

2094--B

Cal. No. 285

2013-2014 Regular Sessions

I N S E N A T E

January 10, 2013

Introduced by Sens. GOLDEN, AVELLA, GIPSON -- read twice and ordered printed, and when printed to be committed to the Committee on Children and Families -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading -- recommitted to the Committee on Children and Families in accordance with Senate Rule 6, sec. 8 -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

AN ACT to amend the domestic relations law and the family court act, in relation to the standing of certain relatives in custody and guardianship proceedings

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Subdivision 2 of section 72 of the domestic relations law,
2 as added by chapter 657 of the laws of 2003, is amended to read as
3 follows:
4 2. (a) Where a grandparent or the grandparents of a minor child,
5 residing within this state, OR RELATIVE WHO IS RELATED TO A PARENT WITH-
6 IN THE SECOND DEGREE OF CONSANGUINITY OR AFFINITY, RESIDING IN THIS
7 STATE can demonstrate to the satisfaction of the court the existence of
8 extraordinary circumstances, such grandparent [or], grandparents OR
9 RELATIVE of such child may apply to the supreme court by commencing a
10 special proceeding or for a writ of habeas corpus to have such child
11 brought before such court, or may apply to family court pursuant to
12 subdivision (b) of section six hundred fifty-one OR SECTION SIX HUNDRED
13 SIXTY-ONE of the family court act; and on the return thereof, the court,
14 by order, after due notice to the parent or any other person or party
15 having the care, custody, and control of such child, to be given in such
16 manner as the court shall prescribe, may make such directions as the

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 best interests of the child may require, for custody rights for such
2 grandparent [or], grandparents OR RELATIVE in respect to such child. An
3 extended disruption of custody, as such term is defined in this section,
4 shall constitute an extraordinary circumstance.

5 (b) For the purposes of this section "extended disruption of custody"
6 shall include, but not be limited to, a prolonged separation of the
7 respondent parent and the child for at least twenty-four continuous
8 months, during which TIME the parent voluntarily relinquished care and
9 control of the child and the child resided in the household of the peti-
10 tioner grandparent [or], grandparents OR RELATIVE, provided, however,
11 that the court may find that extraordinary circumstances exist should
12 the prolonged separation have lasted for less than twenty-four months
13 AND PROVIDED THAT WHERE THE PARENT PROVES BY PREPONDERANCE OF THE
14 EVIDENCE THAT AN ACT OR ACTS OF DOMESTIC VIOLENCE COMMITTED AGAINST THE
15 PARENT CONTRIBUTED TO THE RELINQUISHMENT OF CARE AND CONTROL, THE COURT
16 SHALL FIND NO EXTRAORDINARY CIRCUMSTANCES EXIST.

17 (c) Nothing in this section shall limit the ability of parties to
18 enter into consensual custody agreements absent the existence of
19 extraordinary circumstances.

20 S 2. Subdivisions (b) and (d) of section 651 of the family court act,
21 subdivision (b) as amended by chapter 657 of the laws of 2003 and subdi-
22 vision (d) as amended by chapter 41 of the laws of 2010, are amended to
23 read as follows:

24 (b) When initiated in the family court, the family court has jurisdic-
25 tion to determine, in accordance with subdivision one of section two
26 hundred forty of the domestic relations law and with the same powers
27 possessed by the supreme court in addition to its own powers, habeas
28 corpus proceedings and proceedings brought by petition and order to show
29 cause, for the determination of the custody or visitation of minors,
30 including applications by a grandparent or grandparents for visitation
31 or custody rights pursuant to section seventy-two or two hundred forty
32 of the domestic relations law , OR BY A RELATIVE WHO IS RELATED TO A
33 PARENT OF A CHILD IN THE SECOND DEGREE OF CONSANGUINITY OR AFFINITY FOR
34 CUSTODY RIGHTS PURSUANT TO SECTION SEVENTY-TWO OF THE DOMESTIC RELATIONS
35 LAW.

36 (d) With respect to applications by a grandparent or grandparents for
37 visitation or custody rights, made pursuant to section seventy-two or
38 two hundred forty of the domestic relations law, OR BY A RELATIVE WHO IS
39 RELATED TO A PARENT OF A CHILD IN THE SECOND DEGREE OF CONSANGUINITY OR
40 AFFINITY FOR CUSTODY RIGHTS PURSUANT TO SECTION SEVENTY-TWO OF THE
41 DOMESTIC RELATIONS LAW, with a child remanded or placed in the care of a
42 person, official, agency or institution pursuant to the provisions of
43 article ten of this act, the applicant, in such manner as the court
44 shall prescribe, shall serve a copy of the application upon the social
45 services official having care and custody of such child, and the child's
46 attorney, who shall be afforded an opportunity to be heard thereon.

47 S 3. This act shall take effect immediately.