

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

State of Arkansas

As Engrossed: H3/19/01 S4/9/01

83rd General Assembly

A Bill

Regular Session, 2001

HOUSE BILL 2377

By: Representative Cleveland

For An Act To Be Entitled

AN ACT TO PROVIDE THAT AN ADJUDICATED FATHER IS ENTITLED TO ONE PATERNITY TEST AT ANY TIME DURING THE PERIOD OF HIS CHILD SUPPORT OBLIGATION, AND IF THE TEST INDICATES HE IS NOT THE FATHER, HIS CHILD SUPPORT OBLIGATION SHALL CEASE; AND FOR OTHER PURPOSES.

Subtitle

AN ACT TO PROVIDE THAT AN ADJUDICATED FATHER IS ENTITLED TO ONE PATERNITY TEST AT ANY TIME DURING THE PERIOD OF HIS CHILD SUPPORT OBLIGATION.

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

SECTION 1. Arkansas Code 9-10-115 is amended to read as follows:

9-10-115. Modification of orders or judgments.

(a) The chancery court may, at any time, enlarge, diminish, or vacate any such order or judgment in the proceedings under this section, except in regard to the issue of paternity, as justice may require and on such notice to the defendant as the court may prescribe.

(b) The court shall not set aside, alter, or modify any final decree, order, or judgment of paternity where paternity blood testing, genetic testing, or other scientific evidence was used to determine the adjudicated father as the biological father.

~~*(c) Upon request for modification of a judicial finding of paternity, if the court determines that the original finding of paternity did not*~~

~~include results of scientific paternity testing, consent of the parents, or was not entered upon a party's failure to comply with scientific paternity testing ordered by the court, the court shall direct the biological mother, the child, and the adjudicated father to submit to scientific testing for paternity, which may include deoxyribonucleic acid testing or other tests as provided by § 9-10-108.~~

~~(d)(c)~~ Any signatory to a voluntary acknowledgment of paternity may rescind the acknowledgment by completing a form provided for that purpose and filing the form with the Division of Vital Records:

(1) Prior to the date that an administrative or judicial proceeding, including a proceeding to establish a support order, is held relating to the child and the person executing the voluntary acknowledgment of paternity is a party; or

(2) Within sixty (60) days of executing the voluntary acknowledgment of paternity, whichever date occurs first.

~~(e)(1)(A)(d)(1)~~ Beyond the sixty-day period or other limitation set forth in subsection ~~(d)(c)~~ of this section, a person may ~~petition a court of competent jurisdiction to set aside~~ challenge a paternity establishment pursuant to a voluntary acknowledgment of paternity or an order based on an acknowledgment of paternity only if the petition is based on allegations of whether the acknowledgment was obtained by upon an allegation of fraud, duress, or material mistake of fact.

~~(B) The court may, after making such finding, direct the mother, the child, and the presumed father to submit to scientific testing for paternity as provided by § 9-10-108.~~

~~(2)(A)~~ The burden of proof shall be upon the person challenging the establishment of paternity.

~~(B)(i) The duty to pay child support and other legal obligations shall not be suspended while the motion is pending except for good cause shown.~~

~~(ii) The specific basis supporting good cause findings shall be recited in the court's order.~~

~~(f) In no event shall the adjudication or voluntary acknowledgment of paternity be modified later than three (3) years after such adjudication or voluntary acknowledgment.~~

(e)(1) When any man has been adjudicated to be the father of a child,

1 or is deemed to be the father of a child pursuant to an acknowledgment of
2 paternity, without the benefit of scientific testing for paternity, and as a
3 result was ordered to pay child support, he shall be entitled to one (1)
4 paternity test, pursuant to § 9-10-108, at any time during the period of time
5 that he is required to pay child support upon the filing of a motion
6 challenging the adjudication or acknowledgment of paternity in a court of
7 competent jurisdiction. If an acknowledgment of paternity was the basis for
8 the order of support the motion must comply with the requirements of
9 subsection (d) of this section.

10 (2) The duty to pay child support and other legal obligations
11 shall not be suspended while the motion is pending except for good cause
12 shown which shall be recited in the court's order.

13 ~~(g)(1)(f)(1)~~ If the test administered under subsection (e) of this
14 section excludes the adjudicated father or man deemed to be the father
15 pursuant to an acknowledgment of paternity as the biological father of the
16 child, and the court determines, based upon the results of scientific
17 testing, that the adjudicated or putative father is not the biological
18 father, so finds the court shall set aside a the previous finding or
19 establishment of paternity and relieve ~~the adjudicated or putative father~~ him
20 of any future obligation of support as of the date of the ~~filing of the~~
21 ~~motion for modification as authorized by § 9-14-234~~ finding.

22 (2) If the name of the adjudicated father or putative father man
23 deemed to be the father pursuant to an acknowledgment of paternity appears on
24 the birth certificate of the child, the court shall issue an order requiring
25 the birth certificate to be amended to delete the name of the father.

26 ~~(h)(g)~~ If the court determines, based upon the results of scientific
27 testing, that the putative father test administered under subsection (e) of
28 this section confirms that the adjudicated father or man deemed to be the
29 father pursuant to an acknowledgment of paternity is the biological father of
30 the child, the court shall enter an order adjudicating paternity and setting
31 child support in accordance with § 9-10-109, the guidelines for child
32 support, and the family support chart.

33 ~~(i) As used in this title, "consent" means voluntary agreement by a~~
34 ~~person in possession and exercise of sufficient mental capacity to make an~~
35 ~~intelligent choice to do something proposed by another.~~

36 /s/ Cleveland