Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NARCISO SALAS,
Petitioner,

- versus -

ANNABELLE MATUSALEM,
Respondent.

G.R. No. 180284

Present:

SERENO, *C.J.*,
Chairperson,
LEONARDO-DE CASTRO,
BERSAMIN,
VILLARAMA, JR., and
REYES, *JJ.*

Promulgated:

SEP 11 2013

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DECISION

VILLARAMA, JR., *J.*:

Before the Court is a petition for review on certiorari which seeks to reverse and set aside the Decision[1] dated July 18, 2006 and Resolution[2] dated October 19, 2007 of the Court of Appeals (CA) in CA-G.R. CV No. 64379.

The factual antecedents:

On May 26, 1995, Annabelle Matusalem (respondent) filed a complaint[3] for Support/Damages against Narciso Salas (petitioner) in the Regional Trial Court (RTC) of Cabanatuan City (Civil Case No. 2124-AF).

Respondent claimed that petitioner is the father of her son Christian Paulo Salas who was born on December 28, 1994. Petitioner, already 56 years old at the time, enticed her as she was then only 24 years old, making

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1 *Rollo*, pp. 75-84. Penned by Associate Justice Arcangelita M. Romilla-Lontok with Associate Justices Roberto A. Barrios and Mario L. Guariña III concurring.

2 Id. at 93. Penned by Associate Justice Arcangelita M. Romilla-Lontok with Associate Justices Mario L. Guariña III and Lucenito N. Tagle.

3 Records, pp. 1-6.

her believe that he is a widower. Petitioner rented an apartment where respondent stayed and shouldered all expenses in the delivery of their child, including the cost of caesarian operation and hospital confinement. However, when respondent refused the offer of petitioner's family to take the child from her, petitioner abandoned respondent and her child and left them to the mercy of relatives and friends. Respondent further alleged that she attempted suicide due to depression but still petitioner refused to support her and their child.

Respondent thus prayed for support *pendente lite* and monthly support in the amount of ₱20,000.00, as well as actual, moral and exemplary damages, and attorney's fees.

Petitioner filed his answer[4] with special and affirmative defenses and counterclaims. He described respondent as a woman of loose morals, having borne her first child also out of wedlock when she went to work in Italy. Jobless upon her return to the country, respondent spent time riding on petitioner's jeepney which was then being utilized by a female real estate agent named Felicisima de Guzman. Respondent had seduced a senior police officer in San Isidro and her charge of sexual abuse against said police officer was later withdrawn in exchange for the quashing of drug charges against respondent's brother-in-law who was then detained at the municipal jail. It was at that time respondent introduced herself to petitioner whom she pleaded for charity as she was pregnant with another child. Petitioner denied paternity of the child Christian Paulo; he was motivated by no other reason except genuine altruism when he agreed to shoulder the expenses for the delivery of said child, unaware of respondent's chicanery and deceit designed to "scandalize" him in exchange for financial favor.

At the trial, respondent and her witness Grace Murillo testified. Petitioner was declared to have waived his right to present evidence and the case was considered submitted for decision based on respondent's evidence.

Respondent testified that she first met petitioner at the house of his *"kumadre"* Felicisima de Guzman at Bgy. Malapit, San Isidro, Nueva Ecija. During their subsequent meeting, petitioner told her he is already a widower and he has no more companion in life because his children are all grown-up. She also learned that petitioner owns a rice mill, a construction business and a housing subdivision (petitioner offered her a job at their family-owned Ma. Cristina Village). Petitioner at the time already knows that she is a single mother as she had a child by her former boyfriend in Italy. He then brought her to a motel, promising that he will take care of her and marry her. She believed him and yielded to his advances, with the thought that she and her child will have a better life. Thereafter, they saw each other weekly and petitioner gave her money for her child. When she became pregnant with petitioner's child, it was only then she learned that he is in fact not a

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[4] Id. at 24-26.

widower. She wanted to abort the baby but petitioner opposed it because he wanted to have another child.[5]

On the fourth month of her pregnancy, petitioner rented an apartment where she stayed with a housemaid; he also provided for all their expenses. She gave birth to their child on December 28, 1994 at the Good Samaritan Hospital in Cabanatuan City. Before delivery, petitioner even walked her at the hospital room and massaged her stomach, saying he had not done this to his wife. She filled out the form for the child's birth certificate and wrote all the information supplied by petitioner himself. It was also petitioner who paid the hospital bills and drove her baby home. He was excited and happy to have a son at his advanced age who is his "look-alike," and this was witnessed by other boarders, visitors and Grace Murillo, the owner of the apartment unit petitioner rented. However, on the 18th day after the baby's birth, petitioner went to Baguio City for a medical check-up. He confessed to her daughter and eventually his wife was also informed about his having sired an illegitimate child. His family then decided to adopt the baby and just give respondent money so she can go abroad. When she refused this offer, petitioner stopped seeing her and sending money to her. She and her baby survived through the help of relatives and friends. Depressed, she tried to commit suicide by drug overdose and was brought to the hospital by Murillo who paid the bill. Murillo sought the help of the Cabanatuan City Police Station which set their meeting with petitioner. However, it was only petitioner's wife who showed up and she was very mad, uttering unsavory words against respondent.[6]

Murillo corroborated respondent's testimony as to the payment by petitioner of apartment rental, his weekly visits to respondent and financial support to her, his presence during and after delivery of respondent's baby, respondent's attempted suicide through sleeping pills overdose and hospitalization for which she paid the bill, her complaint before the police authorities and meeting with petitioner's wife at the headquarters.[7]

On April 5, 1999, the trial court rendered its decision[8] in favor of respondent, the dispositive portion of which reads:

> WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiff and against the defendant as follows:
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> 1. Ordering the defendant to give as monthly support of TWO THOUSAND (₱2,000.00) PESOS for the child Christian Paulo through the mother;
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> 2. Directing the defendant to pay the plaintiff the sum of ₱20,000.00 by way of litigation expenses; and

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5 TSN, October 6, 1995, p. 21; TSN, November 17, 1995, pp. 4-7, 13; TSN, March 22, 1996, pp. 14-25; TSN, June 3, 1996, pp. 19-29, 33-37.

6 Id. at 8-21; id. at 10-12; id. at 7-11; id. at 9-10, 14-18, 43-46; TSN, February 19, 1996, pp. 6, 10-12.

7 TSN, July 8, 1996, pp. 5-11; TSN, November 29, 1996, pp. 4-9, 15-26.

8 *Rollo*, pp. 65-73. Penned by Acting Presiding Judge Johnson L. Ballutay.

3. To pay the costs of suit.

SO ORDERED.[9]

Petitioner appealed to the CA arguing that: (1) the trial court decided the case without affording him the right to introduce evidence on his defense; and (2) the trial court erred in finding that petitioner is the putative father of Christian Paulo and ordering him to give monthly support.

By Decision dated July 18, 2006, the CA dismissed petitioner's appeal. The appellate court found no reason to disturb the trial court's exercise of discretion in denying petitioner's motion for postponement on April 17, 1998, the scheduled hearing for the initial presentation of defendant's evidence, and the motion for reconsideration of the said order denying the motion for postponement and submitting the case for decision.

On the paternity issue, the CA affirmed the trial court's ruling that respondent satisfactorily established the illegitimate filiation of her son Christian Paulo, and consequently no error was committed by the trial court in granting respondent's prayer for support. The appellate court thus held:

> Christian Paulo, in instant case, does not enjoy the benefit of a record of birth in the civil registry which bears acknowledgment signed by Narciso Salas. He cannot claim open and continuous possession of the status of an illegitimate child.
>
> It had been established by plaintiff's evidence, however, that during her pregnancy, Annabelle was provided by Narciso Salas with an apartment at a rental of ₱1,500.00 which he paid for (*TSN, October 6, 1995, p. 18*). Narciso provided her with a household help with a salary of ₱1,500.00 a month (*TSN, October 6, 1995, ibid*). He also provided her a monthly food allowance of ₱1,500.00 (*Ibid, p. 18*). Narciso was with Annabelle at the hospital while the latter was in labor, "walking" her around and massaging her belly (*Ibid, p. 11*). Narciso brought home Christian Paulo to the rented apartment after Annabelle's discharge from the hospital. People living in the same apartment units were witnesses to Narciso's delight to father a son at his age which was his "look alike". It was only after the 18th day when Annabelle refused to give him Christian Paulo that Narciso withdrew his support to him and his mother.
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> Said testimony of Annabelle aside from having been corroborated by Grace Murillo, the owner of the apartment which Narciso rented, was never rebutted on record. Narciso did not present any evidence, verbal or documentary, to repudiate plaintiff's evidence.
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> In the cases of *Lim vs. CA* (270 SCRA 1) and *Rodriguez vs. CA* (245 SCRA 150), the Supreme Court made it clear that Article 172 of the Family Code is an adaptation of Article 283 of the Civil Code. Said legal provision provides that the father is obliged to recognize the child as his natural child x x "3) when the child has in his favor any evidence or proof that the defendant is his father".

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[9] Id. at 72-73.

In fact, in *Ilano vs. CA* (230 SCRA 242, 258-259), it was held that–

> "The last paragraph of Article 283 contains a blanket provision that practically covers all the other cases in the preceding paragraphs. 'Any other evidence or proof' that the defendant is the father is broad enough to render unnecessary the other paragraphs of this article. When the evidence submitted in the action for compulsory recognition is not sufficient to meet [the] requirements of the first three paragraphs, it may still be enough under the last paragraph. This paragraph permits hearsay and reputation evidence, as provided in the Rules of Court, with respect to illegitimate filiation."

As a necessary consequence of the finding that Christian Paulo is the son of defendant Narciso Salas, he is entitled to support from the latter (*Ilano vs. CA*, *supra*).

It "shall be demandable from the time the person who has the right to recover the same needs it for maintenance x x." (*Art. 203, Family Code of the Philippines*).[10]

Petitioner filed a motion for reconsideration but it was denied by the CA.

Hence, this petition submitting the following arguments:

1. THE VENUE OF THE CASE WAS IMPROPERLY LAID BEFORE THE REGIONAL TRIAL COURT OF CABANATUAN CITY CONSIDERING THAT BOTH PETITIONER AND RESPONDENT ARE ACTUAL RESIDENTS OF BRGY. MALAPIT, SAN ISIDRO, NUEVA ECIJA.

2. THE HONORABLE COURT OF APPEALS ERRED IN PRONOUNCING THAT PETITIONER WAS AFFORDED THE FULL MEASURE OF HIS RIGHT TO DUE PROCESS OF LAW AND IN UPHOLDING THAT THE TRIAL COURT DID NOT GRAVELY ABUSE ITS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT DECIDED THE INSTANT CASE WITHOUT AFFORDING PETITIONER THE RIGHT TO INTRODUCE EVIDENCE IN HIS DEFENSE.

3. THE HONORABLE COURT OF APPEALS ERRED IN HOLDING THAT THE FILIATION OF CHRISTIAN PAULO WAS DULY ESTABLISHED PURSUANT TO ARTICLE 175 IN RELATION TO ARTICLE 172 OF THE FAMILY CODE AND EXISTING JURISPRUDENCE AND THEREFORE ENTITLED TO SUPPORT FROM THE PETITIONER.[11]

We grant the petition.

It is a legal truism that the rules on the venue of personal actions are

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[10] Id. at 82-83.
[11] Id. at 180-181.

fixed for the convenience of the plaintiffs and their witnesses. Equally settled, however, is the principle that choosing the venue of an action is not left to a plaintiff's caprice; the matter is regulated by the Rules of Court.[12]

In personal actions such as the instant case, the Rules give the plaintiff the option of choosing where to file his complaint. He can file it in the place (1) where he himself or any of them resides, or (2) where the defendant or any of the defendants resides or may be found.[13] The plaintiff or the defendant must be residents of the place where the action has been instituted at the time the action is commenced.[14]

However, petitioner raised the issue of improper venue for the first time in the Answer itself and no prior motion to dismiss based on such ground was filed. Under the Rules of Court before the 1997 amendments, an objection to an improper venue must be made before a responsive pleading is filed. Otherwise, it will be deemed waived.[15] Not having been timely raised, petitioner's objection on venue is therefore deemed waived.

As to the denial of the motion for postponement filed by his counsel for the resetting of the initial presentation of defense evidence on April 17, 1998, we find that it was not the first time petitioner's motion for postponement was denied by the trial court.

Records disclosed that after the termination of the testimony of respondent's last witness on November 29, 1996, the trial court as prayed for by the parties, set the continuation of hearing for the reception of evidence for the defendant (petitioner) on January 27, February 3, and February 10, 1997. In the Order dated December 17, 1996, petitioner was advised to be ready with his evidence at those hearing dates earlier scheduled. At the hearing on January 27, 1997, petitioner's former counsel, Atty. Rolando S. Bala, requested for the cancellation of the February 3 and 10, 1997 hearings in order to give him time to prepare for his defense, which request was granted by the trial court which thus reset the hearing dates to March 3, 14 and 17, 1997. On March 3, 1997, upon oral manifestation by Atty. Bala and without objection from respondent's counsel, Atty. Feliciano Wycoco, the trial court again reset the hearing to March 14 and 17, 1997. With the non-appearance of both petitioner and Atty. Bala on March 14, 1997, the trial court upon oral manifestation by Atty. Wycoco declared their absence as a waiver of their right to present evidence and accordingly deemed the case submitted for decision.[16]

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12 *Ang v. Ang*, G.R. No. 186993, August 22, 2012, 678 SCRA 699, 705, citing *Hyatt Elevators and Escalators Corp. v. Goldstar Elevators, Phils., Inc.*, 510 Phil. 467, 476 (2005).

13 1997 RULES OF CIVIL PROCEDURE , Rule 4, Section 2.

14 *Ang v. Ang*, supra note 12, at 705-706, citing *Baritua v. Court of Appeals*, 335 Phil. 12, 15-16 (1997).

15 *Fernandez v. International Corporate Bank*, 374 Phil. 668, 677 (1999), citing Rule 14, Section 4 of the pre-1997 Rules of Court which provides that "[w]hen improper venue is not objected to in a motion to dismiss, it is deemed waived." The Complaint in this case was filed on May 26, 1995 and the Answer was filed on July 3, 1995.

16 Records, pp. 81-83, 109, 111 and 113.

On July 4, 1997, Atty. Bala withdrew as counsel for petitioner and Atty. Rafael E. Villarosa filed his appearance as his new counsel on July 21, 1997. On the same date he filed entry of appearance, Atty. Villarosa filed a motion for reconsideration of the March 14, 1997 Order pleading for liberality and magnanimity of the trial court, without offering any explanation for Atty. Bala's failure to appear for the initial presentation of their evidence. The trial court thereupon reconsidered its March 14, 1997 Order, finding it better to give petitioner a chance to present his evidence. On August 26, 1997, Atty. Villarosa received a notice of hearing for the presentation of their evidence scheduled on September 22, 1997. On August 29, 1997, the trial court received his motion requesting that the said hearing be re-set to October 10, 1997 for the reason that he had requested the postponement of a hearing in another case which was incidentally scheduled on September 22, 23 and 24, 1997. As prayed for, the trial court reset the hearing to October 10, 1997. On said date, however, the hearing was again moved to December 15, 1997. On February 16, 1998, the trial court itself reset the hearing to April 17, 1998 since it was unclear whether Atty. Wycoco received a copy of the motion.[17]

On April 17, 1998, petitioner and his counsel failed to appear but the trial court received on April 16, 1998 an urgent motion to cancel hearing filed by Atty. Villarosa. The reason given by the latter was the scheduled hearing on the issuance of writ of preliminary injunction in another case under the April 8, 1998 Order issued by the RTC of Gapan, Nueva Ecija, Branch 36 in Civil Case No. 1946. But as clearly stated in the said order, it was the plaintiffs therein who requested the postponement of the hearing and it behoved Atty. Villarosa to inform the RTC of Gapan that he had a previous commitment considering that the April 17, 1998 hearing was scheduled as early as *February 16, 1998.* Acting on the motion for postponement, the trial court denied *for the second time* petitioner's motion for postponement. Even at the hearing of their motion for reconsideration of the April 17, 1998 Order on September 21, 1998, Atty. Villarosa failed to appear and instead filed another motion for postponement. The trial court thus ordered that the case be submitted for decision stressing that the case had long been pending and that petitioner and his counsel have been given opportunities to present their evidence. It likewise denied a second motion for reconsideration filed by Atty. Villarosa, who arrived late during the hearing thereof on December 4, 1998.[18]

A motion for continuance or postponement is not a matter of right, but a request addressed to the sound discretion of the court. Parties asking for postponement have absolutely no right to assume that their motions would be granted. Thus, they must be prepared on the day of the hearing.[19] Indeed,

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17 Id. at 115-126, 128 and 130.

18 Id. at 131-138, 140 and 142-146.

19 *Gochan v. Gochan*, 446 Phil. 433, 454 (2003), citing *Tiomico v. Court of Appeals*, 363 Phil. 558, 571 (1999); *Pepsi-Cola Products Phils, Inc. v. Court of Appeals*, 359 Phil. 859, 867 (1998); *Republic of the Philippines v. Sandiganbayan*, 361 Phil. 186, 196 (1999) and *Iriga Telephone Co., Inc. v. NLRC*, 350 Phil. 245, 252 (1998).

an order declaring a party to have waived the right to present evidence for performing dilatory actions upholds the trial court's duty to ensure that trial proceeds despite the deliberate delay and refusal to proceed on the part of one party.[20]

Atty. Villarosa's plea for liberality was correctly rejected by the trial court in view of his own negligence in failing to ensure there will be no conflict in his trial schedules. As we held in *Tiomico v. Court of Appeals*[21]:

> Motions for postponement are generally frowned upon by Courts if there is evidence of bad faith, malice or inexcusable negligence on the part of the movant. The inadvertence of the defense counsel in failing to take note of the trial dates and in belatedly informing the trial court of any conflict in his schedules of trial or court appearances, constitutes inexcusable negligence. It should be borne in mind that a client is bound by his counsel's conduct, negligence and mistakes in handling the case.[22]

With our finding that there was no abuse of discretion in the trial court's denial of the motion for postponement filed by petitioner's counsel, petitioner's contention that he was deprived of his day in court must likewise fail. The essence of due process is that a party is given a reasonable opportunity to be heard and submit any evidence one may have in support of one's defense. Where a party was afforded an opportunity to participate in the proceedings but failed to do so, he cannot complain of deprivation of due process. If the opportunity is not availed of, it is deemed waived or forfeited without violating the constitutional guarantee.[23]

We now proceed to the main issue of whether the trial and appellate courts erred in ruling that respondent's evidence sufficiently proved that her son Christian Paulo is the illegitimate child of petitioner.

Under Article 175 of the Family Code of the Philippines, illegitimate filiation may be established in the same way and on the same evidence as legitimate children.

Article 172 of the Family Code of the Philippines states:

> 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
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> (2) An admission of legitimate filiation in a public document or a private handwritten instrument and signed by the parent concerned.

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[20] *Memita v. Masongsong,* G.R. No. 150912, May 28, 2007, 523 SCRA 244, 254, citing *Rockwell Perfecto Gohu v. Spouses Gohu*, 397 Phil. 126, 135 (2000).

[21] Supra note 19.

[22] Id. at 572, citing *Cing Hong So v. Tan Boon Kong*, 53 Phil. 437 (1929) and *Suarez v. Court of Appeals*, G.R. No. 91133, March 22, 1993, 220 SCRA 274, 279.

[23] *Memita v. Masongsong*, supra note 20, at 253, citing *Air Phils. Corp. v. International Business Aviation Services Phils., Inc.*, 481 Phil. 366, 386 (2004) and *Tiomico v. Court of Appeals*, supra note 19, at 570-571.

> 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. (Underscoring supplied.)

Respondent presented the Certificate of Live Birth[24] (Exhibit "A-1") of Christian Paulo Salas in which the name of petitioner appears as his father but which is not signed by him. Admittedly, it was only respondent who filled up the entries and signed the said document though she claims it was petitioner who supplied the information she wrote therein.

We have held that a certificate of live birth purportedly identifying the putative father is not competent evidence of paternity when there is no showing that the putative father had a hand in the preparation of the certificate.[25] Thus, if the father did not sign in the birth certificate, the placing of his name by the mother, doctor, registrar, or other person is incompetent evidence of paternity.[26] Neither can such birth certificate be taken as a recognition in a public instrument[27] and it has no probative value to establish filiation to the alleged father.[28]

As to the Baptismal Certificate[29] (Exhibit "B") of Christian Paulo Salas also indicating petitioner as the father, we have ruled that while baptismal certificates may be considered public documents, they can only serve as evidence of the administration of the sacraments on the dates so specified. They are not necessarily competent evidence of the veracity of entries therein with respect to the child's paternity.[30]

The rest of respondent's documentary evidence consists of handwritten notes and letters, hospital bill and photographs taken of petitioner and respondent inside their rented apartment unit.

Pictures taken of the mother and her child together with the alleged father are inconclusive evidence to prove paternity.[31] Exhibits "E" and "F"[32] showing petitioner and respondent inside the rented apartment unit thus have

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24 Records, p. 88.

25 *Cabatania v. Court of Appeals*, 484 Phil. 42, 51 (2004).

26 *Berciles, et al. v. GSIS, et al.*, 213 Phil. 48, 71 (1984); *Roces v. Local Civil Registrar of Manila*, 102 Phil. 1050, 1054 (1958).

27 *Reyes, et al. v. Court of Appeals, et al.*, 220 Phil. 116, 128 (1985), citing *Intestate Estate of Pareja v. Pareja*, 95 Phil. 167, 172 (1954).

28 See *Nepomuceno v. Lopez*, G.R. No. 181258, March 18, 2010, 616 SCRA 145, 153 and *Puno v. Puno Enterprises, Inc.*, G.R. No. 177066, September 11, 2009, 599 SCRA 585, 590-591.

29 Records, p. 90.

30 *Fernandez v. Fernandez*, 416 Phil. 322, 339 (2001); *Fernandez v. Court of Appeals*, G.R. No. 108366, February 16, 1994, 230 SCRA 130, 136; *Reyes, et al. v. Court of Appeals, et al.*, supra note 27; *Macadangdang v. Court of Appeals*, No. L-49542, September 12, 1980, 100 SCRA 73, 84.

31 *Fernandez v. Court of Appeals*, id. at 135-136, citing *Tan v. Trocio*, A.C. No. 2115, November 27 1990, 191 SCRA 764, 769.

32 Records, pp. 103-104.

scant evidentiary value. The Statement of Account[33] (Exhibit "C") from the Good Samaritan General Hospital where respondent herself was indicated as the payee is likewise incompetent to prove that petitioner is the father of her child notwithstanding petitioner's admission in his answer that he shouldered the expenses in the delivery of respondent's child as an act of charity.

As to the handwritten notes[34] (Exhibits "D" to "D-13") of petitioner and respondent showing their exchange of affectionate words and romantic trysts, these, too, are not sufficient to establish Christian Paulo's filiation to petitioner as they were not signed by petitioner and contained no statement of admission by petitioner that he is the father of said child. Thus, even if these notes were authentic, they do not qualify under Article 172 (2) *vis-à-vis* Article 175 of the Family Code which admits as competent evidence of illegitimate filiation an admission of filiation in a private handwritten instrument signed by the parent concerned.[35]

Petitioner's reliance on our ruling in *Lim v. Court of Appeals*[36] is misplaced. In the said case, the handwritten letters of petitioner contained a clear admission that he is the father of private respondent's daughter and were signed by him. The Court therein considered the totality of evidence which established beyond reasonable doubt that petitioner was indeed the father of private respondent's daughter. On the other hand, in *Ilano v. Court of Appeals*,[37] the Court sustained the appellate court's finding that private respondent's evidence to establish her filiation with and paternity of petitioner was overwhelming, particularly the latter's public acknowledgment of his amorous relationship with private respondent's mother, and private respondent as his own child through acts and words, her testimonial evidence to that effect was fully supported by documentary evidence. The Court thus ruled that respondent had adduced sufficient proof of continuous possession of status of a spurious child.

Here, while the CA held that Christian Paulo Salas could not claim open and continuous possession of status of an illegitimate child, it nevertheless considered the testimonial evidence sufficient proof to establish his filiation to petitioner.

An illegitimate child is now also allowed to establish his claimed filiation by "any other means allowed by the Rules of Court and special laws," like his baptismal certificate, a judicial admission, a family Bible in which his name has been entered, common reputation respecting his pedigree, admission by silence, *the testimonies of witnesses*, and other kinds of proof admissible under Rule 130 of the Rules of Court.[38] Reviewing the

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33 Id. at 92.
34 Id. at 93-102.
35 *Nepomuceno v. Lopez*, supra note 28.
36 G.R. No. 112229, March 18, 1997, 270 SCRA 1, 5-7.
37 G.R. No. 104376, February 23, 1994, 230 SCRA 242.
38 *Gotardo v. Buling*, G.R. No. 165166, August 15, 2012, 678 SCRA 436, 443, citing *Cruz v. Cristobal*, 529 Phil. 695, 710-711 (2006), *Heirs of Ignacio Conti v. Court of Appeals*, 360 Phil. 536, 548-549 (1998) and *Trinidad v. Court of Appeals*, 352 Phil. 12, 32-33 (1998); *Uyguangco v. Court of Appeals*, 258-A Phil. 467, 472-473 (1989).

records, we find the totality of respondent's evidence insufficient to establish that petitioner is the father of Christian Paulo.

The testimonies of respondent and Murillo as to the circumstances of the birth of Christian Paulo, petitioner's financial support while respondent lived in Murillo's apartment and his regular visits to her at the said apartment, though replete with details, do not approximate the "overwhelming evidence, documentary and testimonial" presented in *Ilano.* In that case, we sustained the appellate court's ruling anchored on the following factual findings by the appellate court which was quoted at length in the *ponencia*:

> It was Artemio who made arrangement for the delivery of Merceditas (sic) at the Manila Sanitarium and Hospital. Prior to the delivery, Leoncia underwent prenatal examination accompanied by Artemio (TSN, p. 33, 5/17/74). After delivery, they went home to their residence at EDSA in a car owned and driven by Artemio himself (id. p. 36).
>
> Merceditas (sic) bore the surname of "Ilano" since birth without any objection on the part of Artemio, the fact that since Merceditas (sic) had her discernment she had always known and called Artemio as her "Daddy" (TSN, pp. 28-29, 10/18/74); the fact that each time Artemio was at home, he would play with Merceditas (sic), take her for a ride or restaurants to eat, and sometimes sleeping with Merceditas (sic) (id. p. 34) and does all what a father should do for his child — bringing home goodies, candies, toys and whatever he can bring her which a child enjoys which Artemio gives to Merceditas (sic) (TSN, pp. 38-39, 5/17/74) are positive evidence that Merceditas (sic) is the child of Artemio and recognized by Artemio as such. Special attention is called to Exh. "E-7" where Artemio was telling Leoncia the need for a "frog test" to know the status of Leoncia.
>
> Plaintiff pointed out that the support by Artemio for Leoncia and Merceditas (sic) was sometimes in the form of cash personally delivered to her by Artemio, thru Melencio, thru Elynia (Exhs. "E-2" and "E-3", and "D-6"), or thru Merceditas (sic) herself (TSN, p. 40, 5/17/74) and sometimes in the form of a check as the Manila Banking Corporation Check No. 81532 (Exh. "G") and the signature appearing therein which was identified by Leoncia as that of Artemio because Artemio often gives her checks and Artemio would write the check at home and saw Artemio sign the check (TSN, p. 49, 7/18/73). Both Artemio and Nilda admitted that the check and signature were those of Artemio (TSN, p. 53, 10/17/77; TSN, p. 19, 10/9/78).
>
> During the time that Artemio and Leoncia were living as husband and wife, Artemio has shown concern as the father of Merceditas (sic). When Merceditas (sic) was in Grade 1 at the St. Joseph Parochial School, Artemio signed the Report Card of Merceditas (sic) (Exh. "H") for the fourth and fifth grading period(s) (Exh. "H-1" and "H-2") as the parent of Merceditas (sic). Those signatures of Artemio [were] both identified by Leoncia and Merceditas (sic) because Artemio signed Exh. "H-1" and "H-2" at their residence in the presence of Leoncia, Merceditas (sic) and of Elynia (TSN, p. 57, 7/18/73; TSN, p. 28, 10/1/73). x x x.

x x x x x x x x x

> When Artemio run as a candidate in the Provincial Board of Cavite[,] Artemio gave Leoncia his picture with the following dedication: "To Nene, with best regards, Temiong". (Exh. "I"). (pp. 19-20, Appellant's Brief)
>
> The mere denial by defendant of his signature is not sufficient to offset the totality of the evidence indubitably showing that the signature thereon belongs to him. The entry in the Certificate of Live Birth that Leoncia and Artemio was falsely stated therein as married does not mean that Leoncia is not appellee's daughter. This particular entry was caused to be made by Artemio himself in order to avoid embarrassment.[39]

In sum, we hold that the testimonies of respondent and Murillo, by themselves are not competent proof of paternity and the totality of respondent's evidence failed to establish Christian Paulo's filiation to petitioner.

Time and again, this Court has ruled that a high standard of proof is required to establish paternity and filiation. An order for recognition and support may create an unwholesome situation or may be an irritant to the family or the lives of the parties so that it must be issued only if paternity or filiation is established by clear and convincing evidence.[40]

Finally, we note the Manifestation and Motion[41] filed by petitioner's counsel informing this Court that petitioner had died on May 6, 2010.

The action for support having been filed in the trial court when petitioner was still alive, it is not barred under Article 175 (2)[42] of the Family Code. We have also held that the death of the putative father is not a bar to the action commenced during his lifetime by one claiming to be his illegitimate child.[43] The rule on substitution of parties provided in Section 16, Rule 3 of the 1997 Rules of Civil Procedure, thus applies.

> SEC. 16. *Death of party*; *duty of counsel*. – Whenever a party to a pending action dies, and the claim is not thereby extinguished, it shall be the duty of his counsel to inform the court within thirty (30) days after such death of the fact thereof, and to give the name and address of his legal representative or representatives. Failure of counsel to comply with his duty shall be a ground for disciplinary action.

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39 Supra note 37, at 255-256.

40 *Cabatania v. Court of Appeals*, supra note 25, at 50, citing *Baluyut v. Baluyut*, G.R. No. 33659, June 14, 1990, 186 SCRA 506, 513 and *Constantino v. Mendez*, G.R. No. 57227, May 14, 1992, 209 SCRA 18, 23-24.

41 *Rollo*, pp. 212-213.

42 ART. 175. x x x
The action must be brought within the same period specified in Article 173, except when the action is based on the second paragraph of Article 172, in which case the action may be brought during the lifetime of the alleged parent.

43 *Mendoza v. Court of Appeals*, 278 Phil. 687, 694 (1991), citing *Masecampo v. Masecampo*, 11 Phil. 1, 3 (1908).

> The heirs of the deceased may be allowed to be substituted for the deceased, without requiring the appointment of an executor or administrator and the court may appoint a guardian *ad litem* for the minor heirs.
>
> The court shall forthwith order said legal representative or representatives to appear and be substituted within a period of thirty (30) days from notice.
>
> If no legal representative is named by the counsel for the deceased party, or if the one so named shall fail to appear within the specified period, the court may order the opposing party, within a specified time to procure the appointment of an executor or administrator for the estate of the deceased and the latter shall immediately appear for and on behalf of the deceased. The court charges in procuring such appointment, if defrayed by the opposing party, may be recovered as costs.

WHEREFORE, the petition for review on certiorari is **GRANTED**. The Decision dated July 18, 2006 and Resolution dated October 19, 2007 of the Court of Appeals in CA-G.R. CV No. 64379 are hereby **REVERSED** and **SET ASIDE**. Civil Case No. 2124-AF of the Regional Trial Court of Cabanatuan City, Branch 26 is **DISMISSED**.

No pronouncement as to costs.

SO ORDERED.

MARTIN S. VILLARAMA, JR.
Associate Justice

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

LUCAS P. BERSAMIN
Associate Justice

BIENVENIDO L. REYES
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the 1987 Constitution, 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.

MARIA LOURDES P. A. SERENO
Chief Justice