

STATE OF NEW YORK

2886

2023-2024 Regular Sessions

IN ASSEMBLY

January 31, 2023

Introduced by M. of A. WOERNER, SAYEGH, DeSTEFANO, J. M. GIGLIO, DiPIETRO, DARLING, FAHY -- Multi-Sponsored by -- M. of A. BRAUNSTEIN, JOYNER, 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 with 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
23 the respondent and the petition must allege so with specificity, and

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

LBD04246-02-3

1 must be verified or accompanied by a verified affidavit. The court shall
2 conduct its own search to determine whether the petitioner is a fit and
3 proper person to have visitation rights with the child and whether the
4 petitioner has ever had allegations of domestic violence, child abuse,
5 child sexual abuse or incidents involving harm, or risk of harm, to a
6 child made against him or her or prior police reports or a domestic
7 violence incident report filed against him or her. The court shall
8 further conduct a search to determine whether the petitioner is, or ever
9 has been, subject to an order of protection or has any criminal history.

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

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

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

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

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

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