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DOMESTIC RELATIONS Determination of Paternity: To Provide for a Motion to Set Aside a Determination of Paternity Based On Newly Discovered Evidence Regarding Paternity of a Child; To Provide Requirements for Filing Such a Motion; To Provide That the Motion Shall Be Granted If Genetic Testing Conclusively Shows That the Alleged Father is Not the Biological Father and Certain Other Conditions Are Met; To Provide that the Motion Shall Not Be Denied Because of Occurrence of Certain Prior Acts Unless Father Acted With Knowledge That He Was

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Not the Biological Father; To Provide for Additional Testing

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DOMESTIC RELATIONS

Determination of Paternity: To Provide for a Motion to Set Aside a Determination of Paternity Based On Newly Discovered Evidence Regarding Paternity of a Child; To Provide Requirements for Filing Such a Motion; To Provide That the Motion Shall Be Granted If Genetic Testing Conclusively Shows That the Alleged Father is Not the Biological Father and Certain Other Conditions Are Met; To Provide that the Motion Shall Not Be Denied Because of Occurrence of Certain Prior Acts Unless Father Acted With Knowledge That He Was Not the Biological Father; To Provide for Additional Testing

CODE SECTION:	O.C.G.A. § 19-7-54 (new)
BILL NUMBER:	HB 369
ACT NUMBER:	768
GEORGIA LAWS:	2002 Ga. Laws 596
SUMMARY:	The Act provides that a motion may be made to set aside a judgment requiring a male to pay child support following newly discovered DNA evidence conclusively demonstrating that the male is not the biological father. In order for the court to grant such relief, the Act requires an affidavit by the male stating that (1) the evidence has come to his attention since the judgment's entry and, (2) the male has not adopted the child. However, if the moving party fails to meet the requirements as set forth in the Act, a judge may grant the motion or enter an order regarding paternity, duty to support, custody, and visitation privileges as otherwise provided by law.
Effective Date:	May 9, 2002

History

If Thomas Jefferson were alive now, would he have to pay child support for Eston Hemings, the youngest son of Sally Hemings, a slave of Thomas Jefferson?¹ Following a recent DNA test, it appears that Thomas Jefferson was not the biological father of Eston Hemings.² However, if a court had already ordered him to pay child support, the DNA test would be irrelevant.³ Jefferson would continue to pay child support in some states, even although he was not the biological father. This is exactly what happened to Carnell Smith, and others living in Georgia.⁴

The Georgia courts have ordered many fathers to continue to pay child support even though credible DNA evidence established that they were not the biological fathers.⁵ Prior to the 2002 Legislative Session, the law in Georgia provided that once a man legally became a father, “he is responsible for supporting the child even if he later proves he is not the father.”⁶ For that reason, HB 369 was introduced to permit a male, ordered to pay child support, to make a motion to set aside such a determination of paternity if genetic testing conclusively demonstrates that he is not the biological father.⁷

HB 369

Introduction

Representatives Stanley Watson, Barbara Mobley, Tom Bordeaux, Ron Sailor, Jr., and Ronald Forster of the 70th, 69th, 151st, 71st, and

1. Bob Dart, *Jefferson Scholars Fuel Paternity Debate; New Report Doubts Slave Bore His Child*, ATLANTA J. CONST., Apr. 13, 2001, at 7A.

2. *Id.*

3. *Id.*

4. Electronic Interview with Carnell Smith, Director-U.S. Citizens Against Paternity Fraud, June 28, 2002; *Smith v. Odum*, No. S01C1628, (Ga. Jan. 9, 2002) (order denying cert.), *cert. denied*, 122 S. Ct. 2359 (2002); see also Richard Matthews, *Contradictory Laws: Non-fathers Have Obligations, Real Fathers Have Few Rights*, ATLANTA J. CONST., May 17, 2001, at 20A.

5. See generally Matthews, *supra* note 4; Christopher Quinn, *As DNA Tests Rule Out Paternity, Men Sue to Stop Support Payments*, ATLANTA J. CONST., May 16, 2001, at 1A.

6. Christopher Quinn, *As DNA Tests Rule Out Paternity, Men Sue to Stop Support Payments*, ATLANTA J. CONST., May 16, 2001, at 1A.

7. HB 369, as introduced, 2001 Ga. Gen. Assem.

3rd Districts, respectively, sponsored HB 369.⁸ Representative Watson introduced the bill on the House floor on February 1, 2001.⁹ The House referred the bill to the Special Judiciary Committee, and the Committee favorably reported the bill by substitute, on February 27, 2001.¹⁰ The House adopted the Special Committee's substitute, and passed HB 369 on March 7, 2001 by a vote of 163-0.¹¹

The Senate assigned HB 369 to the Senate Special Judiciary Committee on March 7, 2001.¹² The Senate Special Judiciary Committee favorably reported HB 369 by substitute, on February 1, 2002.¹³ The Senate adopted the Special Committee's substitute, introduced and passed amendments on the floor, and passed HB 369 on February 6, 2002 by a vote of 45-5.¹⁴

The House of Representatives adopted the Senate version of HB 369 as substituted (and amended) on April 2, 2002, and forwarded the bill to the Governor for his signature.¹⁵ Governor Roy Barnes signed HB 369 into law on May 9, 2002.¹⁶

Consideration by the House Special Judiciary Committee

After introduction, the House assigned the bill to its Special Judiciary Committee.¹⁷ The Committee amended the bill slightly by removing sub-part (f) of Section 1, which allowed the court the discretion to modify, continue, or terminate visitation rights in the best interest of the child after granting the male's motion to suspend child support.¹⁸

The House passed HB 369, as substituted, on March 7, 2001.¹⁹

8. *Id.*

9. State of Georgia Final Composite Status Sheet, HB 369, Apr. 12, 2002.

10. *Id.*

11. Georgia House of Representatives Voting Record, HB 369 (Mar. 7, 2001); State of Georgia Final Composite Status Sheet, HB 369, Apr. 12, 2002.

12. State of Georgia Final Composite Status Sheet, HB 369, Apr. 12, 2002.

13. *Id.*

14. *Id.*

15. State of Georgia Final Composite Status Sheet, HB 369, Apr. 12, 2002.

16. *Id.*

17. *Id.*

18. *Compare* HB 369, as introduced, 2001 Ga. Gen. Assem., with HB 369 (HCS), 2001 Ga. Gen. Assem.

19. State of Georgia Final Composite Status Sheet, HB 369, Apr. 12, 2002.

Consideration by the Senate Special Judiciary Committee

The Senate assigned HB 369 to its Special Judiciary Committee.²⁰ The Senate Special Judiciary Committee substantially changed HB 369, by adding a new Code section.²¹ The House version provided for “extraordinary motions for a new trial,” while the Senate version provided that a motion to set aside a determination of paternity be made at any time.²²

Further, the Senate Special Judiciary Committee amended this introductory section by providing that relief be granted when the “biological” father determines through genetic testing that he is not the father.²³ The Senate Special Judiciary Committee also struck language providing that the court grant the motion if genetic testing conclusively shows that the male is not the father and that the male has not adopted the child or that the child was not conceived by artificial insemination.²⁴ Instead, the Senate Special Judiciary Committee substitute simply stated that the court grant the motion if genetic testing shows that the male is not the father, and “other conditions are met.”²⁵

The Senate Special Judiciary Committee also amended this introduction by providing that the court shall not grant the motion if the male knew that he was not the biological father and took certain acts such as adoption.²⁶ Conversely, the House version provided that the motion shall not be denied solely because certain acts occurred such as marrying the child’s mother or acknowledging his paternity in a sworn statement.²⁷ Finally, the Senate Special Judiciary Committee amended this introduction by inserting a provision for an effective date.²⁸

The Senate Special Judiciary Committee substitute also added new Code section 19-7-54.²⁹ Code section 19-7-54(a) provided that “a motion to set aside a determination of paternity may be made at any

20. *Id.*

21. HB 369 (SCS), 2002 Ga. Gen. Assem.

22. *Compare* HB 369, (HCS), 2001 Ga. Gen. Assem., *with* HB 369 (SCS), 2002 Ga. Gen. Assem.

23. *Id.*

24. *Id.*

25. *Id.*

26. HB 369 (SCS), 2002 Ga. Gen. Assem.

27. HB 369 (HCS), 2001 Ga. Gen. Assem.

28. *Compare* HB 369 (HCS), 2001 Ga. Gen. Assem., *with* HB 369 (SCS), 2002 Ga. Gen. Assem.

29. HB 369 (SCS), 2002 Ga. Gen. Assem.

time upon the grounds set forth in this Code section.”³⁰ The Senate Special Judiciary Committee also added that the male must file the motion in the superior court to Code section 19-7-54(a).³¹ The Senate Special Judiciary Committee also removed language which provided that the motion may be made “without a showing of due diligence.”³²

The Senate Special Judiciary Committee made only one change to the language found in Code section 19-7-54(b)(1-3) to provide that the motion be granted “upon a finding by the court” that the requirements are met rather than the House’s version which read, “if all the following apply.”³³ However, the Committee significantly changed the bill by adding language to Code section 19-7-54(b)(4) to provide that the motion not be granted if the male ordered to pay child support acted in a way to prevent the biological father of the child from asserting his paternal rights.³⁴ The Senate Special Judiciary Committee then amended the House’s version by removing language of Code section 5-5-41.1(c), which provided that the motion not be denied solely because of the occurrence of certain acts “if the male ordered to pay child support did not know at the time of the occurrence of the act that he was not the natural father.”³⁵ Instead, the Senate Special Judiciary Committee replaced this language with Code section 19-7-54(b)(5)(A-G).³⁶ This Code section provided that the court grant the motion as long as the “male ordered to pay child support with knowledge that he is not the biological father,” has not performed any of the following acts:

- a) married the child’s mother and voluntarily assumed the parental obligation and duty to pay child support;
- b) acknowledged paternity of the child in a sworn statement;

30. *Id.*

31. *Id.*

32. *Compare* HB 369 (HCS), 2001 Ga. Gen. Assem., *with* HB 369 (SCS), 2002 Ga. Gen. Assem.

33. *Id.*

34. *Id.*

35. *Id.*

36. *Id.*

- c) named himself as the child's biological father on the child's birth certificate with his consent;
- d) promised to support the child because of a written voluntary promise;
- e) refused an order by the Department of Human Resources, or any other state agency, or any court directing him to submit to genetic testing;
- f) signed a voluntary acknowledgement of paternity as provided in Code section 19-7-4.6.1; or
- g) proclaimed himself to be the child's biological father.³⁷

The Senate Special Judiciary Committee also added Code section 19-7-54(c), proposing that the court may still grant the motion or enter an order of paternity, duty to support, custody, visitation, as otherwise provided by law even if the movant fails to meet all the requirements of Code section 19-7-54(b).³⁸ The Senate Special Judiciary Committee added Code section 19-7-54(d) which provided that in the event the motion to set aside determination of paternity is granted, "relief shall be limited to the issues of prospective child support payments, past due child support payments, termination of parental rights, custody, and visitation rights."³⁹ The last significant change made added Code section 19-7-54(e), which provided that the duty to pay child support not suspend, except for good cause, while the motion is pending.⁴⁰

Finally, the Senate Special Judiciary Committee language found at Code section 19-7-54(f)(1), that dealt with court ordered genetic testing.⁴¹ Code section 19-7-54(f)(3), which required the party requesting genetic testing to pay any fees charged, was also amended to read that "[i]f the custodian of the child is receiving services from

37. *Id.*

38. HB 369 (SCS), 2002 Ga. Gen. Assem.

39. *Id.*

40. *Id.*

41. Compare HB 369 (HCS), 2001 Ga. Gen. Assem., with HB 369 (SCS), 2002 Ga. Gen. Assem.

an administrative agency,” then the agency will pay the cost of genetic testing.⁴²

Senate Passage

The Senate passed HB 369 with minor changes on February 6, 2002.⁴³ The Senate considered and adopted an amendment offered by Senators Carol Jackson of the 50th District and Charlie Tanksley of the 32nd District.⁴⁴ This amendment struck the language found at Code section 19-7-54(f)(1), which provided that the clerk schedule court ordered genetic testing, by “requiring such genetic testing be done no more than 30 days after the court issues its order.”⁴⁵ The Senate also adopted a floor amendment offered by Senators Seth Harp of the 16th District and Joey Brush, Jr. of the 24th District.⁴⁶ This amendment added a provision to Code section 19-7-54(e) that allowed the court to order child support payments held in the registry of the court until the final determination of paternity while the motion was pending.⁴⁷

House Reconsideration of the Senate Version

The House agreed to the Senate version on April 2, 2002.⁴⁸ Representative Stephanie Benfield of the 67th District, offered a floor amendment, but later withdrew it.⁴⁹ This amendment would have required the male ordered to pay child support to make the motion within one year of the genetic testing.⁵⁰ The amendment proposed by

42. HB 369 (SCS), 2002 Ga. Gen. Assem.

43. State of Georgia Final Composite Status Sheet, HB 369, Apr. 12, 2002.

44. Senate Floor Substitute Amendment to HB 369, introduced by Sens. Carol Jackson and Charlie Tanksley, Feb. 6, 2002; HB 369 (SCSFA), 2002 Ga. Gen. Assem.

45. Senate Floor Substitute Amendment to HB 369, introduced by Sens. Carol Jackson and Charlie Tanksley, Feb. 6, 2002. *Compare* HB 369 (SCS), 2002 Ga. Gen. Assem., *with* HB 369 (SCSFA), 2002 Ga. Gen. Assem.

46. Senate Floor Substitute Amendment to HB 369, introduced by Sens. Seth Harp and Joey Brush, Jr., Feb. 6, 2002; Audio Recording of Senate Proceedings (Feb. 6, 2002), *at* <http://www.state.ga.us/services/leg/audio/2002archive.html> [hereinafter Senate audio].

47. *Compare* HB 369 (SCS), 2002 Ga. Gen. Assem., *with* HB 369 (SCSFA), 2002 Ga. Gen. Assem.

48. State of Georgia Final Composite Status Sheet, HB 369, Apr. 12, 2002.

49. Audio Recordings of House Proceedings, Apr. 2, 2002, *at* <http://www.ganet.org/services/leg/audio/2002archive.html>.

50. *See* Withdrawn House Floor Amendment to HB 369 (SCSFA/2), introduced by Rep. Stephanie Benfield, Apr. 2, 2002.

Representative Benfield would have also added a requirement to Code section 19-7-54(b) that the court, in granting the motion, take into account “the best interest of the child.”⁵¹ Lastly, the withdrawn amendment would have added that the “best interest of the child” also be considered in Code section 19-7-54(d) that dealt with the scope of relief.⁵² The House then forwarded the bill to the Governor for his signature.⁵³ Governor Roy Barnes signed HB 369 into law on May 9, 2002.⁵⁴

The Act

The Act adds Code section 19-7-54, relating to determination of paternity.⁵⁵ Section 1 provides that a male ordered to pay child support may file a motion in superior court to set aside such a determination of paternity at anytime in accordance with this Code section.⁵⁶ Code section 19-7-54(a)(1-2) provides that the motion be accompanied with an affidavit executed by the movant.⁵⁷ The affidavit must state that subsequent to the entry of judgment of paternity, the results of a scientifically credible genetic test administered within ninety (90) days of filing the motion, indicate that there is a zero (0) percent probability that the petitioning male is the biological father of the child.⁵⁸

Code section 19-7-54(b) states that the court shall grant the motion to set aside child support if Code section 19-7-54(a) is satisfied and the court makes the findings found at 19-7-54(b)(1-5).⁵⁹ The court shall grant the motion if it finds all of the following:

- a) The genetic test was properly conducted;
- b) The movant has not adopted the child;

51. *Id.*

52. *Id.*

53. State of Georgia Final Composite Status Sheet, HB 369, Apr. 12, 2002.

54. *Id.*

55. O.C.G.A. § 19-7-54 (Supp. 2002).

56. O.C.G.A. § 19-7-54(a) (Supp. 2002).

57. O.C.G.A. § 19-7-54(a)(1-2) (Supp. 2002).

58. *Id.*

59. O.C.G.A. § 19-7-54(b) (Supp. 2002).

- c) The child was not conceived by artificial insemination while the child's mother and male were in wedlock;
- d) The male did not try to prevent the biological father of the child from asserting his paternal rights; and
- e) The male did not perform certain acts with knowledge that he was not the biological father.⁶⁰

The Act further provides that even if the movant fails to make the requisite showing above, the court, as otherwise provided by law, may still grant the motion or enter an order as to paternity, duty to support, custody, and visitation privileges.⁶¹ If relief is granted, the Act provides that such relief be limited in scope to the issues of prospective child support payments, past due child support payments, termination of parental rights, and visitation rights only.⁶²

While the motion is pending in court, the Act provides that the duty to pay child support is not suspended except with a showing of good cause.⁶³ However, the court may order that the child support be held in the registry of the court while the motion is pending.⁶⁴

The Act also allows the court or another party to make a motion that would require the other parties involved to undergo genetic testing within thirty (30) days after such order is issued.⁶⁵ In the event the mother of the child or the male or the person with custody of the child willfully refuses to submit to genetic testing following an order of the court, the court will grant relief against the party refusing the order.⁶⁶ Lastly, Code section 19-7-54(f) provides that the party requesting the genetic testing bear the cost, even if it is an administrative agency requesting the test.⁶⁷

The last subsection of Section 1 of the Act provides that if the court does not grant relief on a motion filed in accordance with this

60. *Id.*

61. O.C.G.A. § 19-7-54(c) (Supp. 2002).

62. O.C.G.A. § 19-7-54(d) (Supp. 2002).

63. O.C.G.A. § 19-7-54(e) (Supp. 2002).

64. *Id.*

65. O.C.G.A. § 19-7-54(f)(1) (Supp. 2002).

66. O.C.G.A. § 19-7-54(f)(2) (Supp. 2002).

67. O.C.G.A. § 19-7-54(f)(3) (Supp. 2002).

Code section, the court will assess the costs of the action and attorney's fees against the movant.⁶⁸ Section 2 of the Act provides for an effective date, and Section 3 repeals any laws that are in conflict with the Act.⁶⁹

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68. O.C.G.A. § 19-7-54(g) (Supp. 2002).

69. O.C.G.A. § 19-7-54 (Supp. 2002).