ARNEL L. AGUSTIN, PETITIONER, VS. HON. COURT OF APPEALS AND MINOR MARTIN JOSE PROLLAMANTE, REPRESENTED BY HIS MOTHER/GUARDIAN FE ANGELA PROLLAMANTE, RESPONDENTS.

G.R. NO. 162571. June 15, 2005

Ponente: CORONA, J.

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CORONA, J.:

At issue in this petition for certiorari [1] is whether or not the Court of Appeals (CA) gravely erred in exercising its discretion, amounting to lack or excess of jurisdiction, in issuing a decision[2] and resolution[3] upholding the resolution and order of the trial court,[4] which denied petitioner's motion to dismiss private respondents' complaint for support and directed the parties to submit themselves to deoxyribonucleic acid (DNA) paternity testing.

Respondents Fe Angela and her son Martin Prollamante sued Martin's alleged biological father, petitioner Arnel L. Agustin, for support and support pendente lite before the Regional Trial Court (RTC) of Quezon City, Branch 106.[5]

In their complaint, respondents alleged that Arnel courted Fe in 1992, after which they entered into an intimate relationship. Arnel supposedly impregnated Fe on her 34th birthday on November 10, 1999. Despite Arnel's insistence on abortion, Fe decided otherwise and gave birth to their child out of wedlock, Martin, on August 11, 2000 at the Capitol Medical Hospital in Quezon City. The baby's birth certificate was purportedly signed by Arnel as the father. Arnel shouldered the pre-natal and hospital expenses but later refused Fe's repeated requests for Martin's support despite his adequate financial capacity and even suggested to have the child committed for adoption. Arnel also denied having fathered the child.

On January 19, 2001, while Fe was carrying five-month old Martin at the Capitol Hills Golf and Country Club parking lot, Arnel sped off in his van, with the open car door hitting Fe's leg. This incident was reported to the police. In July 2001, Fe was diagnosed with leukemia and has, since then, been undergoing chemotherapy. On March 5, 2002, Fe and Martin sued Arnel for support.[6]

In his amended answer, Arnel denied having sired Martin because his affair and intimacy with Fe had allegedly ended in 1998, long before Martin's conception. He claimed that Fe had at least one other secret lover. Arnel admitted that their relationship started in 1993 but "he never really fell in love with (Fe) not only because (she) had at least one secret lover, a certain Jun, but also because she proved to be scheming and overly demanding and possessive. As a result, theirs was a stormy on-and-off affair. What started as a romantic liaison between two consenting adults eventually turned out to be a case of fatal attraction where (Fe) became so obsessed with (Arnel), to the point of even entertaining the idea of marrying him, that she resorted to various devious ways and means to alienate (him) from his wife and family.... Unable to bear the prospect of losing his wife and children, Arnel terminated the affair although he still treated her as a friend such as by referring potential customers to the car aircon repair shop"[7] where she worked. Later on, Arnel found out that Fe had another erstwhile secret lover.

In May 2000, Arnel and his entire family went to the United States for a vacation. Upon their return in June 2000, Arnel learned that Fe was telling people that he had impregnated her. Arnel refused to acknowledge the child as his because their "last intimacy was sometime in 1998."[8] Exasperated, Fe started calling Arnel's wife and family. On January 19, 2001, Fe followed Arnel to the Capitol Hills Golf and Country Club parking lot to demand that he acknowledge Martin as his child. According to Arnel, he could not get through Fe and the discussion became so heated that he had no "alternative but to move on but without bumping or hitting any part of her body."[9] Finally, Arnel claimed that the signature and the community tax certificate (CTC) attributed to him in the acknowledgment of Martin's birth certificate were falsified. The CTC erroneously reflected his marital status as single when he was actually married and that his birth year was 1965 when it should have been 1964.[10]

In his pre-trial brief filed on May 17, 2002, Arnel vehemently denied having sired Martin but expressed willingness to consider any proposal to settle the case.[11]

On July 23, 2002, Fe and Martin moved for the issuance of an order directing all the parties to submit themselves to DNA paternity testing pursuant to Rule 28 of the Rules of Court.[12]

Arnel opposed said motion by invoking his constitutional right against self-incrimination.[13] He also moved to dismiss the complaint for lack of cause of action, considering that his signature on the birth certificate was a forgery and that, under the law, an illegitimate child is not entitled to support if not recognized by the putative father.[14] In his motion, Arnel manifested that he had filed criminal charges for falsification of documents against Fe (I.S. Nos. 02-5723 and 02-7192) and a petition for cancellation of his name appearing in Martin's birth certificate (docketed as Civil Case No. Q-02-46669). He attached the certification of the Philippine National Police Crime Laboratory that his signature in the birth certificate was forged.

The trial court denied the motion to dismiss the complaint and ordered the parties to submit themselves to DNA paternity testing at the expense of the applicants. The Court of Appeals affirmed the trial court.

Thus, this petition.

In a nutshell, petitioner raises two issues: (1) whether a complaint for support can be converted to a petition for recognition and (2) whether DNA paternity testing can be ordered in a proceeding for support without violating petitioner's constitutional right to privacy and right against self-incrimination.[15]

The petition is without merit.

First of all, the trial court properly denied the petitioner's motion to dismiss because the private respondents' complaint on its face showed that they had a cause of action against the petitioner. The elements of a cause of action are: (1) the plaintiff's primary right and the defendant's corresponding primary duty, and (2) the delict or wrongful act or omission of the defendant, by which the primary right and duty have been violated. The cause of action is determined not by the prayer of the complaint but by the facts alleged.[16]

In the complaint, private respondents alleged that Fe had amorous relations with the petitioner, as a result of which she gave birth to Martin out of wedlock. In his answer, petitioner admitted that he had sexual relations with Fe but denied that he fathered Martin, claiming that he had ended the relationship long before the child's conception and birth. It is undisputed and even admitted by the parties that there existed a sexual relationship between Arnel and Fe. The only remaining question is whether such sexual relationship produced the child, Martin. If it did, as respondents have alleged, then Martin should be supported by his father Arnel. If not, petitioner and Martin are strangers to each other and Martin has no right to demand and petitioner has no obligation to give support.

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Preliminaries aside, we now tackle the main issues.

Petitioner refuses to recognize Martin as his own child and denies the genuineness and authenticity of the child's birth certificate which he purportedly signed as the father. He also claims that the order and resolution of the trial court, as affirmed by the Court of Appeals, effectively converted the complaint for support to a petition for recognition, which is supposedly proscribed by law. According to petitioner, Martin, as an unrecognized child, has no right to ask for support and must first establish his filiation in a separate suit under Article 283[17] in relation to Article 265[18] of the Civil Code and Section 1, Rule 105[19] of the Rules of Court.

The petitioner's contentions are without merit.

The assailed resolution and order did not convert the action for support into one for recognition but merely allowed the respondents to prove their cause of action against petitioner who had been denying the authenticity of the documentary evidence of acknowledgement. But even if the assailed resolution and order effectively integrated an action to compel recognition with an action for support, such was valid and in accordance with jurisprudence. In Tayag v. Court of Appeals,[20] we allowed the integration of an action to compel recognition with an action to claim one's inheritance:

> ...In Paulino, we held that an illegitimate child, to be entitled to support and successional rights from the putative or presumed parent, must prove his filiation to the latter. We also said that it is necessary to allege in the complaint that the putative father had acknowledged and recognized the illegitimate child because such acknowledgment is essential to and is the basis of the right to inherit. There being no allegation of such acknowledgment, the action becomes one to compel recognition which cannot be brought after the death of the putative father. The ratio decidendi in Paulino, therefore, is not the absence of a cause of action for failure of the petitioner to allege the fact of acknowledgment in the complaint, but the prescription of the action.
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> Applying the foregoing principles to the case at bar, although petitioner contends that the complaint filed by herein private respondent merely alleges that the minor Chad Cuyugan is an illegitimate child of the deceased and is actually a claim for inheritance, from the allegations therein the same may be considered as one to compel recognition. Further, that the two causes of action, one to compel recognition and the other to claim inheritance, may be joined in one complaint is not new in our jurisprudence.
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> As early as [1922] we had occasion to rule thereon in Briz vs. Briz, et al. (43 Phil. 763 [1922]) wherein we said:
> The question whether a person in the position of the present plaintiff can in any event maintain a complex action to compel recognition as a natural child and at the same time to obtain ulterior relief in the character of heir, is one which in the opinion of this court must be answered in the affirmative, provided always that the conditions justifying the joinder of the two distinct causes of action are present in the particular case. In other words, there is no absolute necessity requiring that the action to compel acknowledgment should have been instituted and prosecuted to a successful conclusion prior to the action in which that same plaintiff seeks additional relief in the character of heir. Certainly, there is nothing so peculiar to the action to compel acknowledgment as to require that a rule should be here applied different from that generally applicable in other cases. x x x
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> The conclusion above stated, though not heretofore explicitly formulated by this court, is undoubtedly to some extent supported by our prior decisions. Thus, we have held in numerous cases, and the doctrine must be considered well settled, that a natural child having a right to compel acknowledgment, but who has not been in fact legally acknowledged, may maintain partition proceedings for the division of the inheritance against his coheirs x x x; and the same person may intervene in proceedings for the distribution of the estate of his deceased natural father, or mother x x x. In neither of these situations has it been thought necessary for the plaintiff to show a prior decree compelling acknowledgment. The obvious reason is that in partition suits and

> distribution proceedings the other persons who might take by inheritance are before the court; and the declaration of heirship is appropriate to such proceedings. (Underscoring supplied)

Although the instant case deals with support rather than inheritance, as in Tayag, the basis or rationale for integrating them remains the same. Whether or not respondent Martin is entitled to support depends completely on the determination of filiation. A separate action will only result in a multiplicity of suits, given how intimately related the main issues in both cases are. To paraphrase Tayag, the declaration of filiation is entirely appropriate to these proceedings.

On the second issue, petitioner posits that DNA is not recognized by this Court as a conclusive means of proving paternity. He also contends that compulsory testing violates his right to privacy and right against self-incrimination as guaranteed under the 1987 Constitution. These contentions have no merit.

Given that this is the very first time that the admissibility of DNA testing as a means for determining paternity has actually been the focal issue in a controversy, a brief historical sketch of our past decisions featuring or mentioning DNA testing is called for.

In the 1995 case of People v. Teehankee[21] where the appellant was convicted of murder on the testimony of three eyewitnesses, we stated as an obiter dictum that "while eyewitness identification is significant, it is not as accurate and authoritative as the scientific forms of identification evidence such as the fingerprint or the DNA test result (emphasis supplied)."

Our faith in DNA testing, however, was not quite so steadfast in the previous decade. In Pe Lim v. Court of Appeals,[22] promulgated in 1997, we cautioned against the use of DNA because "DNA, being a relatively new science, (had) not as yet been accorded official recognition by our courts. Paternity (would) still have to be resolved by such conventional evidence as the relevant incriminating acts, verbal and written, by the putative father."

In 2001, however, we opened the possibility of admitting DNA as evidence of parentage, as enunciated in Tijing v. Court of Appeals:[23]

> A final note. Parentage will still be resolved using conventional methods unless we adopt the modern and scientific ways available. Fortunately, we have now the facility and expertise in using DNA test for identification and parentage testing. The University of the Philippines Natural Science Research Institute (UP-NSRI) DNA Analysis Laboratory has now the capability to conduct DNA typing using short tandem repeat (STR) analysis. The analysis is based on the fact that the DNA of a child/person has two (2) copies, one copy from the mother and the other from the father. The DNA from the mother, the alleged father and child are analyzed to establish parentage. Of course, being a novel scientific technique, the use of DNA test as evidence is still open to challenge. Eventually, as the appropriate case comes, courts should not hesitate to rule on the admissibility of DNA evidence. For it was said, that courts should apply the results of science when competently obtained in aid of situations presented, since to reject said result is to deny progress.

The first real breakthrough of DNA as admissible and authoritative evidence in Philippine jurisprudence came in 2002 with our en banc decision in People v. Vallejo[24] where the rape and murder victim's DNA samples from the bloodstained clothes of the accused were admitted in evidence. We reasoned that "the purpose of DNA testing (was) to ascertain whether an association exist(ed) between the evidence sample and the reference sample. The samples collected (were) subjected to various chemical processes to establish their profile."

A year later, in People v. Janson,[25] we acquitted the accused charged with rape for lack of evidence because "doubts persist(ed) in our mind as to who (were) the real malefactors. Yes, a complex offense (had) been perpetrated but who (were) the perpetrators? How we wish we had DNA or other scientific evidence to still our

doubts!"

In 2004, in Tecson, et al. v. COMELEC[26] where the Court en banc was faced with the issue of filiation of then presidential candidate Fernando Poe Jr., we stated:

> In case proof of filiation or paternity would be unlikely to satisfactorily establish or would be difficult to obtain, DNA testing, which examines genetic codes obtained from body cells of the illegitimate child and any physical residue of the long dead parent could be resorted to. A positive match would clear up filiation or paternity. In Tijing vs. Court of Appeals, this Court has acknowledged the strong weight of DNA testing...

Moreover, in our en banc decision in People v. Yatar,[27] we affirmed the conviction of the accused for rape with homicide, the principal evidence for which included DNA test results. We did a lengthy discussion of DNA, the process of DNA testing and the reasons for its admissibility in the context of our own Rules of Evidence:

> Deoxyribonucleic Acid, or DNA, is a molecule that encodes the genetic information in all living organisms. A person's DNA is the same in each cell and it does not change throughout a person's lifetime; the DNA in a person's blood is the same as the DNA found in his saliva, sweat, bone, the root and shaft of hair, earwax, mucus, urine, skin tissue, and vaginal and rectal cells. Most importantly, because of polymorphisms in human genetic structure, no two individuals have the same DNA, with the notable exception of identical twins.
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> In assessing the probative value of DNA evidence, courts should consider, inter alia, the following factors: how the samples were collected, how they were handled, the possibility of contamination of the samples, the procedure followed in analyzing the samples, whether proper standards and procedures were followed in conducting the tests, and the qualification of the analyst who conducted the tests.
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> In the case at bar, Dr. Maria Corazon Abogado de Ungria was duly qualified by the prosecution as an expert witness on DNA print or identification techniques. Based on Dr. de Ungria's testimony, it was determined that the gene type and DNA profile of appellant are identical to that of the extracts subject of examination. The blood sample taken from the appellant showed that he was of the following gene types: vWA 15/19, TH01 7/8, DHFRP29/10 and CSF1PO 10/11, which are identical with semen taken from the victim's vaginal canal. Verily, a DNA match exists between the semen found in the victim and the blood sample given by the appellant in open court during the course of the trial.
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> Admittedly, we are just beginning to integrate these advances in science and technology in the Philippine criminal justice system, so we must be cautious as we traverse these relatively uncharted waters. Fortunately, we can benefit from the wealth of persuasive jurisprudence that has developed in other jurisdictions. Specifically, the prevailing doctrine in the U.S. has proven instructive.
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> In Daubert v. Merrell Dow (509 U.S. 579 (1993); 125 L. Ed. 2d 469) it was ruled that pertinent evidence based on scientifically valid principles could be used as long as it was relevant and reliable. Judges, under Daubert, were allowed greater discretion over which testimony they would allow at trial, including the introduction of new kinds of scientific techniques. DNA typing is one such novel procedure.
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> Under Philippine law, evidence is relevant when it relates directly to a fact in issue as to induce belief in its existence or non-existence. Applying the Daubert test to the case at bar, the DNA evidence obtained through PCR testing and utilizing STR analysis, and which was appreciated by the court a quo is relevant and reliable since it is reasonably based on scientifically valid principles of human genetics and molecular biology.

Significantly, we upheld the constitutionality of compulsory DNA testing and the admissibility of the results thereof as evidence. In that case, DNA samples from semen recovered from a rape victim's vagina were used to positively identify the accused Joel "Kawit" Yatar as the rapist. Yatar claimed that the compulsory extraction of

his blood sample for DNA testing, as well as the testing itself, violated his right against self-incrimination, as embodied in both Sections 12 and 17 of Article III of the Constitution. We addressed this as follows:

> The contention is untenable. The kernel of the right is not against all compulsion, but against testimonial compulsion. The right against self-incrimination is simply against the legal process of extracting from the lips of the accused an admission of guilt. It does not apply where the evidence sought to be excluded is not an incrimination but as part of object evidence.

Over the years, we have expressly excluded several kinds of object evidence taken from the person of the accused from the realm of self-incrimination. These include photographs,[28] hair,[29] and other bodily substances.[30] We have also declared as constitutional several procedures performed on the accused such as pregnancy tests for women accused of adultery,[31] expulsion of morphine from one's mouth[32] and the tracing of one's foot to determine its identity with bloody footprints.[33] In Jimenez v. Cañizares,[34] we even authorized the examination of a woman's genitalia, in an action for annulment filed by her husband, to verify his claim that she was impotent, her orifice being too small for his penis. Some of these procedures were, to be sure, rather invasive and involuntary, but all of them were constitutionally sound. DNA testing and its results, per our ruling in Yatar,[35] are now similarly acceptable.

Nor does petitioner's invocation of his right to privacy persuade us. In Ople v. Torres,[36] where we struck down the proposed national computerized identification system embodied in Administrative Order No. 308, we said:

> In no uncertain terms, we also underscore that the right to privacy does not bar all incursions into individual privacy. The right is not intended to stifle scientific and technological advancements that enhance public service and the common good... Intrusions into the right must be accompanied by proper safeguards that enhance public service and the common good.

Historically, it has mostly been in the areas of legality of searches and seizures,[37] and the infringement of privacy of communication[38] where the constitutional right to privacy has been critically at issue. Petitioner's case involves neither and, as already stated, his argument that his right against self-incrimination is in jeopardy holds no water. His hollow invocation of his constitutional rights elicits no sympathy here for the simple reason that they are not in any way being violated. If, in a criminal case, an accused whose very life is at stake can be compelled to submit to DNA testing, we see no reason why, in this civil case, petitioner herein who does not face such dire consequences cannot be ordered to do the same.

DNA paternity testing first came to prominence in the United States, where it yielded its first official results sometime in 1985. In the decade that followed, DNA rapidly found widespread general acceptance.[39] Several cases decided by various State Supreme Courts reflect the total assimilation of DNA testing into their rules of procedure and evidence.

The case of Wilson v. Lumb[40] shows that DNA testing is so commonly accepted that, in some instances, ordering the procedure has become a ministerial act. The Supreme Court of St. Lawrence County, New York allowed a party who had already acknowledged paternity to subsequently challenge his prior acknowledgment. The Court pointed out that, under the law, specifically Section 516 of the New York Family Court Act, the Family Court examiner had the duty, upon receipt of the challenge, to order DNA tests:[41]

> § 516-a. Acknowledgment of paternity. (a) An acknowledgment of paternity executed pursuant to section one hundred eleven-k of the social services law or section four thousand one hundred thirty-five-b of the public health law shall establish the paternity of and liability for the support of a child pursuant to this act. Such acknowledgment must be reduced to writing and filed pursuant to section four thousand one hundred thirty-five-b of the public health law with the registrar of the district in which the birth occurred and in which the birth certificate has been filed. No further judicial or administrative proceedings are required to ratify an

unchallenged acknowledgment of paternity.

(b) An acknowledgment of paternity executed pursuant to section one hundred eleven-k of the social services law or section four thousand one hundred thirty-five-b of the public health law may be rescinded by either signator's filing of a petition with the court to vacate the acknowledgment within the earlier of sixty days of the date of signing the acknowledgment or the date of an administrative or a judicial proceeding (including a proceeding to establish a support order) relating to the child in which either signator is a party. For purposes of this section, the "date of an administrative or a judicial proceeding" shall be the date by which the respondent is required to answer the petition. After the expiration of sixty days of the execution of the acknowledgment, either signator may challenge the acknowledgment of paternity in court only on the basis of fraud, duress, or material mistake of fact, with the burden of proof on the party challenging the voluntary acknowledgment. Upon receiving a party's challenge to an acknowledgment, the court shall order genetic marker tests or DNA tests for the determination of the child's paternity and shall make a finding of paternity, if appropriate, in accordance with this article. Neither signator's legal obligations, including the obligation for child support arising from the acknowledgment, may be suspended during the challenge to the acknowledgment except for good cause as the court may find. If a party petitions to rescind an acknowledgment and if the court determines that the alleged father is not the father of the child, or if the court finds that an acknowledgment is invalid because it was executed on the basis of fraud, duress, or material mistake of fact, the court shall vacate the acknowledgment of paternity and shall immediately provide a copy of the order to the registrar of the district in which the child's birth certificate is filed and also to the putative father registry operated by the department of social services pursuant to section three hundred seventy-two-c of the social services law. In addition, if the mother of the child who is the subject of the acknowledgment is in receipt of child support services pursuant to title six-A of article three of the social services law, the court shall immediately provide a copy of the order to the child support enforcement unit of the social services district that provides the mother with such services.

(c) A determination of paternity made by any other state, whether established through the parents' acknowledgment of paternity or through an administrative or judicial process, must be accorded full faith and credit, if and only if such acknowledgment meets the requirements set forth in section 452(a)(7) of the social security act.(emphasis supplied)

DNA testing also appears elsewhere in the New York Family Court Act:[42]

§532. Genetic marker and DNA tests; admissibility of records or reports of test results; costs of tests.

a) The court shall advise the parties of their right to one or more genetic marker tests or DNA tests and, on the court's own motion or the motion of any party, shall order the mother, her child and the alleged father to submit to one or more genetic marker or DNA tests of a type generally acknowledged as reliable by an accreditation body designated by the secretary of the federal department of health and human services and performed by a laboratory approved by such an accreditation body and by the commissioner of health or by a duly qualified physician to aid in the determination of whether the alleged father is or is not the father of the child. No such test shall be ordered, however, upon a written finding by the court that it is not in the best interests of the child on the basis of res judicata, equitable estoppel, or the presumption of legitimacy of a child born to a married woman. The record or report of the results of any such genetic marker or DNA test ordered pursuant to this section or pursuant to section one hundred eleven-k of the social services law shall be received in evidence by the court pursuant to subdivision (e) of rule forty-five hundred eighteen of the civil practice law and rules where no timely objection in writing has been made thereto and that if such timely objections are not made, they shall be deemed waived and shall not be heard by the court. If the record or report of the results of any such genetic marker or DNA test or tests indicate at least a ninety-five percent probability of paternity, the admission of such record or report shall create a rebuttable presumption of paternity, and shall establish, if unrebutted, the paternity of and liability for the support of a child pursuant to this article and article four of this act.

> (b) Whenever the court directs a genetic marker or DNA test pursuant to this section, a report made as provided in subdivision (a) of this section may be received in evidence pursuant to rule forty-five hundred eighteen of the civil practice law and rules if offered by any party.
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> (c) The cost of any test ordered pursuant to subdivision (a) of this section shall be, in the first instance, paid by the moving party. If the moving party is financially unable to pay such cost, the court may direct any qualified public health officer to conduct such test, if practicable; otherwise, the court may direct payment from the funds of the appropriate local social services district. In its order of disposition, however, the court may direct that the cost of any such test be apportioned between the parties according to their respective abilities to pay or be assessed against the party who does not prevail on the issue of paternity, unless such party is financially unable to pay. (emphasis supplied)

In R.E. v. C.E.W.,[43] a decision of the Mississippi Supreme Court, DNA tests were used to prove that H.W., previously thought to be an offspring of the marriage between A.C.W. and C.E.W., was actually the child of R.E. with whom C.E.W. had, at the time of conception, maintained an adulterous relationship.

In Erie County Department of Social Services on behalf of Tiffany M.H. v. Greg G.,[44] the 4[th] Department of the New York Supreme Court's Appellate Division allowed G.G., who had been adjudicated as T.M.H.'s father by default, to have the said judgment vacated, even after six years, once he had shown through a genetic marker test that he was not the child's father. In this case, G.G. only requested the tests after the Department of Social Services, six years after G.G. had been adjudicated as T.M.H.'s father, sought an increase in his support obligation to her.

In Greco v. Coleman,[45] the Michigan Supreme Court while ruling on the constitutionality of a provision of law allowing non-modifiable support agreements pointed out that it was because of the difficulty of determining paternity before the advent of DNA testing that such support agreements were necessary:

> As a result of DNA testing, the accuracy with which paternity can be proven has increased significantly since the parties in this lawsuit entered into their support agreement...(current testing methods can determine the probability of paternity to 99.999999% accuracy). However, at the time the parties before us entered into the disputed agreement, proving paternity was a very significant obstacle to an illegitimate child's access to child support. The first reported results of modern DNA paternity testing did not occur until 1985. ("In fact, since its first reported results in 1985, DNA matching has progressed to 'general acceptance in less than a decade'"). Of course, while prior blood-testing methods could exclude some males from being the possible father of a child, those methods could not affirmatively pinpoint a particular male as being the father. Thus, when the settlement agreement between the present parties was entered in 1980, establishing paternity was a far more difficult ordeal than at present. Contested paternity actions at that time were often no more than credibility contests. Consequently, in every contested paternity action, obtaining child support depended not merely on whether the putative father was, in fact, the child's biological father, but rather on whether the mother could prove to a court of law that she was only sexually involved with one man--the putative father. Allowing parties the option of entering into private agreements in lieu of proving paternity eliminated the risk that the mother would be unable meet her burden of proof.

It is worth noting that amendments to Michigan's Paternity law have included the use of DNA testing:[46]

> §722.716 Pretrial proceedings; blood or tissue typing determinations as to mother, child, and alleged father; court order; refusal to submit to typing or identification profiling; qualifications of person conducting typing or identification profiling; compensation of expert; result of typing or identification profiling; filing summary report; objection; admissibility; presumption; burden of proof; summary disposition.
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> Sec. 6.
> (1) In a proceeding under this act before trial, the court, upon application made by or on behalf of either party,

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> or on its own motion, shall order that the mother, child, and alleged father submit to blood or tissue typing determinations, which may include, but are not limited to, determinations of red cell antigens, red cell isoenzymes, human leukocyte antigens, serum proteins, or DNA identification profiling, to determine whether the alleged father is likely to be, or is not, the father of the child. If the court orders a blood or tissue typing or DNA identification profiling to be conducted and a party refuses to submit to the typing or DNA identification profiling, in addition to any other remedies available, the court may do either of the following:
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> (a) Enter a default judgment at the request of the appropriate party.
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> (b) If a trial is held, allow the disclosure of the fact of the refusal unless good cause is shown for not disclosing the fact of refusal.
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> (2) A blood or tissue typing or DNA identification profiling shall be conducted by a person accredited for paternity determinations by a nationally recognized scientific organization, including, but not limited to, the American association of blood banks.
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> (5) If the probability of paternity determined by the qualified person described in subsection (2) conducting the blood or tissue typing or DNA identification profiling is 99% or higher, and the DNA identification profile and summary report are admissible as provided in subsection (4), paternity is presumed. If the results of the analysis of genetic testing material from 2 or more persons indicate a probability of paternity greater than 99%, the contracting laboratory shall conduct additional genetic paternity testing until all but 1 of the putative fathers is eliminated, unless the dispute involves 2 or more putative fathers who have identical DNA.
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> (6) Upon the establishment of the presumption of paternity as provided in subsection (5), either party may move for summary disposition under the court rules. this section does not abrogate the right of either party to child support from the date of birth of the child if applicable under section 7. (emphasis supplied)

In Rafferty v. Perkins,[47] the Supreme Court of Mississippi ruled that DNA test results showing paternity were sufficient to overthrow the presumption of legitimacy of a child born during the course of a marriage:

> The presumption of legitimacy having been rebutted by the results of the blood test eliminating Perkins as Justin's father, even considering the evidence in the light most favorable to Perkins, we find that no reasonable jury could find that Easter is not Justin's father based upon the 99.94% probability of paternity concluded by the DNA testing.

In S.J.F. and J.C.F. v. R.C.W.,[48] the North Dakota Supreme Court upheld an order for genetic testing given by the Court of Appeals, even after trial on the merits had concluded without such order being given. Significantly, when J.C.F., the mother, first filed the case for paternity and support with the District Court, neither party requested genetic testing. It was only upon appeal from dismissal of the case that the appellate court remanded the case and ordered the testing, which the North Dakota Supreme Court upheld.

The case of Kohl v. Amundson,[49] decided by the Supreme Court of South Dakota, demonstrated that even default judgments of paternity could be vacated after the adjudicated father had, through DNA testing, established non-paternity. In this case, Kohl, having excluded himself as the father of Amundson’s child through DNA testing, was able to have the default judgment against him vacated. He then obtained a ruling ordering Amundson to reimburse him for the amounts withheld from his wages for child support. The Court said “(w)hile Amundson may have a remedy against the father of the child, she submit(ted) no authority that require(d) Kohl to support her child. Contrary to Amundson's position, the fact that a default judgment was entered, but subsequently vacated, (did) not foreclose Kohl from obtaining a money judgment for the amount withheld from his wages.”

In M.A.S. v. Mississippi Dept. of Human Services,[50] another case decided by the Supreme Court of

Mississippi, it was held that even if paternity was established through an earlier agreed order of filiation, child support and visitation orders could still be vacated once DNA testing established someone other than the named individual to be the biological father. The Mississippi High Court reiterated this doctrine in Williams v. Williams.[51]

The foregoing considered, we find no grave abuse of discretion on the part of the public respondent for upholding the orders of the trial court which both denied the petitioner's motion to dismiss and ordered him to submit himself for DNA testing. Under Rule 65 of the 1997 Rules of Civil Procedure, the remedy of certiorari is only available "when any tribunal, board or officer has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, nor any plain, speedy and adequate remedy in the ordinary course of law."[52] In Land Bank of the Philippines v. the Court of Appeals[53] where we dismissed a special civil action for certiorari under Rule 65, we discussed at length the nature of such a petition and just what was meant by "grave abuse of discretion":

> Grave abuse of discretion implies such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction or, in other words, where the power is exercised in an arbitrary manner by reason of passion, prejudice, or personal hostility, and it must be so patent or gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.
>
> The special civil action for certiorari is a remedy designed for the correction of errors of jurisdiction and not errors of judgment. The raison d'etre for the rule is when a court exercises its jurisdiction, an error committed while so engaged does not deprive it of the jurisdiction being exercised when the error is committed. If it did, every error committed by a court would deprive it of its jurisdiction and every erroneous judgment would be a void judgment. In such a scenario, the administration of justice would not survive. Hence, where the issue or question involved affects the wisdom or legal soundness of the decision—not the jurisdiction of the court to render said decision—the same is beyond the province of a special civil action for certiorari.
>
> The proper recourse of the aggrieved party from a decision of the CA is a petition for review on certiorari under Rule 45 of the Revised Rules of Court. On the other hand, if the error subject of the recourse is one of jurisdiction, or the act complained of was perpetrated by a quasi-judicial officer or agency with grave abuse of discretion amounting to lack or excess of jurisdiction, the proper remedy available to the aggrieved party is a petition for certiorari under Rule 65 of the said Rules. (emphasis supplied)

In the instant case, the petitioner has in no way shown any arbitrariness, passion, prejudice or personal hostility that would amount to grave abuse of discretion on the part of the Court of Appeals. The respondent court acted entirely within its jurisdiction in promulgating its decision and resolution, and any error made would have only been an error in judgment. As we have discussed, however, the decision of the respondent court, being firmly anchored in law and jurisprudence, was correct.

EPILOGUE

For too long, illegitimate children have been marginalized by fathers who choose to deny their existence. The growing sophistication of DNA testing technology finally provides a much needed equalizer for such ostracized and abandoned progeny. We have long believed in the merits of DNA testing and have repeatedly expressed as much in the past. This case comes at a perfect time when DNA testing has finally evolved into a dependable and authoritative form of evidence gathering. We therefore take this opportunity to forcefully reiterate our stand that DNA testing is a valid means of determining paternity.

WHEREFORE, in view of the foregoing, the petition is hereby DENIED. The Court of Appeals' decision dated January 28, 2004 in CA-G.R. SP No. 80961 is hereby AFFIRMED in toto.

Costs against petitioner.

SO ORDERED.

Panganiban, (Chairman), Sandoval-Gutierrez, Carpio-Morales, and Garcia, JJ., concur.

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[1] Under Rule 65 of the Rules of Court.

[2] CA Decision dated January 28, 2004 in CA-G.R. SP No. 80961, penned by Associate Justice Martin S. Villarama, Jr. and concurred in by Associate Justices Mario L. Guariña III and Jose C. Reyes, Jr. of the Seventeenth Division; Rollo, pp. 32-39.

[3] CA Resolution dated March 8, 2004 (affirming the January 28, 2004 CA Decision) in CA-G.R. SP No. 80961, penned by Associate Justice Martin S. Villarama, Jr. and concurred in by Associate Justices Mario L. Guariña III and Jose C. Reyes, Jr. of the Seventeenth Division.; Rollo, pp. 41-43.

[4] Resolution dated November 8, 2002 and order dated February 5, 2003 in Civil Case No. Q-02-46301, both penned by Presiding Judge Natividad Giron Dizon of the Regional Trial Court of Quezon City Branch 106; Rollo, pp. 157-159 and 171-172.

[5] Docketed as Civil Case No. Q-02-46301. Rollo, pp. 55-60.

[6] Rollo, pp. 55-60.

[7] Rollo, p. 103.

[8] Rollo, p. 104.

[9] Rollo, p. 105.

[10] Rollo, pp. 101-109.

[11] Rollo, pp. 111-114.

[12] Rollo, pp. 132-137.

[13] Rollo, pp. 138-139.

[14] Rollo, pp. 140-143.

[15] Rollo, pp. 10-11 and 21.

[16] Nicanor G. de Guzman, Jr. v. CA, et al., G.R. No. 92029, 20 December 1990, 192 SCRA 507.

[17] Art. 283. In any of the following cases, the father is obliged to recognize the child as his natural child:

(1) In cases of rape, abduction or seduction, when the period of the offense coincides more or less with that of the conception;
(2) When the child is in continuous possession of status of a child of the alleged father by the direct acts of the latter or of his family;
(3) When the child was conceived during the time when the mother cohabited with the supposed father;
(4) When the child has in his favor any evidence or proof that the defendant is his father.
(5)

[18] Art. 265. The filiation of legitimate children is proved by the record of birth appearing in the Civil Register,

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or by an authentic document or a final judgment.

[19] SECTION 1. Venue. — Where judicial approval of a voluntary recognition of a minor natural child is required, such child or his parents shall obtain the same by filing a petition to that effect with the Court of First Instance of the province in which the child resides. In the City of Manila, the petition shall be filed in the Juvenile and Domestic Relations Court.

[20] G.R. No. 95299, 9 June 1992, 209 SCRA 665.

[21] 319 Phil. 128 (1995).

[22] 336 Phil. 741 (1997).

[23] G.R. No. 125901, 8 March 2001, 354 SCRA 17.

[24] G.R. No. 144656, 9 May 2002, 382 SCRA 192.

[25] G.R. No. 125938, 4 April 2003, 400 SCRA 584.

[26] G.R. Nos. 161434, 161634, and 161824, 3 March 2004.

[27] G.R. No. 150224, 19 May 2004.

[28] People v. Gallarde, 382 Phil. 718 (2000).

[29] People v. Rondero, 378 Phil. 123 (1999).

[30] U.S. v. Tan Teng, 23 Phil. 145 (1912).

[31] Villaflor v. Summers, 41 Phil. 62 (1920).

[32] U.S. v. Ong Siu Hong, 36 Phil. 735 (1917).

[33] U.S. v. Salas, 25 Phil. 337 (1913).

[34] 109 Phil. 273 (1960).

[35] Supra.

[36] 354 Phil. 948 (1998).

[37] Republic v. Sandiganbayan, et al., G.R. No. 104768, 21 July 2003, 407 SCRA 10; People v. Valdez, 363 Phil 481 (1999); Aniag v. Comelec, et al., G.R. No. 104961, 7 October 1994, 237 SCRA 424; MHP Garments v. CA, et al., G.R. No. 86720, 2 September 1994, 236 SCRA 227; 20th Century Fox v. Court of Appeals, et al., No. L-76649-51, 19 August 1988, 164 SCRA 655; People v. Burgos, 228 Phil. 1 (1986); Villanueva v. Querubin 150-C Phil. 519 (1972).

[38] Waterous Drug v. NLRC, et al., 345 Phil. 982 (1997); Zulueta v. CA, et al., 324 Phil. 63 (1996).

[39] Greco v. Coleman, 615 N.W. 2d 218 (Mich. 2000).

[40] 181 Misc 2d 1033 (1999).

[41] NYSCL, Ch. 686, Article 5, Part 1, Section 516.

[42] NYSCL, Ch. 686, Article 5, Part 3, Section 532.

[43] 752 So. 2d 1019 (Miss. 1999).

[44] 273 AD 2d 919 (NY 2000).

[45] Supra.

[46] MCLA 722.716 § 6.

[47] 757 So. 2d 992 (Miss. 2000).

[48] 615 N.W. 2d 533 (ND 2000).

[49] 620 N.W.2d 606 (SD 2001).

[50] 842 So. 2d 527 (Miss. 2003).

[51] 843 So. 2d 720 (Miss. 2003).

[52] Section 1, Rule 65, Rules of Court.

[53] G.R. No. 129368, 25 August 2003, 409 SCRA 455.

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