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Bill Analysis
Legislative Service Commission

Sub. H.B. 136*

126th General Assembly
(As Reported by S. Judiciary on Civil Justice)

Reps. Gilb, Hood, McGregor, Allen, Harwood, Aslanides, Barrett, Beatty, Blessing, Book, Brown, Bupp, Cassell, Chandler, Collier, Combs, DeGeeter, Domenick, C. Evans, D. Evans, Faber, Fende, Flowers, Garrison, Hagan, Healy, Hughes, Latta, Mason, Mitchell, Oelslager, Otterman, S. Patton, Perry, Raussen, Reidelbach, Schaffer, Schneider, Seaver, Seitz, G. Smith, D. Stewart, Wagoner, Webster, Wolpert, Yuko

BILL SUMMARY

- Allows a parentage action to be filed directly with the juvenile court of the county in which the child is located in certain circumstances.
- Replaces a provision requiring a child support enforcement agency to be made a party to a parentage action in certain circumstances with a provision that requires the child support enforcement agency, in the county where a parentage action is filed, to always be notified of the action and be given an opportunity to be heard in the action.
- Allows interest to accrue on a child support arrearage after judgment is rendered to a date certain at a specified rate of interest.
- Allows the court to make a temporary order regarding the allocation of parental rights and responsibilities for the care of a child while an action pertaining to the allocation of parental rights and responsibilities is pending.
- Allows the court to take into consideration that the putative father is named on the birth record of the child, the child has the putative father's surname, or a clear pattern of a parent and child relationship between the putative father and the child exists when determining whether to award

* This analysis was prepared before the report of the Senate Judiciary on Civil Justice Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

parenting time, visitation rights, or temporary custody to a putative father.

- Provides that the CSEA may bring an action to determine the existence or nonexistence of a father and child relationship if the child's father or alleged father is a recipient of public assistance or of services under Title IV-D of the "Social Security Act."

CONTENT AND OPERATION

Allocation of parental rights and responsibilities

Under the bill, in any proceeding pertaining to the allocation of parental rights and responsibilities for the care of a child, when requested in the complaint, answer, or counterclaim, or by a motion served with the pleading, upon satisfactory proof by affidavit duly filed with the clerk of the court, the court, without oral hearing and for good cause shown, may make a temporary order regarding the allocation of parental rights and responsibilities for the care of the child while the action is pending. If a parent and child relationship has not already been established, the court may take into consideration when determining whether to award parenting time, visitation rights, or temporary custody to a putative father that the putative father is named on the birth record of the child, the child has the putative father's surname, or a clear pattern of a parent and child relationship between the child and the putative father exists. (R.C. 3109.043.)

Action to determine the existence or nonexistence of a father and child relationship

Current law provides that an action to determine the existence or nonexistence of the father and child relationship may be brought by the child or the child's personal representative, the child's mother or her personal representative, a man alleged or alleging himself to be the child's father, the child support enforcement agency (CSEA) of the county in which the child resides if the child's mother is a recipient of public assistance or of services under Title IV-D of the "Social Security Act," or the alleged father's personal representative. The bill additionally allows the CSEA to bring an action of that nature if the child's *father or alleged father* is a recipient of public assistance or of services under Title IV-D of the "Social Security Act." (R.C. 3111.04(A).)

Determination of paternity

The bill

Current law requires a person seeking to determine the parentage of a child to file a request for a CSEA administrative parentage determination *prior* to filing a parentage action with the juvenile court (R.C. 3111.38 (not in the bill) and 3111.381). The bill adds two exceptions to this general rule. In the following circumstances, the appropriate division of the court of common pleas may determine the parentage of a child without an administrative determination from the CSEA:

(1) A child's mother may go directly to the court in the county in which the child resides to determine parentage in order to request an order to determine the allocation of parental rights and responsibilities,¹ the payment of all or any part of the reasonable expenses of the mother's pregnancy and hospitalization, or child support of the child.

(2) The putative father may go directly to the court in the county in which the child resides to determine parentage in order to request an order to determine the allocation of parental rights and responsibilities.

In either case, the clerk of the court must forward a copy of the complaint to the CSEA of the county in which the complaint is filed. If services are requested by the court, in either of the above circumstances, of the CSEA to determine the existence or non-existence of a parent and child relationship, a Title IV-D application must be completed and delivered to the CSEA. (R.C. 3111.381(B), (C), and (D).)

The bill also eliminates a provision requiring the CSEA of the county in which the child resides to be made a party to a parentage action if (1) the person who initiates the action is a recipient of medical or disability assistance or Ohio Works First or (2) the CSEA is responsible under Title IV-D of the Social Security Act for the collection of support for the child who is the subject of the action. Instead, the bill requires that the CSEA of the county in which the parentage action is brought always be notified of the juvenile court action and be given an opportunity to be heard during the proceedings. (R.C. 3111.07(A).)

Current law also provides that a parentage action may be brought in the juvenile court or other court with jurisdiction of the county in which the child, the child's mother, or the alleged father resides or is found or, if the alleged father is

¹ *Allocation of parental rights and responsibilities is the determination of who has custody of a child.*

deceased, of the county in which proceedings for the probate of the alleged father's estate have been or can be commenced, or of the county in which the child is being provided support by the county department of job and family services of that county. Under the bill, this provision does not apply to a situation when the child's mother or the putative father of the child brings an action to determine the existence or nonexistence of a parent and child relationship without requesting an administrative determination. (R.C. 3111.06(A).)

Current law--administrative determination

Current Ohio law requires certain persons who seek to clarify the parentage of a child² to file a request with a CSEA to make an administrative parentage determination *prior* to filing a parentage action with the juvenile court. The person seeking the administrative determination must file a request with the CSEA of the county in which the child or the guardian or legal custodian of the child resides. However, if the alleged father is deceased or involved in an action for divorce, dissolution of marriage, legal separation, or child support, the court with jurisdiction over that case retains jurisdiction in determining parentage. (R.C. 3111.38 (not in the bill) and 3111.381.)

Upon the request for an administrative determination of parentage, the CSEA will issue an order requiring the child, mother, and alleged father to submit to genetic tests (R.C. 3111.41 (not in the bill)). Once the CSEA receives the results of the genetic tests, an officer of the CSEA will issue an administrative order stating whether the alleged father of the child is the natural father of the child (R.C. 3111.46 (not in the bill)). The mother, alleged father, and guardian or legal custodian of the child may object to the administrative order by filing an action in the juvenile court (or other court with jurisdiction) in the county where the officer of the CSEA is employed within 30 days of the issuance of the administrative order (R.C. 3111.49 (not in the bill)). The CSEA, in certain circumstances, or a man alleging to be the natural father of the child may also file an action in the juvenile court (R.C. 3111.04 (not in the bill)). If an action is not filed within 30 days, the administrative order is final and enforceable (R.C. 3111.49 (not in the bill)). If the CSEA issues an administrative order determining the existence of a parent and child relationship, the CSEA will schedule an administrative hearing to determine the amount and method of child support payments and the method of providing for the child's health care. Upon

² *Only the following persons may request an administrative determination or bring an action to determine parentage: (1) the child, or the child's representative, (2) the child's mother, or her representative, (3) the man alleged to be the father, or his representative, (4) the man alleging himself to be the father, or (4) a child support enforcement agency in the county where the child resides if the child's mother is a recipient of Title IV-D assistance or services (R.C. 3111.04(A) (not in the bill)).*

completion of the hearing, the CSEA may issue an additional administrative order requiring payments of child support and provision for the child's health care. (R.C. 3111.80 and 3111.81 (not in the bill).)

Current law--judicial determination

If an action is brought to the juvenile court (or other court with jurisdiction) to object to the administrative determination of parentage, the following persons must be involved in the parentage action, be notified of the action, and be given opportunity to speak at the proceedings: (1) the natural mother, (2) any man statutorily presumed to be the father, or (3) any man alleged to be the natural father. The child must also be involved in the action, unless a party can show cause for not including that child in the action.³ Additionally, the CSEA where the child resides must be made a party to the parentage action if (1) the person who initiates the action is a recipient of medical or disability assistance or Ohio Works First or (2) the CSEA is responsible under Title IV-D of the Social Security Act for the collection of support for the child who is the subject of the parentage action.⁴ The Department of Job and Family Services, or another public agency or department, may intervene in the action to collect or recover support, if that agency or department currently or previously provided support to the child involved in the action.⁵ (R.C. 3111.07.)

The court may order the child, the child's mother, the alleged father, and any other relevant defendant to submit to genetic tests, if not already completed by the CSEA or ascertained from the Bureau of Criminal Identification and Investigation DNA database (R.C. 3111.09 (not in the bill)). During the parentage action, testimony may be heard and evidence may be presented, and upon determination of parentage, the court may issue an order or judgment (R.C. 3111.12 and 3111.13 (not in the bill)). Generally, the order or judgment may contain provisions regarding (1) the duty of child support, (2) the payment of all or any part of the expenses of the mother's pregnancy and hospitalization, (3) the furnishing of bond or other security for the payment of the judgment, and (4) any

³ *If the administrative determination is brought to the juvenile court, the alleged father is required to pay child support until the court determines if the alleged father is the natural father of the child. At that point, the administrative support order is terminated and, if the alleged father is determined to be the father, replaced with a judicial support order. (R.C. 3111.111 (not in the bill).)*

⁴ *If any of these parties are not subject to the jurisdiction of the court, the court must notify the party of the parentage action and allow that party to be involved in the action (R.C. 3111.07).*

⁵ *The court may align the parties involved in the action (R.C. 3111.07).*

other matter in the best interest of the child (R.C. 3111.13(C) (not in the bill)). The issuance of an order or judgment determining parentage is final and enforceable by the mother, the child, the public authority furnishing certain expenses for the child or during the action, or a person or private agency that has furnished any of the similar expenses (R.C. 3111.13(A) and 3113.15(A) (not in the bill)). Willful failure to obey the order or judgment is a civil contempt of court, punishable by fine or imprisonment (R.C. 3111.15(C) and 2705.05(A) (not in the bill)).

Interest on child support arrearages

The bill

When the court renders a money judgment for child support, pursuant to a motion for a lump sum judgment filed by an obligee, the bill requires interest to accrue on that child support arrearage unless the court finds that assessing interest would be inequitable. Interest accrues from the date the judgment is rendered to a date certain set for payment of the judgment at a rate set at the time of judgment. The court must enter the amount due, including interest, in the journal. The bill continues to allow the court to determine whether to assess interest on a child support arrearage from the date the court determines the payment went into default to the date the court issues a new order requiring the payment of child support, *if the court determines the default was willful*. If interest is not assessed, the court must explain the reasons for not doing so in the journal. (R.C. 3123.171.)

Current law

Under current Ohio law, if the juvenile court determines that a person is in default under a child support order, the court must issue a new order to pay child support. The court may assess interest on a child support arrearage from the date of default to the date the court issues the new order. The court may assess this interest *only if the court determines the default was willful* (R.C. 3123.17(A) (not in the bill) and 3123.171).

HISTORY

| ACTION | DATE |
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| Introduced | 03-15-05 |
| Reported, H. Juvenile & Family Law | 06-09-05 |
| Passed House (99-0) | 06-21-05 |
| Reported, S. Judiciary on Civil Justice | --- |

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