

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 295

Short Title: Relief From Incorrect Paternity Determination. (Public)

Sponsors: Representatives Cleveland, Moore (Primary Sponsors); Current, Hurley, Lucas, Mackey, McGee, Randleman, and Stevens.

Referred to: Judiciary II, if favorable, Appropriations.

February 26, 2009

A BILL TO BE ENTITLED

AN ACT TO ALLOW RELIEF FROM A CHILD SUPPORT ORDER WHEN THE OBLIGOR IS NOT THE CHILD'S FATHER.

The General Assembly of North Carolina enacts:

SECTION 1. Article 1 of Chapter 50 of the General Statutes is amended by adding the following new section to read:

"§ 50-13.13. Motion for relief from child support order based on finding of nonpaternity.

(a) Notwithstanding G.S. 1A-1, Rule 60 of the North Carolina Rules of Civil Procedure, or any other provision of law, an individual who, as the father of a child, is required to pay child support under an order that was entered by a North Carolina court pursuant to Chapter 49, 50, 52C, or 110 of the General Statutes and that is subject to modification by a North Carolina court under applicable law may file a motion seeking relief from a child support order as provided in this section.

(b) A motion for relief under this section shall be filed as a motion in the cause in the pending child support action. The motion shall be verified by the moving party, state with particularity the basis on which the moving party believes that he is not the child's father, and state that the moving party either: (i) has not acknowledged paternity of the child; or (ii) acknowledged paternity without knowing that he was not the child's biological father.

(c) The court shall appoint a guardian ad litem to represent the interest of the child in connection with a proceeding under this section.

(d) Notwithstanding G.S. 8-50.1(b1), the court shall, upon motion of a party in a proceeding under this section, order the moving party, the child's mother, and the child to submit to genetic paternity testing if the court finds that there is good cause to believe that the moving party is not the child's father and that the moving party may be entitled to relief under this section. If genetic paternity testing is ordered, the provisions of G.S. 8-50.1(b1) shall govern the admissibility and weight of the genetic test results and the payment of and taxing of the costs of genetic testing. If a party fails to comply with an order for genetic testing without good cause, the court may hold the party in civil or criminal contempt or impose appropriate sanctions under G.S. 1A-1, Rule 37 of the North Carolina Rules of Civil Procedure, or both.

(e) The moving party's child support obligation shall not be suspended while the motion is pending before the court.

(f) The court may grant relief from a child support order under this section if the moving party proves by clear and convincing evidence, and the court, sitting without a jury, finds that:

(1) The results of a valid genetic test establish that the moving party is not the child's biological father.



- 1 (2) The moving party either: (i) has not acknowledged paternity of the child; or
2 (ii) acknowledged paternity without knowing that he was not the child's
3 biological father. For purposes of this section, acknowledging paternity
4 means that the moving party has done any of the following:
- 5 a. Publicly acknowledged the child as his own and supported the child
6 while married to the child's mother.
- 7 b. Acknowledged paternity in a sworn written statement, including an
8 affidavit of parentage executed under G.S. 110-132(a) or
9 G.S. 130A-101(f).
- 10 c. Executed a consent order, a voluntary support agreement under
11 G.S. 110-132 or G.S. 110-133, or any other legal agreement to pay
12 child support as the child's father.
- 13 d. Admitted paternity in open court or in any pleading.
- 14 (3) The moving party has not adopted the child, has not legitimated the child
15 pursuant to G.S. 49-10, 49-12, or 49-12.1, or is not the child's legal father
16 pursuant to G.S. 49A-1.
- 17 (4) The moving party did not act to prevent the child's biological father from
18 asserting his paternal rights regarding the child.
- 19 (g) If the court determines that the moving party has not satisfied the requirements of
20 this section, the court shall deny the motion, and all orders regarding the child's paternity,
21 support, or custody shall remain enforceable and in effect until modified as otherwise provided
22 by law. If the court finds that the moving party did not act in good faith in filing a motion
23 pursuant to this section, the court shall award reasonable attorneys' fees to the prevailing party.
24 The court shall make findings of fact and conclusions of law to support its award of attorneys'
25 fees under this subsection.
- 26 (h) If the court determines that the moving party has satisfied the requirements of this
27 section, the court shall either:
- 28 (1) Dismiss the action to overcome paternity and affirm the original paternity
29 adjudication if the court, upon making appropriate findings of fact and
30 conclusions of law, determines that such action is in the best interest of the
31 child.
- 32 (2) Enter an order, including written findings of fact and conclusions of law,
33 terminating the moving party's child support obligation regarding the child.
34 Any unpaid support due prior to the date the order determining that the
35 moving party is not the biological father is filed, is due and owing. The
36 moving party has no right to reimbursement of past child support paid on
37 behalf of the child to the State or any other assignee of child support. If the
38 child was born in North Carolina and the moving party is named as the
39 father on the child's birth certificate, the court shall order the clerk of
40 superior court to notify the State Registrar of the court's order pursuant to
41 G.S. 130A-118(b)(2). If relief is granted under this subdivision, a party may,
42 to the extent otherwise provided by law, apply for modification of or relief
43 from any judgment or order involving the moving party's paternity of the
44 child."

45 **SECTION 2.** This act becomes effective January 1, 2010, and applies to motions
46 for relief filed on or after that date.