S T A T E O F N E W Y O R K

4264

2015-2016 Regular Sessions

I N S E N A T E

March 11, 2015

Introduced by Sen. PARKER -- read twice and ordered printed, and when printed to be committed to the Committee on Children and Families

AN ACT to amend the domestic relations law and the family court act, in relation to prohibiting the making of decisions concerning guardianship, custody or visitation or adoption petitions solely on the basis of a parent's, guardian's or custodian's blindness; and to amend the social services law, in relation to prohibiting the department of social services from denying, deciding or opposing a petition or request for guardianship, custody or visitation solely because the petitioner is blind and to prohibiting a local social services agency from taking actions solely because a parent, custodian or guardian is blind

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

Section 1. This act shall be known and may be cited as the "blind persons right to parent act".

S 2. Legislative intent. The legislature finds the following:

a. All blind Americans have the right to found a family, to freely and responsibly decide on the number and spacing of their children, and to retain the custody of their offspring on an equal basis with others. This right to parent is rooted in the due process clause of the Fourteenth Amendment; however, blind people are often stripped of these constitutional rights when state statutes, judicial decisions, and child welfare practices are based on the presumption that blindness automatically means parental incompetence.

b. The presumption that blindness automatically means parental incompetence is a misconception. Given the proper tools and education, blindness can be reduced to a physical nuisance. Because many sighted people do not understand the techniques that blind people use to accomplish everyday tasks, sighted judges, social workers, and state official assume that those tasks cannot be completed by a blind person. Using

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

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alternative techniques, blind people are capable of living independent, productive lives, which include providing safe and loving homes for their children. For example, blind people put small tactile dots over markers on stoves, washing machines, and other flat surfaces so that they can independently operate those devices. Specific to raising children, blind parents may have their young children wear a small bell on their shoes so the child's location can be known to the parents. Blind parents will also pull a stroller behind them rather than push the stroller in front of them so their long white cane or guide dog will find obstacles or enter an intersection before the child and stroller.

c. When sighted parents are involved in a guardianship, custody or visitation proceeding, their parental capabilities and how those capabilities affect the best interest of the child are thoroughly evaluated through a careful review of evidence. Too often, however, judges summarily dismiss a blind parent's capabilities under the misconception that blind people are incapable of most anything, despite evidence on record proving otherwise. Blind parents involved in these proceedings must first overcome any bias or low expectations of the judge, and then also provide evidence negating those misconceptions above and beyond the normal burden placed on sighted parents.

d. Widespread misconceptions about blindness often trigger a state agency to act, unsolicited, against the wishes of a blind parent. One of many countless, devastating reports of discrimination occurred in 2010, when the state of Missouri wrongfully deemed a blind couple unable to care for their 2-day old daughter, who remained in protective custody until the family was reunited after a 57-day battle. These parents had done nothing to demonstrate parental incompetence other than happening to have had a child and been blind, and yet the agency solely considered their blindness and decided to take action. In fact, the Missouri case and many others, the parents had voluntarily contacted social service officials themselves in order to seek advice and assistance and to ensure that all of their child's needs were being met, but instead found themselves stripped of custody. Thus, hasty actions on the part of state social welfare officials can discourage blind parents from seeking services and assistance for which they and their children are eligible.

e. During custody proceedings in cases of divorce, where one parent is blind and the other is sighted, the sighted parent will often try to use the other parent's blindness as a tool to deny the blind parent custodial rights. Because custody proceedings related to a divorce are often hostile, the court should demand that each party demonstrate evidence of the other party's incompetence. However, courts often assume that the sighted party is accurate in portraying the blind parent as incompetent, and make custody and visitation decisions based solely on the fact that one parent is blind. These decisions can range from limiting or denying visitation unless a sighted person is present at all times to simply denying the blind parent all custodial rights. This is not only discriminatory; it denies the blind parent a fair chance at custody and opens courts to manipulation.

S 3. The domestic relations law is amended by adding a new section 75-m to read as follows:

S 75-M. CONSIDERATION OF BLINDNESS DURING GUARDIANSHIP, CUSTODY OR VISITATION PROCEEDINGS. 1. THE COURT MAY NOT DENY OR DECIDE A PETITION FOR GUARDIANSHIP, CUSTODY OR VISITATION SOLELY ON THE BASIS THAT THE PETITIONER IS BLIND. THE BLINDNESS OF THE PETITIONER SHALL BE CONSIDERED RELEVANT ONLY TO THE EXTENT THAT THE COURT FINDS, BASED ON EVIDENCE IN THE RECORD, THAT THE BLINDNESS AFFECTS THE BEST INTERESTS OF THE CHILD

WHOSE GUARDIANSHIP, CUSTODY OR VISITATION IS THE SUBJECT OF THE PETITION.

2. AS USED IN THIS SECTION, "BLIND" OR "BLINDNESS" MEANS:

A. VISION THAT IS 20/200 OR LESS IN THE BEST CORRECTED EYE; OR

B. VISION THAT SUBTENDS AN ANGLE OF NOT GREATER THAN TWENTY DEGREES IN THE BEST CORRECTED EYE.

S 4. The domestic relations law is amended by adding a new section 111-d to read as follows:

S 111-D. CONSIDERATION OF BLINDNESS DURING ADOPTION PROCEEDINGS. 1. THE COURT MAY NOT DENY OR DECIDE A PETITION FOR ADOPTION SOLELY ON THE BASIS THAT THE PETITIONER IS BLIND. THE BLINDNESS OF THE PETITIONER SHALL BE CONSIDERED RELEVANT ONLY TO THE EXTENT THAT THE COURT FINDS, BASED ON EVIDENCE IN THE RECORD, THAT THE BLINDNESS AFFECTS THE BEST INTERESTS OF THE CHILD WHOSE ADOPTION IS THE SUBJECT OF THE PETITION.

2. AS USED IN THIS SECTION, "BLIND" OR "BLINDNESS" MEANS:

A. VISION THAT IS 20/200 OR LESS IN THE BEST CORRECTED EYE; OR

B. VISION THAT SUBTENDS AN ANGLE OF NOT GREATER THAN TWENTY DEGREES IN THE BEST CORRECTED EYE.

S 5. The family court act is amended by adding a new section 643 to read as follows:

S 643. CONSIDERATION OF BLINDNESS DURING ADOPTION PROCEEDINGS. 1. THE COURT MAY NOT DENY OR DECIDE A PETITION FOR ADOPTION SOLELY ON THE BASIS THAT THE PETITIONER IS BLIND. THE BLINDNESS OF THE PETITIONER SHALL BE CONSIDERED RELEVANT ONLY TO THE EXTENT THAT THE COURT FINDS, BASED ON EVIDENCE IN THE RECORD, THAT THE BLINDNESS AFFECTS THE BEST INTERESTS OF THE CHILD WHOSE ADOPTION IS THE SUBJECT OF THE PETITION.

2. AS USED IN THIS SECTION, "BLIND" OR "BLINDNESS" MEANS:

A. VISION THAT IS 20/200 OR LESS IN THE BEST CORRECTED EYE; OR

B. VISION THAT SUBTENDS AN ANGLE OF NOT GREATER THAN TWENTY DEGREES IN THE BEST CORRECTED EYE.

S 6. The family court act is amended by adding a new section 658 to read as follows:

S 658. CONSIDERATION OF BLINDNESS DURING GUARDIANSHIP, CUSTODY OR VISITATION PROCEEDINGS. 1. THE COURT MAY NOT DENY OR DECIDE A PETITION FOR CUSTODY OR VISITATION UNDER THIS PART OR GUARDIANSHIP UNDER PART FOUR OF THIS ARTICLE SOLELY ON THE BASIS THAT THE PETITIONER IS BLIND. THE BLINDNESS OF THE PETITIONER SHALL BE CONSIDERED RELEVANT ONLY TO THE EXTENT THAT THE COURT FINDS, BASED ON EVIDENCE IN THE RECORD, THAT THE BLINDNESS AFFECTS THE BEST INTERESTS OF THE CHILD WHOSE GUARDIANSHIP, CUSTODY OR VISITATION IS THE SUBJECT OF THE PETITION.

2. AS USED IN THIS SECTION, "BLIND" OR "BLINDNESS" MEANS:

A. VISION THAT IS 20/200 OR LESS IN THE BEST CORRECTED EYE; OR

B. VISION THAT SUBTENDS AN ANGLE OF NOT GREATER THAN TWENTY DEGREES IN THE BEST CORRECTED EYE.

S 7. The social services law is amended by adding a new section 393 to read as follows:

S 393. CONSIDERATION OF BLINDNESS DURING GUARDIANSHIP, CUSTODY OR ADOPTION PROCEEDINGS. 1. THE DEPARTMENT MAY NOT DENY, DECIDE OR OPPOSE A PETITION OR REQUEST FOR GUARDIANSHIP, CUSTODY OR VISITATION UNDER THIS ARTICLE SOLELY ON THE BASIS THAT THE PETITIONER, PARENT, GUARDIAN OR CUSTODIAN IS BLIND. THE BLINDNESS OF THE PETITIONER, PARENT, GUARDIAN OR CUSTODIAN SHALL BE CONSIDERED RELEVANT ONLY TO THE EXTENT THAT THE BLINDNESS AFFECTS THE BEST INTERESTS OF THE CHILD WHOSE GUARDIANSHIP, CUSTODY OR VISITATION IS THE SUBJECT OF THE PETITION.

2. THE DEPARTMENT SHALL NOT SEEK CUSTODY OR GUARDIANSHIP OF A CHILD SOLELY BECAUSE THE CHILD'S PARENT, GUARDIAN OR CUSTODIAN IS BLIND. THE

BLINDNESS OF THE PARENT, GUARDIAN OR CUSTODIAN SHALL BE CONSIDERED RELEVANT ONLY TO THE EXTENT THAT THE BLINDNESS AFFECTS THE BEST INTERESTS OF THE CHILD WHOSE GUARDIANSHIP, CUSTODY OR VISITATION IS THE SUBJECT OF THE PETITION.

3. AS USED IN THIS SECTION, "BLIND" OR "BLINDNESS" MEANS:

A. VISION THAT IS 20/200 OR LESS IN THE BEST CORRECTED EYE; OR

B. VISION THAT SUBTENDS AN ANGLE OF NOT GREATER THAN TWENTY DEGREES IN THE BEST CORRECTED EYE.

S 8. The commissioner of social services is authorized and directed to promulgate rules and regulations necessary for the implementation of the provisions of this act on or before its effective date.

S 9. This act shall take effect on the ninetieth day after it shall have become a law.