

By: Dutton

H.B. No. 498

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

SUBCHAPTER J. PROCEEDINGS TO VACATE COURT ORDER

Sec. 160.801. SUIT TO VACATE COURT ORDER. (a) A person identified in a court order as the father of a child may file a petition not later than the child's 18th birthday requesting the court to vacate a court order that:

(1) states that the person identified in the order as the father of the child is the father of the child identified in the motion; or

(2) requires the person identified in the order as the father of the child to pay child support for the child.

(b) The petition to vacate a court order must be accompanied by:

(1) an affidavit stating facts that show the court order was obtained by fraud or material mistake of fact; and

(2) a certified copy of the court order to be vacated.

(c) The court may not grant a petition to vacate a court order under this section if the person identified in the court order as the father of the child:

1 (1) is the child's adoptive father;

2 (2) consented to assisted reproduction by his wife
3 under Subchapter H;

4 (3) was an intended father under a gestational
5 agreement confirmed by a court under Subchapter I; or

6 (4) filed the petition under this section after the
7 180th day after the date the person received the results of a
8 genetic test described by Section 160.802(b)(3).

9 Sec. 160.802. GENETIC TESTING. (a) In a proceeding under
10 this subchapter, if the court finds that the affidavit filed with
11 the petition under Section 160.801 establishes a prima facie case
12 that the court order was obtained by fraud or material mistake of
13 fact, the court shall order the child and the person identified in
14 the court order as the father of the child to submit to genetic
15 testing not later than the 30th day after the date the order
16 requiring genetic testing is rendered.

17 (b) A person establishes a prima facie case that a court
18 order was obtained by fraud or material mistake of fact if the
19 person's affidavit states that the person:

20 (1) was the presumed father of the child or was induced
21 by representations made by the child's mother to believe that the
22 person was the child's father;

23 (2) at the time the court order was rendered, did not
24 know that he was not the father of the child; and

25 (3) took a genetic test after the date the court order
26 sought to be vacated was rendered that establishes that the person
27 is not rebuttably identified as the father of the child in

1 accordance with Section 160.505.

2 (c) Genetic testing under this section is governed by
3 Subchapter F.

4 (d) If the affidavit filed with the petition does not
5 establish a prima facie case, the court shall, on a motion by the
6 respondent, dismiss the petition.

7 Sec. 160.803. FAILURE TO SUBMIT TO GENETIC TEST. (a) If
8 the person who has been awarded the exclusive right to designate the
9 child's primary residence fails to allow the child to be
10 genetically tested under Section 160.802, the court may suspend the
11 legal obligation of the person identified in the court order as the
12 father of the child to pay child support until the child is
13 genetically tested.

14 (b) If the person identified in the court order as the
15 father of the child fails to submit to a genetic test ordered under
16 Section 160.802, the court shall dismiss the person's petition to
17 vacate with prejudice.

18 Sec. 160.804. GROUNDS FOR VACATING ORDER. (a) Except as
19 otherwise provided by this section, the court shall vacate an order
20 described by Section 160.801(a) if the court finds that the court
21 order was obtained by fraud or material mistake of fact and the
22 person identified in the court order as the father of the child:

23 (1) was the presumed father of the child or was induced
24 by representations made by the child's mother to believe that the
25 person was the child's father;

26 (2) at the time the order was rendered, did not know
27 that he was not the father of the child;

1 (3) based on genetic testing, is not rebuttably
2 identified as the father of the child in accordance with Section
3 160.505;

4 (4) is not the child's adoptive parent;

5 (5) is not the intended father of the child under a
6 gestational agreement confirmed by a court under Subchapter I; and

7 (6) did not consent to assisted reproduction by his
8 wife under Subchapter H.

9 (b) The court may not vacate an order under this section if
10 the court finds that at any time the person identified in the court
11 order as the father of the child knew that he was not the child's
12 biological parent and:

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

15 (2) was determined to be the child's father in a
16 proceeding to determine parentage; or

17 (3) filed an acknowledgment of paternity with the
18 bureau of vital statistics.

19 Sec. 160.805. POSSESSION ORDER; CHILD SUPPORT ARREARAGE.

20 (a) If the court vacates a parentage or child support order in a
21 proceeding under this subchapter and the person identified in the
22 court order as the father of the child is also entitled under an
23 order to the possession of or access to the child who is the subject
24 of the vacated order, the court shall determine whether the
25 possession order should be terminated, modified, or continued based
26 on the best interest of the child.

27 (b) If the court modifies or continues the possession order

1 under Subsection (a), the person identified in the court order as
2 the father of the child shall have the rights and duties provided by
3 Section 153.074 during the period he has possession of the child.

4 (c) If the court vacates a child support order under this
5 subchapter and an arrearage exists under that child support order,
6 the court may reduce the amount of the arrearage to zero. If the
7 court eliminates an arrearage under this subsection, the court
8 shall issue an order stating that the child support obligation,
9 including any arrearage, is terminated.

10 (d) The elimination of an arrearage under a child support
11 order that is vacated as provided by this subchapter is for purposes
12 of correcting an act induced by fraud or material mistake of fact
13 and is not a retroactive modification.

14 (e) If the court vacates a parentage order in a proceeding
15 under this subchapter, the court may order:

16 (1) the child or any party to participate in
17 counseling with a licensed mental health professional who:

18 (A) has a background in family therapy; and

19 (B) holds a professional license that requires
20 the person to possess at least a master's degree; and

21 (2) any party to pay the cost of counseling.

22 (f) If a person possessing the qualifications of Subsection
23 (e)(1) is not available in the county in which the court presides,
24 the court may appoint a person the court believes is qualified to
25 conduct the counseling under Subsection (e).

26 Sec. 160.806. ATTORNEY'S FEES AND COURT COSTS. If the court
27 vacates a parentage order or a child support order in a proceeding

1 under this subchapter, the court may award reasonable attorney's
2 fees to the petitioner. If the court does not grant the petition to
3 vacate a parentage order or a child support order under this
4 subchapter, the court shall order the petitioner to pay the costs of
5 the action and each opposing party's reasonable attorney's fees.

6 SECTION 2. This Act takes effect September 1, 2011.