

Act 725 of the 1989 Regular Session.

Act 725

HB1258

By: Representative Mahony

"AN ACT TO AMEND TITLE 9, CHAPTER 10, SUBCHAPTER 1, OF THE ARKANSAS CODE OF 1987 TO MEET NEW FEDERAL REQUIREMENTS IN THE ESTABLISHMENT OF PATERNITY; TO ESTABLISH A REBUTTABLE PRESUMPTION BASED ON SCIENTIFIC TESTING; AND FOR OTHER PURPOSES."

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code 9-10-102 is hereby amended to read as follows:

"9-10-102. Actions governed by rules of civil procedure - Venue - Summons.

(a) An action to establish the paternity of a child or children shall be commenced and proceed under the rules of civil procedure applicable in circuit and chancery court as amended from time to time by the Supreme Court or the General Assembly.

(b) Actions brought in the State of Arkansas to establish paternity may be brought at any time. Any action brought prior to August 1, 1985, but dismissed because of a statute of limitations in effect prior to that date, may be brought for any person for whom paternity has not yet been established.

(c) Venue of paternity actions shall be in the county in which the plaintiff resides or in cases involving a juvenile, in the county in which the juvenile resides.

(d) Summons may be issued in any county of this state in which the defendant may be found."

SECTION 2. Arkansas Code 9-10-108 is hereby amended to read as follows:

"9-10-108. Blood tests.

(a) At the request of either party in a paternity action, the trial court shall direct that the defendant, complainant, and child submit to one (1) or more blood tests or other scientific examinations or tests, including deoxyribonucleic acid (DNA) typing, to determine whether or not the defendant can be excluded as being the father of the child and to establish the probability of paternity if the test does not exclude the defendant.

(b) The tests shall be made by a duly qualified physician or physicians, or by another duly qualified person or persons, not to exceed three (3), to be appointed by the court.

(c) (1) The results of the tests shall be receivable in evidence.

(2) (A) A written report of the test results by the duly qualified expert performing the test, or by a duly qualified expert under whose supervision and direction the test and analysis have been performed, certified by an affidavit duly subscribed and sworn to by him before a notary public, may be introduced in evidence in illegitimacy actions without calling the expert as a witness. If either party shall desire to question the expert certifying the results the party shall have the expert subpoenaed within a reasonable time prior to trial.

(B) If the results of the paternity tests establish a ninety-five percent (95%) or more probability of inclusion that the

defendant is the natural father of the child and after corroborating testimony of the mother in regard to access during the probable period of conception, such shall constitute a prima facie case of establishment of paternity and the burden of proof shall shift to the defendant to rebut such proof.

(3) The experts shall be subject to cross-examination by both parties after the court has caused them to disclose their findings.

(d) Whenever the court orders the blood tests to be taken and one (1) of the parties refuses to submit to the test, that fact shall be disclosed upon the trial unless good cause is shown to the contrary.

(e) The costs of the test and witness fees shall be taxed by the court as other costs in the case.

(f) Whenever it shall be relevant to the prosecution or the defense in a paternity action, blood tests which exclude third parties as the father of the child may be introduced under the same requirements as set out in subsections (a) - (e)."

SECTION 3. Arkansas Code 9-10-101 is hereby amended to read as follows:

"9-10-101. (a) The chancery court shall have concurrent jurisdiction with the juvenile division of chancery court in cases and matters relating to paternity.

(1) The chancery court shall have exclusive jurisdiction of paternity matters which arise during pendency of original proceedings brought under equity jurisdiction.

(2) The juvenile division of chancery court shall have exclusive jurisdiction of paternity matters which arise during pendency of original proceedings brought pursuant to the Arkansas Juvenile Code of 1989.

(b)(1) The judge of the most recently created chancery or circuit-chancery judgeship as of January 1, 1989, shall be the primary judge of all other cases and matters relating to paternity. Another chancery or circuit-chancery judge may be designated by agreement in writing prior to August 1, 1989, by the duly elected chancery and circuit-chancery judges in that circuit provided the agreement is filed with the executive secretary of the Arkansas Judicial Department.

(2) The General Assembly may, from time to time, provide for the creation of additional circuit-chancery judgeships in any judicial circuit in which the workload necessitates the creation of one or more judgeships. The judge of the additional judgeship may be designated to serve as an additional judge of cases and matters relating to paternity in lieu of other judges of the judicial circuit.

(c) The chancery court and the juvenile division of chancery court in the several counties shall remain jointly responsible for meeting case processing deadlines as required by law for processing paternity cases and enforcing support orders in paternity cases. At any time when data furnished to the Arkansas Judicial Department indicates that cases are not being processed in the time requirements as required by law, the executive secretary of the Judicial Department shall notify all chancery and circuit-chancery judges in that circuit who shall assist the judge or judges designated in (c) above in docketing and hearing pending cases until the circuit is brought back into compliance as determined through data furnished to the Arkansas Judicial Department with case processing requirements."

SECTION 4. Arkansas Code 9-10-104 is hereby amended to read as follows:

"9-10-104. Petitions for paternity establishment may be filed by:

- (1) A biological mother;
- (2) A putative father;

(3) A person for whom paternity is not presumed or established by court order; or

(4) The Department of Human Services of the State of Arkansas."

SECTION 5. Appeals from chancery decisions in paternity cases shall be in the same manner as now provided by law for appeals from the chancery courts in equity cases.

SECTION 6. It is the intent of this act that jurisdiction of paternity cases shall be transferred from county court to chancery court. All provisions of Arkansas Code 9-10-101 et seq. referring to the "county court" shall hereafter mean the "chancery court"; all references to "county judge or referee" shall hereafter refer to the "chancellor"; and all references to "county clerk" shall hereafter refer to the "chancery clerk." The Arkansas Code Revision Commission shall make these changes in the Arkansas Code of 1987 Annotated to comply with this intent.

SECTION 7. All paternity cases pending in the county courts of the various counties in this state or cases under the jurisdiction of circuit courts on July 1, 1989, shall be transferred and docketed in the chancery court of the county in which they are pending on that date.

SECTION 8. All provisions of this act of a general and permanent nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code Revision Commission shall incorporate the same in the Code.

SECTION 9. All laws and parts of laws in conflict with this act are hereby repealed.

APPROVED: March 21, 1989

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