STATE OF NEW YORK

8186

IN SENATE

February 1, 2022

Introduced by Sen. OBERACKER -- 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 procedures for certain temporary custody orders

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

Section 1. Subdivision 1 of section 240 of the domestic relations law is amended by adding a new paragraph (a-3) to read as follows:

(a-3) Parenting time; presumptions and procedures for temporary custody orders. (1) A party to a custody proceeding may move for a temporary custody order. The motion must be supported by a petition. The court may award temporary custody pursuant to the provisions of this paragraph after a hearing, or, if there is no objection, solely on the basis of the petitions. If the parents present a temporary custody agreement and mutually agreed plan for parenting time, and the court confirms that the agreement adequately provides for the welfare of the child, such agreement shall become the temporary custody order of the court.

(2) In making an order for temporary custody, there shall be a fifty-fifty rebuttable presumption that the parents shall have temporary joint legal and shared physical custody and shall share equal parenting time. If an allegation of family violence is entered prior to the temporary custody order, the family violence hearing shall take place within thirty days to determine for a quick and expedient resolution not to impair the parent-child relationship. As used in this paragraph, the term "parenting time" shall mean the period of time that a parent may spend with his or her child pursuant to a court order under this chapter, the family court act or an order enforced under article five-A of this chapter.

(3) If a deviation from equal parenting time is warranted, the temporary custody order shall include a statement of the court's reasons for such a determination, except when the court confirms the agreement of the parties. The parents, through mutual and agreed upon considerations, shall construct a parenting time schedule which maximizes the time each parent has with the child and is consistent with ensuring the child's

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

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welfare. In the event that the parents cannot agree on a parenting schedule deviating from equal parenting time, the court shall construct a parenting time schedule which maximizes the time each parent has with the child and is consistent with ensuring such child's welfare.

(4) Any temporary custody order shall address the circumstance in which the child will transfer from one parent to the other.

(5) If a proceeding to annul a marriage, to declare the nullity of a void marriage, for a separation or for a divorce is dismissed, any temporary custody order shall be vacated unless a parent moves that the proceeding continue as a custody proceeding and the court finds, after a hearing, that the circumstances of the parents and the best interests of the child require that a custody decree be issued.

(6) If a custody proceeding commenced in the absence of a proceeding to annul a marriage, to declare the nullity of a void marriage, for a separation or for a divorce is dismissed, any temporary custody order shall be vacated.

(7) If a court determines by a preponderance of the evidence that a person is a person who is acting as a parent, the court shall join such person in any action pursuant to the provisions of this paragraph as a party needed for just adjudication.

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