STATE OF OKLAHOMA

2nd Session of the 44th Legislature (1994)

HOUSE BILL NO. 2646 By: Henshaw

AS INTRODUCED

An Act relating to divorce; amending 10 O.S. 1991, Sections 2 and 3, which relate to certain children born after dissolution of marriage; creating certain presumptions for children born to a marriage; authorizing certain paternity proceedings and determinations; limiting time period for certain actions; amending 43 O.S. 1991, Sections 123 and 126, which relate to limitations of remarriage; providing for certain exemptions to prohibition against remarriage within certain time period; defining term; amending 10 O.S. 1991, Sections 508, 501, 502, 503, 504, 505 and 506, which relate to Uniform Act on Blood Tests to Determine Paternity; changing name to Genetic Testing to Determine Paternity Act; authorizing additional testing; clarifying language; amending 10 O.S. 1991, Section 77.1, which relates to paternity; conforming language; repealing 10 O.S. 1991, Section 507, which relates to uniform laws; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 10 O.S. 1991, Section 2, is amended to read as follows:

Section 2. ~~All~~ A. Except as otherwise provided by subsection B of this section, all children of a woman who has been married, born within ten (10) months after the dissolution of the marriage are presumed to be legitimate children of that marriage. A child born before wedlock becomes legitimate by the ~~subsequent~~ marriage of its ~~parent~~ parents.

B. Any child born of a woman within the ten-month period specified in subsection A of this section during a subsequent marriage to another person shall be presumed to be the legitimate child of that subsequent marriage provided the provision of this subsection shall not prohibit or restrict the initiation of paternity proceedings by the former spouse and a determination of paternity of the child if such proceedings are initiated by such former spouse within two (2) years of the dissolution of the previous marriage.

SECTION 2. AMENDATORY 10 O.S. 1991, Section 3, is amended to read as follows:

Section 3. The presumption of legitimacy can be disputed only by the husband or wife ~~or~~, the descendant or relatives of one or both of them, custodians or guardians of the child, or by any person alleging to be the father of the child. The court shall determine paternity of the child pursuant to genetic testing to determine paternity. Illegitimacy in such a case may be proved like any other fact. Provided that if the child is born during the course of the marriage and is reared by the husband and wife as a member of their family without disputing the child's legitimacy for a period of at least two (2) years, the presumption cannot be disputed by anyone.

SECTION 3. AMENDATORY 43 O.S. 1991, Section 123, is amended to read as follows:

Section 123. ~~It~~ A. Except as otherwise provided in subsection B of this section, it shall be unlawful for either party to an action for divorce whose former husband or wife is living to marry in this state a person other than the divorced spouse within six (6) months from date of decree of divorce granted in this state, or to cohabit with such other person in this state during said period if the marriage took place in another state; and if an appeal be commenced from said decree, it shall be unlawful for either party to such cause to marry any other person and cohabit with such person in this state until the expiration of thirty (30) days from the date on which final judgment shall be rendered pursuant to such appeal. Any person violating the provisions of this section by such marriage shall be deemed guilty of bigamy. Any person violating the provisions of this section by such cohabitation shall be deemed guilty of adultery.

An appeal from a judgment granting or denying a divorce shall be made in the same manner as in any other civil case.

B. The provisions of subsection A shall not apply to any person who has been separated and has not cohabited with his spouse for at least one (1) year prior to the date of the decree of divorce in this state provided the decree of divorce contains a finding of fact as to such separation and as to the absence of cohabitation of such person with such spouse as determined by the court upon evidence submitted by the spouse requesting such finding. As used in this subsection the term "cohabited" means the dwelling together continuously and habitually of such person with his spouse in a private conjugal relationship.

SECTION 4. AMENDATORY 43 O.S. 1991, Section 126, is amended to read as follows:

Section 126. ~~A~~ Except as otherwise provided by Section 123 of this title, a marriage wherein one of the parties had not been

divorced for six (6) months shall hereafter in this state be ground for annullment of marriage by either party.

SECTION 5. AMENDATORY 10 O.S. 1991, Section 508, is amended to read as follows:

Section 508. ~~This~~ Sections 6 through 11 of this act may be cited as the ~~Uniform Act on Blood Tests~~ Genetic Testing to Determine Paternity Act.

SECTION 6. AMENDATORY 10 O.S. 1991, Section 501, is amended to read as follows:

Section 501. In a civil action in which paternity is a relevant fact, the court, upon its own initiative or upon suggestion made by or on behalf of any person whose blood ~~is~~ or other genetic markers are involved may, or upon motion of any party to the action shall, order the mother, child and putative father to submit to ~~blood tests~~ genetic testing. If any party refuses to submit to such tests, the court may resolve the question of paternity against such party or enforce its order if the rights of others and the interests of justice so require unless such individual is found to have good cause for refusing to cooperate.

SECTION 7. AMENDATORY 10 O.S. 1991, Section 502, is amended to read as follows:

Section 502. The tests shall be made by experts qualified as examiners of genetic markers ~~present on blood cells and blood components~~ in the human body. The experts shall be called by the court or by a party as witnesses to testify as to their findings and shall be subject to cross-examination by the parties. Any party may request that other experts qualified as examiners of genetic markers ~~present on blood cells and blood components~~ in the human body perform independent tests subject to order of court, the results of which may be offered in evidence. The number and qualifications of said experts shall be determined by the court.

SECTION 8. AMENDATORY 10 O.S. 1991, Section 503, is amended to read as follows:

Section 503. The compensation of each expert witness appointed by the court or called by a party and costs of tests required pursuant to the provisions of Section ~~501~~ 6 of this ~~title~~ act shall be fixed at reasonable amounts by the court. Said compensation and costs shall be paid as the court shall order. The court may order that said compensation and costs be paid by the parties in such proportions and at such times as it shall prescribe, or that the proportion of payment of said compensation and costs of any indigent party be paid by the county or by any other appropriate public or charitable agency. The court may order that, after payment by the parties, or the county or other appropriate agency, or both, said compensation and costs may be taxed as costs in the action.

SECTION 9. AMENDATORY 10 O.S. 1991, Section 504, is amended to read as follows:

Section 504. A. Evidence which shows a statistical probability of paternity is admissible and shall be weighed in addition to other evidence of the paternity of the child. Evidence which shows a statistical probability of paternity may include but is not limited to:

1. Blood test results provided for in the ~~Uniform Act on Blood Tests~~ Genetic Testing to Determine Paternity Act; and

2. Medical, scientific, or genetic evidence relating to the paternity of the child based on tests performed by said experts.

B. If the court finds that the evidence based upon the medical, scientific, and genetic tests, shows that the defendant is not the parent of the child, said evidence shall be conclusive proof of nonpaternity and the court shall dismiss the action.

C. Evidence of statistical probability of paternity established at ninety-five percent (95%) or more creates a presumption of

paternity. Said presumption is rebuttable by clear and convincing evidence admitted on behalf of the defendant.

SECTION 10. AMENDATORY 10 O.S. 1991, Section 505, is amended to read as follows:

Section 505. ~~The~~ Except as otherwise provided by law, presumption of legitimacy of a child born during wedlock is overcome if the court finds that the conclusions of all the experts, as disclosed by the evidence based upon the tests, show that the husband is not the father of the child.

SECTION 11. AMENDATORY 10 O.S. 1991, Section 506, is amended to read as follows:

Section 506. ~~This act~~ The Genetic Testing to Determine Paternity Act shall also apply to criminal cases, subject to the following limitations and provisions:

~~(a)~~ 1. An order for the tests shall be made on the application of a defendant or the state;

~~(b)~~ 2. The compensation of the experts appointed by the court shall be paid by the county under order of court;

~~(c)~~ 3. The court may direct a verdict of acquittal upon the conclusions of all the experts under the provisions of Section ~~504~~ 9 of this ~~title~~ act, but otherwise the case shall be submitted for determination upon all the evidence.

SECTION 12. AMENDATORY 10 O.S. 1991, Section 77.1, is amended to read as follows:

Section 77.1 When the paternity petition is filed, the court shall order the defendant to appear and show cause why the court should not determine him to be the father. If the defendant fails to appear, the court shall upon the findings of the judge enter an order determining paternity. If the defendant appears and does not admit paternity, then the court shall enter at that time an order directing ~~blood tests~~ genetic testing to determine paternity.

SECTION 13. REPEALER 10 O.S. 1991, Section 507, is hereby repealed.

SECTION 14. This act shall become effective September 1, 1994.

44-2-7410 KSM