

LEGISLATIVE BILL 79

Approved by the Governor March 18, 1986

Introduced by Marsh, 29

AN ACT relating to parental support and paternity; to amend section 43-1412, Reissue Revised Statutes of Nebraska, 1943, and section 43-1406, Reissue Revised Statutes of Nebraska, 1943, as amended by section 74, Legislative Bill 7, Eighty-ninth Legislature, Second Special Session, 1985; to provide for the award of court costs and attorney's fees in child support orders and paternity proceedings as prescribed; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. That section 43-1406, Reissue Revised Statutes of Nebraska, 1943, as amended by section 74, Legislative Bill 7, Eighty-ninth Legislature, Second Special Session, 1985, be amended to read as follows:

43-1406. The father of a child whose paternity is established either by acknowledgment or by a judicial proceeding as hereinafter specified, not having entered into a judicially approved settlement or being in default in the performance of the same, may be made the defendant in an equitable proceeding for the support of the child. Such proceeding shall be commenced by a complaint of the mother of the child, the guardian or next friend of the child, the county which may be required to support the child, the county attorney, or an authorized attorney as defined in section 43-512 who shall set forth the facts of paternity and of nonsupport and shall ask that the father be ordered to provide for the support of the child. Summons shall issue against the father and be served as in other civil proceedings, except that such summons may be directed to the sheriff of any county in the state and may be served in any county. The method of trial shall be the same as in actions formerly cognizable in equity, and jurisdiction is hereby vested in the district court of the district where the child is domiciled or found to hear and determine such actions for support. If the court ~~shall~~ ~~find~~ ~~finds~~ that the father has failed adequately to support the child, it shall issue a decree directing him

to do so, specifying the amount of such support, and the manner in which it shall be furnished, and the amount, if any, of any court costs and attorney's fees to be paid by the father. The court in its discretion, after notice and hearing, may order implementation of income withholding pursuant to the Income Withholding for Child Support Act, if income withholding is appropriate, or may require the furnishing of bond to insure the performance of the decree in the same manner as is provided for in section 43-1405. Failure on the part of the father to perform the terms of such decree shall constitute contempt of court and may be dealt with in the same manner as other contempts.

Sec. 2. That section 43-1412, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

43-1412. The method of trial shall be the same as that in other civil proceedings, except that the trial shall be by the court without a jury unless a jury be requested by the alleged father. It being contrary to public policy that such proceedings should be open to the general public, no one but the parties, their counsel, and others having a legitimate interest in the controversy shall be admitted to the courtroom during the trial of the case. The alleged father and the mother shall be competent to testify. The uncorroborated testimony of the mother shall not alone be sufficient to support a verdict or finding that the alleged father is actually the father. Should it be determined in this proceeding that the alleged father is actually the father of the child, a judgment shall be entered declaring such to be the case. In the event that such a judgment is entered, the court shall retain jurisdiction of the cause, and enter such order of support, which order of support shall include the amount, if any, of any court costs and attorney's fees which the court in its discretion deems appropriate to be paid by the father, as may be proper under the procedure and in the manner specified in section 43-1406. If it is not determined in the proceeding that the alleged father is actually the father of the child, the court shall, if it finds that the action was frivolous, award court costs and attorney's fees incurred by the alleged father, with such costs and fees to be paid by the plaintiff.

Sec. 3. That original section 43-1412, Reissue Revised Statutes of Nebraska, 1943, and section 43-1406, Reissue Revised Statutes of Nebraska, 1943, as amended by section 74, Legislative Bill 7, Eighty-ninth

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Legislature, Second Special Session, 1985, are repealed.