STATE OF NEW YORK

7888

IN SENATE

March 6, 2018

Introduced by Sen. AVELLA -- (at request of the Office of Court Administration) -- 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 social services law, in relation to non-marital fathers in adoption, surrender and termination of parental rights proceedings and consents to adoptions in family and surrogate's courts

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

Section 1. Paragraphs (d) and (e) of subdivision 1 of section 111 of the domestic relations law, as added by chapter 575 of the laws of 1980, are amended to read as follows:

(d) Of the father, whether adult or infant, of a child born out-of-wedlock and [~~placed with the adoptive parents~~] more than six months [~~after birth~~] **old at the time of the filing of a petition to terminate parental rights, application to execute a judicial surrender, petition for approval of an extra-judicial surrender or extra-judicial consent to adoption or petition for adoption, whichever is earliest**, but only if such father [~~shall have~~] **has:**

(i) established legal paternity by having been adjudicated as the father by a court of competent jurisdiction or by having acknowledged paternity in a form duly executed pursuant to section forty-one hundred thirty-five-b of the public health law or in a form recognized by the state, territory or country in which it was executed to have the force and effect of an order of paternity or filiation, so long as said legal paternity:

A. was established within six months of the child's first entry into foster care; or

B. was the result of a court action filed within six months of the child's birth that was actively prosecuted until the order was entered; or

(ii) openly lived with the child and openly held himself out to be the father of such child for a period of six months immediately preceding the earlier of the filing of a petition to terminate parental rights, application to execute a judicial surrender, petition for approval of an extra-judicial surrender or extra-judicial consent to adoption or petition for adoption; or

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

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(iii) maintained substantial and continuous or repeated contact with the child as manifested by[: (i)] the payment by the father toward the support of the child of a fair and reasonable sum, according to the father's means, and either [(ii) the father's]:

A. visiting the child at least [monthly] twice per month when physically and financially able to do so and not prevented from doing so by the person or authorized agency having lawful custody of the child[;]; or [(iii) the father's regular communication]

B. regularly communicating with the child or with the person or agency having the care or custody of the child, when physically [and] or financially unable to visit the child or prevented from doing so by the person or authorized agency having lawful custody of the child.

[The] For purposes of this subparagraph, the subjective intent of the father, whether expressed or otherwise, unsupported by evidence of acts specified in this [paragraph] subparagraph manifesting such intent, shall not preclude a determination that the father failed to maintain substantial and continuous or repeated contact with the child. In making such a determination, the court shall not require a showing of diligent efforts by any person or agency to encourage the father to perform the acts specified in this [paragraph] subparagraph. [A father, whether adult or infant, of a child born out-of-wedlock, who openly lived with the child for a period of six months within the one year period immediately preceding the placement of the child for adoption and who during such period openly held himself out to be the father of such child shall be deemed to have maintained substantial and continuous contact with the child for the purpose of this subdivision.]

(e) Of the father, whether adult or infant, of a child born out-of-wedlock who is under the age of six months at the time [he is placed for] of the filing of a petition to terminate parental rights, application to execute a judicial surrender, a petition for approval of an extra-judicial surrender or extra-judicial consent to adoption or a petition for adoption, whichever is earliest, but only if: (i) such father [openly lived with the child or the child's mother for a continuous period of six months immediately preceding the placement of the child for adoption] is a person entitled to notice pursuant to subdivision two of section one hundred eleven-a of this title or subdivision two of section three hundred eighty-four-c of the social services law; and (ii) such father openly held himself out to be the father of such child [during such period] prior to the filing of a petition to terminate parental rights, application to execute a judicial surrender petition for approval of an extra-judicial surrender or extra-judicial consent to adoption or petition for adoption, whichever is earlier, unless prevented from so doing by the person or agency having lawful custody of the child; and (iii) such father paid a fair and reasonable sum, in accordance with his means, for the medical, hospital and nursing expenses incurred in connection with the mother's pregnancy or with the birth of the child or child support, unless prevented from so doing by the person or agency having lawful custody of the child; and (iv) upon receiving notice of an adoption proceeding pursuant to the provisions of this chapter, or a notice of a proceeding to terminate parental rights pursuant to section three hundred eighty-four-b of the social services law, or a notice of the commitment of the guardianship and custody of the child by voluntary surrender instrument pursuant to section three hundred eighty-three-c or section three hundred eighty-four of the social services law, or a notice of a proceeding to grant temporary guardianship of the child to a proposed adoptive parent pursuant to

section one hundred fifteen-c of this article, such father filed a motion to intervene in the proceeding, including an assertion of paternity and a request for custody, within thirty days of the date of such notice.

Such consent shall not be required unless paternity is established in accordance with the relevant and otherwise consistent provisions of the family court act, the social services law and the public health law.

§ 2. Subdivisions 1 and 2 of section 111-a of the domestic relations law, subdivision 1 as amended by chapter 371 of the laws of 2013, subdivision 2 as added by chapter 665 of the laws of 1976, paragraph (e) of subdivision 2 as amended by chapter 862 of the laws of 1977, paragraphs (f) and (g) as amended and paragraph (h) of subdivision 2 as added by chapter 575 of the laws of 1980, are amended to read as follows:

1. Notwithstanding any inconsistent provisions of this or any other law, and in addition to the notice requirements of any law pertaining to persons other than those specified in subdivision two of this section, notice as provided herein shall be given to the persons specified in subdivision two of this section of any adoption proceeding initiated pursuant to this article or of any proceeding initiated pursuant to section one hundred fifteen-b of this article relating to the revocation of an adoption consent, when such proceeding involves a child born out-of-wedlock provided, however, that such notice shall not be required to be given to any person who previously has been given notice of any [~~proceeding~~] petition to terminate parental rights, application to execute a judicial surrender, petition for approval of an extra-judicial surrender or extra-judicial consent to adoption involving the child, [~~pursuant to section three hundred eighty-four-c of the social services law,~~] and provided further that notice in an adoption proceeding[~~,~~] pursuant to this section shall not be required to be given to any person who has previously received notice of any proceeding pursuant to section one hundred fifteen-b of this article. In addition to such other requirements as may be applicable to the petition in any proceeding in which notice must be given pursuant to this section, the petition shall set forth the names and last known addresses of all persons required to be given notice of the proceeding, pursuant to this section, and there shall be shown by the petition or by affidavit or other proof satisfactory to the court that there are no persons other than those set forth in the petition who are entitled to notice. For the purpose of determining persons entitled to notice of adoption proceedings initiated pursuant to this article, persons specified in subdivision two of this section shall not include any person who has been convicted of one or more of the following sexual offenses in this state or convicted of one or more offenses in another jurisdiction which, if committed in this state, would constitute one or more of the following offenses, when the child who is the subject of the proceeding was conceived as a result: (A) rape in first or second degree; (B) course of sexual conduct against a child in the first degree; (C) predatory sexual assault; or (D) predatory sexual assault against a child.

2. Persons entitled to notice, pursuant to subdivision one of this section, shall include:

(a) any person adjudicated by a court [~~in this state~~] of competent jurisdiction to be the father of the child;

(b) [~~any person adjudicated by a court of another state or territory of the United States to be the father of the child, when a certified copy of the court order has been filed with the putative father regis-~~

~~try, pursuant to section three hundred seventy-two-c of the social services law;~~

~~(c)~~] any person who has timely filed an unrevoked notice of intent to claim paternity of the child, pursuant to section three hundred seventy-two-c of the social services law;

[~~(d)~~] (c) any person who is recorded on the child's birth certificate as the child's father;

[~~(e)~~] (d) any person who is openly living with the child [~~and the child's mother~~] at the time the proceeding is initiated and who is holding himself out to be the child's father;

[~~(f)~~] (e) any person who has been identified as the child's father by the mother in a written, sworn statement;

[~~(g)~~] (f) any person holding himself out as the child's father who was married to the child's mother within six months subsequent to the birth of the child and prior to the execution of a surrender instrument or the initiation of a proceeding pursuant to section three hundred eighty-four-b of the social services law; [~~and~~]

[~~(h)~~] (g) any person who has filed with the putative father registry an instrument acknowledging paternity of the child, pursuant to section 4-1.2 of the estates, powers and trusts law;

(h) any person who has established legal paternity through the execution of an acknowledgment of paternity recognized by any state, territory or country in which it was executed to have the force and effect of an order of paternity or filiation; and

(i) any person who has filed a paternity or custody petition for a child in foster care in which he states that he is the father of the child and where the petition remains pending despite his diligent efforts to prosecute it, so long as the petition was filed prior to issuance of any order freeing the child for adoption.

§ 3. Subdivisions 1 and 2 of section 384-c of the social services law, subdivision 1 as amended by chapter 371 of the laws of 2013, subdivision 2 as added by chapter 665 of the laws of 1976, paragraph (e) of subdivision 2 as amended by chapter 862 of the laws of 1977, paragraphs (f) and (g) as amended and paragraph (h) of subdivision 2 as added by chapter 575 of the laws of 1980, are amended to read as follows:

1. Notwithstanding any inconsistent provision of this or any other law, and in addition to the notice requirements of any law pertaining to persons other than those specified in subdivision two of this section, notice as provided herein shall be given to the persons specified in subdivision two of this section of any [~~proceeding initiated pursuant to sections three hundred fifty-eight-a, three hundred eighty-four, and three hundred eighty-four-b of this chapter,~~] petition to terminate parental rights, application to execute a judicial surrender, petition for approval of an extra-judicial surrender or extra-judicial consent to adoption involving a child born out-of-wedlock. Persons specified in subdivision two of this section shall not include any person who has been convicted of one or more of the following sexual offenses in this state or convicted of one or more offenses in another jurisdiction which, if committed in this state, would constitute one or more of the following offenses, when the child who is the subject of the proceeding was conceived as a result: (A) rape in first or second degree; (B) course of sexual conduct against a child in the first degree; (C) predatory sexual assault; or (D) predatory sexual assault against a child.

2. Persons entitled to notice, pursuant to subdivision one of this section, shall include:

(a) any person adjudicated by a court [~~in this state~~] **of competent jurisdiction** to be the father of the child;

(b) [~~any person adjudicated by a court of another state or territory of the United States to be the father of the child, when a certified copy of the court order has been filed with the putative father registry, pursuant to section three hundred seventy-two-c of this chapter;~~

~~(c)~~] any person who has timely filed an unrevoked notice of intent to claim paternity of the child, pursuant to section three hundred seventy-two-c of this [~~chapter~~] **title**;

[~~(d)~~] **(c)** any person who is recorded on the child's birth certificate as the child's father;

[~~(e)~~] **(d)** any person who is openly living with the child [~~and the child's mother~~] at the time the proceeding is initiated or at the time the child was placed in the care of an authorized agency, and who is holding himself out to be the child's father;

[~~(f)~~] **(e)** any person who has been identified as the child's father by the mother in **a** written, sworn statement;

[~~(g)~~] **(f)** any person **holding himself out as the child's father** who was married to the child's mother within six months subsequent to the birth of the child and prior to the execution of a surrender instrument or the initiation of a proceeding pursuant to section three hundred eighty-four-b **of this title**; [~~and~~]

[~~(h)~~] **(g)** any person who has filed with the putative father registry an instrument acknowledging paternity of the child, pursuant to section 4-1.2 of the estates, powers and trusts law**;**

(h) any person who has established legal paternity through the execution of an acknowledgement of paternity recognized by any state, territory or country in which it was executed to have the force and effect of an order of paternity or filiation; and

(i) any person who has filed a paternity or custody petition for a child in foster care in which he states that he is the father of the child and where the petition remains pending despite his diligent efforts to prosecute it so long as the petition was filed prior to the issuance of any order freeing the child for adoption.

§ 4. Section 384-c of the social services law is amended by adding a new subdivision 8 to read as follows:

8. If a party noticed pursuant to this section for a proceeding under section three hundred eighty-four-b of this title appears and asserts that his consent to any adoption of the child would be required under section one hundred eleven of the domestic relations law, a hearing shall be held prior to the fact-finding hearing. At such hearing, the petitioner in the underlying proceeding shall bear the initial burden of going forward with evidence showing that the noticed party's consent to the adoption would be not required, but the noticed party shall bear the ultimate burden of establishing by a preponderance of the evidence that his consent would be required under the domestic relations law.

§ 5. This act shall take effect on the ninetieth day after it shall have become a law and shall apply to petitions for adoption, termination of parental rights, approval of extra-judicial surrenders or extra-judicial consents to adoption or applications to execute judicial surrenders filed on or after such effective date; provided, however, that this act shall not apply to cases in which judicial determinations had been made prior to such effective date regarding whether a putative father's consent to an adoption would be required or whether he is entitled to notice under section 111-a of the domestic relations law or section 384-c of the social services law.