VIRGINIA ACTS OF ASSEMBLY -- 1999 SESSION

CHAPTER 781

An Act to amend and reenact §§ 32.1-286, 64.1-5.1, and 64.1-5.2 of the Code of Virginia, relating to exhumations to prove parentage.

[H 2114]

Approved March 28, 1999

Be it enacted by the General Assembly of Virginia:

1. That §§ 32.1-286, 64.1-5.1, and 64.1-5.2 of the Code of Virginia are amended and reenacted as follows:

§ 32.1-286. Exhumations.

A. In any case of death described in subsection A of § 32.1-283, where the body is buried without investigation by a medical examiner as to the cause and manner of death or where sufficient cause develops for further investigation after a body is buried, the Chief Medical Examiner shall authorize such investigation and shall send a copy of the report to the appropriate attorney for the Commonwealth who shall communicate such report to a judge of the appropriate circuit court. Such judge may order that the body be exhumed and an autopsy performed thereon by the Chief Medical Examiner or by an Assistant Chief Medical Examiner. The pertinent facts disclosed by the autopsy shall be communicated to the judge who ordered it.

B. In any case of death in which a private person has an interest, such person may petition the judge of the circuit court exercising jurisdiction over the place of interment and, upon proper showing of sufficient cause, such judge may order the body exhumed. Such petition or exhumation or both shall not require the participation of the Chief Medical Examiner or his Assistant Chief Medical Examiners. Costs shall be paid by the party requesting the exhumation.

C. Upon the ~~presentation of substantial evidence by a moving party that he will prevail in his attempt~~ *petition of a party attempting* to prove, in accordance with the provisions of §§ 64.1-5.1 and 64.1-5.2, that he is the issue of a person dead and buried, ~~and in the interest of the furtherance of justice,~~ a court may order the exhumation of the body of a dead person for the conduct of scientifically reliable genetic tests, including ~~blood~~ *DNA* tests, to prove a biological relationship. The costs of exhumation ~~and~~, testing, *and reinterment* shall be paid by the ~~moving party~~ *petitioner* unless, for good cause shown, the court orders such costs paid from the estate of the exhumed deceased. *This provision is intended to provide a procedural mechanism for obtaining posthumous samples for reliable genetic testing and shall not require substantive proof of parentage to obtain the exhumation order.*

§ 64.1-5.1. Meaning of child and related terms.

If, for purposes of this title or for determining rights in and to property pursuant to any deed, will, trust or other instrument, a relationship of parent and child must be established to determine succession or a taking by, through or from a person:

1. An adopted person is the child of an adopting parent and not of the biological parents, except that adoption of a child by the spouse of a biological parent has no effect on the relationship between the child and either biological parent.

2. The parentage of a child resulting from assisted conception shall be determined as provided in Chapter 9 (§ 20-156 et seq.) of Title 20.

3. In cases not covered by subdivision 1 or 2 hereof, a person born out of wedlock is a child of the mother. That person is also a child of the father, if:

a. The biological parents participated in a marriage ceremony before or after the birth of the child, even though the attempted marriage was prohibited by law, deemed null or void or dissolved by a court; or

b. The paternity is established by clear and convincing evidence, *including scientifically reliable genetic testing,* as set forth in § 64.1-5.2; ~~provided,~~ however, ~~that the~~ paternity establishment pursuant to this subparagraph b shall be ineffective to qualify the father or his kindred to inherit from or through the child unless the father has openly treated the child as his and has not refused to support the child.

4. No claim of succession based upon the relationship between a child born out of wedlock and a parent of such child shall be recognized in the settlement of any decedent's estate unless an affidavit by such child or by someone acting for such child alleging such parenthood has been filed within one year of the date of the death of such parent in the clerk's office of the circuit court of the jurisdiction wherein the property affected by such claim is located and an action seeking adjudication of parenthood is filed in an appropriate circuit court within said time. However, such one-year period shall run notwithstanding the minority of such child. The limitation period of the preceding sentence shall not apply in those cases where the relationship between the child born out of wedlock and the parent in question is (i) established by a birth record prepared upon information given by or at the request of such

parent; or (ii) by admission by such parent of parenthood before any court or in writing under oath; or (iii) by a previously concluded proceeding to determine parentage pursuant to the provisions of former § 20-61.1 or Chapter 3.1 (§ 20-49.1 et seq.) of Title 20.

5. Unless otherwise specifically provided therein, an order terminating residual parental rights under § 16.1-283 shall terminate the rights of the parent to take from or through the child in question but the order shall not otherwise affect the rights of the child, the child's kindred, or the parent's kindred to take from or through the parent or the rights of the parent's kindred to take from or through the child.

§ 64.1-5.2. Evidence of paternity.

For the purposes of this title, evidence that a man is the father of a child born out of wedlock shall be clear and convincing and may include, but shall not be limited to, the following:

1. That he cohabited openly with the mother during all of the ten months immediately prior to the time the child was born;

2. That he gave consent to a physician or other person, not including the mother, charged with the responsibility of securing information for the preparation of a birth record that his name be used as the father of the child upon the birth records of the child;

3. That he allowed by a general course of conduct the common use of his surname by the child;

4. That he claimed the child as his child on any statement, tax return or other document filed and signed by him with any local, state or federal government or any agency thereof;

5. That he admitted before any court having jurisdiction to try and dispose of the same that he is the father of the child;

6. That he voluntarily admitted paternity in writing, under oath;

7. The results of ~~medically~~ *scientifically* reliable genetic ~~blood~~ ~~grouping~~ tests, *including DNA tests,* weighted with all the evidence; or

8. *Other* medical, *scientific* or anthropological evidence relating to the alleged parentage of the child based on tests performed by experts.

If a proceeding to determine parentage has been initiated and concluded pursuant to former § 20-61.1 or Chapter 3.1 (§ 20-49.1 et seq.) of Title 20, and the court enters a judgment against a man for the support, maintenance and education of a child as if the child were born in lawful wedlock to the man, that judgment shall be sufficient evidence of paternity for the purposes of this section.