GENERAL ASSEMBLY OF NORTH CAROLINA
1993 SESSION

CHAPTER 333
HOUSE BILL 1119

AN ACT REGARDING THE ESTABLISHMENT OF PATERNITY OF A CHILD BY AFFIDAVIT, CHANGING THE LAWS OF EVIDENCE RELATING TO PATERNITY TESTING IN CIVIL ACTIONS, AND GIVING PRIORITY TO THE TRIAL OF PATERNITY ACTIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 130A-101(f) reads as rewritten:

"(f) If the mother was unmarried at all times from date of conception through date of birth, the name of the father shall not be entered on the certificate ~~without written consent, under oath, of both the father and the mother. The surname of the child shall be determined by the mother, except if the father's name is entered on the certificate, the mother and father shall agree upon the child's surname. If there is no agreement, the child's surname shall be the same as that of the mother.~~ unless the child's mother and father complete an affidavit acknowledging paternity which contains the following:

(1) A sworn statement by the mother consenting to the assertion of paternity by the father and declaring that the father is the child's natural father;

(2) A sworn statement by the father declaring that he believes he is the natural father of the child;

(3) Information explaining in plain language the effect of signing the affidavit, including a statement of parental rights and responsibilities and an acknowledgment of the receipt of this information; and

(4) The social security numbers of both parents.

The State Registrar, in consultation with the Child Support Enforcement Section of the Division of Social Services, shall develop and disseminate a form affidavit for use in compliance with this section, together with an information sheet that contains all the information required to be disclosed by subdivision (3) of this subsection.

Upon the execution of the affidavit, the declaring father shall be listed as the father on the birth certificate and shall be presumed to be the natural father of the child. The executed affidavit shall be filed with the registrar along with the birth certificate. A certified copy of the affidavit shall be admissible in any action to establish paternity. The presumption of paternity arising under this section may be rebutted in a legal action only by clear, cogent, and convincing evidence. The surname of the child shall be determined by the mother, except if the father's name is entered on the certificate, the mother and father shall agree upon the child's surname. If there is no agreement, the child's surname shall be the same as that of the mother.

The execution and filing of this affidavit with the registrar does not affect rights of inheritance unless the affidavit is also filed with the clerk of court in accordance with G.S. 29-19(b)(2)."

Sec. 2. G.S. 8-50.1 reads as rewritten:

"**§ 8-50.1. Competency of blood tests; jury charge; taxing of expenses as costs.**

(a) In the trial of any criminal action or proceeding in any court in which the question of parentage arises, regardless of any presumptions with respect to parentage, the court before whom the matter may be brought, upon motion of the State or the defendant, shall order that the alleged-parent defendant, the known natural parent, and the child submit to any blood tests and comparisons which have been developed and adapted for purposes of establishing or disproving parentage and which are reasonably accessible to the alleged-parent defendant, the known natural parent, and the child. The results of those blood tests and comparisons, including the statistical likelihood of the alleged parent's parentage, if available, shall be admitted in evidence when offered by a duly qualified, licensed practicing physician, duly qualified immunologist, duly qualified geneticist, or other duly qualified person. Upon receipt of a motion and the entry of an order under the provisions of this subsection, the court shall proceed as follows:

(1) Where the issue of parentage is to be decided by a jury, where the results of those blood tests and comparisons are not shown to be inconsistent with the results of any other blood tests and comparisons, and where the results of those blood tests and comparisons indicate that the alleged-parent defendant cannot be the natural parent of the child, the jury shall be instructed that if they believe that the witness presenting the results testified truthfully as to those results, and if they believe that the tests and comparisons were conducted properly, then it will be their duty to decide that the alleged-parent is not the natural parent; whereupon, the court shall enter the special verdict of not guilty; and

(2) By requiring the State or defendant, as the case may be, requesting the blood tests and comparisons pursuant to this subsection to initially be responsible for any of the expenses thereof and upon the entry of a special verdict incorporating a finding of parentage or nonparentage, by taxing the expenses for blood tests and comparisons, in addition to any fees for expert witnesses allowed per G.S. 7A-314 whose testimonies supported the admissibility thereof, as costs in accordance with G.S. 7A-304; G.S. Chapter 6, Article 7; or G.S. 7A-315, as applicable.

~~(b) In the trial of any civil action in which the question of parentage arises, the court before whom the matter may be brought, upon motion of the plaintiff, alleged-parent defendant, or other interested party, shall order that the alleged-parent defendant, the known natural parent, and the child submit to any blood tests and comparisons which have been developed and adapted for purposes of establishing or disproving parentage and which are reasonably accessible to the alleged-parent defendant, the~~

~~known natural parent, and the child. The results of those blood tests and comparisons, including the statistical likelihood of the alleged parent's parentage, if available, shall be admitted in evidence when offered by a duly qualified, licensed practicing physician, duly qualified immunologist, duly qualified geneticist, or other qualified person. Upon receipt of a motion and the entry of an order under the provisions of this subsection, the court shall proceed as follows:~~

~~(1) Where the issue of parentage is to be decided by a jury, where the results of those blood tests and comparisons are not shown to be inconsistent with the results of any other blood tests and comparisons, and where the results of those blood tests and comparisons indicate that the alleged-parent defendant cannot be the natural parent of the child, the jury shall be instructed that if they believe that the witness presenting the results testified truthfully as to those results, and if they believe that the tests and comparisons were conducted properly, then it will be their duty to decide that the alleged-parent defendant is not the natural parent; and~~

~~(2) By requiring the plaintiff, alleged-parent defendant or other interested party requesting blood tests and comparisons pursuant to this subsection to initially be responsible for any of the expenses thereof and upon the entry of a verdict of parentage or nonparentage, by taxing the expenses for blood tests and comparisons, in addition to any fees for expert witnesses allowed per G.S. 7A-314 whose testimonies supported the admissibility thereof, as costs in accordance with the provisions of G.S. 6-21.~~

(b1) In the trial of any civil action in which the question of parentage arises, the court shall, on motion of a party, order the mother, the child, and the alleged father-defendant to submit to one or more blood or genetic marker tests, to be performed by a duly certified physician or other expert. The court shall require the person requesting the blood or genetic marker tests to pay the costs of the tests. The court may, in its discretion, tax as part of costs the expenses for blood or genetic marker tests and comparisons. Verified documentary evidence of the chain of custody of the blood specimens obtained pursuant to this subsection shall be competent evidence to establish the chain of custody. The testing expert's completed and certified report of the results and conclusions of the paternity blood test or genetic marker test is admissible as evidence without additional testimony by the expert if the laboratory in which the expert performed the test is accredited for parentage testing by the American Association of Blood Banks. Accreditation may be established by verified statement or reference to published sources. Any person contesting the results of a blood or genetic marker test has the right to subpoena the testing expert pursuant to the Rules of Civil Procedure. The results of the blood or genetic marker tests shall have the following effect:

(1) If the court finds that the conclusion of all the experts, as disclosed by the evidence based upon the test, is that the probability of the alleged parent's parentage is less than eighty-five percent (85%), the alleged parent is presumed not to be the parent and the evidence shall be

admitted. This presumption may be rebutted only by clear, cogent, and convincing evidence.

(2) If the experts disagree in their findings or conclusions, the question of paternity shall be submitted upon all the evidence;

(3) If the tests show that the alleged parent is not excluded and that the probability of the alleged parent's parentage is between eighty-five percent (85%) and ninety-seven percent (97%), this evidence shall be admitted by the court and shall be weighed with other competent evidence;

(4) If the experts conclude that the genetic tests show that the alleged parent is not excluded and that the probability of the alleged parent's parentage is ninety-seven percent (97%) or higher, the alleged parent is presumed to be the parent and this evidence shall be admitted. This presumption may be rebutted only by clear, cogent, and convincing evidence."

Sec. 3. G.S. 49-14 reads as rewritten:

"**§ 49-14. Civil action to establish paternity.**

(a) The paternity of a child born out of wedlock may be established by civil action at any time prior to such child's eighteenth birthday. A certified copy of a certificate of birth of the child shall be attached to the complaint. Such establishment of paternity shall not have the effect of legitimation.

(b) Proof of paternity pursuant to this section shall be ~~beyond a reasonable doubt.~~ by clear, cogent, and convincing evidence.

(c) No such action shall be commenced nor judgment entered after the death of the putative father.

(d) If the action to establish paternity is brought more than three years after birth of a child, paternity shall not be established in a contested case without evidence from a blood ~~grouping test, or evidence that the putative father has declined an opportunity for such testing.~~ or genetic marker test.

(e) Either party to an action to establish paternity may request that the case be tried at the first session of the court after the case is docketed, but the presiding judge, in his discretion, may first try any pending case in which the rights of the parties or the public demand it."

Sec. 4. This act becomes effective October 1, 1993, and Section 2 and Section 3 apply to civil paternity actions filed on or after that date.

In the General Assembly read three times and ratified this the 13th day of July, 1993.

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Dennis A. Wicker
President of the Senate

Daniel Blue, Jr.
Speaker of the House of Representatives