

2020 Regular Session

HOUSE BILL NO. 183

BY REPRESENTATIVE TURNER

CHILDREN/PARENTAL RIGHTS: Prohibits parenting determinations based upon parental blindness

1 AN ACT

2 To amend and reenact Civil Code Article 134(B) and R.S. 46:283(A) and to enact Children's
3 Code Articles 116(29) and (30), 606(D), 1015.2, 1220.1, 1242.1, 1258, 1283.18, and
4 1284.6 and R.S. 9:355.14(C), relative to parental blindness; limits the consideration
5 of a parent's blindness in custody, adoption, relocation, child in need of care, and
6 parental termination proceedings and in foster parent fitness and eligibility
7 determinations; to provide a burden of proof; to provide for written findings; to
8 provide for definitions; and to provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. Children's Code Articles 116(29) and (30), 606(D), 1015.2, 1220.1,
11 1242.1, 1258, 1283.18, and 1284.6 are hereby enacted to read as follows:

12 Art. 116. Definitions

13 Except where the context clearly indicates otherwise, these definitions apply
14 for the following terms used throughout this Code:

15 * * *

16 (29) "Blind" means having either of the following:

17 (a) A central vision acuity of 20/200 or less in the better eye with the use of
18 a correcting lense.

1 (b) A degenerative condition that reasonably can be expected to result in a
2 central visual acuity of 20/200 or less in the better eye with the use of a correcting
3 lense.

4 (30) "Central visual acuity of 20/200 or less" means having a limitation in
5 the field of vision so that the widest diameter of the visual field subtends an angle
6 of not more than twenty degrees.

7 * * *

8 Art. 606. Grounds; child in need of care

9 * * *

10 D. A child whose parent is blind shall not, for that reason alone, be
11 determined to be a child in need of care, unless it is proven by clear and convincing
12 evidence that the petitioner's behavior endangers or is likely to endanger the health,
13 safety, or welfare of the child. If a parent's blindness is considered to be a factor in
14 determining that the child is in need of care, the court shall make specific written
15 findings that state the basis of its decision.

16 * * *

17 Art. 1015.2. Termination of parental rights; limitation

18 Parental rights may not be terminated based on the parent's blindness if other
19 grounds for termination do not exist.

20 * * *

21 Art. 1220.1. Petitioner's blindness; interlocutory and final decree; burden of proof;
22 specific written findings

23 A. The court may not refuse to enter an interlocutory or final decree in favor
24 of a petitioner based on the petitioner's blindness if the petitioner is otherwise
25 acceptable to adopt children and the adoption is determined to be otherwise in the
26 best interest of the child.

27 B. If a petitioner's blindness is alleged to have a detrimental impact on a
28 child, the party who raises the allegation has the burden of proving by clear and

1 convincing evidence that the petitioner's behavior endangers or is likely to endanger
2 the health, safety, or welfare of the child.

3 C. If the court denies or limits the grant of the adoption to a blind petitioner,
4 the court shall make specific written findings that state the basis of the denial or
5 limitation.

6 * * *

7 Art. 1242.1. Petitioner's blindness; interlocutory or final decree; burden of proof;
8 specific written findings

9 A. The court may not refuse to enter an interlocutory or final decree in favor
10 of a petitioner based on the petitioner's blindness if the petitioner is otherwise
11 acceptable to adopt children and the adoption is determined to be otherwise in the
12 best interest of the child.

13 B. If a petitioner's blindness is alleged to have a detrimental impact on a
14 child, the party who raises the allegation has the burden of proving by clear and
15 convincing evidence that the petitioner's behavior endangers or is likely to endanger
16 the health, safety, or welfare of the child.

17 C. If the court denies or limits the grant of the adoption to a blind petitioner,
18 the court shall make specific written findings that state the basis of the denial or
19 limitation.

20 * * *

21 Art. 1258. Petitioner's blindness; interlocutory or final decree; burden of proof;
22 specific written findings

23 A. The court may not refuse to enter an interlocutory or final decree in favor
24 of a petitioner based on the petitioner's blindness if the petitioner is otherwise
25 acceptable to adopt children and the adoption is determined to be otherwise in the
26 best interest of the child.

27 B. If a petitioner's blindness is alleged to have a detrimental impact on a
28 child, the party who raises the allegation has the burden of proving by clear and

1 convincing evidence that the petitioner's behavior endangers or is likely to endanger
2 the health, safety, or welfare of the child.

3 C. If the court denies or limits the grant of the adoption to a blind petitioner,
4 the court shall make specific written findings that state the basis of the denial or
5 limitation.

6 * * *

7 Art. 1283.18. Petitioner's blindness; interlocutory or final decree; burden of proof;
8 specific written findings

9 A. The court may not refuse to enter an interlocutory or final decree in favor
10 of a petitioner based on the petitioner's blindness if the petitioner is otherwise
11 acceptable to adopt children and the adoption is determined to be otherwise in the
12 best interest of the child.

13 B. If a petitioner's blindness is alleged to have a detrimental impact on a
14 child, the party who raises the allegation has the burden of proving by clear and
15 convincing evidence that the petitioner's behavior endangers or is likely to endanger
16 the health, safety, or welfare of the child.

17 C. If the court denies or limits the grant of the adoption to a blind petitioner,
18 the court shall make specific written findings that state the basis of the denial or
19 limitation.

20 * * *

21 Art. 1284.6. Petitioner's blindness; final decree; burden of proof; specific written
22 findings

23 A. The court may not refuse to enter a final decree in favor of a petitioner
24 based on the petitioner's blindness if the petitioner is otherwise acceptable to adopt
25 children and the adoption is determined to be otherwise in the best interest of the
26 child.

27 B. If a petitioner's blindness is alleged to have a detrimental impact on a
28 child, the party who raises the allegation has the burden of proving by clear and

1 convincing evidence that the petitioner's behavior endangers or is likely to endanger
2 the health, safety, or welfare of the child.

3 C. If the court denies or limits the grant of the adoption to a blind petitioner,
4 the court shall make specific written findings that state the basis of the denial or
5 limitation.

6 Section 2. Civil Code Article 134(B) is hereby amended and reenacted to read as
7 follows:

8 Art. 134. Factors in determining child's best interest

9 * * *

10 B.(1) In cases involving a history of committing family violence, as defined
11 in R.S. 9:362, or domestic abuse, as defined in R.S. 46:2132, including sexual abuse,
12 as defined in R.S. 14:403(A)(4)(b), whether or not a party has sought relief under
13 any applicable law, the court shall determine an award of custody or visitation in
14 accordance with R.S. 9:341 and 364. The court may only find a history of
15 committing family violence if the court finds that one incident of family violence has
16 resulted in serious bodily injury or the court finds more than one incident of family
17 violence.

18 (2) A parent's blindness, as defined in Children's Code Article 116, shall not
19 be a factor in determining the child's best interest, unless it is proven by clear and
20 convincing evidence that the blindness significantly or substantially inhibits the
21 parent's ability to provide for the physical and emotional needs of the child and the
22 parent lacks sufficient resources to supplement the parent's ability to provide for the
23 physical and emotional needs of the child. If a parent's blindness is considered to be
24 a factor in determining the child's best interest, the court shall make specific written
25 findings that state the basis of its decision.

26 Section 3. R.S. 9:355.14(C) is hereby enacted to read as follows:

27 §355.14. Factors to determine contested relocation

28 * * *

1 C. A parent's blindness, as defined in Children's Code Article 116, shall not
 2 be a factor in determining the child's best interest, unless it is proven by clear and
 3 convincing evidence that the blindness significantly or substantially inhibits the
 4 parent's ability to provide for the physical and emotional needs of the child and that
 5 the parent lacks sufficient resources to supplement the parent's ability to provide for
 6 the physical and emotional needs of the child. If a parent's blindness is considered
 7 to be a factor in determining the child's best interest, the court shall make specific
 8 written findings that state the basis of its decision.

9 Section 4. R.S. 46:283(A) is hereby amended and reenacted to read as follows:

10 §283. Determination of fitness; award of contract

11 A.(1) The office of children and family services shall determine the fitness
 12 and eligibility of each person who applies for a contract to provide foster care
 13 services to which the provisions of this Subpart apply.

14 (2) A person's blindness, as defined in Children's Code Article 116, shall not
 15 be a factor in determining the person's fitness and eligibility to provide foster care
 16 services, unless it is proven by clear and convincing evidence that the person's
 17 behavior endangers or is likely to endanger the health, safety, or welfare of a foster
 18 child. If the office of children and family services determines the person is not
 19 eligible for a contract for foster care services, the office shall make specific written
 20 findings that state the basis of its decision.

21 * * *

22 Section 5. The Louisiana State Law Institute is hereby authorized and directed to
 23 renumber the terms defined in Children's Code Article 116 to ensure that such terms are in
 24 alphabetical order.

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 183 Original

2020 Regular Session

Turner

Abstract: Limits the consideration of a parent's blindness in custody, adoption, relocation, child in need of care, and parental termination proceedings and in foster parent fitness and eligibility determinations.

Child in Need of Care

Present law provides for Child in Need of Care (CINC) proceedings to protect children whose physical or mental health and welfare is substantially at risk of harm by physical abuse, neglect, or exploitation and who may be further threatened by the conduct of others and could result in a child being removed from their home. Present law sets forth the grounds for which a CINC proceeding may be brought. Proposed law retains present law.

Proposed law requires that a child whose parent is blind shall not, for that reason alone, be determined to be a child in need of care, unless it is proven by clear and convincing evidence that the petitioner's behavior endangers or is likely to endanger the health, safety, or welfare of the child. If a parent's blindness is considered to be a factor in determining that the child is in need of care, proposed law requires the court to make specific written findings that state the basis of its decision.

Termination of Parental Rights

Present law provides for the involuntary termination of parental rights and enumerates the grounds for which parental rights may be terminated. Proposed law retains present law and provides that parental rights may not be terminated based on the parent's blindness if other grounds for termination do not exist.

Present law requires that the petitioner bear the burden of establishing each element of a ground for termination of parental rights by clear and convincing evidence and that the parent asserting a mental or physical disability as an affirmative defense to abandonment bears the burden of proof by a preponderance of the evidence. When the court finds that the alleged grounds for termination are proven and that it is in the best interest of the child, present law requires the court to enter written findings thereof. Proposed law retains present law.

Adoptions

Present law provides that for an agency adoption, private adoption, intrafamily adoption, and adoption or recognition of a foreign decree of adoption of a foreign orphan from a country outside of the United States that is not party to the Hague Adoption Convention, the court may enter an interlocutory decree, and later a final decree, of adoption in favor of the petitioning adoptive parent or parents. Present law provides that for an adoption or recognition of a foreign decree of adoption of a convention adoptee from a country outside of the United States that is a party to the Hague Adoption Convention, the court may enter a final decree of adoption in favor of the petitioning adoptive parent or parents. Proposed law retains present law.

Proposed law requires that the court may not refuse to enter an interlocutory or final decree in favor of a petitioner based on the petitioner's blindness if the petitioner is otherwise acceptable to adopt children and the adoption is determined to be otherwise in the best

interest of the child. If a petitioner's blindness is alleged to have a detrimental impact on a child, the party who raises the allegation has the burden of proving by clear and convincing evidence that the petitioner's behavior endangers or is likely to endanger the health, safety, or welfare of the child. If the court denies or limits the grant of the adoption to a blind petitioner, the court shall make specific written findings that state the basis of the denial or limitation.

Custody and Visitation

Present law requires that a court award custody of a child in accordance with the best interest of the child and sets out the factors the court is to consider in determining a child's best interest. Proposed law retains present law.

Proposed law provides that a parent's blindness shall not be a factor in determining the child's best interest, unless it is proven by clear and convincing evidence that the blindness significantly or substantially inhibits the parent's ability to provide for the physical and emotional needs of the child and the parent lacks sufficient resources to supplement the parent's ability to provide for the physical and emotional needs of the child. If a parent's blindness is considered to be a factor in determining the child's best interest, proposed law requires the court to make specific written findings that state the basis of its decision.

Relocation

Present law allows certain persons to propose relocation of the principal residence of a child. When the proposed relocation is contested, present law requires the court to consider all relevant factors in determining whether relocation is in the best interest of the child, including certain enumerated factors. Proposed law retains present law.

Proposed law requires that a parent's blindness shall not be a factor in determining the child's best interest, unless it is proven by clear and convincing evidence that the blindness significantly or substantially inhibits the parent's ability to provide for the physical and emotional needs of the child and the parent lacks sufficient resources to supplement the parent's ability to provide for the physical and emotional needs of the child. Proposed law further provides that if a parent's blindness is considered to be a factor in determining the child's best interest, the court shall make specific written findings that state the basis of its decision.

Foster Parenting

Present law provides that persons may contract with the office of children and family services of the Department of Children and Family Services to provide temporary or long-term foster care for not more than six children. Present law requires the office to determine the fitness and eligibility of each person who applies for a contract to provide foster care services. Proposed law retains present law.

Proposed law requires that a person's blindness shall not be a factor in determining the person's fitness and eligibility to provide foster care services, unless it is proven by clear and convincing evidence that the person's behavior endangers or is likely to endanger the health, safety, or welfare of a foster child. If the office determines the person is not eligible for a contract for foster care services, the office shall make specific written findings that state the basis of its decision.

Proposed law defines "blind."

(Amends C.C. Art. 134(B) and R.S. 46:283(A); Adds Ch.C. Arts. 116(29) and (30), 606(D), 1015.2, 1220.1, 1242.1, 1258, 1283.18, and 1284.6 and R.S. 9:355.14(C))