

1 H.486

2 Introduced by Representative Wizowaty of Burlington

3 Referred to Committee on

4 Date:

5 Subject: Probate proceedings; transfer to family division; permanent
6 guardianships; mediation; advanced directives

7 Statement of purpose: This bill proposes to provide the probate court with the
8 authority to: (1) transfer cases from probate court to family court; (2) create
9 permanent guardianships; (3) revoke an advance directive if the agent engages
10 in wrongful conduct; and (4) order mediation in probate proceedings.

11 An act relating to probate proceedings

12 It is hereby enacted by the General Assembly of the State of Vermont:

13 Sec. 1. 4 V.S.A. § 454 is amended to read:

14 § 454. JURISDICTION

15 Notwithstanding any other provision of law to the contrary, the family court
16 shall have exclusive jurisdiction to hear and dispose of the following
17 proceedings filed or pending on or after October 1, 1990. The family court
18 shall also have exclusive jurisdiction to hear and dispose of any requests to
19 modify or enforce any orders issued by the district or superior court relating to
20 the following proceedings:

1 * * *

2 (18) Guardianship and adoption proceedings transferred to family court
3 pursuant to section 455 of this title.

4 Sec. 2. 4 V.S.A. § 455 is amended to read:

5 § 455. TRANSFER OF PROBATE PROCEEDINGS

6 (a) Any guardianship action filed in the probate division of the superior
7 court pursuant to 14 V.S.A. chapter 111, subchapter 2, article 1 ~~of Title 14~~ and
8 any adoption action filed in the probate division pursuant to Title 15A may be
9 transferred to the family division of the superior court as provided in this
10 section.

11 (b) The family division or the probate division shall order the transfer of
12 the proceeding on motion of a party or on its own motion if it finds that:

13 (1) the identity of the parties, issues, and evidence are so similar in
14 nature to the parties, issues, and evidence in a proceeding pending in the family
15 division that transfer of the probate action to the family division would
16 expedite resolution of the issues or would best serve the interests of justice; or

17 (2) transfer of the proceedings would serve the best interests of the child
18 or would otherwise best serve the interests of justice.

19 (c) The probate division shall provide notice of the option to file a motion
20 to transfer under subsection (b) of this section to all parties in any case
21 involving guardianship or custody of a child.

1 (d) A proceeding shall not be transferred pursuant to this section unless the
2 court ordering the transfer has communicated with the receiving court
3 regarding the advisability of the transfer.

4 Sec. 3. 14 V.S.A. § 2664 is amended to read:

5 § 2664. CREATION OF PERMANENT GUARDIANSHIP

6 (a) The family division or the probate division of the superior court may
7 establish a permanent guardianship at a permanency planning hearing or at any
8 other hearing in which a permanent legal disposition of the child can be made,
9 including a child protection proceeding pursuant to 33 V.S.A. § 5318, or a
10 delinquency proceeding pursuant to 33 V.S.A. § 5232. The court shall also
11 issue an order permitting or denying visitation, contact or information with the
12 parent at the same time the order of permanent guardianship is issued. Before
13 issuing an order for permanent guardianship, the court shall find by clear and
14 convincing evidence all of the following:

15 (1) Neither parent is capable or willing to provide adequate care to the
16 child, requiring that parental rights and responsibilities be awarded to a
17 permanent guardian.

18 (2) Neither returning the child to the parents nor adoption of the child is
19 likely within a reasonable period of time.

20 (3) The child is at least 12 years old unless the proposed permanent
21 guardian is:

1 (A) a relative; or

2 (B) the permanent guardian of one of the child's siblings.

3 (4) The child has resided with the permanent guardian for at least a year
4 or the permanent guardian is a relative with whom the child has a relationship
5 and with whom the child has resided for at least six months.

6 (5) A permanent guardianship is in the best interests of the child.

7 (6) The proposed permanent guardian:

8 (A)(i) is emotionally, mentally, and physically suitable to become the
9 permanent guardian; and

10 (ii) is financially suitable, with kinship guardianship assistance
11 provided for in 33 V.S.A. § 4903 if applicable, to become the permanent
12 guardian;

13 (B) has expressly committed to remain the permanent guardian for
14 the duration of the child's minority; and

15 (C) has expressly demonstrated a clear understanding of the financial
16 implications of becoming a permanent guardian including an understanding of
17 any resulting loss of state or federal benefits or other assistance.

18 (b) The parent may voluntarily consent to the permanent guardianship, and
19 shall demonstrate an understanding of the implications and obligations of the
20 consent.

1 (c) ~~After~~ If the family division of the superior court issues a final order
2 establishing permanent guardianship, the case shall be transferred to the
3 appropriate probate division of the superior court in the district in which the
4 permanent guardian resides. Jurisdiction shall continue to lie in the probate
5 division. Appeal of any decision by the probate division of the superior court
6 shall be de novo to the family division.

7 Sec. 4. 18 V.S.A. § 9718 is amended to read:

8 § 9718. PETITION FOR REVIEW BY PROBATE DIVISION OF THE
9 SUPERIOR COURT

10 * * *

11 (b) A petition filed in probate division of the superior court under this
12 section shall include a supporting affidavit and may request:

13 (1) that the advance directive be revoked on the grounds that:

14 (A) the principal lacked capacity to understand the nature of the
15 advance directive, was under duress, or was the subject of fraud or undue
16 influence when the advance directive was executed, except that, if the principal
17 is deceased, this subdivision (A) shall not apply to any part of an advanced
18 directive making an anatomical gift; or

19 (B) the agent violated the provisions of this chapter or the terms of
20 the advance directive, breached his or her fiduciary duty, failed to perform

1 duties under the advance directive, or is unable or unwilling to perform duties
2 under the advance directive;

3 * * *

4 Sec. 5. Rule 16.1 of the Vermont Rules of Probate Procedure is added to read:

5 RULE 16.1. MEDIATION

6 Notwithstanding any other provision of law or rule, a probate judge may
7 order that the parties in a proceeding in the probate division of the superior
8 court participate in mediation. When an order to participate in mediation
9 pursuant to this section is issued, the court may order that the mediation
10 proceeding be conducted pursuant to relevant provisions of Rule 16.3 of the
11 Vermont Rules of Civil Procedure.

12 Sec. 6. EFFECTIVE DATE

13 This act shall take effect on passage.