

Delaware Family Law – Jurisdiction and Service of Process

By Morgan, Lewis & Bockius LLP – March 31, 2021

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Custody Determination – Jurisdiction

A. See 13 Del. Code §1920

Except as otherwise provided in 13 Del. Code §1923, a Delaware court has jurisdiction to make an initial child custody determination only if:

- (1) This State is the home state of the child on the date of the commencement of the proceeding or was the home state of the child within 6 months before the commencement of the proceeding and the child is absent from this State but a parent or person acting as a parent; continues to live in this State;
- (2) A court of another state does not have jurisdiction under paragraph (1) of this subsection, or a court of the home state of the child has declined to exercise jurisdiction on the ground that this State is the more appropriate forum under § 1926 or § 1927 of this title; and
 - a. the child and the child's parents, or the child and at least one parent or a person acting as a parent, have a significant connection with this State other than mere physical presence; and
 - b. Substantial evidence is available in this State concerning the child's care, protection, training, and personal relationships;
- (3) All courts having jurisdiction under paragraph (1) or (2) of this subsection have declined to exercise jurisdiction on the ground that a court of this State is the more appropriate forum to determine the custody of the child under § 1926 or § 1927 of this title; or No court of any other state would have jurisdiction under the criteria specified in paragraph (1), (2) or (3) of this subsection.

A. See 13 Del. Code §1923 —A court of this State has temporary emergency jurisdiction if the child is present in this State and the child has been abandoned or it is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to or threatened with mistreatment or abuse.

The Delaware Supreme Court has previously held that in order to obtain emergency jurisdiction, "the Family Court must make a finding that an extraordinary situation exists." (See *Trader v. Darrow*, 630 A.2d 634 (Del. 1993). More specifically, "[a] situation is extraordinary, for purposes of emergency jurisdiction, when there is an immediate and imminent threat that a child will be subjected to abuse or neglect if temporary jurisdiction, in the form of a stay of the outstanding order, is not exercised." (See *id.*) The Delaware Family Court has found that an extraordinary situation arose when a child was left with his biological mother after her parental rights were involuntarily terminated in a home with no heat or running water. (*Dep't of Services for Children, Youth and their Families v. T.H.*, 2013 WL 1718348 (Del.Fam. Feb.4, 2013).

Custody Determination – Service/Notification Requirements

See 13 Del. Code §721

§ 721 Commencement of proceedings; venue; notice; pleadings; attorney for child; removal from jurisdiction; considerations.

(a) A child custody proceeding is commenced in the Family Court of the State, or as otherwise provided by law, by a parent filing a petition seeking custody of the child in the county where the child is permanently a resident or where he or she is found.

(b) Notice of a child custody proceeding shall be given to the child's parent, guardian and custodian, who may appear and be heard and may file a responsive pleading. The Court may, upon a showing of good cause, permit the intervention of other interested parties.

(c) The Court may, in the interest of the child, appoint an attorney to represent the child in the proceedings. A fee for an attorney so appointed shall be allowed as part of the costs of the proceeding.

(d) Upon the filing of a petition for custody or visitation, a preliminary injunction shall be issued against both parties to the action, enjoining them from removing any natural or adopted child of the parties then residing in Delaware from the jurisdiction of this Court without the prior written consent of the parties or the permission of the Court. The preliminary injunction shall be effective against the petitioner upon the filing of the petition for custody or visitation and upon the respondent upon service of a copy of the petition.

(e) A custody proceeding between parents shall be determined in accordance with §§ 722, 729 and Chapter 7A of this title, whichever shall apply.

Paternity and Child Support Proceeding – Jurisdiction

A. 13 De. Code § 6-201(a)

In a proceeding to establish or enforce a support order or to determine parentage of a child, a tribunal of this State may exercise personal

jurisdiction over a nonresident individual or the individual's guardian or conservator if:

- (1) The individual is personally served with notice within this State;
- (2) The individual submits to the jurisdiction of this State by consent in a record, by entering a general appearance, or by filing a responsive document having the effect of waiving any contest to personal jurisdiction;
- (3) The individual resided with the child in this State;
- (4) The individual resided in this State and provided prenatal expenses or support for the child;
- (5) The child resides in this State as a result of the acts or directives of the individual;
- (6) The individual engaged in sexual intercourse in this State and the child may have been conceived by that act of intercourse;
- (7) The individual asserted parentage of a child in the registry of paternity maintained in this State by the Office of Vital Statistics; or There is any other basis consistent with the Constitutions of this State and the United States for the exercise of personal jurisdiction.

Paternity and Child Support Proceeding – Service/Notification Requirements

§ 6-301 Proceedings under this chapter.

(a) Except as otherwise provided in this chapter, the provisions of this subchapter apply to all proceedings under this chapter.

(b) An individual petitioner or a support enforcement agency may initiate a proceeding authorized under this chapter by filing a petition in an initiating tribunal for forwarding to a responding tribunal or by filing a petition or a comparable pleading directly in a tribunal of another state or a foreign country which has or can obtain personal jurisdiction over the respondent.

Child Abuse/Neglect Proceeding – Jurisdiction



FORMERLY

HOUSE BILL NO. 528

AS AMENDED BY HOUSE AMENDMENT NOS. 1, 2 AND 3 AND

SENATE AMENDMENT NOS. 1, 2, AND 3

AN ACT TO AMEND TITLES 10, 11, AND 16 OF THE DELAWARE CODE RELATING TO THE CHILD PROTECTION

REGISTRY AND CRIMINAL BACKGROUND CHECKS.

§924. Notice of Intent to Substantiate; process.

(a) In response to a report where abuse or neglect is alleged, the Division shall conduct an investigation into the facts and

circumstances of the alleged abuse or neglect as required by §906 of this chapter.

(1) If the Division determines from its investigation not to substantiate the person for abuse or neglect, the person may not be entered on the Child Protection Registry for that reported incident. The Division shall indicate in its internal information system that the incident is unsubstantiated, and so notify the person in writing. The Division shall develop regulations for classifying unsubstantiated cases in its internal information system.

(2) If the Division determines from its investigation that it intends to substantiate the person for abuse or neglect and enter the person on the Child Protection Registry, it shall give written notice to the person by certified mail, return receipt requested, at his or her last known address. The written notice must:

a. briefly describe the alleged incident of abuse or neglect;

b. advise the person that the Division intends to substantiate the allegations and enter the person on the Child Protection Registry for the incident of abuse or neglect at a designated Child Protection Level;

c. state the consequences of being entered on the Registry at the designated level, including whether the person will be reported as substantiated for abuse or neglect in response to a Child Protection Registry check made pursuant to §8563 of Title 11;

d. inform the person of his or her right to request a hearing in the Family Court before the person is entered on the Child Protection Registry;

e. further advise that the person will be entered on the Registry for the incident at the designated Child Protection Level unless, within 30 days of the date of mailing of the notice, the person responds to the Division in writing, requesting a hearing in the Family Court on the Division's intent to substantiate the person for abuse or neglect and enter the person on the Registry;

f. contain a written form for the person to return to the Division to request a hearing.

(b) A person who fails to request a hearing as provided in subsection (a) of this section must, at the expiration of 30 days from the date of mailing of the notice of intent to substantiate the allegations of abuse or neglect and enter the person on the Registry, be entered on the Child Protection Registry at the Child Protection Level designated in the notice.

§925. Petition for Substantiation.

(a) If a person responds to the Division and requests a hearing in the Family Court before being entered on the Registry, as provided in §924 of this chapter, the Division shall, unless the automatic stay provisions of §927 of this chapter apply, file in the Family Court no later than 20 days after receipt of the written request, a Petition for Substantiation which requests that the Court substantiate the abuse or neglect and enter the person on the Child Protection Registry at a Child Protection Level designated by the Court. The Petition for Substantiation must be filed in the county in which the alleged incident leading to the Petition occurred. The Family Court may, upon motion by the Division or sua sponte, enter an order that places the person on the Registry at a designated Child Protection Level pending a final order on the Petition for Substantiation. The Family Court shall make a written finding in the proceedings on the Petition for Substantiation as to whether the person committed abuse or neglect. If the Family Court finds that the person committed abuse or neglect, it shall, pursuant to §923 of this chapter, designate the

Child Protection Level at which the person must be entered on the Registry. An order of substantiation may not be stayed pending appeal. If the Family Court finds that the person has not committed an act of abuse or neglect, the person may not be entered on the Registry for that incident, and the Division shall indicate in its internal information system that the incident is unsubstantiated.

(b) If a child welfare proceeding is pending in which the Division has requested a finding of abuse or neglect against a party and entry on the Registry for the same incident, the Family Court shall decide the issues of substantiation and entry on the Registry as provided in §926 of this chapter without the necessity of a response to the notice of intent to substantiate or a separate Petition for Substantiation.

(c) If the Division fails to file a Petition for Substantiation within 20 days of receipt of a person's written request for a hearing as provided in §924 of this chapter and a child welfare proceeding based on the same incident of abuse or neglect is not pending, the person may not be entered on the Child Protection Registry for the incident of abuse or neglect indicated in the notice of intent to substantiate.

Child Abuse/Neglect Proceeding – Service/Notification Requirements

"Child welfare proceeding" defined as any family court proceeding and subsequent appeal therefrom involving custody, visitation, guardianship, termination of parental rights, adoption or other related petitions that involve a dependent, neglected or abused child or a child at risk of same as determined by the family court. Defined term not otherwise used in 16 Del. Code. Chapter 9.

Divorce and Legal Separation – Jurisdiction

13 Del. C. Ch. 15

§ 1504 Jurisdiction; residence; procedure.

(a) The Family Court of the State has jurisdiction over all actions for divorce and annulment of marriage where either petitioner or respondent, at the time the action was commenced, actually resided in this State, or was stationed in this State as a member of the armed services of the United States, continuously for 6 or more months immediately preceding the commencement of the action. Notwithstanding the immediately preceding sentence, in addition to any other basis for jurisdiction it may otherwise have, the Family Court of this State has jurisdiction over all proceedings for divorce and annulment of same-gender marriages that are solemnized in this State or created by conversion of civil unions pursuant to the laws of this State, notwithstanding that the domicile or residency of the petitioner and the respondent are not in this State, if the jurisdiction of domicile or residency of the petitioner and/or the respondent does not by law affirmatively permit such a proceeding to be brought in the courts of that jurisdiction. If neither of the parties to a same-gender marriage solemnized in this State or created by conversion of a civil union pursuant to the laws of this State reside in this State, any petition for divorce or annulment of such marriage shall be filed in the county in which one or both of such parties last resided in this State.

(b) The procedure in divorce and annulment shall conform to the rules of the Court where the same do not contravene this title.

Divorce and Legal Separation – Service/Notification Requirements

13 Del. C. Ch. 15

§ 1508 Obtaining jurisdiction over respondent.

(a) After the filing of the petition, jurisdiction may be acquired over respondent in any of the following ways:

(1) By issuance of summons by the Clerk of the Family Court, and service thereof by the sheriff upon respondent, by delivering a copy of the summons, petition and any affidavit to respondent personally or by delivering copies thereof to an agent authorized by appointment or by law to receive service of process;

(2) By appearance of respondent, either personally or by executing and filing an appearance document in a form approved by the Court, with or without issuance of summons;

(3) By appearance of counsel for respondent, with or without issuance of summons;

- (4) Under a court rule not inconsistent with this section.
- (b) If the petition avers that it is unlikely that jurisdiction can be acquired over respondent except by mailing and publication, or by publication only, whether respondent is a resident or a nonresident of this State, jurisdiction may be acquired over respondent by mailing and publication, or by publication only, under subsection (d) of this section.
- (c) If an effort has been made unsuccessfully to obtain jurisdiction over respondent as provided in subsection (a) of this section, then jurisdiction may be acquired over respondent by mailing and publication, or by publication only, under subsection (d) of this section.
- (d) When service is to be made upon respondent by mailing and publication, the Clerk of the Family Court shall:
 - (1) Send a copy of the summons, petition and any affidavit to respondent by registered or certified mail, return receipt requested, to the address that petitioner had averred it is most likely that mail will be received by respondent; and
 - (2) Cause a notice in the form prescribed by subsection (e) of this section to be published once in a newspaper of general circulation in the county where the action is pending.If petitioner has averred that he or she knows of no address where it is most likely that mail will be received by respondent there shall be no mailing. No further notice shall be required unless the Court, deeming the circumstances exceptional, requires further notice.
- (e) The form of notice shall be as follows:
- (f) When the petition avers that respondent is a resident of this State, the summons shall be delivered to an officer for service in the county where it appears most likely that service can be effected on respondent.
- (g) The expense of mailing and publication shall be taxed as part of the costs of the case.
- (h) Original process, whether an original, alias or pluries writ, is returnable 20 days after the issuance of the writ, except that the Court by rule, or by order after application for cause shown, may provide that the writ be returnable sooner or later.

Adoption Proceeding – Jurisdiction

13 Del. C. Ch. 9

§ 902 Jurisdiction and venue; removal of petitioner from county.

- (a) Family Court shall have jurisdiction of proceedings under this chapter.
- (b) A petition for adoption shall be filed either in the Family Court of the county in which the licensed or authorized agency placing the child is located, or the Family Court of the county in which the petitioner resides.
- (c) In any case in which, before the proposed adoption has been finally approved or disapproved, the petitioner or petitioners move into a county other than the county in which the original petition was filed, or into another jurisdiction, the Family Court of the county in which the petition was originally filed may continue to exercise jurisdiction over the proceeding until a final decision has been rendered on the petition.
- (d) Whenever the Family Court shall assume jurisdiction for the purposes of terminating parental rights over a child, it shall be deemed to have retained jurisdiction for the purposes of proceeding under this chapter for the adoption.

Adoption Proceeding – Service/Notification Requirements

13 Del. C. Ch. 9[13]

§ 903 Persons eligible to petition to adopt.

An unmarried person or a husband and wife jointly, who are not legally separated or who are not living apart from each other, or a divorced or legally separated person, being a resident of the State at the time of filing the petition or with whom a child has been placed for adoption under § 904 of this title, and being over 21 years of age, may petition the Family Court for an order authorizing the petitioner or petitioners

to adopt a child not his, hers or theirs. Nothing herein shall in any way affect the right of any person to adopt a person who has reached age 18 as provided in subchapter II of this chapter.

§ 904 Placement and supervision for adoption.

(a) No petition for adoption shall be presented unless prior to the filing of the petition the child sought to be adopted has been placed for adoption by the Department, a licensed agency or an authorized agency, and the placement has been supervised by the Department or a licensed agency, but no such placement or supervision shall be necessary in the case of:

(1) A child sought to be adopted by a stepparent;

(2) A child sought to be adopted by a blood relative, except as provided in § 926 of this title;

(3) A child sought to be adopted by a guardian or permanent guardian so long as guardianship or permanent guardianship has been granted for at least 6 months prior to filing the adoption petition.

(b) No placement for an identified adoption in which an intermediary has been involved shall be approved or permitted by the Department or a licensed agency.

(c) No child shall be placed for adoption in this State pursuant to § 926 of this title unless the placement is approved and supervised by the Department or a licensed agency.

(d) When the prospective adoptive parents are legal residents of the State, but live elsewhere, the approval and supervision required by this section shall be provided by an authorized agency located in close proximity to the family, as will the social report required by § 912 of this title.

(e) An adoptive placement shall not be made until a preplacement evaluation that complies with the Delaware Requirements for Child Placing Agencies has been completed by the Department or licensed agency.

Domestic Violence – Jurisdiction

10 Del. C. Ch. 9

§ 1048 Jurisdiction.

The Family Court shall have jurisdiction of proceedings under this part.

Domestic Violence– Service/Notification Requirements

10 Del. C. Ch. § 1042 Commencement of action; procedure.

(a) A request for relief from domestic violence is initiated by the filing of a verified petition by the petitioner, or by the Division of Child Protective Services or the Division of Adult Protective Services, asking the court to issue a protective order against the respondent.

(b) The petitioner need not reveal an address, place of residence, school or employment or the address or place where the petitioner's child or children receive child care or attend school, if it is alleged that disclosure of this information would endanger the petitioner. However, the Court may require the petitioner to reveal in confidence a current address or place of residence for the purpose of determining jurisdiction or venue.

(c) A petition for a protective order may be filed in any county where the petitioner resides, the respondent resides, the alleged domestic violence occurred, or where the petitioner is temporarily located away from the residence to avoid domestic violence.

(d) Forms and instructions for initiating a proceeding under this part shall be available from the Clerk of the Court. Assistance from court staff or court volunteers shall be available during business hours to assist the parties with all papers which may be filed in connection with a proceeding under this part. Any assistance or information provided by court staff or court volunteers under this part does not constitute the practice of law.

(e) All forms and instructions developed for use by the parties to a proceeding under this part shall contain simple, understandable language.

(f) The Court may examine a child outside the presence of the parties for the purpose of obtaining the child's testimony and ascertaining the truth of a matter asserted by a party to the proceeding. The Court may permit counsel to be present at the examination, and to also examine the child. The Court may permit a party who is not present for the examination to submit questions of fact for the Court to use in ascertaining the testimony of the child. The Court shall cause a record of the examination to be made and it shall be made a part of the record in the case.

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