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Anderson, Bernie Assemblyman

From: Mike Rasmussen [MRasmussen@alversontaylor.com]
Sent: Friday, March 07, 2003 7:16 PM
To: WHorne@asm.state.nv.us; banderson@asm.state.nv.us; RSherer@asm.state.nv.us
Cc: Chris Escobar (E-mail); Lucille Lusk (E-mail); Myra Sheehan (E-mail)
Subject: FW: AB 28

Assemblymen Horne, Anderson & Sherer:

Although I do not think we need this legislation, I accept the amendments recommended in the draft offered by Myra Sheehan. However, if it is the subcommittees intention to act on this legislation, I request consideration of additional amendments which are listed here in concept.

Proposed Amendments

1. (Sec. 2) The enforceable post-adoptive contact agreement may be entered into where the child to be adopted is at least 1 year of age and there is a previously established relationship with a birth parent or parents.

2. (Sec. 2.2) Do not require that all agreements be incorporated into the adoption decree. It should remain a choice of the parties to incorporate.

3. Limit repeated frivolous or vexatious complaints by:

Limit to 3 the number of times a complaint can be brought.
or
Give the court power to award sanctions for frivolous complaints, equal to those that can be awarded against adoptive parents.
or
(Sec. 2.2.(c)) Do not award attorneys costs and fees.

4. Place this legislation in contract law (instead of adoption law), where enforcement would be handled as a contract dispute. Then no one could question the validity of the adoption.

Finally, it remains my suggestion that this legislation not be passed as there are alternative lawful measures that achieve the same goal, i.e., (1) individuals simply choosing to incorporate these agreements on their own as they are now allowed to do; or (2) entering the same contracts, post adoption finalization, agreeing to those same matters as in the pre-finalization agreement (then it becomes an enforceable at contract law).

My opinion, as a lawyer, is that the Supreme Court did not "mandate" a need for this legislation. One justice, in dissent, said it was necessary, four others stated that other actions taken (incorporation) would have changed the result we saw in "Birth Mother v. Adoptive Parents & New Hope". The majority of the Court, Nevada law, says all you need to do is incorporate it in the decree. New legislation is not the only answer.

I have attached the latest string of emails between myself and Ms. Sheehan below for your reference. I request that the written materials below be included in the record.

Also, it is a mere typographical error, but at Section 4, the last word of Ms. Sheehan's draft, it states "into the decree of divorce" - I'm sure she meant "into the decree of adoption".

ASSEMBLY JUDICIARY SUBCOMMITTEE
DATE: 3/12/03 EXHIBIT D
SUBMITTED BY: M. Rassmussen

I look forward to seeing you next week.

Mike Rasmussen

-----Original Message-----
From: Mike Rasmussen
Sent: Thursday, March 06, 2003 2:19 PM
To: 'Myra Sheehan'
Cc: Deborah Schumacher; W. Kathleen Baker; Keith M. Lyons; Ann Price-McCarthy; Todd L. Torvinen; Beverly J. Salhanick; Lucelle Lusk; Cynthia Lu; Ed Cotton; Mike Capello; Marie Burgess
Subject: RE: AB 28

Myra,

Another two thoughts . . . I am concerned that this legislation might implicate an affirmative duty upon a placing agency (either the State or private) to advise birth parent(s) of the availability of these contracts and that they should be incorporated into the decrees. I have had contact with Catholic Charities and LDS Family Services and they see it as real possibility. I'm not sure how the State feels about it.

I suggest adding a new section to the legislation simply stating: "This statute does not create an affirmative duty upon a placing agency to advise birth parent(s) of post adoption contact agreements or the incorporation of the same into adoption decrees."

As for Judge Schumacher's concern, I suggest the following as an alternative to moving the jurisdiction: an adoptive parent or a birth parent must be allowed to testify via affidavits or through a telephone conference if they are living outside of the county wherein the adoption was finalized.

Mike

-----Original Message-----
From: Myra Sheehan [mailto:msheehan@gbis.com]
Sent: Thursday, March 06, 2003 9:03 AM
To: Mike Rasmussen
Cc: Deborah Schumacher; W. Kathleen Baker; Keith M. Lyons; Ann Price-McCarthy; Todd L. Torvinen; Beverly J. Salhanick; Lucelle Lusk; Cynthia Lu; Ed Cotton; Mike Capello; Marie Burgess; Mike Rasmussen
Subject: Re: AB 28

Thank you Mike...

I believe some of your suggestions are very good. I will run your recommendations past the NTLA domestic committee. All the recommendation that we agree upon I will work them into the amendment to present to Assemblyman Horne....

Assemblyman Horne has asked that I get a draft to him by Friday (probably won't be until Saturday)....anything that was recommended and does not make the final cut on what I send I will make sure that I note that so the

Assemblyman has all the recommendations not just the ones we were able
to
come to a consensus on.

Judge Schumacher has raised the issue that our language concerning
jurisdiction is questionable. Can a party agree to the jurisdiction of
a
yet unknow state for the purpose of enforcement if the party (birth
parent)
has no connections with that state. I haven't had time to do much
research
on that and would be happy to hear others thoughts on that provision.

Thank you again for your time.

----- Original Message -----
From: "Mike Rasmussen" <MRasmussen@alversontaylor.com>
To: <msheehan@gbis.com>
Cc: "Lucelle Lusk" <LKLusk@earthlink.net>; "Cynthia Lu"
<clu@mail.co.washoe.nv.us>; "Ed Cotton" <ecotton@dcfs.state.nv.us>;
"Mike
Capello" <mcapello@mail.co.washoe.nv.us>; "Marie Burgess"
<mburgess@mail.co.washoe.nv.us>; "Deborah Schumacher"
<dschumac@mail.co.washoe.nv.us>; "W. Kathleen Baker" <wkbreno@gbis.com>;
"Keith M. Lyons" <Klyonslaw@lvcm.com>; "Ann Price-McCarthy"
<APMLTD@aol.com>; "Todd L. Torvinen" <TTORV@aol.com>; "Beverly J.
Salhanick"
<bsalhani@ix.netcom.com>; "Chris Escobar (E-mail)"
<cescobar@picomitchell.com>
Sent: Tuesday, March 04, 2003 7:54 PM
Subject: AB 28

> Myra:
> I drafted the suggestions below prior to reviewing your proposed
revisions
to AB 28. Some of my concerns are adequately addressed by you (and I've
tried to indicate such below), but there remain other significant areas
of
concern.
> First, I think it is a fallacious representation to assert in
testimony or
otherwise that the Supreme Court mandates this legislation. One Justice
(Maupin as I recall), in dissent, suggested that the legislature must
settle
this matter while the other Justices simply agreed that the Legislature
could mandate otherwise. The majority of the Court, however, stated
that if
people want there agreements enforced they should incorporate the same
into
the adoption decree. The Court left it up to the parties to incorporate
and
the Justices clearly indicated how they would have voted had the
agreement
been incorporated. The answer to the problem is incorporation into the
decree, not a new statute.
> Second, all the non-adoptive parent proponents of this legislation are
failing to take into consideration the position of the adoptive family
when
they are offered a child. Adoptive parents do not want to say no to
children, but do yearn to take them in and nurture them in loving homes.
To
say no to a contract proposed by a birthparent, is saying no to a child.
One is way off base if they think such contracts are wholly voluntary.
Nevertheless, if an adoptive parent agrees to a contract they should
abide
by its terms. But this must be weighed against the adoptive parents'

rights, i.e., the right to determine what is in the best interests of
"their" child. It is unnatural to make a parent seek leave of court to
do
what the parent (adoptive or not) believes is in the best interests of
their
child.
> Third, this legislation assumes an "open" adoption. It is not the
legislatures place or purpose to declare that "open" adoption is better
than
"closed" adoption or vice versa. As such, parties who are willing to
enter
closed or "semi" open adoptions should not be required, if they chose,
to
incorporate these agreements into their decrees.
> Finally, it is not wise to leave penalties/remedies up to the courts.
I
think we must have some defined limitations on what a court may impose.
> Proposed Amendments to AB 28 re: post-adoptive contact agreements.
> These amendments are in concept - not necessarily the language of
choice.
> 1. (Sec. 2.1) The enforceable post-adoptive contact agreement may be
entered into where the prospective adoptive parent chooses open
adoption,
and where the child to be adopted is at least one (1) year of age and
there
is a previously established relationship with a birth parent or parents.
Such language would make it so infant adoptions are not affected by this
legislation. The interest of an infant is different from that of a child
who
has bonded with the birth parent.
> 2. (Sec. 2.2) We should not require all agreements to be incorporated
into the degree, but it should remain a choice of the parties to
incorporate. Requiring incorporation may reduce the pool of parents
willing
to adopt and thereby impede the number of overall adoptions.
> 3. (Sec. 2.2(c)) Everybody should pay their own way. This alone will
alleviate frivolous actions.
> 4. (Sec. 2.2.(d)) Specify that the agreement terminates on the date
agreed
to in the agreement, but in any event no later than age 18 or the
child's
emancipation. I agree with your change in this regard.
> 5. (Sec. 2.4) Delete the rebuttable presumption that the agreement is
in
the best interests of the child. I agree with your change.
> 6. (Sec. 2.5) Failure to comply may not be used as grounds to:
> (in addition to subparts a & b)
> c. Require adoptive parent(s) to remain living in the proximity of the
birth parent(s).
> d. Require adoptive parent(s) to pay costs for birth parent(s) to
access
any privileges in the agreement (such as travel or lodging costs). I
agree
in part with your jurisdiction change.
> 7. (Sec. 3) Only the adoptive parent(s) may seek modification of the
agreement. The agreement shall be modified if:
> a. The adoptive parent or parents demonstrate that the agreement is
not in
the best interests of the child; or
> b. Each party to the agreement consents. I agree with your change
here.
> 8. (Sec. 3.1) The test for changing the agreement should be a "best
interests" analysis alone. The additional requirement of showing a
change
in circumstances should be deleted.
> 9. Remove this legislation from adoption law and place it in contract
law

where enforcement would be handled as a contract dispute. As such, no one
could ever question the validity of the adoption.
> 10. (Your new Section 2.4) Specify and limit the consequences for failure
to comply.
> a. This should take the form of a prospective order to comply, i.e., no
make up visits, just an order to comply going forward. I cannot see how requiring make up visits will benefit the child and I can foresee significant problems. For example, it would be quite disruptive if several
contacts have passed, and the adoptive parents had a good faith basis for
not complying, the suit is filed, a hearing set and during the action even
more contacts have passed. Making up six months worth of one per month visits would reek havoc on a child's schedule.
> b. Get rid of costs & fees as noted above.
> c. Insert a limited fine. I might suggest, $50 per occurrence, up to $1000 max. The problem will be those who will just pay the $1000 to buy their way out of the agreement, but we need specifics.
> 10. Insert a six month time limit from an alleged breach of the agreement
to bring an action before the court. Also, a birth parent only could bring
up to three actions during the course of an agreement.
> I look forward to working with you on this matter. I would also appreciate your continued cc's on emails regarding this matter. It would be
nice to all be in agreement by the 12th.
>
> Regards,
>
> C. Michael Rasmussen
> Alverson Taylor Mortensen Nelson & Sanders
> 7401 W. Charleston Blvd.
> Las Vegas, NV 89117
> Tel. 702.384.7000
> Fax 702.385.7000
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