

§ 48-2-206. Prebirth determination of right to consent.

(a) At any time after approximately three months from the date of conception as reasonably determined by a physician, the biological mother, agency, or adoptive parents chosen by the biological mother may file a special proceeding with the clerk requesting the court to determine whether consent of the biological father is required. The biological father shall be served with notice of the intent of the biological mother to place the child for adoption, allowing the biological father 30 days after service to assert a claim that his consent is required.

(b) The notice required under subsection (a) of this section shall contain the special proceeding case caption and file number and shall be substantially similar to the following language:

[Name of the biological mother], the biological mother, is expected to give birth to a child on or about [birth due date]. You have been identified as the biological father. It is the intention of the biological mother to place the child for adoption. It is her belief that your consent to the adoption is not required. If you believe your consent to the adoption of this child is required pursuant to G.S. 48-3-601, you must notify the court in writing no later than 30 days from the date you received this notice that you believe your consent is required. A copy of your notice to the court must also be sent to the person or agency that sent you this notice. If you fail to notify the court within 30 days that you believe your consent is required, the court will rule that your consent is not required.

(c) If the biological father fails to respond within the time required, the court shall enter an order that the biological father's consent is not required for the adoption. A biological father who fails to respond within the time required under this section is not entitled to notice under G.S. 48-2-401(c) of an adoption petition filed within three months of the birth of the minor or to participate in the adoption proceeding.

(d) If the biological father notifies the court within 30 days of his receipt of the notice required by subsection (a) of this section that he believes his consent to the adoption is required, on motion of the petitioner, the court shall hold a hearing to determine whether the consent of the biological father is required. Promptly on receipt of the petitioner's motion, the court shall set a date for the hearing no earlier than 60 days nor later than 70 days after the biological father received the notice required by subsection (a) of this section and shall notify the petitioner and the biological father of the date, time, and place of the hearing. The notice of hearing to the biological father shall include a statement substantially similar to the following:

"To the biological father named above: You have told the court that you believe your consent is necessary for the adoption of the child described in the notice sent to you earlier. This hearing is being held to decide whether your consent is in fact necessary. Before the date of the hearing, you must have taken steps under G.S. 48-3-601 to establish that your consent is necessary or this court will decide that your consent is not necessary and the child can be adopted without it."

During the hearing, the court may take such evidence as necessary and enter an order determining whether or not the consent of the biological father is necessary. If the court determines that the consent of the biological father is not required, that individual is not entitled to receive notice under G.S. 48-2-401(c) of an adoption petition filed within three months of the birth of the minor or to participate in the adoption proceeding.

(e) The manner of service under this section shall be the same as set forth in G.S. 48-2-402. If the identity or whereabouts of the biological father cannot be ascertained and the biological father is served by publication, then the 30-day notice requirements otherwise required by this section shall not apply and the biological father shall have 40 days from the date of first publication to answer in accordance with this section.

(f) The jurisdiction provisions of Article 6A of Chapter 1 of the General Statutes and the venue provisions of Article 7 of Chapter 1 of the General Statutes rather than the provisions of Part 1 of this Article apply to proceedings under this section.

- (g) Computation of periods of time provided for in this section shall be calculated as set forth in G.S. 1A-1, Rule 6.
- (h) Transfer under G.S. 1-301.2 and appeal under G.S. 1-279.1 shall be as for an adoption proceeding.
- (i) A determination by the court under this section that the consent of the biological father is not required shall only apply to an adoption petition filed within three months of the birth of the minor. (1997-215, s. 14; 2002-159, s. 11; 2005-166, s. 1; 2015-54, s. 4; 2018-68, s. 4.1.)