



Texas' New Legal Remedy for Mistaken Paternity

Men who have been wrongly or mistakenly identified as the father of a child now have a legal remedy. In May 2011 the Texas Legislature passed new laws to address the issue of "mistaken paternity."

What is "mistaken paternity?"

"Mistaken paternity" describes the situation in which a man has either signed an acknowledgment of paternity or has been determined by court order to be the father of a child—but the man is not actually the child's biological father and did not know at the time that he was not the biological father.

How does the law work?

Amended Texas Family Code §161.005 now offers men who have reason to believe they are not the father of a child the ability to challenge the paternity determination by way of DNA testing. Upon filing a petition with the court, the man is entitled to a hearing in which he must present some credible evidence as to why he may not be the child's biological father. At such a hearing the mother of the child may present evidence, including evidence that the father knew that he was not the biological father at the time he acknowledged paternity or the court found him to be the father. If the court is satisfied with the father's evidence presented, it will order genetic testing. If the court-ordered DNA test shows that the man is not the child's biological father, then his parental rights and duties are terminated, and importantly, his obligation to provide child support is terminated immediately.

Could this negatively impact the child?

In many cases, the mistakenly-identified father will have already established an emotional bond with the child. The court may hear evidence on this issue, and may determine that cutting off the mistakenly-identified father from visitation with the child would significantly impair the child's physical health or emotional well-being. The child's mother may want to present her own evidence regarding whether or not court ordered visitation should continue if the father's parental rights and obligations are otherwise terminated. After a hearing the court can order visitation periods with the child for the mistakenly-identified father. The court also has the power to order the child, the mother, or the mistakenly-identified father to mental health counseling.

What about the financial impact on the mother?

Termination of the mistakenly-identified father's child support obligation does not release him from any amounts owed prior to the termination order. All previously-owed child support, up to the date of the termination order, is still due and enforceable, and arrearages may be collected with interest. But going forward from the date of termination, there is no child support unless and until the true biological father is identified and determined by the court to be the father. Additionally, after the termination, the mistakenly-identified father may not be held in contempt of court for not paying past due child support.

Is there a time limit on filing a mistaken-paternity case?

Any man who believes himself mistakenly identified as a father may file his suit prior to September 1, 2012. After that date, a man must file his suit within one year of the time he first learns that he may not be the child's father. After September 1, 2012, the issue of when the mistakenly-identified father learned that he may not be the child's father may be a significant issue in these cases. The court will have to hear evidence from the father and the mother to determine if a suit filed after September 1, 2012 has been filed in a timely manner.

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Partners

Lea C. Noelke	lnoelke@nems-law.com	Keith D Maples	kmaples@nems-law.com
Andi St. Leger	astleger@nems-law.com	Audrey Blair	ablair@nems-law.com

Contact Us

(512) 480-9777 www.nems-law.com

901 MoPac Expressway, Barton Oaks Plaza
Building Two, Suite 200
Austin, TX 78746

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901 S. Mopac Expwy, Barton Oaks Plaza II, Suite 200, Austin, TX 78746