

STATE OF NEW YORK

7674

2021-2022 Regular Sessions

IN ASSEMBLY

May 19, 2021

Introduced by M. of A. LAVINE -- (at request of the Office of Court Administration) -- read once and referred to the Committee on Judiciary

AN ACT to amend the family court act, in relation to parentage and gestational surrogacy proceedings

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

1 Section 1. Subdivisions (c), (d), (e) and (g) of section 581-202 of
2 the family court act, as added by section 1 of part L of chapter 56 of
3 the laws of 2020, are amended to read as follows:

4 (c) Where [~~a petition includes the following truthful~~] the court finds
5 the following statements in the petition to be true, the court shall
6 adjudicate the intended parent to be the parent of the child:

7 (1) a statement that an intended parent has been a resident of the
8 state for at least six months or if an intended parent is not a New York
9 state resident, that the child will be or was born in the state within
10 ninety days of filing; and

11 (2) a statement from the gestating intended parent that the gestating
12 intended parent became pregnant as a result of assisted reproduction;
13 and

14 (3) in cases where there is a non-gestating intended parent, a state-
15 ment from the gestating intended parent and non-gestating intended
16 parent that the non-gestating intended parent consented to assisted
17 reproduction pursuant to section 581-304 of this article; and

18 (4) proof of any donor's donative intent.

19 (d) The following shall be deemed sufficient proof of a donor's dona-
20 tive intent for purposes of this section:

21 (1) in the case of an anonymous donor or where gametes or embryos have
22 previously been released to a gamete or embryo storage facility or in
23 the presence of a health care practitioner, either:

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

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(i) a statement or documentation from the gamete or embryo storage facility or health care practitioner stating or demonstrating that such gametes or embryos were anonymously donated or had previously been released; or

(ii) clear and convincing evidence that the gamete or embryo donor intended to donate gametes or embryos anonymously or intended to release such gametes or embryos to a gamete or embryo storage facility or health care practitioner; or

(2) in the case of a donation from a known donor, either: a. a record from the gamete or embryo donor acknowledging the donation and confirming that the donor has no parental or proprietary interest in the gametes or embryos. The record shall be signed by the gestating intended parent and the gamete or embryo donor[~~, The record may be, but is not required to be, signed~~]:

(i) before a notary public, or

(ii) before two witnesses who are not the intended parents, or

(iii) before a health care practitioner; or

b. clear and convincing evidence that the gamete or embryo donor agreed, prior to conception, with the gestating parent that the donor has no parental or proprietary interest in the gametes or embryos.

(e)(1) In the absence of evidence pursuant to paragraph two of this subdivision, notice shall be given to the donor at least twenty days prior to the date set for the proceeding to determine the existence of donative intent by delivery of a copy of the petition and notice pursuant to section three hundred eight of the civil practice law and rules. Such notice shall also be given to the gestating intended parent, the non-gestating intended parent, if any, and the gestating intended parent's spouse, if any, each of whom shall be a necessary party. Upon a showing to the court, by affidavit or otherwise, on or before the date of the proceeding or within such further time as the court may allow, that personal service cannot be effected at the donor's last known address with reasonable effort, notice may be given, without prior court order therefore, at least twenty days prior to the proceeding by registered or certified mail directed to the donor's last known address. Notice by publication shall not be required to be given to a donor entitled to notice pursuant to the provisions of this section.

(2) Notwithstanding the above, where sperm is provided under the supervision of a health care practitioner to someone other than the sperm provider's intimate partner or spouse without a record of the sperm provider's intent to parent notice is not required.

(g) Where the requirements of subdivision (c) of this section are met or where the court finds the intended parent to be a parent under subdivision [~~(e)~~] (f) of this section, the court shall issue a judgment of parentage:

(1) declaring, that upon the birth of the child, the intended parent or parents is or are the legal parent or parents of the child; and

(2) ordering the intended parent or parents to assume responsibility for the maintenance and support of the child immediately upon the birth of the child; and

(3) if there is a donor, ordering that the donor is not a parent of the child; ~~and~~

(4) ordering that:

(i) Pursuant to section two hundred fifty-four of the judiciary law, the clerk of the court shall transmit to the state commissioner of health, or for a person born in New York city, to the commissioner of health of the city of New York, on a form prescribed by the commission-

er, a written notification of such entry together with such other facts as may assist in identifying the birth record of the person whose parentage was in issue and, if such person whose parentage has been determined is under eighteen years of age, the clerk shall also transmit forthwith to the registry operated by the department of social services pursuant to section three hundred seventy-two-c of the social services law a notification of such determination; and

(ii) Pursuant to section forty-one hundred thirty-eight of the public health law and NYC Public Health Code section 207.05 that upon receipt of a judgment of parentage the local registrar where a child is born will report the parentage of the child to the appropriate department of health in conformity with the court order. If an original birth certificate has already been issued, the appropriate department of health will amend the birth certificate in an expedited manner and seal the previously issued birth certificate except that it may be rendered accessible to the child at eighteen years of age or the legal parent or parents[.]; and

(5) if the judgment of parentage is issued prior to the birth of the child, ordering the petitioner, within seven days of such birth, to provide the court with notification thereof, together with such other facts as may assist in identifying the birth record of the child whose parentage was in issue. Such notification shall be in writing on a form to be prescribed by the chief administrator of the courts.

§ 2. Subdivisions (b) and (c) of section 581-203 of the family court act, as added by section 1 of part L of chapter 56 of the laws of 2020, are amended to read as follows:

(b) The proceeding may be commenced at any time after [~~the surrogacy agreement has been executed~~] pregnancy is achieved and the person acting as surrogate, the spouse of the person acting as surrogate, if any, donors, if any, and all intended parents are necessary parties.

(c) The petition for a judgment of parentage must be verified and include the following:

(1) a statement that [~~the person acting as surrogate or~~] at least one [~~of the~~] intended [~~parents has been~~] parent was a resident of the state for at least six months at the time the surrogacy agreement was executed and, in cases in which there are two intended parents, only one of whom was a resident of the state for at least six months prior to the execution of the agreement, then a statement that the person acting as surrogate had been a resident of the state for at least six months at the time the agreement was executed; [and]

(2) a certification from the attorney representing the intended parent or parents and the attorney representing the person acting as surrogate that the requirements of part four of this article have been met; [~~and~~]

(3) a statement from all parties to the surrogacy agreement that they knowingly and voluntarily entered into the surrogacy agreement and that the parties are jointly requesting the judgment of parentage; and

(4) a copy of the executed surrogacy agreement.

§ 3. Subdivision (b) of section 581-303 of the family court act, as added by section 1 of part L of chapter 56 of the laws of 2020, is amended to read as follows:

(b) The court shall issue a judgment of parentage pursuant to this article upon application by any [~~participant~~] person authorized to file a petition pursuant to subdivision (c) of section 581-201 of this article.

§ 4. Subdivision (a) of section 581-403 of the family court act, as added by section 1 of part L of chapter 56 of the laws of 2020, is amended to read as follows:

(a) it shall be in a [signed] record [~~verified or executed before two non-party witnesses by:~~

~~(1) each intended parent, and~~

~~(2) the person acting as surrogate, and the spouse of the person acting as surrogate, if any, unless:~~

~~(i) the person acting as surrogate and the spouse of the person acting as surrogate are living separate and apart pursuant to a decree or judgment of separation or pursuant to a written agreement of separation subscribed by the parties thereto and acknowledged or proved in the form required to entitle a deed to be recorded; or~~

~~(ii) have been living separate and apart for at least three years prior to execution of the surrogacy agreement]~~ subscribed by the parties and acknowledged in the form required to entitle a deed to be recorded;

§ 5. Section 581-409 of the family court act, as added by section 1 of part L of chapter 56 of the laws of 2020, is amended to read as follows:

§ 581-409. Dispute as to surrogacy agreement. (a) Any dispute which is related to a surrogacy agreement other than disputes as to parentage shall be resolved by the supreme court, which shall determine the respective rights and obligations of the parties[~~, in~~]. In any proceeding initiated pursuant to this section, the court may, at its discretion, authorize the use of conferencing or mediation at any point in the proceedings.

(b) Except as expressly provided in the surrogacy agreement, the intended parent or parents and the person acting as surrogate shall be entitled to all remedies available at law or equity in any dispute related to the surrogacy agreement.

(c) There shall be no specific performance remedy available for a breach.

(d) In any proceeding initiated pursuant to this section, where the supreme court determines that the disputed involves both contractual and parentage issues, the court may order that the portion of the proceeding raising parentage issues may be transferred to the family or surrogate's court.

§ 6. This act shall take effect immediately.