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2015-2016 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 7, 2015

Introduced by M. of A. DINOWITZ -- read once and referred to the Committee on Judiciary

AN ACT to amend the domestic relations law and the family court act, in relation to prohibiting the court from granting custody of or unsupervised visitation with a child to a person who has been convicted of or charged with raping the parent of the child

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

1 Section 1. Paragraph (a) of subdivision 1 of section 240 of the domestic
2 relations law, as amended by chapter 476 of the laws of 2009, is
3 amended to read as follows:
4 (a) In any action or proceeding brought (1) to annul a marriage or to
5 declare the nullity of a void marriage, or (2) for a separation, or (3)
6 for a divorce, or (4) to obtain, by a writ of habeas corpus or by petition
7 and order to show cause, the custody of or right to visitation with
8 any child of a marriage, the court shall require verification of the
9 status of any child of the marriage with respect to such child's custody
10 and support, including any prior orders, and shall enter orders for
11 custody and support as, in the court's discretion, justice requires,
12 having regard to the circumstances of the case and of the respective
13 parties and to the best interests of the child and subject to the
14 provisions of subdivision one-c of this section. Where either party to
15 an action concerning custody of or a right to visitation with a child
16 alleges in a sworn petition or complaint or sworn answer, cross-petition,
17 counterclaim or other sworn responsive pleading that the other
18 party has committed an act of domestic violence against the party making
19 the allegation or a family or household member of either party, as such
20 family or household member is defined in article eight of the family
21 court act, and such allegations are proven by a preponderance of the
22 evidence, the court must consider the effect of such domestic violence

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

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1 upon the best interests of the child, together with such other facts and
2 circumstances as the court deems relevant in making a direction pursuant
3 to this section and state on the record how such findings, facts and
4 circumstances factored into the direction. NO COURT SHALL AWARD CUSTODY
5 TO OR ALLOW UNSUPERVISED VISITATION WITH A PERSON WHO HAS BEEN CONVICTED
6 OF RAPING THE PARENT OF SUCH CHILD AND ANY REQUEST FOR CUSTODY OR UNSU-
7 PERVISED VISITATION BY A PERSON CHARGED WITH RAPING THE PARENT OF SUCH
8 CHILD SHALL BE STAYED PENDING RESOLUTION OF ANY CRIMINAL CHARGES OF
9 RAPE. If a parent makes a good faith allegation based on a reasonable
10 belief supported by facts that the child is the victim of child abuse,
11 child neglect, or the effects of domestic violence, and if that parent
12 acts lawfully and in good faith in response to that reasonable belief to
13 protect the child or seek treatment for the child, then that parent
14 shall not be deprived of custody, visitation or contact with the child,
15 or restricted in custody, visitation or contact, based solely on that
16 belief or the reasonable actions taken based on that belief. If an alle-
17 gation that a child is abused is supported by a preponderance of the
18 evidence, then the court shall consider such evidence of abuse in deter-
19 mining the visitation arrangement that is in the best interest of the
20 child, and the court shall not place a child in the custody of a parent
21 who presents a substantial risk of harm to that child, and shall state
22 on the record how such findings were factored into the determination. An
23 order directing the payment of child support shall contain the social
24 security numbers of the named parties. In all cases there shall be no
25 prima facie right to the custody of the child in either parent. Such
26 direction shall make provision for child support out of the property of
27 either or both parents. The court shall make its award for child support
28 pursuant to subdivision one-b of this section. Such direction may
29 provide for reasonable visitation rights to the maternal and/or paternal
30 grandparents of any child of the parties. Such direction as it applies
31 to rights of visitation with a child remanded or placed in the care of a
32 person, official, agency or institution pursuant to article ten of the
33 family court act, or pursuant to an instrument approved under section
34 three hundred fifty-eight-a of the social services law, shall be
35 enforceable pursuant to part eight of article ten of the family court
36 act and sections three hundred fifty-eight-a and three hundred eighty-
37 four-a of the social services law and other applicable provisions of law
38 against any person having care and custody, or temporary care and custo-
39 dy, of the child. Notwithstanding any other provision of law, any writ-
40 ten application or motion to the court for the establishment, modifica-
41 tion or enforcement of a child support obligation for persons not in
42 receipt of public assistance and care must contain either a request for
43 child support enforcement services which would authorize the collection
44 of the support obligation by the immediate issuance of an income
45 execution for support enforcement as provided for by this chapter,
46 completed in the manner specified in section one hundred eleven-g of the
47 social services law; or a statement that the applicant has applied for
48 or is in receipt of such services; or a statement that the applicant
49 knows of the availability of such services, has declined them at this
50 time and where support enforcement services pursuant to section one
51 hundred eleven-g of the social services law have been declined that the
52 applicant understands that an income deduction order may be issued
53 pursuant to subdivision (c) of section fifty-two hundred forty-two of
54 the civil practice law and rules without other child support enforcement
55 services and that payment of an administrative fee may be required. The
56 court shall provide a copy of any such request for child support

1 enforcement services to the support collection unit of the appropriate
2 social services district any time it directs payments to be made to such
3 support collection unit. Additionally, the copy of any such request
4 shall be accompanied by the name, address and social security number of
5 the parties; the date and place of the parties' marriage; the name and
6 date of birth of the child or children; and the name and address of the
7 employers and income payors of the party from whom child support is
8 sought or from the party ordered to pay child support to the other
9 party. Such direction may require the payment of a sum or sums of money
10 either directly to the custodial parent or to third persons for goods or
11 services furnished for such child, or for both payments to the custodial
12 parent and to such third persons; provided, however, that unless the
13 party seeking or receiving child support has applied for or is receiving
14 such services, the court shall not direct such payments to be made to
15 the support collection unit, as established in section one hundred
16 eleven-h of the social services law. Every order directing the payment
17 of support shall require that if either parent currently, or at any time
18 in the future, has health insurance benefits available that may be
19 extended or obtained to cover the child, such parent is required to
20 exercise the option of additional coverage in favor of such child and
21 execute and deliver to such person any forms, notices, documents or
22 instruments necessary to assure timely payment of any health insurance
23 claims for such child.

24 S 2. The family court act is amended by adding a new section 553 to
25 read as follows:

26 S 553. PATERNITY PROCEEDINGS STAYED FOR RAPE CHARGES AGAINST PUTATIVE
27 FATHER. 1. IF CRIMINAL CHARGES ALLEGING AN ACT OF RAPE ARE BROUGHT
28 AGAINST THE PUTATIVE FATHER OF A CHILD CONCEIVED AS THE RESULT OF THAT
29 ACT OF RAPE, THE COURT SHALL ISSUE AN AUTOMATIC STAY OF ANY PATERNITY
30 PROCEEDING INVOLVING BOTH THE CHILD AND THE ALLEGED PUTATIVE FATHER. THE
31 STAY SHALL NOT BE LIFTED UNTIL THERE IS A FINAL DISPOSITION OF SUCH
32 CRIMINAL CHARGES.

33 2. IN ANY FUTURE CUSTODY PROCEEDING, ANY DENIAL OF VISITATION UNDER
34 THIS SECTION SHALL NOT BE USED AGAINST THE MOTHER OF THE CHILD WHEN
35 DETERMINING ANY SUPPORT OBLIGATION.

36 S 3. Subdivisions (a), (b) and (c) of section 651 of the family court
37 act, subdivisions (a) and (c) as amended by chapter 85 of the laws of
38 1996 and subdivision (b) as amended by chapter 657 of the laws of 2003,
39 are amended to read as follows:

40 (a) When referred from the supreme court or county court to the family
41 court, the family court has jurisdiction to determine, in accordance
42 with subdivision one of section two hundred forty of the domestic
43 relations law and with the same powers possessed by the supreme court in
44 addition to its own powers, habeas corpus proceedings and proceedings
45 brought by petition and order to show cause, for the determination of
46 the custody or visitation of minors SUBJECT, HOWEVER, TO THE PROVISIONS
47 OF PARAGRAPH (A) OF SUBDIVISION ONE OF SECTION TWO HUNDRED FORTY OF THE
48 DOMESTIC RELATIONS LAW PROHIBITING THE COURT FROM GRANTING CUSTODY OR
49 UNSUPERVISED VISITATION OF A CHILD TO A PERSON WHO HAS BEEN CONVICTED OF
50 OR CHARGED WITH RAPING THE PARENT OF THE CHILD.

51 (b) When initiated in the family court, the family court has jurisdic-
52 tion to determine, in accordance with subdivision one of section two
53 hundred forty of the domestic relations law and with the same powers
54 possessed by the supreme court in addition to its own powers, habeas
55 corpus proceedings and proceedings brought by petition and order to show
56 cause, for the determination of the custody or visitation of minors,

1 including applications by a grandparent or grandparents for visitation
2 or custody rights pursuant to section seventy-two or two hundred forty
3 of the domestic relations law SUBJECT, HOWEVER, TO THE PROVISIONS OF
4 PARAGRAPH (A) OF SUBDIVISION ONE OF SECTION TWO HUNDRED FORTY OF THE
5 DOMESTIC RELATIONS LAW PROHIBITING THE COURT FROM GRANTING CUSTODY OR
6 UNSUPERVISED VISITATION OF A CHILD TO A PERSON WHO HAS BEEN CONVICTED OF
7 OR CHARGED WITH RAPING THE PARENT OF THE CHILD.

8 (c) When initiated in the family court pursuant to a petition under
9 part eight of article ten of this act or section three hundred fifty-
10 eight-a of the social services law, the family court has jurisdiction to
11 enforce or modify orders or judgments of the supreme court relating to
12 the visitation of minors in foster care, notwithstanding any limitation
13 contained in subdivision (b) of section four hundred sixty-seven of this
14 act BUT SUBJECT TO THE PROVISIONS OF PARAGRAPH (A) OF SUBDIVISION ONE OF
15 SECTION TWO HUNDRED FORTY OF THE DOMESTIC RELATIONS LAW PROHIBITING THE
16 COURT FROM GRANTING CUSTODY OR UNSUPERVISED VISITATION OF A CHILD TO A
17 PERSON WHO HAS BEEN CONVICTED OF OR CHARGED WITH RAPING THE PARENT OF
18 THE CHILD.

19 S 4. This act shall take effect immediately.