

ADOPTION

JUVENILE COURTS

Juvenile court of county in which persons seeking to adopt reside or in which child sought to be adopted may be has jurisdiction in adoption proceedings.

April 29, 1950

Honorable James F. Nangle
Judge of the Juvenile Court
of Saint Louis
1321 Clark Avenue
St. Louis, Missouri



Dear Sir:

We have received your request for an opinion of this department, which request is as follows:

"Some confusion has developed concerning the matter of jurisdiction between the Saint Louis County Court and this Court in adoption proceedings. According to the new adoption law, which went into effect May 21, 1948, and more particularly Section 9619, a child shall not be transferred to an individual, or an agency, without first obtaining an order from the Judge of the Juvenile Court.

"When the transfer of custody is granted in this Court, the prospective adopting parents must wait nine (9) months before the adoption petition is heard. There have been instances where the prospective adopting parents have left the City of Saint Louis after receiving the transfer of custody and established a home in Saint Louis County before the expiration of the nine (9) months period as prescribed by the adoption law. Also, there are situations when an agency having custody of the child from this Court has placed such child in a Saint Louis County home with a view toward adoption. Since such individuals are then in another County, some attorneys believe they should initiate adoption proceedings in the Saint Louis County Court.

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"It is my opinion, and that of several judges who have preceded me on the Juvenile bench, that if jurisdiction is taken by this Court in the matter of transfer of custody that the Saint Louis Juvenile Court retains jurisdiction under Section 9673, Revised Statutes of Missouri 1939, and that the petition for adoption must be filed in this Court. I believe, and they concur, that jurisdiction remains here until removed by a Court of higher jurisdiction, but not by a Court of concurrent jurisdiction.

"It is my understanding that the Judges in Saint Louis County believe they have the right to hear the petition and grant a decree of adoption in such cases although the transfer of custody to the parents, or agency, was heard and granted in the Saint Louis Juvenile Court, and has remained in this Court.

"I am vitally interested in having your assurance that the decree of adoption which I grant is not subject to question at any future date as to matters of jurisdiction. I am very anxious to have your opinion on this matter, because such situations are arising here repeatedly."

Section 9608, Laws of Missouri, 1947, Volume II, page 213, provides in part as follows:

"Any person desiring to adopt another person as his child may petition the Juvenile Division of the Circuit Court of the County in which the person seeking to adopt resides, or in which the person sought to be adopted may be, for permission to adopt such person as his child."

Section 9608 formerly provided that the petition should be filed in the county where the person proposed to be adopted resided, or, if such person had no place of abode in this state, then in the county in which the person seeking to adopt resided.

The rule regarding jurisdiction in matters of adoption is stated in 2 C.J.S., Adoption of Children, Section 35, page 416, as follows:

"In view of the fact that adoption statutes are in derogation of the common law, and that

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courts vested with the power to hear and determine adoption proceedings in so acting are courts of limited jurisdiction, a statute requiring the residence of the parties within the jurisdiction of the court granting the adoption is mandatory, * * *

The courts of this state have not definitely passed on the question of whether or not provisions prescribing the place in which petitions in adoption proceedings must be filed are mandatory. In the case of *In Re Duren*, 355 Mo. 1222, 200 S.W. (2d) 343, 1. c. 350, the court stated:

"There is considerable authority to the effect that if a statute requires an adoption suit to be brought in the county of the adoptee's residence, it is a condition precedent to a valid adoption. * * *"

The court then proceeded to consider at length the question of the residence of the child sought to be adopted. It held in that case that the requirements of the statute had been complied with.

The present statute (Section 9608, supra) has eliminated the necessity of residence within the county where the petition is filed of the child sought to be adopted. All that is now required is that the child be in the county where the petition is filed. Residence on the part of the person seeking to adopt is still necessary if the jurisdiction is to be based upon their status.

As you point out, Section 9613, Laws of 1947, Volume II, page 213, requires that the person sought to be adopted have been in the custody of the petitioners for at least nine months prior to the adoption decree. Section 9616, provides in part:

"No person, agency, organization or institution shall surrender custody of a minor child, or transfer the custody of such child to another, and no person, agency, organization or institution shall take possession or charge of a minor child so transferred, without first having filed a petition before the Circuit Court sitting as a Juvenile Court of the County where the child may be, praying that such surrender or transfer may be made, and having obtained such an order from such Court approving or ordering transfer of custody. * * *"

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No provision is made that a court which has transferred custody of a child shall thereafter retain control of such child in all matters, including his adoption.

In view of the foregoing, we feel that in the situations presented by you, where custody is granted by you, and thereafter a petition for adoption is filed, the petition should be filed in either the county in which the persons seeking to adopt reside or in the county where the child may be. If the persons seeking to adopt reside in St. Louis County, and the child is also there, the St. Louis County Circuit Court is the proper place for filing of the petition for adoption. The fact that both the parents and the child removed to the county following the order of your court granting custody of the child does not appear to affect the question of jurisdiction for purposes of adoption. In some cases the petition for adoption might be filed in your court and the persons thereafter removed to St. Louis County. Inasmuch as your court had jurisdiction at the time of the filing of the petition, we feel that it would have jurisdiction to enter the decree of adoption.

We do not feel that Section 9673, R. S. Missouri, 1939, affects the question of jurisdiction in adoption proceedings. That section, which is found in Article 9 of Chapter 56 dealing with juvenile courts in counties with 50,000 inhabitants and over, provides in part that:

"When jurisdiction has been acquired under the provisions hereof, over the person of a child, such jurisdiction shall continue for the purpose of this article until the child shall have obtained its majority."

(Underscoring ours.)

Article 9, for the purpose of which the court retains jurisdiction, deals with the treatment of neglected and delinquent children and does not relate to the matter of adoption. Therefore, we feel that this provision is not relevant in the matter of jurisdiction in adoption proceedings.

CONCLUSION

Therefore, it is the opinion of this department that under Section

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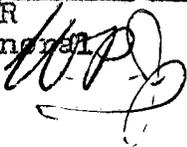
9608, Laws of Missouri, 1947, Volume II, page 213, an adoption petition is required to be filed in the county in which the persons seeking to adopt reside, or in which the person sought to be adopted may be, and the fact that a Juvenile Court has ordered the transfer of custody of the child sought to be adopted in accordance with Section 9616, Laws of Missouri, 1947, Volume II, page 213, does not confer jurisdiction upon said court in the absence of compliance with the requirements of Section 9608.

Respectfully submitted,

ROBERT R. WELBORN
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General



RRW/feh