

ESTATE OF ROGELIO G. ONG, PETITIONER, VS. MINOR JOANNE RODJIN DIAZ, REPRESENTED BY HER MOTHER AND GUARDIAN, JINKY C. DIAZ, RESPONDENT.

G.R. No. 171713. December 17, 2007

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

This is a petition for Review on Certiorari under Rule 45 of the Revised Rules of Civil Procedure assailing (1) the Decision[1] of the Court of Appeals dated 23 November 2005 and (2) the Resolution[2] of the same court dated 1 March 2006 denying petitioner's Motion for Reconsideration in CA-G.R. CV No. 70125.

A Complaint[3] for compulsory recognition with prayer for support pending litigation was filed by minor Joanne Rodjin Diaz (Joanne), represented by her mother and guardian, Jinky C. Diaz (Jinky), against Rogelio G. Ong (Rogelio) before the Regional Trial Court (RTC) of Tarlac City. In her Complaint, Jinky prayed that judgment be rendered:

- (a) Ordering defendant to recognize plaintiff Joanne Rodjin Diaz as his daughter.
- (b) Ordering defendant to give plaintiff monthly support of P20,000.00 pendente lite and thereafter to fix monthly support.
- (c) Ordering the defendant to pay plaintiff attorney's fees in the sum of P100,000.00.
- (d) Granting plaintiff such other measure of relief as maybe just and equitable in the premises.[4]

As alleged by Jinky in her Complaint in November 1993 in Tarlac City, she and Rogelio got acquainted. This developed into friendship and later blossomed into love. At this time, Jinky was already married to a Japanese national, Hasegawa Katsuo, in a civil wedding solemnized on 19 February 1993 by Municipal Trial Court Judge Panfilo V. Valdez.[5]

From January 1994 to September 1998, Jinky and Rogelio cohabited and lived together at Fairlane Subdivision, and later at Capitol Garden, Tarlac City.

From this live-in relationship, minor Joanne Rodjin Diaz was conceived and on 25 February 1998 was born at the Central Luzon Doctors' Hospital, Tarlac City.

Rogelio brought Jinky to the hospital and took minor Joanne and Jinky home after delivery. Rogelio paid all the hospital bills and the baptismal expenses and provided for all of minor Joanne's needs - recognizing the child as his.

In September 1998, Rogelio abandoned minor Joanne and Jinky, and stopped supporting minor Joanne, falsely alleging that he is not the father of the child.

Rogelio, despite Jinky's remonstrance, failed and refused and continued failing and refusing to give support for

the child and to acknowledge her as his daughter, thus leading to the filing of the heretofore adverted complaint.

After summons had been duly served upon Rogelio, the latter failed to file any responsive pleading despite repeated motions for extension, prompting the trial court to declare him in default in its Order dated 7 April 1999. Rogelio's Answer with Counterclaim and Special and Affirmative Defenses was received by the trial court only on 15 April 1999. Jinky was allowed to present her evidence ex parte on the basis of which the trial court on 23 April 1999 rendered a decision granting the reliefs prayed for in the complaint.

In its Decision[6] dated 23 April 1999, the RTC held:

WHEREFORE, judgment is hereby rendered:

- Ordering defendant to recognize plaintiff as his natural child;
- Ordering defendant to provide plaintiff with a monthly support of P10,000.00 and further
- Ordering defendant to pay reasonable attorney's fees in the amount of P5,000.00 and the cost of the suit.

On 28 April 1999, Rogelio filed a motion to lift the order of default and a motion for reconsideration seeking the court's understanding, as he was then in a quandary on what to do to find a solution to a very difficult problem of his life.[7]

On 29 April 1999, Rogelio filed a motion for new trial with prayer that the decision of the trial court dated 23 April 1999 be vacated and the case be considered for trial de novo pursuant to the provisions of Section 6, Rule 37 of the 1997 Rules of Civil Procedure.[8]

On 16 June 1999, the RTC issued an Order granting Rogelio's Motion for New Trial:

WHEREFORE, finding defendant's motion for new trial to be impressed with merit, the same is hereby granted.

The Order of this court declaring defendant in default and the decision is this court dated April 23, 1999 are hereby set aside but the evidence adduced shall remain in record, subject to cross-examination by defendant at the appropriate stage of the proceedings.

In the meantime defendant's answer is hereby admitted, subject to the right of plaintiff to file a reply and/or answer to defendant's counterclaim within the period fixed by the Rules of Court.

Acting on plaintiff's application for support pendente lite which this court finds to be warranted, defendant is hereby ordered to pay to plaintiff immediately the sum of P2,000.00 a month from January 15, 1999 to May 1999 as support pendente lite in arrears and the amount of P4,000.00 every month thereafter as regular support pendente lite during the pendency of this case.[9]

The RTC finally held:

The only issue to be resolved is whether or not the defendant is the father of the plaintiff Joanne Rodjin Diaz.

Since it was duly established that plaintiff's mother Jinky Diaz was married at the time of the birth of Joanne Rodjin Diaz, the law presumes that Joanne is a legitimate child of the spouses Hasegawa Katsuo and Jinky Diaz (Article 164, Family Code). The child is still presumed legitimate even if the mother may have declared against her legitimacy (Article 167, Ibid).

The legitimacy of a child may be impugned only on the following grounds provided for in Article 166 of the same Code. Paragraph 1 of the said Article provides that there must be physical impossibility for the husband to have sexual intercourse with the wife within the first 120 days of the 300 days following the birth of the child because of –

a)

physical incapacity of the husband to have sexual intercourse with his wife;

b)

husband and wife were living separately in such a way that sexual intercourse was not possible;

c)

serious illness of the husband which prevented sexual intercourse.

It was established by evidence that the husband is a Japanese national and that he was living outside of the country (TSN, Aug. 27, 1999, page 5) and he comes home only once a year. Both evidence of the parties proved that the husband was outside the country and no evidence was shown that he ever arrived in the country in the year 1997 preceding the birth of plaintiff Joanne Rodjin Diaz.

While it may also be argued that plaintiff Jinky had a relationship with another man before she met the defendant, there is no evidence that she also had sexual relations with other men on or about the conception of Joanne Rodjin. Joanne Rodjin was her second child (see Exh. "A"), so her first child, a certain Nicole (according to defendant) must have a different father or may be the son of Hasegawa K[u]tsuo.

The defendant admitted having been the one who shouldered the hospital bills representing the expenses in connection with the birth of plaintiff. It is an evidence of admission that he is the real father of plaintiff. Defendant also admitted that even when he stopped going out with Jinky, he and Jinky used to go to motels even after 1996. Defendant also admitted that on some instances, he still used to see Jinky after the birth of Joanne Rodjin. Defendant was even the one who fetched Jinky after she gave birth to Joanne.

On the strength of this evidence, the Court finds that Joanne Rodjin is the child of Jinky and defendant Rogelio Ong and it is but just that the latter should support plaintiff.[10]

On 15 December 2000, the RTC rendered a decision and disposed:

WHEREFORE, judgment is hereby rendered declaring Joanne Rodjin Diaz to be the illegitimate child of defendant Rogelio Ong with plaintiff Jinky Diaz. The Order of this Court awarding support pendente lite dated June 15, 1999, is hereby affirmed and that the support should continue until Joanne Rodjin Diaz shall have reached majority age.[11]

Rogelio filed a Motion for Reconsideration, which was denied for lack of merit in an Order of the trial court dated 19 January 2001.[12] From the denial of his Motion for Reconsideration, Rogelio appealed to the Court of Appeals. After all the responsive pleadings had been filed, the case was submitted for decision and ordered re-raffled to another Justice for study and report as early as 12 July 2002.[13]

During the pendency of the case with the Court of Appeals, Rogelio's counsel filed a manifestation informing the Court that Rogelio died on 21 February 2005; hence, a Notice of Substitution was filed by said counsel praying that Rogelio be substituted in the case by the Estate of Rogelio Ong,[14] which motion was accordingly granted by the Court of Appeals.[15]

In a Decision dated 23 November 2005, the Court of Appeals held:

WHEREFORE, premises considered, the present appeal is hereby GRANTED. The appealed Decision dated

December 15, 2000 of the Regional Trial Court of Tarlac, Tarlac, Branch 63 in Civil Case No. 8799 is hereby SET ASIDE. The case is hereby REMANDED to the court a quo for the issuance of an order directing the parties to make arrangements for DNA analysis for the purpose of determining the paternity of plaintiff minor Joanne Rodjin Diaz, upon consultation and in coordination with laboratories and experts on the field of DNA analysis.

No pronouncement as to costs.[16]

Petitioner filed a Motion for Reconsideration which was denied by the Court of Appeals in a Resolution dated 1 March 2006.

In disposing as it did, the Court of Appeals justified its Decision as follows:

In this case, records showed that the late defendant-appellant Rogelio G. Ong, in the early stage of the proceedings volunteered and suggested that he and plaintiff's mother submit themselves to a DNA or blood testing to settle the issue of paternity, as a sign of good faith. However, the trial court did not consider resorting to this modern scientific procedure notwithstanding the repeated denials of defendant that he is the biological father of the plaintiff even as he admitted having actual sexual relations with plaintiff's mother. We believe that DNA paternity testing, as current jurisprudence affirms, would be the most reliable and effective method of settling the present paternity dispute. Considering, however, the untimely demise of defendant-appellant during the pendency of this appeal, the trial court, in consultation with out laboratories and experts on the field of DNA analysis, can possibly avail of such procedure with whatever remaining DNA samples from the deceased defendant alleged to be the putative father of plaintiff minor whose illegitimate filiations is the subject of this action for support.[17]

Hence, this petition which raises the following issues for resolution:

I

WHETHER OR NOT THE COURT OF APPEALS ERRED WHEN IT DID NOT DISMISS RESPONDENT'S COMPLAINT FOR COMPULSORY RECOGNITION DESPITE ITS FINDING THAT THE EVIDENCE PRESENTED FAILED TO PROVE THAT ROGELIO G. ONG WAS HER FATHER.

II

WHETHER OR NOT THE COURT OF APPEALS ERRED WHEN IT DID NOT DECLARE RESPONDENT AS THE LEGITIMATE CHILD OF JINKY C. DIAZ AND HER JAPANESE HUSBAND, CONSIDERING THAT RESPONDENT FAILED TO REBUT THE PRESUMPTION OF HER LEGITIMACY.

III

WHETHER OR NOT THE COURT OF APPEALS ERRED WHEN IT REMANDED THE CASE TO THE COURT A QUO FOR DNA ANALYSIS DESPITE THE FACT THAT IT IS NO LONGER FEASIBLE DUE TO THE DEATH OF ROGELIO G. ONG.[18]

Petitioner prays that the present petition be given due course and the Decision of the Court of Appeals dated November 23, 2005 be modified, by setting aside the judgment remanding the case to the trial court for DNA testing analysis, by dismissing the complaint of minor Joanne for compulsory recognition, and by declaring the minor as the legitimate child of Jinky and Hasegawa Katsuo.[19]

From among the issues presented for our disposition, this Court finds it prudent to concentrate its attention on the third one, the propriety of the appellate court's decision remanding the case to the trial court for the conduct of DNA testing. Considering that a definitive result of the DNA testing will decisively lay to rest the issue of the

filiation of minor Joanne, we see no reason to resolve the first two issues raised by the petitioner as they will be rendered moot by the result of the DNA testing.

As a whole, the present petition calls for the determination of filiation of minor Joanne for purposes of support in favor of the said minor.

Filiation proceedings are usually filed not just to adjudicate paternity but also to secure a legal right associated with paternity, such as citizenship, support (as in the present case), or inheritance. The burden of proving paternity is on the person who alleges that the putative father is the biological father of the child. There are four significant procedural aspects of a traditional paternity action which parties have to face: a prima facie case, affirmative defenses, presumption of legitimacy, and physical resemblance between the putative father and child.[20]

A child born to a husband and wife during a valid marriage is presumed legitimate.[21] As a guaranty in favor of the child and to protect his status of legitimacy, Article 167 of the Family Code provides:

Article 167. The children shall be considered legitimate although the mother may have declared against its legitimacy or may have been sentenced as an adulteress.

The law requires that every reasonable presumption be made in favor of legitimacy. We explained the rationale of this rule in the recent case of *Cabatanian v. Court of Appeals*[22]:

The presumption of legitimacy does not only flow out of a declaration in the statute but is based on the broad principles of natural justice and the supposed virtue of the mother. The presumption is grounded on the policy to protect the innocent offspring from the odium of illegitimacy.

The presumption of legitimacy of the child, however, is not conclusive and consequently, may be overthrown by evidence to the contrary. Hence, Article 255 of the New Civil Code[23] provides:

Article 255. Children born after one hundred and eighty days following the celebration of the marriage, and before three hundred days following its dissolution or the separation of the spouses shall be presumed to be legitimate.

Against this presumption no evidence shall be admitted other than that of the physical impossibility of the husband's having access to his wife within the first one hundred and twenty days of the three hundred which preceded the birth of the child.

This physical impossibility may be caused:

- 1) By the impotence of the husband;
- 2) By the fact that husband and wife were living separately in such a way that access was not possible;
- 3) By the serious illness of the husband.[24]

The relevant provisions of the Family Code provide as follows:

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.

ART. 175. Illegitimate children may establish their illegitimate filiation in the same way and on the same evidence as legitimate children.

There had been divergent and incongruent statements and assertions bandied about by the parties to the present petition. But with the advancement in the field of genetics, and the availability of new technology, it can now be determined with reasonable certainty whether Rogelio is the biological father of the minor, through DNA testing.

DNA is the fundamental building block of a person's entire genetic make-up. DNA is found in all human cells and is the same in every cell of the same person. Genetic identity is unique. Hence, a person's DNA profile can determine his identity.[25]

DNA analysis is a procedure in which DNA extracted from a biological sample obtained from an individual is examined. The DNA is processed to generate a pattern, or a DNA profile, for the individual from whom the sample is taken. This DNA profile is unique for each person, except for identical twins.

Everyone is born with a distinct genetic blueprint called DNA (deoxyribonucleic acid). It is exclusive to an individual (except in the rare occurrence of identical twins that share a single, fertilized egg), and DNA is unchanging throughout life. Being a component of every cell in the human body, the DNA of an individual's blood is the very DNA in his or her skin cells, hair follicles, muscles, semen, samples from buccal swabs, saliva, or other body parts.

The chemical structure of DNA has four bases. They are known as A (Adenine), G (guanine), C (cytosine) and T (thymine). The order in which the four bases appear in an individual's DNA determines his or her physical make up. And since DNA is a double stranded molecule, it is composed of two specific paired bases, A-T or T-A and G-C or C-G. These are called "genes."

Every gene has a certain number of the above base pairs distributed in a particular sequence. This gives a person his or her genetic code. Somewhere in the DNA framework, nonetheless, are sections that differ. They are known as "polymorphic loci," which are the areas analyzed in DNA typing (profiling, tests, fingerprinting). In other words, DNA typing simply means determining the "polymorphic loci."

How is DNA typing performed? From a DNA sample obtained or extracted, a molecular biologist may proceed to analyze it in several ways. There are five (5) techniques to conduct DNA typing. They are: the RFLP (restriction fragment length polymorphism); "reverse dot blot" or HLA DQ a/Pm loci which was used in 287 cases that were admitted as evidence by 37 courts in the U.S. as of November 1994; DNA process; VNTR (variable number tandem repeats); and the most recent which is known as the PCR-[polymerase] chain reaction) based STR (short tandem repeats) method which, as of 1996, was availed of by most forensic laboratories in the world. PCR is the process of replicating or copying DNA in an evidence sample a million times through repeated cycling of a reaction involving the so-called DNA polymerize enzyme. STR, on the other hand, takes measurements in 13 separate places and can match two (2) samples with a reported theoretical error rate of less than one (1) in a trillion.

Just like in fingerprint analysis, in DNA typing, "matches" are determined. To illustrate, when DNA or fingerprint tests are done to identify a suspect in a criminal case, the evidence collected from the crime scene is compared with the "known" print. If a substantial amount of the identifying features are the same, the DNA or fingerprint is deemed to be a match. But then, even if only one feature of the DNA or fingerprint is different, it is deemed not to have come from the suspect.

As earlier stated, certain regions of human DNA show variations between people. In each of these regions, a person possesses two genetic types called "allele," one inherited from each parent. In [a] paternity test, the forensic scientist looks at a number of these variable regions in an individual to produce a DNA profile.

Comparing next the DNA profiles of the mother and child, it is possible to determine which half of the child's DNA was inherited from the mother. The other half must have been inherited from the biological father. The alleged father's profile is then examined to ascertain whether he has the DNA types in his profile, which match the paternal types in the child. If the man's DNA types do not match that of the child, the man is excluded as the father. If the DNA types match, then he is not excluded as the father.[26]

In the newly promulgated rules on DNA evidence it is provided:

SEC. 3 Definition of Terms. - For purposes of this Rule, the following terms shall be defined as follows:

x x x x

(c)

"DNA evidence" constitutes the totality of the DNA profiles, results and other genetic information directly generated from DNA testing of biological samples;

(d)

"DNA profile" means genetic information derived from DNA testing of a biological sample obtained from a person, which biological sample is clearly identifiable as originating from that person;

(e)

"DNA testing" means verified and credible scientific methods which include the extraction of DNA from biological samples, the generation of DNA profiles and the comparison of the information obtained from the DNA testing of biological samples for the purpose of determining, with reasonable certainty, whether or not the DNA obtained from two or more distinct biological samples originates from the same person (direct identification) or if the biological samples originate from related persons (kinship analysis); and

(f)

"Probability of Parentage" means the numerical estimate for the likelihood of parentage of a putative parent compared with the probability of a random match of two unrelated individuals in a given population.

Amidst the protestation of petitioner against the DNA analysis, the resolution thereof may provide the definitive key to the resolution of the issue of support for minor Joanne. Our articulation in *Agustin v. Court of Appeals*[27] is particularly relevant, thus:

Our faith in DNA testing, however, was not quite so steadfast in the previous decade. In *Pe Lim v. Court of Appeals* (336 Phil. 741, 270 SCRA 1), 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* [G.R. No. 125901, 8 March 2001, 354 SCRA 17]:

x x x 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 results is to deny progress.

The first real breakthrough of DNA as admissible and authoritative evidence in Philippine jurisprudence came in 2002 with out en banc decision in *People v. Vallejo* [G.R. No. 144656, 9 May 2002, 382 SCRA 192] 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* [G.R. No. 125938, 4 April 2003, 400 SCRA 584], 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* [G.R. Nos. 161434, 161634 and 161824, 3 March 2004, 424 SCRA 277], 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 v. Court of Appeals*, this Court has acknowledged the strong weight of DNA testing...

Moreover, in our en banc decision in *People v. Yatar* [G.R. No. 150224, 19 May 2004, 428 SCRA 504], we affirmed the conviction of the accused for rape with homicide, the principal evidence for which included DNA test results. x x x.

Coming now to the issue of remand of the case to the trial court, petitioner questions the appropriateness of the order by the Court of Appeals directing the remand of the case to the RTC for DNA testing given that petitioner has already died. Petitioner argues that a remand of the case to the RTC for DNA analysis is no longer feasible due to the death of Rogelio. To our mind, the alleged impossibility of complying with the order of remand for purposes of DNA testing is more ostensible than real. Petitioner's argument is without basis especially as the New Rules on DNA Evidence[28] allows the conduct of DNA testing, either *motu proprio* or upon application of any person who has a legal interest in the matter in litigation, thus:

SEC. 4. Application for DNA Testing Order. – The appropriate court may, at any time, either *motu proprio* or on application of any person who has a legal interest in the matter in litigation, order a DNA testing. Such order shall issue after due hearing and notice to the parties upon a showing of the following:

(a)

A biological sample exists that is relevant to the case;

(b)

The biological sample: (i) was not previously subjected to the type of DNA testing now requested; or (ii) was previously subjected to DNA testing, but the results may require confirmation for good reasons;

(c)

The DNA testing uses a scientifically valid technique;

(d)

The DNA testing has the scientific potential to produce new information that is relevant to the proper resolution of the case; and

(e)

The existence of other factors, if any, which the court may consider as potentially affecting the accuracy or integrity of the DNA testing.

From the foregoing, it can be said that the death of the petitioner does not ipso facto negate the application of DNA testing for as long as there exist appropriate biological samples of his DNA.

As defined above, the term "biological sample" means any organic material originating from a person's body, even if found in inanimate objects, that is susceptible to DNA testing. This includes blood, saliva, and other body fluids, tissues, hairs and bones.[29]

Thus, even if Rogelio already died, any of the biological samples as enumerated above as may be available, may be used for DNA testing. In this case, petitioner has not shown the impossibility of obtaining an appropriate biological sample that can be utilized for the conduct of DNA testing.

And even the death of Rogelio cannot bar the conduct of DNA testing. In *People v. Umanito*, [30] citing *Tecson v. Commission on Elections*, [31] this Court held:

The 2004 case of *Tecson v. Commission on Elections* [G.R. No. 161434, 3 March 2004, 424 SCRA 277] likewise reiterated the acceptance of DNA testing in our jurisdiction in this wise: "[i]n 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."

It is obvious to the Court that the determination of whether appellant is the father of AAA's child, which may be accomplished through DNA testing, is material to the fair and correct adjudication of the instant appeal. Under Section 4 of the Rules, the courts are authorized, after due hearing and notice, motu proprio to order a DNA testing. However, while this Court retains jurisdiction over the case at bar, capacitated as it is to receive and act on the matter in controversy, the Supreme Court is not a trier of facts and does not, in the course of daily routine, conduct hearings. Hence, it would be more appropriate that the case be remanded to the RTC for reception of evidence in appropriate hearings, with due notice to the parties. (Emphasis supplied.)

As we have declared in the said case of *Agustin v. Court of Appeals* [32]:

x x x [F]or 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, the instant petition is DENIED for lack of merit. The Decision of the Court of Appeals dated 23 November 2005 and its Resolution dated 1 March 2006 are AFFIRMED. Costs against petitioner.

SO ORDERED.

Ynares-Santiago, (Chairperson), Austria-Martinez, Nachura, and Reyes, JJ., concur.

[1] Penned by Associate Justice Martin S. Villarama, Jr. with Associate Justices Edgardo F. Sundiam and Japar B. Dimaampao concurring. Rollo, p. 27-43.

[2] Rollo, pp. 44-46.

[3] Docketed as Civil Case No. 8799; id. at 47-50.

[4] Id. at 48-49.

[5] Id. at 27.

[6] Penned by Acting Presiding Judge Victor T. Llamas, Jr.; rollo, p. 57-60.

[7] Id. at 28-29.

[8] SEC. 6. Effect of granting of motion for new trial. – If a new trial is granted in accordance with the provisions of this Rule, the original judgment or final order shall be vacated, and the action shall stand for trial de novo; but the recorded evidence taken upon the former trial, in so far as the same is material and competent to establish the issues, shall be used at the new trial without retaking the same.

[9] Rollo, p. 31.

[10] Id. at 61-62.

[11] Id. at 62.

[12] Id. at 35.

[13] Id. at 37.

[14] Id. at 135.

[15] Id. at 38.

[16] Id. at 42-43.

[17] Id. at 42.

[18] Id. at 125.

[19] Id. at 23.

[20] Herrera v. Alba, G.R. No. 148220, 15 June 2005, 460 SCRA 197, 204.

[21] Art. 164 of the Family Code.

[22] G.R. No. 124814, 21 October 2004, 441 SCRA 96, 104-105; *Concepcion v. Court of Appeals*, G.R. 123450, 31 August 2005, 468 SCRA 438, 447-448.

[23] Article 166 of the Family Code has a similar provision.

[24] *Liyao, Jr. v. Tanhoti-Liyao*, 428 Phil. 628, 640-641 (2002).

[25] *Herrera v. Alba*, *supra* note 20 at 209.

[26] *Id.* at 204-211.

[27] G.R. No. 162571, 15 June 2005, 460 SCRA 315, 325-327.

[28] A.M. No. 06-11-5-SC, 15 October 2007.

[29] Section 3(a) of the Rules on DNA Evidence, *id.*

[30] G.R. No. 172607, 26 October 2007.

[31] 468 Phil. 421 (2004).

[32] *Supra* note 27 at 339.

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