STATE OF NEW YORK

2121

2017-2018 Regular Sessions

IN ASSEMBLY

January 17, 2017

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

AN ACT to amend the family court act, in relation to establishing kinship guardianship

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The family court act is amended by adding a new section 1059 to read as follows:

§ 1059. Kinship guardianship. 1. Definitions. When used in this section:

a. "Kinship foster child" shall mean a child placed with a social services official pursuant to section one thousand fifty-five of this part who is placed either (i) as a kinship foster child pursuant to regulations of the office of children and family services or (ii) as a foster child and who has been placed by the social services official or other authorized agency in the home of a relative within the third degree;

b. "Kinship foster parent" shall mean a foster parent who is approved or certified pursuant to section three hundred seventy-eight of the social services law and who is caring for a child who is related within the third degree.

2. Petition. A kinship foster parent or a social services official may file a petition with the family court which placed the child pursuant to section one thousand fifty-five of this part to have the kinship foster parent appointed as kinship guardian for the child. The petition shall allege that the child was placed, that more than fifteen months have passed since the date of the order placing the child, that the parents of the child are presently and for the foreseeable future unable to provide proper and adequate care for the child, notwithstanding the authorized agency's diligent efforts to encourage and strengthen the parental relationship, that the prospective kinship guardians consent to

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

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the appointment and that the child has resided with them for more than eighteen months, and that it would be in the best interests of the child for the petition to be granted.

3. Notice. Notice of the petition and a copy of the petition shall be served upon the social services official with whom the child is placed, the parents of the child, the kinship foster parents of the child, and the law guardian of the child, each of whom shall be parties to the proceeding.

4. Hearing and determination. If the court finds that the elements of the petition have been proven by a fair preponderance of the evidence, or upon the consent of all parties, the court shall grant the petition.

5. Orders. An order appointing a person as a kinship guardian shall award custody of the child to the kinship guardian. A kinship guardian shall have the same authority as a parent to consent on behalf of a child, except that a kinship guardian shall not consent to the adoption or surrender of a child.

6. Maintenance subsidy. The social services official with whom the child was placed shall make monthly payments to the kinship guardian as if the child had been placed under sections four hundred fifty-three and four hundred fifty-four of the social services law, and subject to the procedures, limitations, and minimum payments of such sections.

7. Rights of the parents. The appointment of a kinship guardian shall not affect or impair the visitation rights of a parent.

8. Vacating orders. A parent may apply for an order vacating the appointment of the kinship guardian. The court shall vacate the appointment and award custody of the child to the parent upon a showing that the parent is able to provide proper and adequate care for the child and one or more of the following conditions exist:

a. the kinship guardian is unfit;

b. the kinship guardian has neglected his or her duties;

c. the kinship guardian is unwilling or unable to continue the appointment; or

d. the relationship between the kinship guardian and the child is no longer in the best interest of the child.

§ 2. This act shall take effect April 1, 2018.