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Opinion No. 00-176

Authority for Child Custody Bond

QUESTION

Does current Tennessee law permit the use of a child custody bond under which a bond is forfeited to the searching parent when the other parent fails to produce the child who is the subject of the bond?

OPINION

Yes. Under the provisions of Tenn. Code Ann. § 36-6-235, a court has the authority to impose conditions, such as a child custody bond, in an enforcement hearing regarding a child custody determination for the purpose of ensuring the appearance of the child and the child's custodian.

ANALYSIS

As described in your request, a child custody bond is intended to reduce the number of children abducted by parents. Under the terms of the bond, when one parent fails to produce the child as required by a court order, the bond is thereby forfeited. In that case, the bonding company will not search for the missing parent but rather, will pay the forfeiture to the searching parent.

Absent authorization by law, a public official has no right to require a bond of any person as a condition of such person's enjoyment of a privilege. *State for Use of Moore v. Tutt*, 175 Tenn. 412, 135 S.W.2d 449, 450 (1940). In an enforcement hearing regarding a child custody determination, a court has the statutory authority to impose conditions upon the placement of a child to ensure the appearance of the child and the child's custodian. Tenn. Code Ann. § 36-6-235(f). As noted in the official comments, this would include the use of a cash bond.[1] Thus, it is our opinion that this would permit the use of a child

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[1]As provided in Tenn. Code Ann. § 36-6-203, the official comments pertaining to the corresponding sections of the Uniform Child Custody Jurisdiction and Enforcement Act constitute evidence of the purposes and policies underlying such sections.

custody bond in such situations.

In addition, Tennessee law also recognizes common law bonds. A bond is good at common law if entered into voluntarily for a valid consideration and if it is not repugnant to law or the policy of the law. *Day v. Walton*, 199 Tenn. 10, 281 S.W.2d 685, 691 (1955). A common law bond is treated as a contract. *Id.* Therefore, a parent may also voluntarily execute a child custody bond even if not statutorily required.

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