



NOW THAT'S A LEGITIMATE QUESTION: Disestablishment of Paternity

The Florida statute governing the issue of the disestablishment of paternity, Section 742.18, Florida Statutes, became effective June 20, 2006 and allows, in certain circumstances, a man to disestablish paternity or relieve himself of the obligation to pay child support for a child who is determined not to be his. See Section 742.18, F.S.

If a male is concerned that a child previously determined to be his is not, in fact, his, he can seek relief from a paternity determination or child support order by filing—in circuit court—a petition pursuant to F.S. 742.18, accompanied by: an affidavit stating that newly discovered evidence exists as to the issue of paternity; results of a generally acceptable scientific paternity test administered within the 90 days preceding the filing which states that the child cannot be his or an affidavit stating that he did not have access to the child for such test to be administered; and an affidavit stating that he is current, or has just cause for not being current, in all child support obligations related to the child the paternity of whom is questioned. See F.S. 742.18(1).

To obtain the relief, the male must prove: that newly discovered evidence exists regarding paternity; that the scientific test required was done properly; that child support is current as to the child, or just cause exists for the failure to be current; that he has not adopted the child; that the child was not conceived by artificial insemination during his marriage to the mother; that he did not prevent the true biological father from asserting his own rights of paternity towards the child; and that the child was not yet 18 at the time of the filing of the petition. See F.S. 742.18(2).

Even if all of the foregoing factors are proven, the court must deny the request for various reasons which include: that the male married the mother while known as the child's father and voluntarily assumed the attendant financial and moral responsibilities for raising the child; that he swore out an acknowledgement of paternity with respect to the child; that he consented to being named on the child's birth certificate as the father; that he voluntarily and in writing pledged to support the child and was therefore required to do so; that he disregarded a request from a state agency of court that he submit to scientific testing; or that he signed a voluntary acknowledgement of paternity pursuant to Section 742.10(4), F.S. See F.S. 742.18(3).

If the disestablishment of paternity is granted, it shall apply only to prospective child support payments and termination of parental rights and time-sharing issues. And, until the order granting the disestablishment is entered, the man is still the father.

So, if you find yourself questioning the legitimacy of a child previously determined to be yours, an action to disestablish paternity is an option to consider. It is a legitimate question. ¹

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