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REPORT ON LEGISLATION BY THE CHILDREN AND THE LAW COMMITTEE, FAMILY COURT AND FAMILY LAW COMMITTEE AND LESBIAN, GAY, BISEXUAL AND TRANSGENDER RIGHTS COMMITTEE

A.460 **M. of A. Paulin**
S.3999 **Sen. Hoylman**

AN ACT to amend the domestic relations law, in relation to adoption by a petitioner where such petitioner's parentage is legally-recognized

THIS BILL IS APPROVED

SUMMARY OF PROPOSED LEGISLATION

The proposed legislation would amend the Domestic Relations Law ("DRL") by adding language to Section 110 that clarifies that a petition to adopt a child filed by an individual who already is legally recognized in New York as the parent of the child "shall not be denied solely on the basis that the petitioner's parentage is already legally-recognized."

In practice, this amendment would clarify the law with respect to adoption petitions filed by parents who are already legally recognized as parents in New York but who nonetheless seek adoptions to give further security to their children, particularly for married same-sex spouses whose children were conceived using donor insemination. While most courts interpret the current law to permit adoption by already legally-established parents, one decision issued by a Kings County Surrogate's Court differed.

In Matter of Seb C-M, the court declined to entertain a married woman's uncontested petition to adopt the biological child of her female spouse based on the fact that the woman was already presumed to be the child's parent through the marital presumption of legitimacy.[1] The court noted that the non-biological mother had filed her petition for adoption "out of an abundance of caution, perhaps to ensure that, with the support of judicial imprimatur, her existing parental relationship with the infant [was] less susceptible to challenge in the event of the family's relocation to a jurisdiction less hospitable to the rights of same-sex couples to marry and adopt children." However, the court found that based on the fact that the petitioning mother was already legally recognized as the parent of the subject child through New York's marital

[1] Matter of Seb C-M, NYLJ 1202640083455 (N.Y. Surrogate's Ct., Kings County, Jan. 6, 2014).

presumption, "it [was] wholly unnecessary to affirm the existing parental relationship between [the mother] and her infant son."[2]

However, in 2016, the Family Court for Kings County wrote an expansive Decision, analyzing the reasons why second parent adoption is still warranted in light of the Marriage Equality Act and the United States Supreme Court's opinion in Obergefell v. Hodges, 135 S. Ct. 2584 (2015). Matter of L., A-11966/15 (Kings County Family Court, Oct. 6, 2016) (Ross, J.H.O.). Judicial Hearing Officer Ross succinctly explained the issue raised by these adoptions and his conclusion:

> These six private placement adoption proceedings raise the question of whether a person has standing to adopt a child in New York State who is already a legal parent of the child in New York State but whose legal parentage is not expressly recognized in all jurisdictions within the United States and abroad. In order to harmonize the non-uniform, unsettled state of family law regarding the definition of legal parentage in the United States and elsewhere with New York's emphatic legal mandate to promote the best interests of children, this Court answers in the affirmative.
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> Matter of L., at 1.

Judges in the Family Court for Queens County, meanwhile, in September through December of 2016 denied at least three second parent adoptions for reasons that mirror Matter of Seb C-M. The Family Court reasoned that because petitioner's marriage must be afforded respect in all states, and all of the attendant rights and responsibilities, including the presumption of legitimacy of a child born to a married couple, must also apply equally to same-sex or different sex couples. The court held, "It is clear [petitioner] is already a parent to [the adoptive child]. Because she is already a parent, adoption is not available to her. Petition denied." Matter of C., Docket No. A-227-16 (N.Y. Fam. Ct., Queens County) (Piccirillo, J.) (Dec. 7, 2016).[3] The Family Court similarly rejected Petitioner's motion for reargument, which extensively discussed the dimensions of the presumption of parentage based on the non-biological parent's marriage to the biological mother and the varying weight afforded that presumption in other states. The court reasoned that the "Court cannot take into consideration hypothetical situations regarding how other countries may recognize [Petitioner's] parentage or potential trips the family may take in the future. [Petitioner] is legally the parent of the [adoptive child] C in the State of New York and that is the extent of what this court can consider as it is the only petition before the Court. Matter of C., Docket No. A-227-16 (N.Y. Fam. Ct., Queens County) (Piccirillo, J.) (Feb. 23, 2017). Two other Queens Family Court judges have reached similar conclusions in analyzing second-parent adoption petitions for married same-sex couples.

Although it appears that, aside from a handful of judges in Kings and Queens Counties, other courts have not been following the reasoning of the Matter of Seb C-M and Matter of C.

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[2] Id.

[3] The Decisions in this case have not been made publicly available.

courts, the proposed amendment to the DRL would clarify the statute and ensure that no court could deny an adoption petition based solely on the reasoning that the person was already legally established as a parent.

ANALYSIS

The legal landscape for same-sex relationships and children of those relationships continues to evolve in New York and across the country. While the Supreme Court has ruled that the U.S. Constitution guarantees families of same-sex couples "equal dignity in the eyes of the law,"[4] such a decision does not remedy the situation created in New York in the wake of Matter of Seb C-M and Matter of C.

Passage of the proposed amendment would allow non-biological parents to pursue and obtain adoption decrees with respect to their subject children. While these petitioners are already parents through New York's marital presumption, as the Kings County Surrogate's Court and Queens County Family Court reasoned, unfortunately, the marital presumption alone may be insufficient to protect the parent-child relationship uniformly in jurisdictions outside the state of New York. There is no guarantee that other states or other countries would recognize the parent-child relationship based on New York's marital presumption alone.

CONCLUSION

The New York legislature should pass the proposed amendment to fully protect New York residents from suffering an outcome similar to the family in Matter of Seb C-M. The DRL does not preclude courts from allowing legally-established parents from filing adoption petitions for their children, and we believe that New York law already permits the types of adoptions the petitioner sought in Matter of Seb C-M and which are granted by many courts. Passage of the proposed legislation would make explicit that New York law permits these types of adoptions. Clarifying the law would remove any obstacles jurists may believe there are to granting these adoptions. Children and their non-biological parents should be assured of access to these adoptions in all New York adoption courts. Adoption decrees of children born to individuals in same-sex marriages only strengthen the legal protections for these parent-child relationships. Nor is any harm caused by allowing non-biological parents to pursue and obtain adoptions of children born to the marriage. In fact, allowing these adoptions promotes public policies that already exist relating to legitimacy of children and marriage equality.[5]

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[4] Obergefell v. Hodges, 135 S. Ct. 2584, 2608 (2015)

[5] See D.R.L. § 73; In re Estate of Fay, 44 NY2d 137, 142 (1978) ("the presumption that a child born to a marriage is the legitimate child of both parents is one of the strongest and persuasive known to law.") (quoting Matter of Findlay, 253 N.Y. 1, 7 (N.Y. 1930)). See also The New York Marriage Equality Act, D.R.L. § 10-a ("No government treatment or legal status, effect, right, benefit, privilege, protection or responsibility relating to marriage, whether deriving from statute, administrative or court rule, public policy, common law or any other source of law, shall differ based on the parties to the marriage being or having been of the same sex rather than a different sex.").