

By: Dutton

H.B. No. 503

A BILL TO BE ENTITLED

AN ACT

relating to a proceeding to vacate an order of paternity or child support.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter A, Chapter 154, Family Code, is amended by adding Section 154.015 to read as follows:

Sec. 154.015. RESTITUTION FOR CHILD SUPPORT. A person who is the obligor for a child support order vacated by the court under Subchapter I, Chapter 160, may seek restitution for all child support the person paid under the order before the date the order was vacated from:

(1) the mother of the child; or

(2) the child's biological father.

SECTION 2. Chapter 160, Family Code, is amended by adding Subchapter I to read as follows:

SUBCHAPTER I. PROCEEDINGS TO VACATE COURT ORDER

Sec. 160.751. MOTION TO VACATE COURT ORDER. (a) A person may file a motion requesting the court to vacate a court order that states that the person is the father of a child identified in the motion or that requires the person to pay child support for the child. The motion may be filed at any time.

(b) The motion to vacate a court order must be accompanied by a certified copy of the court order to be vacated.

Sec. 160.752. GENETIC TESTING. (a) In a proceeding under

1 this subchapter, the court, on application by or on behalf of either  
2 party, or on its own motion, shall order the child, the child's  
3 mother, and the person filing the motion to submit to genetic  
4 testing not later than the 30th day after the date the order  
5 requiring genetic testing is issued.

6 (b) Genetic testing under this section is subject to the  
7 same procedures as genetic testing ordered under Subchapter F.

8 Sec. 160.753. GROUNDS FOR VACATING ORDER. (a) Except as  
9 otherwise provided by this section, the court shall vacate an order  
10 described by Section 160.751 if the court finds that the person who  
11 filed the motion to vacate:

12 (1) is not the child's adoptive parent;

13 (2) did not consent to assisted reproduction by his  
14 wife under Subchapter H; and

15 (3) based on genetic testing, is not rebuttably  
16 identified as the father of the child in accordance with Section  
17 160.505.

18 (b) The court may not grant a motion under this section if  
19 the court finds that:

20 (1) the person who filed the motion knew, more than six  
21 months before the date the person filed the motion, of genetic  
22 testing results that excluded the person as the child's parent  
23 unless the person shows good cause for the delay; or

24 (2) at any time, the person knew that he was not the  
25 child's biological parent, and the person:

26 (A) acknowledged paternity of the child in  
27 writing;

1                   (B) consented to his name being entered as the  
2 child's biological father on the child's birth certificate;

3                   (C) was determined to be the child's father in a  
4 proceeding to determine parentage;

5                   (D) filed an acknowledgment of paternity with the  
6 bureau of vital statistics; or

7                   (E) otherwise admitted that he is, or  
8 acknowledges himself as, the child's biological father.

9           Sec. 160.754. POSSESSION ORDER; CHILD SUPPORT ARREARAGE.

10 (a) If the court vacates a parentage or support order in a  
11 proceeding under this subchapter and the moving party is also  
12 entitled under an order to the possession of or access to the child  
13 who is the subject of the vacated order, the court shall determine  
14 whether the possession order should be terminated, modified, or  
15 continued based on the best interest of the child.

16           (b) If the court vacates a child support order under this  
17 subchapter and an arrearage exists under that child support order,  
18 the court may retroactively reduce the amount of the arrearage to  
19 zero. If the court eliminates an arrearage under this subsection,  
20 the court shall issue an order stating that the child support  
21 obligation including any arrearage is terminated.

22           Sec. 160.755. COURT COSTS. If the court does not grant the  
23 motion to vacate a court order under this subchapter, the court  
24 shall order the moving party to pay the costs of the action and each  
25 opposing party's reasonable attorney's fees.

26           SECTION 3. This Act takes effect September 1, 2003.