

Memorandum in Opposition

FAMILY LAW SECTION

FLS # 4

June 18, 2013

A. 7189-A
S. 2094-A

By: M. of A. Rozic
By: Senator Golden
Assembly Committee: Judiciary
Senate Committee: Children and Families
Effective Date: Immediately

AN ACT to amend Domestic Relations Law, in relation to the standing of certain relatives in custody and guardianship proceedings

SECTION OF LAW REFERRED TO: DRL §72

THE FAMILY LAW SECTION OPPOSES THIS BILL

The Memorandum in Support of this bill states: “This bill will help increase the options for placement in a manner that allows families to remain intact.”

It is the position of the Family Law Section that this bill is unnecessary in light of Bennett v. Jeffreys, 40 NY2d 543 (1976), would cause undue hardship to custodial parents, would undermine the stability of children and their parents and provides a possible mechanism for perpetrators of domestic violence and their family members to separate domestic violence victims from their children, despite the exception for cases of domestic violence.

Case law has established that a third party has standing to seek custody where there are extraordinary circumstances such that the parent has “surrendered, abandoned, or persistently neglected” the child. See Bennett v. Jeffreys, 40 NY2d 543 (1976). Thus, a non-parent may obtain custody where the Court finds that: 1) there are extraordinary circumstances present, and 2) it is in the ‘best interest of the child.’ Accordingly, the amendment to DRL §72 paragraph 2 as proposed by this bill is unnecessary.

Further, this legislation provides an opportunity for exploitation by perpetrators of domestic violence and their family members. Research shows that family members of batterers often assist the batterer in trying to take children away from the victim. Custody petitions filed by batterers and their relatives could become tools of abuse. These petitions have been found to be frivolous and disruptive. While the bill provides an exception for cases of domestic violence, an unfair burden is placed on the victim of

domestic violence to prove “by a preponderance of the evidence” that domestic violence contributed to the relinquishment of care and control.

This legislation would undermine the stability of children whose custodial parent becomes engaged in potentially endless litigation perpetrated by any number of family members “within the second degree of consanguinity.”

Finally, there may be a number of family members “within the second degree of consanguinity.” The legislation does not address which of these competing family members has priority. This legislation opens the door to endless frivolous litigation consuming judicial resources that are already heavily burdened.

Based on the foregoing, the Family Law Section **OPPOSES** this legislation.

Memorandum prepared by: Benjamin E. Schub, Esq., Susan L. Bender, Esq., Lisa Zeiderman, Esq. and Lauren Hunt, Esq.

Chair of the Section: Pamela M. Sloan, Esq.