

ENGROSSED SENATE
BILL NO. 122

By: Smith of the Senate

and

Steidley of the House

An Act relating to family support; amending 10 O.S. 1991, Section 89, as amended by Section 5, Chapter 356, O.S.L. 1994 (10 O.S. Supp. 1994, Section 89), which relates to paternity actions; clarifying which law governs determination of jurisdiction of certain actions; amending 43 O.S. 1991, Sections 110, as amended by Section 1, Chapter 252, O.S.L. 1992 and 48, Chapter 160, O.S.L. 1994 (43 O.S. Supp. 1994, Sections 110 and 601-701), which relate to orders concerning property, children, support and expenses and proceedings to determine parentage; increasing types of actions in which parties may request the court to issue a temporary order; clarifying which law governs certain actions; and declaring an emergency.

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

SECTION 1. AMENDATORY 10 O.S. 1991, Section 89, as amended by Section 5, Chapter 356, O.S.L. 1994 (10 O.S. Supp. 1994, Section 89), is amended to read as follows:

Section 89. A. The mother, putative father, guardian or custodian of the child, the Department of Human Services, a public

or private agency or authority chargeable with the support of the child, or the child may bring an action in a civil proceeding in district court or by an administrative action through the Department of Human Services, to determine paternity and the amount of child support due and owing for the maintenance of the child.

B. Venue of an action to determine the paternity of a child pursuant to this section shall be, at the option of the plaintiff, in either the county where the putative father, mother, or child resides. If the mother or child or both the mother and child reside out-of-state, venue of an action to determine the paternity of a child pursuant to this section, at the option of the plaintiff, may be in the county where the putative father resides.

C. A court may exercise personal jurisdiction over a person, whether or not a resident of this state, who is the subject of a paternity action. When ~~the~~ a person who is subject to the jurisdiction of the court is outside the state, ~~he~~ the person may be served outside of the state by any method that is authorized by the statutes of this state. In an action brought in this state to determine paternity and which also seeks a support order, jurisdiction shall be determined pursuant to the Uniform Interstate Family Support Act, Section 601-101 et seq. of Title 43 of the Oklahoma Statutes.

D. The petition shall be verified as true by the affidavit of the plaintiff. A summons may be issued thereon and shall be served or publication made as in other civil cases.

E. The practice, pleading, and proceedings in such action shall conform to the rules prescribed by the code of civil procedure as far as the same may be applicable.

F. If the defendant fails to answer the petition of the plaintiff or appear for show cause hearing, then the court shall proceed to determine issues of paternity, support, custody and

visitation in the same manner as provided for in actions for divorce.

G. Attorneys for the Department of Human Services may appear or initiate an action brought under this section on behalf of:

1. A recipient of Aid to Families with Dependent Children; or

2. A person not receiving Aid to Families with Dependent Children, including but not limited to the putative father, upon the request of such person and proper application pursuant to rules and regulations adopted by the Department. A reasonable fee and costs may be assessed for the services by the Department.

H. In a proceeding brought under subsection G of this section by the Department of Human Services, the court may, and unless it is not in the best interests of the child, shall, limit the issues in that proceeding to issues of paternity and support, unless issues of custody and visitation are specifically and affirmatively pled by the father.

SECTION 2. AMENDATORY Section 48, Chapter 160, O.S.L. 1994 (43 O.S. Supp. 1994, Section 601-701), is amended to read as follows:

Section 601-701. A. A tribunal of this state may serve as an initiating or responding tribunal in a proceeding brought under ~~this act or a law substantially similar to this act~~ the Uniform Interstate Family Support Act, the Uniform Reciprocal Enforcement of Support Act, ~~or~~ the Revised Uniform Reciprocal Enforcement of Support Act, or a substantially similar law to determine that the petitioner is a parent of a particular child or to determine that a respondent is a parent of that child.

B. In a proceeding to determine parentage, a responding tribunal of this state shall apply the ~~Uniform Parentage Act~~; procedural and substantive law of this state, and the rules of this state on choice of law.

SECTION 3. AMENDATORY 43 O.S. 1991, Section 110, as amended by Section 1, Chapter 252, O.S.L. 1992 (43 O.S. Supp. 1994, Section 110), is amended to read as follows:

Section 110. A. After a petition has been filed in an action for divorce, paternity, grandparental visitation or separate maintenance either party may request the court to issue:

1. A temporary order:

- a. regarding child custody, support, or visitation including grandparental visitation,
- b. regarding spousal maintenance,
- c. regarding payment of debt,
- d. regarding possession of property,
- e. regarding attorney fees,
- f. restraining any person from transferring, encumbering, concealing, or otherwise disposing of any property except in the usual course of business or for the necessities of life, and, if so restrained, requiring such person to notify the other party reasonably in advance of any proposed extraordinary expenditures made after the order is issued,
- g. enjoining a party from molesting or disturbing the peace of the other party or of any child,
- h. excluding a party from the family home or from the home of the other party,
- i. enjoining a party from removing a child from the jurisdiction of the court, ~~and~~
- j. providing other injunctive relief proper in the circumstances, and
- k. regarding a determination of paternity.

All applications for temporary orders shall set forth the factual basis for the application and shall be verified by the party seeking relief. The application and a notice of hearing shall be

served on the other party in any manner provided for in the Rules of Civil Procedure.

The court shall not issue a temporary order until at least five (5) days' notice of hearing is given to the other party.

After notice and hearing, a court may issue a temporary order granting the relief as provided by this paragraph; ~~and/or~~

2. A temporary restraining order. If the court finds on the basis of a verified application and testimony of witnesses that irreparable harm will result to the moving party, or a child of a party if no order is issued before the adverse party or attorney for the adverse party can be heard in opposition, the court may issue a temporary restraining order which shall become immediately effective and enforceable without requiring notice and opportunity to be heard to the other party. If a temporary restraining order is issued pursuant to this paragraph, the motion for a temporary order shall be set within ten (10) days.

B. Temporary orders may be vacated or modified before final decree on a showing by either party of facts necessary for vacation or modification. Temporary orders terminate when the final judgment on all issues, except attorney fees and costs, is rendered or when the action is dismissed. The court may reserve jurisdiction to rule on an application for a contempt citation for a violation of a temporary order which is filed any time prior to the time the temporary order terminates.

C. Upon granting a decree of divorce or separate maintenance, the court may require either party to pay such reasonable expenses of the other as may be just and proper under the circumstances.

D. The court may in its discretion make additional orders relative to the expenses of any such subsequent actions, including but not limited to writs of habeas corpus, brought by the parties or their attorneys, for the enforcement or modification of any

interlocutory or final orders in the divorce action made for the benefit of either party or their respective attorneys.

SECTION 4. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the Senate the 27th day of February, 1995.

President of the Senate

Passed the House of Representatives the ____ day of _____, 1995.

Speaker of the House of Representatives