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THIRD DIVISION

[G.R. No. 230049; October 6, 2021]

BERNIE SANTIAGO, *Petitioner*, *v.* **ROMMEL C. JORNACION and THE CITY CIVIL REGISTRAR OF MARIKINA CITY,** *Respondents*.

D E C I S I O N

CARANDANG, *J.*:

The age-old adage that *maternity is a matter of fact while paternity is a matter of faith* might not always ring true today in view of scientific advances establishing filiation.

The instant Petition for Review[1] under Rule 45 of the Rules of Court assails the Decision[2] dated May 23, 2016 and the Resolution[3] dated February 6, 2017 of the Court of Appeals (CA) in CA-G.R. CV No. 102257. The assailed Decision and Resolution affirmed the Order[4] dated November 12, 2013 of the Regional Trial Court (RTC) of Marikina City, Branch 273 dismissing petitioner Bernie Santiago's (Bernie) Petition to Establish Filiation and Correction of Entries in the Certificate of Live Birth (Birth Certificate) of Maria Sofia Jornacion (Sofia).

Facts of the Case

On May 17, 2013, Bernie filed a petition with the RTC of Marikina City which sought to establish his paternity with Sofia and to have the City Civil Registrar of Marikina City correct some entries in Sofia's Birth Certificate. Desiring to include other persons who may be interested in the outcome of the petition, Bernie filed

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[1] *Rollo*, pp. 24-53.

[2] Penned by Associate Justice Edwin D. Sorongon with the concurrence of Associate Justices Ricardo R. Rosario (now a Member of this Court) and Marie Christine Azcarraga-Jacob; id. at 57-65.

[3] Id. at 66-68.

[4] Penned by Presiding Judge Romeo Dizon Tagra; records, pp. 134-138.

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a Motion for Leave of Court to File an Amended Petition[5] and an Amended Petition,[6] impleading Sofia, Kevin Karl G. Jornacion (Kevin), Samantha Gabrielle G. Jornacion (Samantha), Nicanor De Lima Santiago, Victorino De Lima Santiago, and Teresita Santiago-Francisco.

In his Amended Petition, Bernie sought to change the following entries in Sofia's Birth Certificate:

	ORIGINAL ENTRY	REQUESTED ENTRY
Name	Maria Sofia Gabutin Jornacion	Maria Sofia Gabutin **Santiago**
Father's Name	Rommel [Illegible] Jornacion	**Bernie Santiago**
Father's Citizenship	Filipino	**American**
Father's Religion	Roman Catholic	**Roman Catholic**
Father's Occupation	Employee	**U.S. Government Employee**
Father's Age at the Time of this Birth	26	**43**
Date and Place of Marriage of Parents	November 12, 1992 Quezon City	**Not Married**
Informant Relationship to the Child	Father	**None**

Bernie claimed to be the biological father of Sofia. He averred that Sofia was the fruit of his romantic relationship with Magdalena O. Gabutin (Magdalena). When Sofia was born on March 24, 2001, Magdalena was still married to—although separated in fact from—respondent Rommel C. Jornacion (Rommel). Since Magdalena was still legally married to Rommel and to save Magdalena from shame, Rommel was registered as Sofia's father. Thus, Sofia's last name was registered as Jornacion.

Bernie alleged that it was he and Magdalena who lived as husband and wife. Since Rommel and Magdalena's separation in 1999, Rommel never returned to Magdalena and their two children, Kevin and Samantha. On the other hand, Bernie has been financially supporting Sofia's daily needs and education from the time of Sofia's birth and even after Bernie left the Philippines.

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[5] Id. at 69-70.

[6] Id. at 73-77.

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Bernie only realized the importance of establishing his filiation with Sofia when Magdalena died on October 23, 2012.

In support of his petition, Bernie submitted: (1) Certificates of Death of Bernie's parents;[7] (2) Rommel and Magdalena's Marriage Contract;[8] (3) Sofia's Birth Certificate; (4) Pictures of Sofia with either Magdalena, Bernie, or both;[9] (5) Foreign Money Transmittal Receipts from Bernie Delima to Petronila Rivera or Magdalena/Maggie Jornacion;[10] (6) Certification dated February 26, 2008 certifying that the Decree of Annulment between Rommel and Magdalena was registered with the Civil Registrar of Malabon City;[11] (7) Entry of Judgment in Civil Case No. 4001-MN, which judgment declared the marriage between Rommel and Magdalena void *ab initio*;[12] (8) Magdalena's Certificate of Death;[13] (9) DNA Results;[14] (10) Sofia and Bernie's Passports;[15] and (11) Kevin's Affidavit dated April 29, 2013.[16] The DNA test results were issued by DNA Diagnostic Center (DDC), a laboratory located in Ohio, U.S.A. Samples were collected from both Bernie and Sofia through the help of DDC's Philippine Corporate Partner, Infinitech Center located in 64 Scout Gandia, Quezon City.

Before Bernie filed his Amended Petition, the Republic of the Philippines, through the Office of the Solicitor General (OSG), filed a Comment/Opposition,[17] which sought to dismiss the petition based on the following grounds: (1) Sofia is presumed to be a

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[7] Id. at 80-81.

[8] Id. at 82-83.

[9] Id. at 85-89.

[10] Id. at 90-108.

[11] Id. at 109.

[12] Id. at 110.

[13] Id. at 111-112.

[14] Id. at 113-117.

[15] Id. at 118-119.

[16] Id. at 120.

[17] Id. at 57-66.

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legitimate child of Magdalena and Rommel, following Article 164 of the Family Code; (2) the fact that Magdalena and Bernie had a romantic relationship cannot overturn the presumption of legitimacy; (3) Sofia's legitimacy can only be questioned by Rommel or his heirs in a direct attack within one year from the knowledge of Sofia's birth or the recording of the Birth Certificate in the civil register, thus, Sofia's legitimacy cannot be (a) assailed through a special proceeding for correction of entry under Rule 108, (b) filed twelve years after Sofia's birth, and (c) instituted by Bernie—who is not the proper party under Arts. 170-171 of the Family Code; and (4) the petition failed to implead Sofia and all indispensable parties, such as Rommel's heirs.

In his Reply[18] to the OSG's Comment/Opposition, Bernie explained that while the petition would inevitably result in the change of Sofia's status from legitimate to illegitimate, humanitarian reasons should outweigh such result. Bernie claimed that since Magdalena's death, Sofia has been living with Bernie's family and is loved more than how an ordinary family member would love a legitimate relative. Disregarding Bernie's filiation with Sofia would leave Sofia to the sole care of her half-siblings who are either just recently employed (*i.e.*, Kevin) or still a minor (*i.e.*, Samantha) because Rommel abandoned Sofia, Kevin, and Samantha. Thus, Bernie sought to have his Amended Petition granted in order to protect the welfare and best interest of the minor child, Sofia. He argued that the law is merely subservient to the paramount interest of the child and should not be used to defeat such purpose. He stressed his biological relationship with Sofia (as evidenced by the DNA test results conducted in Ohio, U.S.A.) and its precedence over the presumption of Sofia's legitimacy. He expressed his willingness to undergo DNA testing in the Philippines to re-establish his filiation with Sofia.

Lastly, Bernie acknowledged his failure to implead all affected parties in his petition, which prompted him to file his Amended Petition.

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[18] Id. at 122-128.

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Ruling of the Regional Trial Court

In an Order[19] dated November 12, 2013, the RTC dismissed the original petition, thus, considered the motion for leave to file and admit the amended petition moot and academic.

The trial court held that while Bernie sought to have some entries in Sofia's Birth Certificate corrected, the petition is really one to impugn Sofia's legitimacy. The prayer to have the entries in a child's Birth Certificate changed is only a necessary consequence to impugning the child's legitimate filiation. Therefore, Bernie had no personality to file the petition since he is neither Magdalena's husband (Rommel) nor an heir of Rommel. The RTC junked Bernie's plea for equity and consideration of Sofia's best interest since equity cannot be invoked to allow a petition that is contrary to the law.

Bernie questioned the validity of the RTC's Order on the following grounds: (1) an order issued by the trial court in the absence of its finding that it had jurisdiction over the proceedings is null and void; (2) the inclusion of Rommel in the petition converted the petition into an adversarial proceeding where Rommel can contest the petition; and (3) the RTC should not have considered the OSG's Comment/Opposition since it was filed beyond the 15-day period under Section 5, Rule 108 of the Rules of Court. However, the motion for reconsideration was denied in an Order[20] dated February 12, 2014. Hence, Bernie appealed with the CA.

Ruling of the Court of Appeals

In the assailed Decision[21] dated May 23, 2016, the appellate court justified the OSG's belatedly filed Comment/Opposition since it is: (1) in the interest of justice; and (2) in furtherance of the RTC's inherent power to resolve the issues presented to it. The CA agreed that Bernie's petition was dismissible because Bernie was not the proper party to impugn Sofia's legitimate status.

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[19] Supra note 4.

[20] Records, p. 165.

[21] Supra note 2.

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Moreover, Bernie's prayer to establish filiation with Sofia would violate the presumption of legitimate filiation under Article 164 of the Family Code. The only way to remove Sofia's status as a legitimate child of Rommel would be for Rommel or his heirs to file a direct action to impugn such legitimacy within the periods provided by Article 170 of the Family Code.

In its Resolution[22] dated February 6, 2017, the appellate court denied Bernie's motion for reconsideration for lack of merit and reiterated its earlier ruling that Bernie's petition is a collateral attack on Sofia's status as a legitimate child of Rommel.

Thus, Bernie filed the instant petition insisting that the RTC should not have considered the OSG's belatedly filed Comment/Opposition and should have given due course to his petition. The inclusion of Rommel converted the petition before the RTC into an adversarial proceeding. He pointed out that the CA incorrectly relied on this Court's ruling in *Braza v. The City Civil Registrar of Himamaylan City, Negros Occ.*[23] in determining the propriety of an action under Rule 108 of the Rules of Court.

In its Comment dated June 3, 2019,[24] the OSG explained that while the RTC initially found Bernie's petition to be sufficient in form and substance, it still had the power to correct its error upon discovering the inappropriateness of the petition under Rule 108. The CA correctly upheld the dismissal of Bernie's petition since it sought to impugn Sofia's legitimacy and is contrary to Articles 164, 166, 170, and 171 of the Family Code. The issue of changing an individual's status from legitimate to illegitimate has already been passed upon by this Court in *De Jesus v. Estate of decedent Dizon*[25] where this Court dismissed a third party's claim of being the biological father of two children born during the subsistence of their mother's valid marriage to another man.

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[22] Supra note 3.

[23] 622 Phil. 654 (2009).

[24] *Rollo*, pp. 80-91.

[25] 418 Phil. 768 (2001).

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Ruling of the Court

The petition is meritorious.

It has been settled that a petition for (substantial) correction of entries under Rule 108 was allowed and considered an appropriate adversary proceeding for as long as the notice and publication requirements under Sections 3 to 5 of Rule 108 were complied with.[26] While the original petition only impleaded Rommel and the City Civil Registrar of Marikina, the Amended Petition impleaded Sofia, Kevin, Samantha, and Bernie's siblings (*i.e.*, Nicanor De Lima Santiago, Victorino De Lima Santiago, and Teresita Santiago-Francisco). Instead of acting on the motion for leave of court to admit the Amended Petition, the RTC simply dismissed the petition on the supposed impropriety and lack of Bernie's legal standing to impugn Sofia's legitimacy. This was incorrectly affirmed by the CA *in toto*.

In *Republic v. Uy*,[27] We explained that a petitioner's failure to implead and notify affected or interested parties may be cured by publication of the notice of hearing if the petitioner exerted earnest efforts in bringing the said affected or interested parties to court.[28] Here, the Amended Petition impleading Sofia, Rommel and Magdalena's children (Kevin and Samantha), and Bernie's siblings illustrates Bernie's desire to include all affected and interested parties upon the discovery of his omission. Unlike in *Republic v. Coseteng-Magpayo*[29] and *Labayo-Rowe v. Republic*,[30] Bernie's original petition already impleaded the City Civil Registrar of Marikina and the legitimate father stated in Sofia's Birth Certificate, *i.e.*, Rommel.

While there may be cases where the Court held that the failure to implead and notify the affected or interested parties

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[26] *Republic v. Uy*, 716 Phil. 254, 259-262 (2013).

[27] Id.

[28] Id. at 261-262.

[29] 656 Phil. 550 (2011).

[30] 250 Phil. 300 (1998).

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may be cured by the publication of the notice of hearing, earnest efforts were made by petitioners in bringing to court all possible interested parties. Such failure was likewise excused where the interested parties themselves initiated the correction proceedings; when there is no actual or presumptive awareness of the existence of the interested parties; or when a party is inadvertently left out.

The propriety of a petition under Rule 108 of the Rules of Court to establish a child's filiation is not a novel concept. In *Lee v. Court of Appeals*,[31] the Court clarified that "Rule 108, when all the procedural requirements thereunder are followed, is the *appropriate adversary proceeding* to effect substantial corrections and changes in the entries of the civil register."[32] As regards the propriety of a petition under Rule 108 in cases involving the legitimacy or illegitimacy of a child, Lee overturned the Court's previous ruling in *Republic v. Labrador*[33] (which erroneously held that "Rule 108 cannot be used to modify, alter or increase substantive rights, such as those involving the legitimacy or illegitimacy of the child")[34] and clarified that Article 412 of the Civil Code where "no entry in a civil register shall be changed or corrected, without a judicial order" refers to the court's power to change all entries in the civil register, including one's status and nationality. Hence, the entries that require a judicial order (allowable via a petition under Rule 108 of the Rules of Court) do not simply refer to clerical or typographical errors, as evidenced by a separate legislation (*i.e.*, Republic Act No. 9048)[35] allowing for the correction of such errors.

The issue of establishing a child's filiation with an illegitimate father despite the existence of a valid marriage between the mother

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[31] 419 Phil. 392 (2001).

[32] Id. at 410.

[33] 364 Phil. 934 (1999).

[34] Id. at 942.

[35] An Act Authorizing the City or Municipal Civil Registrar or the Consul General to Correct a Clerical or Typographical Error in an Entry and/or Change of First Name or Nickname in the Civil Registrar Without Need of a Judicial Order, Amending for this Purpose Articles 376 and 412 of the Civil Code of the Philippines.

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and another man was succinctly discussed in *Estate of Ong v. Diaz*.[36] While that case stemmed from a complaint for compulsory recognition with prayer for support, the factual circumstances between *Estate of Ong* and the instant case are strikingly similar. In *Estate of Ong*, the RTC declared Joanne Rodjin Diaz (Joanne) to be the illegitimate child of Rogelio Ong and awarded Joanne support until she reached the age of majority. The CA granted the appeal filed by Rogelio Ong but remanded the case to the RTC for the conduct of DNA testing to determine the paternity of the minor child, Joanne, as it would go against the presumption of Joanne's legitimacy. We held that the presumption of legitimacy embodied in Article 167 of the Family Code is not conclusive and may be overthrown by evidence to the contrary. This is why Article 166 of the Family Code (taken from Article 255 of the New Civil Code) provided for instances when legitimacy may be impugned. In *Estate of Ong*, We explained:

> 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.
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> A child born to a husband and wife during a valid marriage is presumed legitimate. As a guaranty in favor of the child and to protect his status of legitimacy, Article 167 of the Family Code provides:
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> 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.
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> 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 *Cabatania v. Court of Appeals*:
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> 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

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[36] 565 Phil. 215 (2007).

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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 [now 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. (255a)]

The relevant provisions of the Family Code provide as follows:

Article 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

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(2) Any other means allowed by the Rules of Court and special laws.

Article 175. Illegitimate children may establish their illegitimate filiation in the same way and on the same evidence as legitimate children.[37] (Citations omitted)

Alongside Articles 172 and 175 of the Family Code in establishing filiation of illegitimate children, We held that "with the advancement in the field of genetics, and the availability of new technology, it can now be determined with reasonable certainty whether Rogelio (Ong) is the biological father of the minor, through DNA testing."[38] Thus, We affirmed the remand of that case to the RTC to determine Joanne's paternity through DNA analysis.

Similarly, We find a remand of the instant petition proper.

To be clear, while scientific proof is allowed to **impugn legitimacy** under Article 166 (2) of the Family Code, the same type of proof should also be allowed to **establish filiation** under Article 175 in relation to Article 172, paragraph 2 (2)—*i.e.*, any other means allowed by the Rules of Court. One of these means is through the use of DNA evidence under A.M. No. 06-11-5-SC.

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 be 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.

It is hornbook principle in statutory construction that a statute must 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."[39] In construing a statute, every effort must be made to harmonize the

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[37] Id. at 224-226.

[38] Id. at 226.

[39] *Phil. International Trading Corp. v. COA*, 635 Phil. 447, 454 (2010).

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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.[40] It is an inference of the existence or non-existence of a fact which courts are permitted to draw from proof of other facts.[41] It is not evidence but merely affects the burden of offering evidence.[42] 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.[43] It may be contradicted or overcome by other evidence.

The presumption that a child born in wedlock is legitimate is only a disputable presumption.[44] This presumption may be overthrown

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[40] Riano, *Evidence: The Bar Lecture Series* (2009), p. 427, citing Black's Law Dictionary (5th ed.), p. 1067.

[41] *Delgado vda. de De la Rosa v. Heirs of Russia vda. de Damian*, 516 Phil. 130, 145 (2006).

[42] Riano, *Evidence: The Bar Lecture Series* (2009), p. 427, citing *California Evidence Code* cited in *Black's Law Dictionary* (5th ed.), p. 1167 and *I Wharton's Criminal Evidence*, Section 64.

[43] *People v. Cabiles*, 810 Phil. 969, 976-977 (2017).

[44] *University of Mindanao, Inc. v. Bangko Sentral ng Pilipinas*, 776 Phil. 401, 434-435 (2016).

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.

This Court is aware that the presumption of legitimacy prevails even if the mother may have stated otherwise as "a guaranty in favor of x x x children [whose] status x x x is protected from the passions of their parents."[45] However, such rationale may disregard the State's policy of protecting the best interest of children. The presumption meant to protect the child should not be used to defeat the truth. It would have been different if the child's legitimate father (*i.e.*, the mother's husband) insisted that the child is his. In such a case, this Court would have to re-evaluate the attendant circumstances to determine what would be in the best interest of the child.

In the case before Us, Bernie (the supposed biological father) claims to have been supporting Sofia since she was born—with Rommel having abandoned her and Magdalena's other children. Tellingly, Rommel—though included in the original petition—

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[45] Tolentino, Civil Code of the Philippines: Comments and Jurisprudence (Vol. I) with Family Code, p. 528.

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never participated in the proceedings to deny or admit Bernie's allegation. If Bernie's allegations are found to be true, then Sofia can never be recognized as Bernie's child—even with accurate scientific proof of such fact—simply because Rommel never impugned Sofia's presumed legitimacy. Bernie—if proven to be the biological father—could never have custody of his now abandoned and motherless child. The "protection" sought to be granted by the presumption of legitimacy becomes more apparent than real.

"[F]iliation proceedings are usually filed not just to adjudicate paternity but also to secure a legal right associated with paternity, such as citizenship, support, or inheritance."[46] Assuming Bernie's allegations to be true, Magdalena's death and Rommel's abandonment of Magdalena's children leaves Sofia to the care of Bernie who, though able to financially support Sofia, could not avail himself of other remedies available to a legally recognized father such as the remedy of petitioning for or bestowing upon Sofia his American citizenship. The circumstances of the instant case justify the need to harmonize the provisions on establishing filiation in cases where the presumption of legitimacy is applied.

The presumption of legitimacy is not—and never was—conclusive. Prior to the Family Code, Article 255 of the Civil Code did not apply the presumption if there is evidence of "physical impossibility of the husband's access to his wife." In fact—even if it was physically possible for the husband to engage in sexual congress with his wife—the child was *prima facie* presumed to be illegitimate under Article 257 of the Civil Code if (1) the wife committed adultery at or about the time of the child's conception and (2) it *appears* highly improbable that the child is the husband's for ethnic reasons. Note that by using the word "appears," a pronouncement against a child's legitimacy was allowed by a comparison of the husband's and the child's appearance.

While this *prima facie* presumption of illegitimacy was removed in Article 166 of the Family Code, the amendments to Article 255

[46] *Estate of Ong v. Diaz*, supra note 36 at 224.

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of the Civil Code still recognized scientific advancements that the husband may use to deny a child's presumed legitimacy. "[T]he burden of proof is [merely] shifted from the party asserting legitimacy to the husband who claims illegitimacy."[47]

The Family Code accepted biological or other scientific reasons to prove that the child could not have been that of the husband's (save for artificial insemination under Article 164). DNA testing analysis is one of the latest "scientific reasons" covered by Section 166 (2) of the Family Code. A.M. No. 06-11-5-SC or the Rule on DNA Evidence is an acceptance of this accurate scientific breakthrough of determining, not just non-paternity (like in blood testing), but paternity itself. Section 9(c) of the Rule on DNA Evidence categorically states when DNA evidence is considered *conclusive* proof of non-paternity and when it can be used as proof of paternity:

> Section 9. *of DNA Testing Results*. – In evaluating the results of DNA testing, the court shall consider the following:
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> x x x x
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> c. DNA results that exclude the putative parent from paternity shall be conclusive proof of non-paternity. If the value of the Probability of Paternity is less than 99.9%, the results of the DNA testing shall be considered as corroborative evidence. If the value of the Probability of Paternity is 99.9% or higher there shall be a disputable presumption of paternity.

The welfare of the Child is of paramount consideration. The Convention on the Rights of the Child provides that "[i]n **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."[48] This Court succinctly explained

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[47] Tolentino, Civil Code of the Philippines: Comments and Jurisprudence (Vol. I) with Family Code, p. 531.

[48] *Pablo-Gualberto v. Gualberto V*, 500 Phil. 226, 249 (2005), citing Section 1, Article 31 of the Convention on the Rights of the Child.

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what constitutes a child's best interest in *Pablo-Gualberto v. Gualberto V*,[49] to wit:

> The principle of "best interest of the child" pervades Philippine cases involving adoption, guardianship, support, personal status, minors in conflict with the law, and child custody. In these cases, it has long been recognized that in choosing the parent to whom custody is given, the welfare of the minors should always be the paramount consideration. Courts are mandated to take into account all relevant circumstances that would have a hearing on the children's well-being and development. Aside from the material resources and the moral and social situations of each parent, other factors may also be considered to ascertain which one has the capability to attend to the physical, educational, social and moral welfare of the children. Among these factors are the previous care and devotion shown by each of the parents; their religious background, moral uprightness, home environment and time availability; as well as the children's emotional and educational needs.[50] (citations omitted)

Although *Pablo-Gualberto* pertained to the mother's custody of a child of tender age, We see no reason why the same pronouncements cannot apply here. Considering the factual milieu of this case, maintaining Sofia's legitimate status may not necessarily be to her best interest.

Nevertheless, this Court will not rule on the issue of Bernie's paternity to Sofia in the absence of any evidence overcoming Sofia's presumption of legitimacy. As the case was dismissed by the RTC, We deem it proper to reverse the RTC and remand the case for continuation of the proceedings—taking into consideration the Amended Petition filed by Bernie to include the other indispensable parties to his petition.

WHEREFORE, the instant Petition for Review on *Certiorari* is **GRANTED**. The Decision dated May 23, 2016 of the Court of Appeals in CA-G.R. CV No. 102257 is **REVERSED and SET ASIDE**. The Order dated November 12, 2013 of the Regional Trial Court of Marikina City, Branch 273 in Special Proceeding

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[49] 500 Phil. 226 (2005).

[50] Id. at 249-250.

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Case No. 2013-897-MK is **REVERSED and SET ASIDE**. Let the records of this case be **REMANDED** to the Regional Trial Court of Marikina City Branch 273 for further proceedings, including the conduct of DNA Analysis in accordance with A.M. No. 06-11-5-SC. The trial court must take the necessary steps to summon the participation of respondent Rommel C. Jornacion, the recorded father in the birth certificate of Maria Sofia Gabutin Jornacion.

SO ORDERED.

Leonen (Chairperson), Inting,[*] *Zalameda,* and *Dimaampao,*[**] *JJ.*, concur.

APPEARANCES OF COUNSEL

Oliva Firme & Associates for petitioner.
Office of the Solicitor General for respondents.

[*] Designated as additional Member per Raffle dated August 25, 2021.

[**] Designated as additional Member per Special Order No. 2839 dated September 16, 2021.