H.B. 242

123rd General Assembly
(As Reported by H. Family Services)

Reps. Jones, Winkler, Sutton, Corbin, Krebs, Pringle, Netzley, Padgett, Van Vyven, Hood, Tiberi, Hartnett, D. Miller, Jolivette, Sulzer, Schuler, Allen, James, Willamowski, Smith, O'Brien, Netzley, Damschroder, Sykes, Hollister, Young, Boyd

BILL SUMMARY

- Permits a court to relieve a person from an order requiring him to pay child support for a child on a motion made at any time based on genetic test results that find there is a zero per cent probability that the person or male minor is the father of the child.

- Requires a court to relieve a person or male minor from a paternity determination if the court grants him relief from the child support order that was issued based on that paternity determination.

- Requires genetic tests on which relief is granted under the bill to be conducted by a genetic testing laboratory accredited by the American Association of Blood Banks.

- Permits a court that grants relief from a child support order to cancel child support arrearages owed under the child support order.

- Provides that nothing in the bill may be construed to limit any actions that may be taken to recover child support previously paid under the child support order from which relief was granted.

- Declares that the right to relief is a substantive right regardless of whether the person or male minor has admitted or acknowledged himself to be, or was presumed or determined to be, the child's father.

- Prohibits relief under the bill if the person or male minor adopted the child, the child was conceived by artificial insemination with his consent, or the

person or male minor knew the child was not his child before taking certain actions resulting in the child being considered his child.

- Permits, with certain limitations and after a motion has been granted relieving the person from the child support order, a paternity action to be brought and permits the court to determine the existence of paternity between the person relieved from the order or the male minor and the child subject to the order.

- Provides that, if a person brings a paternity action after relief is granted under the bill to again establish a parent-child relationship between the person who obtained relief or the male minor and the child subject to the order from which relief was granted, the person bringing the paternity action will be liable for all court costs of the action and the reasonable attorney's fees of the opposing party if the court determines no parent-child relationship exists.

CONTENT AND OPERATION

Background

Current law provides that under certain circumstances a man is presumed to be the father of a child and may be ordered by a court or county child support enforcement agency to pay child support. In addition, a court or agency that makes a determination that a man is the father of a child must issue an order requiring the man to pay child support for the child. A court or agency may also order the grandparents of a child to pay support for the child if the child was born to the unemancipated and unmarried minor children of the grandparents and paternity is established between the child and the male minor.

The Ohio Rules of Civil Procedure provide that in order to request a new trial concerning any issue, including paternity, a party must serve a motion for a new trial no later than 14 days after the entry of the judgment.[1] The Rules also provide that, on motion and on such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise or excusable neglect, (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(B), (3) fraud, misrepresentation or other misconduct of an adverse party, (4) the judgment has been satisfied, released

[1] *Civ. R. 59(B).*

or discharged, or a prior judgment on which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application, or (5) any other reason justifying relief from the judgment. The motion must be made within a reasonable time--for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken.[2]

The bill

(secs. 3111.37 and 3113.2111)

Relief based on genetic tests

The bill provides that notwithstanding Civil Rule 60(B) (see **COMMENT** 3), on motion and on any terms that are just, a court must relieve a party from a final order that requires the party to pay child support if the party submits with the motion genetic test results determined no more than six months prior to the filing of the motion that find there is a zero per cent probability that the party or the party's male minor child (in cases in which a grandparent is required to pay support) is the father of the child.[3] The bill also provides that if a court grants relief from a child support order, it must also relieve the party or male minor from any judgment, order, or proceeding determining the party or male minor to be the father of the child who is the subject of the child support order.

Other genetic test provisions

Under the bill, if the genetic test results submitted with the motion for relief are based on samples from only the party or male minor and the child, the court, in its discretion, may order the child's mother, the party or male minor, and the child to submit to further genetic tests. If the court does not order further genetic tests, the court is prohibited from rejecting genetic test results solely because the results are based on samples from only the party or male minor and the child. The genetic

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[2] *Civ. R. 60(B).*

[3] *"Child support" is defined as support for a child that is required by a court-issued or administrative support order issued or modified prior to, on, or after the effective date of the bill under Revised Code sections listed in the bill that require or permit the issuance of support orders.*

The bill defines "genetic tests" and "genetic testing" to mean either: (1) tissue or blood tests, or (2) DNA typing of blood and buccal cell samples, including typing and comparison of the DNA from the blood of one person and buccal cells of another. A buccal cell comes from the cheek inside the mouth.

tests submitted with the motion for relief from a child support order and the further genetic tests that may be ordered by a court must be conducted by a genetic testing laboratory accredited by the American Association of Blood Banks.

Effect of granting relief

The filing of a motion under the bill for relief from the child support order does not affect the finality of the child support order and paternity determination or suspend their operation. If a court grants a motion for relief made under the bill, the granting of the motion does not prevent any person from subsequently filing an administrative or court action to establish a parent and child relationship between the child and the party or the male minor granted relief, provided that the person cannot file more than one such action in any two-year period regarding the party or male minor and the child. If a person files an action to establish the existence of a parent and child relationship after the motion for relief made under the bill is granted, the court may enter a judgment in that action determining the existence of a parent and child relationship between the party or the male minor granted relief and the child, except that a judgment of paternity may not be entered unless genetic tests taken subsequent to the granting of the motion indicate that there is a statistical probability that the party or the male minor is the natural father of the child. If a person files an action to establish a parent and child relationship subsequent to the granting of relief as provided under the bill and the court determines that no parent and child relationship exists between the party and male minor granted relief and the child, the court must require the person who filed the subsequent action to pay all court costs of the action and the reasonable attorney's fees of the opposing party.

The bill provides that if relief from a child support order is granted and the party relieved, the male minor, or any relative of the party or male minor has companionship or visitation rights with the child, the court granting the relief must immediately send written notice to the court that issued the order granting companionship or visitation rights. On receipt of the notice, the court must terminate the companionship or visitation rights. The bill also provides that if relief for a child support order is granted under the bill and child support arrearages are owed, the court may issue an order canceling that arrearage. The bill provides that none of its provisions may be construed to limit any actions that may be taken by the party relieved from the child support order to recover child support already paid.

Purpose and applicability of the bill

The bill states that the General Assembly declares that the right to obtain relief from a child support order and paternity determination provided in the bill

based on genetic evidence that the party or the male minor is not the father of the child is a substantive right (see **COMMENT** 3). A party who is required to pay support under a child support order is entitled to obtain relief under the bill regardless of whether the party or male minor at any time prior to the filing of the motion for relief from the order:

(1) Was married to the mother of the child;

(2) Acknowledged paternity of the child in a writing sworn to before a notary public;

(3) Was named with his consent as the child's father on the child's birth certificate;

(4) Was required to support the child by a written voluntary promise or a court order;

(5) Signed with his consent the child's birth certificate as an informant;

(6) Was named in an acknowledgment of paternity that a court entered on its journal or that has become final;

(7) Was presumed to be the natural father according to law;

(8) Was determined to be the father of the child in a parentage action;

(9) Otherwise admitted, acknowledged, or was determined to be the child's father.

A person paying child support is entitled to obtain relief under the bill regardless of whether the child support order was issued prior to, on, or after the bill's effective date unless, any of the following is the case:

(1) The party or male minor adopted the child;

(2) The child was conceived as the result of artificial insemination with his consent;

(3) The party or male minor knew the child was not his before taking any of the actions described in (1) to (6) above; being presumed to be the natural father of the child for a reason other than one based on genetic test results indicating paternity; or otherwise admitting or acknowledging the child as his.

COMMENT

1. In *Strack v. Pelton* (1994), 70 Ohio St.3d 172, the Ohio Supreme Court addressed a situation in which a man made a Rule 60(B) motion for relief from a divorce decree that found him to be the father of a child of the terminated marriage and required him to pay child support. At the time of the divorce proceedings, blood-grouping tests were conducted on the parties that did not exclude the man as the father. Nine years after the divorce decree was entered, the human leukocyte antigen genetic test was conducted on the parties and it showed that the man was not the child's father. However, the trial court denied the 60(B) motion and the Supreme Court affirmed the trial court's decision. The Supreme Court reasoned that the motion was based on "new evidence" that was not presented within the one year time limitation required by the new evidence provision of Rule 60(B)(2). Thus, even though the man was not the father, he was not relieved from the judgment finding paternity and the child support order.

2. In *Cuyahoga Support Enforcement Agency v. Guthrie* (1999), 84 Ohio St.3d 437, the Supreme Court addressed a situation in which Guthrie, although notified that an administrative paternity proceeding had been commenced against him, failed to appear at the hearing. When the Cuyahoga Support Enforcement Agency filed a paternity action against him in the juvenile court, he again failed to respond or appear. Several months after paternity was determined and a support order issued, Guthrie received a notice of default. At that time, he asked for legal counsel and genetic testing. Based on the results of genetic tests ordered by the magistrate, the juvenile court found that Guthrie was not the child's father and vacated the earlier order. In affirming the trial court decision to vacate the paternity determination and support order, the Supreme Court held: (1) a Civ. R. 60(B)(2) motion to vacate a paternity determination and support order is not appropriate because paternity test results obtained after a paternity determination are not "newly discovered evidence" if the test results were based on technology that was available at the time the original paternity determination was made, (2) a Civ. R. 60(B)(4) motion to vacate a paternity determination and support order is not appropriate because the motion is intended to provide relief to those subjected to circumstances they had no opportunity to foresee or control and Guthrie could have asserted his rights at the administrative or court hearing, but voluntarily and deliberately chose not to do so, and (3) juvenile courts have authority to vacate a court-issued paternity determination and child support order under Revised Code § 3111.16. The *Guthrie* decision does not apply to administrative orders or to court orders arising out of divorce or dissolution proceedings and therefore has a narrower focus than H.B. 242.

3. Article IV, Section 5(B) of the Ohio Constitution grants the Supreme Court authority to prescribe rules governing practice and procedure in all courts of the state. Any statute that infringes on the practice and procedure matters encompassed in those rules is unconstitutional. Pursuant to its constitutional authority, the Supreme Court adopted a number of rules, including the Ohio Rules of Civil Procedure. The provisions of the bill that address relieving a party from a final judgment, order, or proceeding requiring a man, as the father of a child, to pay support for the child, may conflict with Civil Rule 60(B) governing relief from judgment. This conflict may be present even though the bill states specifically that the General Assembly finds the right to relief from such a judgment, order, or proceeding to be a substantive right and not a procedural matter.

HISTORY

ACTION	DATE	JOURNAL ENTRY	
Introduced	03-10-99	p.	286
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