STATE OF NEW YORK

4797

2023-2024 Regular Sessions

IN SENATE

February 14, 2023

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-4) to read as follows:

(a-4) 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 or a person acting as a parent, as defined in section seventy-five-a of this chapter, 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 presumption, rebuttable by clear and convincing evidence, that the parents or a person acting as a parent shall have temporary joint legal and shared physical custody and shall share equal parenting time. 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 parents or person acting as a parent, through mutual and agreed upon considerations or mediation, shall construct a parenting time schedule which maximizes the time each parent or person acting as a parent has with the

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

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child and is consistent with ensuring the child's welfare. In the event that the parents or person acting as a parent 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 or person acting as a parent has with the child and is consistent with ensuring such child's welfare.

(4) Each temporary custody order shall include specific findings of fact and conclusions of law, except when the court confirms the agreement of the parties.

(5) Any temporary custody order shall address the circumstance in which the child will transfer from one parent or person acting as a parent to the other.

(6) Modification of a temporary custody order may be sought when there is a material and substantial change in the circumstance of the parents, person acting as a parent, or child.

(7) 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 or person acting as a parent moves that the proceeding continue as a custody proceeding and the court finds, after a hearing, that the circumstances of the parents or person acting as a parent and the best interests of the child require that a custody decree be issued.

(8) 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.

(9) If a court determines by clear and convincing 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.