Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

LOWELLA YAP,
Petitioner,

-versus-

ALMEDA YAP, HEARTY YAP-DYBONGCO and DIOSDADO YAP, JR.,
Respondents.

G.R. No. 222259

Present:

LEONEN, *J., Chairperson,*
LAZARO-JAVIER,
LOPEZ, M.,
LOPEZ, J., and
KHO, JR., *JJ.*

Promulgated:
OCT 17 2022

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DECISION

LEONEN, *J.:*

Children who enjoy the presumption of legitimacy under Article 164 of the Family Code may impugn this presumption through any of the grounds provided under Article 166 of the same Code.

This Court resolves a Petition for Review on Certiorari[1] under Rule 45 of the Rules of Court assailing the Decision[2] and Resolution[3] of the Court of Appeals which set aside the portion of the Regional Trial Court's Decision[4]

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1 *Rollo*, pp. 13–23.

2 Id. at 27–44. The April 30, 2015 Decision in CA-G.R. CV No. 03083-MIN was penned by Associate Justice Rafael Antonio M. Santos and concurred in by Associate Justices Edgardo T. Lloren and Edward B. Contreras of the Twenty-Third Division, Court of Appeals, Cagayan de Oro City.

3 Id. at 45–49. The November 13, 2015 Resolution was penned by Associate Justice Rafael Antonio M. Santos and concurred in by Associate Justices Edgardo T. Lloren and Ronaldo B. Martin of the Special Former Twenty-Third Division, Court of Appeals, Cagayan de Oro City.

4 Id. at 103–112. The Decision dated March 28, 2012 was penned by Presiding Judge Edmundo P. Pintac of Branch 15, Regional Trial Court, Ozamiz City.

finding Lowella Yap (Lowella) to be Diosdado Yap, Sr.'s (Diosdado, Sr.) nonmarital daughter. It likewise dismissed Lowella's Complaint for partition and accounting with prayer for receivership for being devoid of merit.

On March 12, 1996, Lowella and Josie May Yap (Josie) filed before the Regional Trial Court a Complaint for partition and accounting with prayer for receivership and preliminary injunction against Almeda Yap (Almeda), Hearty Yap-Dybongco (Hearty), and Diosdado Yap, Jr. (Diosdado, Jr.).[5]

They alleged that Diosdado, Sr. died in January 1995[6] and left as heirs his wife Almeda, their marital children Josie, Hearty, and Diosdado, Jr., and an acknowledged nonmarital child, Lowella.[7]

Following Diosdado, Sr.'s death, Lowella and Josie decided to wait for the other heirs' plan regarding the partition of the decedent's estate. When no action was taken, Josie approached Almeda and inquired about the partition. In response, Almeda scolded Josie, and informed her that she and Lowella will not inherit anything from the decedent. Almeda challenged them to take legal actions, but the two decided to let the issue subside.[8]

Later, Lowella and Josie discovered that a portion of the decedent's estate had been extrajudicially partitioned among Almeda, Hearty, and Diosdado, Jr. This prompted Lowella and Josie to file a complaint for partition before the Regional Trial Court.[9]

In their answer, Almeda, Hearty, and Diosdado, Jr. denied that Lowella and Josie are heirs of the decedent. They maintained that Josie's real name is Josie Joy Villanueva Saavedra, whose parents are Manuel Saavedra and Lagrimas Villanueva. They likewise claimed that Lowella's father is not Diosdado, Sr., but a certain Bernardo Lumahang (Lumahang),[10] to whom her mother Matilde Lusterio[11] was married on January 15, 1953.[12]

Meanwhile, Adonis Yap (Adonis) and Adam Lou Yap (Adam), represented by Marcelita Ambil-Pancho, filed a Complaint-in-Intervention where they claimed to be the acknowledged nonmarital children of the decedent. They prayed that they be given their legitime.[13]

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5 Id. at 14 and 103.
6 Id. at 14.
7 Id. at 103.
8 Id. at 29–30.
9 Id. at 104.
10 The Regional Trial Court and the Court of Appeals interchangeably used Lumahang and Lumahao as Bernardo's surname, but for clarity, this decision will use Lumahang. See *rollo* pp. 106–107 and 35–36.
11 The Regional Trial Court and the Court of Appeals interchangeably used Rosterio and Lusterio as Matilde's surname. For clarity, this decision will use Lusterio. See *rollo* pp. 105–107 and 35–36.
12 *Rollo*, pp. 104 and 107.
13 Id. at 104.

As with Lowella and Josie, Almeda, Hearty, and Diosdado, Jr. denied that Adonis and Adam are heirs of Diosdado, Sr. They then prayed that the Complaint-in-Intervention be dismissed.[14]

In its January 21, 2002 Order, the Regional Trial Court ordered Josie to be dropped as litigant since she could no longer be located.[15]

On June 22, 2005, the Regional Trial Court directed the parties to manifest if they were still interested in pursuing the case. Only Lowella filed a Manifestation, while Adonis and Adam no longer filed any pleading and have not participated in the proceedings ever since.[16]

Trial then proceeded and the parties presented their evidence.[17]

Lowella testified that she was born on April 1, 1961 to Diosdado, Sr. and Matilde Lusterio.[18] She narrated that she started living with Diosdado, Sr. and his family when she was a second-year high school student. Lowella was treated well by the decedent's family and was even allowed to call Almeda as "Mama Mie." In addition, Lowella maintained that she worked at the decedent's construction business where she was authorized to act for and on his behalf. She further stated that despite her birth certificate bearing the name "Nelie," she uses "Lowella" instead since it was what her mother wanted.[19] In support of her allegations, she presented the following pieces of evidence, among others:

(1) Certification issued by the Civil Registrar of the Municipality of Bacolod relating to the registration of Nelie Rosterio Yap's birth to Diosdado Yap and Matilde Rosterio (Certificate of Registration);[20]

(2) Special Power of Attorney executed by Diosdado, Sr. in favor of Lowella wherein she was referred to as his daughter;[21]

(3) Photographs showing Lowella nursing Diosdado, Sr.;[22]

(4) Almeda's letters to Lowella wherein Almeda signed as "Mama

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14 Id. at 105.
15 Id.
16 Id.
17 Id.
18 Id.
19 Id. at 105–106.
20 Id. at 60. As mentioned earlier, the Regional Trial Court and the Court of Appeals interchangeably used Rosterio and Lusterio as Matilde's surname. In the Certificate of Registration, however, Rosterio was indicated.
21 Id. at 62.
22 Id. at 74 and 106.

Mie";[23] and

(5) A copy of the decedent's memorial program wherein Lowella was listed as one of Diosdado, Sr.'s children.[24]

Additionally, Lowella submitted Diosdado, Sr.'s Affidavit,[25] reproduced below:

> I, Diosdado Yap, Sr., of legal age, Filipino married and resident of Ozamis City after being duly sworn to in accordance with law depose and say,
>
> That I am the natural father of Lowella Yap;
>
> That my daughter Lowella Yap had been using the said name since when she enrolled in grade one up to the present, in her college education;
>
> That when my daughter Lowella Yap was born, the attending nurse reported her birth to the local Civil Registrar and the Civil Registrar or the clerk recorded the name of my daughter as Nelie Yap;
>
> That the Birth Certificate of my daughter bearing her Bio Data is hereto attached;
>
> This affidavit is executed for the purpose of establishing the fact that Lowella Yap or Nelie Yap is one and the same person and for any other purposes this affidavit may serve.

In compliance with the Regional Trial Court's *subpoena duces tecum*, Liza B. Taculod (Taculod), Municipal Civil Registrar of Bacolod, Lanao del Norte, brought during trial the book of live birth of the Municipal Registry of Bacolod. She read the entry relating to Nelie Lusterio Yap's birth on April 1, 1961, whose parents are Diosdado Yap and Matilde Lusterio. She testified that the Municipal Registry of Bacolod no longer have copies of birth certificates of individuals born prior to 1980. She stated that for those born prior to 1980, their office only has the book of live birth.[26]

For the defense, Almeda and her sister Ofelia Ho (Ofelia) were presented in court.[27]

Ofelia denied that the signatures appearing on Lowella's documentary exhibits were that of Diosdado, Sr.[28]

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23 Id. at 68–71 and 106.
24 Id. at 73.
25 Id. at 61.
26 Id. at 106.
27 Id.
28 Id. at 107.

Meanwhile, Almeda presented the following, among others: (1) certifications from the National Statistics Office, Manila stating that they do not have records relating to the birth of Lowella Yap and Nelie Yap born on April 2, 1961;[29] (2) Certification from the Office of the Civil Registrar regarding the marriage of Lusterio and Lumahang on January 15, 1953; (3) Lusterio and Lumahang's marriage contract; and (4) Birth Certificates of Lusterio and Lumahang's children born from 1957 to 1974.[30]

In its March 28, 2012 Decision,[31] the Regional Trial Court ruled in favor of Lowella and directed the parties to partition among themselves the estate of Diosdado, Sr., thus:

> **WHEREFORE,** judgment is hereby rendered ordering the partition in proportionate share in accordance with law of the estate of Diosdado Yap, Sr. by and among plaintiff Lowella Yap and defendant Almeda Yap, Hearty Yap-Dybongco and Diosdado Yap, Jr.
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> The parties are directed to make the partition among themselves by proper instruments of conveyance and to submit to the Court said proper instruments of conveyance for its confirmation within sixty (60) days from finality of this Decision; otherwise if the parties are unable to agree on the partition, the Court shall appoint not more than three (3) competent and disinterested persons or Commissioners to make the partition, commanding them to set off to the plaintiff and to each party in interest such part and proportion of the property as the Court shall direct.
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> The complaint-in-intervention of plaintiffs-intervenors Adonis Yap and Adam Lou Yap is dismissed without prejudice for failure to prosecute consistent with the Court's Order of June 22, 2005.
>
> **SO ORDERED.**[32] (Emphasis in the original)

In ruling this, the Regional Trial Court considered Lowella's documentary exhibits as superior evidence establishing her status as Diosdado, Sr.'s nonmarital daughter.[33]

It further held that the Certificate of Registration of Lowella's birth was not invalidated by the certifications issued by the National Statistics Office, since these certifications included a directive to make further verification with the Civil Registrar of Bacolod.[34]

In addition, it emphasized that "documents consisting of entries in

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29 Both the Regional Trial Court and the Court of Appeals noted that Almeda Yap presented certifications from the National Statistics Office which indicated that the verification made in the office files relating to the birth of Lowella Yap and Nelie Yap said to be born on April 2, 1961 yielded negative results. According to Lowella's testimony, she was born on April 1, 1961.

30 *Rollo*, p. 107.

31 Id. at 103–112.

32 Id. at 111–112.

33 Id. at 107–110.

34 Id.

public records made in the performance of a duty by a public officer are *prima facie* evidence of the facts therein stated."[35]

Finally, it considered irrelevant the marriage between Lusterio and Lumahang since Lowella proved that her father is Diosdado, Sr. It noted that Lowella's testimony that Lusterio and Lumahang had separated for a while, during which Lusterio had a relationship with Diosdado, Sr., had not been refuted.[36]

Dissatisfied with the decision, Almeda, Hearty and Diosdado, Jr., filed an appeal before the Court of Appeals.[37]

In its assailed Decision, the Court of Appeals set aside the portion of the Regional Trial Court's ruling decreeing Lowella to be Diosdado, Sr.'s acknowledged nonmarital child.[38] It ruled that since Lowella was born during the subsistence of Lusterio and Lumahang's marriage, she enjoys the presumption of legitimacy provided under Article 164 of the Family Code. It decreed that a child's legitimate status can only be impugned in an action instituted for that purpose, and not through a mere action for partition,[39] thus:

> The factual basis for the presumption of legitimacy has been sufficiently established in this case. As earlier discussed, the evidence on record readily shows that at the time plaintiff-appellee was born, her mother, Matilde Lusterio, was legally married to one Bernardo Lumahang, Sr. Thus, having been born inside the valid marriage between mother and Bernardo Lumahang, Sr., plaintiff-appellee cannot validly claim her status as an illegitimate daughter of the decedent without first having her status as a legitimate daughter of Bernardo Lumahang, Sr. impugned in an action instituted for that purpose in accordance with Articles 170 and 171 of the Family Code. Of course, such action could only have been filed by Bernardo Lumahang, Sr. or his heirs. Accordingly, the trial court could not validly declare plaintiff-appellee to be an illegitimate daughter of Bernardo Lumahang, Sr. in the present case for partition as the same would have the effect of collaterally impugning plaintiff-appellee's legitimate status.[40]

Lowella moved for reconsideration,[41] but it was denied on November 13, 2015.[42]

Aggrieved, petitioner filed a Petition for Review[43] before this Court.

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35 Id. at 110.
36 Id. at 111.
37 Id. at 27.
38 Id. at 35.
39 Id. at 35–42.
40 Id.
41 Id. at 113–118.
42 Id. at 49.
43 Id. at 13–24.

Petitioner argues that the Court of Appeals erred in applying Article 164 since her birth certificate already provides that Diosdado, Sr. is her father. She insists that the presumption of legitimacy should apply only if her birth certificate states that her father is Lumahang. She maintains that it would be useless to require Lumahang to contest her filiation when his name does not even appear on her birth certificate.[44]

For their part, respondents insist that petitioner failed to prove that she is Diosdado, Sr.'s nonmarital daughter. They claim that the Certificate of Registration is not under petitioner's name, and that she also failed to submit a copy of her birth certificate.[45]

Further, they aver that the Affidavit and Special Power of Attorney allegedly executed by Diosdado, Sr. are irregular and falsified.[46]

Finally, respondents argue that petitioner cannot validly claim to be Diosdado, Sr.'s nonmarital child without her status as Lumahang's marital child having been impugned in an action filed for that purpose.[47]

In her Reply,[48] petitioner denies the allegations of respondents. She claims that while her mother was married to Lumahang at the time of her birth, respondents submitted no documentary evidence to prove that she is Lumahang and Lusterio's marital child.[49] Moreover, she insists that there is no evidence on record to prove that the Affidavit and Special Power of Attorney were falsified.[50]

For this Court's resolution is the issue of whether or not petitioner Lowella Yap has sufficiently established her status as Diosdado Yap, Sr.'s nonmarital child.

The Petition is meritorious.

I

This Court notes that petitioner does not deny that she was born during the subsistence of her mother's marriage with Lumahang. Under the Family Code, a child conceived or born during a valid marriage shall be presumed legitimate.[51] Accordingly, petitioner is presumed to be the marital daughter

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44 Id. at 21.
45 Id. at 125.
46 Id. at 126.
47 Id.
48 Id. at 137–141.
49 Id. at 138.
50 Id. at 139.
51 FAMILY CODE, art. 164.

of Lusterio and Lumahang.

In *Liyao, Jr. v. Tanhoti-Liyao*,[52] this Court held that the presumption of legitimacy is grounded on public policy which seeks "to protect [an] innocent offspring from the odium of illegitimacy."[53] We said:

> The presumption of legitimacy of children does not only flow out from a declaration contained in the statute but is based on the broad principles of natural justice and the supposed virtue of the mother. The presumption is grounded in a policy to protect innocent offspring from the odium of illegitimacy.[54] (Citation omitted)

Nonetheless, the presumption of legitimacy may be refuted and overthrown by substantial and credible evidence to the contrary.[55] Article 166 of the Family Code provides:

> ARTICLE 166. Legitimacy of a child may be impugned only on the following grounds:
>
> (1) That it was physically impossible for the husband to have sexual intercourse with his wife within the first 120 days of the 300 days which immediately preceded the birth of the child because of:
>
> (a) the physical incapacity of the husband to have sexual intercourse with his wife;
>
> (b) the fact that the husband and wife were living separately in such a way that sexual intercourse was not possible; or
>
> (c) serious illness of the husband, which absolutely prevented sexual intercourse;
>
> (2) That it is proved that for biological or other scientific reasons, the child could not have been that of the husband, except in the instance provided in the second paragraph of Article 164; or
>
> (3) That in case of children conceived through artificial insemination, the written authorization or ratification of either parent was obtained through mistake, fraud, violence, intimidation, or undue influence.

In this regard, Articles 170 and 171 of the Family Code state that only the husband, and in exceptional circumstances, his heirs, may impugn the

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ARTICLE 164. Children conceived or born during the marriage of the parents are legitimate.
Children conceived as a result of artificial insemination of the wife with the sperm of the husband or that of a donor or both are likewise legitimate children of the husband and his wife, provided, that both of them authorized or ratified such insemination in a written instrument executed and signed by them before the birth of the child. The instrument shall be recorded in the civil registry together with the birth certificate of the child.

52 428 Phil. 628 (2002) [Per J. De Leon, Jr., Second Division].

53 Id. at 640.

54 Id.

55 Id. See also *Tison v. Court of Appeals*, 342 Phil. 550, 559-560 (1997) [Per J. Regalado, Second Division].

presumption of legitimacy of a child born to his wife:

> ARTICLE 170. The action to impugn the legitimacy of the child shall be brought within one year from the knowledge of the birth or its recording in the civil register, if the husband or, in a proper case, any of his heirs, should reside in the city or municipality where the birth took place or was recorded.
>
> If the husband or, in his default, all of his heirs do not reside at the place of birth as defined in the first paragraph or where it was recorded, the period shall be two years if they should reside in the Philippines; and three years if abroad. If the birth of the child has been concealed from or was unknown to the husband or his heirs, the period shall be counted from the discovery or knowledge of the birth of the child or of the fact of registration of said birth, whichever is earlier.
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> ARTICLE 171. The heirs of the husband may impugn the filiation of the child within the period prescribed in the preceding article only in the following cases:
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> (1) If the husband should die before the expiration of the period fixed for bringing his action;
>
> (2) If he should die after the filing of the complaint without having desisted therefrom; or
>
> (3) If the child was born after the death of the husband.

Tison v. Court of Appeals[56] discussed the reason for these rules:

> There is no presumption of the law more firmly established and founded on sounder morality and more convincing reason than the presumption that children born in wedlock are legitimate. And well settled is the rule that the issue of legitimacy cannot be attacked collaterally.
>
> The rationale for these rules has been explained in this wise:
>
> > "The presumption of legitimacy in the Family Code . . . actually fixes a civil status for the child born in wedlock, and that civil status cannot be attacked collaterally. The legitimacy of the child can be impugned only in a direct action brought for that purpose, by the proper parties, and within the period limited by law.
> >
> > The legitimacy of the child cannot be contested by way of defense or as a collateral issue in another action for a different purpose. The necessity of an independent action directly impugning the legitimacy is more clearly expressed in the Mexican Code (Article 335) which provides: 'The contest of the legitimacy of a child by the husband or his heirs must be made by proper complaint before the competent court; any contest made in any other way is void.' This principle applies under our Family Code. Articles 170

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56 342 Phil. 550 (1997) [Per J. Regalado, Second Division].

> and 171 of the code confirm this view, because they refer to "the action to impugn the legitimacy." This action can be brought only by the husband or his heirs and within the periods fixed in the present articles.
>
> Upon the expiration of the periods provided in Article 170, the action to impugn the legitimacy of a child can no longer be brought. The status conferred by the presumption, therefore, becomes fixed, and can no longer be questioned. The obvious intention of the law is to prevent the status of a child born in wedlock from being in a state of uncertainty for a long time. It also aims to force early action to settle any doubt as to the paternity of such child, so that the evidence material to the matter, which must necessarily be facts occurring during the period of the conception of the child, may still be easily available.
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> xxx xxx xxx
>
> Only the husband can contest the legitimacy of a child born to his wife. He is the one directly confronted with the scandal and ridicule which the infidelity of his wife produces; and he should decide whether to conceal that infidelity or expose it, in view of the moral and economic interest involved. It is only in exceptional cases that his heirs are allowed to contest such legitimacy. Outside of these cases, none — even his heirs — can impugn legitimacy; that would amount to an insult to his memory."[57] (Citations omitted)

The pronouncement in *Tison* was reiterated in *Liyao, Jr.*,[58] where this Court decreed:

> The fact that Corazon Garcia had been living separately from her husband, Ramon Yulo, at the time petitioner was conceived and born is of no moment. While physical impossibility for the husband to have sexual intercourse with his wife is one of the grounds for impugning the legitimacy of the child, it bears emphasis that the grounds for impugning the legitimacy of the child mentioned in Article 255 of the Civil Code may only be invoked by the husband, or in proper cases, his heirs under the conditions set forth under Article 262 of the Civil Code. Impugning the legitimacy of the child is a strictly personal right of the husband, or in exceptional cases, his heirs for the simple reason that he is the one directly confronted with the scandal and ridicule which the infidelity of his wife produces and he should be the one to decide whether to conceal that infidelity or expose it in view of the moral and economic interest involved. It is only in exceptional cases that his heirs are allowed to contest such legitimacy. Outside of these cases, none — even his heirs — can impugn legitimacy; that would amount to an insult to his memory.
>
> It is therefor clear that the present petition initiated by Corazon G. Garcia as guardian *ad litem* of the then minor, herein petitioner, to compel

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57 Id. at 558–559.

58 *Liyao, Jr. v. Tanhoti-Liyao*, 428 Phil. 628 (2002) [Per J. De Leon, Jr., Second Division].

> recognition by respondents of petitioner William Liyao, Jr, as the illegitimate son of the late William Liyao cannot prosper. It is settled that a child born within a valid marriage is presumed legitimate even though the mother may have declared against its legitimacy or may have been sentenced as an adulteress. We cannot allow petitioner to maintain his present petition and subvert the clear mandate of the law that only the husband, or in exceptional circumstances, his heirs, could impugn the legitimacy of a child born in a valid and subsisting marriage. The child himself cannot choose his own filiation. If the husband, presumed to be the father does not impugn the legitimacy of the child, then the status of the child is fixed, and the latter cannot choose to be the child of his mother's alleged paramour. On the other hand, if the presumption of legitimacy is overthrown, the child cannot elect the paternity of the husband who successfully defeated the presumption.[59] (Citations omitted)

The wisdom behind these rules was examined in the recent case of *Santiago v. Jornacion*.[60]

Santiago involved a petition filed by petitioner Bernie Santiago (Bernie) to establish filiation and correction of entries in the birth certificate of Maria Sofia Jornacion (Sofia). Bernie sought, among others, to change the name of Sofia's father in her birth certificate, from Rommel Jorancion to his name, Bernie Santiago. He alleged that he is Sofia's biological father. He also claimed that Rommel was only registered as Sofia's father to save her mother from embarrassment, since she was still then married to Rommel.

Both the Regional Trial Court and the Court of Appeals ruled to dismiss the petition on the ground that Bernie had no legal personality to impugn Sofia's legitimacy. The Court of Appeals further noted that the petition constituted as "a collateral attack on Sofia's status as a legitimate child of Rommel."[61]

When the case reached this Court, both decisions of the lower courts were reversed and set aside. This Court found it illogical to adhere to the presumption of legitimacy despite considerable evidence to the contrary. We held:

> The OSG makes much ado about Bernie's lack of legal standing to file the petition for correction of entries. It contends that an action to impugn legitimacy should he brought by the father in an action specifically for that purpose and that Bernie's petition is a collateral attack on Sofia's legitimacy.
>
> This Court cannot subscribe to the OSG's myopic interpretation of the Family Code.
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> It is hornbook principle in statutory construction that a statute must

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59 Id. at 641–642.

60 G.R. No. 230049, October 6, 2021, <https://sc.judiciary.gov.ph/28598/> [Per J. Carandang, Third Division].

61 Id. at 5.

be interpreted and understood in its entirety. "Every part of the statute must be considered together with the other parts, and kept subservient to the general intent of the whole enactment." In construing a statute, every effort must be made to harmonize the provisions of a law and to avoid rendering other provisions of the said statute inoperative.

To hastily dismiss a petition to establish filiation (under Articles 172, in relation to 175, of the Family Code) merely because Articles 170 and 171 only allow the husband or his heirs to impugn the child's legitimate status unjustifiably limits the instances when a child's filiation with his/her biological father may be established. As will be discussed below, it was never the intent of the legislators (when they crafted both the Civil Code and the Family Code) to elevate the presumption of legitimacy to a position higher than a proven fact. Albeit every *reasonable* presumption must be made in favor of legitimacy, upholding such presumption despite the presence of a contrary scientifically-proven fact becomes unreasonable — if not totally absurd.

Without meaning to belabor the point, a presumption is merely an **assumption** of fact resulting from a rule of law. It is an inference of the existence or non-existence of a fact which courts are permitted to draw from proof of other facts. It is not evidence but merely affects the burden of offering evidence. Although conclusive presumptions (*i.e.*, enumerated in Section 2, Rule 131 of the Revised Rules on Evidence) are irrefutable, a disputable presumption only becomes conclusive in the absence of any clear and convincing evidence rebutting the same. It may be contradicted or overcome by other evidence.

The presumption that a child born in wedlock is legitimate is only a disputable presumption. This presumption may be overthrown using the grounds enumerated in Article 166 of the Family Code. One of these grounds, as previously mentioned, is biological or scientific proof. Since Bernie is willing to undergo DNA testing to overcome this disputable presumption of the child's legitimate status, this Court finds it proper to afford him an opportunity to present this fact (if proven).

We are aware that establishing Sofia's illegitimacy would change her status from a legitimate to an illegitimate child. However, an unbending application of the provisions governing legitimate children results in preventing a child from establishing his or her true (illegitimate) filiation under Article 175. To cling on to archaic views of protecting the presumed legitimate father from "scandal and ridicule which the infidelity of his wife produces" blindly rejects the possibility of scientific evidence proving a biological father's filiation with their child simply because the presumed legitimate father refuses — or apathetically fails — to question his paternity with the said child. Again, Rommel was impleaded as defendant yet he never participated, much more claimed, that Sofia is his daughter.[62] (Emphasis in the original)

In this day and age, the theory that only the father is affected by the infidelity of the wife no longer holds true. The circumstances under which these children are conceived and born have an impact on their rights and privileges. Filiation proceedings are instituted not only for the purpose of

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[62] Id. at 9–10.

determining paternity. These proceedings are also filed "to secure a legal right associated with paternity, such as citizenship, support . . . or inheritance[,]"[63] as with petitioner in this case.

Further, this Court emphasizes that being a signatory to the United Nations Convention on the Rights of the Child,[64] "the Philippines has bound itself to abide by [the] universal standards on children's rights embodied" in the Convention.[65] Among the obligations which the Philippines undertook is to ensure that in actions concerning children, their best interests shall be the primary consideration:

> 1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.[66]

In this case, it would be antithetical to the best interests of the child should the Petition be denied based merely on the archaic view that only the husband is "directly confronted with the scandal and ridicule which the infidelity of his wife produces."[67] The best interest of the child is to allow petitioner to prove and establish her true filiation.

II

Before petitioner may establish her filiation with the decedent, it is imperative that she first overthrow the presumption that she is Lusterio and Lumahang's marital daughter. Once the presumption of legitimacy "has been successfully impugned. . . [only then can] the paternity of the husband. . . be rejected."[68]

Article 166 of the Family Code provides for the grounds for impugning the presumption of legitimacy. Among these grounds is the physical impossibility for the husband and wife to have sexual intercourse within the first 120 days of the 300 days immediately preceding the child's birth. The physical impossibility may be caused by the couple's living situation, in that they are "living separately in such a way that sexual intercourse was not possible."

Macadangdang v. Court of Appeals[69] discussed physical impossibility

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63 *Estate of Ong v. Diaz*, 565 Phil. 215, 224 (2007) [Per J. Chico-Nazario, Third Division].
64 *Aquino v. Aquino*, G.R. Nos. 208912 and 209018, December 7, 2021, <https://sc.judiciary.gov.ph/28508/> [Per J. Leonen, En banc].
65 Id.
66 UN Convention on the Rights of the Child, art. 3.
67 *Liyao, Jr. v. Tanhoti-Liyao*, 428 Phil. 628, 641 (2002) [Per J. De Leon, Jr., Second Division].
68 *De Jesus v. Estate of* Dizon, 418 Phil. 768, 775 (2001) [Per J. Vitug, Third Division].
69 188 Phil. 192 (1980) [Per J. Makasiar, First Division].

of sexual union as a means to impugn the presumption of legitimacy:

> The modern rule is that, in order to overthrow the presumption of legitimacy, it must be shown beyond reasonable doubt that there was no access as could have enabled the husband to be the father of the child. Sexual intercourse is to be presumed where personal access is not disproved, unless such presumption is rebutted by evidence to the contrary; where sexual intercourse is presumed or proved, the husband must be taken be the father of the child . . . .
>
> To defeat the presumption of legitimacy, therefore, there must be physical impossibility of access by the husband to the wife during the period of conception. The law expressly refers to physical impossibility. Hence, a circumstance which makes sexual relations improbable, cannot defeat the presumption of legitimacy; but it may be proved as a circumstance to corroborate proof of physical impossibility of access. . . .
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> . . . .
>
> The separation between the spouses must be such as to make sexual access impossible. This may take place when they reside in different countries or provinces, and they have never been together during the period of conception. . . Or, the husband may be in prison during the period of conception, unless it appears that sexual union took place through corrupt violation of or allowed by prison regulations[.][70] (Citations omitted)

Here, in ruling that petitioner is not Lumahang's daughter, the Regional Trial Court held:

> It is true that plaintiff Lowella Yap's mother Matilde Lusterio was legally married to Bernardo Lumahang and that plaintiff Lowella Yap was born during the said marriage. Nevertheless, this does not detract from the fact that the father of plaintiff Lowella Yap is not Bernado Lumahang but Diosdado Yap, Sr. As explained by plaintiff Lowella Yap, which has been unrefuted, her mother Matilde Lusterio and Bernardo Lumahang had separated albeit they eventually reconciled and that during said separation Matilde Lusterio and Diosdao Yap, Sr had a relationship that resulted in the birth of plaintiff Lowella Yap.[71]

Ordinarily, "the Court defers and accords finality to the factual findings of trial courts."[72] This Court will not review the Regional Trial Court's findings of fact absent any showing that one or more of the following exceptional circumstances exist:[73]

> (1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (2) When the inference made is manifestly mistaken, absurd or impossible; (3) Where there is a grave abuse of discretion; (4) When the judgment is based on a misapprehension of facts;

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70 Id. at 202–203.
71 *Rollo*, p. 111.
72 *Heirs of Villanueva v. Heirs of Mendoza*, 810 Phil. 172, 178 (2017) [Per J. Peralta, Second Division].
73 *Pascual v. Burgos*, 776 Phil. 167, 182 (2016) [Per J. Leonen, Second Division].

> (5) When the findings of fact are conflicting; (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) The findings of the Court of Appeals are contrary to those of the trial court; (8) When the findings of fact are conclusions without citation of specific evidence on which they are based; (9) When the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and (10) The finding of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record.[74]

A perusal of the records, however, reveals that the Regional Trial Court's "conclusion is a finding grounded entirely on speculation, surmises or conjectures[.]"[75]

It appears that the Regional Trial Court's conclusion that Lumahang and Lusterio briefly separated was solely based on petitioner's testimony. No other evidence was presented to prove this fact.

Further, even if we agree that Lumahang and Lusterio had briefly separated, separation alone is insufficient to impugn the presumption of legitimacy. It is imperative that there be proof of impossibility of sexual union. Here, the circumstances showing impossibility of sexual union between Lumahang and Lusterio were not discussed.

Based on the foregoing, complete resolution of this case requires the submission of additional evidence. However, considering that this Court is not a trier of facts, the prudent recourse is for the case to be remanded to the court of origin for the reception of additional evidence. This remedy "is in keeping with the liberalization of the rule on investigation of the paternity and filiation of children, in the paramount consideration of the child's welfare and best interest of the child."[76]

III

It must be stressed that the Family Code provides for other grounds in impugning the presumption of legitimacy. The presumption may be overturned when it was proven "that for biological or other scientific reasons, the child could not have been that of the husband[.]"

Deoxyribonucleic acid (DNA) refers to "the chain of molecules found in every nucleated cell of the body."[77] It is "the fundamental building block

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74 Id. Citing *Medina v. Asistio, Jr.*, 269 Phil. 225 (1990) [Per J. Bidin, Third Division].

75 Id.

76 *Aquino v. Aquino*, G.R. Nos. 208912 and 209018, December 7, 2021, <https://sc.judiciary.gov.ph/28508/> [Per J. Leonen, En banc].

77 RULE ON DNA EVIDENCE, A.M. No. 06-11-5-SC (2007), sec. 3(b).

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. . . [one's] identity."[78]

The Rule on DNA Evidence[79] defines DNA testing as:

> . . . 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)[.][80]

Herrera v. Alba[81] explained how paternity may be established through DNA testing:

> 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. We quote relevant portions of the trial court's 3 February 2000 Order with approval:
>
> > 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** (cystosine) and **T** (thymine). The order in which the four bases appear in an individual's DNA determines his or her physical makeup. 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, or analysis/DNA fingerprinting/genetic tests or fingerprinting).

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78 *Herrera v. Alba*, 499 Phil. 185, 196 (2005) [Per J. Carpio, First Division].
79 RULE ON DNA EVIDENCE, A.M. NO. 06-11-5-SC (2007).
80 RULE ON DNA EVIDENCE, A.M. No. 06-11-5-SC (2007), sec. 3(e).
81 499 Phil. 185 (2005) [Per J. Carpio, First Division].

> 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; mtDNA 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.[82] (Emphasis in the original)

In several cases, this Court has considered DNA testing as a valid means to determine paternity and filiation.[83]

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[82] Id. at 196–197.

[83] *Aquino v. Aquino*, G.R. Nos. 208912 and 209018, December 7, 2021, <https://sc.judiciary.gov.ph/28508/> [Per J. Leonen, En banc].

In *Agustin v. Court of Appeals*,[84] a case involving a complaint for support, this Court upheld the ruling of the lower courts directing the parties to submit themselves to DNA paternity testing. This Court noted that in determining whether private respondent Martin is entitled to support, there was a necessity to first determine his filiation.[85]

Similarly, *Estate of Ong v. Diaz*[86] sustained the use of DNA testing to resolve the issue of respondent minor Joanne's filiation. In that case, respondent minor Joanne, as represented by her mother Jinky, filed before the Regional Trial Court a complaint for compulsory recognition with prayer for support against Rogelio Ong (Rogelio). The Regional Trial Court granted the complaint and declared respondent minor as Rogelio's nonmarital child. In ruling this, the Regional Trial Court noted that while respondent minor was born during the subsistence of Jinky's marriage to Hasegawa Katsuo (Katsuo), making respondent minor as Jinky and Katsuo's presumed marital child, the presumption was overthrown by proof that it was physically impossible for Katsuo to have sexual intercourse with Jinky within the first 120 days of the 300 days preceding respondent minor's birth. Additionally, the Regional Trial Court ruled that there was sufficient evidence to prove that respondent minor is the nonmarital child of Rogelio.[87]

On appeal, the Court of Appeals remanded the case and directed the Regional Trial Court to issue an order for the conduct of DNA testing. This Court upheld the decision of the Court of Appeals and decreed:

> 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.[88]

This Court continued clarifying that DNA testing may still be conducted notwithstanding the death of the putative father:

> 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 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:

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84 499 Phil. 307 (2005) [Per J. Corona, Third Division].
85 Id. at 318.
86 565 Phil. 215 (2007) [Per J. Chizo, Nazario, Third Division].
87 Id. at 220–221.
88 Id. at 226.

> 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.
>
> 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.[89]

Recent rulings of this Court have likewise recognized the validity of DNA testing in resolving issues of filiation and paternity.

In *Santiago*, this Court refused to rule on the issue of paternity there being no evidence to overcome Sofia's presumption of legitimacy. We ordered the remand of the case for further proceedings including the conduct of DNA testing.[90]

Aquino v. Aquino[91] acknowledged the viability of DNA testing for purposes of establishing petitioner's filiation. The cases were then remanded

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89 Id. at 231-232.

90 *Santiago v. Jornacion,* G.R. No. 230049, October 6, 2021, <https://sc.judiciary.gov.ph/28598/> [Per J. Carandang, Third Division].

91 G.R. Nos. 208912 and 209018, December 7, 2021, <https://sc.judiciary.gov.ph/28508/> [Per J. Leonen, En banc].

to the court of origin for the purpose of, among others, resolving "Amadea Angela K. Aquino's filiation — including the reception of DNA evidence[.]"[92]

On a final note, when the filiation and paternity of children are in issue, the case should be resolved taking into consideration the welfare and best interests of the children.

ACCORDINGLY, the Petition is **GRANTED**. The April 30, 2015 Decision and November 13, 2015 Resolution of the Court of Appeals in CA-G.R. CV NO. 03083-MIN are **REVERSED** and **SET ASIDE**. The case is **REMANDED** to the Regional Trial Court of Ozamiz City, Branch 15 for the resolution of the issue on Lowella Yap's filiation, including the reception of DNA evidence. The Regional Trial Court is directed to proceed with dispatch in the disposition of the case and to report to this Court the result of the proceedings below within 60 days from the receipt of this Decision.

SO ORDERED.

MARVIC M.V.F. LEONEN
Senior Associate Justice

WE CONCUR:

AMY C. LAZARO-JAVIER
Associate Justice

MARIO V. LOPEZ
Associate Justice

JHOSEP Y. LOPEZ
Associate Justice

ANTONIO T. KHO, JR.
Associate Justice

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92 Id. at 46.

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARVIC M.V.F. LEONEN
Senior Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ALEXANDER G. GESMUNDO
Chief Justice