

Memorandum in Support

FAMILY LAW SECTION

FLS #1

June 6, 2011

A. 700-A

By: M. of A. Paulin
Assembly Committee: Judiciary
Effective Date: Immediately

AN ACT to amend the domestic relations law, in relation to determining parentage of a child for purposes of applying to the supreme court or family court for writ of habeas corpus.

LAW AND SECTIONS REFERRED TO: Section 70 of the domestic relations law.

THE FAMILY LAW SECTION SUPPORTS THIS LEGISLATION

This bill would amend Section 70 of the Domestic Relations Law by expanding the definition of “parent” with respect to the right of such parent to bring a habeas corpus proceeding for the purpose of a child custody determination. Under the bill, the term “parent” is expanded to include one who, before or after the birth, mutually consents in writing with a woman to be a parent of her child using donor sperm. No writing is necessary if the individual resided in the same household with such woman and the child, and openly held out the child as their own. A sperm donor (other than the spouse or domestic partner of the recipient) is not deemed a parent unless the donor and recipient agree in writing that the donor shall be a parent.

In addition, the definition of “parent” under the bill includes a person who demonstrates by clear and convincing evidence that (i) the parent consented to a parent-child relationship with the child, with such consent expressed in written form (e.g., birth certificate, signed letter agreement, executed contract, birth announcement, religious ceremony document, or school or medical record); (ii) the person lived with the child and established a bonded, dependent relationship; (iii) the person performed parental functions to a significant degree; (iv) the person formed a parent-child bond with the child. Grandparents, a person whose relationship with the child is based on payments, and a person who has never been in a committed relationship with the parent of the child are excluded from the definition of “parent” under the bill.

The Family Law section supports this bill to amend section 70 of the Domestic Relations Law. The legislation is clearly aimed to give standing to an individual to petition the court for a writ of habeas corpus in order to try to continue an established parent-child relationship when such relationship is in the best interest of the child. The reality of our world as it exists today has demonstrated that there are many individuals

who, although not legally defined as a “parent,” have fostered a parent-child relationship whose bonds and continued relationship are in the child’s best interest. The concept of the traditional family, exemplified by a marital union between opposite-sex individuals and children born into the marriage, is rapidly shifting. Co-extensive with the rise of divorce and the growing acceptance of non-traditional patterns of coupling is the increase of the non-marital family. It is only appropriate that the Domestic Relations Law adapt itself to consider these societal changes and give those individuals who are currently excluded from the legal definition of “parent” the opportunity to prove to the Court their relationship with the child and that said relationship is in the child’s best interests.

There is no danger of overreaching with the proposed legislation inasmuch as the legislation simply opens the courthouse doors to those individuals who were previously shut out. The rights of the child remain protected to the extent that the Court still remains the ultimate arbiter of the nature of the relationship with the child and whether a continued relationship with the petitioner is in the best interests of the child.

Based on the foregoing, the Family Law Section of the New York State Bar Association **SUPPORTS** this legislation.

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Chair of the Section: Bruce J. Wagner, Esq.