

STATE OF OKLAHOMA

1st Session of the 48th Legislature (2001)

HOUSE BILL HB1077

By: Fields

AS INTRODUCED

An Act relating to paternity and child support; amending 10 O.S. 1991, Section 3, as amended by Section 2, Chapter 356 O.S.L. 1994 (10 O.S. Supp. 2000, Section 3), which relates to presumption of paternity; authorizing certain presumptions to be disputed; limiting who may dispute; specifying conditions; providing certain relief from certain arrearage for child support for certain parties; providing for effect of certain orders; providing for certain evidence; providing who may bring actions; providing for relief from certain orders relating to child support and paternity; providing for filing and transfers; specifying conditions; requiring certain tests; providing for failure to test; providing for certain fees; requiring certain orders; providing for payment of certain costs; providing for visitation; providing for effect of certain orders; providing for codification; and providing an effective date.

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

SECTION 1. AMENDATORY 10 O.S. 1991, Section 3, as amended by Section 2, Chapter 356, O.S.L. 1994 (10 O.S. Supp. 2000, Section 3), is amended to read as follows:

Section 3. A. The presumption of paternity created pursuant to Section 2 of this title may be disputed only by the husband or wife, the putative father or their descendants. Paternity may be established pursuant to Section 70 of this title.

B. If a 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~~ may only be disputed by the husband upon a showing of all of the following:

1. A genetic test administered no more than six (6) months prior to the filing of a motion for relief that finds that there is a zero percent probability that the husband is the father of the child;

2. The husband has not adopted the child or the child was not conceived as a result of artificial insemination; and

3. The husband proves by clear and convincing evidence prior to the filing of the motion that he reasonably believed the child was his biological child on the basis of fraud or material mistake of fact.

C. If a child is reared by a putative father of the child for a period of at least two (2) years without a dispute of the child's legitimacy, upon a belief by the putative father that the child is his biological child due to fraud or mistake of fact, the presumption of paternity may only be disputed by the putative father.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 84.1 of Title 10, unless there is created a duplication in numbering, reads as follows:

A. After a determination of paternity a court shall not request the father to pay:

1. Any arrearages or any amount for his failure to support his child prior to the date the court issues a child support order requiring the father to pay for the current support of that child; or

2. All or any part of the reasonable expenses of the mother's pregnancy and confinement, if prior to the initial filing of an action to determine the paternity with respect to the father, the father had no knowledge and had no reason to have knowledge of his alleged paternity of the child.

B. The mother of the child may establish that the father had or should have had knowledge of the paternity of the child by showing, by a preponderance of the evidence, that she performed a reasonable and documented effort to contact and notify the alleged father of his paternity of the child.

C. A party is entitled to obtain modifications of an existing order for arrearages under this division regardless of whether the judgment, court order, or administrative support order from which relief is sought was issued prior to, on, or after the effective date of this act.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 120.1 of Title 43, unless there is created a duplication in numbering, reads as follows:

A. A person may file a motion for relief from a final judgment, court order, or administrative determination or order that:

1. Determines that the person is the father of a child; or
2. Requires the person to pay child support.

The person shall file the motion in the county in which the original judgment, court order, or administrative determination or order was made.

B. Upon the motion of any adverse party or upon its own motion, the court in which an action is brought pursuant to this section may transfer the action to the county in which an adverse party resides when it appears to the court that the location of the original venue presents hardship for that adverse party.

C. 1. Upon the filing of a motion for relief pursuant to the provisions of this section, a court shall grant relief from a final judgment, court order, or administrative determination or order that determines that a person is the father of a child or that requires a person to pay child support for a child if all of the following apply:

- a. the court receives genetic test results from a genetic test administered no more than six (6) months prior to the filing of the motion for relief that finds that there is a zero percent probability that the person is the father of the child,
- b. the person has not adopted the child,
- c. the child was not conceived as a result of artificial insemination, and
- d. the person proves by clear and convincing evidence prior to the filing of the motion that he reasonably believed the child was his biological child on the basis of fraud or material mistake of fact.

2. A court shall not deny relief from a final judgment, court order, or administrative determination or order that determines that a person is the father of a child or that requires a person to pay child support for a child solely because of the occurrence of any of the following acts if the person proves by clear and convincing evidence at the time of or prior to the occurrence of the act did not know that he was not the natural father of the child:

- a. the person married the mother of the child,
- b. the person was named as the child's natural father on the child's birth certificate with the valid consent of the person,
- c. the person was required to support the child because of a written voluntary promise or by a court order or an administrative support order,
- d. the person was presumed to be the natural father of the child pursuant to any of the circumstances listed in Section 2 of Title 10 of the Oklahoma Statutes, or
- e. the person otherwise admitted or acknowledged himself to be the child's natural father.

D. 1. In any action for relief instituted pursuant to this section, the court shall order the child's mother, the child, and the putative father or legally determined father to submit to genetic tests.

2. If the mother is the custodian of the child and willfully fails to submit the child to genetic testing, if the putative father or legally determined father of the child willfully fails to submit himself to genetic testing, or if the putative father or legally determined father is the custodian of the child and willfully fails to submit the child to genetic testing, the court shall issue an order determining the motion for relief against the party failing to submit the party or the child to the genetic testing. If a party shows good cause for failing to submit to genetic testing or for failing to submit the child to genetic testing, the court shall not consider the failure to be willful.

3. The party bringing the action shall pay any fees charged for the tests, unless the custodian of the child is represented by the Department of Human Services in its role as the agency providing enforcement of child support orders, in which case the Department shall pay the costs of genetic testing. The Department or the person who paid the fees charged for the genetic testing may seek reimbursement for the fees from the person against whom the court assesses the costs of the action.

E. If a court grants relief from a judgment, court order, or administrative determination or order pursuant to this section and the person who is relieved from the judgment, order, or determination, or any parent of the person or has been granted visitation rights with the child pursuant to a court order, the court shall determine whether the order granting those rights should be terminated, modified, or continued.

F. If a court grants relief from a judgment, court order, or administrative order for the payment of child support pursuant to

this section and child support arrearages are owed, the court shall issue an order canceling that arrearage.

G. If relief from a judgment, court order, or administrative order for the payment of child support is not granted pursuant to this section, the court shall require the person who filed the motion for relief to pay all court costs of the action and the reasonable attorney's fees of the opposing party.

H. Except as otherwise provided in this section, a party is entitled to obtain relief under this section regardless of whether the final judgment, court order, or administrative determination or order from which relief is sought was issued prior to, on, or after the effective date of this section.

SECTION 4. This act shall become effective November 1, 2001.

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