

Authority

K.S.A. 59-2124; 59-2115; 59-2116; and 59-2117.

Notes on Use

Relinquishment of a child to an adoption agency may only be made if the agency accepts the relinquishment in writing, K.S.A. 59-2124(a). Once the relinquishment is made and accepted, the agency stands *in loco parentis* to the child and has to the power to place the child for adoption and grant consent to the adoption.

K.S.A. 59-2124(c) provides that all relinquishments must be in writing and acknowledged before a judge of a court of record or an officer authorized by law to take acknowledgments. If a judge acknowledges the relinquishment, the judge has a duty to advise the relinquishing person of the consequences of the relinquishment. If the relinquishment is executed and acknowledged outside the state, it is valid as long as it was done in accord with the law of the place where executed or the law of Kansas. K.S.A. 59-2117.

K.S.A. 59-2124(a) provides that a parent or “person *in loco parentis*” may relinquish a child to an agency, but does not explain when a non-parent would have sufficient authority as a substitute parent to relinquish a child. The Kansas Guardianship statute provides that a guardian does not have authority to consent to the adoption of a ward, unless approved by the court. K.S.A. 59-3075(e)(3). If the relinquishment is by a person *in loco parentis* the relinquishment should have attached documents supporting the person's authority to execute the relinquishment, such as a court order authorizing such relinquishment by a guardian. Although the relinquishment statute does not specifically require such documents, one of the consent statutes, K.S.A. 59-2129(e), does require such documents.

In order for a relinquishment signed by a minor parent to be valid, the minor must have advice of legal counsel as to the consequences of the relinquishment and the legal counsel must be present at the execution of the relinquishment. K.S.A. 59-2115. The relinquishment form should include a certificate for the minor’s attorney to sign verifying that these conditions have been met. The cost of counsel must be provided by the adoptive parents or by the agency, unless the minor is represented by his or her own counsel.

The acceptance by the agency of the relinquishment terminates parental rights, including the right to notice of a subsequent adoption and the right to inherit from the child. When a parent signs a relinquishment, believing that the other parent will also relinquish, thus freeing the child for adoption, and the other parent does not relinquish, parental rights of the relinquishing parent are not terminated. K.S.A. 59-2124(d).

A relinquishment does not terminate the right of the child to inherit from the relinquishing parent. K.S.A. 59-2124(e).

A relinquishment signed by a mother within 12 hours after the birth of the child is voidable, prior to the final decree of adoption. K.S.A. 59-2116. Thus to ensure a valid adoption, the party securing the relinquishment should take care to wait until after the minimum 12 hour period has expired.

Indian Child Welfare Act (ICWA). The ICWA applies to adoption placements of Indian children (25 U.S.C. § 1903(1)(iv)), requiring notice to the tribe and adoption placement preferences (25 U.S.C. § 1915(a)). Indian children are defined as unmarried persons under the age of 18 who are either (a) members of an Indian tribe or (b) eligible for membership and the biological children of a member of an Indian tribe. 25 U.S.C. § 1903(4). Paragraph 4 of the revocation form is included to provide information about whether the child meets the definition of Indian child under the ICWA.

If the child is an Indian child, the court may nonetheless determine that the ICWA does not apply if the child has never been a member of an Indian home or culture, pursuant to the holding in *In re Adoption of L.*, 231 Kan. 199, 643 P.2d 168 (1982). If such facts exist, a paragraph may be added to the form establishing those facts. Also, even if the ICWA applies, the court may determine that good cause exists not to follow the otherwise required adoption placement preferences. *In re Adoption of B.G.J.*, 111 P.3d 651 (Kan. Ct. App. 2005).

Comments

The relinquishment of a child to an agency for adoption must be accepted in writing by that agency in

order to be effective. *In re Baby Boy N.*, 19 Kan. App.2d 574, 874 P.2d 680 (1994) (construing K.S.A. 59-2124(a)).

Voluntary relinquishment of parental rights and acceptance by an adoption agency terminates parental rights and obligations, including the obligation to pay child support. *Secretary of SRS v. Clear*, 248 Kan. 109, 804 P.2d 961 (1991). However, a decree of adoption does not relieve a parent of his or her obligation to pay the child support due and owing at the time of the adoption. Child support arrearages which have been reduced to judgment are not extinguished or canceled by termination of parental rights. *Michels v. Weingartner* 254 Kan. 44, 49, 864 P.2d 1189 (1993).

It has been held that statutory relinquishment authorizes divestiture of parents' rights, and must be strictly construed in favor of maintaining those rights. *Wilson v. Kansas Children's Home*, 159 Kan. 325, 329-30, 154 P.2d 137 (1944) (construing G.S.1935, 38-113, the predecessor of K.S.A. 59-2124).