



STATE OF NEW JERSEY
NEW JERSEY LAW REVISION COMMISSION

Final Report

Relating to

Title 9-Parentage
April 2010

NEW JERSEY LAW REVISION COMMISSION
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Parentage

Introduction

This is the revision of a chapter covering the substance of what is now Chapter 17 of Title 9. The current statutes were written before the development of modern genetic tests that can almost always determine whether a particular person is a genetic parent of a particular child with a level of accuracy that makes them practically irrefutable. As a result, current law is written in terms of factual presumptions that are not now relevant. This chapter gives a central role to genetic testing in litigated cases of disputed genetic parentage.

However, the majority of parentage cases that arise around the time of birth do not involve a court determination. Most often, a man agrees that he is the father and signs a certificate of paternity. Federal statutes and regulations essentially require that states establish a system of voluntary acknowledgements of paternity that is as binding as a court determination. See, e.g. 42 USC §668 and 45 C.F.R. §303.5. Section 4 establishes such a system in the form of certificates of parentage. Unfortunately, some men who sign acknowledgments later come to question whether they were correct either because of the acquisition of new facts or a change of heart. The Commission considered requiring genetic testing in connection with a certificate of paternity but rejected the requirement because of the cost in money, time and invasion of privacy.

A small number of disputes over paternity do not follow the ordinary pattern of a known question around the time of birth. These disputes may arise when the relationship terminates between the persons who thought themselves to be father and mother, or in the context of divorce, or in the distribution of estates or trusts. There are not many of these cases, but they engender a great deal of heat. The chapter deals with this problem, first, with the requirement of genetic testing. Whenever an issue of genetic parentage arises, the court is required to order testing. The draft also limits challenges to parentage by barring challenges to parentage when the questioned parent has lived with the child for five years. This “statute of repose” treats the relationship as one of adoption whatever the genetic information may show.

The only provision on non-genetic parentage is one on sperm or egg donation, tracking a current provision on sperm donation. There are many other issues involving parentage that turn on matters other than genetics. Many of these issues are controversial, and all are fact sensitive. It seems better to leave these issues to caselaw determination.

1. Short title

This chapter shall be known and may be cited as the "New Jersey Parentage Act."

Source: 9:17-38.

COMMENT

This section is substantively identical to its source.

2. Parent-child relationship defined; genetic parent defined

a. "Parent-child relationship" means the legal relationship existing between a child and the child's natural or adoptive parents, incident to which the law confers or imposes rights, privileges, duties, and obligations. It includes the mother and child relationship and the father and child relationship.

b. The parent and child relationship extends equally to every child and to every parent, regardless of the marital status of the parents or the basis of that relationship.

c. In the absence of an action to determine parentage, the parentage of a child shall be presumed to be that indicated on the child's birth certificate.

d. A genetic parent is a person who is the source of the egg or sperm that produced the child.

Source: 9:17-39; 9:17-40.

COMMENT

Subsection (a) is substantively identical to 9:17-39. Subsection (b) is similar to 9:17-40, but it has been broadened by the addition of the last phrase.

3. Certificates of paternity

a. A man who claims to be the genetic father of the child may sign a certificate of paternity with intent to establish his paternity.

b. A certificate of paternity shall:

(1) be signed, under oath or before a witness by the mother and by the man seeking to establish his paternity;

(2) identify the child whose paternity is being acknowledged;

(3) state that the signatories understand that the certificate is the equivalent of a judicial adjudication of paternity of the child and that a challenge to the certificate is permitted only under limited circumstances;

(4) state whether there has been genetic testing and, if there was testing, that the claim of paternity is consistent with the results of the testing.

c. A valid certificate of paternity filed with an appropriate state or county agency is equivalent to an adjudication of paternity of a child and confers upon the acknowledged father all of the rights and duties of a parent unless the certificate is rescinded or challenged in a parentage action as allowed by this act.

d. A signatory may rescind a certificate of paternity by commencing a proceeding to rescind before the earlier of:

(1) 60 days after the effective date of execution of the certificate; or

(2) the date of the first hearing, in a proceeding to which the signatory is a party, before a court to adjudicate an issue relating to the child, including a proceeding that establishes support.

Source: New; 9:17-58.

COMMENT

This section is based primarily on provisions in a number of bills filed in the Legislature in the last few years. See, e.g. A809 (2009).

4. Closed court; confidentiality of records

Notwithstanding any other law concerning public hearings and records, any action or proceeding held under this chapter shall be held in closed court without admittance of any person other than those necessary to the action or proceeding. All papers and records and any information pertaining to an action or proceeding held under this chapter that may reveal the identity of any party in an action, other than the final judgment or the birth certificate, whether part of the permanent record of the court or of a file with any public agency, are confidential and are subject to inspection only on order of the court for compelling reason clearly and convincingly shown or with the consent of all parties to the action who are still living.

Source: 9:17-42.

COMMENT

This section is substantively identical to its source.

5. Action to determine existence of parent-child relationship.

a. An action for the purpose of determining the existence or nonexistence of the parent-child relationship may be brought by:

(1) a child or a legal representative of the child;

(2) a parent of the child or the estate or legal representative of the parent if the parent has died, is mentally incapacitated or is a minor;

(3) a person alleging to be a parent or the estate or legal representative of the alleged parent if the alleged parent has died, is mentally incapacitated or is a minor;

(4) the Division of Family Development in the Department of Human Services, or the county welfare agency; or

(5) any person who would be benefited or deprived of a benefit under a will, trust or the laws of intestacy by the existence or nonexistence of a parent and child relationship, or a trustee, executor or administrator of such a will, trust or intestate estate.

b. An action under this act is a civil action in the Superior Court governed by the Rules of Court. The trial shall be by the court without a jury. The Superior Court shall

have jurisdiction over an action brought under this act. The action may be joined with an action for divorce, annulment, separate maintenance or support.

c. The courts of this State have subject matter jurisdiction over any action brought under this act with respect to a child who is resident in this State. Personal jurisdiction may be acquired over any defendant by service in accordance with the rules of the court or as provided by the Uniform Interstate Family Support Act or other law.

d. The action may be brought in the county in which the child or the alleged parent resides or is found or, if deceased, in which proceedings for probate of the estate have been or could be commenced.

Source: 9:17-45; 9:17-49 9:17-46

COMMENT

Though it is new in its form, subsection (a) is substantively identical to current law. Subsection (b) is substantively identical to 9:17-49 and subsection (a) of 9:17-46. Subsection (c) is based on subsection (b) of 9:17-46. This provision differs from the source subsection in that it bases jurisdiction on residency rather than the place of intercourse. This approach is consistent with the Child Custody Jurisdiction and Enforcement Act 2A:34-53, et seq. Subsection (d) is substantively identical to subsection (c) of 9:17-46.

6. Parties; guardian ad litem

a. The child may be made a party to the action. If the child is a minor and is made a party, a guardian ad litem shall be appointed by the court to represent the child. The child's mother or father may not represent the child as guardian or otherwise.

b. Any person known to be the child's parent, any person alleged to be the child's parent, any person who has claimed to be the child's parent, and any person who would be affected by the determination of parentage shall be made parties.

c. If a party is not subject to the jurisdiction of the court, the party shall be given notice of the action in a manner prescribed by the court and an opportunity to be heard.

Source: 9:17-47.

COMMENT

Section 9:17-47 assumes a known natural mother and defendant men who are fathers. It bases the requirement that a person be a party on presumptions of paternity. Since those presumptions are being abandoned, the section has been recast in more general terms.

7. Genetic Testing.

a. In any action to establish genetic parentage pursuant to the provisions of this chapter, or in any action where genetic parentage is at issue, the court, on its own motion, shall order the child, the mother, the alleged father and any other designated individuals to submit to genetic testing. The court shall direct that the tests be of a type generally acknowledged as reliable by an accredited body designated by the Secretary of the United States Department of Health and Human Services and be performed by a laboratory approved by such an accredited body.

b. The test results, together with the opinions and conclusions of the test laboratory, shall be filed with the court. Any objection to the test results shall be made in writing and must be filed with the court at least 10 days prior to the hearing. If no

objection is filed, the test results shall be admitted into evidence without requiring any additional foundation testimony or proof of authenticity or accuracy of the paternity testing or results. A party may call an outside expert witness to refute or support the testing procedure or results, or the mathematical theory on which they are based. Upon the entry of the order for scientific testing, the court shall inform each person to be tested of the procedure and requirements for objecting to the test results and of the consequences of the failure to object.

c. If the test results indicate a probability of 95% or more that a particular person is the parent, that person shall be presumed to be the parent.

d. The fees and costs for the tests shall be paid by the parties in proportions and at times determined by the court.

Source: New

COMMENT

This section is based primarily on provisions in a number of bills filed in the Legislature in the last few years. See, e.g. A809 (2009). A consensus developed on the best method to determine genetic parentage after the sources were drafted. In the overwhelming majority of cases, where all three relevant parties can be tested, the tests are so definitive that it is unlikely that their results would be questioned. As a result, it has been possible to simplify the section somewhat and to eliminate some other sections that deal with evidentiary issues.

8. Judgment, order of court, certificate of parentage; support.

a. The judgment or order of the court or a Certificate of Parentage determining the existence or nonexistence of the parent and child relationship is determinative for all purposes until that determination is superseded by new court judgment or order in a later action permitted by this chapter.

b. If the judgment or order of the court is at variance with the child's birth certificate, the court shall order that an amendment to the original birth record be made under section 22 of P.L.1983, c.17 (C.9:17-59).

c. The judgment or order may contain any other provision directed against the appropriate party to the proceeding concerning the duty of support, the custody and guardianship of the child, parenting time privileges with the child, the furnishing of bond or other security for the payment of the judgment, the repayment of any public assistance grant, or any other matter in the best interests of the child. The judgment or order may direct the father to pay the reasonable expenses of the mother's pregnancy and postpartum disability, including repayment to an agency that provided public assistance funds for those expenses. Bills for pregnancy, childbirth and blood or genetic testing are admissible as evidence without requiring third party foundation testimony, and shall constitute prima facie evidence of the amounts incurred for these services or for testing on behalf of the child.

d. Support judgments or orders ordinarily shall be for periodic payments, which may vary in amount. In the best interests of the child, the purchase of an annuity may be ordered in lieu of periodic payments of support. The court may limit a parent's liability for past support of the child to the proportion of the expenses already incurred that the court deems just.

e. In determining the amount to be paid by a parent for support of the child and the period during which the duty of support is owed, the court shall apply the child support guidelines as defined in section 3 of P.L.1998, c.1 (C.2A:17-56.52). In cases in which the court finds that a deviation from these guidelines is appropriate, the court shall consider all relevant facts when determining the amount of support, including the:

- (1) Needs of the child;
- (2) Standard of living and economic circumstances of each parent;
- (3) Income and assets of each parent, including any public assistance grant received by a parent;
- (4) Earning ability of each parent, including educational background, training, employment skills, work experience, custodial responsibility for children and the length of time and cost for each parent to obtain training or experience for appropriate employment;
- (5) Need and capacity of the child for education, including higher education;
- (6) Age and health of the child and each parent;
- (7) Income, assets and earning ability of the child;
- (8) Responsibility of the parents for the support of others; and
- (9) Debts and liabilities of each child and parent.

The factors set forth herein are not intended to be exhaustive. The court may consider such other factors as may be appropriate under the circumstances.

f. Upon a motion by a party, the court shall enter a temporary support order pending a judicial determination of parentage if there is clear and convincing evidence of paternity supported by blood or genetic test results or other evidence.

g. The court may order reasonable fees of counsel, experts, and the child's guardian ad litem, and other costs of the action and pre-trial proceedings, including genetic tests, to be paid by the parties in proportions and at times determined by the court.

Source: 9:17-53; 9:17-54.

COMMENT

With one exception, this section is substantively identical to its sources. Subsections (a) through (f) are derived from 9:17-53; subsection (g) from 9:17-54. The last phrase in subsection (a) is new. It refers to the fact that reexaminations of parentage are permitted in limited circumstances.

9. Enforcement.

a. If a parent-child relationship is established under this chapter or under prior law, the obligation of the parent may be enforced in the same or other proceedings by the other parent, the child, the public agency that has furnished or may furnish the reasonable expenses of pregnancy, postpartum disability, education, support, medical expenses, or burial, or by any other person, including a private agency, to the extent that the person, has furnished or is furnishing these expenses.

b. The court shall order support payments to be made to the New Jersey Family Support Payment Center unless the court finds good cause for another system of payment.

c. Willful failure to obey the judgment or order of the court is a civil contempt of the court.

d. The court has continuing jurisdiction to modify or revoke a judgment or order.

Source: 9:17-55; 9:17-56.

COMMENT

This section is substantively identical to its sources. Subsections (a) through (c) are derived from 9:17-55; subsection (d) from 9:17-56.

10. Amended birth record

a. Upon order of a court of this State or upon request of a court of another state, the local registrar of vital statistics shall prepare an amended birth record consistent with the findings of the court.

b. The fact that the parent-child relationship was declared after the child's birth shall not be ascertainable from the amended birth record, but the actual place and date of birth shall be shown.

c. The evidence upon which the amended birth record was made and the original birth certificate shall be kept in a sealed and confidential file and be subject to inspection only upon consent of the court and all interested persons, or in exceptional cases only upon an order of the court for compelling reasons clearly and convincingly shown.

Source: 9:17-59.

COMMENT

This section is substantively identical to 9:17-59.

11. Restrictions on Reexamination of Parent-Child Relationship

a. A party who has signed a certificate of paternity accompanied by the results of genetic testing may not challenge the certificate without new genetic evidence that clearly shows that the earlier determination was mistaken.

b. A party who has signed a certificate of paternity not accompanied by the results of genetic testing may not challenge the certificate unless the party's agreement to the certificate was the result of fraud, duress or mistake of fact that could not reasonably have been known at a time when the certificate could have been rescinded.

c. No person may challenge a court determination of parentage based on genetic evidence without new genetic evidence that clearly shows that the earlier determination was mistaken.

d. No person, other than a child who was a minor at the time of the action, may challenge a court determination of parentage made in an action to which the person was a party.

e. No person other than the child may challenge the parent-child relationship of a person who resided with the child for more than three years from the birth of the child:

(1) when that relationship was established by a court determination or by a certificate of paternity, or

(2) when the person was married to the child's genetic parent.

f. This section does not extend the time within which a right of inheritance or a right to succession may be asserted beyond the time provided by law relating to distribution and closing of decedents' estates or to the determination of heirship, or otherwise, or limit any time period for the determination of any claims arising under the laws governing probate, including the construction of wills and trust instruments.

g. A judgment or order of a court reexamining a determination of the existence or nonexistence of a parent and child relationship under an earlier judgment or order of the court or a Certificate of Parentage shall not effect any obligation of support due before the entry of the judgment or order.

h. No person may bring an action to challenge parentage more than two years after that person:

(1) had reason to know the facts underlying the action; and

(2) had standing to bring the action.

Source: New; 9:17-47(f).

COMMENT

Most of this section is new. It regulates the controversial area of when, by whom, and under what circumstances a determination of parentage may be reconsidered. The subsections are separate and cumulative. If a person is barred from bringing an action by any of the limitations, he may not bring an action.

The rule limits most severely determinations based on genetic testing. These findings are normally definitive and there is no reason to reexamine them without new scientific reason. Other findings are binding on persons who were parties to them. A person who is a party, if aggrieved by the result, should appeal. A total statute of repose is created by subsection (e) when the parent lives with the child for five years. In such a case, the actual relationship creates a real parent-child relationship irrespective of genetics. In such a case, there is a de facto adoption, and the child is entitled to expect a permanent relationship.

Subsection (f) is substantively identical to 9:17-47(f). Subsection (g) is new. It provides that while there may be actions to reexamine whether a parent child relationship exists, determinations in those actions will be prospective as to support. If a person owed support under an old order, new support payments will be stopped, but the past support is still due.

12. Donation of egg or sperm

a. If, under the supervision of a licensed physician and with the consent of both parties to a marriage, civil union or domestic partnership, pregnancy is achieved with semen, an egg or both, donated by persons not parties to the marriage, the parties to the marriage shall be the parents of the resulting child irrespective of genetic parentage.

b. Unless the donor of the egg or semen and the parties to a marriage have entered into a written contract to the contrary, the donor shall not be treated in law as a parent of the resulting child and shall have no rights or duties stemming from the conception of a child.

c. The identity of an anonymous donor of the egg or semen shall be kept confidential and shall not be disclosed without the permission of the donor.

Source: 9:17-44.

COMMENT

Section 9:17-44 refers only to artificial insemination. This section has been broadened to include donations of both eggs and sperm.