



Senate

General Assembly

File No. 26

February Session, 2010

Substitute Senate Bill No. 138

Senate, March 11, 2010

The Committee on Human Services reported through SEN. DOYLE of the 9th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING MOTIONS FOR SUMMARY JUDGMENT IN JUVENILE COURT MATTERS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective October 1, 2010*) (a) For purposes of this
2 section "juvenile matters" means all proceedings concerning uncared-
3 for, neglected or dependent children and youths within this state,
4 termination of parental rights of children committed to a state agency,
5 matters concerning families with service needs, contested matters
6 involving termination of parental rights or removal of guardian
7 transferred from the Probate Court and the emancipation of minors,
8 but does not include matters of guardianship and adoption or matters
9 affecting property rights of any child or youth over which the Probate
10 Court has jurisdiction, except that appeals from probate concerning
11 adoption, termination of parental rights and removal of a parent as
12 guardian shall be included.

13 (b) In the superior court for juvenile matters, the respondent party
14 may file a motion for summary judgment at any time, except the

15 respondent party filing the motion must obtain the court's permission
16 to file a motion after the case has been assigned for a trial on the
17 merits. On the same day that the respondent party files a motion for
18 summary judgment, the respondent party shall serve a copy of such
19 motion on all parties or, if represented by an attorney, on the party's
20 attorney.

21 (c) The motion may be supported by any appropriate documents,
22 including, but not limited to, affidavits, certified transcripts of
23 testimony under oath, disclosures and written admissions.

24 (d) A party opposing a motion for summary judgment may file an
25 opposing memorandum and supporting documents not later than
26 fifteen days after receiving a copy of the motion pursuant to subsection
27 (b) of this section, unless the court grants the opposing party an
28 extension of time for filing the opposing memorandum in opposition
29 to the motion for summary judgment.

30 (e) The court shall hold a hearing on the motion for summary
31 judgment and opposing memorandum, if any, at which time any party
32 shall be permitted to testify and present evidence.

33 (f) The court shall grant the motion for summary judgment and
34 render judgment in favor of the moving party if the pleadings,
35 affidavits and any other proof submitted show that there is no genuine
36 issue as to any material fact and that the moving party is entitled to
37 judgment as a matter of law. In deciding a motion for summary
38 judgment, the court shall view the evidence in the light most favorable
39 to the nonmoving party.

40 (g) (1) Affidavits offered in support or opposition to a motion for
41 summary judgment shall be made on personal knowledge, set forth
42 facts that are admissible in evidence and show that the affiant is
43 competent to testify to the matters stated in the affidavit.

44 (2) If the court finds that a party opposing a motion for summary
45 judgment cannot, for reasons stated, present facts essential to justify

46 opposition, the court may deny the motion for judgment or order a
 47 continuance of the matter to permit the respondent party opposing a
 48 motion for summary judgment to obtain affidavits or other
 49 information.

50 (3) If the court finds that any affidavit in support or opposition to a
 51 motion for summary judgment is made in bad faith or solely for the
 52 purpose of delay, the court shall order the offending party to pay to
 53 the other party the reasonable expenses which the filing of the affidavit
 54 caused that party to incur, including attorney's fees. Any offending
 55 party or attorney may be adjudged guilty of contempt and any
 56 offending attorney may also be disciplined by the judicial authority.

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|---|-----------------|-------------|
| This act shall take effect as follows and shall amend the following sections: | | |
| Section 1 | October 1, 2010 | New section |

HS *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact: None

Municipal Impact: None

Explanation

This bill could speed the resolution of certain juvenile cases. It is anticipated that relatively few cases would be affected, and thus will not result in a fiscal impact.

The Out Years

State Impact: None

Municipal Impact: None

OLR Bill Analysis**sSB 138*****AN ACT CONCERNING MOTIONS FOR SUMMARY JUDGMENT IN JUVENILE COURT MATTERS.*****SUMMARY:**

This bill establishes a pre-trial procedure for respondents in certain Family Court matters to have cases dismissed before trial when they can demonstrate that there are no material facts in dispute. They can do this by filing a motion for summary judgment and following the same procedures that currently govern such motions on the Superior Court's civil docket.

EFFECTIVE DATE: October 1, 2010

TYPES OF CASES ELIGIBLE FOR SUMMARY JUDGMENT MOTIONS

Under the bill, the following contested cases are eligible for the summary judgment procedure:

1. proceedings concerning uncared for, neglected, or dependent children and youth living in Connecticut;
2. proceedings to terminate parental rights, when the involved child has been removed from the home and committed to Department of Children and Families' (DCF) care and custody;
3. proceedings concerning Families With Service Needs (status offenders);
4. cases transferred from Probate Court involving termination of parental rights or removal of guardianship;
5. petitions for emancipation of minors; and

6. appeals from Probate Court concerning adoption, termination of parental rights, and removal of a parent as guardian.

The bill specifically excludes matters of guardianship, adoption, and matters affecting the property of any child or youth over which the Probate Court has jurisdiction.

FILING SUMMARY JUDGMENT MOTIONS UNDER THE BILL

Only respondents (generally parents and other caregivers) can file for summary judgment under the new procedure. Motions can be filed at any time, but the respondent must ask for the court's permission to file once the case has been assigned for a trial on the merits.

Respondents must serve a copy of the motion and any supporting documents on all parties or their attorneys the same day that they file them with the court. In most cases, DCF will be the opposing party.

The party filing for summary judgment may include appropriate documents, such as affidavits, certified deposition transcripts, disclosures, and written submissions to support its claim that there are no material facts in dispute. (A material fact is one that could affect the outcome of the case.) The opposing party has 15 days to file a memorandum of law and supporting documents of the same types as described above.

Contents of Affidavits

As under the Superior Court's rules governing summary judgment, the bill requires that affidavits supporting or opposing the motion be based on the affiant's personal knowledge and demonstrate why he or she is competent to testify about the matters covered in the affidavit. The facts set forth in the affidavits must concern evidence that would be admissible at a full trial.

Penalties for Bad Faith Filings. The bill allows courts to order those who submit affidavits in bad faith or solely to delay resolution of the action to pay the other party's reasonable expenses, including

attorney's fees. The court may find the offending party or attorney guilty of contempt and may formally discipline the attorney.

COURT HEARING AND DISPOSITIONS

Under the bill, the court must hold a hearing on the summary judgment motion and its opposition. The moving party is entitled to have the motion granted and judgment entered in its favor if, viewing the evidence in the light most favorable to the opposing party, the pleadings, affidavits, and any other proof submitted show that there are no material facts in dispute and that the moving party is entitled to judgment as a matter of law.

If the court finds that an opposing party has made a factual showing that he or she cannot present all facts essential to justify opposition, the court may deny the motion for summary judgment or order a continuance to allow the opposing party time to obtain affidavits or other information.

COMMITTEE ACTION

Human Services Committee

Joint Favorable Substitute

Yea 13 Nay 6 (02/25/2010)