STATE OF NEW YORK

5648

2019-2020 Regular Sessions

IN SENATE

May 9, 2019

Introduced by Sen. MONTGOMERY -- 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 the standing of certain relatives in custody and guardianship proceedings

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

Section 1. Subdivision 2 of section 72 of the domestic relations law, as added by chapter 657 of the laws of 2003, is amended to read as follows:

2. (a) Where a grandparent or the grandparents of a minor child, residing within this state, **or a relative who is related to a parent of such child within the second degree of consanguinity or affinity, residing in this state,** can demonstrate to the satisfaction of the court the existence of extraordinary circumstances, such grandparent [~~or~~], grandparents **or relative** 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 **or section six hundred sixty-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 **or relative** 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 **time** the parent voluntarily relinquished care and

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

LBD00599-01-9

control of the child and the child resided in the household of the petitioner grandparent [~~or~~], grandparents or relative, provided, however, that the court may find that extraordinary circumstances exist should the prolonged separation have lasted for less than twenty-four months and provided further that where a parent of the child proves by preponderance of the evidence that an act or acts of domestic violence committed against such parent contributed to his or her relinquishment of care and control of the child, the court shall find no extraordinary circumstances exist.

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

§ 2. Subdivisions (b) and (d) of section 651 of the family court act, subdivision (b) as amended by chapter 657 of the laws of 2003 and subdivision (d) as amended by chapter 41 of the laws of 2010, are amended to read as follows:

(b) When initiated in the family court, the family court has jurisdiction to determine, in accordance with subdivision one of section two hundred forty of the domestic relations law and with the same powers possessed by the supreme court in addition to its own powers, habeas corpus proceedings and proceedings brought by petition and order to show cause, for the determination of the custody or visitation of minors, including applications by a grandparent or grandparents for visitation or custody rights pursuant to section seventy-two or two hundred forty of the domestic relations law , and applications by a relative who is related to a parent of a child in the second degree of consanguinity or affinity for custody rights pursuant to section seventy-two of the domestic relations law.

(d) With respect to applications by a grandparent or grandparents for visitation or custody rights, made pursuant to section seventy-two or two hundred forty of the domestic relations law, or by a relative who is related to a parent of a child in the second degree of consanguinity or affinity for custody rights pursuant to section seventy-two of the domestic relations law, with a child remanded or placed in the care of a person, official, agency or institution pursuant to the provisions of article ten of this act, the applicant, in such manner as the court shall prescribe, shall serve a copy of the application upon the social services official having care and custody of such child, and the child's attorney, who shall be afforded an opportunity to be heard thereon.

§ 3. This act shall take effect immediately.