

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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HOUSE BILL 55
Committee Substitute Favorable 2/24/11

Short Title: Relief from Incorrect Paternity Determination.

(Public)

Sponsors:

Referred to:

February 9, 2011

1 A BILL TO BE ENTITLED
2 AN ACT TO ALLOW RELIEF FROM A CHILD SUPPORT ORDER WHEN THE
3 OBLIGOR IS NOT THE CHILD'S FATHER.

4 The General Assembly of North Carolina enacts:

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

7 **"§ 50-13.13. Motion for relief from child support order based on finding of nonpaternity.**

8 (a) Notwithstanding G.S. 1A-1, Rule 60 of the North Carolina Rules of Civil Procedure,
9 or any other provision of law, an individual who, as the father of a child, is required to pay
10 child support under an order that was entered by a North Carolina court pursuant to Chapter 49,
11 50, 52C, or 110 of the General Statutes and that is subject to modification by a North Carolina
12 court under applicable law may file a motion seeking relief from a child support order as
13 provided in this section.

14 (b) A motion for relief under this section shall be filed as a motion in the cause in the
15 pending child support action and shall be filed within one year of the date the moving party
16 knew or reasonably should have known that he was not the father of the child. The motion shall
17 be verified by the moving party and shall state all of the following:

18 (1) The basis, with particularity, on which the moving party believes that he is
19 not the child's father.

20 (2) The moving party has not acknowledged paternity of the child or
21 acknowledged paternity without knowing that he was not the child's
22 biological father.

23 (3) The moving party has not adopted the child, has not legitimated the child
24 pursuant to G.S. 49-10, 49-12, or 49-12.1, or is not the child's legal father
25 pursuant to G.S. 49A-1.

26 (4) The moving party did not act to prevent the child's biological father from
27 asserting his paternal rights regarding the child.

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

30 (d) Notwithstanding G.S. 8-50.1(b1), the court shall, upon motion of a party in a
31 proceeding under this section, order the moving party, the child's mother, and the child to
32 submit to genetic paternity testing if the court finds that there is good cause to believe that the
33 moving party is not the child's father and that the moving party may be entitled to relief under
34 this section. If genetic paternity testing is ordered, the provisions of G.S. 8-50.1(b1) shall
35 govern the admissibility and weight of the genetic test results. The moving party shall pay the
36 costs of genetic testing. If a party fails to comply with an order for genetic testing without good



1 cause, the court may hold the party in civil or criminal contempt or impose appropriate
2 sanctions under G.S. 1A-1, Rule 37, of the North Carolina Rules of Civil Procedure, or both.

3 (e) The moving party's child support obligation shall be suspended while the motion is
4 pending before the court if the support is being paid on behalf of the child to the State, or any
5 other assignee of child support, where the child is in the custody of the State or other assignee,
6 or where the moving party is an obligor in a IV-D case as defined in G.S. 110-129(7).

7 The moving party's child support obligation shall not be suspended while the motion is
8 pending before the court if the support is being paid to the mother of the child.

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

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

14 (2) The moving party either (i) has not acknowledged paternity of the child or
15 (ii) acknowledged paternity without knowing that he was not the child's
16 biological father. For purposes of this section, 'acknowledging paternity'
17 means that the moving party has done any of the following:

18 a. Publicly acknowledged the child as his own and supported the child
19 while married to the child's mother.

20 b. Acknowledged paternity in a sworn written statement, including an
21 affidavit of parentage executed under G.S. 110-132(a) or
22 G.S. 130A-101(f).

23 c. Executed a consent order, a voluntary support agreement under
24 G.S. 110-132 or G.S. 110-133, or any other legal agreement to pay
25 child support as the child's father.

26 d. Admitted paternity in open court or in any pleading.

27 (g) If the court determines that the moving party has not satisfied the requirements of
28 this section, the court shall deny the motion, and all orders regarding the child's paternity,
29 support, or custody shall remain enforceable and in effect until modified as otherwise provided
30 by law. If the court finds that the moving party did not act in good faith in filing a motion
31 pursuant to this section, the court shall award reasonable attorneys' fees to the prevailing party.
32 The court shall make findings of fact and conclusions of law to support its award of attorneys'
33 fees under this subsection.

34 (h) If the court determines that the moving party has satisfied the requirements of this
35 section, the court shall enter an order, including written findings of fact and conclusions of law,
36 terminating the moving party's child support obligation regarding the child. The court may tax
37 as costs to the mother of the child the expenses of genetic testing.

38 Any unpaid support due prior to the filing of the motion is due and owing. If the court finds
39 that the mother of the child used fraud, duress, or misrepresentation, resulting in the belief on
40 the part of the moving party that he was the father of the child, the court may order the mother
41 of the child to reimburse any child support amounts paid and received by the mother after
42 filing of the motion. The moving party has no right to reimbursement of past child support paid
43 on behalf of the child to the State, or any other assignee of child support, where the child is in
44 the custody of the State or other assignee, or where the moving party is an obligor in a IV-D
45 case as defined in G.S. 110-129(7).

46 If the child was born in North Carolina and the moving party is named as the father on the
47 child's birth certificate, the court shall order the clerk of superior court to notify the State
48 Registrar of the court's order pursuant to G.S. 130A-118(b)(2). If relief is granted under this
49 subdivision, a party may, to the extent otherwise provided by law, apply for modification of or
50 relief from any judgment or order involving the moving party's paternity of the child."

51 **SECTION 2.** G.S. 110-132 reads as rewritten:

1 **"§ 110-132. Affidavit of parentage and agreement to support.**

2 (a) In lieu of or in conclusion of any legal proceeding instituted to establish paternity,
3 the written affidavits of parentage executed by the putative father and the mother of the
4 dependent child shall constitute an admission of paternity and shall have the same legal effect
5 as a judgment of paternity for the purpose of establishing a child support obligation, subject to
6 the right of either signatory to rescind within the earlier of:

7 (1) 60 days of the date the document is executed, or

8 (2) The date of entry of an order establishing paternity or an order for the
9 payment of child support.

10 In order to rescind, a challenger must request the district court to order the rescission and to
11 include in the order specific findings of fact that the request for rescission was filed with the
12 clerk of court within 60 days of the signing of the document. The court must also find that all
13 parties, including the child support enforcement agency, if appropriate, have been served in
14 accordance with Rule 4 of the North Carolina Rules of Civil Procedure. In the event the court
15 orders rescission and the putative father is thereafter found not to be the father of the child, then
16 the clerk of court shall send a copy of the order of rescission to the State Registrar of Vital
17 Statistics. Upon receipt of an order of rescission, the State Registrar shall remove the putative
18 father's name from the birth certificate. In the event that the putative father defaults or fails to
19 present or prosecute the issue of paternity, the trial court shall find the putative father to be the
20 biological father as a matter of law.

21 ~~After 60 days have elapsed, execution of the document may be challenged in court only~~
22 ~~upon the basis of fraud, duress, mistake, or excusable neglect. The burden of proof shall be on~~
23 ~~the challenging party, and the legal responsibilities, including child support obligations, of any~~
24 ~~signatory arising from the executed documents may not be suspended during the challenge~~
25 ~~except for good cause shown.~~

26 (a1) Paternity established under subsection (a) of this section may be set aside in
27 accordance with G.S. 50-13.13.

28 (a2) A written agreement to support the child by periodic payments, which may include
29 provision for reimbursement for medical expenses incident to the pregnancy and the birth of the
30 child, accrued maintenance and reasonable expense of prosecution of the paternity action, when
31 acknowledged as provided herein, filed with, and approved by a judge of the district court at
32 any time, shall have the same force and effect as an order of support entered by that court, and
33 shall be enforceable and subject to modification in the same manner as is provided by law for
34 orders of the court in such cases. The written affidavit shall contain the social security number
35 of the person executing the affidavit. Voluntary agreements to support shall contain the social
36 security number of each of the parties to the agreement. The written affidavits and agreements
37 to support shall be sworn to before a certifying officer or notary public or the equivalent or
38 corresponding person of the state, territory, or foreign country where the affirmation,
39 acknowledgment, or agreement is made, and shall be binding on the person executing the same
40 whether the person is an adult or a minor. The child support enforcement agency shall ensure
41 that the mother and putative father are given oral and written notice of the legal consequences
42 and responsibilities arising from the signing of an affidavit of parentage and of any alternatives
43 to the execution of an affidavit of parentage. The mother shall not be excused from making the
44 affidavit on the grounds that it may tend to disgrace or incriminate her; nor shall she thereafter
45 be prosecuted for any criminal act involved in the conception of the child as to whose paternity
46 she attests.

47 (b) At any time after the filing with the district court of an affidavit of parentage, upon
48 the application of any interested party, the court or any judge thereof shall cause a summons
49 signed by him or by the clerk or assistant clerk of superior court, to be issued, requiring the
50 putative father to appear in court at a time and place named therein, to show cause, if any he
51 has, why the court should not enter an order for the support of the child by periodic payments,

1 which order may include provision for reimbursement for medical expenses incident to the
2 pregnancy and the birth of the child, accrued maintenance and reasonable expense of the action
3 under this subsection on the affidavit of parentage previously filed with said court. The court
4 may order the responsible parents in a IV-D establishment case to perform a job search, if the
5 responsible parent is not incapacitated. This includes IV-D cases in which the responsible
6 parent is a noncustodial mother or a noncustodial father whose affidavit of parentage has been
7 filed with the court or when paternity is not at issue for the child. The court may further order
8 the responsible parent to participate in the work activities, as defined in 42 U.S.C. § 607, as the
9 court deems appropriate. The amount of child support payments so ordered shall be determined
10 as provided in G.S. 50-13.4(c). The prior judgment as to paternity shall be res judicata as to that
11 issue and shall not be reconsidered by the court."

12 **SECTION 3.** This act becomes effective January 1, 2012, and applies to motions
13 for relief filed on or after that date. Notwithstanding the provision in Section 1 requiring
14 motions to be filed within one year of discovery that the moving party is not the father, any
15 person who would otherwise be eligible to file a motion may file a motion pursuant to this act
16 prior to January 1, 2013.