STATE OF NEW YORK

3314

2021-2022 Regular Sessions

IN ASSEMBLY

January 22, 2021

Introduced by M. of A. HUNTER, TAYLOR, CRUZ, DAVILA, PERRY, McDONOUGH -- read once and referred to the Committee on Judiciary

AN ACT to amend the domestic relations law, in relation to establishing procedure guidelines for custody agreements involving child abuse, family violence and/or domestic violence

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

Section 1. Paragraph (a) of subdivision 1 of section 240 of the domestic relations law, as amended by chapter 567 of the laws of 2015, is amended to read as follows:

(a) **(1)** In any action or proceeding brought [~~(1)~~] to annul a marriage or to declare the nullity of a void marriage, or [~~(2)~~] for a separation, or [~~(3)~~] for a divorce, or [~~(4)~~] to obtain, by a writ of habeas corpus or by petition and order to show cause, the custody of or right to visitation with any child of a marriage, the court shall require verification of the status of any child of the marriage with respect to such child's custody and support, including any prior orders, and shall enter orders for custody and support as, in the court's discretion, justice requires, having regard to the circumstances of the case and of the respective parties and to the best interests of the child and subject to the provisions of subdivision one-c of this section. Where either party to an action concerning custody of or a right to visitation with a child alleges in a sworn petition or complaint or sworn answer, cross-petition, counterclaim or other sworn responsive pleading that the other party has committed an act of **child abuse against the child, or committed an act of family violence or** domestic violence against the party making the allegation or a family or household member of either party, as such family or household member is defined in article eight of the family court act, [~~and such allegations are proven by a preponderance of the evidence, the court must consider the effect of such domestic violence upon the best interests of the child, together with such other~~

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

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~~facts and circumstances as the court deems relevant in making a direction pursuant to this section and state on the record how such findings, facts and circumstances factored into the direction~~] the court must first, before considering any other best interest factors, hear and determine upon competent admissible evidence the allegations set forth, and enter findings regarding any child abuse, family violence or domestic abuse; with the evidentiary hearing for such determination to be held within thirty days of the filing of the verified pleading. The court shall not be precluded, however, from issuing any necessary emergency orders to protect the child. All costs, including attorney and expert fees incurred by the non-offending parent and the child, shall be paid by the parent who is found to have committed child abuse or domestic violence, unless the offending parent has insufficient means to fund such activities. If the court finds by a preponderance of the evidence that a parent has perpetrated family abuse, including sexual abuse of any family member, the court shall not award sole or joint custody or unsupervised visitation of any children to that parent, unless:

(i) the parent is not abusing alcohol or illegally using psychoactive drugs;

(ii) the offending parent's custody is necessary due to the other parent's absence, verifiably medically diagnosed mental illness or substance abuse; and

(iii) the child is comfortable with unsupervised contact, as verified by a child therapist or evaluator with documented expertise in the pertinent type or types of abuse.

(2) If a parent makes a good faith allegation based on a reasonable belief supported by facts that the child is the victim of child abuse, child neglect, or the effects of domestic violence, and if that parent acts lawfully and in good faith in response to that reasonable belief to protect the child or seek treatment for the child, then that parent shall not be deprived of custody, visitation or contact with the child, or restricted in custody, visitation or contact, based solely on that belief or the reasonable actions taken based on that belief. [~~If an allegation that a child is abused is supported by a preponderance of the evidence, then the court shall consider such evidence of abuse in determining the visitation arrangement that is in the best interest of the child, and the court shall not place a child in the custody of a parent who presents a substantial risk of harm to that child, and shall state on the record how such findings were factored into the determination~~] If the court finds by clear and convincing evidence an act of child abuse or a pattern of domestic violence, including sexual abuse and trauma, by a parent, the court shall award sole physical custody of the child to the safe parent or party and shall suspend any physical custody with the offending parent, except that it may award supervised physical custody if it is in the best interest of the child and such supervised physical contact is protective of the health and safety of the child. Before such supervised physical custody may begin, the court shall issue a supervised physical custody plan, including:

(i) restrictions, conditions and safeguards necessary to minimize any risk of harm to the child, including but not limited to restricting the offending parent from possessing a firearm during such supervised physical custody;

(ii) specific measures the offending parent must take for supervised physical custody to continue;

(iii) the duration supervised visitation shall continue, assuming all conditions in the supervised physical custody plan are consistently and continually met; and

(iv) specific measures the offending parent must complete in order for supervised physical custody to end.

(3) (i) Court ordered supervised visitation shall continue unabated until the court issues written findings of the evidentiary hearing and the conditions of the supervised physical custody plan terminating said visitation.

(ii) A supervised physical custody arrangement imposed on a parent by a court shall be conducted by a court-approved professional with expertise in domestic violence and/or child abuse, in a therapeutic setting and under conditions that ensure the health and safety of the child. The supervised physical custody arrangement shall not be conducted in either parent's home and shall not extend overnight.

(iii) If an offending parent commits additional harm to the child, the non-offending parent, or another individual in the non-offending parent's household, when supervised physical custody arrangements are ongoing, the court will immediately suspend future physical custody arrangements until such time as the court can re-evaluate and revise the previously issued supervised physical custody plan. Supervised physical custody arrangements will not be re-initiated unless and until the court can implement additional measures to minimize any risk of harm to the child. The court shall explain the additional measures in writing.

(iv) Unsupervised visitation with the offending parent shall not occur prior to the court's written determination that such unsupervised visitation is in the child's best interests. Such determination shall be made based upon factors, including, but not limited to:

(A) whether the offending parent completed the specific measures identified in the court-ordered supervised physical custody plan;

(B) evidence of the offending parent's current mental health condition and the risk that the offending parent will subject the child or other household members to domestic abuse;

(C) whether the offending parent is not abusing alcohol or illegally using psychoactive drugs; and

(D) whether the offending parent will not cause any unreasonable physical, emotional or psychological harm to the child or other parent.

(v) The court shall explain its findings with respect to the factors listed in clause (iv) of this subparagraph, and the justification for ending supervised visitation, in writing.

(vi) Any cost incurred for supervised physical custody, for implementation of safety measures during supervised physical custody arrangements, or to perform measures identified by the court for physical custody to continue or end, shall be paid by the offending parent, unless the offending parent has insufficient means to fund such activities.

(4) Where a proceeding filed pursuant to article ten or ten-A of the family court act is pending at the same time as a proceeding brought in the supreme court involving the custody of, or right to visitation with, any child of a marriage, the court presiding over the proceeding under article ten or ten-A of the family court act may jointly hear the dispositional hearing on the petition under article ten or the permanency hearing under article ten-A of the family court act and, upon referral from the supreme court, the hearing to resolve the matter of custody or visitation in the proceeding pending in the supreme court; provided

however, the court must determine custody or visitation in accordance with the terms of this section.

(5) An order directing the payment of child support shall contain the social security numbers of the named parties. In all cases there shall be no prima facie right to the custody of the child in either parent. Such direction shall make provision for child support out of the property of either or both parents. The court shall make its award for child support pursuant to subdivision one-b of this section. Such direction may provide for reasonable visitation rights to the maternal and/or paternal grandparents of any child of the parties. Such direction as it applies to rights of visitation with a child remanded or placed in the care of a person, official, agency or institution pursuant to article ten of the family court act, or pursuant to an instrument approved under section three hundred fifty-eight-a of the social services law, shall be enforceable pursuant to part eight of article ten of the family court act and sections three hundred fifty-eight-a and three hundred eighty-four-a of the social services law and other applicable provisions of law against any person having care and custody, or temporary care and custody, of the child. Notwithstanding any other provision of law, any written application or motion to the court for the establishment, modification or enforcement of a child support obligation for persons not in receipt of public assistance and care must contain either a request for child support enforcement services which would authorize the collection of the support obligation by the immediate issuance of an income execution for support enforcement as provided for by this chapter, completed in the manner specified in section one hundred eleven-g of the social services law; or a statement that the applicant has applied for or is in receipt of such services; or a statement that the applicant knows of the availability of such services, has declined them at this time and where support enforcement services pursuant to section one hundred eleven-g of the social services law have been declined that the applicant understands that an income deduction order may be issued pursuant to subdivision (c) of section fifty-two hundred forty-two of the civil practice law and rules without other child support enforcement services and that payment of an administrative fee may be required. The court shall provide a copy of any such request for child support enforcement services to the support collection unit of the appropriate social services district any time it directs payments to be made to such support collection unit. Additionally, the copy of any such request shall be accompanied by the name, address and social security number of the parties; the date and place of the parties' marriage; the name and date of birth of the child or children; and the name and address of the employers and income payors of the party from whom child support is sought or from the party ordered to pay child support to the other party. Such direction may require the payment of a sum or sums of money either directly to the custodial parent or to third persons for goods or services furnished for such child, or for both payments to the custodial parent and to such third persons; provided, however, that unless the party seeking or receiving child support has applied for or is receiving such services, the court shall not direct such payments to be made to the support collection unit, as established in section one hundred eleven-h of the social services law. Every order directing the payment of support shall require that if either parent currently, or at any time in the future, has health insurance benefits available that may be extended or obtained to cover the child, such parent is required to exercise the option of additional coverage in favor of such child and

execute and deliver to such person any forms, notices, documents or instruments necessary to assure timely payment of any health insurance claims for such child.

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