DOMINGO ONG, JR., MINOR REP. BY DAISY MARTINEZ (NATURAL GUARDIAN), PLAINTIFF-APPELLEE, VS. JUSTINA, JOYCE, JULIE, DAISY AND MA. SOLEDAD ALL SURNAMED ONG, DEFENDANTS-APPELLANTS.

Ponente: ANTONIO-VALENZUELA, J.

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ANTONIO-VALENZUELA, J.:

This is the appeal from the Decision dated 08 October 2010[1] (which was affirmed in the Order dated 29 November 2011[2]) (“assailed Decision”), of the Regional Trial Court, Fifth Judicial Region, Branch 60, Iriga City ("RTC"), in Civil Case No. IR-2988 which granted plaintiff-appellee Domingo Martinez Ong Jr. and intervenor-appellee Domingo Abad Ong Jr.'s Complaint for Partition with Petition for Administration and Support Pendente Lite (“Complaint”).

THE FACTS

After the death of Domingo Ong Sr. (“deceased”), two persons, both alleging to be the deceased's sons, and both bearing the names Domingo Ong Jr., sought partition of the deceased's estate.

Domingo Ong Jr. ("plaintiff-appellee Domingo Martinez Ong Jr.") filed the Complaint[3] before the RTC, docketed as Civil Case No. IR-2988, against defendants-appellants Justina, Joyce, Julie, Daisy, and Ma. Soledad, all surnamed Ong (“defendants-appellants”).

The Complaint averred: plaintiff-appellee Domingo Martinez Ong Jr. was a 16-year old minor, born to the deceased and Daisy Martinez on 04 May 1982; plaintiff-appellee Domingo Martinez Ong Jr. was one of the heirs of the deceased, and, as such, entitled to a share in the deceased's estate; however, despite plaintiff-appellee Domingo Martinez Ong Jr.'s efforts to seek for a partition of the estate of the deceased, defendants-appellants persistently refused, and unduly withheld, plaintiff-appellee Domingo Martinez Ong Jr.'s rightful share in the estate of the deceased.

Intervenor-appellee Domingo Abad Ong Jr. (“intervenor-appellee Domingo Abad Ong Jr.”) filed the Motion for Intervention,[4] which the RTC granted. Intervenor-appellee Domingo Abad Ong Jr.'s Complaint in Intervention[5] alleged: intervenor-appellee Domingo Abad Ong Jr. was born to the deceased and Dolores Abad on 19 November 1979; intervenor-appellee Domingo Abad Ong Jr. was one of the heirs of the deceased who was entitled to a share in the deceased's estate; intervenor-appellee Domingo Abad Ong Jr. tried to set up a meeting with the defendants-appellants to effect a partition of the deceased's estate, but intervenor-appellee Domingo Abad Ong Jr.'s efforts proved futile.

Defendants-appellants filed their Answer,[6] which alleged: defendants-appellants were never aware that the deceased had a son with Daisy Martinez; the birth certificate presented by the plaintiff-appellee Domingo Martinez Ong Jr. did not deserve consideration as it originated from plaintiff-appellee Domingo Martinez Ong Jr.'s natural guardian alone, without the deceased's acknowledgment; further, whatever properties that were in the

possession of defendants-appellants were products of their own labor, and were never part of the estate of the late Domingo Ong Sr; defendants-appellants sought for moral damages in the amount of P200,000.00, attorney's fees in the amount of P20,000.00, and appearance fee in the amount of P2,000.00.

Defendants-appellants filed their Answer in Intervention,[7] which alleged: it is a well-settled principle that before intervenor-appellee Domingo Abad Ong Jr. could be entitled to a share in the deceased's estate, intervenor-appellee Domingo Abad Ong Jr. must first prove his filiation to the deceased; the birth certificate presented by the intervenor-appellee Domingo Abad Ong Jr. could not be considered as competent evidence as it was not signed by the deceased; the suit was barred by prescription; defendants-appellants sought for moral damages in the amount of P100,000.00, and attorney's fees in the amount of P50,000.00.

Pre-trial was conducted and terminated.

Trial proceeded.

The following persons testified for the plaintiff-appellee: plaintiff-appellee Domingo Martinez Ong Jr.; Margarito Ibaretta (“Ibaretta”); Antonio Ocile (“Ocile”); and Tita Embestro (“Embestro”).

The evidence for the plaintiff-appellee Domingo Martinez Ong Jr. is summarized, thus: plaintiff-appellee Domingo Martinez Ong Jr. was 16 years old, third year high school student at Ateneo de Naga, and was born to the deceased (who died on 22 April 1997) and Daisy Martinez, on 04 May 1982; plaintiff-appellee Domingo Martinez Ong Jr. presented documents and photos (i.e. birth certificate;[8] pictures which depicted plaintiff-appellee Domingo Martinez Ong Jr. and the deceased;[9] report card with the signature of the deceased on the space provided for parents;[10] reservation slip at Ateneo de Naga signed by the deceased;[11] Christmas letter from the deceased to plaintiff-appellee Domingo Martinez Ong Jr.;[12] letter written by a certain Daisy to the deceased;[13] insurance policy taken out by the deceased designating plaintiff-appellee Domingo Martinez Ong Jr. as beneficiary;[14] plaintiff-appellee Domingo Martinez Ong Jr. had four sisters (i.e. Maricel, Julie, Daisy, and Joyce, all surnamed Ong) born to the deceased and the deceased's first wife, Justina Ong, and three sisters (i.e. Michelle, Hazel, and Haide, all surnamed Pimentel) born to Daisy who was married to a Pimentel; after the death of the deceased, plaintiff-appellee Domingo Martinez Ong Jr.'s sisters Julie and Joyce Ong informed plaintiff-appellee Domingo Martinez Ong Jr. that they would support plaintiff-appellee Domingo Martinez Ong Jr. in his studies; Ibaretta was a retired mailman who used to deliver letters to the deceased; Ibaretta knew the deceased and the deceased's wife, Justina Ong, and the children of deceased by Justina (i.e. Joyce, Julie, Daisy, and Tet-tot); Ibaretta knew that plaintiff-appellee Domingo Martinez Ong Jr. was the half brother of the children of the deceased with Justina Ong, because the deceased told Ibaretta this fact when the deceased stayed overnight with plaintiff-appellee Domingo Martinez Ong Jr. at Ibaretta's house at San Vicente Sur, Iriga City; defendants-appellants sought Ibaretta's help to collect the receivables of the deceased from the City Hall, and in return, defendants-appellants promised that they will pay the unpaid loan of the deceased; Ibaretta facilitated the release of a portion of the receivables, and for this, defendants-appellants paid Ibaretta the amount of P20,000.00 (defendants-appellants did not pay Ibaretta the full amount of the unpaid loan); Ocile was the driver and bodyguard of the deceased for about 20 years; when plaintiff-appellee Domingo Martinez Ong Jr. was still studying at Rinconda Allied School, Ocile was the one who brought and fetched plaintiff-appellee Domingo Martinez Ong Jr. to and from the school; the deceased brought plaintiff-appellee Domingo Martinez Ong Jr. to the Jorge L. Ong Hardware (owned by the deceased's father), when the mother and father of the deceased died; during the mass at the burial of the deceased, plaintiff-appellee Domingo Martinez Ong Jr. and Daisy Martinez were present; after the death of the deceased, Julie and Joyce Ong and plaintiff-appellee Domingo Martinez Ong Jr. met and Julie and Joyce Ong told plaintiff-appellee Domingo Martinez Ong Jr. that they (Julie and Joyce) will support plaintiff-appellee Domingo Martinez Ong Jr.'s studies; when the deceased was living, defendants-appellants were

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unemployed, but defendants-appellants operated a flour and bakery business located at the back of Jorge L. Ong Hardware; defendants-appellants operated the Joyce S. Ong Marketing; Embestro identified vouchers pertaining to different projects of the City Hall in the amounts of P14,825.00, P25,500.00, P33,813.79, P47,802.87, P25,760.00, P17,426.00, P19,811.00, P77,000.00, P59,844.00, and P14,085.87.

The following persons testified for the intervenor-appellee Domingo Abad Ong Jr.: Ocile; Ana Abad ("Abad"); intervenor-appellee Domingo Abad Ong Jr.; and Dolores Abad ("Dolores").

The evidence for the intervenor-appellee Domingo Abad Ong Jr. is summarized, thus: Ocile was the personal driver of the deceased from 1974 up to 1997; intervenor-appellee Domingo Abad Ong Jr. was the son of the deceased, and Ocile stood as godfather during the baptism of the intervenor-appellee Domingo Abad Ong Jr.; during the lifetime of deceased, Ocile was the one who regularly delivered the financial support for the intervenor-appellee Domingo Abad Ong Jr. in Naga City; Abad was the grandmother of the intervenor-appellee Domingo Abad Ong Jr., who was born to the deceased and Dolores; Abad came to know the deceased when the deceased courted Dolores, promised to support Dolores, and assured Abad that his intentions were good; and after three months, Dolores told Abad that she was pregnant; on 19 November 1979, Dolores gave birth to the intervenor-appellee Domingo Abad Ong Jr.; after giving birth, Dolores and the intervenor-appellee Domingo Abad Ong Jr. went back to Naga City, where the deceased supported them; Ocile was the one who regularly delivered the financial support to the intervenor-appellee Domingo Abad Ong Jr.; intervenor-appellee Domingo Abad Ong Jr. was the son of the deceased and Dolores as evidenced by the birth certificate;[15] intervenor-appellee Domingo Abad Ong Jr. knows the deceased because intervenor-appellee Domingo Abad Ong Jr. saw the deceased once a year at the Jorge L. Ong Hardware, to ask support from the deceased; meetings between the deceased and intervenor-appellee Domingo Abad Ong Jr. became more frequent when the intervenor-appellee Domingo Abad Ong Jr. reached fourth year high school because school expenses became higher; intervenor-appellee Domingo Abad Ong Jr. was present during the wake of the deceased, but was not able to attend the deceased's interment; intervenor-appellee Domingo Abad Ong Jr. was Dolores's son with the deceased; Dolores met the deceased in a restaurant where Dolores worked as a waitress; the deceased was at the restaurant three times a week; the deceased was very kind and friendly, so that Dolores fell for the deceased and eventually consented to having sexual intercourse with the deceased for three times, which resulted in Dolores's pregnancy; when the deceased learned that Dolores was pregnant, the deceased promised to support Dolores and her child, the intervenor-appellee Domingo Abad Ong Jr..

The following persons testified for the defendants-appellants: Joyce Ong ("Joyce") and Julie Ong ("Julie"). Joyce and Julie's testimonies are summarized, thus: Joyce and Julie both felt humiliated when they learned of the filing of the Complaint, and they suffered sleepless nights, being businesswomen with customers and transactions with several suppliers; the damages they suffered can more or less be quantified in the amount of P200,000.00; they likewise engaged the services of counsel and incurred P20,000.00 expenses as acceptance fee, and P2,000.00 as appearance fee.

On 08 October 2010, the RTC rendered the assailed Decision,[16] and rendered in favor of plaintiff-appellee Domingo Martinez Ong Jr. and intervenor-appellee Domingo Abad Ong Jr. The dispositive portion of the assailed Decision read:

> WHEREFORE, in the light of the foregoing, plaintiff and intervenor-appellee Domingo Abad Ong Jr. having satisfactorily proved their filiation, they are hereby declared illegitimate children of Domingo Chan Ong who, pursuant to law on succession, are entitled to their lawful share in the estate of said Doming Chan Ong, as may be determined by a competent court.
>
> Defendants' counterclaim for damages is dismissed. All other claims and counterclaims are likewise dismissed.

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SO ORDERED.

In the Motion for Reconsideration,[17] the defendants-appellants prayed for the reconsideration of the assailed Decision, and that a new decision be rendered in favor of the defendants-appellants.

The Motion for Reconsideration averred: plaintiff-appellee Domingo Martinez Ong Jr.'s and intervenor-appellee Domingo Abad Ong Jr.'s claims of being illegitimate children of the deceased, were barred by prescription pursuant to Articles 172[18] and 175[19] of the Family Code; the certificates of live birth presented by both plaintiff-appellee Domingo Martinez Ong Jr. and intervenor-appellee Domingo Abad Ong Jr. could not be considered as competent evidence, because there was no showing that the deceased had a hand in the preparation of the said certificates of live birth; plaintiff-appellee Domingo Martinez Ong Jr. and intervenor-appellee Domingo Abad Ong Jr. could not establish their filiation by asserting open and continuous possession of the status of an illegitimate child pursuant to the second paragraph of Article 172, because suits to prove filiation could only be brought during the lifetime of the putative father, as provided for by law.

Plaintiff-appellee Domingo Martinez Ong Jr. filed his Comment to the Motion for Reconsideration,[20] and the defendants-appellants filed their Reply (to Comment to Motion for Reconsideration).[21]

The RTC denied defendants-appellants' Motion for Reconsideration, and ruled that plaintiff-appellee Domingo Martinez Ong Jr.'s and intervenor-appellee Domingo Abad Ong Jr.'s evidence was more credible and preponderant than the evidence of the defendants-appellants.[22]

Aggrieved, defendants-appellants file the Appellants' Brief,[23] and make the following assignment of errors:[24]

ASSIGNMENT OF ERRORS

I.
THE REGIONAL TRIAL COURT COMMITTED REVERSIBLE ERROR IN DECLARING THAT PLAINTIFF-APPELLEE DOMINGO MARTINEZ ONG JR. AND INTERVENOR-APPELLEE DOMINGO ABAD ONG JR. ARE ILLEGITIMATE CHILDREN OF DOMINGO CHAN ONG.

II.
THE REGIONAL TRIAL COURT COMMITTED REVERSIBLE ERROR IN NOT AWARDING DAMAGES TO THE DEFENDANTS-APPELLANTS.

The issue is whether the RTC erred in declaring that plaintiff-appellee Domingo Martinez Ong Jr. and intervenor-appellee Domingo Abad Ong Jr., are illegitimate children of the late Domingo Chan Ong, Sr..

BRIEF FOR THE DEFENDANTS-APPELLANTS

The defendants-appellants answer in the affirmative. The RTC erred in declaring that plaintiff-appellee Domingo Martinez Ong Jr. and intervenor-appellee Domingo Abad Ong Jr. are illegitimate children of the deceased.

The Brief for the defendants-appellants[25] thrusts: plaintiff-appellee Domingo Martinez Ong Jr.'s and intervenor-appellee Domingo Abad Ong Jr.'s cause of action was prescribed since they asserted their illegitimate filiation based on the second paragraph of Article 172 of the Family Code, which provides that, the action must be brought during the lifetime of the putative father;[26] granting that the action had not yet prescribed, the photographs and school records presented by the plaintiff-appellee Domingo Martinez Ong Jr., were not sufficient evidence of filiation or acknowledgment; the RTC overlooked the fact that Daisy Martinez was married to a certain Pimentel at the time of plaintiff-appellee Domingo Martinez Ong Jr.'s birth, thus, the presumption was that plaintiff-appellee Domingo Martinez Ong Jr.'s status was legitimate, having been born in wedlock to Pimentel and Daisy; the RTC was unmindful of the pain and trouble that the Complaint had caused to the defendants-appellants

family, hence, the RTC should have dismissed the Complaint, and awarded damages to the defendants-appellants.

PLAINTIFF-APPELLEE DOMINGO MARTINEZ ONG JR.'S BRIEF

Plaintiff-appellee Domingo Martinez Ong Jr. answers in the negative. The RTC did not err in declaring that plaintiff-appellee Domingo Martinez Ong Jr. is the illegitimate child of the deceased.

The Appellee's Brief[27] parries: the second paragraph of Article 172 of the Family Code uses the word “may be” hence, the requirement to prove the filiation during the lifetime of the putative parent is merely permissive in nature; the defendants-appellants did not successfully rebut the genuineness of the certificate of live birth of plaintiff-appellee Domingo Martinez Ong Jr., and the documents presented by plaintiff-appellee Domingo Martinez Ong Jr. bearing the signature of the deceased are “authentic writings” which fall under subparagraph 2 of the 1[st] paragraph of Article 172 of the Family Code;[28] plaintiff-appellee Domingo Martinez Ong Jr.'s action had not prescribed because it is based on the first paragraph of Article 172, and not the second paragraph of the same article; it was misplaced for defendants-appellants to conclude that the evidence of plaintiff-appellee Domingo Martinez Ong Jr. falls under the second paragraph of Article 172 on open continuous possession of a status of a legitimate child.

INTERVENOR- APPELLEE DOMINGO ABAD ONG JR.'S BRIEF

Intervenor-appellee Domingo Abad Ong Jr. answers in the negative. The RTC did not err in declaring that intervenor-appellee Domingo Abad Ong Jr. is an illegitimate child of the deceased.

The intervenor-appellee Domingo Abad Ong Jr.'s Brief parries:[29] intervenor-appellee Domingo Abad Ong Jr. successfully established his illegitimate filiation under the second paragraph of Article 172, in relation to Article 175 of the Family Code, specifically, by proving that intervenor-appellee Domingo Abad Ong Jr. openly and continuously possessed the status of an illegitimate child;[30] the status of illegitimacy was proved by the testimonies of intervenor-appellee Domingo Abad Ong Jr., Abad, Ocile, and Dolores; intervenor-appellee Domingo Abad Ong Jr.'s action had not prescribed because at the time intervenor-appellee Domingo Abad Ong Jr. was born, the New Civil Code was still in effect, hence, intervenor-appellee Domingo Abad Ong Jr. had four years counted from the time intervenor-appellee Domingo Abad Ong Jr. reached the age of majority, within which to file the Complaint, and since the Motion for Intervention was filed on 06 May 1999, it was filed within the four-year prescriptive period provided for by law.[31]

THE COURT'S RULING

We rule in the affirmative. The RTC erred in declaring that plaintiff-appellee Domingo Martinez Ong Jr., and intervenor-appellee Domingo Abad Ong Jr., are the illegitimate children of the deceased.

AS TO PLAINTIFF-APPELLEE
DOMINGO MARTINEZ ONG JR.'S
CLAIM

The status of plaintiff-appellee Domingo Martinez Ong Jr. as legitimate child of Daisy and Pimentel cannot be subject of a collateral attack.

It is a well-settled principle that the legitimate status of a child cannot be subject of a collateral attack. The presumption of legitimacy fixes a civil status for the child born in wedlock, and only the father, or in exceptional instances the latter's heirs, can contest in an appropriate action the legitimacy of a child born to his wife. Thus, it

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is only when the legitimacy of a child has been successfully impugned that the paternity of the husband can be rejected.[32]

In this case, it was proved that Daisy Martinez was married to Pimentel, and the marriage between Daisy Martinez and Pimentel was valid and existing when plaintiff-appellee Domingo Martinez Ong Jr. was born, until the trial of the case when plaintiff-appellee Domingo Martinez Ong Jr. adduced evidence. It was likewise undisputed that Pimentel was still alive during the trial. Plaintiff-appellee Domingo Martinez Ong Jr. himself testified:

> ATTY PAYTE:
>
> Q Now, Mr. Witness, isn't it that you have a sister by the name of Michelle?
>
> A Yes, ma'am.
>
> Q You also have a sister by the name of Hazel?
>
> A Yes, ma'am.
>
> Q Another sister by the name of Haide?
>
> A Yes, ma'am.
>
> Q And, you affirm to the Court that these three (3) ladies I have mentioned in court today are your sisters?
>
> A Yes, ma'am.
>
> xxx
>
> Q Mr Witness, will you admit that the surname of these three (3) other sisters you have admitted today is "Pimentel," am I correct?
>
> A Yes, ma'am.
>
> Q And the surname is Pimentel because the father of those other sisters is also "Pimentel," am I correct?

A Yes, ma'am.

Q An you know for a fact that your mother is married to that man, a certain “Pimentel,” am I correct?

A Yes ma'am.

Q And, that man is still living up to this time?

A Yes, ma'am.

This issue, therefore, of whether plaintiff-appellee Domingo Martinez Ong Jr. is indeed the illegitimate child of the deceased, and thus, entitled to a share in the estate of the deceased, cannot be adjudicated without an action having been first instituted to impugn plaintiff-appellee Domingo Martinez's as being the child of Daisy and Pimentel, born in lawful wedlock. Jurisprudence has ruled that the paramount declaration of legitimacy by law cannot be attacked collaterally, one that can only be repudiated or contested in a direct suit specifically brought for that purpose. Indeed, a child born in wedlock shall be considered legitimate although the mother may have declared against its legitimacy or may have been sentenced as having been an adulteress.[33]

AS TO INTERVENOR-APPELLEE
DOMINGO ABAD ONG JR.'S CLAIM

The action by intervenor-appellee Domingo Abad Ong Jr. to seek recognition as the illegitimate child of the deceased had not prescribed because intervenor-appellee Domingo Abad Ong Jr. was still a minor when the Family Code took effect, and when the deceased died.

The argument by the defendants-appellants that the action to establish paternity and filiation is time-barred, depends upon whether the means of proving filiation falls under the first paragraph, or the second paragraph, of Article 172 of the Family Code.[34]

Intervenor-appellee Domingo Abad Ong Jr. presented his birth certificate as proof of his filiation to the deceased. Presentation of birth certificate as a means to prove filiation falls under the first paragraph of Article 172.[35] However, as admitted by both the intervenor-appellee Domingo Abad Ong Jr. and defendants-appellants, the deceased did not sign the birth certificate, and neither was it proven that the deceased had a hand in the preparation of the birth certificate. Hence, the birth certificate presented by intervenor-appellee Domingo Abad Ong Jr. had no probative value to establish his filiation to the deceased.[36] Intervenor-appellee Domingo Abad Ong Jr. did not present any other public document or private document signed by the deceased acknowledging intervenor-appellee Domingo Abad Ong Jr. as the deceased's son.

Intervenor-appellee Domingo Abad Ong Jr. failed to prove his filiation based on the first paragraph of Article 172 of the Family Code. Thus, what remains is the means to prove filiation under the second paragraph of Article 172 of the Family Code.[37] However, defendants-appellants argue that the action was time-barred because pursuant

to the Family Code, the action to prove filiation based on the second paragraph of Article 172 must be brought during the lifetime of the putative parent. Since the deceased died on 22 April 1997, the action to prove filiation based on the second paragraph of Article 172 was barred by prescription.

We are not persuaded.

Intervenor-appellee Domingo Abad Ong Jr. was born on 19 November 1979 during the time when the New Civil Code was still in effect. In fact, up to the time when the Family Code took effect (i.e. 03 August 1988) and when the deceased died (i.e. 22 April 1997), intervenor-appellee Domingo Abad Ong Jr. was still a minor, being only 17 years old. The Supreme Court has held that illegitimate children who were still minors at the time the Family Code took effect, and during the time when the putative parent died, have the right to seek recognition granted by the New Civil Code, and such right cannot be impaired or taken away. The minors, therefore, have four years from the time they reached the age of majority within which to file an action for recognition.[38] Intervenor-appellee Domingo Abad Ong Jr. intervened in the suit on 03 March 1999, or when intervenor-appellee Domingo Abad Ong Jr. was 19 years old. Clearly, the intervention in the suit was well-within the four-year prescriptive period.

Having determined that the Complaint was not time-barred, we proceed to determine whether intervenor-appellee Domingo Abad Ong Jr. was able to establish his filiation to the deceased pursuant to the second paragraph of Article 172 of the Family Code.

We rule in the negative.

Intervenor-appellee Domingo Abad Ong Jr.
failed to prove, by means of overwhelming
evidence, that there was permanent
intention by the deceased to treat
intervenor-appellee Domingo Abad Ong Jr.
as his own son.

The possession of an open and continuous status means that the father must have treated the child as his own spontaneously and without concealment. There must be a showing of the permanent intention of the supposed father to consider the child as his own, by continuous and clear manifestation of paternal affection and care.[39]

The Supreme Court has consistently held that a high standard of proof is required to establish paternity and filiation. An order for recognition and support may create an unwholesome situation or may be an irritant to the family or the lives of the parties so that it must be issued only if paternity or filiation is established by clear and convincing evidence and not merely by preponderance of evidence.[40]

Clear and convincing evidence must amount to an overwhelming evidence as was held in the case of Ilano[41] where the specific circumstances and details were narrated (i.e. the arrangement for the delivery of the child at the hospital was taken care by the alleged father; whenever the mother underwent prenatal examination, the alleged father was present; that after delivery of the child, the alleged father drove the mother and child home using his car; the alleged father bought gifts and toys for the child; the alleged father also took the child to restaurants to eat; the alleged father constantly gave the child support; and the signatures on the report cards of the child were all of the alleged father's).[42]

In this case, intervenor-appellee Domingo Abad Ong Jr. was not able to adduce any evidence attesting to the fact that intervenor-appellee Domingo Abad Ong Jr. openly and continuously possessed the status of an illegitimate child. In fact, intervenor-appellee Domingo Abad Ong Jr. failed to produce a single document proving his filiation

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to the deceased. Intervenor-appellee Domingo Abad Ong Jr.'s evidence consisted mainly of testimonial evidence that the deceased regularly provided financial support to intervenor-appellee Domingo Abad Ong Jr.. The fact of providing financial support was insufficient to prove filiation.[43] In fact, no less than Dolores, intervenor-appellee Domingo Abad Ong Jr.'s mother, admitted that the deceased was naturally kind-hearted. Thus, the grant of financial support was not indicative of paternity. Rather it showed a magnanimous heart.

Dolores's testimony was as follows:[44]

> ATTY BERMEJO:
>
> Q What were the circumstances which lead you to being familiar already to Domingo Boy Ong Sr.?
>
> A He being our customer, he treated me as a friend and he is so kind to me.
>
> Q You said at first you treated him as friend. What happened after that?
>
> A When he treated me as friend, there was a time, my friend and I were brought home by him, Domingo Ong. And then when he saw my brother sick, he volunteered to help me.
>
> Q Who was this person who volunteered to help you?
>
> A Mr. Domingo Boy Ong.
>
> Q What was then your brother ailing of?
>
> A Lung cancer.
>
> xxx
>
> Q And how much financial assistance did Mr. Domingo Boy Ong, Sr. extend to your ailing brother?
>
> A P20,000.00

Intervenor-appellee Domingo Abad Ong Jr. himself testified that he had no close relations with the deceased. Intervenor-appellee Domingo Abad Ong Jr. himself testified that he was absent during the deceased's interment. We cannot therefore infer any permanent intention by the deceased to treat intervenor-appellee Domingo Abad Ong Jr. as the deceased's own son.

The testimony of Ocile that he was the witness and godparent at intervenor-appellee Domingo Abad Ong Jr.'s baptism cannot be given credence to prove paternity and filiation.

After a careful review of the evidence presented, we are convinced that intervenor-appellee Domingo Abad Ong Jr. failed to prove his filiation under the second paragraph of Article 172 of the Family Code by means of "overwhelming evidence." The testimonies of intervenor-appellee Domingo Abad Ong Jr., Abad, Ocile, and Dolores as to the circumstances of birth, financial support, and regular visits to the Jorge L. Ong Hardware to seek for support from the deceased, did not approximate the "overwhelming evidence" presented in Ilano.[45] We hold that intervenor-appellee Domingo Abad Ong Jr. failed to prove his illegitimate filiation to the deceased.

AS TO DEFENDANTS-APPELLANTS
COUNTERCLAIM

We dismiss the prayer for moral damages and attorney's fees by the defendants-appellants against plaintiff-appellee Domingo Martinez Ong Jr. and intervenor-appellee Domingo Abad Ong Jr..

Defendants-appellants failed to clearly
show that they actually suffered mental
anguish, besmirched reputation, sleepless
nights, wounded feelings, or similar injury.

Defendants-appellants averred in a vague and general manner that they suffered embarrassment as a result of the filing of the Complaints and explained that as businesswomen, they had dealings with several customers and suppliers without narrating in specific details as to how they suffered mental anguish, besmirched reputation, sleepless nights, wounded feelings, or similar injury. In particular, defendants-appellants did not allege that as a result of the filing of the Complaints, the number of their suppliers and customers decreased, and as a consequence, they suffered business losses.

Time and again, the Supreme Court has held that an award of moral damages must be anchored on a clear showing that the person actually experienced mental anguish, besmirched reputation, sleepless nights, wounded feelings, or similar injury. Since the award of moral damages is predicated on a categorical showing that the claimant actually experienced emotional and mental sufferings, the claim of moral damages by the defendants-appellants, absent any evidence thereon, must be dismissed.[46]

Defendants-appellants failed to
substantiate, by means of documentary
evidence, their claim for attorney's fees.

Apart from the bare assertion of the defendants-appellants that they incurred legal fees of P20,000.00, and P2,000.00 per appearance by their counsel, no other proof was submitted such as official receipts or any other documentary evidence proving such fact.[47] Thus, we cannot allow the defendant-appellants' claim.

Attorney's fees as part of damages are not meant to enrich the winning party at the expense of the losing litigant. They are not awarded every time a party prevails in a suit because of the policy that no premium should be placed on the right to litigate. The award of attorney's fees is the exception rather than the rule. As such, it is necessary for the court to make findings of fact and law that would bring the case within the exception and justify the grant of such award.[48]

We SET ASIDE the Decision dated 08 October 2010 of the Regional Trial Court, Branch 60, Iriga City, in Civil Case No. IR-2988 and rule as follows:

1) DISMISS plaintiff-appellee Domingo Martinez Ong Jr.'s and intervenor-appellee Domingo Abad Ong Jr.'s Complaint for Partition with Petition for Administration and Support Pendente Lite;

2) DISMISS defendants-appellants' counterclaim for damages, and other claims and counterclaims.

IT IS SO ORDERED.

De Leon, M.M., Chairperson and Lantion, J.A.C., JJ., concur.

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[1] Records, p. 598.

[2] Records, p. 622.

[3] Dated 25 January 2011, Records, p. 1.

[4] Records, p. 55.

[5] Records, p. 77.

[6] Records, p. 18.

[7] Records, p. 70.

[8] Exhibit A, Records, p. 11.

[9] Exhibits E to E39, Records, p. 250.

[10] Exhibits B and B-3, Records, p. 245, 247.

[11] Exhibit B-1, Records, p. 246.

[12] Exhibit C, Records, p. 248.

[13] Exhibit K, Records, p. 270.

[14] Exhibit D, Records, p. 249.

[15] Exhibit A, Records, p. 427.

[16] Supra., note 1.

[17] Records, p. 605.

[18] Art. 172. The filiation of legitimate children is established by any of the following:

(1) The record of birth appearing in the civil register or a final judgment; or

(2) An admission of legitimate filiation in a public document or a private handwritten instrument and signed by the parent concerned.

In the absence of the foregoing evidence, the legitimate filiation shall be proved by:

(1) The open and continuous possession of the status of a legitimate child; or

(2) Any other means allowed by the Rules of Court and special laws. 19Art. 175. Illegitimate children may establish their illegitimate filiations in the same way and on the same evidence as legitimate children.

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[20] Records, p. 613.

[21] Records, p. 616.

[22] Records, p 622.

[23] C.A. Rollo, p. 31.

[24] Ibid..

[25] Ibid..

[26] Supra, note 10.

[27] C.A. Rollo, p. 97.

[28] Supra, note 10.

[29] C.A. Rollo, p. 77.

[30] Supra, note 10.

[31] Art. 285. The action for the recognition of natural children may be brought only during the lifetime of the presumed parents, except when the father or mother dies during the minority of the child, the action shall be brought within four years from the age of majority, or if after the death of the father or of the mother a document should appear of which nothing had been heard and in which either or both parents recognize the child, the action shall be brought within four years from the finding of the document.

[32] De Jesus v. Estate of Dizon, G.R. No. 142877, 02 October 2001.

[33] Ibid..

[34] Supra, note 10.

[35] Ibid..

[36] Solinap v. Locsin, G.R. No. 146737, 10 December 2001.

[37] Ibid..

[38] Bernabe v. Alejo, G.R. No. 140500, 21 January 2002.

[39] Mendoza v. Court of Appeals, G.R. No. 86302, 24 September 1991.

[40] Ilano v. Court of Appeals, G.R. No. 104376, 23 February 1994.

[41] Ibid..

[42] Supra, note 30.

[43] Salas v. Matusalem, G.R. No. 180284, 11 September 2013.

[44] TSN dated 06 April 2005, p. 5.

[45] Supra, note 35.

[46] De Guzman v. Tumolva, G.R. No. 188072, 19 October 2011.

[47] Ferrer v. People, G.R. No. 143487, 22 February 2006.

[48] Ibid..

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