

# STATE OF NEW YORK

1355

2021-2022 Regular Sessions

## IN ASSEMBLY

January 8, 2021

Introduced by M. of A. WOERNER, SAYEGH, DeSTEFANO, J. M. GIGLIO, DiPIETRO, DARLING -- Multi-Sponsored by -- M. of A. BRAUNSTEIN, JOYNER, LAVINE, SANTABARBARA, SEAWRIGHT, STECK, ZEBROWSKI -- read once and referred to the Committee on Judiciary

AN ACT to amend the domestic relations law, in relation to the rights of grandparents with respect to visitation rights or custody of minor children

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

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

3 § 72. Special proceeding or habeas corpus to obtain visitation rights  
4 or custody in respect to certain infant grandchildren. 1. (a) Where  
5 [~~either or both of the parents of a minor child, residing within this~~  
6 ~~state, is or are deceased, or where~~] circumstances show that conditions  
7 exist which equity would see fit to intervene, a grandparent or the  
8 grandparents of [~~such child~~] a minor child, residing within this state  
9 may apply to the supreme court by commencing a special proceeding or for  
10 a writ of habeas corpus to have such child brought before such court, or  
11 may apply to the family court pursuant to subdivision (b) of section six  
12 hundred fifty-one of the family court act[~~, and on~~].

13 (b) When determining whether such grandparent or grandparents shall  
14 have standing to commence such proceedings pursuant to paragraph (a) of  
15 this subdivision, a strong presumption exists in favor of parental deci-  
16 sions concerning visitation. Further, the court shall not appoint a  
17 guardian ad litem until such time as standing of such grandparent or  
18 grandparents has been determined. A petitioner seeking to overturn a  
19 parental decision must allege, with detail and specificity, that the  
20 child would experience significant harm to his or her health, safety, or  
21 welfare if visitation were denied. Prior to filing the petition, the  
22 petitioner must have made a good faith attempt at reconciliation with

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

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1 the respondent and the petition must allege so with specificity, and  
2 must be verified or accompanied by a verified affidavit. The petitioner  
3 must demonstrate that he or she is a fit and proper person to have visi-  
4 tation rights with the child and that he or she has no reported history  
5 of domestic violence. The court shall also conduct its own search to  
6 determine whether the petitioner has ever had a domestic violence inci-  
7 dent report filed against him or her. The court shall further conduct a  
8 search to determine whether the petitioner is, or ever has been, subject  
9 to an order of protection or has any criminal history. The court may  
10 also consider whether or not either or both of the parents of such child  
11 is or are deceased, however, such factor shall not automatically grant a  
12 grandparent or the grandparents of such child standing to commence such  
13 proceedings pursuant to paragraph (a) of this subdivision.

14 (c) On the return thereof, the court, by order, after due notice to  
15 the parent or any other person or party having the care, custody, and  
16 control of such child, to be given in such manner as the court shall  
17 prescribe, may make such directions as the best interest of the child  
18 may require, for visitation rights for such grandparent or grandparents  
19 in respect to such child. Any finding concerning the best interests of  
20 the child shall be subject to the strong presumption that the parents'  
21 decision is in the child's best interest, and visitation may only be  
22 ordered in circumstances in which the child's health, safety or welfare  
23 would be adversely affected by the denial of visitation. The court's  
24 finding supporting an order of visitation shall be in writing.

25 2. (a) Where a grandparent or the grandparents of a minor child,  
26 residing within this state, can demonstrate to the satisfaction of the  
27 court the existence of extraordinary circumstances, such grandparent or  
28 grandparents of such child may apply to the supreme court by commencing  
29 a special proceeding or for a writ of habeas corpus to have such child  
30 brought before such court, or may apply to family court pursuant to  
31 subdivision (b) of section six hundred fifty-one of the family court  
32 act; and on the return thereof, the court, by order, after due notice to  
33 the parent or any other person or party having the care, custody, and  
34 control of such child, to be given in such manner as the court shall  
35 prescribe, may make such directions as the best interests of the child  
36 may require, for custody rights for such grandparent or grandparents in  
37 respect to such child. An extended disruption of custody, as such term  
38 is defined in this section, shall constitute an extraordinary circum-  
39 stance.

40 (b) For the purposes of this section "extended disruption of custody"  
41 shall include, but not be limited to, a prolonged separation of the  
42 respondent parent and the child for at least twenty-four continuous  
43 months during which the parent voluntarily relinquished care and control  
44 of the child and the child resided in the household of the petitioner  
45 grandparent or grandparents, provided, however, that the court may find  
46 that extraordinary circumstances exist should the prolonged separation  
47 have lasted for less than twenty-four months.

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

51 3. The court may direct that costs and allowances in whole or in part,  
52 including attorney's fees, be payable by an unsuccessful petitioner  
53 where the court finds that the contest was brought in bad faith or was  
54 frivolous or non-meritorious.

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