STATE OF NEW YORK

5394

2023-2024 Regular Sessions

IN ASSEMBLY

March 10, 2023

Introduced by M. of A. JOYNER -- read once and referred to the Committee on Judiciary

AN ACT to amend the family court act and the social services law, in relation to establishing procedures regarding orders of post-termination visitation and/or contact between a child and such child's parent

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

Section 1. Section 634 of the family court act, as amended by chapter 666 of the laws of 1976, is amended to read as follows:

§ 634. Commitment of guardianship and custody; further orders. The court may enter an order under section six hundred thirty-one **of this part** committing the guardianship and custody of the child to the petitioner on such conditions, if any, as it deems proper**, including but not limited to, an order of post-termination visitation and/or contact pursuant to section three hundred eighty-four-b of the social services law**.

§ 2. Section 384-b of the social services law is amended by adding five new subdivisions 14, 15, 16, 17 and 18 to read as follows:

14. (a) Upon application by any party to a proceeding under this section, (i) the court shall order post-termination visitation and/or contact between the child and such child's parent who is a party to such proceeding on such terms and conditions as may be agreed upon by the parent, the child, and the foster parent or authorized agency prior to the entry of an order committing the guardianship and custody of the child; or (ii) if any party does not consent, the court may order post-termination visitation and/or contact between the child and the child's parent after a hearing at which the court has determined that (A) the party's consent is being unreasonably withheld; and (B) post-termination visitation and/or contact would be in the best interest of the child.

(b) The hearing to determine whether the court should enter an order of post-termination visitation and/or contact shall be held either (i)

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

LBD04475-01-3

concurrently with a dispositional hearing held in the proceedings to terminate the parent's rights pursuant to this section; or (ii) if no dispositional hearing is held, subsequent to the close of the fact-finding hearing on the underlying petition to terminate the parent's rights and prior to the court's entry of an order committing the guardianship and custody of the child. The court shall not hold such a hearing at any other time.

(c) Parents and children who are parties to a termination proceeding under article six of the family court act or this section, as well as such child's foster parents, or, in the case of a child who is not in the care of a foster parent, the authorized agency, shall have notice of and standing to participate in the best interest post-termination visitation and/or contact hearing.

(d) The applicant shall have the burden of proof that (i) the opposing party's consent has been unreasonably withheld; and (ii) post-termination visitation and/or contact is in the child's best interest.

(e) If the application for post-termination contact is denied after this hearing, the applicant shall not have standing to bring the same application in any other proceeding regarding the same child. However, if the court grants any visitation and/or contact, an application to modify the order, upon a showing of substantial change in circumstances, may still be brought, pursuant to subdivision fifteen of this section.

(f) The court shall have discretion, depending on the best interests of the child, to determine the nature of any post-termination visitation and/or contact.

(g) Notwithstanding the provisions of paragraph (a) of this subdivision, in no event shall an order of post-termination visitation and/or contact be entered where a court has entered a finding pursuant to paragraph (a) or (b) of subdivision eight of this section that a parent severely or repeatedly abused the child, except where a court has determined that the parent seeking post-termination visitation and/or contact was not the perpetrator of such severe or repeated abuse of such child.

(h) If the child is over fourteen years of age, the consent of such child to post-termination visitation and/or contact is required.

(i) The court in its order shall indicate such person or persons who were given notice of the proceeding and whether such person or persons appeared.

15. All parties to a post-termination visitation and/or contact order entered pursuant to subdivision fourteen of this section, as well as any person who subsequently becomes the child's legal guardian, custodian or adoptive parent, may move the court to enforce or modify such order. Upon motion for modification by any such party, (i) the court shall enter an order modifying such post-termination visitation and/or contact order on such terms and conditions as may be agreed upon by the parties, or, (ii) if any party does not consent, the court may enter an order modifying such post-termination visitation and/or contact order, after a hearing at which the court has determined that (A) the party's consent is being unreasonably withheld; and (B) the modification would be based on a showing of a substantial change in circumstances and the best interests of the child.

16. Nothing in subdivision fourteen or fifteen of this section shall be construed to limit the rights of half-siblings or siblings to seek contact pursuant to subdivision nine of this section or section seventy-one of the domestic relations law following a termination of parental rights or adoption.

17. The failure of an authorized agency or a child's foster parent or any other person who subsequently becomes the child's legal guardian, custodian or adoptive parent to comply with the terms of the order of post-termination visitation and/or contact shall not constitute a basis for invalidating either the order committing the guardianship and custody of the child to the petitioner or any subsequent order of adoption regarding such child.

18. Unless a stay of adoption proceedings is granted by a judge of the family court or appellate court, an appeal from any order regarding the application for post-termination visitation and/or contact shall not provide a basis for delaying the finalization of a child's adoption.

§ 3. This act shall take effect on the one hundred eightieth day after it shall have become a law.