



Establishment of Paternity in Child Support

Gerald K. Robbins
Special Deputy Attorney General
GROBBINS@mail.jus.state.nc.us
(919) 716-6850



•I. Establishment of Paternity

- G.S. §110-132(a): Acknowledgment of paternity
- G.S. §49-14: Civil action to establish paternity
- G.S. §§49-10, 49-12 and 99-12.1: Legitimation
- Compliance with G.S. §130A-101(f): Birth registration
- G.S. §49-2: Nonsupport of illegitimate child
- Full Faith and Credit: G.S. §52C-3-314; G.S. §110-132.1



A. G.S. §110-132(a): Acknowledgment of Paternity

- Affidavit of parentage signed by the mother and putative father
- Constitutes “an admission of paternity”
- Same legal effect as a judgment of paternity to establish child support obligations
- Subject to right of either mother or father to rescind signature within 60 days of signing



B. G.S. §49-14: Civil Action to Establish Paternity

- Civil action can be initiated if father of child born out of wedlock does not voluntarily acknowledge paternity
- Anytime before child’s 18th birthday
- Proof of paternity is by clear, cogent and convincing evidence
- If child >3 years old, must perform blood test or present evidence that father declined testing



B. G.S. §49-14: Civil Action to Establish Paternity Con’d

- Blood Test for Paternity
 - May be rebutted by clear, cogent, and convincing evidence
 - Results 97% or greater - rebuttable presumption of paternity arises G.S. §8-50.1(b1)
- Must be initiated within one year following death of putative father - G.S. §49-14.



C. G.S. §§49-10, 49-12 and 99-12.1: Legitimation

- Paternity for child born out of wedlock
 - Putative father files verified written petition
 - Mother and child are necessary parties
 - Petition must contain full names of father, mother and child
 - See In re Locklear, 314 N.C. 412, 334 S.E.2d 46 (1985)
- Paternity established when reputed father and mother intermarry
- Paternity may be established if mother is married, but child’s father is not husband. See In re Locklear

D. Compliance with G.S. §130A-101(f): Birth Registration

- Need written consent of father and mother to add father's name to birth certificate when child is born to unmarried mother
- Defendant estopped from denying paternity even if affidavit signed was false
- Name of husband entered as father on birth certificate if mother is married, unless a court has ruled otherwise [Paternity may still be placed at issue. See, *Ambrose v. Ambrose*, 140 N.C. App. 545, 536 SE2d 855(2000)].

E. G.S. §49-2: Nonsupport of Illegitimate Child

- In a criminal action to seek support of illegitimate child, must establish paternity
- Paternity does not need to be relitigated
- General verdict of guilty of willful nonsupport is sufficient as finding of paternity
- Verdict of not guilty does not determine defendant is not the biological father

F. Sister State

- When a sister state has previously adjudicated paternity the biological father may not contest paternity in North Carolina.
- *Reid v. Dixon*, 136 N.C. App. 438, 524 S.E.2d 576 (2000). See also G.S. §52C-3-314; G.S. §110-132.1.

II. Denials and Defenses in Paternity Actions

- A. G.S. §8-50.1: Blood Tests
- B. Rebutting the presumption of legitimacy
- C. Rescission

A. G.S. §8-50.1: Blood Tests

- Best defense in paternity action is an exclusion as result of blood test
- Indigent defendants entitled to free test
- Test cannot "prove" paternity
- Test is conclusive in exclusion of defendant
- Where evidence showed defendant sterile at time of conception, inclusionary probability reduced to 0%

B. Rebutting the Presumption of Legitimacy

- If child is born to a married woman, husband's name placed upon birth certificate
 - Exception: If paternity otherwise determined by court, then name of father as determined by court is entered
- Husband who is not the natural father is generally called the "legal father"

Husband can rebut presumption of legitimacy in several ways:

- Where he has access to wife --
 - Blood test exclusion
 - No capacity to procreate
 - Possible racial or distinctive differences
 - Testimony by either husband or wife of no sexual relations during period of conception
- Where non-access exists --
 - Bloodtest exclusion
 - No capacity to procreate
 - Racial or other distinctive differences
 - "Across the seven seas doctrine"

C. Rescission

- Man or woman may petition district court to order their respective signatures be rescinded from affidavit of parentage
- Parties have no longer than 60 days from date of signing to petition the court
- If no rescission petition is filed, only recourse available is alleging either fraud, duress, mistake, or excusable neglect

III. Collateral Estoppel and Res Judicata in Paternity Cases

- A. Principles of res judicata and collateral estoppel
- B. Application in paternity cases
- C. Actions to establish paternity

A. Principles of res judicata and collateral estoppel

- Principles of res judicata and collateral estoppel preclude the relitigation of a claim or issue after a final determination on the merits by a court of competent jurisdiction.
- Applies to parties and persons in privity with parties

B. Application in Paternity Cases

- When mother and father execute documents necessary to have paternity established
- When judgment is rendered, relitigation of that issue by the parties to original judgment is precluded
- Res judicata precludes a trial court from ordering blood test
- If granted, blood test orders will be vacated on appeal

B. Application in Paternity Cases con'd

- If defendant found not to be father, the matter is not over. Two other persons can bring action
 - Tidwell v. Booker, 290 N.C. 98, 225 S.E.2d 816 (1976)
 - Settle v. Beasley, 309 N.C. 616, 308 S.E.2d 288 (1983)



C. Actions to Establish Paternity

- Actions to establish paternity can be brought by the mother, the father, the child or the personal representative of the mother or the child, and the Director of Social Services or such person “as the law performs the duties of such official.”
- G.S. §49-16



IV. Other Likely Defenses

- A. Statute of Limitations - child is 18 or older at time action is brought
- B. Court lacks subject matter jurisdiction to determine paternity
- C. Court lacks personal jurisdiction
- D. Parental rights terminated by termination of parental rights or entry of final order of adoption



Other Likely Defenses con'd

- E. Objection to chain of custody for blood test results
 - Blood test results are inadmissible when not ordered by trial court
 - Certification of documents is not sufficient to comply with statute
 - Proper chain of custody will admit any blood test results in evidence