, and the state and county of birth; (b) a certified copy of the petitioner's birth certificate; (c) the name and last known address of the petitioner's parent or parents, guardian, or custodian; (d) the petitioner's present address, and length of residence at that address; (e) a declaration by the petitioner indicating that he or she has the ability to manage his or her financial affairs, including any supporting information; and (f) a declaration by the petitioner indicating that he or she has the ability to manage his or her personal, social, educational, and nonfinancial affairs, including any supporting information.

(2) Fees for this section are set under RCW 36.18.014.

§ 13.64.030. Service of petition -- Notice -- Date of hearing.

The petitioner shall serve a copy of the filed petition and notice of hearing on the petitioner's parent or parents, guardian, or custodian at least fifteen days before the emancipation hearing. No summons shall be required. Service shall be waived if proof is made to the court that the address of the parent or parents, guardian, or custodian is unavailable or unascertainable. The petitioner shall also serve notice of the hearing on the department if the petitioner is subject to dependency disposition order under RCW 13.34.130. The hearing shall be held no later than sixty days after the date on which the petition is filed.

§ 13.64.040. Hearing on petition.

(1) The hearing on the petition shall be before a judicial officer, sitting without a jury. Prior to the presentation of proof the judicial officer shall determine whether: (a) The petitioning minor understands the consequences of the petition regarding his or her legal rights and responsibilities; (b) a guardian ad litem should be appointed to investigate the allegations of the petition and file a report with the court.

(2) For the purposes of this section, the term "judicial officer" means: (a) A judge; (b) a superior court commissioner of a unified family court if the county operates a unified family court; or (c) any superior court commissioner if the county does not operate a unified family court. The term does not include a judge pro tempore.

§ 13.64.050. Emancipation decree -- Certified copy -- Notation of emancipated status.

(1) The court shall grant the petition for emancipation, except as provided in subsection (2) of this section, if the petitioner proves the following facts by clear and convincing evidence: (a) That the petitioner is sixteen years of age or older; (b) that the petitioner is a resident of the state; (c) that the petitioner has the ability to manage his or her financial affairs; and (d) that the petitioner has the ability to manage his or her personal, social, educational, and nonfinancial affairs.

(2) A parent, guardian, custodian, or in the case of a dependent minor, the department, may oppose the petition for emancipation. The court shall deny the petition unless it finds, by clear and convincing evidence, that denial of the grant of emancipation would be detrimental to the interests of the minor.

(3) Upon entry of a decree of emancipation by the court the petitioner shall be given a certified copy of the decree. The decree shall instruct the petitioner to obtain a Washington driver's license or a Washington identification

card and direct the department of licensing make a notation of the emancipated status on the license or identification card.

§ 13.64.060. Power and capacity of emancipated minor.

(1) An emancipated minor shall be considered to have the power and capacity of an adult, except as provided in subsection (2) of this section. A minor shall be considered emancipated for the purposes of, but not limited to:

(a) The termination of parental obligations of financial support, care, supervision, and any other obligation the parent may have by virtue of the parent-child relationship, including obligations imposed because of marital dissolution;

(b) The right to sue or be sued in his or her own name;

(c) The right to retain his or her own earnings;

(d) The right to establish a separate residence or domicile;

(e) The right to enter into nonvoidable contracts;

(f) The right to act autonomously, and with the power and capacity of an adult, in all business relationships, including but not limited to property transactions;

(g) The right to work, and earn a living, subject only to the health and safety regulations designed to protect those under age of majority regardless of their legal status; and

(h) The right to give informed consent for receiving health care services.

(2) An emancipated minor shall not be considered an adult for: (a) The purposes of the adult criminal laws of the state unless the decline of jurisdiction procedures contained in RCW 13.40.110 are used or the minor is tried in criminal court pursuant to *RCW 13.04.030(1)(e)(iv); (b) the criminal laws of the state when the emancipated minor is a victim and the age of the victim is an element of the offense; or (c) those specific constitutional and statutory age requirements regarding voting, use of alcoholic beverages, possession of firearms, and other health and safety regulations relevant to the minor because of the minor's age.

§ 13.64.070. Declaration of emancipation – Voidable.

A declaration of emancipation obtained by fraud is voidable. The voiding of any such declaration shall not affect any obligations, rights, or interests that arose during the period the declaration was in effect.

§ 13.64.080. Forms to initiate petition of emancipation.

The office of the administrator for the courts shall prepare and distribute to the county court clerks appropriate forms for minors seeking to initiate a petition of emancipation.

MATURE MINOR:
GENERAL MEDICAL HEALTH SERVICES

ALABAMA

TITLE 22. HEALTH, MENTAL HEALTH AND ENVIRONMENTAL CONTROL

SUBTITLE 1. HEALTH AND ENVIRONMENTAL CONTROL GENERALLY

CHAPTER 8. CONSENT FOR HEALTH SERVICES

§ 22-8-4. Minors; consent for self.

Any minor who is 14 years of age or older, or has graduated from high school, or is married, or having been married is divorced or is pregnant may give effective consent to any legally authorized medical, dental, health or mental health services for himself or herself, and the consent of no other person shall be necessary.

ARIZONA

TITLE 44. TRADE AND COMMERCE

CHAPTER 1. CONTRACTS

ARTICLE 3. CAPACITY TO CONTRACT

§ 44-132. Capacity of minor to obtain hospital, medical and surgical care; definition.

A. Notwithstanding any other provision of law except as provided in title 36, chapter 20, article 1, and without limiting cases in which consent may otherwise be obtained or is not required, any emancipated minor, any minor who has contracted a lawful marriage or any homeless minor may give consent to the furnishing of hospital, medical and surgical care to such minor, and such consent shall not be subject to disaffirmance because of minority. The consent of the parent, or parents, of such a person is not necessary in order to authorize hospital, medical and surgical care. For the purposes of this section only, subsequent judgment of annulment of such marriage or judgment of divorce shall not deprive such person of his adult status once attained.

B. A health care provider acting in reliance on the consent of a minor who has authority or apparent authority pursuant to this section to consent to health care is not subject to criminal and civil liability and professional disciplinary action on the ground that he or she failed to obtain consent of the minor's parent, parents or legal guardian. This subsection does not affect any other cause of action permitted under title 12, chapter 5.1.

C. For purposes of this section, a homeless minor is an individual under the age of eighteen years living apart from his parents and who lacks a fixed and regular nighttime residence or whose primary residence is either a supervised shelter designed to provide temporary accommodations, a halfway house or a place not designed for or ordinarily used for sleeping by humans.

CALIFORNIA

FAMILY CODE

DIVISION 11. MINORS

PART 4. MEDICAL TREATMENT

CHAPTER 3. CONSENT BY MINOR

§ 6922. Consent by minor 15 or older living separately.

(a) A minor may consent to the minor's medical care or dental care if all of the following conditions are satisfied:

(1) The minor is 15 years of age or older.

(2) The minor is living separate and apart from the minor's parents or guardian, whether with or without the consent of a parent or guardian and regardless of the duration of the separate residence.

(3) The minor is managing the minor's own financial affairs, regardless of the source of the minor's income.

(b) The parents or guardian are not liable for medical care or dental care provided pursuant to this section.

(c) A physician and surgeon or dentist may, with or without the consent of the minor patient, advise the minor's parent or guardian of the treatment given or needed if the physician and surgeon or dentist has reason to know, on the basis of the information given by the minor, the whereabouts of the parent or guardian.

MICHIGAN

[NO STATUTE LOCATED]

MINNESOTA

HEALTH

CHAPTER 144 DEPARTMENT OF HEALTH

CONSENT OF MINORS FOR HEALTH SERVICES

§ 341. Living apart from parents and managing financial affairs, consent for self.

Notwithstanding any other provision of law, any minor who is living separate and apart from parents or legal guardian, whether with or without the consent of a parent or guardian and regardless of the duration of such separate residence, and who is managing personal financial affairs, regardless of the source or extent of the minor's income, may give effective consent to personal medical, dental, mental and other health services, and the consent of no other person is required.

WASHINGTON

[NO STATUTE LOCATED]

MATURE MINOR:
MENTAL HEALTH SERVICES

ALABAMA

TITLE 22. HEALTH, MENTAL HEALTH AND ENVIRONMENTAL CONTROL

SUBTITLE 1. HEALTH AND ENVIRONMENTAL CONTROL GENERALLY

CHAPTER 8. CONSENT FOR HEALTH SERVICES

§ 22-8-4. Minors; consent for self.

Any minor who is 14 years of age or older, or has graduated from high school, or is married, or having been married is divorced or is pregnant may give effective consent to any legally authorized medical, dental, health or mental health services for himself or herself, and the consent of no other person shall be necessary.

ARIZONA

TITLE 36. PUBLIC HEALTH AND SAFETY

CHAPTER 5. MENTAL HEALTH SERVICES

ARTICLE 3. VOLUNTARY ADMISSIONS

§ 36-518. Application for voluntary admission; admission to agency; minors; transportation.

A. Pursuant to rules of the division, any person who is eighteen years of age or older and who manifests the capacity to give and gives informed consent may be hospitalized for evaluation, care and treatment by voluntarily making written application on a prescribed form. The agency to which the person applies may accept and admit the person if the medical director of the agency or the admitting officer believes that the person needs evaluation or will benefit from care and treatment of a mental disorder or other personality disorder or emotional condition in the agency. Informed consent as defined in section 36-501 may be given by the person's guardian pursuant to section 14-5312.01 or agent appointed pursuant to Chapter 32, Article 6 of this title if that agent was granted the authority to do this by the mental health care power of attorney. If an agent gives informed consent as defined in section 36-501, an evaluation shall be conducted pursuant to section 36-3284.

B. Notwithstanding Subsection C of this section, and except in the case of an emergency admission, a minor who is in the custody of the juvenile court, who is a ward of the juvenile court as a dependent child or who is adjudicated delinquent or incorrigible shall not be admitted for evaluation or treatment unless approved by the court on application filed by an entity as provided in section 8-272 or 8-273.

C. A minor may be admitted to a mental health agency as defined in section 8-201 by the written application of the parent, guardian or custodian of the minor after the following has occurred:

1. A psychiatric investigation by the medical director of the mental health agency which carefully probes the child's social, psychological and developmental background.
2. An interview with the child by the medical director of the mental health agency.
3. The medical director has explained to the child and the child's parent, guardian or custodian the program of evaluation or treatment contemplated and its probable length.
4. The medical director has explored and considered available alternatives to inpatient treatment or evaluation.
5. The medical director of a mental health agency has determined whether the child needs an inpatient evaluation or will benefit from care and treatment of a mental disorder or other personality disorder or emotional condition in the agency and whether the evaluation or treatment goals can be accomplished in a less restrictive setting. A record of the reasons for this determination shall be made.

D. If the child's situation does not satisfy the requirements of Subsection C of this section, the application by the parent, guardian or custodian shall be refused.

E. All emergency admissions for mental health evaluation or treatment of children shall be made pursuant to the standards and procedures in Article 4 of this chapter.

F. The board of supervisors of the county of residence of a person who has submitted an application for admission to the state hospital pursuant to Subsection A of this section shall provide transportation to the state hospital for the person if it appears that the person is eligible for voluntary admission to the state hospital after consultation between the state hospital and the evaluation or screening agency. The county is responsible for that expense to the extent the expense is not covered by any third party payor.

CALIFORNIA

FAMILY CODE

DIVISION 11. MINORS

PART 4. MEDICAL TREATMENT

CHAPTER 3. CONSENT BY MINOR

§ 6924. Consent by minor to mental health treatment or counseling or residential shelter services.

(a) As used in this section:

(1) "Mental health treatment or counseling services" means the provision of mental health treatment or counseling on an outpatient basis by any of the following:

(A) A governmental agency.

(B) A person or agency having a contract with a governmental agency to provide the services.

(C) An agency that receives funding from community united funds.

(D) A runaway house or crisis resolution center.

(E) A professional person, as defined in paragraph (2).

(2) "Professional person" means any of the following:

(A) A person designated as a mental health professional in Sections 622 to 626, inclusive, of Article 8 of Subchapter 3 of Chapter 1 of Title 9 of the California Code of Regulations.

(B) A marriage and family therapist as defined in Chapter 13 (commencing with Section 4980) of Division 2 of the Business and Professions Code.

(C) A licensed educational psychologist as defined in Article 5 (commencing with Section 4986) of Chapter 13 of Division 2 of the Business and Professions Code.

(D) A credentialed school psychologist as described in Section 49424 of the Education Code.

(E) A clinical psychologist as defined in Section 1316.5 of the Health and Safety Code.

(F) The chief administrator of an agency referred to in paragraph (1) or (3).

(G) A marriage and family therapist registered intern, as defined in Chapter 13 (commencing with Section 4980) of Division 2 of the Business and Professions Code, while working under the supervision of a licensed professional specified in subdivision (f) of Section 4980.40 of the Business and Professions Code.

(3) "Residential shelter services" means any of the following:

(A) The provision of residential and other support services to minors on a temporary or emergency basis in a facility that services only minors by a governmental agency, a person or agency having a contract with a governmental agency to provide these services, an agency that receives funding from community funds, or a licensed community care facility or crisis resolution center.

(B) The provision of other support services on a temporary or emergency basis by any professional person as defined in paragraph (2).

(b) A minor who is 12 years of age or older may consent to mental health treatment or counseling on an outpatient basis, or to residential shelter services, if both of the following requirements are satisfied:

(1) The minor, in the opinion of the attending professional person, is mature enough to participate intelligently in the outpatient services or residential shelter services.

(2) The minor (A) would present a danger of serious physical or mental harm to self or to others without the mental health treatment or counseling or residential shelter services, or (B) is the alleged victim of incest or child abuse.

(c) A professional person offering residential shelter services, whether as an individual or as a representative of an entity specified in paragraph (3) of subdivision (a), shall make his or her best efforts to notify the parent or guardian of the provision of services.

(d) The mental health treatment or counseling of a minor authorized by this section shall include involvement of the minor's parent or guardian unless, in the opinion of the professional person who is treating or counseling the minor, the involvement would be inappropriate. The professional person who is treating or counseling the minor shall state in the client record whether and when the person attempted to contact the minor's parent or guardian, and whether the attempt to contact was successful or unsuccessful, or the reason why, in the professional person's opinion, it would be inappropriate to contact the minor's parent or guardian.

(e) The minor's parents or guardian are not liable for payment for mental health treatment or counseling services provided pursuant to this section unless the parent or guardian participates in the mental health treatment or counseling, and then only for services rendered with the participation of the parent or guardian. The minor's parents or guardian are not liable for payment for any residential shelter services provided pursuant to this section unless the parent or guardian consented to the provision of those services.

(f) This section does not authorize a minor to receive convulsive therapy or psychosurgery as defined in subdivisions (f) and (g) of Section 5325 of the Welfare and Institutions Code, or psychotropic drugs without the consent of the minor's parent or guardian.

MICHIGAN

CHAPTER 330. MENTAL HEALTH CODE

MENTAL HEALTH CODE

CHAPTER 4A. CIVIL ADMISSION AND DISCHARGE PROCEDURES FOR EMOTIONALLY DISTURBED MINORS

§ 330.1498d. Hospitalization of minor; conditions; request by family independence agency or county juvenile agency.

Sec. 498d. (1) Subject to section 498e and except as otherwise provided in this chapter, a minor of any age may be hospitalized if both of the following conditions are met:

(a) The minor's parent, guardian, or a person acting in loco parentis for the minor or, in compliance with subsection (2) or (3), the family independence agency or county juvenile agency, as applicable, requests hospitalization of the minor under this chapter.

(b) The minor is found to be suitable for hospitalization.

(2) The family independence agency may request hospitalization of a minor who is committed to the family independence agency under 1935 PA 220, MCL 400.201 to 400.214.

(3) As applicable, the family independence agency may request hospitalization of, or the county juvenile agency may request an evaluation for hospitalization of, a minor who is 1 of the following:

(a) A ward of the court under chapter X or XIIA of 1939 PA 288, MCL 710.21 to 710.70 and 712a.1 to 712a.32, if the family independence agency or county juvenile agency is specifically empowered to do so by court order.

(b) Committed to the family independence agency or county juvenile agency under the youth rehabilitation services act, 1974 PA 150, MCL 803.301 to 803.309, except that if the minor is residing with his or her custodial parent, the consent of the custodial parent is required.

(4) Subject to sections 498e, 498f, and 498j, a minor 14 years of age or older may be hospitalized if both of the following conditions are met:

(a) The minor requests hospitalization under this chapter.

(b) The minor is found to be suitable for hospitalization.

(5) In making the determination of suitability for hospitalization, a minor shall not be determined to be a minor requiring treatment solely on the basis of 1 or more of the following conditions:

(a) Epilepsy.

(b) Developmental disability.

(c) Brief periods of intoxication caused by substances such as alcohol or drugs or by dependence upon or addiction to those substances.

(d) Juvenile offenses, including school truancy, home truancy, or incorrigibility.

(e) Sexual activity.

(f) Religious activity or beliefs.

(g) Political activity or beliefs.

(6) As used in this section, "county juvenile agency" means that term as defined in section 2 of the county juvenile agency act.

CHAPTER 330. MENTAL HEALTH CODE

MENTAL HEALTH CODE

CHAPTER 7. RIGHTS OF RECIPIENTS OF MENTAL HEALTH SERVICES

§ 330.1707. Rights of minor.

Sec. 707. (1) A minor 14 years of age or older may request and receive mental health services and a mental health professional may provide mental health services, on an outpatient basis, excluding pregnancy termination referral services and the use of psychotropic drugs, without the consent or knowledge of the minor's parent, guardian, or person in loco parentis. Except as otherwise provided in this section, the minor's parent, guardian, or person in loco parentis shall not be informed of the services without the consent of the minor unless the mental health professional treating the minor determines that there is a compelling need for disclosure based on a substantial probability of harm to the minor or to another individual, and if the minor is notified of the mental health professional's intent to inform the minor's parent, guardian, or person in loco parentis.

(2) Services provided to a minor under this section shall, to the extent possible, promote the minor's relationship to the parent, guardian, or person in loco parentis, and shall not undermine the values that the parent, guardian, or person in loco parentis has sought to instill in the minor.

(3) Services provided to a minor under this section shall be limited to not more than 12 sessions or 4 months per request for services. After the twelfth session or fourth month of services the mental health professional shall terminate the services or, with the consent of the minor, notify the parent, guardian, or person in loco parentis to obtain consent to provide further outpatient services.

(4) The minor's parent, guardian, or person in loco parentis is not liable for the costs of services that are received by a minor under subsection (1).

(5) This section does not relieve a mental health professional from his or her duty to report suspected child abuse or neglect under section 3 of the child protection law, Act No. 238 of the Public Acts of 1975, being section 722.623 of the Michigan Compiled Laws.

MINNESOTA

HEALTH

CHAPTER 144. DEPARTMENT OF HEALTH

CONSENT OF MINORS FOR HEALTH SERVICES

§ 144.343. Pregnancy, venereal disease, alcohol or drug abuse, abortion.

Subdivision 1. Minor's consent valid. Any minor may give effective consent for medical, mental and other health services to determine the presence of or to treat pregnancy and conditions associated therewith, venereal disease, alcohol and other drug abuse, and the consent of no other person is required.

WASHINGTON

TITLE 71. MENTAL ILLNESS

CHAPTER 71.34. MENTAL HEALTH SERVICES FOR MINORS

§ 71.34.030. Age of consent -- Outpatient treatment of minors.

Any minor thirteen years or older may request and receive outpatient treatment without the consent of the minor's parent. Parental authorization is required for outpatient treatment of a minor under the age of thirteen.

§ 71.34.042. Minor thirteen or older may be admitted for inpatient mental treatment without parental consent -- Professional person in charge must concur -- Written renewal of consent required.

(1) A minor thirteen years or older may admit himself or herself to an evaluation and treatment facility for inpatient mental treatment, without parental consent. The admission shall occur only if the professional person in charge of the facility concurs with the need for inpatient treatment.

(2) When, in the judgment of the professional person in charge of an evaluation and treatment facility, there is reason to believe that a minor is in need of inpatient treatment because of a mental disorder, and the facility provides the type of evaluation and treatment needed by the minor, and it is not feasible to treat the minor in any less restrictive setting or the minor's home, the minor may be admitted to an evaluation and treatment facility.

(3) Written renewal of voluntary consent must be obtained from the applicant no less than once every twelve months. The minor's need for continued inpatient treatments shall be reviewed and documented no less than every one hundred eighty days.

§ 71.34.046. Minor voluntarily admitted may give notice to leave at any time.

(1) Any minor thirteen years or older voluntarily admitted to an evaluation and treatment facility under RCW 71.34.042 may give notice of intent to leave at any time. The notice need not follow any specific form so long as it is written and the intent of the minor can be discerned.

(2) The staff member receiving the notice shall date it immediately, record its existence in the minor's clinical record, and send copies of it to the minor's attorney, if any, the county-designated mental health professional, and the parent.

(3) The professional person shall discharge the minor, thirteen years or older, from the facility upon receipt of the minor's notice of intent to leave.

MATURE MINOR:
ALCOHOL AND/OR DRUG ABUSE TREATMENT

ALABAMA

TITLE 22. HEALTH, MENTAL HEALTH AND ENVIRONMENTAL CONTROL

SUBTITLE 1. HEALTH AND ENVIRONMENTAL CONTROL GENERALLY

CHAPTER 8. CONSENT FOR HEALTH SERVICES

§ 22-8-6. Minors; pregnancy, venereal disease, drug or alcohol treatment.

Any minor may give effective consent for any legally authorized medical, health or mental health services to determine the presence of, or to treat, pregnancy, venereal disease, drug dependency, alcohol toxicity or any reportable disease, and the consent of no other person shall be deemed necessary.

ARIZONA

TITLE 36. PUBLIC HEALTH AND SAFETY

CHAPTER 18. ALCOHOL AND DRUG ABUSE

ARTICLE 2. EVALUATION AND TREATMENT OF PERSONS IMPAIRED BY ALCOHOLISM

§ 36-2024. Treatment of alcoholics.

A. An alcoholic may apply for evaluation and treatment directly to any approved public or private treatment facility. If the applicant is a minor or incompetent person, either he or a parent, legal guardian or other legal representative shall make the application for evaluation and treatment.

B. Subject to rules adopted by the division, with the approval of the director, the administrator in charge of any approved public or private treatment facility may determine who shall be admitted for evaluation and treatment. If a person is refused admission to an approved private treatment facility because of financial reasons, the administrator in charge, subject to rules established by the division, with the approval of the director, shall refer the person to an approved public treatment facility for treatment, if possible and appropriate.

C. If a patient receiving inpatient care leaves an approved treatment facility, he shall be encouraged to consent to appropriate outpatient treatment or intermediate treatment.

CALIFORNIA

FAMILY CODE

DIVISION 11. MINORS

PART 4. MEDICAL TREATMENT

CHAPTER 3. CONSENT BY MINOR

§ 6929. Consent by minor to drug or alcohol treatment.

(a) As used in this section:

(1) "Counseling" means the provision of counseling services by a provider under a contract with the state or a county to provide alcohol or drug abuse counseling services pursuant to Part 2 (commencing with Section 5600) of Division 5 of the Welfare and Institutions Code or pursuant to Division 10.5 (commencing with Section 11750) of the Health and Safety Code.

(2) "Drug or alcohol" includes, but is not limited to, any substance listed in any of the following:

(A) Section 380 or 381 of the Penal Code.

(B) Division 10 (commencing with Section 11000) of the Health and Safety Code.

(C) Subdivision (f) of Section 647 of the Penal Code.

(3) "LAAM" means levoalphacetylmethadol as specified in paragraph (10) of subdivision (c) of Section 11055 of the Health and Safety Code.

(4) "Professional person" means a physician and surgeon, registered nurse, psychologist, clinical social worker, or marriage, family, and child counselor.

(b) A minor who is 12 years of age or older may consent to medical care and counseling relating to the diagnosis and treatment of a drug or alcohol related problem.

(c) The treatment plan of a minor authorized by this section shall include the involvement of the minor's parent or guardian, if appropriate, as determined by the professional person or treatment facility treating the minor. The professional person providing medical care or counseling to a minor shall state in the minor's treatment record whether and when the professional person attempted to contact the minor's parent or guardian, and whether the attempt to contact the parent or guardian was successful or unsuccessful, or the reason why, in the opinion of the professional person, it would not be appropriate to contact the minor's parent or guardian.

(d) The minor's parents or guardian are not liable for payment for any care provided to a minor pursuant to this section, except that if the minor's parent or guardian participates in a counseling program pursuant to this section, the parent or guardian is liable for the cost of the services provided to the minor and the parent or guardian.

(e) This section does not authorize a minor to receive replacement narcotic abuse treatment, in a program licensed pursuant to Article 3 (commencing with Section 11875) of Chapter 1 of Part 3 of Division 10.5 of the Health and Safety Code, without the consent of the minor's parent or guardian.

(f) It is the intent of the Legislature that the state shall respect the right of a parent or legal guardian to seek medical care and counseling for a drug-or alcohol-related problem of a minor child when the child does not consent to the medical care and counseling, and nothing in this section shall be construed to restrict or eliminate this right.

(g) Notwithstanding any other provision of law, in cases where a parent or legal guardian has sought the medical care and counseling for a drug-or alcohol-related problem of a minor child, the physician shall disclose medical information concerning such care to the minor's parents or legal guardian upon their request, even if the minor child does not consent to disclosure, without liability for such disclosure.

MICHIGAN

TITLE 14. PUBLIC HEALTH

PART ONE. PUBLIC HEALTH ADMINISTRATION

CHAPTER 111. STATE DEPARTMENT OF HEALTH

PUBLIC HEALTH CODE

ARTICLE 6. SUBSTANCE ABUSE

PART 61. GENERAL PROVISIONS

§ 333.6121. Consent by minor to care, treatment, services; not subject to later disaffirmance by reason of minority; services in absence of consent by spouse, parent, guardian; treatment, election to inform; spouse, parent, guardian, person in loco parentis, not responsible for services.

Sec. 6121. (1) The consent to the provision of substance abuse related medical or surgical care, treatment or services by a hospital, clinic, or health professional authorized by law executed by a minor who is or professes to be a substance abuser is valid and binding as if the minor had achieved the age of majority. The consent is not subject to later disaffirmance by reason of minority. The consent of any other person, including a spouse, parent, guardian, or person in loco parentis, is not necessary to authorize these services to be provided to a minor.

(2) For medical reasons the treating physician, and on the advice and direction of the treating physician, a member of the medical staff of a hospital or clinic or other health professional may, but is not obligated to, inform the spouse, parent, guardian, or person in loco parentis as to the treatment given or needed. The information may be given to or withheld from these persons without consent of the minor and notwithstanding the express refusal of the minor to the providing of the information.

(3) A spouse, parent, guardian, or person in loco parentis of a minor is not legally responsible for service provided under this section.§ 18.1151(1).

MINNESOTA

HEALTH

CHAPTER 144. DEPARTMENT OF HEALTH

CONSENT OF MINORS FOR HEALTH SERVICES

§ 144.343. Pregnancy, venereal disease, alcohol or drug abuse, abortion.

Subdivision 1. Minor's consent valid. Any minor may give effective consent for medical, mental and other health services to determine the presence of or to treat pregnancy and conditions associated therewith, venereal disease, alcohol and other drug abuse, and the consent of no other person is required.

WASHINGTON

TITLE 70. PUBLIC HEALTH AND SAFETY

CHAPTER 70.96A. TREATMENT FOR ALCOHOLISM, INTOXICATION, AND DRUG ADDICTION (FORMERLY: UNIFORM ALCOHOLISM AND INTOXICATION TREATMENT)

§ 70.96A.095. Age of consent -- Outpatient treatment of minors for chemical dependency.

Any person thirteen years of age or older may give consent for himself or herself to the furnishing of outpatient treatment by a chemical dependency treatment program certified by the department. Parental authorization is required for any treatment of a minor under the age of thirteen.

§ 70.96A.235. Minor -- Parental consent for inpatient treatment – Exception.

Parental consent is required for inpatient chemical dependency treatment of a minor, unless the child meets the definition of a child in need of services in *RCW 13.32A.030(4)(c) as determined by the department: PROVIDED, That parental consent is required for any treatment of a minor under the age of thirteen.

MATURE MINOR:
COMMUNICABLE DISEASE TREATMENT

ALABAMA

TITLE 22. HEALTH, MENTAL HEALTH AND ENVIRONMENTAL CONTROL

SUBTITLE 1. HEALTH AND ENVIRONMENTAL CONTROL GENERALLY

CHAPTER 8. CONSENT FOR HEALTH SERVICES

§ 22-8-6. Minors; pregnancy, venereal disease, drug or alcohol treatment.

Any minor may give effective consent for any legally authorized medical, health or mental health services to determine the presence of, or to treat, pregnancy, venereal disease, drug dependency, alcohol toxicity or any reportable disease, and the consent of no other person shall be deemed necessary.

ARIZONA

TITLE 44. TRADE AND COMMERCE

CHAPTER 1. CONTRACTS

ARTICLE 3. CAPACITY TO CONTRACT

§ 44-132.01. Capacity of minor to obtain treatment for venereal disease without consent of parent.

Notwithstanding any other provision of the law, a minor who may have contracted a venereal disease may give consent to the furnishing of hospital or medical care related to the diagnosis or treatment of such disease and such consent shall not be subject to disaffirmance because of minority. The consent of the parent, parents or legal guardian of such a person shall not be necessary in order to authorize hospital or medical care.

CALIFORNIA

FAMILY CODE

DIVISION 11. MINORS

PART 4. MEDICAL TREATMENT

CHAPTER 3. CONSENT BY MINOR

§ 6926. Consent by minor to treatment for communicable disease.

(a) A minor who is 12 years of age or older and who may have come into contact with an infectious, contagious, or communicable disease may consent to medical care related to the diagnosis or treatment of the disease, if the disease or condition is one that is required by law or regulation adopted pursuant to law to be reported to the local health officer, or is a related sexually transmitted disease, as may be determined by the State Director of Health Services.

(b) The minor's parents or guardian are not liable for payment for medical care provided pursuant to this section.

MICHIGAN

CHAPTER 333. HEALTH

PUBLIC HEALTH CODE

ARTICLE 5. PREVENTION AND CONTROL OF DISEASES, INFECTIONS, AND DISABILITIES

PART 51. GENERAL PROVISIONS

§ 333.5127. Validity of minor's consent to treatment for venereal disease or HIV infection; other consent; information given by physician about treatment; financial responsibility for treatment.

Sec. 5127. (1) Subject to section 5133, the consent to the provision of medical or surgical care, treatment, or services by a hospital, clinic, or physician that is executed by a minor who is or professes to be infected with a venereal disease or HIV is valid and binding as if the minor had achieved the age of majority. The consent is not subject to later disaffirmance by reason of minority. The consent of any other person, including a spouse, parent, or guardian, or person in loco parentis, is not necessary to authorize the services described in this subsection to be provided to a minor.

(2) For medical reasons a treating physician, and on the advice and direction of the treating physician, a physician, a member of the medical staff of a hospital or clinic, or other health professional, may, but is not obligated to, inform the spouse, parent, guardian, or person in loco parentis as to the treatment given or needed. The information may be given to or withheld from these persons without consent of the minor and notwithstanding the express refusal of the minor to the providing of the information.

(3) A spouse, parent, guardian, or person in loco parentis of a minor is not financially responsible for surgical care, treatment, or services provided under this section.

MINNESOTA

HEALTH

CHAPTER 144. DEPARTMENT OF HEALTH

CONSENT OF MINORS FOR HEALTH SERVICES

§ 144.343. Pregnancy, venereal disease, alcohol or drug abuse, abortion.

Subdivision 1. Minor's consent valid. Any minor may give effective consent for medical, mental and other health services to determine the presence of or to treat pregnancy and conditions associated therewith, venereal disease, alcohol and other drug abuse, and the consent of no other person is required.

WASHINGTON

TITLE 70. PUBLIC HEALTH AND SAFETY

CHAPTER 70.24. CONTROL AND TREATMENT OF SEXUALLY TRANSMITTED DISEASES

FORMERLY: CONTROL AND TREATMENT OF VENEREAL DISEASES)

§ 70.24.110. Treatment, consent, liability for payment for care.

A minor fourteen years of age or older who may have come in contact with any sexually transmitted disease or suspected sexually transmitted disease may give consent to the furnishing of hospital, medical and surgical care related to the diagnosis or treatment of such disease. Such consent shall not be subject to disaffirmance because of minority. The consent of the parent, parents, or legal guardian of such minor shall not be necessary to authorize hospital, medical and surgical care related to such disease and such parent, parents, or legal guardian shall not be liable for payment for any care rendered pursuant to this section.

MATURE MINOR:
CONTRACEPTIVE SERVICES

ALABAMA

TITLE 22. HEALTH, MENTAL HEALTH AND ENVIRONMENTAL CONTROL

SUBTITLE 1. HEALTH AND ENVIRONMENTAL CONTROL GENERALLY

CHAPTER 8. CONSENT FOR HEALTH SERVICES

§ 22-8-6. Minors; pregnancy, venereal disease, drug or alcohol treatment.

Any minor may give effective consent for any legally authorized medical, health or mental health services to determine the presence of, or to treat, pregnancy, venereal disease, drug dependency, alcohol toxicity or any reportable disease, and the consent of no other person shall be deemed necessary.

ARIZONA

TITLE 44. TRADE AND COMMERCE

CHAPTER 1. CONTRACTS

ARTICLE 3.CAPACITY TO CONTRACT

§ 44-132. Capacity of minor to obtain hospital, medical and surgical care; definition.

A. Notwithstanding any other provision of law except as provided in title 36, chapter 20, article 1, and without limiting cases in which consent may otherwise be obtained or is not required, any emancipated minor, any minor who has contracted a lawful marriage or any homeless minor may give consent to the furnishing of hospital, medical and surgical care to such minor, and such consent shall not be subject to disaffirmance because of minority. The consent of the parent, or parents, of such a person is not necessary in order to authorize hospital, medical and surgical care. For the purposes of this section only, subsequent judgment of annulment of such marriage or judgment of divorce shall not deprive such person of his adult status once attained.

B. A health care provider acting in reliance on the consent of a minor who has authority or apparent authority pursuant to this section to consent to health care is not subject to criminal and civil liability and professional disciplinary action on the ground that he or she failed to obtain consent of the minor's parent, parents or legal guardian. This subsection does not affect any other cause of action permitted under title 12, chapter 5.1.

C. For purposes of this section, a homeless minor is an individual under the age of eighteen years living apart from his parents and who lacks a fixed and regular nighttime residence or whose primary residence is either a supervised shelter designed to provide temporary accommodations, a halfway house or a place not designed for or ordinarily used for sleeping by humans.

CALIFORNIA

FAMILY CODE

DIVISION 11. MINORS

PART 4. MEDICAL TREATMENT

CHAPTER 3. CONSENT BY MINOR

§ 6925. Consent by minor to pregnancy treatment.

(a) A minor may consent to medical care related to the prevention or treatment of pregnancy.

(b) This section does not authorize a minor:

(1) To be sterilized without the consent of the minor's parent or guardian.

(2) To receive an abortion without the consent of a parent or guardian other than as provided in Section 123450 of the Health and Safety Code.

MICHIGAN

CHAPTER 400. SOCIAL SERVICES

THE SOCIAL WELFARE ACT

STATE DEPARTMENT OF SOCIAL SERVICES

§ 400.14b. Family planning services; notice; referrals; furnishing drugs and appliances.

Sec. 14b. The director, and under his supervision, county, city and district departments of social welfare, may provide written or oral notice to recipients of public assistance of the availability of advice and treatment in family planning. Such notice shall include a statement that receipt of public assistance is in no way dependent upon a request or nonrequest for family planning services. No effort shall be made to suggest or persuade recipients to request or not request family planning services. The director, and under his supervision, county, city and district departments of social welfare may make available upon request of recipients of public assistance advice and treatment in family planning by referral upon request of the recipient to a licensed medical doctor, licensed osteopathic physician, public agency or, on a contractual basis, to a private agency of the recipient's choice. Necessary drugs and recognized medical appliances for use in family planning may also be made available through licensed pharmacists upon prescription issued by a licensed physician. Such family planning services shall be made available in accordance with rules and regulations promulgated by the director under law.

CASE NOTES

Contraception does not violate public policy of Michigan. *Troppi v Scarf* (1971) 31 Mich App 240, 187 NW2d 511.

Existence, if any, of fundamental civil right among minors to obtain prescriptive contraceptives need not exist to total exclusion of any rights of minor child's parents. *Doe v Irwin* (1977, WD Mich) 441 F Supp 1247, revd on other grounds (1980, CA6 Mich) 615 F2d 1162, cert den (1980) 449 US 829, 66 L Ed 2d 33, 101 S Ct 95.

State-run clinic which distributed contraceptive devices and medication to unemancipated children without knowledge and consent of parents did not infringe parents' constitutional right to care, custody and nurture of their children. *Doe v Irwin* (1980, CA6 Mich) 615 F2d 1162, cert den (1980) 449 US 829, 66 L Ed 2d 33, 101 S Ct 95.

MINNESOTA

HEALTH

CHAPTER 144. DEPARTMENT OF HEALTH

CONSENT OF MINORS FOR HEALTH SERVICES

§ 144.343. Pregnancy, venereal disease, alcohol or drug abuse, abortion.

Subdivision 1. Minor's consent valid. Any minor may give effective consent for medical, mental and other health services to determine the presence of or to treat pregnancy and conditions associated therewith, venereal disease, alcohol and other drug abuse, and the consent of no other person is required.

WASHINGTON

TITLE 9. CRIMES AND PUNISHMENTS

CHAPTER 9.02. ABORTION

§ 9.02.100. Reproductive privacy -- Public policy.

The sovereign people hereby declare that every individual possesses a fundamental right of privacy with respect to personal reproductive decisions.

Accordingly, it is the public policy of the state of Washington that:

(1) Every individual has the fundamental right to choose or refuse birth control;

(2) Every woman has the fundamental right to choose or refuse to have an abortion, except as specifically limited by RCW 9.02.100 through 9.02.170 and 9.02.900 through 9.02.902;

(3) Except as specifically permitted by RCW 9.02.100 through 9.02.170 and 9.02.900 through 9.02.902, the state shall not deny or interfere with a woman's fundamental right to choose or refuse to have an abortion; and

(4) The state shall not discriminate against the exercise of these rights in the regulation or provision of benefits, facilities, services, or information.

MATURE MINOR:
PRENATAL CARE

ALABAMA

TITLE 22. HEALTH, MENTAL HEALTH AND ENVIRONMENTAL CONTROL

SUBTITLE 1. HEALTH AND ENVIRONMENTAL CONTROL GENERALLY

CHAPTER 8. CONSENT FOR HEALTH SERVICES

§ 22-8-6. Minors; pregnancy, venereal disease, drug or alcohol treatment.

Any minor may give effective consent for any legally authorized medical, health or mental health services to determine the presence of, or to treat, pregnancy, venereal disease, drug dependency, alcohol toxicity or any reportable disease, and the consent of no other person shall be deemed necessary.

ARIZONA

TITLE 44. TRADE AND COMMERCE

CHAPTER 1. CONTRACTS

ARTICLE 3. CAPACITY TO CONTRACT

§ 44-132. Capacity of minor to obtain hospital, medical and surgical care; definition.

A. Notwithstanding any other provision of law except as provided in title 36, chapter 20, article 1, and without limiting cases in which consent may otherwise be obtained or is not required, any emancipated minor, any minor who has contracted a lawful marriage or any homeless minor may give consent to the furnishing of hospital, medical and surgical care to such minor, and such consent shall not be subject to disaffirmance because of minority. The consent of the parent, or parents, of such a person is not necessary in order to authorize hospital, medical and surgical care. For the purposes of this section only, subsequent judgment of annulment of such marriage or judgment of divorce shall not deprive such person of his adult status once attained.

B. A health care provider acting in reliance on the consent of a minor who has authority or apparent authority pursuant to this section to consent to health care is not subject to criminal and civil liability and professional disciplinary action on the ground that he or she failed to obtain consent of the minor's parent, parents or legal guardian. This subsection does not affect any other cause of action permitted under title 12, chapter 5.1.

C. For purposes of this section, a homeless minor is an individual under the age of eighteen years living apart from his parents and who lacks a fixed and regular nighttime residence or whose primary residence is either a supervised shelter designed to provide temporary accommodations, a halfway house or a place not designed for or ordinarily used for sleeping by humans.

CALIFORNIA

FAMILY CODE

DIVISION 11. MINORS

PART 4. MEDICAL TREATMENT

CHAPTER 3. CONSENT BY MINOR

§ 6925. Consent by minor to pregnancy treatment.

(a) A minor may consent to medical care related to the prevention or treatment of pregnancy.

(b) This section does not authorize a minor:

(1) To be sterilized without the consent of the minor's parent or guardian.

(2) To receive an abortion without the consent of a parent or guardian other than as provided in Section 123450 of the Health and Safety Code.

MICHIGAN

CHAPTER 333 HEALTH

PUBLIC HEALTH CODE

ARTICLE 9. SUPPORTIVE PERSONAL HEALTH SERVICES

PART 91. GENERAL PROVISIONS

§ 333.9132. Health care for minor or child of minor, validity of minor's consent; minor informed of notification to interested parties; minor's permission for parental contact; notification to interested parties for medical reasons; definition of health care.

(1) If a minor consents to the provision of prenatal and pregnancy related health care or to the provision of health care for a child of the minor by a health facility or agency licensed under article 17 or a health professional licensed under article 15, the consent shall be valid and binding as if the minor had achieved the age of majority. The consent is not subject to later disaffirmance by reason of minority. The consent of any other person, including the putative father of the child or a spouse, parent, guardian, or person in loco parentis, is not necessary to authorize the provision of health care to a minor or to a child of a minor.

(2) Before providing health care to a minor pursuant to this section, a health facility or agency or a health professional shall inform the minor that the putative father of the child or the minor's spouse, parent, guardian, or person in loco parentis may be notified pursuant to subsection (4).

(3) At the initial visit to the health facility or health professional, permission shall be requested of the minor to contact the minor's parents for any additional medical information which may be necessary or helpful to the provision of proper health care.

(4) For medical reasons, the treating physician, and on the advice and direction of the treating physician, a member of the medical staff of a health facility or agency or other health professional may, but is not obligated to, inform the putative father of the child or the spouse, parent, guardian, or person in loco parentis as to the health care given or needed. The information may be given to or withheld from these persons without consent of the minor and notwithstanding the express refusal of the minor to the providing of the information.

(5) As used in this section, "health care" means only treatment or services intended to maintain the life and improve the health of both the minor and the minor's child or fetus.

MINNESOTA

HEALTH

CHAPTER 144. DEPARTMENT OF HEALTH

CONSENT OF MINORS FOR HEALTH SERVICES

§ 144.343. Pregnancy, venereal disease, alcohol or drug abuse, abortion.

Subdivision 1. Minor's consent valid. Any minor may give effective consent for medical, mental and other health services to determine the presence of or to treat pregnancy and conditions associated therewith, venereal disease, alcohol and other drug abuse, and the consent of no other person is required.

WASHINGTON

TITLE 74. PUBLIC ASSISTANCE

CHAPTER 74.09. MEDICAL CARE

MATERNITY CARE ACCESS PROGRAM

§ 74.09.770. Maternity care access system established.

(1) The legislature finds that Washington state and the nation as a whole have a high rate of infant illness and death compared with other industrialized nations. This is especially true for minority and low-income populations. Premature and low weight births have been directly linked to infant illness and death. The availability of adequate maternity care throughout the course of pregnancy has been identified as a major factor in reducing infant illness and death. Further, the investment in preventive health care programs, such as maternity care, contributes to the growth of a healthy and productive society and is a sound approach to health care cost containment. The legislature further finds that access to maternity care for low-income women in the state of Washington has declined significantly in recent years and has reached a crisis level.

(2) It is the purpose of this chapter [subchapter] to provide, consistent with appropriated funds, maternity care necessary to ensure healthy birth outcomes for low-income families. To this end, a maternity care access system is established based on the following principles:

(a) The family is the fundamental unit in our society and should be supported through public policy.

(b) Access to maternity care for eligible persons to ensure healthy birth outcomes should be made readily available in an expeditious manner through a single service entry point.

(c) Unnecessary barriers to maternity care for eligible persons should be removed.

(d) Access to preventive and other health care services should be available for low-income children.

(e) Each woman should be encouraged to and assisted in making her own informed decisions about her maternity care.

(f) Unnecessary barriers to the provision of maternity care by qualified health professionals should be removed.

(g) The system should be sensitive to cultural differences among eligible persons.

(h) To the extent possible, decisions about the scope, content, and delivery of services should be made at the local level involving a broad representation of community interests.

(i) The maternity care access system should be evaluated at appropriate intervals to determine effectiveness and need for modification.

(j) Maternity care services should be delivered in a cost-effective manner.

TITLE 74. PUBLIC ASSISTANCE

CHAPTER 74.09. MEDICAL CARE

MATERNITY CARE ACCESS PROGRAM

§ 74.09.780. Reservation of legislative power.

The legislature reserves the right to amend or repeal all or any part of this chapter [subchapter] at any time and there shall be no vested private right of any kind against such amendment or repeal. All rights, privileges, or immunities conferred by this chapter [subchapter] or any acts done pursuant thereto shall exist subject to the power of the legislature to amend or repeal this chapter [subchapter] at any time.

TITLE 74. PUBLIC ASSISTANCE

CHAPTER 74.09. MEDICAL CARE

MATERNITY CARE ACCESS PROGRAM

§ 74.09.790. Definitions.

Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 74.09.760 through 74.09.820 and 74.09.510:

(1) "At-risk eligible person" means an eligible person determined by the department to need special assistance in applying for and obtaining maternity care, including pregnant women who are substance abusers, pregnant and parenting adolescents, pregnant minority women, and other eligible persons who need special assistance in gaining access to the maternity care system.

(2) "County authority" means the board of county commissioners, county council, or county executive having the authority to participate in the maternity care access program or its designee. Two or more county authorities may enter into joint agreements to fulfill the requirements of this chapter.

(3) "Department" means the department of social and health services.

(4) "Eligible person" means a woman in need of maternity care or a child, who is eligible for medical assistance pursuant to this chapter or the prenatal care program administered by the department.

(5) "Maternity care services" means inpatient and outpatient medical care, case management, and support services necessary during prenatal, delivery, and postpartum periods.

(6) "Support services" means, at least, public health nursing assessment and follow-up, health and childbirth education, psychological assessment and counseling, outreach services, nutritional assessment and counseling, needed vitamin and nonprescriptive drugs, transportation, family planning services, and child care. Support services may include alcohol and substance abuse treatment for pregnant women who are addicted or at risk of being addicted to alcohol or drugs to the extent funds are made available for that purpose.

(7) "Family planning services" means planning the number of one's children by use of contraceptive techniques.

TITLE 74. PUBLIC ASSISTANCE

CHAPTER 74.09. MEDICAL CARE

MATERNITY CARE ACCESS PROGRAM

§ 74.09.800. Maternity care access program established.

The department shall, consistent with the state budget act, develop a maternity care access program designed to ensure healthy birth outcomes as follows:

(1) Provide maternity care services to low-income pregnant women and health care services to children in poverty to the maximum extent allowable under the medical assistance program, Title XIX of the federal social security act;

(2) Provide maternity care services to low-income women who are not eligible to receive such services under the medical assistance program, Title XIX of the federal social security act;

(3) By January 1, 1990, have the following procedures in place to improve access to maternity care services and eligibility determinations for pregnant women applying for maternity care services under the medical assistance program, Title XIX of the federal social security act:

(a) Use of a shortened and simplified application form;

(b) Outstationing department staff to make eligibility determinations;

(c) Establishing local plans at the county and regional level, coordinated by the department; and

(d) Conducting an interview for the purpose of determining medical assistance eligibility within five working days of the date of an application by a pregnant woman and making an eligibility determination within fifteen working days of the date of application by a pregnant woman;

(4) Establish a maternity care case management system that shall assist at-risk eligible persons with obtaining medical assistance benefits and receiving maternity care services, including transportation and child care services;

(5) Within available resources, establish appropriate reimbursement levels for maternity care providers;

(6) Implement a broad-based public education program that stresses the importance of obtaining maternity care early during pregnancy;

(7) Refer persons eligible for maternity care services under the program established by this section to persons, agencies, or organizations with maternity care service practices that primarily emphasize healthy birth outcomes;

(8) Provide family planning services including information about the synthetic progestin capsule implant form of contraception, for twelve months immediately following a pregnancy to women who were eligible for medical assistance under the maternity care access program during that pregnancy or who were eligible only for emergency labor and delivery services during that pregnancy; and

(9) Within available resources, provide family planning services to women who meet the financial eligibility requirements for services under subsections (1) and (2) of this section.

TITLE 74. PUBLIC ASSISTANCE

CHAPTER 74.09. MEDICAL CARE

MATERNITY CARE ACCESS PROGRAM

§ 74.09.810. Alternative maternity care service delivery system established -- Remedial action report.

(1) The department shall establish an alternative maternity care service delivery system, if it determines that a county or a group of counties is a maternity care distressed area. A maternity care distressed area shall be defined by the department, in rule, as a county or a group of counties where eligible women are unable to obtain adequate maternity care. The department shall include the following factors in its determination:

(a) Higher than average percentage of eligible persons in the distressed area who receive late or no prenatal care;

(b) Higher than average percentage of eligible persons in the distressed area who go out of the area to receive maternity care;

(c) Lower than average percentage of obstetrical care providers in the distressed area who provide care to eligible persons;

(d) Higher than average percentage of infants born to eligible persons per obstetrical care provider in the distressed area; and

(e) Higher than average percentage of infants that are of low birth weight, five and one-half pounds or two thousand five hundred grams, born to eligible persons in the distressed area.

(2) If the department determines that a maternity care distressed area exists, it shall notify the relevant county authority. The county authority shall, within one hundred twenty days, submit a brief report to the department recommending remedial action. The report shall be prepared in consultation with the department and its local community service offices, the local public health officer, community health clinics, health care providers, hospitals, the business community, labor representatives, and low-income advocates in the distressed area. A county authority may contract with a local nonprofit entity to develop the report. If the county authority is unwilling or unable to develop the report, it shall notify the department within thirty days, and the department shall develop the report for the distressed area.

(3) The department shall review the report and use it, to the extent possible, in developing strategies to improve maternity care access in the distressed area. The department may contract with or directly employ qualified maternity care health providers to provide maternity care services, if access to such providers in the distressed area is not possible by other means. In such cases, the department is authorized to pay that portion of the health care providers' malpractice liability insurance that represents the percentage of maternity care provided to eligible persons by that provider through increased medical assistance payments.

TITLE 74. PUBLIC ASSISTANCE

CHAPTER 74.09. MEDICAL CARE

MATERNITY CARE ACCESS PROGRAM

§ 74.09.820. Maternity care provider's loan repayment program.

To the extent that federal matching funds are available, the department or the *department of health if one is created shall establish, in consultation with the health science programs of the state's colleges and universities, and community health clinics, a loan repayment program that will encourage maternity care providers to practice in medically underserved areas in exchange for repayment of part or all of their health education loans.

TITLE 74. PUBLIC ASSISTANCE

CHAPTER 74.09. MEDICAL CARE

MATERNITY CARE ACCESS PROGRAM

§ 74.09.850. Conflict with federal requirements.

If any part of this chapter is found to conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this chapter is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this chapter.

TITLE 74. PUBLIC ASSISTANCE

CHAPTER 74.09. MEDICAL CARE

MATERNITY CARE ACCESS PROGRAM

§ 74.09.900. Other laws applicable.

All the provisions of Title 74 RCW, not otherwise inconsistent herewith, shall apply to the provisions of this chapter.

LEGAL ACCESS

ALABAMA

TITLE 26. INFANTS AND INCOMPETENTS

CHAPTER 2A. ALABAMA UNIFORM GUARDIANSHIP AND PROTECTIVE PROCEEDINGS ACT

ARTICLE 1. GENERAL PROVISIONS, DEFINITIONS AND JURISDICTION OF COURT

DIVISION 2. DEFINITIONS

§ 26-2A-20. Generally.

As used in this chapter the following terms shall have the following meanings, respectively, unless the context clearly indicates otherwise:

(1) Claims. In respect of a protected person, includes liabilities of the protected person, whether arising in contract, tort, or otherwise, and liabilities of the estate which arise at or after the appointment of a conservator, including expenses of administration.

(2) Conservator. A person who is appointed by a court to manage the estate of a protected person and includes a limited conservator described in Section 26-2A-148(a).

(3) Court. A probate court of this state.

(4) Court representative. A person appointed in a guardianship or protective proceeding who is trained in law, nursing, or social work, is an officer, employee, or special appointee of the court, and has no personal interest in the proceeding.

(5) Disability. Cause for a protective order as described in Section 26-2A-130.

(6) Estate. Includes the property of the person whose affairs are subject to this chapter.

(7) Guardian. A person who has qualified as a guardian of a minor or incapacitated person pursuant to parental or spousal nomination or court appointment and includes a limited guardian as described in Sections 26-2A-78(e) and 26-2A-105(c), but excludes one who is merely a guardian ad litem.

(8) Incapacitated person. Any person who is impaired by reason of mental illness, mental deficiency, physical illness or disability, physical or mental infirmities accompanying advanced age, chronic use of drugs, chronic intoxication, or other cause (except minority) to the extent of lacking sufficient understanding or capacity to make or communicate responsible decisions.

(9) Lease. Includes an oil, gas, or other mineral lease.

(10) Letters. Includes letters of guardianships and letters of conservatorship.

(11) Minor. A person who is under 19 years of age and has not otherwise had the disabilities of minority removed.

(12) Mortgage. Any conveyance, agreement, or arrangement in which property is used as collateral.

(13) Organization. Includes a corporation, business trust, estate, trust, partnership, association, two or more persons having a joint or common interest, government, governmental subdivision or agency, or any other legal entity.

(14) Parent. Includes any person entitled to take, or who would be entitled to take if the child died without a will, as a parent by intestate succession from the child whose relationship is in question and excludes any person who is only a stepparent, foster parent, or grandparent.

(15) Person. An individual or an organization, unless the context otherwise requires.

(16) Petition. A written request to the court for an order after notice.

(17) Proceeding. Includes action at law and suit in equity.

(18) Property. Includes both real and personal property or any interest therein and means anything that may be the subject of ownership.

(19) Protected person. A minor or other person for whom a conservator has been appointed or other protective order has been made as provided in Sections 26-2A-136 and 26-2A-137.

(20) Protective proceeding. A proceeding under the provisions of Article 2, Division 3.

(21) Security. Includes any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease, collateral trust certificate, transferable share, voting trust certificate or, in general, any interest or instrument commonly known as a security, or any certificate of interest or participation, any temporary or interim certificate, receipt or certificate of deposit for, or any warrant or right to subscribe to or purchase any of the foregoing.

(22) Ward. A person for whom a guardian has been appointed. A "minor ward" is a minor for whom a guardian has been appointed solely because of minority.

TITLE 26. INFANTS AND INCOMPETENTS

CHAPTER 2A. ALABAMA UNIFORM GUARDIANSHIP AND PROTECTIVE PROCEEDINGS ACT

ARTICLE 1. GENERAL PROVISIONS, DEFINITIONS AND JURISDICTION OF COURT

DIVISION 4. NOTICE, PARTIES AND REPRESENTATION IN GUARDIANSHIP AND PROTECTIVE PROCEEDINGS

§ 26-2A-52. Appointment of guardian ad litem.

At any point in a proceeding, a court may appoint a guardian ad litem to represent the interest of a minor or other person if the court determines that representation of the interest otherwise would be inadequate. If not precluded by conflict of interests, a guardian ad litem may be appointed to represent several persons or interests.

TITLE 26. INFANTS AND INCOMPETENTS

CHAPTER 21. PARENTAL CONSENT TO PERFORMING ABORTION UPON MINOR

§ 26-21-4. Petition for waiver of consent.

(a) A minor who elects not to seek or does not or cannot for any reason, obtain consent from either of her parents or legal guardian, may petition, on her own behalf, the juvenile court, or the court of equal standing, in the county in which the minor resides or in the county in which the abortion is to be performed for a waiver of the consent requirement of this chapter. Notice by the court to the minor's parents, parent or legal guardian shall not be required or permitted. The requirements and procedures under this chapter shall apply and are available to minors whether or not they are residents of this state.

(b) The minor may participate in proceedings in the court on her own behalf. The court shall advise her that she has a right to be represented by an attorney and that if she is unable to pay for the services of an attorney one will be appointed for her. If the court appoints an attorney to represent her such attorney shall be compensated as provided in Section 15-12-21. If the minor petitioner chooses to represent herself, such pleadings, documents or

evidence that she may file with the court shall be liberally construed by the court so as to do substantial justice. Hearsay evidence shall be admissible.

(c) The court shall insure that the minor is given assistance in preparing and filing the petition and shall insure that the minor's identity is kept confidential. Such assistance may be provided by court personnel including intake personnel of juvenile probation services.

(d) The petition required in Section 26-21-3(e) shall be made under oath and shall include all of the following:

(1) A statement that the petitioner is pregnant;

(2) A statement that the petitioner is unmarried, under 18 years of age, and unemancipated;

(3) A statement that the petitioner wishes to have an abortion without the consent of either parent or legal guardian.

(4) An allegation of either or both of the following:

a. That the petitioner is sufficiently mature and well enough informed to intelligently decide whether to have an abortion without the consent of either of her parents or legal guardian.

b. That one or both of her parents or her guardian has engaged in a pattern of physical, sexual, or emotional abuse against her, or that the consent of her parents, parent or legal guardian otherwise is not in her best interest.

(5) A statement as to whether the petitioner has retained an attorney and the name, address and telephone number of her attorney.

(e) Court proceedings shall be given such precedence over other pending matters as is necessary to insure that the court may reach a decision promptly, but in no case, except as provided herein, shall the court fail to rule within 72 hours of the time the petition is filed, Saturdays, Sundays, and legal holidays excluded. Provided, however, this time requirement may be extended on the request of the minor. If a juvenile court judge is not available for the hearing provided herein, the clerk of the court in which the petition was filed shall forthwith notify the presiding circuit court judge and the presiding circuit court judge of the circuit shall immediately appoint a district or circuit court level judge to hear the petition.

(f) The required consent shall be waived if the court finds either:

(1) That the minor is mature and well-informed enough to make the abortion decision on her own; or

(2) That performance of the abortion would be in the best interest of the minor.

(g) A court that conducts proceedings under this section shall issue written and specific factual findings and legal conclusions supporting its decision and shall order that a confidential record of the evidence be maintained for at least four years. A transcript of the proceedings shall be recorded and if there is an appeal as provided in subsection (h), a transcript of the proceedings shall be prepared forthwith.

(h) An expedited confidential and anonymous appeal shall be available to any minor to whom the court denies a waiver of consent. If notice of appeal is given, the record of appeal shall be completed and the appeal shall be perfected within five days from the filing of the notice of appeal. Briefs shall not be required but may be permitted. Because time may be of the essence regarding the performance of the abortion, the Alabama Supreme Court shall issue promptly such additional rules as it deems are necessary to insure that appeals under this section are handled in an expeditious, confidential and anonymous manner.

(i) All proceedings under this chapter shall be confidential and anonymous. In all pleadings or court documents, the minor shall be identified by initials only.

(j) No fees or costs shall be required of any minor who avails herself of the procedures provided by this section.

ALABAMA RULES OF CIVIL PROCEDURE WITH DISTRICT COURT MODIFICATIONS

IV. PARTIES

ARCP, R 17 (2000)

Review Court Orders which may amend this Rule.

Rule 17. Parties plaintiff and defendant; capacity.

(a) Real party in interest.

Every action shall be prosecuted in the name of the real party in interest. An executor, administrator, guardian, bailee, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by statute may sue in that person's own name without joining the party for whose benefit the action is brought. No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder, or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest.

In subrogation cases, regardless of whether subrogation has occurred by operation of law, assignment, loan receipt, or otherwise, if the subrogor no longer has a pecuniary interest in the claim, the action shall be brought in the name of the subrogee. If the subrogor still has a pecuniary interest in the claim, the action shall be brought in the names of the subrogor and the subrogee.

(b) Capacity to sue or be sued.

The capacity of a party, including one acting in a representative capacity, to sue or be sued shall be determined by the law of this state.

(c) Minors or incompetent persons.

Whenever a minor has a representative, such as a general guardian or like fiduciary, the representative may sue in the name of the minor. Whenever an incompetent person has a representative such as a general guardian or a like fiduciary, the representative may sue or defend in the name of the incompetent person. If a minor or an incompetent person does not have a duly appointed representative, that person may sue by that person's next friend. The court shall appoint a guardian ad litem (1) for a minor defendant, or (2) for an incompetent person not otherwise represented in an action and may make any other orders it deems proper for the protection of the minor or incompetent person. When the interest of an infant unborn or unconceived is before the court, the court may appoint a guardian ad litem for such interest. Moreover, if a case occurs not provided for in these rules in which a minor is or should be made a party defendant, or if service attempted upon any minor is incomplete under these rules, the court may direct further process to bring the minor into court or appoint a guardian ad litem for the minor without service upon the minor or upon anyone for the minor.

(d) Guardian ad litem; how chosen.

Whenever a guardian ad litem shall be necessary, the court in which the action is pending shall appoint to serve in that capacity some person who is qualified to represent the minor or incompetent person in the capacity of an attorney or solicitor, and must not select or appoint any person who is related, either by blood or marriage within the fourth degree, to the plaintiff or the plaintiff's attorney, or to the judge or clerk of the court, or who is in any manner connected with such plaintiff or such plaintiff's attorney, or who has been suggested, nominated, or recommended by the plaintiff or the plaintiff's attorney or any person for the plaintiff. If the guardian ad litem is to be appointed for a minor fourteen (14) years of age or over, such minor may, within thirty (30) days after perfection of service upon the minor in such cause, have the minor's choice of a guardian ad litem to represent the minor in said cause certified by an officer authorized to take acknowledgments, but if such minor fails to nominate a guardian ad litem within the thirty-(30-) day period or before any hearing set in the action, whichever is earlier, the court shall appoint a guardian ad litem as before provided. In all cases in which a guardian ad litem is required, the court must ascertain a reasonable fee or compensation to be allowed and paid to such guardian ad litem for services rendered in such cause, to be taxed as a part of the costs in such action, and which is to be paid when collected as other costs in the action, to such guardian ad litem.

(dc) District court rule.

Rule 17 applies in the district courts except that the thirty-(30-) day time period in Rule 17(d) is reduced to fourteen (14) days.

ARIZONA

TITLE 8. CHILDREN

CHAPTER 3. JUVENILE OFFENDERS

ARTICLE 7. VICTIMS' RIGHTS FOR JUVENILE OFFENSES

§ 8-384. Inability to exercise rights; designation of others; notice; representative for a minor.

A. If a victim is physically or emotionally unable to exercise any right but is able to designate a lawful representative who is not a bona fide witness, the designated person may exercise the same rights that the victim is entitled to exercise. The victim may revoke this designation at any time and exercise the victim's rights.

B. If a victim is incompetent, deceased or otherwise incapable of designating another person to act in the victim's place, the court may appoint a lawful representative who is not a witness. If at any time the victim is no longer incompetent, incapacitated or otherwise incapable of acting, the victim may personally exercise the victim's rights.

C. If the victim is a minor the victim's parent or other immediate family member may exercise all of the victim's rights on behalf of the victim. If the delinquent act is alleged against a member of the minor's immediate family, these rights may not be exercised by that person but may be exercised by another member of the immediate family unless the court, after considering the guidelines in subsection D, finds that another person would better represent the interests of the minor.

D. The court shall consider the following guidelines in appointing a representative for a minor:

1. If the minor has a relative who would not be so substantially affected or adversely impacted by the conflict resulting from the allegation of a delinquent act against a member of the immediate family of the minor that the representative could not represent the victim.

2. The representative's willingness and ability to do all of the following:

   (a) Undertake working with and accompanying the minor victim through all proceedings, including delinquency, civil and dependency proceedings.

   (b) Communicate with the minor victim.

   (c) Express the concerns of the minor to those authorized to come in contact with the minor as a result of the proceedings.

3. The representative's training, if any, to serve as a minor's representative.

4. The likelihood of the representative being called as a witness in the case.

E. The minor's representative shall accompany the minor victim through all proceedings, including delinquency, criminal, dependency and civil proceedings, and, before the minor's courtroom appearance, shall explain to the minor the nature of the proceedings and what the minor will be asked to do, including telling the minor that the minor is expected to tell the truth. The representative shall be available to observe the minor in all aspects of the case in order to consult with the court as to any special needs of the minor. Those consultations shall take place before the minor testifies. The court may recognize the minor's representative when the representative indicates a need to address the court. A minor's representative shall not discuss the facts and circumstances of the case with the minor witness, unless the court orders otherwise on a showing that it is in the best interests of the minor.

F. Any notices that are to be provided to a victim pursuant to this article shall be sent only to the victim or the victim's lawful representative.

TITLE 14. TRUSTS, ESTATES AND PROTECTIVE PROCEEDINGS

CHAPTER 5. PROTECTION OF PERSONS UNDER DISABILITY AND THEIR PROPERTY

ARTICLE 2. GUARDIANS OF MINORS

§ 14-5206. Court appointment of guardian of minor; qualifications; priority of minor's nominee; fingerprints.

A. The court shall appoint as guardian a person whose appointment would be in the best interests of the minor. The court may appoint a person nominated by the minor, if the minor is fourteen years of age or older, unless the court finds the appointment contrary to the best interests of the minor.

B. Before the court may appoint as guardian a person unrelated to the minor, the court shall, in order to determine the applicant's suitability as a guardian, require the potential guardian to furnish a full set of fingerprints to the court to enable a criminal background investigation to be conducted. The court shall submit the completed fingerprint card with the fee prescribed in § 41-1750 to the department of public safety. The applicant shall bear the cost of obtaining the criminal background information. The cost shall not exceed the actual cost of obtaining the applicant's criminal background information. The department of public safety shall conduct criminal history records checks pursuant to § 41-1750 and applicable federal law. The department of public safety is authorized to submit fingerprint card information to the federal bureau of investigation for a national criminal history records check.

TITLE 14. TRUSTS, ESTATES AND PROTECTIVE PROCEEDINGS

CHAPTER 5. PROTECTION OF PERSONS UNDER DISABILITY AND THEIR PROPERTY

ARTICLE 2. GUARDIANS OF MINORS

§ 14-5207. Formal appointment of guardian of minor; procedure.

A. Any person interested in the welfare of a minor may petition the court for appointment of a guardian. The court shall then set a hearing date. The petitioner shall give notice of the time and place of the hearing in the manner prescribed by section 14-1401 to:

1. A minor who is at least fourteen years of age.
2. The person who has had the principal care and custody of the minor during the sixty days preceding the date of the petition.
3. Any living parent of the minor.

B. Upon hearing, if the court finds that a qualified person seeks appointment, venue is proper, the required notices have been given, the requirements of section 14-5204 have been met and the welfare and best interests of the minor will be served by the requested appointment, it shall make the appointment and issue letters on the acceptance of the proposed guardian. In other cases the court may dismiss the proceedings or make any other disposition of the matter that will best serve the interests of the minor.

C. If necessary, the court may appoint a temporary guardian, with the status of an ordinary guardian of a minor, but the authority of a temporary guardian shall not last longer than six months.

D. If, at any time in the proceeding, the court determines that the interests of the minor are or may be inadequately represented, it may appoint an attorney to represent the minor, giving consideration to the preference of the minor if the minor is at least fourteen years of age or older.

LOCAL RULES OF PRACTICE FOR THE SUPERIOR COURTS

MARICOPA COUNTY

RULE 6. FAMILY COURT DEPARTMENT CASES

Rule 6.13. Guardian ad litem.

a. In any proceeding under these rules involving children, the court may appoint a guardian ad litem to protect a child's best interests if it finds any of the following:

1. There is an allegation of abuse or neglect of a child;
2. The parents are persistently in conflict with one another;
3. There is a history of parental alienation, substance abuse by either parent, or family violence;
4. There are serious concerns about the mental health or behavior of either parent;
5. The children include infants or toddlers; or
6. A child has special needs.

The guardian ad litem may be an attorney or a court appointed special advocate.

b. The court may appoint a guardian ad litem through a volunteer program or through the Office of Court Appointed Counsel, except the court shall not appoint a guardian ad litem through the Office of Court Appointed Counsel unless the court believes that a child may be the victim of child abuse or neglect as defined in A.R.S. § 8-201.

RULES OF PROCEDURE FOR THE JUVENILE COURT

RULE 4. PART IV. ADOPTION

2. GENERAL ADOPTION PROVISIONS

Rule 70. Appointment of Guardian Ad Litem.

A. The court may appoint a guardian ad litem to protect the interest of the child. The guardian ad litem may be an attorney, volunteer special advocate or other qualified person.

B. In any proceeding where a parent, guardian or Indian custodian is under eighteen (18) years of age, the court may appoint a guardian ad litem to protect the interests of such parent, guardian or Indian custodian.

C. If the court has reason to believe a parent, guardian or Indian custodian may be incompetent, the court shall appoint a guardian ad litem to conduct an investigation and report to the court as to whether the parent, guardian or Indian custodian may be incompetent and in need of protection. The court shall conduct hearings and enter orders as determined to be necessary to protect the interests of the parent, guardian or Indian custodian.

CALIFORNIA

CODE OF CIVIL PROCEDURE

PART 2. CIVIL ACTIONS

TITLE 3. PARTIES TO CIVIL ACTIONS

CHAPTER 3. DISABILITY OF PARTY

§ 372. Minors and incompetent persons as parties; Manner of appearing; Appointment of guardian ad litem; Handling of moneys recovered.

(a) When a minor, an incompetent person, or a person for whom a conservator has been appointed is a party, that person shall appear either by a guardian or conservator of the estate or by a guardian ad litem appointed by the court in which the action or proceeding is pending, or by a judge thereof, in each case. A guardian ad litem may be appointed in any case when it is deemed by the court in which the action or proceeding is prosecuted, or by a judge thereof, expedient to appoint a guardian ad litem to represent the minor, incompetent person, or person for whom a conservator has been appointed, notwithstanding that the person may have a guardian or conservator of the estate and may have appeared by the guardian or conservator of the estate. The guardian or conservator of the estate or guardian ad litem so appearing for any minor, incompetent person, or person for whom a conservator has been appointed shall have power, with the approval of the court in which the action or proceeding is pending, to compromise the same, to agree to the order or judgment to be entered therein for or against the ward or conservatee, and to satisfy any judgment or order in favor of the ward or conservatee or release or discharge any claim of the ward or conservatee pursuant to that compromise. Any money or other property to be paid or delivered pursuant to the order or judgment for the benefit of a minor, incompetent person, or person for whom a conservator has been appointed shall be paid and delivered as provided in Chapter 4 (commencing with Section 3600) of Part 8 of Division 4 of the Probate Code.

Where reference is made in this section to "incompetent person," such reference shall be deemed to include "a person for whom a conservator may be appointed."

Nothing in this section, or in any other provision of this code, the Civil Code, the Family Code, or the Probate Code is intended by the Legislature to prohibit a minor from exercising an intelligent and knowing waiver of his or her constitutional rights in any proceedings under the Juvenile Court Law, Chapter 2 (commencing with Section 200) of Part 1 of Division 2 of the Welfare and Institutions Code.

(b) (1) Notwithstanding subdivision (a), a minor 12 years of age or older may appear in court without a guardian, counsel, or guardian ad litem, for the purpose of requesting or opposing a request for any of the following:

(A) An injunction or temporary restraining order or both to prohibit harassment pursuant to Section 527.6.

(B) An injunction or temporary restraining order or both against violence or a credible threat of violence in the workplace pursuant to Section 527.8.

(C) A protective order pursuant to Division 10 (commencing with Section 6200) of the Family Code.

(D) A protective order pursuant to Sections 7710 and 7720 of the Family Code.

The court may, either upon motion or in its own discretion, and after considering reasonable objections by the minor to the appointment of specific individuals, appoint a guardian ad litem to assist the minor in obtaining or opposing the order, provided that the appointment of the guardian ad litem does not delay the issuance or denial of the order being sought. In making the determination concerning the appointment of a particular guardian ad litem, the court shall consider whether the minor and the guardian have divergent interests.

(2) For purposes of this subdivision only, upon the issuance of an order pursuant to paragraph (1), if the minor initially appeared in court seeking an order without a guardian or guardian ad litem, and if the minor is residing with a parent or guardian, the court shall send a copy of the order to at least one parent or guardian designated by the minor, unless, in the discretion of the court, notification of a parent or guardian would be contrary to the best interest of the minor. The court is not required to send the order to more than one parent or guardian.

(3) The Judicial Council shall adopt forms by July 1, 1999, to facilitate the appointment of a guardian ad litem pursuant to this subdivision.

CODE OF CIVIL PROCEDURE

PART 2. CIVIL ACTIONS

TITLE 3. PARTIES TO CIVIL ACTIONS

CHAPTER 3. DISABILITY OF PARTY

§ 373. Manner of appointment of guardian ad litem.

When a guardian ad litem is appointed, he or she shall be appointed as follows:

(a) If the minor is the plaintiff the appointment must be made before the summons is issued, upon the application of the minor, if the minor is of the age of 14 years, or if under that age, upon the application of a relative or friend of the minor.

(b) If the minor is the defendant, upon the application of the minor, if the minor is of the age of 14 years, and the minor applies within 10 days after the service of the summons, or if under that age, or if the minor neglects to apply, then upon the application of a relative or friend of the minor, or of any other party to the action, or by the court on its own motion.

(c) If an insane or incompetent person is a party to an action or proceeding, upon the application of a relative or friend of such insane or incompetent person, or of any other party to the action or proceeding, or by the court on its own motion.

PROBATE CODE

DIVISION 3. GENERAL PROVISIONS OF A PROCEDURAL NATURE

PART 1. GENERAL PROVISIONS

CHAPTER 1. RULES OF PRACTICE

§ 1003. Appointment of guardian ad litem.

(a) The court may, on its own motion or on request of a personal representative, guardian, conservator, trustee, or other interested person, appoint a guardian ad litem at any stage of a proceeding under this code to represent the interest of any of the following persons, if the court determines that representation of the interest otherwise would be inadequate:

(1) A minor.

(2) An incapacitated person.

(3) An unborn person.

(4) An unascertained person.

(5) A person whose identity or address is unknown.

(6) A designated class of persons who are not ascertained or are not in being.

(b) If not precluded by a conflict of interest, a guardian ad litem may be appointed to represent several persons or interests.

(c) The reasonable expenses of the guardian ad litem, including compensation and attorney's fees, shall be determined by the court and paid as the court orders, either out of the property of the estate involved or by the petitioner or from such other source as the court orders.

FAMILY CODE

DIVISION 11. MINORS

PART 2. RIGHTS AND LIABILITIES; CIVIL ACTIONS AND PROCEEDINGS

§ 6601. Enforcement of minor's rights by civil proceeding.

A minor may enforce the minor's rights by civil action or other legal proceedings in the same manner as an adult, except that a guardian must conduct the action or proceedings.

FAMILY CODE

DIVISION 11. MINORS

PART 3. CONTRACTS

CHAPTER 1. CAPACITY TO CONTRACT

§ 6701. Limitation on authority of minor.

A minor cannot do any of the following:

(a) Give a delegation of power.

(b) Make a contract relating to real property or any interest therein.

(c) Make a contract relating to any personal property not in the immediate possession or control of the minor.

FAMILY CODE

DIVISION 12. PARENT AND CHILD RELATIONSHIP

PART 4. FREEDOM FROM PARENTAL CUSTODY AND CONTROL

CHAPTER 1. GENERAL PROVISIONS

§ 7804. Appointment of person to act on child's behalf.

In a proceeding under this part, the court may appoint a suitable party to act in behalf of the child and may order such further notice of the proceedings to be given as the court deems proper.

CALIFORNIA AFFIRMATIVE DEFENSES 2D

UPDATED BY THE 2001 SUPPLEMENT

ANN TAYLOR SCHWING

CHAPTER 18. LACK OF CAPACITY TO SUE

II. INFANCY OR MINORITY

§ 18:3. Appointment Of Guardian Ad Litem.

With a few exceptions, FN21 a minor plaintiff must be represented by a guardian ad litem or a general guardian, if one has been appointed, FN22 whether the minor appears as plaintiff or defendant. FN23 Section 6601 of the California Family Code provides: "A minor may enforce the minor's rights by civil action, or other legal proceedings, in the same manner as an adult, except that a guardian must conduct the action or proceeding." FN24 Provisions requiring such appointment reflect "recognition by the Legislature that whenever a minor is involved in litigation, his rights cannot be protected unless a guardian ad litem or a similar representative acts for him." FN25 Parents are sometimes said to have a preferential status in applications for appointment of a guardian ad litem, FN26 although the court is not required to appoint a parent if it appears that appointment of a person other than a parent would be in the best interests of the minor. FN27

Pursuant to § 372 of the Code of Civil Procedure, a minor must appear in litigation through a general guardian, if one has been appointed, or a guardian ad litem appointed for the particular litigation. FN28 Section 372 provides: "When a minor ... is a party, such person shall appear either by a guardian ... or by a guardian ad litem appointed by the court in which the action or proceeding is pending, or by a judge thereof, in each case." FN29 A general guardian is appointed pursuant to § § 1500 et seq. of the Probate Code. FN30 No guardian of the person may be appointed for a married minor, but a conservator may be appointed if appropriate. FN31 The fact that a general guardian has been appointed does not preclude appointment of a guardian ad litem in a particular case if the court deems it "expedient" to do so. FN32

Once appointed, the guardian ad litem acts "not in his own behalf when he seeks to have it established that the minors he represents are entitled to a share in an estate [or a recovery on a claim], but strictly in their behalf and what is more as a representative of the court." FN33 The guardian, conservator or guardian ad litem is empowered to compromise or settle the litigation, with the approval of the court, and to satisfy any judgment or order in favor of the minor. FN34 The guardian or conservator may select the attorney or attorneys to sue in behalf of the minor and may exercise judgment in behalf of the minor respecting the procedural steps of the litigation. FN35 The guardian may not take affirmative steps or enter into substantive stipulations or admissions that adversely affect the minor's interests without court approval. FN36 The guardian ad litem may not bind the minor to an agreement concerning attorney fees absent approval of the court. FN37 The guardian ad litem is a third party to communications between minor and attorney whose participation is reasonably necessary for the transmission of information and the accomplishment of the purpose for which the attorney is retained and, as a result, communications by or with the guardian ad litem are encompassed within the attorney-client relationship. FN38

When the minor appears as a plaintiff, the appointment of the guardian ad litem should be completed before the summons is issued. FN39 The guardian is appointed on application of the minor, if 14 years or older, or on application of a relative or friend of the minor. FN40 Failure to comply is not jurisdictional and may be cured by obtaining appointment following issuance of the summons. FN41 The application and proceedings for appointment of a guardian ad litem may be made on an ex parte application to the court having jurisdiction of the action. FN42 There is no requirement for notice to an adverse party. FN43 Service of the order appointing the guardian ad litem may avoid unnecessary briefing on a demurrer for lack of capacity. FN44 There is also no need for the consent of the minor as the court may take steps to protect the minor's interests without the minor's consent. FN45 There are cases, however, that hold that, "[i]f a guardian *ad litem* is appointed prior to service of process on a minor, the appointment is void and the appointee has no power to appear." FN46

FN21 See Prob C § 3500 (parent's right to settle minor child's claim and seek court approval without appointment of guardian ad litem if claim has not been made basis of action); § 18:8 (emancipated minors and married minors need not have guardian ad litem appointed); *Rico v Nasser Brothers Realty Co.* (1943) 58 Cal App 2d 878, 137 P 2d 861 (then-applicable Probate Code provisions permitted father to seek court approval of settlement for minor child without appointment of a guardian ad litem); cf. CCP § 372 (guardian ad litem must be appointed if action on claim has been filed). See also Fam C § 4826 (complaint on behalf of minor obligee under Uniform Reciprocal Enforcement of Support Act may be executed and filed by person having legal custody of minor without appointment of guardian ad litem), discussed in *Harmon v Harmon* (1958, 2nd Dist) 160 Cal App 2d 47, 324 P 2d 901, cert. denied (1958) 358 US 881, 79 S Ct 120, 3 L Ed 2d 110 (nonresident mother can bring action under Act on behalf of nonresident minor against resident father without appointment of guardian ad litem); W & I C § 11350.1 (district attorney's action to determine paternity and obtain child support does not require guardian ad litem for minor child), discussed in *Tulare County v Boggs* (1983, 5th Dist) 146 Cal App 3d 236, 241, 194 Cal Rptr 80, 83-84; R. Bernhardt, California Mortgage and Deed of Trust Practice (C.E.B. 2d ed. 1990) § § 3.27, 3.28 (foreclosure actions are brought by or against conservator or guardian ad litem of incompetent person).

Pocket Part

Pocket Part FN: FN21 The Revised Uniform Reciprocal Enforcement of Support Act, Family Code former § § 4800 et seq., has been repealed and replaced with the Uniform Interstate Family Support Act, Family Code § § 4900 et seq.

Pocket Part FN: FN21 New exceptions have been created for a minor who is at least 12 who may appear in court to requesting or opposing a request for an injunction or temporary restraining order to prohibit harassment or against violence or a credible threat of violence in the workplace or for a protective order against a person for contacting, molesting, attacking, striking, threatening, assaulting, telephoning with intent to harass, or disturbing the peace of the minor or a family member. CCP § 372(b). Former Welfare and Institutions Code section 11350.1 is now Family Code § 17404(a).

FN22 Under California law, a conservator may not be appointed for an unmarried minor. Section 1800.3 of the Probate Code empowers the court to appoint a conservator of the person or estate, or both, of an adult or a conservator of the person of a married minor. No provisions apply to the creation of a conservatorship of a minor. Sections 1500 et seq. of the Probate Code provide for the appointment of a general guardian for an unmarried minor. Prob C § § 1500 et seq., 1800.3.

FN23 CCP § § 372, 373; *Poaster v Superior Court* (1993, 5th Dist) 20 Cal App 4th 948, 950, 24 Cal Rptr 2d 582 ("minor defendant cannot appear in a civil action except by a guardian of the estate or a guardian ad litem"); see § 18:6 (on minors appearing as defendants). The statutes requiring appointment of a guardian ad litem if no general guardian has been appointed are mandatory. *White v Renck* (1980, 5th Dist) 108 Cal App 3d 835, 838-39 & n.4, 166 Cal Rptr 701, 702-03 & n.4. See generally 32 Cal Jur 3d (1988) Guardianship and Conservatorship § § 101-06, 108-16, 120-26; 1 California Civil Procedure Before Trial (C.E.B. 3d ed. 1990) § § 19:1 et seq.; Goldberg, Of Gametes and Guardians: The Impropriety of Appointing Guardians as Litem for Fetuses and Embryos (1991) 66 Wash L Rev 503; Muhlhauser, From "Best" to "Better": The Interests of Children and the Role of a Guardian ad Litem (1990) 66 N D L Rev 633; Annot., Liability of Guardian ad Litem for Infant Party to Civil Suit for Negligence in Connection with Suit (1993) 14 ALR 5th 929; Annot., Capacity of Guardian to Sue or Be Sued Outside State Where Appointed (1964) 94 ALR 2d 162; Annot., Right of Infant to Select His Own Guardian (1962) 85 ALR 2d 921; Annot., Function, Power, and Discretion of Court Where There Is Testamentary Appointment of Guardian of Minor (1959) 67 ALR 2d 803; Annot., Consideration and Weight of Religious Affiliations in Appointment or Removal of Guardian for Minor Child (1952) 22 ALR 2d 696; Annot., Validity of Appointment of Guardian or Curator for

Infant Without Service of Process Upon, or Notice to, Latter (1919) 1 ALR 919. Fed R Civ P 17(c) (infant or incompetent person may be represented by duly appointed representative or by next friend or guardian ad litem); § 25:49 (tolling of statute of limitations for minor's action).

FN24 Fam C § 6601 (former Civil C § 42).

Pocket Part FN: FN24 *Johns v. County of San Diego* (9th Cir.1997) 114 F.3d 874, 37 Fed.R.Serv.3d (LCP) 1243 (non-attorney guardian ad litem cannot appear for child without retaining an attorney). See also Fam C § 4916 ("A minor parent, or a guardian or other legal representative of a minor parent, may maintain a proceeding on behalf of or for the benefit of the minor's child.").

FN25 *De Los Santos v Superior Court* (1980) 27 Cal 3d 677, 683, 166 Cal Rptr 172, 175, 613 P 2d 233, 236. See also *Torres v Friedman* (1985, 2nd Dist) 169 Cal App 3d 880, 887-88, 215 Cal Rptr 604, 608-09 (attorney must obtain court approval prior to withdrawing as attorney of record for minor appearing through guardian ad litem).

FN26 *State v Superior Court* (1978, 3rd Dist) 86 Cal App 3d 475, 482, 150 Cal Rptr 308, 313, disapproved on other grounds in *Hernandez v County of Los Angeles* (1986) 42 Cal 3d 1020, 232 Cal Rptr 519, 728 P 2d 1154. See also CCP § 376 (parents may sue for damages they incur from injury to child, and their action may be consolidated with action for child's injuries or wrongful death); 6A C. Wright & A. Miller & M. Kane, Federal Practice and Procedure (2d ed. 1990) § 1571; Note, Representation of Infant by Guardian ad Litem (1954) 5 Hast L J 214; Annot., Federal Civil Procedure Rule 17(c), Relating to Representation of Infants or Incompetent Persons (1959) 68 ALR 2d 752; Annot., Construction and Effect of Provision for Service of Process Against Minor on a Parent, Guardian, or Other Designated Person (1963) 92 ALR 2d 1336; Annot., Necessity for and Degree of Relationship to Infant as Affecting Representation as Next Friend or Guardian Ad Litem (1939) 118 ALR 401.

FN27 *D.G. v Superior Court* (1979, 4th Dist) 100 Cal App 3d 535, 545-46, 161 Cal Rptr 117, 123-24; *In re High's Estate* (1967, 4th Dist) 250 Cal App 2d 561, 568, 58 Cal Rptr 694, 699-700.

FN28 CCP § 372.

FN29 CCP § 372.

Pocket Part FN: FN29 The quotation in the text now appears in CCP § 372(a) and has been amended to refer to "that person" instead of "such person."

Pocket Part FN: FN29 *In re Emily R.* (2000, 5th Dist.) 80 Cal.App.4th 1344, 1356-58, 96 Cal.Rptr.2d 285, 293-94 (guardian not required for a minor who is interested person but not party); *In re Marriage of Lloyd* (1997, 1st Dist.) 55 Cal.App.4th 216, 220-21, 64 Cal.Rptr.2d 37, 39-40 (minor must be party).

FN30 Prob C § § 1500 et seq.

FN31 Prob C § 1515; see § 18:3 n.2.

FN32 CCP § 372; Prob C § 2462 (guardian or conservator may sue and defend actions for or against ward or conservatee unless someone else is appointed to do so); Prob C § 2463 (guardian or conservator may bring partition action with court approval); see *Sarracino v Superior Court* (1974) 13 Cal 3d 1, 12, 118 Cal Rptr 21, 29, 529 P 2d 53, 61; *Poaster v Superior Court* (1993, 5th Dist) 20 Cal App 4th 948, 953 n.4, 24 Cal Rptr 2d 582. See generally 1 California Civil Procedure Before Trial (C.E.B. 3d ed. 1990) § 19.2.

Pocket Part FN: FN32 Section 372 has been amended to add that the court shall consider whether the minor and guardian have divergent interests in determining whether to appoint a particular guardian ad litem. CCP § 372(b)(1).

FN33 *In re Cochem's Estate* (1952) 110 Cal App 2d 27, 29, 242 P 2d 56, 57- 58; see *De Los Santos v Superior Court* (1980) 27 Cal 3d 677, 683, 166 Cal Rptr 172, 175, 613 P 2d 233, 236 ("guardian ad litem is an officer of the court"); *Serway v Galentine* (1946) 75 Cal App 2d 86, 89, 170 P 2d 32, 34 ("The court is, in effect, the guardian of the minor and the guardian ad litem is but an officer and representative of the court"); *Fong Sik Leung v Dulles* (1955, CA9 Cal) 226 F2d 74, 82.

Pocket Part FN: FN33 *In re Marriage of Lloyd* (1997, 1st Dist.) 55 Cal.App.4th 216, 220-21, 64 Cal.Rptr.2d 37, 39-40 (role of guardian ad litem is more than that of attorney but less than that of party).

FN34 CCP § 372; Prob C § 2504 (court approval required for settlement of listed claims); see Prob C § 3500 (settlement by minor's parents).

Pocket Part FN: FN34 *Sisco v. Cosgrove, Michelizzi, Schwabacher, Ward & Bianchi* (1996, 2d Dist.) 51 Cal.App.4th 1302, 1309, 59 Cal.Rptr.2d 647, 650.

FN35 E.g., *J.W. v Superior Court* (1993, 2nd Dist) 17 Cal App 4th 958, 965-68, 22 Cal Rptr 2d 527, following *Torres v Friedman* (1985, 2nd Dist) 169 Cal App 3d 880, 887, 215 Cal Rptr 604, 608 (guardian ad litem who is not attorney must employ attorney for representation in litigation); *Cloud v Market Street Ry.* (1946) 74 Cal App 2d 92, 101-03, 168 P 2d 191, 196-98 (guardian ad litem may waive right to jury trial).

FN36 *Everett v Everett* (1976, 2nd Dist) 57 Cal App 3d 65, 69-70, 129 Cal Rptr 8, 10-11 (court "approval is required where the minor's representative enters into a stipulation which involves the waiver of any material right of the minor"); *Robinson v Wilson* (1974, 2nd Dist) 44 Cal App 3d 92, 101, 118 Cal Rptr 569, 574; *Berry v Chaplin* (1946) 74 Cal App 2d 652, 657, 169 P 2d 442, 446-47 ("Any acts or concessions that apparently waive or surrender any material right of the minor, such as the right to a trial, should be set aside unless they be shown to be beneficial or, in any event, not prejudicial to the rights and interests of the minor").

Pocket Part FN: FN36 *Scruton v. Korean Air Lines Co.* (1995, 2d Dist.) 39 Cal.App.4th 1596, 1604-06, 46 Cal.Rptr.2d 638, 642-44 (guardian ad litem has no authority to settle without court approval).

FN37 *Cole v Superior Court* (1883) 63 Cal 86; *In re Price* (1923) 61 Cal App 592, 600, 215 P 710, 713; Annot., Power of Guardian Ad Litem or Next Friend to Bind Infant by His Contract with Attorney for Compensation (1920) 7 ALR 108. See generally 1 California Civil Procedure Before Trial (C.E.B. 3d ed. 1990) § 19.16.

FN38 *De Los Santos v Superior Court* (1980) 27 Cal 3d 677, 683-84, 166 Cal Rptr 172, 175-76, 613 P 2d 233, 236-37; see Evid C § 912(d) (disclosure in confidence of communication protected by attorney client privilege is not waiver when disclosure is reasonably necessary for accomplishment of purpose for which attorney was consulted).

FN39 CCP § 373(a).

FN40 CCP § 373(a).

FN41 See generally 1 California Civil Procedure Before Trial (C.E.B. 3d ed. 1990) § § 19.10, 19.11; Annot., Construction and Effect of Provision for Service of Process Against Minor on a Parent, Guardian or Other Designated Person (1963) 92 ALR 2d 1336; Annot., Appearance by Guardian ad Litem Without Service of Summons (1946) 164 ALR 529; Annot., Power of Infant to Acknowledge Service of Process or to Bind Himself by Waiver or Estoppel in That Regard (1939) 121 ALR 957.

FN42 *Sarracino v Superior Court* (1974) 13 Cal 3d 1, 12, 118 Cal Rptr 21, 29, 529 P 2d 53, 61; *Crawford v Neal* (1880) 56 Cal 321, 322; *Scott v Family Ministries* (1976, 2nd Dist) 65 Cal App 3d 492, 509, 135 Cal Rptr 430, 439.

FN43 *Scott v Family Ministries* (1976, 2nd Dist) 65 Cal App 3d 492, 509, 135 Cal Rptr 430, 439.

FN44 See generally 1 California Civil Procedure Before Trial (C.E.B. 3d ed. 1990) § 19.14.

FN45 *In re Jacobson's Guardianship* (1947) 30 Cal 2d 312, 321, 182 P 2d 537, 542.

FN46 *Weisfeld v Superior Court* (1952) 110 Cal App 2d 148, 152, 242 P 2d 29, 32, following *Akley v Bassett* (1922) 189 Cal 625, 639, 209 P 576, 581- 82, and *McCloskey v Sweeney* (1884) 66 Cal 53, 4 P 943.

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(1995)

2 CAAFDEF § 18:3

IN THE MATTER OF THE ESTATE OF ELLEN CAHILL, DECEASED

No. 11382

Supreme Court of California, Department Two

74 Cal. 52; 15 P. 364; 1887 Cal. LEXIS 745

November 5, 1887

PRIOR HISTORY:

[*1]**

Appeal from an order of the Superior Court of the city and county of San Francisco setting aside a verdict.

DISPOSITION:

The Court. -- For the reasons given in the foregoing opinion, order reversed and cause remanded, with direction to the court below to enter judgment upon the verdict in favor of the contestant.

SYLLABUS:

The facts are stated in the opinion.

COUNSEL:

M. C. Hassett, for Appellant.

William F. Sayers, and *Eugene N. Deuprey*, for Respondent.

JUDGES:

Hayne, C. Foote, C., and Belcher, C. C., concurred.

OPINION BY:

HAYNE

OPINION:

[*53] [365]** William P. Cahill, a minor, commenced a contest to set aside the will of Ellen Cahill, deceased, on the ground of undue influence. No guardian *ad litem* was appointed to commence the proceedings, the written grounds of opposition being signed with his own name. The proponent filed an answer, in which no objection was made for the want of a guardian *ad litem*. After the issues were settled, -- Milton C. Babb acting as attorney for the contestant, -- the matter came up for trial, and then the court, upon petition of the contestant, made an order "that M. C. Hassett be and he is hereby appointed guardian *ad litem* of said **[***2]** William P. Cahill, to appear and act for him in the contest of said William P. Cahill to the proposed last will and testament of Ellen Cahill, deceased." As will be observed, this order did not purport to relate back to the commencement of the proceedings. So far as the record shows, no objection on account of there being no guardian *ad litem* at the commencement of the proceedings was made at any stage of the trial. The jury found that the will had been obtained by undue influence. The finding on this subject was as follows: "Did the said Ellen Cahill, at the time of signing the instrument offered for probate, sign or execute the same under undue influence of either James H. Nolan or of Annie Nolan, or of any other person? Answer: Yes." The proponent moved to set aside the verdict, and the court below granted the motion, on the ground of there having been no guardian *ad litem* at the commencement of the proceedings, and upon the ground of the indefiniteness of the verdict. In this latter regard the court said in its opinion, which is printed in the brief of counsel: "It is not specified whether the undue influence was exercised by James H. Nolan or **[*54]** Annie Nolan, **[***3]** or of some other person. This verdict is necessarily too indefinite to warrant any judgment whatever." The contestant appeals from the order setting aside the verdict.

1. We do not think that the verdict was too indefinite to warrant a judgment setting aside the will. It affirmed that the testatrix, in making it, was acting under the undue influence of James H. Nolan or of Annie Nolan, or of some other person. The material point is, that there was undue influence. It is not necessary that the undue influence should have been exercised by a **[**366]** beneficiary under the will. Undue influence by any one, whether he gains

by the will or not, is sufficient ground for setting it aside. It is perfectly true, that as an allegation in the statement of the grounds of opposition, it would be too indefinite, if objected to. For it would make it necessary to go over too wide a field of evidence, and there would be nothing to apprise the proponent of the particular case to be made against him. It would therefore be ground of demurrer. The issues submitted to the jury should likewise be sufficiently definite to narrow the case within reasonable limits; and probably in such a case as **[***4]** this, if objection had been made to the form of the issue, the objection would have been allowed. But there was no such objection. On the contrary, the attorney for the proponent expressly stipulated in writing "that the foregoing questions *shall be and are the issues* of the contest in the matter of the estate of Ellen Cahill, deceased." In the face of such a stipulation as this, the proponent cannot be allowed to object to the form of the issues, unless they are so uncertain as to render it impossible to say what the jury meant by their verdict, which we do not think is the case here.

2. Was the fact that no guardian *ad litem* was appointed for the contestant until the case was called for trial sufficient reason for setting aside the verdict? If this circumstance went to the jurisdiction of the court, **[*55]** and so rendered the proceedings for contest void, there can be no doubt of the correctness of the action of the court below; but if it was a mere irregularity, the proponent should have brought the matter to the attention of the court, and applied for relief as soon as the matter came to his knowledge; he could not go on and take the chances of a verdict in his **[***5]** favor, and keep the objection in reserve. (See cases collected in Hayne on New Trial and Appeal, sec. 27.) The question stated, therefore, resolves itself into this: Did the matter go to the jurisdiction of the court? We think it did not.

The provision of the Civil Code is, that "a minor may enforce his rights by civil action, or other legal proceedings, in the same manner as a person of full age, except that a guardian must conduct the same." (Civ. Code, *sec. 42*.) And in the Code of Civil Procedure it is provided that "where an infant or an insane person is a party, he must appear either by his general guardian or by a guardian *ad litem* appointed by the court in which the action is pending, in each case." (Code Civ. Proc., *sec. 372*.) And directions are given concerning the manner of the appointment. (Id., sec. 373.) So far as the mere language of these provisions goes, it would seem that the appointment is to be made after the commencement of the suit. But it has been held that the appointment of the guardian must be alleged in the complaint. (*Crawford v. Neal, 56 Cal. 321.)* In this case it was said that the necessity to show the due appointment of the guardian **[***6]** *ad litem* remains as at common law.

The old equity rule is stated by Story as follows: "An infant is incapable by himself of exhibiting a bill, as well on account of his supposed want of discretion as of his inability to bind himself, and to make himself liable to the costs of the suit. When, therefore, an infant claims a right or suffers an injury, on account of which it is necessary to apply to a court of equity, his nearest relation is supposed to be the person who will take him **[*56]** under his protection, and institute a suit to assert his rights or to vindicate his wrongs; and the person who institutes a suit on behalf of an infant is therefore termed his *next friend* (*prochein ami*)." (Story's Eq. Pl., sec. 57.) If the appointment was not made, the defendant could demur or put in a plea in abatement. (Id., secs. 494, 725.)

The common-law rule is stated by Tidd as follows: "An infant, or person under the age of twenty-one years, not being capable of appointing an attorney, must sue by his *prochein ami* or guardian. ... An infant *defendant* must in all cases appear and defend by guardian. ... If it appear by attorney, it is error; though if an infant **[***7]** *plaintiff* appear by attorney, it is cured by the statute of jeofails. (Tidd's Practice, 9th ed., 99.)

[367]** It will be observed that the main reason given by these two learned authors is, that the infant cannot appoint an attorney. The appointment of an attorney was one of the acts of an infant which was absolutely void at common law. And our code provides that a "minor cannot give a delegation of power." (Civ. Code, *sec. 33*.) But, as will be remembered, the minor did not appoint an attorney to commence the proceedings here. He commenced them *in propria persona*. It is not necessary, therefore, to consider what would be the result if the contest had been commenced by an attorney for the minor. That is not the case before the court. The act of the minor himself, in submitting to the jurisdiction of the court, and applying to it for relief, does not seem to us to have been of no effect whatever, or in other words, absolutely void; for the acts of minors are in general voidable merely, and are absolutely void only in certain cases. If this be so, then the court had jurisdiction of the person and of the subject-matter; and hence its action, however erroneous, was **[***8]** not void.

In the passage above quoted, Tidd makes a distinction between infant plaintiffs and infant defendants. It **[*57]** would seem that this distinction was made by statute 21 Jac. I., c. 13, sec. 2, which provided that after verdict for the plaintiff, judgment shall not be stayed or reversed by reason that the plaintiff in ejectment, or other personal action or suit, being an infant under twenty-one years, did appear by attorney therein. (See *Drago v. Moso, 1 Speers, 212;*

40 Am. Dec. 592; Smith v. Van Houten, 9 N. J. L. 382.) This difference between action taken by the infant himself, and action taken in hostility to him, may be founded in reason. It was acted on in *Tremper v. Barton, 18 Ohio, 425.* It is unnecessary in this case, however, to say what would be the law with reference to infant defendants appearing and defending without a guardian *ad litem*. With reference to plaintiffs, it has been frequently held in this country that the want of a next friend or guardian *ad litem* does not go to the jurisdiction, but is a mere irregularity.

Thus in *Fellows v. Niver, 18 Wend. 563,* where a *prochein ami* was appointed after the commencement **[***9]** of the suit, a motion to set aside the proceedings was denied, the court saying: "The only difference between the former statutes and the present is this: Formerly the *prochein ami* was appointed after the issuing of the process, but before a declaration; now it should be done before process; but now, as formerly, it is a question of *regularity* merely, not, as the defendant's counsel supposes, a question of *jurisdiction*. It is a question of practice, and the irregularity may be waived under the present statutes as well as under the old statutes."

So in *Bartlett v. Batts, 14 Ga. 541,* where a next friend was appointed for an infant plaintiff after the commencement of the action, the court refused to set aside the verdict, saying: "It seems very safe to say that a suit commenced and prosecuted by an infant alone is not absolutely void; and although defective in wanting a next friend, the defect is one which before verdict is amendable, and after verdict is cured."

[*58] So in *Hafern v. Davis, 10 Wis. 502,* where the plaintiff signed her complaint in her own name, and proceeded without the appointment of a next friend, the court, per Dixon, C. J., said: **[***10]** "All objections not going to the merits of the action or defense seem to be swept out of existence. Section 40 of chapter 125 provides: 'The court shall in every stage of an action disregard any error or defect in the pleadings or proceedings which shall not affect the substantial rights of the adverse party; and no judgment shall be reversed or affected by reason of any such error or defect.' This is evidently an error or defect which does not affect the substantial rights of the plaintiff in error." The foregoing cannot be said to be a decision, for the case was reversed on another ground. The *dictum*, however, was approved and followed in *Sabine v. Fisher, 37 Wis. 376.* In that case there was no guardian *ad litem* or next friend appointed for the plaintiff. On the trial, the defendant moved to dismiss **[**368]** on this ground, but the court thereupon appointed a guardian *ad litem*, and denied the motion to dismiss. On appeal the judgment was affirmed, the court, per Ryan, C. J., saying: "There is no error in the leave given to respondent to amend, so as to prosecute the suit by her next friend. Had she proceeded without leave, the judgment could not be reversed **[***11]** on that ground. (*Hafern v. Davis, 10 Wis. 510.)*" And the foregoing cases were approved and followed in *Hepp v. Huefner, 61 Wis. 150.*

And to the same effect are other cases: *Young v. Young, 3 N. H. 345; Blood v. Harrington, 8 Pick. 554; Schemerhorn v. Jenkins, 7 Johns. 373; Kid v. Mitchell, 1 Nott & McC. 334; Smart v. Haring, 14 Hun, 276; Sims v. New York College, 35 Hun, 344.* And compare *Brooke* v. *Clarke, 57* Tex. 112.

We do not regard the case of *Townsend v. Tallant, 33 Cal. 52, 91 Am. Dec. 617,* as inconsistent with this conclusion. That was a case with reference to a sale of real **[*59]** estate under the direction of the probate court. It may very well be that a special proceeding by an administrator to divest the heir of title to real property is to be differently regarded.

Nor do we think that *section 1307* of the Code of Civil Procedure affects the question presented here, viz., whether the court was right in setting aside the verdict.

3. It is suggested that the court may have set aside the verdict upon its own motion, under *section 662* of the Code of Civil Procedure, on the ground that the **[***12]** jury acted "under a misapprehension of the instructions, or under the influence of passion or prejudice." But it is sufficient to say that it appears from the bill of exceptions that the order setting aside the verdict was not made at the time of its rendition, nor was it made upon the court's own motion, but on the formal written application of the proponent. And furthermore, the opinion of the court shows the grounds on which it acted. It is true that this opinion is not a part of the record. But when counsel prints a document in his brief, he must not be surprised if, so far as he is concerned, it is treated as properly before the court. (*Mott v. Reyes, 45 Cal. 386.)*

It may be added, although the point is not distinctly made, that the case cannot be treated as one of a motion for new trial granted, or sustainable on the ground of insufficiency of the evidence to support the verdict. The notice of motion states that it was to be made on the minutes of the court, but contains no specification of the insufficiency of the evidence. In such case, the statute expressly provides that the motion shall be denied. (Civ. Code Proc., sec. 659, subd. 4.) This being so, the contestant **[***13]** was not required to insert any evidence in the bill of exceptions settled after the order.

We therefore advise that the order be reversed, and the cause remanded, with directions to the court below to enter judgment upon the verdict in favor of the contestant.

[*60] The Court. -- For the reasons given in the foregoing opinion, order reversed and cause remanded, with direction to the court below to enter judgment upon the verdict in favor of the contestant.

MICHIGAN

CHAPTER 722. CHILDREN

CHILD PROTECTION LAW

§ 722.630. Lawyer-guardian ad litem.

Sec. 10. In each case filed under this act in which judicial proceedings are necessary, the court shall appoint a lawyer-guardian ad litem to represent the child. A lawyer-guardian ad litem represents the child and has powers and duties in relation to that representation as set forth in section 17d of chapter *XIIA of 1939 PA 288,* MCL 712A.17d. All provisions of section 17d of chapter *XIIA of 1939 PA 288,* MCL 712A.17d, apply to a lawyer-guardian ad litem appointed under this act.

MICHIGAN COURT RULES OF 1985

CHAPTER 2. CIVIL PROCEDURE

SUBCHAPTER 2.200. PARTIES; JOINDER OF CLAIMS AND PARTIES; VENUE; TRANSFER OF ACTIONS

Review Court Orders which may amend this Rule.

Rule 2.201. Parties Plaintiff and Defendant; Capacity.

(A) Designation of Parties. The party who commences a civil action is designated as plaintiff and the adverse party as defendant. In an appeal the relative position of the parties and their designations as plaintiff and defendant are the same, but they are also designated as appellant and appellee.

(B) Real Party in Interest. An action must be prosecuted in the name of the real party in interest, subject to the following provisions:

(1) A personal representative, guardian, conservator, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a person authorized by statute may sue in his or her own name without joining the party for whose benefit the action is brought.

(2) An action on the bond of a public officer required to give bond to the people of the state may be brought in the name of the person to whom the right on the bond accrues.

(3) An action on a bond, contract, or undertaking made with an officer of the state or of a governmental unit, including but not limited to a public, municipal, quasi-municipal, or governmental corporation, an unincorporated board, a public body, or a political subdivision, may be brought in the name of the state or the governmental unit for whose benefit the contract was made.

(4) An action to prevent illegal expenditure of state funds or to test the constitutionality of a statute relating to such an expenditure may be brought:

(a) in the name of a domestic nonprofit corporation organized for civic, protective, or improvement purposes; or

(b) in the names of at least 5 residents of Michigan who own property assessed for direct taxation by the county where they reside.

(C) Capacity To Sue or Be Sued.

(1) A natural person may sue or be sued in his or her own name.

(2) A person conducting a business under a name subject to certification under the assumed name statute may be sued in that name in an action arising out of the conduct of that business.

(3) A partnership, partnership association, or unincorporated voluntary association having a distinguishing name may sue or be sued in its partnership or association name, in the names of any of its members designated as such, or both.

(4) A domestic or a foreign corporation may sue or be sued in its corporate name, unless a statute provides otherwise.

(5) Actions to which the state or a governmental unit (including but not limited to a public, municipal, quasi-municipal, or governmental corporation, an unincorporated board, a public body, or a political subdivision) is a party may be brought by or against the state or governmental unit in its own name, or in the name of an officer authorized to sue or be sued on its behalf. An officer of the state or governmental unit must be sued in the officer's official capacity to enforce the performance of an official duty. An officer who sues or is sued in his or her official capacity may be described as a party by official title and not by name, but the court may require the name to be added.

(D) Unknown Parties; Procedure.

(1) Persons who are or may be interested in the subject matter of an action, but whose names cannot be ascertained on diligent inquiry, may be made parties by being described as:

(a) unknown claimants;

(b) unknown owners; or

(c) unknown heirs, devisees, or assignees of a deceased person who may have been interested in the subject matter of the action.

If it cannot be ascertained on diligent inquiry whether a person who is or may be interested in the subject matter of the action is alive or dead, what disposition the person may have made of his or her interest, or where the person resides if alive, the person and everyone claiming under him or her may be made parties by naming the person and adding "or [his or her] unknown heirs, devisees, or assignees".

(2) The names and descriptions of the persons sought to be made parties, with a statement of the efforts made to identify and locate them, must be stated in the complaint and verified by oath or affirmation by the plaintiff or someone having knowledge of the facts in the plaintiff's behalf. The court may require a more specific description to be made by amendment.

(3) A publication giving notice to persons who cannot be personally served must include the description of unknown persons as set forth in the complaint or amended complaint.

(4) The publication and all later proceedings in the action are conducted as if the unknown parties were designated by their proper names. The judgment rendered determines the nature, validity, and extent of the rights of all parties.

(5) A person desiring to appear and show his or her interest in the subject matter of the action must proceed under MCR 2.209. Subject to that rule, the person may be made a party in his or her proper name.

(E) Minors and Incompetent Persons. This subrule does not apply to proceedings under chapter 5.

(1) Representation.

(a) If a minor or incompetent person has a conservator, actions may be brought and must be defended by the conservator on behalf of the minor or incompetent person.

(b) If a minor or incompetent person does not have a conservator to represent the person as plaintiff, the court shall appoint a competent and responsible person to appear as next friend on his or her behalf, and the next friend is responsible for the costs of the action.

(c) If the minor or incompetent person does not have a conservator to represent the person as defendant, the action may not proceed until the court appoints a guardian ad litem, who is not responsible for the costs of the action unless, by reason of personal misconduct, he or she is specifically charged costs by the court. It is unnecessary to appoint a representative for a minor accused of a civil infraction.

(2) Appointment of Representative.

(a) Appointment of a next friend or guardian ad litem shall be made by the court as follows:

(i) if the party is a minor 14 years of age or older, on the minor's nomination, accompanied by a written consent of the person to be appointed;

(ii) if the party is a minor under 14 years of age or an incompetent person, on the nomination of the party's next of kin or of another relative or friend the court deems suitable, accompanied by a written consent of the person to be appointed; or

(iii) if a nomination is not made or approved within 21 days after service of process, on motion of the court or of a party.

(b) The court may refuse to appoint a representative it deems unsuitable.

(c) The order appointing a person next friend or guardian ad litem must be promptly filed with the clerk of the court.

(3) Security.

(a) Except for costs and expenses awarded to the next friend or guardian ad litem or the represented party, a person appointed under this subrule may not receive money or property belonging to the minor or incompetent party or awarded to that party in the action, unless he or she gives security as the court directs.

(b) The court may require that the conservator representing a minor or incompetent party give security as the court directs before receiving the party's money or property.

(4) Incompetency While Action Pending. A party who becomes incompetent while an action is pending may be represented by his or her conservator, or the court may appoint a next friend or guardian ad litem as if the action had been commenced after the appointment.

MICHIGAN COURT RULES OF 1985

CHAPTER 3. SPECIAL PROCEEDINGS AND ACTIONS

SUBCHAPTER 3.200. DOMESTIC RELATIONS ACTIONS

Review Court Orders which may amend this Rule.

Rule 3.202. Capacity to Sue.

(A) Minors and Incompetent Persons. Except as provided in subrule (B) , minors and incompetent persons may sue and be sued as provided in MCR 2.201.

(B) Emancipated Minors. An emancipated minor may sue and be sued in the minor's own name, as provided in MCL 722.4e(1)(b).

MICHIGAN COURT RULES OF 1985

CHAPTER 5. PROBATE COURT

Subchapter 5.100. GENERAL RULES OF PLEADING AND PRACTICE

Review Court Orders which may amend this Rule.

Rule 5.121. Guardian Ad Litem; Visitor.

(A) Appointment.

(1) Guardian Ad Litem. The court shall appoint a guardian ad litem when required by law. If it deems necessary, the court may appoint a guardian ad litem to appear for and represent the interests of any person in any proceeding. The court shall state the purpose of the appointment in the order of appointment. The order may be entered with or without notice.

(2) Visitor. The court may appoint a visitor when authorized by law.

(B) Revocation. If it deems necessary, the court may revoke the appointment and appoint another guardian ad litem or visitor.

(C) Duties. Before the date set for hearing, the guardian ad litem or visitor shall conduct an investigation and shall make a report in open court or file a written report of the investigation and recommendations. The guardian ad litem or visitor need not appear personally at the hearing unless required by law or directed by the court. Any written report must be filed with the court at least 24 hours before the hearing or such other time specified by the court.

(D) Evidence.

(1) Reports, Admission into Evidence. Oral and written reports of a guardian ad litem or visitor may be received by the court and may be relied on to the extent of their probative value, even though such evidence may not be admissible under the Michigan Rules of Evidence.

(2) Reports, Review and Cross-Examination.

(a) Any interested person shall be afforded an opportunity to examine and controvert reports received into evidence.

(b) The person who is the subject of a report received under subrule (D)(1) shall be permitted to cross-examine the individual making the report if the person requests such an opportunity.

(c) Other interested persons may cross-examine the individual making a report on the contents of the report, if the individual is reasonably available. The court may limit cross-examination for good cause.

(E) Attorney-Client Privilege.

(1) During Appointment of Guardian Ad Litem. When the guardian ad litem appointed to represent the interest of a person is an attorney, that appointment does not create an attorney-client relationship. Communications between that person and the guardian ad litem are not subject to the attorney-client privilege. The guardian ad litem must inform the person whose interests are represented of this lack of privilege as soon as practicable after appointment. The guardian ad litem may report or testify about any communication with the person whose interests are represented.

(2) Later Appointment as Attorney. If the appointment of the guardian ad litem is terminated and the same individual is appointed attorney, the appointment as attorney creates an attorney-client relationship. The attorney client privilege relates back to the date of the appointment of the guardian ad litem.

Review Court Orders which may amend this Rule.

Rule 5.916. Guardian Ad Litem.

(A) General. The court may appoint a guardian ad litem for a party if the court finds that the welfare of the party requires it.

(B) Appearance. The appearance of a guardian ad litem must be in writing and in a manner and form designated by the court. The appearance shall contain a statement as to the existence of any interest which the guardian ad litem holds in relation to the minor, the minor's family, or any other person in the proceeding before the court or in other matters.

(C) Access to Information. The appearance entitles the guardian ad litem to be furnished copies of all petitions, motions, and orders filed or entered, and to consult with the attorney of the party for whom the guardian ad litem has been appointed.

(D) Costs. The court may assess the cost of providing a guardian ad litem against the party or a person responsible for the support of the party, and may enforce the order of reimbursement through contempt proceedings.

MINNESOTA

PUBLIC WELFARE AND RELATED ACTIVITIES

CHAPTER 260C CHILD PROTECTION

PROCEDURES

§ 260C.163. Hearing.

Subdivision 1. General. (a) Except for hearings arising under section 260C.425, hearings on any matter shall be without a jury and may be conducted in an informal manner. In all adjudicatory proceedings involving a child alleged to be in need of protection or services, the court shall admit only evidence that would be admissible in a civil trial. To be proved at trial, allegations of a petition alleging a child to be in need of protection or services must be proved by clear and convincing evidence.

(b) Except for proceedings involving a child alleged to be in need of protection or services and petitions for the termination of parental rights, hearings may be continued or adjourned from time to time. In proceedings involving a child alleged to be in need of protection or services and petitions for the termination of parental rights, hearings may not be continued or adjourned for more than one week unless the court makes specific findings that the continuance or adjournment is in the best interests of the child. If a hearing is held on a petition involving physical or sexual abuse of a child who is alleged to be in need of protection or services or neglected and in foster care, the court shall file the decision with the court administrator as soon as possible but no later than 15 days after the matter is submitted to the court. When a continuance or adjournment is ordered in any proceeding, the court may make any interim orders as it deems in the best interests of the minor in accordance with the provisions of sections 260C.001 to 260C.421.

(c) Except as otherwise provided in this paragraph, the court shall exclude the general public from hearings under this chapter and shall admit only those persons who, in the discretion of the court, have a direct interest in the case or in the work of the court.

(d) Adoption hearings shall be conducted in accordance with the provisions of laws relating to adoptions.

Subd. 2. Right to participate in proceedings. A child who is the subject of a petition, and the parents, guardian, or legal custodian of the child have the right to participate in all proceedings on a petition. Official tribal representatives have the right to participate in any proceeding that is subject to the Indian Child Welfare Act of *1978, United States Code, title 25,* sections 1901 to 1963.

Any grandparent of the child has a right to participate in the proceedings to the same extent as a parent, if the child has lived with the grandparent within the two years preceding the filing of the petition. At the first hearing following the filing of a petition, the court shall ask whether the child has lived with a grandparent within the last two years, except that the court need not make this inquiry if the petition states that the child did not live with a grandparent during this time period. Failure to notify a grandparent of the proceedings is not a jurisdictional defect.

If, in a proceeding involving a child in need of protection or services, the responsible social services agency recommends transfer of permanent legal and physical custody to a relative, the relative has a right to participate as a party, and thereafter shall receive notice of any hearing in the proceedings.

Subd. 3. Appointment of counsel. (a) The child, parent, guardian or custodian has the right to effective assistance of counsel in connection with a proceeding in juvenile court.

(b) If they desire counsel but are unable to employ it, the court shall appoint counsel to represent the child who is ten years of age or older or the parents or guardian in any case in which it feels that such an appointment is appropriate.

(c) Counsel for the child shall not also act as the child's guardian ad litem.

(d) In any proceeding where the subject of a petition for a child in need of protection or services is not represented by an attorney, the court shall determine the child's preferences regarding the proceedings, if the child is of suitable age to express a preference.

Subd. 4. County attorney. Except in adoption proceedings, the county attorney shall present the evidence upon request of the court. In representing the agency, the county attorney shall also have the responsibility for advancing the public interest in the welfare of the child.

Subd. 5. Guardian ad litem. (a) The court shall appoint a guardian ad litem to protect the interests of the minor when it appears, at any stage of the proceedings, that the minor is without a parent or guardian, or that the minor's parent is a minor or incompetent, or that the parent or guardian is indifferent or hostile to the minor's interests, and in every proceeding alleging a child's need for protection or services under section 260C.007, subdivision 6. In any other case the court may appoint a guardian ad litem to protect the interests of the minor when the court feels that such an appointment is desirable. The court shall appoint the guardian ad litem on its own motion or in the manner provided for the appointment of a guardian ad litem in the district court. The court may appoint separate counsel for the guardian ad litem if necessary.

(b) A guardian ad litem shall carry out the following responsibilities:

(1) conduct an independent investigation to determine the facts relevant to the situation of the child and the family, which must include, unless specifically excluded by the court, reviewing relevant documents; meeting with and observing the child in the home setting and considering the child's wishes, as appropriate; and interviewing parents, caregivers, and others with knowledge relevant to the case;

(2) advocate for the child's best interests by participating in appropriate aspects of the case and advocating for appropriate community services when necessary;

(3) maintain the confidentiality of information related to a case, with the exception of sharing information as permitted by law to promote cooperative solutions that are in the best interests of the child;

(4) monitor the child's best interests throughout the judicial proceeding; and

(5) present written reports on the child's best interests that include conclusions and recommendations and the facts upon which they are based.

(c) Except in cases where the child is alleged to have been abused or neglected, the court may waive the appointment of a guardian ad litem pursuant to clause (a) , whenever counsel has been appointed pursuant to subdivision 2 or is retained otherwise, and the court is satisfied that the interests of the minor are protected.

(d) In appointing a guardian ad litem pursuant to clause (a) , the court shall not appoint the party, or any agent or employee thereof, filing a petition pursuant to section 260C.141.

(e) The following factors shall be considered when appointing a guardian ad litem in a case involving an Indian or minority child:

(1) whether a person is available who is the same racial or ethnic heritage as the child or, if that is not possible;

(2) whether a person is available who knows and appreciates the child's racial or ethnic heritage.

Subd. 6. Examination of child. In any child in need of protection or services proceeding, neglected and in foster care, or termination of parental rights proceeding the court may, on its own motion or the motion of any party, take the testimony of a child witness informally when it is in the child's best interests to do so. Informal procedures that may be used by the court include taking the testimony of a child witness outside the courtroom. The court may also require counsel for any party to the proceeding to submit questions to the court before the child's testimony is taken, and to submit additional questions to the court for the witness after questioning has been completed. The court may excuse the presence of the child's parent, guardian, or custodian from the room where the child is questioned in accordance with subdivision 7.

Subd. 7. Waiving the presence of child, parent. The court may waive the presence of the minor in court at any stage of the proceedings when it is in the best interests of the minor to do so. In any proceeding, the court may

temporarily excuse the presence of the parent or guardian of a minor from the hearing when it is in the best interests of the minor to do so. The attorney or guardian ad litem, if any, has the right to continue to participate in proceedings during the absence of the minor, parent, or guardian.

Subd. 8. Rights of the parties at the hearing. The minor and the minor's parent, guardian, or custodian are entitled to be heard, to present evidence material to the case, and to cross-examine witnesses appearing at the hearing.

Subd. 9. Factors in determining neglect. In determining whether a child is neglected and in foster care, the court shall consider, among other factors, the following:

(1) the length of time the child has been in foster care;

(2) the effort the parent has made to adjust circumstances, conduct, or conditions that necessitates the removal of the child to make it in the child's best interest to be returned to the parent's home in the foreseeable future, including the use of rehabilitative services offered to the parent;

(3) whether the parent has visited the child within the three months preceding the filing of the petition, unless extreme financial or physical hardship or treatment for mental disability or chemical dependency or other good cause prevented the parent from visiting the child or it was not in the best interests of the child to be visited by the parent;

(4) the maintenance of regular contact or communication with the agency or person temporarily responsible for the child;

(5) the appropriateness and adequacy of services provided or offered to the parent to facilitate a reunion;

(6) whether additional services would be likely to bring about lasting parental adjustment enabling a return of the child to the parent within an ascertainable period of time, whether the services have been offered to the parent, or, if services were not offered, the reasons they were not offered; and

(7) the nature of the efforts made by the responsible social services agency to rehabilitate and reunite the family and whether the efforts were reasonable.

Subd. 10. Waiver. (a) Waiver of any right which a child has under this chapter must be an express waiver voluntarily and intelligently made by the child after the child has been fully and effectively informed of the right being waived.

(b) Waiver of a child's right to be represented by counsel provided under the juvenile court rules must be an express waiver voluntarily and intelligently made by the child after the child has been fully and effectively informed of the right being waived. In determining whether a child has voluntarily and intelligently waived the right to counsel, the court shall look to the totality of the circumstances which includes but is not limited to the child's age, maturity, intelligence, education, experience, and ability to comprehend, and the presence and competence of the child's parents, guardian, or guardian ad litem. If the court accepts the child's waiver, it shall state on the record the findings and conclusions that form the basis for its decision to accept the waiver.

Subd. 11. Presumptions regarding truancy or educational neglect. (a) A child's absence from school is presumed to be due to the parent's, guardian's, or custodian's failure to comply with compulsory instruction laws if the child is under 12 years old and the school has made appropriate efforts to resolve the child's attendance problems; this presumption may be rebutted based on a showing by clear and convincing evidence that the child is habitually truant. A child's absence from school without lawful excuse, when the child is 12 years old or older, is presumed to be due to the child's intent to be absent from school; this presumption may be rebutted based on a showing by clear and convincing evidence that the child's absence is due to the failure of the child's parent, guardian, or custodian to comply with compulsory instruction laws, sections 120A.22 and 120A.24.

(b) Consistent with section 125A.09, subdivision 3, a parent's refusal to provide the parent's child with sympathomimetic medications does not constitute educational neglect.

PUBLIC WELFARE AND RELATED ACTIVITIES

CHAPTER 260C. CHILD PROTECTION

DISPOSITION

§ 260C.212. Children in placement.

Subdivision 1. Out-of-home placement; plan. (a) An out-of-home placement plan shall be prepared within 30 days after any child is placed in a residential facility by court order or by the voluntary release of the child by the parent or parents.

For purposes of this section, a residential facility means any group home, family foster home or other publicly supported out-of-home residential facility, including any out-of-home residential facility under contract with the state, county or other political subdivision, or any agency thereof, to provide those services or foster care as defined in section 260C.007, subdivision 18.

(b) An out-of-home placement plan means a written document which is prepared by the responsible social services agency jointly with the parent or parents or guardian of the child and in consultation with the child's guardian ad litem, the child's tribe, if the child is an Indian child, the child's foster parent or representative of the residential facility, and, where appropriate, the child. As appropriate, the plan shall be:

(1) submitted to the court for approval under section 260C.178, subdivision 7;

(2) ordered by the court, either as presented or modified after hearing, under section 260C.178, subdivision 7, or 260C.201, subdivision 6; and

(3) signed by the parent or parents or guardian of the child, the child's guardian ad litem, a representative of the child's tribe, the responsible social services agency, and, if possible, the child.

(c) The out-of-home placement plan shall be explained to all persons involved in its implementation, including the child who has signed the plan, and shall set forth:

(1) a description of the residential facility including how the out-of-home placement plan is designed to achieve a safe placement for the child in the least restrictive, most family-like, setting available which is in close proximity to the home of the parent or parents or guardian of the child when the case plan goal is reunification, and how the placement is consistent with the best interests and special needs of the child according to the factors under subdivision 2, paragraph (b) ;

(2) the specific reasons for the placement of the child in a residential facility, and when reunification is the plan, a description of the problems or conditions in the home of the parent or parents which necessitated removal of the child from home and the changes the parent or parents must make in order for the child to safely return home;

(3) a description of the services offered and provided to prevent removal of the child from the home and to reunify the family including:

(i) the specific actions to be taken by the parent or parents of the child to eliminate or correct the problems or conditions identified in clause (2) , and the time period during which the actions are to be taken; and

(ii) the reasonable efforts, or in the case of an Indian child, active efforts to be made to achieve a safe and stable home for the child including social and other supportive services to be provided or offered to the parent or parents or guardian of the child, the child, and the residential facility during the period the child is in the residential facility;

(4) a description of any services or resources that were requested by the child or the child's parent, guardian, foster parent, or custodian since the date of the child's placement in the residential facility, and whether those services or resources were provided and if not, the basis for the denial of the services or resources;

(5) the visitation plan for the parent or parents or guardian, other relatives as defined in section 260C.007, subdivision 27, and siblings of the child if the siblings are not placed together in the residential facility, and whether visitation is consistent with the best interest of the child, during the period the child is in the residential facility;

(6) documentation of steps to finalize the adoption or legal guardianship of the child if the court has issued an order terminating the rights of both parents of the child or of the only known, living parent of the child, and a copy of this documentation shall be provided to the court in the review required under section 260C.317, subdivision 3, paragraph (b);

(7) to the extent available and accessible, the health and educational records of the child including:

(i) the names and addresses of the child's health and educational providers;

(ii) the child's grade level performance;

(iii) the child's school record;

(iv) assurances that the child's placement in foster care takes into account proximity to the school in which the child is enrolled at the time of placement;

(v) a record of the child's immunizations;

(vi) the child's known medical problems;

(vii) the child's medications; and

(viii) any other relevant health and education information; and

(8) an independent living plan for a child age 16 or older who is in placement as a result of a permanency disposition. The plan should include, but not be limited to, the following objectives:

(i) educational, vocational, or employment planning;

(ii) health care planning and medical coverage;

(iii) transportation including, where appropriate, assisting the child in obtaining a driver's license;

(iv) money management;

(v) planning for housing;

(vi) social and recreational skills; and

(vii) establishing and maintaining connections with the child's family and community.

(d) The parent or parents or guardian and the child each shall have the right to legal counsel in the preparation of the case plan and shall be informed of the right at the time of placement of the child. The child shall also have the right to a guardian ad litem. If unable to employ counsel from their own resources, the court shall appoint counsel upon the request of the parent or parents or the child or the child's legal guardian. The parent or parents may also receive assistance from any person or social services agency in preparation of the case plan.

After the plan has been agreed upon by the parties involved or approved or ordered by the court, the foster parents shall be fully informed of the provisions of the case plan and shall be provided a copy of the plan.

Subd. 2. Placement decisions based on best interest of the child. (a) The policy of the state of Minnesota is to ensure that the child's best interests are met by requiring an individualized determination of the needs of the child and of how the selected placement will serve the needs of the child being placed. The authorized child-placing agency shall place a child, released by court order or by voluntary release by the parent or parents, in a family foster home selected by considering placement with relatives and important friends in the following order:

(1) with an individual who is related to the child by blood, marriage, or adoption; or

(2) with an individual who is an important friend with whom the child has resided or had significant contact.

(b) Among the factors the agency shall consider in determining the needs of the child are the following:

(1) the child's current functioning and behaviors;

(2) the medical, educational, and developmental needs of the child;

(3) the child's history and past experience;

(4) the child's religious and cultural needs;

(5) the child's connection with a community, school, and church;

(6) the child's interests and talents;

(7) the child's relationship to current caretakers, parents, siblings, and relatives; and

(8) the reasonable preference of the child, if the court, or the child-placing agency in the case of a voluntary placement, deems the child to be of sufficient age to express preferences.

(c) Placement of a child cannot be delayed or denied based on race, color, or national origin of the foster parent or the child.

(d) Siblings should be placed together for foster care and adoption at the earliest possible time unless it is determined not to be in the best interests of a sibling or unless it is not possible after appropriate efforts by the responsible social services agency.

Subd. 3. Limit on multiple placements. If a child has been placed in a residential facility pursuant to a court order under section 260C.178 or 260C.201, the social services agency responsible for the residential facility placement for the child may not change the child's placement unless the agency specifically documents that the current placement is unsuitable or another placement is in the best interests of the child. This subdivision does not apply if the new placement is in an adoptive home or other permanent placement.

Subd. 4. Responsible social service agency's duties for children in placement. (a) When a child is in placement, the responsible social services agency shall make diligent efforts to identify, locate, and, where appropriate, offer services to both parents of the child.

(1) If a noncustodial or nonadjudicated parent is willing and capable of providing for the day-to-day care of the child, the responsible social services agency may seek authority from the custodial parent or the court to have that parent assume day-to-day care of the child. If a parent is not an adjudicated parent, the responsible social services agency shall require the nonadjudicated parent to cooperate with paternity establishment procedures as part of the case plan.

(2) If, after assessment, the responsible social services agency determines that the child cannot be in the day-to-day care of either parent, the agency shall prepare an out-of-home placement plan addressing the conditions that each parent must meet before the child can be in that parent's day-to-day care.

(3) If, after the provision of services following an out-of-home placement plan under this section, the child cannot return to the care of the parent from whom the child was removed or who had legal custody at the time the child was placed in foster care, the agency may petition on behalf of a noncustodial parent to establish legal custody with that parent under section 260C.201, subdivision 11. If paternity has not already been established, it may be established in the same proceeding in the manner provided for under chapter 257.

(4) The responsible social services agency may be relieved of the requirement to locate and offer services to both parents by the juvenile court upon a finding of good cause after the filing of a petition under section 260C.141.

(b) The responsible social services agency shall give notice to the parent or parents or guardian of each child in a residential facility, other than a child in placement due solely to that child's developmental disability or emotional disturbance, of the following information:

(1) that residential care of the child may result in termination of parental rights or an order permanently placing the child out of the custody of the parent, but only after notice and a hearing as required under chapter 260C and the juvenile court rules;

(2) time limits on the length of placement and of reunification services, including the date on which the child is expected to be returned to and safely maintained in the home of the parent or parents or placed for adoption or otherwise permanently removed from the care of the parent by court order;

(3) the nature of the services available to the parent;

(4) the consequences to the parent and the child if the parent fails or is unable to use services to correct the circumstances that led to the child's placement;

(5) the first consideration for placement with relatives;

(6) the benefit to the child in getting the child out of residential care as soon as possible, preferably by returning the child home, but if that is not possible, through a permanent legal placement of the child away from the parent;

(7) when safe for the child, the benefits to the child and the parent of maintaining visitation with the child as soon as possible in the course of the case and, in any event, according to the visitation plan under this section; and

(8) the financial responsibilities and obligations, if any, of the parent or parents for the support of the child during the period the child is in the residential facility.

(c) The responsible social services agency shall inform a parent considering voluntary placement of a child who is not developmentally disabled or emotionally disturbed of the following information:

(1) the parent and the child each has a right to separate legal counsel before signing a voluntary placement agreement, but not to counsel appointed at public expense;

(2) the parent is not required to agree to the voluntary placement, and a parent who enters a voluntary placement agreement may at any time request that the agency return the child. If the parent so requests, the child must be returned within 24 hours of the receipt of the request;

(3) evidence gathered during the time the child is voluntarily placed may be used at a later time as the basis for a petition alleging that the child is in need of protection or services or as the basis for a petition seeking termination of parental rights or other permanent placement of the child away from the parent;

(4) if the responsible social services agency files a petition alleging that the child is in need of protection or services or a petition seeking the termination of parental rights or other permanent placement of the child away from the parent, the parent would have the right to appointment of separate legal counsel and the child would have a right to the appointment of counsel and a guardian ad litem as provided by law, and that counsel will be appointed at public expense if they are unable to afford counsel; and

(5) the timelines and procedures for review of voluntary placements under subdivision 3, and the effect the time spent in voluntary placement on the scheduling of a permanent placement determination hearing under section 260C.201, subdivision 11.

(d) When an agency accepts a child for placement, the agency shall determine whether the child has had a physical examination by or under the direction of a licensed physician within the 12 months immediately preceding the date when the child came into the agency's care. If there is documentation that the child has had an examination within the last 12 months, the agency is responsible for seeing that the child has another physical examination within one year of the documented examination and annually in subsequent years. If the agency determines that the child has not had a physical examination within the 12 months immediately preceding placement, the agency shall ensure that the child has an examination within 30 days of coming into the agency's care and once a year in subsequent years.

Subd. 5. Relative search; nature. (a) In implementing the requirement that the responsible social services agency must consider placement with a relative under subdivision 2 as soon as possible after identifying the need for placement of the child in foster care, the responsible social services agency shall identify relatives of the child and notify them of the need for a foster care home for the child and of the possibility of the need for a permanent out-of-home placement of the child. The relative search required by this section shall be reasonable in scope and may last up to six months or until a fit and willing relative is identified. Relatives should be notified that a decision not to be a placement resource at the beginning of the case may affect the relative being considered for placement of the child with that relative later. The relatives must be notified that they must keep the responsible social services agency informed of their current address in order to receive notice that a permanent placement is being sought for the child. A relative who fails to provide a current address to the responsible social services agency forfeits the right to notice of the possibility of permanent placement.

(b) A responsible social services agency may disclose private or confidential data, as defined in section 13.02, to relatives of the child for the purpose of locating a suitable placement. The agency shall disclose only data that is necessary to facilitate possible placement with relatives. If the child's parent refuses to give the responsible social services agency information sufficient to identify relatives of the child, the agency shall determine whether the parent's refusal is in the child's best interests. If the agency determines the parent's refusal is not in the child's best interests, the agency shall file a petition under section 260C.141, and shall ask the juvenile court to order the parent to provide the necessary information. If a parent makes an explicit request that relatives or a specific relative not be contacted or considered for placement, the agency shall bring the parent's request to the attention of the court to determine whether the parent's request is consistent with the best interests of the child and the agency shall not contact relatives or a specific relative unless authorized to do so by the juvenile court.

(c) When the placing agency determines that a permanent placement hearing is necessary because there is a likelihood that the child will not return to a parent's care, the agency may send the notice provided in paragraph (d), may ask the court to modify the requirements of the agency under this paragraph, or may ask the court to completely relieve the agency of the requirements of this paragraph. The relative notification requirements of this paragraph do not apply when the child is placed with an appropriate relative or a foster home that has committed to being the permanent legal placement for the child and the agency approves of that foster home for permanent placement of the child. The actions ordered by the court under this section must be consistent with the best interests, safety, and welfare of the child.

(d) Unless required under the Indian Child Welfare Act or relieved of this duty by the court under paragraph (c) when the agency determines that it is necessary to prepare for the permanent placement determination hearing, or in anticipation of filing a termination of parental rights petition, the agency shall send notice to the relatives, any adult with whom the child is currently residing, any adult with whom the child has resided for one year or longer in the past, and any adults who have maintained a relationship or exercised visitation with the child as identified in the agency case plan. The notice must state that a permanent home is sought for the child and that the individuals receiving the notice may indicate to the agency their interest in providing a permanent home. The notice must state that within 30 days of receipt of the notice an individual receiving the notice must indicate to the agency the individual's interest in providing a permanent home for the child or that the individual may lose the opportunity to be considered for a permanent placement.

Subd. 6. Change in placement. If a child is removed from a permanent placement disposition authorized under section 260C.201, subdivision 11, within one year after the placement was made:

(1) the child must be returned to the residential facility where the child was placed immediately preceding the permanent placement; or

(2) the court shall hold a hearing within ten days after the child is removed from the permanent placement to determine where the child is to be placed. A guardian ad litem must be appointed for the child for this hearing.

Subd. 7. Administrative or court review of placements. (a) There shall be an administrative review of the out-of-home placement plan of each child placed in a residential facility no later than 180 days after the initial placement of the child in a residential facility and at least every six months thereafter if the child is not returned to the home of the parent or parents within that time. The out-of-home placement plan must be monitored and updated at each administrative review. As an alternative to the administrative review, the social services agency responsible for the placement may bring a petition as provided in section 260C.141, subdivision 2, to the court for review of the foster

care to determine if placement is in the best interests of the child. This petition must be brought to the court in order for a court determination to be made regarding the best interests of the child within the applicable six months and is not in lieu of the requirements contained in subdivision 3 or 4. A court review conducted pursuant to section 260C.201, subdivision 11, or section 260C.141, subdivision 2, shall satisfy the requirement for an administrative review so long as the other requirements of this section are met.

(b) At the review required under paragraph (a) , the reviewing administrative body or the court shall review:

(1) the safety of the child;

(2) the continuing necessity for and appropriateness of the placement;

(3) the extent of compliance with the out-of-home placement plan;

(4) where appropriate, the extent of progress which has been made toward alleviating or mitigating the causes necessitating placement in a residential facility;

(5) where appropriate, the projected date by which the child may be returned to and safely maintained in the home or placed permanently away from the care of the parent or parents or guardian; and

(6) the appropriateness of the services provided to the child.

Subd. 8. Review of voluntary placements. Except for a child in placement due solely to the child's developmental disability or emotional disturbance, if the child has been placed in a residential facility pursuant to a voluntary release by the parent or parents, and is not returned home within 90 days after initial placement in the residential facility, the social services agency responsible for the placement shall:

(1) return the child to the home of the parent or parents; or

(2) file a petition according to section 260C.141, subdivision 1 or 2, which may:

(i) ask the court to review the placement and approve it for up to an additional 90 days;

(ii) ask the court to order continued out-of-home placement according to sections 260C.178 and 260C.201; or

(iii) ask the court to terminate parental rights under section 260C.301.

The out-of-home placement plan must be updated and filed along with the petition.

If the court approves continued out-of-home placement for up to 90 more days, at the end of the court-approved 90-day period, the child must be returned to the parent's home. If the child is not returned home, the responsible social services agency must proceed on the petition filed alleging the child in need of protection or services or the petition for termination of parental rights or other permanent placement of the child away from the parent. The court must find a statutory basis to order the placement of the child under section 260C.178; 260C.201; or 260C.317.

Subd. 9. Review of certain child placements. (a) If a developmentally disabled child or a child diagnosed as emotionally disturbed has been placed in a residential facility pursuant to a voluntary release by the child's parent or parents because of the child's handicapping conditions or need for long-term residential treatment or supervision, the social services agency responsible for the placement shall report to the court and bring a petition for review of the child's foster care status as required in section 260C.141, subdivision 2, paragraph (b) .

(b) If a child is in placement due solely to the child's developmental disability or emotional disturbance, and the court finds compelling reasons not to proceed under section 260C.201, subdivision 11, custody of the child is not transferred to the responsible social services agency under section 260C.201, subdivision 1, paragraph (a) clause (2), and no petition is required by section 260C.201, subdivision 11.

(c) Whenever a petition for review is brought pursuant to this subdivision, a guardian ad litem shall be appointed for the child.

Subd. 10. Rules; children in residential facilities. The commissioner of human services shall promulgate all rules necessary to carry out the provisions of Public Law Number 96-272 as regards the establishment of a state goal for the reduction of the number of children in residential facilities beyond 24 months.

Subd. 11. Rules. The commissioner shall revise Minnesota Rules, parts 9545.0010 to 9545.0260, the rules setting standards for family and group family foster care. The commissioner shall:

(1) require that, as a condition of licensure, foster care providers attend training on understanding and validating the cultural heritage of all children in their care, and on the importance of the Indian Child Welfare Act, United States Code, title 25, sections 1901 to 1923, and the Minnesota Indian Family Preservation Act, sections 260.751 to 260.835; and

(2) review and, where necessary, revise foster care rules to reflect sensitivity to cultural diversity and differing lifestyles. Specifically, the commissioner shall examine whether space and other requirements discriminate against single-parent, minority, or low-income families who may be able to provide quality foster care reflecting the values of their own respective cultures.

Subd. 12. Fair hearing review. Any person whose claim for foster care payment pursuant to the placement of a child resulting from a child protection assessment under section 626.556 is denied or not acted upon with reasonable promptness may appeal the decision under section 256.045, subdivision 3. The application and fair hearing procedures set forth in the administration of community social services rule, Minnesota Rules, parts 9550.0070 to 9550.0092, do not apply to foster care payment issues appealable under this subdivision.

DOMESTIC RELATIONS

CHAPTER 518 MARRIAGE DISSOLUTION

PROCEEDINGS

§ 518.165. Guardians for minor children.

Subdivision 1. Permissive appointment of guardian ad litem. In all proceedings for child custody or for dissolution or legal separation where custody or parenting time with a minor child is in issue, the court may appoint a guardian ad litem from a panel established by the court to represent the interests of the child. The guardian ad litem shall advise the court with respect to custody, support, and parenting time.

Subd. 2. Required appointment of guardian ad litem. In all proceedings for child custody or for marriage dissolution or legal separation in which custody or parenting time with a minor child is an issue, if the court has reason to believe that the minor child is a victim of domestic child abuse or neglect, as those terms are defined in sections 260C.007 and 626.556, respectively, the court shall appoint a guardian ad litem. The guardian ad litem shall represent the interests of the child and advise the court with respect to custody, support, and parenting time. If the child is represented by a guardian ad litem in any other pending proceeding, the court may appoint that guardian to represent the child in the custody or parenting time proceeding. No guardian ad litem need be appointed if the alleged domestic child abuse or neglect is before the court on a juvenile dependency and neglect petition. Nothing in this subdivision requires the court to appoint a guardian ad litem in any proceeding for child custody, marriage dissolution, or legal separation in which an allegation of domestic child abuse or neglect has not been made.

Subd. 2a. Responsibilities of guardian ad litem. A guardian ad litem shall carry out the following responsibilities:

(1) conduct an independent investigation to determine the facts relevant to the situation of the child and the family, which must include, unless specifically excluded by the court, reviewing relevant documents; meeting with and observing the child in the home setting and considering the child's wishes, as appropriate; and interviewing parents, caregivers, and others with knowledge relevant to the case;

(2) advocate for the child's best interests by participating in appropriate aspects of the case and advocating for appropriate community services when necessary;

(3) maintain the confidentiality of information related to a case, with the exception of sharing information as permitted by law to promote cooperative solutions that are in the best interests of the child;

(4) monitor the child's best interests throughout the judicial proceeding; and

(5) present written reports on the child's best interests that include conclusions and recommendations and the facts upon which they are based.

Subd. 3. Fees. (a) A guardian ad litem appointed under either subdivision 1 or 2 may be appointed either as a volunteer or on a fee basis. If a guardian ad litem is appointed on a fee basis, the court shall enter an order for costs, fees, and disbursements in favor of the child's guardian ad litem. The order may be made against either or both parties, except that any part of the costs, fees, or disbursements which the court finds the parties are incapable of paying shall be borne by the state courts. The costs of court-appointed counsel to the guardian ad litem shall be paid by the county in which the proceeding is being held if a party is incapable of paying for them. Until the recommendations of the task force created in Laws 1999, chapter 216, article 7, section 42, are implemented, the costs of court-appointed counsel to a guardian ad litem in the eighth judicial district shall be paid by the state courts if a party is incapable of paying for them. In no event may the court order that costs, fees, or disbursements be paid by a party receiving public assistance or legal assistance or by a party whose annual income falls below the poverty line as established under United States Code, title 42, section 9902(2) .

(b) In each fiscal year, the state treasurer shall deposit guardian ad litem reimbursements in the general fund and credit them to a separate account with the trial courts. The balance of this account is appropriated to the trial courts and does not cancel but is available until expended. Expenditures by the state court administrator's office from this account must be based on the amount of the guardian ad litem reimbursements received by the state from the courts in each judicial district.

GENERAL RULES OF PRACTICE FOR THE DISTRICT COURTS

TITLE X - RULES OF GUARDIAN AD LITEM PROCEDURE

RULE 908. GENERAL RESPONSIBILITIES OF GUARDIANS AD LITEM; OTHER ROLES DISTINGUISHED; CONTACT WITH COURT

Review Court Orders which may amend this Rule

908.01. General Responsibilities of Guardians Ad Litem.

Consistent with the responsibilities set forth in Minnesota Statutes section 260.155, subdivision 4(b), and section 518.165, subdivision 2a, other applicable statutes and rules of court, and the appointment order entered pursuant to Rule 904.04, in every family court and juvenile court case in which a guardian ad litem is appointed, the guardian ad litem shall perform the responsibilities set forth in clauses (a) to (n)

(a) The guardian ad litem shall advocate for the best interests of the child.

(b) The guardian ad litem shall exercise independent judgment, gather information, participate as appropriate in negotiations, and monitor the case, which activities must include, unless specifically excluded by the court, reviewing relevant documents; meeting with and observing the child in the home setting and considering the child's wishes, as appropriate; and interviewing parents, caregivers, and others with knowledge relevant to the case.

(c) The guardian ad litem shall, as appropriate to the case, make written and/or oral reports to the court regarding the best interests of the child, including conclusions and recommendations and the facts upon which they are based.

(d) The guardian ad litem shall complete work in a timely manner, and advocate for timely court reviews and judicial intervention, if necessary.

(e) The guardian ad litem shall be knowledgeable about community resources for placement, treatment, and other necessary services.

(f) The guardian ad litem shall maintain the confidentiality of information related to a case, with the exception of sharing information as permitted by law to promote cooperative solutions that are in the best interests of the child.

(g) The guardian ad litem shall, during service as a guardian ad litem, keep all records, notes, or other information confidential and in safe storage. At the conclusion of service, the guardian ad litem shall keep or destroy the notes and records in accordance with the requirements of the guardian ad litem program.

(h) The guardian ad litem shall complete continuing education requirements, and seek advice as necessary from the program coordinator or, if the program coordinator is not available, from another guardian ad litem.

(i) The guardian ad litem shall treat all individuals with dignity and respect while carrying out her or his responsibilities.

(j) The guardian ad litem shall be knowledgeable about and appreciative of the child's religious background and racial or ethnic heritage, and sensitive to the issues of cultural and socio-economic diversity, and in all cases governed by the Indian Child Welfare Act or the Minnesota Indian Family Heritage Preservation Act shall apply the prevailing social and cultural standards of the Indian community in which the parent or extended family resides or with which the parent or extended family members maintain social and cultural ties.

(k) The guardian ad litem shall use the guardian ad litem appointment and authority appropriately to advocate for the best interests of the child, avoid any impropriety or appearance of impropriety, and not use the position for personal gain.

(l) The guardian ad litem shall comply with all state and federal laws regarding the reporting of child abuse and/or neglect.

(m) The guardian ad litem shall inform individuals contacted in a particular case about the role of the guardian ad litem in the case.

(n) The guardian ad litem shall ensure that the appropriate appointment and discharge documents are timely filed with the court.

GENERAL RULES OF PRACTICE FOR THE DISTRICT COURTS

TITLE X - RULES OF GUARDIAN AD LITEM PROCEDURE

RULE 908. GENERAL RESPONSIBILITIES OF GUARDIANS AD LITEM; OTHER ROLES DISTINGUISHED; CONTACT WITH COURT

Review Court Orders which may amend this Rule

908.03. Contact with Court.

Except as to procedural matters not affecting the merits of a case, all communications between the court and the guardian ad litem shall be in the presence of the parties or in writing with copies to the parties, or if represented, the party's attorney.

WASHINGTON

TITLE 4. CIVIL PROCEDURE

CHAPTER 4.08. PARTIES TO ACTIONS

§ 4.08.050. Guardian ad litem for infant.

Except as provided under RCW 26.50.020 and 28A.225.035, when an infant is a party he or she shall appear by guardian, or if he or she has no guardian, or in the opinion of the court the guardian is an improper person, the court shall appoint one to act. Said guardian shall be appointed as follows:

(1) When the infant is plaintiff, upon the application of the infant, if he or she be of the age of fourteen years, or if under that age, upon the application of a relative or friend of the infant.

(2) When the infant is defendant, upon the application of the infant, if he or she be of the age of fourteen years, and applies within thirty days after the service of the summons; if he or she be under the age of fourteen, or neglects to apply, then upon the application of any other party to the action, or of a relative or friend of the infant.

TITLE 4. CIVIL PROCEDURE

CHAPTER 4.16. LIMITATION OF ACTIONS

§ 4.16.190. Statute tolled by personal disability.

If a person entitled to bring an action mentioned in this chapter, except for a penalty or forfeiture, or against a sheriff or other officer, for an escape, be at the time the cause of action accrued either under the age of eighteen years, or incompetent or disabled to such a degree that he or she cannot understand the nature of the proceedings, such incompetency or disability as determined according to chapter 11.88 RCW, or imprisoned on a criminal charge prior to sentencing, the time of such disability shall not be a part of the time limited for the commencement of action.

TITLE 4. CIVIL PROCEDURE

CHAPTER 4.16. LIMITATION OF ACTIONS

§ 4.16.340. Actions based on childhood sexual abuse.

(1) All claims or causes of action based on intentional conduct brought by any person for recovery of damages for injury suffered as a result of childhood sexual abuse shall be commenced within the later of the following periods:

(a) Within three years of the act alleged to have caused the injury or condition;

(b) Within three years of the time the victim discovered or reasonably should have discovered that the injury or condition was caused by said act; or

(c) Within three years of the time the victim discovered that the act caused the injury for which the claim is brought:

PROVIDED, That the time limit for commencement of an action under this section is tolled for a child until the child reaches the age of eighteen years.

(2) The victim need not establish which act in a series of continuing sexual abuse or exploitation incidents caused the injury complained of, but may compute the date of discovery from the date of discovery of the last act by the same perpetrator which is part of a common scheme or plan of sexual abuse or exploitation.

(3) The knowledge of a custodial parent or guardian shall not be imputed to a person under the age of eighteen years.

(4) For purposes of this section, "child" means a person under the age of eighteen years.

(5) As used in this section, "childhood sexual abuse" means any act committed by the defendant against a complainant who was less than eighteen years of age at the time of the act and which act would have been a violation of chapter 9A.44 RCW or RCW 9.68A.040 or prior laws of similar effect at the time the act was committed.

TITLE 12. DISTRICT COURTS -- CIVIL PROCEDURE

CHAPTER 12.04. COMMENCEMENT OF ACTIONS

§ 12.04.140. Action by person under eighteen years.

Except as provided under RCW 26.50.020, no action shall be commenced by any person under the age of eighteen years, except by his guardian, or until a next friend for such a person shall have been appointed. Whenever requested, the justice shall appoint some suitable person, who shall consent thereto in writing, to be named by such plaintiff, to act as his or her next friend in such action, who shall be responsible for the costs therein.

TITLE 12. DISTRICT COURTS -- CIVIL PROCEDURE

CHAPTER 12.04. COMMENCEMENT OF ACTIONS

§ 12.04.150. Action against defendant under eighteen years -- Guardian ad litem.

After service and return of process against a defendant under the age of eighteen years, the action shall not be further prosecuted, until a guardian for such defendant shall have been appointed, except as provided under RCW 26.50.020. Upon the request of such defendant, the justice shall appoint some person who shall consent thereto in writing, to be guardian of the defendant in defense of the action; and if the defendant shall not appear on the return day of the process, or if he or she neglect or refuse to nominate such guardian, the justice may, at the request of the plaintiff, appoint any discreet person as such guardian. The consent of the guardian or next friend shall be filed with the justice; and such guardian for the defendant shall not be liable for any costs in the action.

TITLE 13. JUVENILE COURTS AND JUVENILE OFFENDERS

CHAPTER 13.34. JUVENILE COURT ACT -- DEPENDENCY AND TERMINATION OF PARENT-CHILD RELATIONSHIP

§ 13.34.100. Appointment of guardian ad litem -- Background information -- Rights -- Appointment of counsel for child – Review.

(1) The court shall appoint a guardian ad litem for a child who is the subject of an action under this chapter, unless a court for good cause finds the appointment unnecessary. The requirement of a guardian ad litem may be deemed satisfied if the child is represented by independent counsel in the proceedings.

(2) If the court does not have available to it a guardian ad litem program with a sufficient number of volunteers, the court may appoint a suitable person to act as guardian ad litem for the child under this chapter. Another party to the proceeding or the party's employee or representative shall not be so appointed.

(3) Each guardian ad litem program shall maintain a background information record for each guardian ad litem in the program. The background file shall include, but is not limited to, the following information:

(a) Level of formal education;

(b) Training related to the guardian's duties;

(c) Number of years' experience as a guardian ad litem;

(d) Number of appointments as a guardian ad litem and the county or counties of appointment;

(e) The names of any counties in which the person was removed from a guardian ad litem registry pursuant to a grievance action, and the name of the court and the cause number of any case in which the court has removed the person for cause; and

(f) Criminal history, as defined in RCW 9.94A.030.

The background information report shall be updated annually. As a condition of appointment, the guardian ad litem's background information record shall be made available to the court. If the appointed guardian ad litem is not a member of a guardian ad litem program the person shall provide the background information to the court.

Upon appointment, the guardian ad litem, or guardian ad litem program, shall provide the parties or their attorneys with a statement containing: His or her training relating to the duties as a guardian ad litem; the name of any counties in which the person was removed from a guardian ad litem registry pursuant to a grievance action, and the name of the court and the cause number of any case in which the court has removed the person for cause; and his or her criminal history as defined in RCW 9.94A.030 for the period covering ten years prior to the appointment. The background statement shall not include identifying information that may be used to harm a guardian ad litem, such as home addresses and home telephone numbers, and for volunteer guardians ad litem the court may allow the use of maiden names or pseudonyms as necessary for their safety.

(4) The appointment of the guardian ad litem shall remain in effect until the court discharges the appointment or no longer has jurisdiction, whichever comes first. The guardian ad litem may also be discharged upon entry of an order of guardianship.

(5) A guardian ad litem through counsel, or as otherwise authorized by the court, shall have the right to present evidence, examine and cross-examine witnesses, and to be present at all hearings. A guardian ad litem shall receive copies of all pleadings and other documents filed or submitted to the court, and notice of all hearings according to court rules. The guardian ad litem shall receive all notice contemplated for a parent or other party in all proceedings under this chapter.

(6) If the child requests legal counsel and is age twelve or older, or if the guardian ad litem or the court determines that the child needs to be independently represented by counsel, the court may appoint an attorney to represent the child's position.

(7) For the purposes of child abuse prevention and treatment act *(42 U.S.C. Secs. 5101* et seq.) grants to this state under P.L. 93-247, or any related state or federal legislation, a person appointed pursuant to RCW 13.34.100 shall be deemed a guardian ad litem to represent the best interests of the minor in proceedings before the court.

(8) When a court-appointed special advocate or volunteer guardian ad litem is requested on a case, the program shall give the court the name of the person it recommends and the appointment shall be effective immediately. The court shall appoint the person recommended by the program. If a party in a case reasonably believes the court-appointed special advocate or volunteer is inappropriate or unqualified, the party may request a review of the appointment by the program. The program must complete the review within five judicial days and remove any appointee for good cause. If the party seeking the review is not satisfied with the outcome of the review, the party may file a motion with the court for the removal of the court-appointed special advocate on the grounds the advocate or volunteer is inappropriate or unqualified.

TITLE 13. JUVENILE COURTS AND JUVENILE OFFENDERS

CHAPTER 13.34. JUVENILE COURT ACT -- DEPENDENCY AND TERMINATION OF PARENT-CHILD RELATIONSHIP

§ 13.34.102. Guardian ad litem -- Training -- Registry -- Selection -- Substitution – Exception.

(1) All guardians ad litem must comply with the training requirements established under RCW 2.56.030(15), prior to their appointment in cases under Title 13 RCW, except that volunteer guardians ad litem or court-appointed special advocates may comply with alternative training requirements approved by the office of the administrator for the courts that meet or exceed the state-wide requirements.

(2) (a) Each guardian ad litem program for compensated guardians ad litem shall establish a rotational registry system for the appointment of guardians ad litem. If a judicial district does not have a program the court shall establish the rotational registry system. Guardians ad litem shall be selected from the registry except in exceptional circumstances as determined and documented by the court. The parties may make a joint recommendation for the appointment of a guardian ad litem from the registry.

(b) In judicial districts with a population over one hundred thousand, a list of three names shall be selected from the registry and given to the parties along with the background information as specified in RCW 13.34.100(3), including their hourly rate for services. Each party may, within three judicial days, strike one name from the list. If more than one name remains on the list, the court shall make the appointment from the names on the list. In the event all three names are stricken the person whose name appears next on the registry shall be appointed.

(c) If a party reasonably believes that the appointed guardian ad litem lacks the necessary expertise for the proceeding, charges an hourly rate higher than what is reasonable for the particular proceeding, or has a conflict of interest, the party may, within three judicial days from the appointment, move for substitution of the appointed guardian ad litem by filing a motion with the court.

(d) The superior court shall remove any person from the guardian ad litem registry who misrepresents his or her qualifications pursuant to a grievance procedure established by the court.

(3) The rotational registry system shall not apply to court-appointed special advocate programs.

TITLE 26. DOMESTIC RELATIONS

CHAPTER 26.09. DISSOLUTION OF MARRIAGE -- LEGAL SEPARATION

§ 26.09.220. Parenting arrangements -- Investigation and report -- Appointment of guardian ad litem.

(1) The court may order an investigation and report concerning parenting arrangements for the child, or may appoint a guardian ad litem pursuant to RCW 26.12.175, or both. The investigation and report may be made by the guardian ad litem, the staff of the juvenile court, or other professional social service organization experienced in counseling children and families.

(2) In preparing the report concerning a child, the investigator may consult any person who may have information about the child and the potential parenting or custodian arrangements. Upon order of the court, the investigator may refer the child to professional personnel for diagnosis. The investigator may consult with and obtain information from medical, psychiatric, or other expert persons who have served the child in the past without obtaining the consent of the parent or the child's custodian; but the child's consent must be obtained if the child has reached the age of twelve, unless the court finds that the child lacks mental capacity to consent. If the requirements of subsection (3) of this section are fulfilled, the investigator's report may be received in evidence at the hearing.

(3) The investigator shall mail the investigator's report to counsel and to any party not represented by counsel at least ten days prior to the hearing unless a shorter time is ordered by the court for good cause shown. The investigator shall make available to counsel and to any party not represented by counsel the investigator's file of underlying data and reports, complete texts of diagnostic reports made to the investigator pursuant to the provisions of subsection (2) of this section, and the names and addresses of all persons whom the investigator has consulted. Any party to the proceeding may call the investigator and any person whom the investigator has consulted for cross-examination. A party may not waive the right of cross-examination prior to the hearing.

TITLE 26. DOMESTIC RELATIONS

CHAPTER 26.12. FAMILY COURT

§ 26.12.175. Appointment of guardian ad litem -- Independent investigation -- Court-appointed special advocate program -- Background information -- Review of appointment.

(1) (a) The court may appoint a guardian ad litem to represent the interests of a minor or dependent child when the court believes the appointment of a guardian ad litem is necessary to protect the best interests of the child in any proceeding under this chapter. The family court services professionals may also make a recommendation to the court regarding whether a guardian ad litem should be appointed for the child. The court may appoint a guardian ad litem from the court-appointed special advocate program, if that program exists in the county.

(b) Unless otherwise ordered, the guardian ad litem's role is to investigate and report factual information to the court concerning parenting arrangements for the child, and to represent the child's best interests. Guardians ad litem and investigators under this title may make recommendations based upon an independent investigation regarding the best interests of the child, which the court may consider and weigh in conjunction with the recommendations of all of the parties. If a child expresses a preference regarding the parenting plan, the guardian ad litem shall report the preferences to the court, together with the facts relative to whether any preferences are being expressed voluntarily and the degree of the child's understanding. The court may require the guardian ad litem to provide periodic reports to the parties regarding the status of his or her investigation. The guardian ad litem shall file his or her report at least sixty days prior to trial.

(c) The parties to the proceeding may file with the court written responses to any report filed by the guardian ad litem or investigator. The court shall consider any written responses to a report filed

by the guardian ad litem or investigator, including any factual information or recommendations provided in the report.

(d) The court shall enter an order for costs, fees, and disbursements to cover the costs of the guardian ad litem. The court may order either or both parents to pay for the costs of the guardian ad litem, according to their ability to pay. If both parents are indigent, the county shall bear the cost of the guardian, subject to appropriation for guardians' ad litem services by the county legislative authority. Guardians ad litem who are not volunteers shall provide the parties with an itemized accounting of their time and billing for services each month.

(2) (a) If the guardian ad litem appointed is from the county court-appointed special advocate program, the program shall supervise any guardian ad litem assigned to the case. The court-appointed special advocate program shall be entitled to notice of all proceedings in the case.

(b) The legislative authority of each county may authorize creation of a court-appointed special advocate program. The county legislative authority may adopt rules of eligibility for court-appointed special advocate program services.

(3) Each guardian ad litem program shall maintain a background information record for each guardian ad litem in the program. The background file shall include, but is not limited to, the following information:

(a) Level of formal education;

(b) Training related to the guardian's duties;

(c) Number of years' experience as a guardian ad litem;

(d) Number of appointments as a guardian ad litem and county or counties of appointment;

(e) The names of any counties in which the person was removed from a guardian ad litem registry pursuant to a grievance action, and the name of the court and the cause number of any case in which the court has removed the person for cause; and

(f) Criminal history, as defined in RCW 9.94A.030.

The background information report shall be updated annually. As a condition of appointment, the guardian ad litem's background information record shall be made available to the court. If the appointed guardian ad litem is not a member of a guardian ad litem program the person shall provide the background information to the court.

Upon appointment, the guardian ad litem, or guardian ad litem program, shall provide the parties or their attorneys with a statement containing: His or her training relating to the duties as a guardian ad litem; the name of any counties in which the person was removed from a guardian ad litem registry pursuant to a grievance action, and the name of the court and the cause number of any case in which the court has removed the person for cause; and his or her criminal history as defined in RCW 9.94A.030 for the period covering ten years prior to the appointment. The background statement shall not include identifying information that may be used to harm a guardian ad litem, such as home addresses and home telephone numbers, and for volunteer guardians ad litem the court may allow the use of maiden names or pseudonyms as necessary for their safety.

(4) When a court-appointed special advocate or volunteer guardian ad litem is requested on a case, the program shall give the court the name of the person it recommends and the appointment shall be effective immediately. The court shall appoint the person recommended by the program. If a party in a case reasonably believes the court-appointed special advocate or volunteer is inappropriate or unqualified, the party may request a review of the appointment by the program. The program must complete the review within five judicial days and remove any appointee for good cause. If the party seeking the review is not satisfied with the outcome of the review, the party may file a motion with the court for the removal of the court-appointed special advocate on the grounds the advocate or volunteer is inappropriate or unqualified.

TITLE 26. DOMESTIC RELATIONS

CHAPTER 26.12. FAMILY COURT

§ 26.12.177. Guardians ad litem and investigators -- Training -- Registry -- Subregistry -- Selection -- Substitution – Exceptions.

(1) All guardians ad litem and investigators appointed under this title must comply with the training requirements established under RCW 2.56.030(15), prior to their appointment in cases under Title 26 RCW, except that volunteer guardians ad litem or court-appointed special advocates may comply with alternative training requirements approved by the office of the administrator for the courts that meet or exceed the state-wide requirements.

(2) (a) Each guardian ad litem program for compensated guardians ad litem shall establish a rotational registry system for the appointment of guardians ad litem and investigators under this title. If a judicial district does not have a program the court shall establish the rotational registry system. Guardians ad litem and investigators under this title shall be selected from the registry except in exceptional circumstances as determined and documented by the court. The parties may make a joint recommendation for the appointment of a guardian ad litem from the registry.

(b) In judicial districts with a population over one hundred thousand, a list of three names shall be selected from the registry and given to the parties along with the background information as specified in RCW 26.12.175(3), including their hourly rate for services. Each party may, within three judicial days, strike one name from the list. If more than one name remains on the list, the court shall make the appointment from the names on the list. In the event all three names are stricken the person whose name appears next on the registry shall be appointed.

(c) If a party reasonably believes that the appointed guardian ad litem lacks the necessary expertise for the proceeding, charges an hourly rate higher than what is reasonable for the particular proceeding, or has a conflict of interest, the party may, within three judicial days from the appointment, move for substitution of the appointed guardian ad litem by filing a motion with the court.

(d) Under this section, within either registry referred to in (a) of this subsection, a subregistry may be created that consists of guardians ad litem under contract with the department of social and health services' division of child support. Guardians ad litem on such a subregistry shall be selected and appointed in state-initiated paternity cases only.

(e) The superior court shall remove any person from the guardian ad litem registry who misrepresents his or her qualifications pursuant to a grievance procedure established by the court.

(3) The rotational registry system shall not apply to court-appointed special advocate programs.

TITLE 26. DOMESTIC RELATIONS

CHAPTER 26.28. AGE OF MAJORITY

(FORMERLY: INFANTS)

§ 26.28.015. Age of majority for enumerated specific purposes.

Notwithstanding any other provision of law, and except as provided under RCW 26.50.020, all persons shall be deemed and taken to be of full age for the specific purposes hereafter enumerated at the age of eighteen years:

(1) To enter into any marriage contract without parental consent if otherwise qualified by law;

(2) To execute a will for the disposition of both real and personal property if otherwise qualified by law;

(3) To vote in any election if authorized by the Constitution and otherwise qualified by law;

(4) To enter into any legal contractual obligation and to be legally bound thereby to the full extent as any other adult person;

(5) To make decisions in regard to their own body and the body of their lawful issue whether natural born to or adopted by such person to the full extent allowed to any other adult person including but not limited to consent to surgical operations;

(6) To sue and be sued on any action to the full extent as any other adult person in any of the courts of this state, without the necessity for a guardian ad litem.

TITLE 26. DOMESTIC RELATIONS

CHAPTER 26.50. DOMESTIC VIOLENCE PREVENTION

§ 26.50.020. Commencement of action -- Jurisdiction – Venue.

(1) Any person may seek relief under this chapter by filing a petition with a court alleging that the person has been the victim of domestic violence committed by the respondent. The person may petition for relief on behalf of himself or herself and on behalf of minor family or household members.

(2) A person under eighteen years of age who is sixteen years of age or older may seek relief under this chapter and is not required to seek relief by a guardian or next friend.

(3) No guardian or guardian ad litem need be appointed on behalf of a respondent to an action under this chapter who is under eighteen years of age if such respondent is sixteen years of age or older.

(4) The court may, if it deems necessary, appoint a guardian ad litem for a petitioner or respondent who is a party to an action under this chapter.

(5) The courts defined in *RCW 26.50.010(3) have jurisdiction over proceedings under this chapter. The jurisdiction of district and municipal courts under this chapter shall be limited to enforcement of RCW 26.50.110(1), or the equivalent municipal ordinance, and the issuance and enforcement of temporary orders for protection provided for in RCW 26.50.070 if: (a) A superior court has exercised or is exercising jurisdiction over a proceeding under this title or chapter 13.34 RCW involving the parties; (b) the petition for relief under this chapter presents issues of residential schedule of and contact with children of the parties; or (c) the petition for relief under this chapter requests the court to exclude a party from the dwelling which the parties share. When the jurisdiction of a district or municipal court is limited to the issuance and enforcement of a temporary order, the district or municipal court shall set the full hearing provided for in RCW 26.50.050 in superior court and transfer the case. If the notice and order are not served on the respondent in time for the full hearing, the issuing court shall have concurrent jurisdiction with the superior court to extend the order for protection.

(6) An action under this chapter shall be filed in the county or the municipality where the petitioner resides, unless the petitioner has left the residence or household to avoid abuse. In that case, the petitioner may bring an action in the county or municipality of the previous or the new household or residence.

(7) A person's right to petition for relief under this chapter is not affected by the person leaving the residence or household to avoid abuse.

DALLAS S. NEWELL, RESPONDENT, V. ELIZABETH C. AYERS, ET AL, APPELLANTS

No. 2897-3

COURT OF APPEALS OF WASHINGTON, Division Three

23 Wn. App. 767; 598 P.2d 3; 1979 Wash. App. LEXIS 2591

July 19, 1979

SUBSEQUENT HISTORY:

[*1]**

Reconsideration Denied August 20, 1979. Review Denied by Supreme Court November 9, 1979.

PRIOR HISTORY:

Superior Court: The Superior Court for Douglas County, No. 11029, B. J. McLean, J., on April 13, 1978, entered a judgment directing the return of the funds.

DISPOSITION:

Holding that the estate was subject to the terms of a mutual will and that the gifts were of a testamentary nature, the court *affirms* the judgment.

HEADNOTES:

[1] Wills -- Mutual Wills -- In General. A mutual will is a will executed pursuant to an agreement between two individuals as to the manner of disposing of their property after both are deceased; the agreement may be incorporated into the will. Once the survivor elects to take under such a will, he is bound to dispose of his property as previously agreed.

[2] Wills -- Contracts To Devise -- Determination -- Standard of Proof. The existence of an agreement to mutually devise property is a factual determination which requires that the trier of fact be persuaded to a high probability that the parties entered into such an agreement.

[3] Wills -- Contracts To Devise -- Inter Vivos Transfers -- Conflict -- Effect. Inter vivos transfers **[***2]** which are testamentary dispositions of property in opposition to the terms of a contract to devise are void and may be set aside.

[4] Infants -- As Party to Action -- Guardian -- Necessity. The requirement of RCW 4.08.050 that an infant be represented by a guardian when a party to an action is not jurisdictional but merely permits an unrepresented infant to avoid an adverse judgment unless the court finds his interests to have been protected to the same extent as if he had been represented by a guardian ad litem.

SYLLABUS:

Nature of Action: The representative of an estate sought to recover inter vivos gifts of funds made by the decedent shortly before his death.

COUNSEL:

Lowell D. Sperline, Sperline & Sperline, Stephen R. Crossland, and *Anderson, McCauley & Crossland,* for appellants.

Peter G. Young, for respondent.

JUDGES:

Green, C.J. Munson and McInturff, JJ., concur.

OPINION BY:

GREEN

OPINION:

[*768] [4]** Plaintiff, as the personal representative of Homer Duncanson's estate, sued the defendants to recover gifts of money made to them by the decedent shortly before his death. He alleged three theories of recovery: (1) the inter vivos gifts were testamentary **[***3]** in nature, and the decedent intended thereby to circumvent the terms of a mutual will; (2) the decedent made the gifts as the result of the undue influence of the defendant, Elizabeth Ayers; and (3) the decedent was mentally incompetent to make the transfer. The trial court found in favor of the plaintiff on all three theories and entered separate judgments against each of the defendants for the amount of each gift. This appeal followed.

We reach only two issues: (1) Did the trial court err in finding a mutual will? and (2) Did the court err in refusing to set aside the judgments because the minor defendants were not represented by a guardian ad litem? We affirm.

Homer and Bessie Duncanson were married in 1936, at which time she had four **[**5]** children and he had one child by their prior marriages. No children were born of their marriage. In 1952, Mrs. Duncanson was scheduled to undergo major surgery. Anticipating the possibility that she might not survive that surgery, the Duncansons executed identical wills. Those wills provided that the couple's property would pass to the survivor, and the survivor agreed to devise the property owned at death to the couple's children **[***4]** in equal shares. The will of the decedent contained the following specific language:

[*769] And by agreement with my wife, Bessie Duncanson, who is making a like will, mutually agreed to, in the event my wife predeceases me, I give, devise and bequeath ...

Mrs. Duncanson died following the surgery. Mr. Duncanson survived her by 23 years.

In 1974, the decedent was in poor health. At this same time, he began liquidating his property, telling his banker he was dissatisfied with his will and that he wanted his money where he could get his hands on it. In June 1974, he gave $ 18,000 each to his natural daughter, Elizabeth Ayers, and her husband Harold. Smaller gifts were made to Elizabeth's children and to her grandchildren, who were minors. Then, in September, the decedent made an additional gift of $ 10,000 each to Mr. and Mrs. Ayers. These monetary transfers represented approximately 90 percent of the decedent's property. The remainder of the property which was liquidated was under the control of Mrs. Ayers who was using it for the decedent's care. He lived less than a year after the final transfer.

Mrs. Ayers, who was named as executrix by a 1974 codicil **[***5]** to the will, did not file probate proceedings. Thereupon, the plaintiff, husband of one of Bessie's children, applied for letters testamentary, and initiated this action against the recipients of the gifts.

[1, 2] First, defendants contend that the 1952 will executed by the decedent was not a mutual will. We disagree with the defendants' contention. A review of the Washington case law in this area reveals that a mutual will is a will that is executed pursuant to an agreement between two individuals as to the manner of the ultimate disposition of their property after *both* are deceased. The agreement and the will may be combined in one document. Once the survivor elects to take under the provisions of such a will, he is not free to avoid the obligation to dispose of his property as previously agreed. The existence of the parties' contractual intention is a question for the trier of fact who must be persuaded to a high probability that the parties entered into such an agreement. *Auger v. Shideler, 23 Wn.2d 505,* **[*770]** *161 P.2d 200 (1945); Arnold v. Beckman, 74 Wn.2d 836, 447 P.2d 184 (1968); In re Estate of Richardson, 11 Wn. App. 758, 760-62, 525* **[***6]** *P.2d 816 (1974).*

[3] Here, the agreement is unambiguously expressed in the will. n1 That the decedent understood the binding nature of his will is evidenced by the fact he obtained legal advice as to whether he could change the will and as a result of the advice never attempted to revoke it. Instead, he sought to avoid its effect by disposing of virtually all of his property before his death in a manner contrary to his agreement with his late wife. This disposition took place at a time when he was aged, in very poor health and anticipating his death. The defendants have not contradicted this evidence except to allege that the Duncansons could not have intended that their wills be mutual because such an intent would have resulted in an unnatural disposition of the decedent's property, *i.e.*, his natural daughter would inherit only one-fifth of his estate. This argument ignores the fact that the **[**6]** couple's property was presumptively community and in any event could be disposed of by agreement. Consequently, we hold that the trial court's finding that the will of the decedent was a mutual will is supported by the required degree of evidence. Since the evidence **[***7]** also discloses that the decedent's inter vivos transfers were in effect testamentary dispositions contrary to the disposition called for by the agreement, those transfers were void and were properly set aside. *Olsen*

v. Olsen, 189 Misc. 1046, 70 N.Y.S.2d 838 (1947). In view of our holding we need not reach the issues raised with respect to undue influence and incompetency.

> n1 We note that the language here clearly expresses the fact that the parties are acting pursuant to a contract unlike the language found in the wills in some previous cases. For example, in *In re Estate of Richardson, supra at 759,* the will simply stated that the testator and testatrix were "relying on the conditions herein made by each of them as the basis for the conditions made by the other ..." In both *Arnold v. Beckman, supra,* and *Auger v. Shideler, supra,* the contract was oral and was not referred to at all in the will itself.

[*771] [4] Second, the defendants point out that James and Kathryn Badgley, **[***8]** and Bradford and Brock Boswell are minors, but that the judgment entered against them was without the benefit of a guardian ad litem. n2 They cite RCW 4.08.050:

When an infant is a party he shall appear by guardian, or if he has no guardian, or in the opinion of the court the guardian is an improper person, the court shall appoint one to act. Said guardian shall be appointed as follows:

(2) When the infant is defendant, upon the application of the infant, if he be of the age of fourteen years, and applies within thirty days after the service of the summons; if he be under the age of fourteen, or neglects to apply, then upon the application of any other party to the action, or of a relative or friend of the infant.

The defendants assert that the statute is jurisdictional, and, since it was not complied with, all of the judgments are void. We disagree. While the appointment of a guardian ad litem is mandatory, *Mezere v. Flory, 26 Wn.2d 274, 278, 173 P.2d 776 (1946),* citing *Ball v. Clothier, 34 Wash. 299, 75 P. 1099 (1904); State ex rel. Davies v. Superior Court, 102 Wash. 395, 173 P. 189 (1918),* we do not find it to be jurisdictional. Rather, the rule **[***9]** is that a minor must be represented by a guardian ad litem, or the judgment against him may be voidable at his option. Whether the minor will be allowed to avoid the judgment or whether the judgment is allowed to stand depends upon whether the court finds that his interests were protected to the same extent as if a guardian ad litem had been appointed at the time the action was instituted. *Zielinski v. Pleason, 299 Ill. App. 594, 20 N.E.2d 620 (1939); Hamilton v. Moore, 6 A.2d 787* **[*772]** *(Pa. 1939); Goodall v. Doss, 312 S.W.2d 875 (Tenn. Ct. App. 1958);* and *Tart v. Register, 257 N.C. 161, 125 S.E.2d 754, 760-61 (1962).*

> n2 We note that the minor defendants are still not represented by a guardian ad litem, a fact which may raise questions concerning the remaining defendants' standing to assert to minors' interests. However, we also note that the appellate courts will act sua sponte to safeguard the interests of a ward. *Shelley v. Elfstrom, 13 Wn. App. 887, 889, 538 P.2d 149 (1975).* We see no reason to act differently with respect to a minor. Thus, we consider the defendants' assignment of error.

[*10]**

Here, the failure to appoint a guardian is a technical error which did not affect the result of the trial. The record reveals that all of the defendants had a common interest and that the defendants were competently represented by counsel. Moreover, at least one of the parents of each minor was a party defendant. In these circumstances, the minor defendants should not be allowed to avoid the judgment.

Accordingly, we affirm the judgment in all respects; however, the trial court is directed to appoint a guardian ad litem to represent the minor defendants in the process of the plaintiff's collection of the judgment.

DELORES NETTLES, ET AL, RESPONDENTS, V. JAMES BECKLEY, APPELLANT

No. 4465-3-III

COURT OF APPEALS OF WASHINGTON, Division Three

32 Wn. App. 606; 648 P.2d 508; 1982 Wash. App. LEXIS 3110

July 22, 1982

PRIOR HISTORY:

[*1]**

Superior Court: The Superior Court for Benton County, No. 79-0633, Albert J. Yencopal, J., on March 12, 1981, entered a judgment finding the defendant to be the natural father of the son and requiring the defendant to pay past and future child support.

DISPOSITION:

Holding that the son was entitled to commence the action on his own behalf, that the statute of limitation was tolled during his minority, that the action was not barred by laches, and that back child support was authorized by statute, the court *affirms* the judgment.

HEADNOTES:

[1] Juveniles -- Paternity -- Common Law Right of Action. An illegitimate child has a common law right to bring an action on his own behalf to establish paternity.

[2] Limitation of Actions -- Juveniles -- Paternity -- Timeliness. RCW 4.16.190, which tolls the statute of limitation during a plaintiff's minority, applies to actions to establish paternity.

[3] Equity -- Laches -- Elements. A party asserting the defense of laches has the burden of proving that the plaintiff knew or could reasonably have discovered the facts constituting the cause of action and unreasonably delayed commencing the action resulting in damage to the party or an innocent third person.

[4] Juveniles -- Paternity -- Support -- Delinquent Payments -- Right of Action -- Timeliness. Under RCW 26.26.130(4) and .150(1), a child may recover back child support from his natural father. The statute of limitation in such an action is tolled during the child's minority.

[5] Witnesses -- Credibility -- Review. The evaluation of a witness' credibility by the trier of fact will not be reversed on appeal absent conflicting evidence.

SYLLABUS:

Nature of Action: A mother and son brought a paternity action almost 13 years after the son's birth.

COUNSEL:

Benton S. Clark, Jr., for appellant.

Michael V. Hubbard, for respondents.

JUDGES:

Green, J. Roe, A.C.J., and Munson, J., concur.

OPINION BY:

GREEN

OPINION:

[*607] [509]** James Beckley appeals the court's determination he is the natural father of Scott J. Nettles and the order requiring him to pay $ 10,000 back child support.

The issues presented revolve around whether the paternity action and some or all of the claims for back child support are barred by the statute of limitations or laches.

On June 25, 1966, Scott **[***2]** J. Nettles was born to Delores Nettles. In March 1979, nearly 13 years later, Delores filed a paternity action against Mr. Beckley. Based upon the statute of limitations and laches, he moved for summary judgment which was denied conditioned upon the amendment of the complaint to join the minor child, Scott, asserting his common law rights. Following a trial, during which Mr. Beckley did not testify, the court held him to be the biological father of Scott, ordered him to pay $ 10,000 child support for the period June 25, 1966, through February 28, 1981, and to pay $ 150 per month future support. Mr. Beckley appeals.

First, he contends the paternity action was barred by the statute of limitations. We disagree.

[1] While RCW 26.24.160, in effect at the time of Scott's birth, provided that a statutory paternity action must be commenced within 2 years of the child's birth, that statute has been repealed and replaced by the Uniform Parentage Act, RCW 26.26.010 *et seq.* This act does not limit the time for commencing a paternity action, n1 nor does it revive a cause of action previously barred by RCW 26.24.160. *State v. Douty, 92 Wn.2d 930, 935, 603 P.2d 373 (1979).* **[***3]** Nevertheless, the statutory paternity procedure is not exclusive because an illegitimate child has a common law right to support from his or her parents, *Kaur v. Singh Chawla, 11 Wn. App. 362, 364, 522 P.2d 1198, review denied, 84 Wn.2d 1011 (1974),* and may bring an action on his or **[**510]** her own **[*608]** behalf to establish paternity. *State v. Douty, supra at 938.* Thus, this paternity action could be brought by Scott regardless of an authorizing state statute.

n1 RCW 26.26.060(2) provides:

> "Any interested party or the department of social and health services or the state of Washington may bring an action at any time for the purpose of determining the existence or nonexistence of the father and child relationship." *See also Miller v. Sybouts, 97 Wn.2d 445, 448, 645 P.2d 1082 (1982).*

[2] Furthermore, RCW 4.16.190 provides:

If a person entitled to bring an action ... be at the time the cause of action accrued ... **[***4]** under the age of eighteen years, ... the time of such disability shall not be a part of the time limited for the commencement of action.

Although it appears this general statute has not been specifically applied to a paternity action, we find it applied here and operated to toll the statute of limitations during Scott's minority. Other jurisdictions have reached the same conclusion. *Perez v. Singh, 21 Cal. App. 3d 870, 97 Cal. Rptr. 920 (1971); Van Buskirk v. Todd, 269 Cal. App. 2d 680, 75 Cal. Rptr. 280 (1969); Stearns v. Kean, 303 N.W.2d 408, 413 (Iowa 1981); M.A.D. v. P.R., 277 N.W.2d 27, 29 (Minn. 1979); C.L.W. v. M.J., 254 N.W.2d 446 (N.D. 1977); Texas Dep't of Human Resources v. Delley, 581 S.W.2d 519, 520 (Tex. Civ. App. 1979); J.M.S. v. Benson, 91 Wis. 2d 526, 283 N.W.2d 465, 470 (1979); see also* Annot., *Statute of Limitations in Illegitimacy or Bastardy Proceedings, 59 A.L.R.3d 685,* § 21(a), at 759-60 (1974).

Second, Mr. Beckley contends this action is barred by laches. We disagree.

[3] Laches is an equitable **[***5]** defense designed to prevent injury to the party asserting it, if such injury is caused by his opponent's delay. *State ex rel. Randall v. Snohomish Cy., 79 Wn.2d 619, 621, 488 P.2d 511 (1971).* Before laches applies, a defendant must prove: (1) plaintiff had knowledge or a reasonable opportunity to discover facts constituting a cause of action; (2) there was an unreasonable delay by plaintiff in commencing the action; and (3) there is damage, prejudice or disadvantage to defendant, or an innocent third party, resulting from the delay. *Hayden v. Port Townsend, 93 Wn.2d 870, 874-75, 613 P.2d 1164 (1980); LaVergne v. Boysen, 82 Wn.2d 718, 721, 513 P.2d 547 (1973); Marsh v. Merrick, 28 Wn. App. 156, 159, 622* **[*609]** *P.2d 878 (1981).* Here, although Delores Nettles had knowledge of the facts constituting a cause of action for paternity against Mr. Beckley, the minor child, Scott, may not have. Also, Mr. Beckley failed to testify or to produce any evidence of damage or injury to himself or a third person caused by the delay in bringing this action. *See Moody v. Christiansen, 306 N.W.2d 775 (Iowa 1981);* **[***6]** *McNulty v. Heitman, 600 S.W.2d 168, 173 (Mo. Ct. App. 1980).* Therefore, laches does not apply.

[4] Third, Mr. Beckley contends the claim for back child support is barred by the statute of limitations or laches. We disagree. "The right of an illegitimate child to assert a claim for parental support is too fundamental to permit its forfeiture by its mother's failure to timely institute a [paternity suit]." *Kaur v. Singh Chawla, supra at 366.* Illegitimate children like legitimate children are entitled to support from their parents. *Mills v. Habluetzel, 456 U.S. 91, 71 L. Ed. 2d 770, 102 S. Ct. 1549 (1982); Gomez v. Perez, 409 U.S. 535, 537-38, 35 L. Ed. 2d 56, 93 S. Ct. 872 (1973); Kaur v. Singh Chawla, supra at 364; County of Lenoir ex rel. Cogdell v. Johnson, 46 N.C. App. 182, 264 S.E.2d 816, 820 (1980); Stringer v. Dudoich, 92 N.M. 98, 583 P.2d 462, 463-64 (1978); J.M.S. v. Benson, 283 N.W.2d at 471.*

RCW 26.26.150(1) provides:

If existence of the father and child relationship is declared, or paternity ... has been ... **[***7]** adjudicated under this chapter or under prior law, the obligation of the father may be enforced in the same or other proceedings by ... *the child*, (Italics ours.) This statute clearly gives the child the right to bring an action for back child support, and because of the child's minority, the statute of limitations is tolled. RCW 4.16.190. *Eisler v. Toms , 160 N.J. Super. 272, 389 A.2d 529, 530 (1978); State v. Wilson, 634 P.2d 172, 174 (Mont. 1981); Texas Dep't of Human Resources v. Delley, supra at 522.* Also, another statute authorizes the court to award past child support. RCW 26.26.130 provides:

[*610] [511]** (1) The judgment and order of the court determining the existence or nonexistence of the parent and child relationship is determinative for all purposes.

(4) ... The court may limit the father's liability for the *past support* to the child to the proportion of the expenses already incurred *as the court deems just: Provided however*, That the court shall not limit or affect in any manner the right of nonparties including the state of Washington to seek reimbursement for **[***8]** support and other services previously furnished to the child.

(Italics ours.) The contention that the claim of support is barred by laches must also fail because Mr. Beckley did not present evidence of prejudice, damage or injury. There was no error.

Fourth, Mr. Beckley contends there was insufficient evidence to support the award of $ 10,000 back child support. Our review of the record indicates sufficient evidence to support the award and thus we find no abuse of discretion. RCW 26.26.130(4).

[5] Finally, Mr. Beckley contends the court erred in giving full credibility to Mrs. Nettles' testimony. It is well established the trial judge appraises the credibility of witnesses, and his determination regarding such will not be overturned on appeal absent evidence to the contrary. No rebuttal testimony was offered by Mr. Beckley. He cites no authority to support his argument. It need not be considered. *State v. Young, 89 Wn.2d 613, 574 P.2d 1171 (1978).*

Affirmed.

IN THE MATTER OF THE WELFARE OF JANET DUNAGAN. KENNETH DUNAGAN ET AL., PETITIONERS, V. THE STATE OF WASHINGTON, RESPONDENT

Reported in 447 P.2d 87

No. 40239

SUPREME COURT OF WASHINGTON, Department Two

74 Wn.2d 807; 447 P.2d 87; 1968 Wash. LEXIS 824

November 7, 1968

PRIOR HISTORY:

[*1]**

Certiorari to review an order of the Superior Court for Pierce County, No. 19986, Horace G. Geer, J., entered March 5, 1968.

DISPOSITION:

Affirmed.

HEADNOTES:

[1] Infants -- Dependent Children -- Jurisdiction -- Irregularities Prior to Hearing. Although there may be irregularities in procedure when obtaining custody and in detention of a child occurring prior to a juvenile dependency hearing which, if timely and properly challenged, might affect the jurisdiction of the juvenile court, once the child is present at the hearing these defects do not deprive the court of jurisdiction to hold the hearing and make such decisions as are warranted by the evidence.

[2] Same -- Dependent Children -- Appointment of Guardian Ad Litem. For purposes of a child dependency hearing involving allegations of parental child abuse and an unfit home environment, the juvenile court may, in its discretion, appoint a guardian ad litem to represent the child even though the parents are present.

[3] Same -- Dependent Children -- Caseworker's Bias to Parents -- Consideration by Court. In a juvenile dependency proceeding the juvenile court properly excluded testimony which would **[***2]** have tended to establish the hostility and bias of a caseworker toward the parents, since bias usually exists in such cases between caseworkers and parents and the testimony would have no effect on the decision.

[4] Same -- Dependent Children -- Admission of Photographs. For purposes of RCW 13.04.130, which requires consent of the juvenile court before photographs may be made of a child under 18 years of age who has been taken into custody, a formal written order to this effect is desirable, but not essential. Consent of the juvenile court, however, must be obtained.

[5] Same -- Dependent Children -- Admission of Caseworker's Report. The caseworker's report and recommendations concerning the circumstances of a child who is the subject of a juvenile dependency hearing is not to be considered as evidence at the dependency hearing.

[6] Same -- Dependent Children -- Determination -- Proof. Before a juvenile court has authority to act in a child dependency case, it must be proven that the child is "dependent" under one or more of the definitions applicable to the case contained in RCW 13.04.010.

SYLLABUS:

Dependency proceedings. Review sought of an order **[***3]** of dependency.

COUNSEL:

Kenyon Eldridge Luce, for petitioners.

Ronald L. Hendry and *Leslie A. Wahlstrom*, for respondent.

JUDGES:

Neill, J. Hill, Rosellini, and Hamilton, JJ., and Wiehl, J. Pro Tem., concur.

OPINION BY:

NEILL

OPINION:

[*808] [88]** The Pierce County Juvenile Court has declared a child to be a dependent child, made her a temporary ward of the court, and placed her in a foster home. We granted certiorari upon the petition of the child's father and stepmother to review the order of the juvenile court.

Eight-year-old Janet Dunagan appeared in school on a Monday morning bearing bruises and marks evidencing a rather severe spanking, strapping, or other form of battery. She informed her teacher that she had been spanked by her father and stepmother about six times during the weekend. The school nurse was called who examined the child and she, in turn, called the Pierce County Office of Public Assistance. A school counselor and a social worker from the public assistance office **[**89]** took the child home and left her with her stepmother. The social worker thereafter contacted the juvenile detention center and requested the child be taken into custody as a **[***4]** dependent child. A staff member of the juvenile detention home, without further investigation, filed a petition in juvenile court alleging the child was subject to the jurisdiction of that court by reason of the child's bruised condition and because the home was unfit. A warrant for the child's arrest was issued, signed by a deputy clerk of court.

The following day the child was removed from school pursuant to the warrant and placed in the juvenile detention home where photographs were taken showing the bruises and marks on her body. The bruised area was the portion of the anatomy which normally receives the brunt of a spanking, but extended well into the small of the back, onto the thighs and around the hips.

Petitioners presented testimony relating to the child's need for discipline resulting from her lying and failure to **[*809]** do her school homework. They further testified that they were then under emotional strain due to the terminal illness of the child's paternal grandfather.

Petitioners challenge the jurisdiction of the juvenile court contending (1) that the petition was improperly drawn and filed; (2) that the warrant of arrest was not lawfully issued; and (3) **[***5]** that an order for continued detention of the child prior to hearing was invalid.

With respect to the first contention, the parents argue that the staff member of the juvenile detention home who filed the dependency petition did not make an investigation into any of the circumstances or allegations contained in the petition either before or after it was filed, as required by RCW 13.04.060. With respect to the second contention, the parents argue that RCW 13.04.070 allows only the court to order a warrant for arrest in dependency proceedings and then only in cases where the person summoned fails without cause to appear, where the summons cannot be served, or where it is shown that a summons would be ineffectual. They point out that the warrant was issued immediately upon the filing of the dependency petition and prior to service of summons, was ordered by a deputy clerk and not by a judge, and was not based on findings by the court that service of summons could not be had or would be ineffectual. With respect to the third contention, the parents urge that the court order extending the child's confinement past the 72 hours provided for in RCW 13.04.053 was invalid because it was only **[***6]** used as a means to hold the child incommunicado from her parents and indicated the juvenile court's bias against them.

[1] We do not condone the predependency hearing procedures disclosed by the record in this case and some of the alleged defects in those procedures could well have supported a writ of habeas corpus sought prior to the hearing. However, the irregularities occurring prior to the hearing did not deprive the juvenile court of jurisdiction to hold the hearing and make such decisions as were warranted by the evidence. Although a juvenile dependency hearing is **[*810]** not a criminal proceeding, the rationale of *In re Ollison v. Rhay, 68 Wn.2d 137, 412 P.2d 111 (1966),* and cases cited therein, is applicable.

The parents next contend that the court erred in appointing a guardian ad litem for the child over their objections. The natural father and stepmother were present at the dependency hearing. They assert the juvenile court code does not provide for the appointment of a guardian ad litem in the circumstances of this case, and that RCW 4.08.050, which sets out the circumstances under which a guardian ad litem may be appointed in civil actions, does not **[***7]** apply to dependency proceedings. They also argue that the guardian ad litem did not act as the child's guardian, but as the prosecutor of the parents on behalf of the juvenile court.

[2] [90]** In *In re Lewis, 51 Wn.2d 193, 200, 316 P.2d 907 (1957),* which involved a delinquency hearing, we said:

We held in *State ex rel. Raddue v. Superior Court, 106 Wash. 619, 180 Pac. 875,* that the court has the duty to make such an appointment only where the child's guardian or parents are not present. However, that case is not authority for the proposition that the court has no *power* to appoint a representative for the child if the parents are present. It may often happen that the interests and desires of the parents may conflict with the interests of the child; and in such circumstances they would be in no position to adequately represent the child at the hearing. This case is an example.

In cases such as the one now before us which involve allegations of parental child abuse and an unfit home environment, the best interests and welfare of the child may well conflict with the desires of the child's parents. We therefore think it entirely proper for a juvenile **[***8]** court, in the sound exercise of its discretion, to appoint a guardian ad litem to represent the child at hearings held to determine what should be done with the child. The court did not abuse its discretion in appointing a guardian ad litem nor do we believe that the record supports the contention that the guardian failed to act on behalf of the child.

[*811] [3, 4] In their next general assignments of error, the parents contend that the court committed errors in the admission and exclusion of evidence. After carefully reviewing the record, we are convinced that the court did not commit reversible error. However, we will briefly touch on each contention.

1. The court permitted testimony by the assistant director of the juvenile court service concerning another of petitioners' children. The objection was overruled on the grounds that the parents had initially brought up the subject on direct examination. Moreover, the testimony was relevant in that it enlightened the court as to the child's home conditions. Contention is made that the testimony was hearsay, but no such objection was made to the trial court.

2. The court excluded the testimony of the family's pastor **[***9]** which allegedly would have shown the hostility and bias of the caseworker toward them. The court's exclusion of this testimony was not reversible error since the court indicated that any hostility which might exist between the caseworker and the parents would not have any effect on his decision. As the court stated:

I would surmise that the greater percentage of parents involved in matters like this don't like the caseworker very well and for that reason I don't pay any attention to it, nor do I pay too much attention to their recommendations.

3. The parents contend that the court erred in admitting the photographs of the child. They argue that RCW 13.04.130 forbids the photographing of dependent children except upon court order and that in the instant case the court did not sign such an order. RCW 13.04.130 uses the words "*consent* of the juvenile court" and not "*order* of court." The record clearly establishes that the juvenile court did approve the taking of photographs, and a written order, although desirable, is not required by the statute.

4. It is asserted that the court erred in considering the caseworker's report and recommendations which allegedly **[***10] [*812]** contained many prejudicial, biased, uninvestigated and unsubstantiated hearsay statements concerning this case. RCW 13.04.040 provides in part that

The probation counselor shall make such investigations as may be required by the court. The probation counselor shall inquire into the antecedents, character, family history, environments and cause of dependency or delinquency of every alleged dependent or delinquent child brought before the juvenile court and shall make his report in writing to the judge thereof.

[5] [91]** The report is a part of the juvenile's file which, by statute, is confidential and available only to the court, the child, the child's parents, guardian and attorney, and such other persons as the court may, by order, permit to examine it. RCW 13.04.230. The contents of this report should not be considered as evidence at a dependency hearing. *In re Ross, 45 Wn.2d 654, 277 P.2d 335 (1954).* However, it appears from the record that the court did not consider the report in making its determination:

As far as Mrs. Smith's report is concerned, that is the report which is filed here for the institution of the action and I **[***11]** see no reason for removing it from the file. It's a matter of what's presented here this morning, not what's in the report anyway.

[6] As their final assignment of error, the parents challenge the sufficiency of the evidence to support making the child a ward of the court, in declaring the child to be dependent, and in removing the child from the parents' home. Before the juvenile court has authority to act, there must be proof that the child is dependent as defined in RCW 13.04.010, which provides in part as follows:

For the purpose of this chapter the words "dependent child" shall mean any child under the age of eighteen years:

(2) Who ... has no parent or guardian willing to exercise, or capable of exercising, proper parental control; or

(3) Whose home by reason of neglect, cruelty or depravity of his parents or either of them, or on the part of **[*813]** his guardian, or on the part of the person in whose custody or care he may be, or for any other reason, is an unfit place for such child; ....

With respect to our duty in reviewing the juvenile court's determinations, the views expressed in *In re Todd v. Superior Court, 68 Wn.2d 587,* **[***12]** *414 P.2d 605 (1966),* are appropriate.

In declaring the child to be dependent and in removing her from the home of the parents, the court gave the following explanations in its oral decision:

I am forced with the determination one thing only and that is as of this date, March 5th, what is to the best interest of Janet Dunagan. I have been in the past extremely reluctant as the staff at Remann Hall know to take children away from their parents, but I have to view this case I think not only by what went on over the week-end of February 22nd, 23rd and 24th, but also what may very well occur in the future can arise from the same situation or a similar situation. .... With the experience that the parents have indicated they have with this kind of discipline and not sparing the rod, it seems to me these photographs indicate excessive use of discipline which amounts in creating a condition which makes it impossible at this time at least for this girl to remain in the home. I think the Court would be greatly remiss in its duty in protecting this child to send it back to this home at this time.

It is apparent that the court's determinations are based on its belief as to the **[***13]** best interests and welfare of the child; and the evidence presented at the hearing is such that we could not overturn those determinations and still be consistent with the principles set forth in *In re Todd, supra.*

The juvenile court properly made its order temporary and did not foreclose the possibility that at a future time the child could be returned to the parents' home. We assume that upon a review of this case, pursuant to proper petition, the juvenile court might well consider returning the child to her home under such terms and conditions as **[*814]** are then warranted. *E.g., see In re Gregoire, 71 Wn.2d 745, 430 P.2d 983 (1967).*

Judgment is affirmed.

SHELTER RESTRICTIONS

ALABAMA

TITLE 12. COURTS

CHAPTER 15. JUVENILE PROCEEDINGS

ARTICLE 3. PROCEDURE GENERALLY

§ 12-15-58. Custody of child; duties of person taking child

(a) A person taking a child into custody shall, with all possible speed, and in accordance with this chapter and the rules of court pursuant thereto:

(1) Release the child to the child's parents, guardian, custodian or other suitable person able and willing to provide supervision and care for the child and issue oral counsel and warning as may be appropriate.

(2) Release the child to the child's parents, guardian or custodian upon their promise to bring the child before the court when requested, unless the child's placement in detention or shelter care appears required.

(3) Bring the child, if not released, to the intake office of probation services or deliver the child to a place of detention or shelter care designated by the court and, in the most expeditious manner possible, give notice of the action taken, together with a statement of the reasons for taking the child into custody, in writing to the intake office, to the court and to the parent, guardian or other custodian of the child and, in the case of dependency, to the Department of Human Resources, except in the case of a juvenile being taken into custody for a violation of a municipal curfew ordinance. In curfew violation cases, if the child is not released, the child may be taken to a facility which has been previously approved by the court as a curfew detention facility. A child taken to a curfew detention facility shall be released within eight hours.

(b) Whenever a child, taken into custody pursuant to this chapter, is brought to a shelter or other care facility established or approved by the Department of Human Resources or the Department of Youth Services or to the intake office, the person in charge of the intake office or the representative of the Department of Human Resources, prior to admitting the child for care, shall review the need for detention or shelter care and shall release the child unless detention or shelter care is required under Section 12-15-59 or has been ordered by the court.

(c) A person taking a child into custody pursuant to subdivisions (1) and (7) of Section 12-15-56 shall bring the child to the place of detention or shelter care or to the intake office which shall thereupon proceed in accordance with this chapter.

(d) A person taking a child into custody pursuant to subdivision (4) of Section 12-15-56 shall bring the child to a medical or mental health facility designated by the court if the child is believed to be suffering from a serious mental health condition, illness, or injury which requires either prompt treatment or prompt diagnosis for the child's welfare or for evidentiary purposes, and, in the most expeditious manner possible, give notice of the action taken together with a statement of taking the child into custody in writing to the court, the parents, guardian or other custodian and to the intake office and to the Department of Human Resources in the case of a dependency allegation.

ARIZONA

TITLE 44. TRADE AND COMMERCE

CHAPTER 1. CONTRACTS

ARTICLE 3. CAPACITY TO CONTRACT

§ 44-132. Capacity of minor to obtain hospital, medical and surgical care; definition.

A. Notwithstanding any other provision of law except as provided in title 36, chapter 20, article 1, and without limiting cases in which consent may otherwise be obtained or is not required, any emancipated minor, any minor who has contracted a lawful marriage or any homeless minor may give consent to the furnishing of hospital, medical and surgical care to such minor, and such consent shall not be subject to disaffirmance because of minority. The consent of the parent, or parents, of such a person is not necessary in order to authorize hospital, medical and surgical care. For the purposes of this section only, subsequent judgment of annulment of such marriage or judgment of divorce shall not deprive such person of his adult status once attained.

B. A health care provider acting in reliance on the consent of a minor who has authority or apparent authority pursuant to this section to consent to health care is not subject to criminal and civil liability and professional disciplinary action on the ground that he or she failed to obtain consent of the minor's parent, parents or legal guardian. This subsection does not affect any other cause of action permitted under title 12, chapter 5.1.

C. For purposes of this section, a homeless minor is an individual under the age of eighteen years living apart from his parents and who lacks a fixed and regular nighttime residence or whose primary residence is either a supervised shelter designed to provide temporary accommodations, a halfway house or a place not designed for or ordinarily used for sleeping by humans.

CALIFORNIA

WELFARE AND INSTITUTIONS CODE

DIVISION 2.5. YOUTHS

CHAPTER 1. THE YOUTH AUTHORITY

ARTICLE 5.4. RUNAWAY YOUTH AND FAMILIES IN CRISIS PROJECT

§ 1788. Services to be provided by projects.

Each Runaway Youth and Families in Crisis Project established under this article shall provide services which shall include, but not be limited to, all of the following:

(a) Temporary shelter and related services to runaway youth. The services shall include:

(1) Food and access to overnight shelter for no more than 14 days.

(2) Counseling and referrals to services which address immediate emotional needs or problems.

(3) Screening for basic health needs and referral to public and private health providers for health care. Shelters that are not equipped to house a youth with substance abuse problems shall refer that youth to an appropriate clinic or facility. The shelter shall monitor the youth's progress and assist the youth with services upon his or her release from the substance abuse facility.

(4) Long-term planning so that the youth may be returned to the home of the parent or guardian under conditions which favor long-term reunification with the family, or so the youth can be suitably placed in a situation outside of the parental or guardian home when such reunification is not possible.

(5) Outreach services and activities to locate runaway youth and to link them with project services.

(b) Family crisis resolution services to runaway and nonrunaway youth and their families which shall include:

(1) Parent training.

(2) Family counseling.

(3) Services designed to reunify youth and their families.

(4) Referral to other services offered in the community by public and private agencies.

(5) Long-term planning so that the youth may be returned to the home of the parent or guardian under conditions which favor long-term reunification with the family, or so the youth can be suitably placed in a situation outside of the parental or guardian home when such reunification is not possible.

(6) Followup services to ensure that the return to the parent or guardian or the placement outside of the parental or guardian home is stable.

(7) Outreach services and activities to locate runaway and nonrunaway youth and to link them with project services.

(c) Transitional living services shall include:

(1) Long-term shelter.

(2) Independent living skill services.

(3) Preemployment and employment skills training.

(4) Home responsibilities training.

(d) Where appropriate and necessary, some of the services identified under this section must also be provided in the local community and in the home of project clients. Projects shall notify parents that their children are staying at a project site consistent with state and federal parent notification requirements.

MICHIGAN

CHAPTER 400. SOCIAL SERVICES

THE SOCIAL WELFARE ACT

STATE DEPARTMENT OF SOCIAL SERVICES

§ 400.18d. Emergency receiving facility for homeless, dependent or neglected children pending foster care placement.

Sec. 18d. The county department of social welfare, upon authorization of the county board of supervisors, may operate an emergency receiving facility for the temporary care of homeless, dependent or neglected children for whom such care is necessary, pending foster care placement or restoration to their own homes or any other plan deemed best for the health, safety and welfare of such children. The county department operating an emergency receiving facility shall maintain the standards of the state department established in respect to places of detention for juveniles under section 14 of this act.

PEOPLE OF THE STATE OF MICHIGAN, PLAINTIFF-APPELLEE, V. EDWARD PAUL ISON, DEFENDANT-APPELLANT

Docket No. 62066

Court of Appeals of Michigan

132 Mich. App. 61; 346 N.W.2d 894; 1984 Mich. App. LEXIS 2443

June 9, 1983, Submitted

February 7, 1984, Decided

DISPOSITION:

[*1]**

Affirmed in part, reversed in part, and remanded.

COUNSEL:

Frank J. Kelley, Attorney General, *Louis J. Caruso*, Solicitor General, *Roy D. Gotham*, Prosecuting Attorney, and *Mary C. Smith*, Assistant Attorney General, for the people.

State Appellate Defender (by *Sheila N. Robertson)*, for defendant on appeal.

JUDGES:

Danhof, C.J., and Allen and K. N. Hansen, * JJ.

* Circuit judge, sitting on the Court of Appeals by assignment.

OPINION BY:

PER CURIAM

OPINION:

[*63] [896]** Defendant pled guilty to assault with intent to commit second-degree criminal sexual conduct, *MCL 750.520g(2)*; MSA 28.788(7)(2), and was sentenced to five years of probation, the first six months of which were to be spent in the county jail. On two occasions, defendant was found **[*64]** to have violated the terms of his probation but each time defendant was resentenced to probation under the original terms and conditions. Subsequently, defendant was charged with five counts of probation violation and was found guilty of three counts. Defendant was sentenced to imprisonment for 2-1/2 to 5 years, and he appeals as of right.

MCL 771.3(1)(b); MSA 28.1133(1)(b) requires that conditions of probation **[***2]** include a provision forbiding the probationer from leaving the state without the consent of the court. One of the counts of which defendant was convicted charged defendant with a violation of that condition. Defendant argues that such a condition violates the right to travel secured by US Const, Am XIV. However, that amendment recognizes that persons may be deprived of their liberty with due process of law. A criminal conviction constitutionally deprives the defendant of much of his liberty; convicts retain some constitutional rights, but those rights are subject to restrictions imposed by the nature of the regime to which they have been lawfully committed. *Wolff v McDonnell, 418 U.S. 539; 94 S Ct 2963; 41 L Ed 2d 935 (1974); Meachum v Fano, 427 U.S. 215; 96 S Ct 2532; 49 L Ed 2d 451 (1976).* A probationer retains only those rights which are consistent with his probationary status. *People v Hardenbrook, 68 Mich App 640; 243 NW2d 705 (1976).* A condition of probation restricting the probationer's right to travel may therefore be imposed without violation of the constitution.

Defendant also argues that the condition at issue was unconstitutionally vague. This argument **[***3]** is without merit because the meaning of the condition is clear and unambiguous; reasonable persons would not guess at its meaning or differ as to its application. See *Lanzetta v New Jersey, 306 U.S. 451, 453; 59 S Ct 618; 83 L Ed 888 (1939).*

[*65] Another count of which defendant was convicted was charged as follows:

"On or about July 17, 1981, this probationer aided in the concealment of two runaway juveniles from the Our Lady of Charity Juvenile Institution in Green Bay, Wisconsin, by allowing them to stay with him for several nights in and around Ontonagon County. The probationer was aware of the fact that the girls were runaways from a Juvenile Institution. This action would constitute a violation of *MCL 722.152*, aiding or abetting runaway juveniles, and would be a violation of Condition #1 of the probationer's probation order which reads: That he shall not violate any criminal law of any state or of the United States, or any municipal or county ordinance."

MCL 722.151; MSA 25.264(1) provides:

[897]** "No person shall knowingly and wilfully aid or abet a child under the age of 17 years to violate an order of a juvenile court or knowingly and wilfully conceal **[***4]** or harbor juvenile runaways who have taken flight from the custody of the court, their parents or legal guardian."

MCL 722.152; MSA 25.264(2) merely establishes the penalty for violation of the preceding section.

Defendant argues that the evidence was insufficient to sustain his conviction of this count. One of the two juvenile runaways at issue, Clarissa Royston, testified that Tracy Bouhan and she encountered defendant in Ontonagon on July 17. According to Royston, defendant took them to a wedding reception and then to a shack behind his home. Royston testified that Bouhan remained at the shack but that she left and stayed with other friends.

Tracy Bouhan's testimony generally corroborated that of Royston. According to Bouhan, she **[*66]** spent the night of July 17 in the shack and then went on a camping trip with defendant and two other persons. Bouhan could not say how long the trip lasted but was sure that it lasted more than one day. Both Royston and Bouhan testified that defendant was aware that they were juvenile runaways.

The prosecution bears the burden of establishing a probation violation by a preponderance of the evidence; the rules of evidence other than **[***5]** those concerning privileges do not apply. GCR 1963, 791.4(c). Reading this standard together with the standard for sufficiency of the evidence to sustain a criminal conviction stated in *People v Hampton, 407 Mich 354, 368; 285 NW2d 284 (1979)*, we conclude that evidence is sufficient to sustain a conviction of probation violation if, viewed in the light most favorable to the prosecution, it would enable a rational trier of fact to conclude that the essential elements of the charge were proven by a preponderance of the evidence.

The testimony that defendant took the two girls to a wedding reception is irreconcilably inconsistent with the notion that he was concealing them. No evidence was presented to suggest that the camping trip with Bouhan and two others involved anything which could conceivably be interpreted as concealment. Defendant's association with Royston apparently ended shortly after the reception. Even considering the evidence in the light most favorable to the prosecution, we conclude that a rational trier of fact could not have concluded that concealment was shown by a preponderance of the evidence.

The prosecution points out that *MCL 722.151*; MSA 25.264(1) **[***6]** also forbids knowingly and wilfully **[*67]** harboring juvenile runaways. However, a defendant charged with probation violation is entitled to written notice of the charges against him and, probation may not be revoked for uncharged conduct. *People v Hunter, 106 Mich App 821; 308 NW2d 694 (1981); People v Longmier, 114 Mich App 351; 319 NW2d 579 (1982); People v Banks, 116 Mich App 446; 323 NW2d 436 (1982); People v Graber, 128 Mich App 185; 339 NW2d 866 (1983).* Because the charge here specified concealment, the prosecution cannot rely on another theory to sustain defendant's conviction.

Moreover, an "aider and abettor" is one who encourages, counsels, or assists another in the commission of a crime with the intention of rendering such help and with knowledge that a criminal act is contemplated. See, for example, *People v Spry, 74 Mich App 584, 594; 254 NW2d 782 (1977).* "Harbor" in some contexts refers to the furnishing of food, shelter, or other aid clandestinely or with concealment but in other contexts refers to the furnishing of such aid with the intent to encourage further violations of the law. See, for example, *United States v Grant, 55 F 414* (CCD **[***7]** Or, 1893); see also *United States v Foy, 416 F2d 940* (CA 7, 1969). We infer that an essential of the crime of "aiding and abetting" or "harboring" a runaway juvenile is an intent to encourage, counsel, or assist the juvenile in evading lawful custody. Mere knowledge **[**898]** that a person aided is a juvenile runaway is insufficient; otherwise, the statute would make innocent acts of charity criminal. The statute was not intended to be construed so broadly as to outlaw runaway shelters or "hotlines". We cannot see how such an intent is shown by evidence that defendant took two persons he knew to be juvenile runaways to a wedding reception, provided one **[*68]** with shelter for a night, or accompanied one on a camping trip with several other persons.

We note also that the charge specified an incident on or about July 17. Other evidence presented showed that defendant assisted several juvenile runaways on or about July 6; however, the charge at issue here clearly did not refer to the earlier incident.

The third count of which defendant was convicted charged him with fishing without a license. At the beginning of the probation violation hearing, defendant's counsel stated **[***8]** that defendant did not contest that count. The court proceeded to conduct a probation revocation hearing without further discussion of the count at issue. Defendant points to the court's complete failure to follow the procedures stated in GCR 1963, 791.5 for taking a guilty plea to a charge of probation violation. The prosecution responds by pointing out that defendant never waived his right to a contested hearing on the count at issue and that what took place cannot be characterized as a guilty plea.

We accept the prosecution's characterization of the proceedings. However, because arguments by counsel are not evidence, *People v Boxx, 16 Mich App 724; 168 NW2d 628 (1969),* the statement by defendant's counsel in opening argument cannot support defendant's conviction. Because no other evidence relevant to this count was introduced, defendant's conviction of this count must be reversed.

We emphasize that the requirements of GCR 1963, 791.5 must be met even when the defendant seeks to plead guilty to less than all of the counts pending against him. While not every deviation from the rule requires reversal, a record sufficient to show that the plea was understanding, voluntary, **[***9]** **[*69]** and knowing must be made. *People v Alame, 129 Mich App 686; 341 NW2d 870 (1983).* Here, however, because of our acceptance of the prosecution's characterization of the proceedings, we are reversing defendant's conviction of this count for insufficient evidence rather than for the failure to comply with the rule.

Defendant's final argument concerns the preparation of the presentence report. Defendant argues that the report should not have been prepared by the probation officer who testified. We cannot agree. It is the judge, not the presentence investigator, who determines the sentence to be imposed. Defendant's rights are adequately safeguarded by the requirement that he be afforded an opportunity to explain or controvert any allegation contained in the report, see GCR 1963, 785.12, and by the requirement that defendant and his counsel be afforded an opportunity to advise the court of any circumstances they believe that the court should consider in imposing the sentence, see GCR 1963, 785.8(2).

Because we have reversed defendant's conviction of two of the three counts at issue for insufficiency of evidence, and because it is impossible to tell from this record **[***10]** the extent to which the sentence imposed reflected defendant's conviction of those two counts, we remand the case to circuit court for resentencing.

Affirmed in part, reversed in part, and remanded for further proceedings consistent with this opinion. We retain no jurisdiction.

MINNESOTA

[NO STATUTES, REGULATIONS OR CASE LAW LOCATED]

WASHINGTON

TITLE 13. JUVENILE COURTS AND JUVENILE OFFENDERS

CHAPTER 13.32A. FAMILY RECONCILIATION ACT

5 (FORMERLY: PROCEDURES FOR FAMILIES IN CONFLICT)

§ 13.32A.082. Providing shelter to minor -- Requirement to notify parent, law enforcement, or department.

(1) Any person who, without legal authorization, provides shelter to a minor and who knows at the time of providing the shelter that the minor is away from the parent's home without the permission of the parent, or other lawfully prescribed residence, shall promptly report the location of the child to the parent, the law enforcement agency of the jurisdiction in which the person lives, or the department. The report may be made by telephone or any other reasonable means.

(2) Unless the context clearly requires otherwise, the definitions in this subsection apply throughout this section.

(a) "Shelter" means the person's home or any structure over which the person has any control.

(b) "Promptly report" means to report within eight hours after the person has knowledge that the minor is away from a lawfully prescribed residence or home without parental permission.

(3) When the department receives a report under subsection (1) of this section, it shall make a good faith attempt to notify the parent that a report has been received and offer services designed to resolve the conflict and accomplish a reunification of the family.

TITLE 388. DEPARTMENT OF (PUBLIC ASSISTANCE) SOCIAL AND HEALTH SERVICES

CHAPTER 160. MINIMUM LICENSING REQUIREMENTS FOR OVERNIGHT YOUTH SHELTERS

WAC 388-160-0265. Do I need to report runaway youth who stay at the shelter?

(1) Within eight hours of learning that a youth staying at a shelter does not have parental permission to be there, shelter staff must report the location of the youth to:

(a) The parent;

(b) The law enforcement agency having jurisdiction in the shelter's area; or

(c) The department.

(2) The shelter staff must:

(a) Make the report by telephone or other reasonable means; and

(b) Document the report in writing in the youth's file.