

STATE OF MAINE

IN THE YEAR OF OUR LORD

TWO THOUSAND TWENTY-THREE

H.P. 82 - L.D. 136

An Act to Clarify Court Jurisdiction of Actions Involving Children Brought Under the Maine Uniform Probate Code

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 4 MRSA §152, sub-§5-A, as amended by PL 2017, c. 402, Pt. C, §3 and affected by PL 2019, c. 417, Pt. B, §14, is further amended to read:

5-A. Actions involving minors under Title 18-C. ~~Exclusive~~ Except as provided in paragraph C, exclusive, continuing jurisdiction of actions for guardianship, adoption, change of name or other matters involving custody or other parental rights with respect to a minor child brought under Title 18-C under the following circumstances: if proceedings under the Maine Juvenile Code brought against the minor child are pending in the District Court; if proceedings involving custody or other parental rights with respect to a the minor child, including but not limited to adoption, divorce, parental rights and responsibilities, grandparents' rights, protective custody, change of name, guardianship, paternity, parentage or termination of parental rights and protection from abuse or harassment, are pending in the District Court; or if the minor child is or was the subject of an order issued by the District Court terminating parental rights, appointing a guardian, including a permanency, emergency or interim guardian, awarding parental rights to a 3rd party or granting an adoption. This subsection does not apply if the only proceedings pending in the District Court involving custody or other parental rights with respect to the minor child are protection from abuse or protection from harassment proceedings unless one of the other grounds for exclusive, continuing jurisdiction are met under this subsection. For purposes of this subsection, a proceeding is pending if a complaint, petition or post-judgment motion has been filed and the final judgment or final order on that complaint, petition or post-judgment motion has not yet been issued.

A. The District Court presiding over any matter involving custody or other parental rights with respect to a minor child shall require all parties to disclose whether they have knowledge of:

(1) Any interim or final order then in effect concerning custody or other parental rights with respect to the minor child;

(2) Any proceeding under the Maine Juvenile Code brought against the minor child pending in the District Court or any proceeding involving custody or other parental rights with respect to the minor child ~~currently filed or~~ pending before any court of this State or another state, including before a probate court in this State; or

(3) Any other related action ~~currently filed or~~ pending before any court of this State or another state, including before a probate court in this State.

B. ~~If~~ Except as provided in paragraph C, if the District Court presiding over any matter under the Maine Juvenile Code brought against a minor child and any matter involving custody or other parental rights with respect to a minor child becomes aware that a proceeding for guardianship, adoption or change of name or another matter involving custody or other parental rights with respect to the minor child under Title 18-C is pending in a probate court in this State, the District Court shall notify the Probate Court and take appropriate action to facilitate a transfer of the matter from the Probate Court; If a matter is transferred to the District Court under this paragraph, the District Court has continuing, exclusive jurisdiction over the matter and over any future proceedings for guardianship, adoption or change of name or other matter involving custody or other parental rights with respect to the minor child brought under Title 18-C, except to the extent that the District Court's jurisdiction is precluded by the Uniform Child Custody Jurisdiction and Enforcement Act.

C. Notwithstanding any provision of law to the contrary, a probate court shall retain jurisdiction over an action for guardianship, adoption, change of name or other matter involving custody or other parental rights with respect to a minor child brought under Title 18-C that would otherwise be within the exclusive, continuing jurisdiction of the District Court under this subsection and may not transfer that matter to the District Court under paragraph B if:

(1) At the time the proceeding under the Maine Juvenile Code or the proceeding involving custody or other parental rights with respect to the minor child that would otherwise trigger the District Court's continuing, exclusive jurisdiction is initiated, the testimonial hearing on the Title 18-C matter has concluded and the Probate Court has that matter under advisement; and

(2) The Probate Court has not determined that the District Court is the more appropriate forum for the Title 18-C proceeding;

Sec. 2. 4 MRSA §251-A, as enacted by PL 2015, c. 460, §4, is amended to read:

§251-A. Other proceedings involving parental rights; transfer to District Court

1. Disclosure of orders and proceedings. The judge of probate presiding over any matter involving guardianship, adoption or change of name or another matter involving custody or other parental rights with respect to a minor child shall require all parties to disclose whether they have knowledge of:

A. Any interim or final order then in effect concerning custody or other parental rights with respect to the minor child, including any order of the District Court terminating parental rights; appointing a guardian, including a permanency, emergency or interim guardian; awarding parental rights to a 3rd party; or granting an adoption;

B. Any proceeding under the Maine Juvenile Code brought against the minor child pending in District Court or any proceeding involving custody or other parental rights

with respect to the minor child ~~currently filed or~~ pending before any court of this State or another state, including the District Court; or

C. Any other related action ~~currently filed or~~ pending before any court of this State or another state, including the District Court.

2. Transfer to District Court. ~~If~~ Except as provided in subsection 3, if in a matter before the Probate Court concerning a minor child a judge of probate becomes aware that a proceeding under the Maine Juvenile Code brought against the minor child or a proceeding involving custody or other parental rights with respect to the minor child is pending in the District Court or that the minor child is or was the subject of a District Court order terminating parental rights, appointing a guardian, including a permanency, emergency or interim guardian, awarding parental rights to a 3rd party or granting an adoption, the judge shall notify the District Court and take appropriate action to facilitate a transfer of the matter to the District Court. If a matter is transferred to the District Court under this subsection, the District Court has continuing, exclusive jurisdiction over the matter and over any future proceedings for guardianship, adoption or change of name or other matter involving custody or other parental rights with respect to the minor child brought under Title 18-C, except to the extent that the District Court's jurisdiction is precluded by the Uniform Child Custody Jurisdiction and Enforcement Act.

3. Exception to transfer. Notwithstanding any provision of law to the contrary, a probate court shall retain jurisdiction over an action for guardianship, adoption, change of name or other matter involving custody or other parental rights with respect to a minor child brought under Title 18-C that would otherwise be within the exclusive, continuing jurisdiction of the District Court under section 152, subsection 5-A and may not transfer that matter to the District Court under subsection 2 if:

A. At the time the proceeding under the Maine Juvenile Code or the proceeding involving custody or other parental rights with respect to the minor child that would otherwise trigger the District Court's continuing, exclusive jurisdiction is initiated, the testimonial hearing on the Title 18-C matter has concluded and the Probate Court has that matter under advisement; and

B. The Probate Court has not determined that the District Court is the more appropriate forum for the Title 18-C proceeding.

For purposes of this section, a proceeding is pending if a complaint, petition or post-judgment motion has been filed and the final judgment or final order on that complaint, petition or post-judgment motion has not yet been issued.

Sec. 3. 22 MRSA §4031, sub-§3, as amended by PL 2015, c. 296, Pt. C, §28 and affected by Pt. D, §1, is further amended to read:

3. Scope of authority. The court shall consider and act on child protection petitions regardless of other decrees regarding a child's care and custody. The requirements and provisions of Title 19-A, chapter 58 do not apply to child protection proceedings. If custody or parentage is an issue in another pending proceeding, the proceedings may be consolidated in the District Court with respect to the issue of custody, parentage or both. In any event, the court shall make an order on the child protection petition in accordance with this chapter. That order takes precedence over any ~~prior~~ other order regarding the child's care and custody. Nothing in this subsection may be construed to limit the authority

of the District Court to determine parentage pursuant to section 4005-F during the pendency of a child protection proceeding; to consolidate a child protection proceeding with another matter; or to resolve a child protection proceeding through the entry of a parental rights and responsibilities order, guardianship order or adoption order.