

2018 Kansas Statutes

59-3073. Temporary guardian; temporary conservator; petition; order; hearings. (a) At any time after the filing of the petition provided for in K.S.A. 59-3058, 59-3059, 59-3060, 59-3061 or 59-3062, and amendments thereto, but prior to the trial provided for in K.S.A. 59-3067, and amendments thereto, if it appears that there may be an imminent danger to the physical health or safety of the proposed ward requiring immediate action to be taken to protect the proposed ward, or that there may be an imminent danger that the estate of the proposed conservatee will be significantly depleted unless immediate action is taken to protect the estate, or both, any person may file in addition to that original petition, or as a part thereof, a verified petition requesting the appointment of a temporary guardian or a temporary conservator, or both, except if the petition alleges that the proposed conservatee is a person in need of an ancillary conservator, and requests the appointment of an ancillary conservator in Kansas, in which case the petition may request the appointment of a temporary ancillary conservator. The petition shall include:

- (1) The petitioner's name and address;
- (2) the proposed ward's or proposed conservatee's name, age, date of birth, address of permanent residence, and present address or whereabouts, if different from the proposed ward's or proposed conservatee's permanent residence;
- (3) a statement that it is the petitioner's belief that there is an imminent danger to the physical health or safety of the proposed ward requiring immediate action to be taken to protect the proposed ward, or that there is an imminent danger that the estate of the proposed conservatee will be significantly depleted unless immediate action is taken to protect the estate, or both;
- (4) the factual basis upon which the petitioner alleges this imminent danger;
- (5) the names and addresses of witnesses by whom the truth of this petition may be proved;
- (6) the name, address and relationship to the proposed ward or proposed conservatee, if any, of the individual or corporation whom the petitioner suggests that the court appoint as the temporary guardian or temporary conservator, or both, and if the proposed temporary guardian or temporary conservator is under contract with the Kansas guardianship program, that fact; and
- (7) a request that the court make an ex parte determination that there exists such imminent danger, and that the court appoint a temporary guardian or a temporary conservator, or both, with such powers as the court deems necessary to protect the proposed ward or the estate of the proposed conservatee.

(b) (1) If the court determines that there is good cause to believe that the proposed ward or proposed conservatee is an adult with an impairment in need of a guardian or a conservator, or both, or is a minor in need of a guardian or a conservator, or both, or is a minor with an impairment in need of a guardian or a conservator, or both, or is a person who has been previously adjudged as impaired in another state, or is a person in need of an ancillary conservator, as alleged in the original petition, and that there exists an imminent danger to the physical health or safety of the proposed ward, or that there exists an imminent danger that the estate of the proposed conservatee will be significantly depleted, the court may enter an ex parte emergency order appointing a temporary guardian or a temporary conservator, or both.

(2) The court shall specify what powers and duties as provided for in K.S.A. 59-3075, 59-3076, 59-3077, 59-3078, 59-3079 or 59-3080, and amendments thereto, the temporary guardian or temporary conservator shall have. The court may further authorize the temporary guardian or temporary conservator to seek appropriate injunctive or other immediate relief from any appropriate court or other authority.

(3) Subject to the provisions of subsection (g), the court shall specify within its order when the authority of the temporary guardian or temporary conservator, or both, shall expire, but in no case shall the court specify a date beyond 30 days following the issuance of the order. The court may issue successive orders extending the authority of a temporary guardian or temporary conservator, or both, only upon the filing of a written request for such, and following a hearing held similarly as provided for in subsection (e) to determine the need for and appropriateness of any such extension.

(4) The court shall order that a copy of any order issued pursuant to this subsection be promptly served upon the proposed ward or proposed conservatee, the attorney for the proposed ward or proposed conservatee, the spouse of the proposed ward or proposed conservatee, and in the case of a minor, the natural guardian of the minor, along with notice. Such notice shall specify the rights of the proposed ward or proposed conservatee, and of others, consistent with the provisions of subsection (c).

(c) If the court enters an ex parte order appointing a temporary guardian or a temporary conservator, or both, the proposed ward or proposed conservatee, the attorney for the proposed ward or proposed conservatee, the spouse of the proposed ward or proposed conservatee, or in the case of a minor, the natural guardian of the minor, may request a hearing on the matter if a written request for such is filed with the court not later than the third day following the entry of the ex parte order, or of service of the ex parte order upon the proposed ward or proposed conservatee, if later. Upon receipt of such a request, the court shall fix the time and place for a hearing upon the request, which hearing shall be held not later than the second day following the filing of the request, excluding any Saturday, Sunday, legal holiday, or day on which the office of the clerk of the court is not accessible, and shall direct how and to whom notice of such hearing shall be given.

(d) In lieu of entering an ex parte emergency order of appointment of a temporary guardian or a temporary conservator, or both, the court may deny the relief requested or set the time and place for a hearing to be held on the request for the appointment of a temporary guardian or a temporary conservator, or both, which hearing shall be held not later than the second day following the filing of the petition, excluding any Saturday, Sunday, legal holiday, or day on which the office of the clerk of the court is not accessible. The court may direct that notice thereof be given to the petitioner, the original petitioner, if different, the proposed ward or proposed conservatee, the spouse of the proposed ward or proposed conservatee, in the case of a minor, the natural guardian of the minor, and such other persons as the court determines appropriate. The court shall determine by whom and in what manner such notice shall be given. The court may enter an order requiring that the proposed ward or proposed conservatee appear at the time and place of the hearing unless the court makes a finding prior to the hearing that the presence of the proposed ward or proposed conservatee will be injurious to the person's health or welfare, or that the proposed ward's or proposed conservatee's impairment is such that the person could not participate in the proceedings, or that the proposed ward or proposed conservatee has filed with the court a written waiver of such person's right to appear in person. In any such case, the court shall enter in the record of the proceedings the facts upon which the court has found that the presence of the proposed ward or proposed conservatee at the hearing should be excused.

(e) Any hearing held pursuant to subsection (b)(3), (c) or (d) shall be conducted in as informal a manner as may be consistent with orderly procedure. The rules governing evidentiary and procedural matters shall be applied in a manner so as to facilitate informal, efficient presentation of all relevant, probative evidence and resolution of the issues with due regard for the interests of all parties.

(f) If after any hearing held pursuant to subsection (c) or (d) the court determines that there is good cause to believe that the proposed ward or proposed conservatee is an adult with an impairment in need of a guardian or a conservator, or both, or a minor in need of a guardian or a conservator, or both, or a minor with an impairment in need of a guardian or a conservator, or both, or a person who has been previously adjudged as impaired in another state, or a person in need of an ancillary conservator, as alleged in the original petition, and that there exists an imminent danger to the physical health or safety of the proposed ward, or that there exists an imminent danger that the estate of the proposed conservatee will be significantly depleted, the court may appoint, or continue the appointment of, a temporary guardian or a temporary conservator, or both, and the court shall specify what duties, responsibilities, powers and authorities as provided for in K.S.A. 59-3075, 59-3076, 59-3077, 59-3078 or 59-3079, and amendments thereto, the temporary guardian or temporary conservator shall have. The court may further authorize the temporary guardian or temporary conservator to seek appropriate injunctive or other immediate relief from any appropriate court or other authority. Otherwise, if the court determines that there is good cause to believe that the proposed ward or proposed conservatee is an adult with an impairment in need of a guardian or a conservator, or both, or a minor in need of a guardian or a conservator, or both, or a minor with an impairment in need of a guardian or a conservator, or both, or a person who has been previously adjudged as impaired in another state, or a person in need of an ancillary conservator, as alleged in the original petition, but that there is not good cause to believe that there exists an imminent danger to the physical health or safety of the proposed ward, or that there exists an imminent danger that the estate of the proposed conservatee will be significantly depleted, the court shall deny the request for the appointment of a temporary guardian or a temporary conservator, or both, or shall terminate the earlier appointment of the temporary guardian or temporary conservator, or both, but shall continue the matter to trial on the original petition provided for in K.S.A. 59-3067, and amendments thereto.

(g) The appointment and authority of any temporary guardian or temporary conservator shall expire at the conclusion of the trial provided for in K.S.A. 59-3067, and amendments thereto, if the petition is denied, or upon the issuance of appropriate letters to any guardian or conservator appointed by the court at the conclusion of the trial, or as otherwise ordered by the court, but such expiration shall not affect the validity of any action taken pursuant to the authority of the temporary guardian or temporary conservator during the time of such person's appointment. The temporary guardian or temporary conservator shall be required to provide an accounting as directed by the court.

(h) If, after any hearing held pursuant to subsection (c) or (d), the court finds that there has not been shown sufficient evidence to cause the court to believe that the proposed ward or proposed conservatee is an adult with an impairment in need of a guardian or a conservator, or both, or a minor in need of a guardian or a conservator, or both, or a minor with an impairment in need of a guardian or a conservator, or both, or a person who has been previously adjudged as impaired in another state, or a person in need of an ancillary conservator, as alleged in the original petition, the court shall dismiss the petition requesting the appointment of a temporary guardian or a temporary conservator, or both, and may dismiss the original petition.

History: L. 2002, ch. 114, § 24; L. 2010, ch. 11, § 13; Apr. 1.