499 Phil. 185

FIRST DIVISION

[G.R. NO. 148220, June 15, 2005]

ROSENDO HERRERA, PETITIONER, VS. ROSENDO ALBA, MINOR, REPRESENTED BY HIS MOTHER ARMI A. ALBA, AND HON. NIMFA CUESTA-VILCHES, PRESIDING JUDGE, BRANCH 48, REGIONAL TRIAL COURT, MANILA, RESPONDENTS.

D E C I S I O N

CARPIO, J.:

The Case

This is a petition for review[1] to set aside the Decision[2] dated 29 November 2000 of the Court of Appeals ("appellate court") in CA-G.R. SP No. 59766. The appellate court affirmed two Orders[3] issued by Branch 48 of the Regional Trial Court of Manila ("trial court") in SP No. 98-88759. The Order dated 3 February 2000 directed Rosendo Herrera ("petitioner") to submit to deoxyribonucleic acid ("DNA") paternity testing, while the Order dated 8 June 2000 denied petitioner's motion for reconsideration.

The Facts

On 14 May 1998, then thirteen-year-old Rosendo Alba ("respondent"), represented by his mother Armi Alba, filed before the trial court a petition for compulsory recognition, support and damages against petitioner. On 7 August 1998, petitioner filed his answer with counterclaim where he denied that he is the biological father of respondent. Petitioner also denied physical contact with respondent's mother.

Respondent filed a motion to direct the taking of DNA paternity testing to abbreviate the proceedings. To support the motion, respondent presented the testimony of Saturnina C. Halos, Ph.D. When she testified, Dr. Halos was an Associate Professor at De La Salle University where she taught Cell Biology. She was also head of the University of the Philippines Natural Sciences Research Institute ("UP-NSRI"), a DNA analysis laboratory. She was a former professor at the University of the Philippines in Diliman, Quezon City, where she developed the Molecular Biology Program and taught Molecular Biology. In her testimony, Dr. Halos described the process for DNA paternity testing and asserted that the test had an accuracy rate of 99.9999% in establishing paternity.[4]

Petitioner opposed DNA paternity testing and contended that it has not gained acceptability. Petitioner further argued that DNA paternity testing violates his right against self-incrimination.

The Ruling of the Trial Court

In an Order dated 3 February 2000, the trial court granted respondent's motion to conduct DNA paternity testing on petitioner, respondent and Armi Alba. Thus:

> **In view of the foregoing,** the motion of the petitioner is **GRANTED** and the relevant individuals, namely: the petitioner, the minor child, and respondent are directed to undergo **DNA paternity testing** in a laboratory of their common choice within a period of thirty (30) days from receipt of the Order, and to submit the results thereof within a period of ninety (90) days from completion. The parties are further reminded of the hearing set on 24 February 2000 for the reception of other evidence in support of the petition.

IT IS SO ORDERED.[5] (Emphasis in the original)

Petitioner filed a motion for reconsideration of the 3 February 2000 Order. He asserted that "under the present circumstances, the DNA test [he] is compelled to take would be inconclusive, irrelevant and the coercive process to obtain the requisite specimen…, unconstitutional."

In an Order dated 8 June 2000, the trial court denied petitioner's motion for reconsideration.[6]

On 18 July 2000, petitioner filed before the appellate court a petition for *certiorari* under Rule 65 of the 1997 Rules of Civil Procedure. He asserted that the trial court rendered the Orders dated 3 February 2000 and 8 June 2000 "in excess of, or without jurisdiction and/or with grave abuse of discretion amounting to lack or excess of jurisdiction." Petitioner further contended that there is "no appeal nor any [other] plain, adequate and speedy remedy in the ordinary course of law." Petitioner maintained his previous objections to the taking of DNA paternity testing. He submitted the following grounds to support his objection:

1. Public respondent misread and misapplied the ruling in Lim vs. Court of Appeals (270 SCRA 2).
2. Public respondent ruled to accept DNA test without considering the limitations on, and conditions precedent for the admissibility of DNA testing and ignoring the serious constraints affecting the reliability of the test as admitted by private respondent's "expert" witness.
3. Subject Orders lack legal and factual support, with public respondent relying on scientific findings and conclusions unfit for judicial notice and unsupported by experts in the field and scientific treatises.
4. Under the present circumstances the DNA testing petitioner [is] compelled to take will be inconclusive, irrelevant and the coercive process to obtain the requisite specimen from the petitioner, unconstitutional.[7]

The Ruling of the Court of Appeals

On 29 November 2000, the appellate court issued a decision denying the petition and affirming the questioned Orders of the trial court. The appellate court stated that petitioner merely desires to correct the trial court's evaluation of evidence. Thus, appeal is an available remedy for an error of judgment that the court may commit in the exercise of its jurisdiction. The appellate court also stated that the proposed DNA paternity testing does not violate his right against self-incrimination because the right applies only to testimonial compulsion. Finally, the appellate court pointed out that petitioner can still refute a possible adverse result of the DNA paternity testing. The dispositive portion of the appellate court's decision reads:

> WHEREFORE, foregoing premises considered, the Petition is hereby **DENIED DUE COURSE,** and ordered dismissed, and the challenged orders of the Trial Court **AFFIRMED**, with costs to Petitioner.
>
> SO ORDERED.[8]

Petitioner moved for reconsideration, which the appellate court denied in its Resolution dated 23 May 2001.[9]

Issues

Petitioner raises the issue of whether a DNA test is a valid probative tool in this jurisdiction to determine filiation. Petitioner asks for the conditions under which DNA technology may be integrated into our judicial system and the prerequisites for the admissibility of DNA test results in a paternity suit.[10]

Petitioner further submits that the appellate court gravely abused its discretion when it authorized the trial court "to embark in [sic] a new procedure xxx to determine filiation despite the absence of legislation to ensure its reliability and integrity, want of official recognition as made clear in *Lim vs. Court of Appeals* and the presence of technical and legal constraints in respect of [sic] its implementation."[11] Petitioner maintains that the proposed DNA paternity testing violates his right against self-incrimination.[12]

The Ruling of the Court

The petition has no merit.

Before discussing the issues on DNA paternity testing, we deem it appropriate to give an overview of a paternity suit and apply it to the facts of this case. We shall consider the requirements of the Family Code and of the Rules of Evidence to establish paternity and filiation.

An Overview of the Paternity and Filiation Suit

Filiation proceedings are usually filed not just to adjudicate paternity but also to secure a legal right associated with paternity, such as citizenship,[13] 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.[14]

A *prima facie* case exists if a woman declares that she had sexual relations with the putative father. In our jurisdiction, corroborative proof is required to carry the burden forward and shift it to the putative father.[15]

There are two affirmative defenses available to the putative father. The putative father may show incapability of sexual relations with the mother, because of either physical absence or impotency.[16] The putative father may also show that the mother had sexual relations with other men at the time of conception.

A child born to a husband and wife during a valid marriage is presumed legitimate.[17] The child's legitimacy may be impugned only under the strict standards provided by law.[18]

Finally, physical resemblance between the putative father and child may be offered as part of evidence of paternity. Resemblance is a trial technique unique to a paternity proceeding. However, although likeness is a function of heredity, there is no mathematical formula that could quantify how much a child must or must not look like his biological father.[19] This kind of evidence appeals to the emotions of the trier of fact.

In the present case, the trial court encountered three of the four aspects. Armi Alba, respondent's mother, put forward a *prima facie* case when she asserted that petitioner is respondent's biological father. Aware that her assertion is not enough to convince the trial court, she offered corroborative proof in the form of letters and pictures. Petitioner, on the other hand, denied Armi Alba's assertion. He denied ever having sexual relations with Armi Alba and stated that respondent is Armi Alba's child with another man. Armi Alba countered petitioner's denial by submitting pictures of respondent and petitioner side by side, to show how much they resemble each other.

Paternity and filiation disputes can easily become credibility contests. We now look to the law, rules, and governing jurisprudence to help us determine what evidence of incriminating acts on paternity and filiation are allowed in this jurisdiction.

Laws, Rules, and Jurisprudence
Establishing Filiation

The relevant provisions of the Family Code provide as follows:

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

The Rules on Evidence include provisions on pedigree. The relevant sections of Rule 130 provide:

> SEC. 39. *Act or declaration about pedigree*.—The act or declaration of a person deceased, or unable to testify, in respect to the pedigree of another person related to him by birth or marriage, may be received in evidence where it occurred before the controversy, and the relationship between the two persons is shown by evidence other than such act or declaration. The word "pedigree" includes relationship, family genealogy, birth, marriage, death, the dates when and the places where these facts occurred, and the names of the relatives. It embraces also facts of family history intimately connected with pedigree.
>
> SEC. 40. *Family reputation or tradition regarding pedigree*.—The reputation or tradition existing in a family previous to the controversy, in respect to the pedigree of any one of its members, may be received in evidence if the witness testifying thereon be also a member of the family, either by consanguinity or affinity. Entries in family bibles or other family books or charts, engraving on rings, family portraits and the like, may be received as evidence of pedigree.

This Court's rulings further specify what incriminating acts are acceptable as evidence to establish filiation. In ***Pe Lim v. CA,***[20] a case petitioner often cites, we stated that the issue of paternity still has to be resolved by such conventional evidence as the relevant **incriminating** verbal and written acts by the putative father. Under Article 278 of the New Civil Code, voluntary recognition by a parent shall be made in the record of birth, a will, a statement before a court of record, or in any authentic writing. To be effective, the claim of filiation must be made by the putative father himself and the writing must be the writing of the putative father.[21] A notarial agreement to support a child whose filiation is admitted by the putative father was considered acceptable evidence.[22] Letters to the mother vowing to be a good father to the child and pictures of the putative father cuddling the child on various occasions, together with the certificate of live birth, proved filiation.[23] However, a student permanent record, a written consent to a father's operation, or a marriage contract where the putative father gave consent, cannot be taken as authentic writing.[24] Standing alone, neither a certificate of baptism[25] nor family pictures[26] are sufficient to establish filiation.

So far, the laws, rules, and jurisprudence seemingly limit evidence of paternity and filiation to incriminating acts alone. However, advances in science show that sources of evidence of paternity and filiation need not be limited to incriminating acts. There is now almost universal scientific agreement that blood grouping tests are conclusive on non-paternity, although inconclusive on paternity.[27]

In ***Co Tao v. Court of Appeals,***[28] the result of the blood grouping test showed that the putative father was a "possible father" of the child. Paternity was imputed to the putative father after the possibility of paternity was proven on presentation during trial of facts and circumstances other than the results of the blood grouping test.

In ***Jao v. Court of Appeals,***[29] the child, the mother, and the putative father agreed to submit themselves to a blood grouping test. The National Bureau of Investigation ("NBI") conducted the test, which indicated that the child could not have been the possible offspring of the mother and the putative father. We held that the result of the blood grouping test was conclusive on the non-paternity of the putative father.

The present case asks us to go one step further. We are now asked whether DNA analysis may be admitted as evidence to prove paternity.

DNA Analysis as Evidence

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.[30]

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.[31] 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). 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.[32] (Emphasis in the original)

Although the term "DNA testing" was mentioned in the 1995 case of ***People v. Teehankee, Jr.***,[33] it was only in the 2001 case of ***Tijing v. Court of Appeals***[34] that more than a passing mention was given to DNA analysis. In ***Tijing***, we issued a writ of *habeas corpus* against respondent who abducted petitioners' youngest son. Testimonial and documentary evidence and physical resemblance were used to establish parentage. However, we observed that:

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. xxx For it was said, that courts should apply the results of science when completely obtained in aid of situations presented, since to reject said result is to deny progress. Though it is not necessary in this case to resort to DNA testing, in [the] future it would be useful to all concerned in the prompt resolution of parentage and identity issues.

Admissibility of
DNA Analysis as Evidence

The 2002 case of ***People v. Vallejo***[35] discussed DNA analysis as evidence. This may be considered a 180 degree turn from the Court's wary attitude towards DNA testing in the 1997 ***Pe Lim*** case,[36] where we stated that "DNA, being a relatively new science, xxx has not yet been accorded official recognition by our courts." In ***Vallejo***, the DNA profile from the vaginal swabs taken from the rape victim matched the accused's DNA profile. We affirmed the accused's conviction of rape with homicide and sentenced him to death. We declared:

In assessing the probative value of DNA evidence, therefore, courts should consider, among other things, the following data: how the samples were collected, how they were handled, the possibility of contamination of the samples, the procedure followed in analyzing the samples, whether the proper

> standards and procedures were followed in conducting the tests, and the qualification of the analyst who conducted the tests.[37]

Vallejo discussed the probative value, not admissibility, of DNA evidence. By 2002, there was no longer any question on the validity of the use of DNA analysis as evidence. The Court moved from the issue of according "official recognition" to DNA analysis as evidence to the issue of observance of procedures in conducting DNA analysis.

In 2004, there were two other cases that had a significant impact on jurisprudence on DNA testing: ***People v. Yatar***[38] and ***In re: The Writ of Habeas Corpus for Reynaldo de Villa.***[39] In ***Yatar***, a match existed between the DNA profile of the semen found in the victim and the DNA profile of the blood sample given by appellant in open court. The Court, following ***Vallejo's*** footsteps, affirmed the conviction of appellant because the physical evidence, corroborated by circumstantial evidence, showed appellant guilty of rape with homicide. In ***De Villa,*** the convict-petitioner presented DNA test results to prove that he is not the father of the child conceived at the time of commission of the rape. The Court ruled that a difference between the DNA profile of the convict-petitioner and the DNA profile of the victim's child does not preclude the convict-petitioner's commission of rape.

In the present case, the various pleadings filed by petitioner and respondent refer to two United States cases to support their respective positions on the admissibility of DNA analysis as evidence: ***Frye v. U.S.***[40] and ***Daubert v. Merrell Dow Pharmaceuticals***.[41] In Frye v. U.S., the trial court convicted Frye of murder. Frye appealed his conviction to the Supreme Court of the District of Columbia. During trial, Frye's counsel offered an expert witness to testify on the result of a systolic blood pressure deception test[42] made on defendant. The state Supreme Court affirmed Frye's conviction and ruled that "the systolic blood pressure deception test has not yet gained such standing and scientific recognition among physiological and psychological authorities as would justify the courts in admitting expert testimony deduced from the discovery, development, and experiments thus far made." The ***Frye*** standard of general acceptance states as follows:

> Just when a scientific principle or discovery crosses the line between the experimental and demonstrable stages is difficult to define. Somewhere in this twilight zone the evidential force of the principle must be recognized, and while courts will go a long way in admitting expert testimony deduced from a well recognized scientific principle or discovery, the thing from which the deduction is made must be sufficiently established to have gained general acceptance in the particular field in which it belongs.

In 1989, State v. Schwartz[43] modified the Frye standard. Schwartz was charged with stabbing and murder. Bloodstained articles and blood samples of the accused and the victim were submitted for DNA testing to a government facility and a private facility. The prosecution introduced the private testing facility's results over Schwartz's objection. One of the issues brought before the state Supreme Court included the admissibility of DNA test results in a criminal proceeding. The state Supreme Court concluded that:

> While we agree with the trial court that forensic DNA typing has gained general acceptance in the scientific community, we hold that admissibility of specific test results in a particular case hinges on the laboratory's compliance with appropriate standards and controls, and the availability of their testing data and results.[44]

In 1993, ***Daubert v. Merrell Dow Pharmaceuticals, In***c.[45] further modified the ***Frye-Schwartz*** standard. ***Daubert*** was a product liability case where both the trial and appellate courts denied the admissibility of an expert's testimony because it failed to meet the ***Frye*** standard of "general acceptance." The United States Supreme Court ruled that in federal trials, the Federal Rules of Evidence have superseded the ***Frye*** standard. Rule 401 defines relevant evidence, while Rule 402 provides the foundation for admissibility of evidence. Thus:

> Rule 401. "Relevant evidence" is defined as that which has any "tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.
>
> Rule 402. All relevant evidence is admissible, except as otherwise provided by the Constitution of the United States, by Act of Congress, by these rules, or by other rules prescribed by the Supreme Court pursuant to statutory authority. Evidence which is not relevant is not admissible.

Rule 702 of the Federal Rules of Evidence governing expert testimony provides:

> If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

Daubert cautions that departure from the ***Frye*** standard of general acceptance does not mean that the Federal Rules do not place limits on the admissibility of scientific evidence. Rather, the judge must ensure that the testimony's reasoning or method is scientifically valid and is relevant to the issue. Admissibility would depend on factors such as (1) whether the theory or technique can be or has been tested; (2) whether the theory or technique has been subjected to peer review and publication; (3) the known or potential rate of error; (4) the existence and maintenance of standards controlling the technique's operation; and (5) whether the theory or technique is generally accepted in the scientific community.

Another product liability case, ***Kumho Tires Co. v. Carmichael***,[46] further modified the ***Daubert*** standard. This led to the amendment of Rule 702 in 2000 and which now reads as follows:

> If scientific, technical or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise, if (1) the testimony is based upon sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case.

We now determine the applicability in this jurisdiction of these American cases. Obviously, neither the ***Frye-Schwartz*** standard nor the ***Daubert-Kumho*** standard is controlling in the Philippines.[47] At best, American jurisprudence merely has a persuasive effect on our decisions. Here, evidence is admissible when it is relevant to the fact in issue and is not otherwise excluded by statute or the Rules of Court.[48] Evidence is relevant when it has such a relation to the fact in issue as to induce belief in its existence or non-existence.[49] Section 49 of Rule 130, which governs the admissibility of expert testimony, provides as follows:

> The opinion of a witness on a matter requiring special knowledge, skill, experience or training which he is shown to possess may be received in evidence.

This Rule does not pose any legal obstacle to the admissibility of DNA analysis as evidence. Indeed, even evidence on collateral matters is allowed "when it tends in any reasonable degree to establish the probability or improbability of the fact in issue."[50]

Indeed, it would have been convenient to merely refer petitioner to our decisions in ***Tijing, Vallejo*** and ***Yatar*** to illustrate that DNA analysis is admissible as evidence. In our jurisdiction, the restrictive tests for admissibility established by *Frye-Schwartz* and ***Daubert-Kumho*** go into the weight of the evidence.

Probative Value of

DNA Analysis as Evidence

Despite our relatively liberal rules on admissibility, trial courts should be cautious in giving credence to DNA analysis as evidence. We reiterate our statement in ***Vallejo***:

> In assessing the probative value of DNA evidence, therefore, courts should consider, among other things, the following data: how the samples were collected, how they were handled, the possibility of contamination of the samples, the procedure followed in analyzing the samples, whether the proper standards and procedures were followed in conducting the tests, and the qualification of the analyst who conducted the tests.[51]

We also repeat the trial court's explanation of DNA analysis used in paternity cases:

> 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.[52]

It is not enough to state that the child's DNA profile matches that of the putative father. A complete match between the DNA profile of the child and the DNA profile of the putative father does not necessarily establish paternity. For this reason, following the highest standard adopted in an American jurisdiction,[53] trial courts should require at least 99.9% as a minimum value of the Probability of Paternity ("W") prior to a paternity inclusion. W is a numerical estimate for the likelihood of paternity of a putative father compared to the probability of a random match of two unrelated individuals. An appropriate reference population database, such as the Philippine population database, is required to compute for W. Due to the probabilistic nature of paternity inclusions, W will never equal to 100%. However, the accuracy of W estimates is higher when the putative father, mother and child are subjected to DNA analysis compared to those conducted between the putative father and child alone.[54]

DNA analysis that excludes the putative father from paternity should be conclusive proof of non-paternity. If the value of W is less than 99.9%, the results of the DNA analysis should be considered as corroborative evidence. If the value of W is 99.9% or higher, then there is **refutable** presumption of paternity.[55] This refutable presumption of paternity should be subjected to the ***Vallejo*** standards.

Right Against Self-Incrimination

Section 17, Article 3 of the 1987 Constitution provides that "no person shall be compelled to be a witness against himself." Petitioner asserts that obtaining samples from him for DNA testing violates his right against self-incrimination. Petitioner ignores our earlier pronouncements that the privilege is applicable only to testimonial evidence. Again, we quote relevant portions of the trial court's 3 February 2000 Order with approval:

> Obtaining DNA samples from an accused in a criminal case or from the respondent in a paternity case, contrary to the belief of respondent in this action, will not violate the right against self-incrimination. This privilege applies only to evidence that is "*communicative*" in essence taken under duress (People vs. Olvis, 154 SCRA 513, 1987). The Supreme Court has ruled that the right against self-incrimination is just a prohibition on the use of physical or moral compulsion to extort communication (testimonial evidence) from a defendant, not an exclusion of evidence taken from his body when it may be material. As such, a defendant can be required to submit to a test to extract virus from his body (as cited in People vs. Olvis, Supra); the substance

> emitting from the body of the accused was received as evidence for acts of lasciviousness (US vs. Tan Teng, 23 Phil. 145); morphine forced out of the mouth was received as proof (US vs. Ong Siu Hong, 36 Phil. 735); an order by the judge for the witness to put on pair of pants for size was allowed (People vs. Otadora, 86 Phil. 244); and the court can compel a woman accused of adultery to submit for pregnancy test (Villaflor vs. Summers, 41 Phil. 62), since the gist of the privilege is the restriction on "*testimonial compulsion.*"[56]

The policy of the Family Code to liberalize the rule on the investigation of the paternity and filiation of children, especially of illegitimate children, is without prejudice to the right of the putative parent to claim his or her own defenses.[57] Where the evidence to aid this investigation is obtainable through the facilities of modern science and technology, such evidence should be considered subject to the limits established by the law, rules, and jurisprudence.

WHEREFORE, we **DISMISS** the petition. We **AFFIRM** the Decision of the Court of Appeals dated 29 November 2000 in CA-G.R. SP No. 59766. We also **AFFIRM** the Orders dated 3 February 2000 and 8 June 2000 issued by Branch 48 of the Regional Trial Court of Manila in Civil Case No. SP-98-88759.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Quisumbing, Ynares-Santiago, and *Azcuna, JJ.,* concur.

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[1] Under Rule 45 of the Rules of Court.

[2] Penned by Associate Justice Jose L. Sabio, Jr., with Associate Justices Buenaventura J. Guerrero and Eliezer R. De Los Santos, concurring.

[3] Penned by Judge Nimfa Cuesta-Vilches.

[4] Rollo, pp. 318-325, 332-338.

[5] *Ibid*., p. 92.

[6] *Ibid*., p. 93.

[7] *Ibid*., p. 59.

[8] *Ibid*., p. 48.

[9] *Ibid*., pp. 51-52.

[10] *Ibid*., p. 22.

[11] *Ibid*., p. 18.

[12] *Ibid*., p. 34.

[13] *See* Tecson v. Commission on Elections, G.R. No. 161434, 3 March 2004, 424 SCRA 277; Co v. Electoral Tribunal of the House of Representatives, G.R. Nos. 92191-92, 30 July 1991, 199 SCRA 692; Board of Commissioners (CID) v. Dela Rosa, G.R. Nos. 95612-13, 31 May 1991, 197 SCRA 854.

[14] *See* E. Donald Shapiro, Stewart Reifler, and Claudia L. Psome, *The DNA Paternity Test: Legislating the Future Paternity Action,* 7 J.L. & Health 1, 7-19 (1993).

[15] *See* Executive Order No. 209, otherwise known as the Family Code of the Philippines ("Family Code"), Arts. 172-173, 175; Rule 130, Sections 39-40.

[16] See Family Code, Art. 166.

[17] *See* Family Code, Arts. 165, 167.

[18] *See* Family Code, Arts. 166-167, 170-171.

[19] *See* Cabatania v. Court of Appeals, G.R. No. 124814, 21 October 2004.

[20] 336 Phil. 741 (1997).

[21] Heirs of Raymundo C. Bañas v. Heirs of Bibiano Bañas, L-25715, 31 January 1985, 134 SCRA 260.

[22] Marcayda v. Naz, 210 Phil. 386 (1983).

[23] *Supra* note 20.

[24] Reyes, et al. v. CA, et al., 220 Phil. 116 (1985).

[25] *Ibid*.

[26] Colorado v. Court of Appeals, No. L-39948, 28 February 1985, 135 SCRA 47.

[27] Jao v. Court of Appeals, No. L-49162, 28 July 1987, 152 SCRA 359.

[28] 101 Phil. 188 (1957).

[29] *Supra* note 27.

[30] *See* Maria Corazon A. De Ungria, Ph.D., *Forensic DNA Analysis in Criminal and Civil Cases,* 1 Continuing Legal Educ. L.J. 57 (2001).

[31] See The UP-NSRI DNA Analysis Laboratory, A Primer on DNA-based Paternity Testing (2001).

[32] Rollo, pp. 89-90.

[33] People v. Teehankee, Jr., 319 Phil. 128 (1995).

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

[35] 431 Phil. 798 (2002).

[36] *Supra* note 20.

[37] *Supra* note 35.

[38] G.R. No. 150224, 19 May 2004, 428 SCRA 504.

[39] G.R. No. 158802, 17 November 2004.

[40] 54 App.D.C. 46, 293 F. 1013 (1923).

[41] 509 US 579, 113 S.Ct. 2786 (1993).

[42] This form of lie detector test asserts that "blood pressure is influenced by change in the emotions of the witness, and that the systolic blood pressure rises are brought about by nervous impulses sent to the sympathetic branch of the nervous system."

[43] 447 N.W.2d 422 (Minn. Sup. Ct. 1989).

[44] *Ibid*.

[45] Supra note 41.

[46] 526 U.S. 137, 119 S.Ct. 1167 (1999).

[47] *See* People v. Joel Yatar, G.R. No. 150224, 19 May 2004, 428 SCRA 504. *See* also Pacifico Agabin, *Integrating DNA Technology in the Judicial System,* 1 CONTINUING LEGAL EDUC. L.J. 27 (2001); Patricia-Ann T. Prodigalidad, *Assimilating DNA Testing into the Philippine Criminal Justice System: Exorcising the Ghost of the Innocent Convict,* 79 Phil. L.J. 930 (2005).

[48] Rule 128, Section 3.

[49] Rule 128, Section 4.

[50] Rule 128, Section 4.

[51] *Supra* note 35.

[52] Rollo, p. 90.

[53] The State of Louisiana. See Maria Corazon A. De Ungria, Ph.D., *Forensic DNA Analysis in Criminal and Civil Cases,* 1 CONTINUING LEGAL EDUC. L.J. 57 (2001).

[54] *Ibid. See* also Maria Corazon A. De Ungria, Ph.D., Kristina A. Tabada, Frederick C. Delfin, Alma M. Frani, Michelle M.F. Magno, Gayvelline C. Calacal, and Saturnina C. Halos, *Resolving Questioned Paternity Issues Using a Philippine Genetic Database*, 14 SCIENCE DILIMAN 8 (January to June 2002).

[55] *See* note 54.

[56] Rollo, p. 91.

[57] *See* Mendoza v. Court of Appeals, G.R. No. 86302, 24 September 1991, 201 SCRA 675.
