STATE OF NEW YORK

6402

2017-2018 Regular Sessions

IN SENATE

May 16, 2017

Introduced by Sen. MARCHIONE -- 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, in relation to the rights of grandparents with respect to visitation rights or custody of minor children

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

Section 1. Section 72 of the domestic relations law, as amended by chapter 657 of the laws of 2003, is amended to read as follows:

§ 72. Special proceeding or habeas corpus to obtain visitation rights or custody in respect to certain infant grandchildren. 1. **(a)** Where [~~either or both of the parents of a minor child, residing within this state, is or are deceased, or where~~] circumstances show that conditions exist which equity would see fit to intervene, a grandparent or the grandparents of [~~such child~~] **a minor child, residing within this state** may apply to the supreme court by commencing a special proceeding or for a writ of habeas corpus to have such child brought before such court, or may apply to the family court pursuant to subdivision (b) of section six hundred fifty-one of the family court act[~~; and on~~]**.**

(b) When determining whether such grandparent or grandparents shall have standing to commence such proceedings pursuant to paragraph (a) of this subdivision, a strong presumption exists in favor of parental decisions concerning visitation. Further, the court shall not appoint a guardian ad litem until such time as standing of such grandparent or grandparents has been determined. A petitioner seeking to overturn a parental decision must allege, with detail and specificity, that the child would experience significant harm to his or her health, safety, or welfare if visitation were denied. Prior to filing the petition, the petitioner must have made a good faith attempt at reconciliation with the respondent and the petition must allege so with specificity, and must be verified or accompanied by a verified affidavit. The petitioner

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

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must demonstrate that he or she is a fit and proper person to have visitation rights with the child and that he or she has no reported history of domestic violence. The court shall also conduct its own search to determine whether the petitioner has ever had a domestic violence incident report filed against him or her. The court shall further conduct a search to determine whether the petitioner is, or ever has been, subject to an order of protection or has any criminal history. The court may also consider whether or not either or both of the parents of such child is or are deceased, however, such factor shall not automatically grant a grandparent or the grandparents of such child standing to commence such proceedings pursuant to paragraph (a) of this subdivision.

(c) On the return thereof, the court, by order, after due notice to the parent or any other person or party having the care, custody, and control of such child, to be given in such manner as the court shall prescribe, may make such directions as the best interest of the child may require, for visitation rights for such grandparent or grandparents in respect to such child. **Any finding concerning the best interests of the child shall be subject to the strong presumption that the parents' decision is in the child's best interest, and visitation may only be ordered in circumstances in which the child's health, safety or welfare would be adversely affected by the denial of visitation. The court's finding supporting an order of visitation shall be in writing.**

2. (a) Where a grandparent or the grandparents of a minor child, residing within this state, can demonstrate to the satisfaction of the court the existence of extraordinary circumstances, such grandparent or grandparents of such child may apply to the supreme court by commencing a special proceeding or for a writ of habeas corpus to have such child brought before such court, or may apply to family court pursuant to subdivision (b) of section six hundred fifty-one of the family court act; and on the return thereof, the court, by order, after due notice to the parent or any other person or party having the care, custody, and control of such child, to be given in such manner as the court shall prescribe, may make such directions as the best interests of the child may require, for custody rights for such grandparent or grandparents in respect to such child. An extended disruption of custody, as such term is defined in this section, shall constitute an extraordinary circumstance.

(b) For the purposes of this section "extended disruption of custody" shall include, but not be limited to, a prolonged separation of the respondent parent and the child for at least twenty-four continuous months during which the parent voluntarily relinquished care and control of the child and the child resided in the household of the petitioner grandparent or grandparents, provided, however, that the court may find that extraordinary circumstances exist should the prolonged separation have lasted for less than twenty-four months.

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

3. The court may direct that costs and allowances in whole or in part, including attorney's fees, be payable by an unsuccessful petitioner where the court finds that the contest was brought in bad faith or was frivolous or non-meritorious.

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