

SUPPORT

S.2094-A (Golden) and A.7189-A (Rozić)

MFY Legal Services, Inc. supports S.2094-A and A.7189-A, which would expand the definition of “extraordinary circumstances” that confer standing in custody proceedings under Domestic Relations Law (“DRL”) § 72 to include all of all of a child’s relatives within two degrees of consanguinity of his or her parents.

MFY offers advice and representation to more than 8,500 New Yorkers each year. MFY’s Kinship Caregiver Law Project represents and counsels New Yorkers who serve as *de facto* parents for non-biological children on custody, guardianship, adoption, foster care issues and access to public assistance. Grandparents and relatives raising family, commonly called “kinship care,” is a system of largely informal care of children who are living with their caregivers due to parental abandonment, substance abuse, neglect, incarceration, death, mental illness and other unfortunate causes. Grandparents make up approximately half of the caregivers in New York City, with the percentage of non-grandparents increasing over the past decade.

Currently, DRL § 72 creates a presumption that grandparents who have been primary caregivers for grandchildren for two or more years when parents are voluntarily absent have a right to petition for custody. From there, a Family Court judge decides whether it is in the child’s best interest to grant the petition. This presumption rests on the definition of “extraordinary circumstances,” but it only applies to grandparents – not great-grandparents, aunts, uncles, older siblings, cousins or other relatives who have been in exactly the same position as long-term, primary caregivers of a child. Expanding the definition of extraordinary circumstances in DRL § 72 to include other close relative caregivers reflects the reality of tens of thousands of children who are cared for by family members outside of the foster care system. This change is especially important since relatives are not entitled to legal counsel in Family Court and find it hard to articulate this legal standard without the assistance of an attorney. The proposed amendment would also clarify that DRL § 72 applies to guardianship as well as custody proceedings, neither of which terminates parental rights but empowers primary caregivers to obtain many essential services for the child. Without this amendment, vulnerable children who need the stability conferred by Family Court orders of custody and guardianship will remain in legal limbo.

This legislation is supported by the kinship community and their advocates, as well as by child advocates. Moreover, the proposed amendment protects domestic violence survivors who have not abandoned their children but are separated from them due to abuse. By enacting this legislation, New York State can go a long way to ensuring a solid foundation for tens of thousands of children whose parents are unable to raise them.

For the reasons stated above, MFY Legal Services supports the passage of S.2094-A and A.7189-A.

Please call Sara Baez at 212-417-3792 or sbaez@mfy.org if you have any questions.