

1 **FOR PUBLICATION**

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5 **IN THE SUPERIOR COURT**
6 **OF THE**
7 **COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

8 **SHAREE DEMAPAN DIAZ on behalf of her) FCD DI CIVIL ACTION NO. 06-0159**
9 **minor child, AEYANNA SKYE DIAZ) FCD FP CIVIL ACTION NO. 07-0442**
10 **MARATITA,)**
11 **Petitioner,)**
12 **vs.)**
13 **BARRIE KEITH REYES MARATITA,) ORDER DENYING RESPONDENT'S**
14 **Respondent.) MOTION TO SET ASIDE JUDGMENT**

15 THIS MATTER came on for a hearing on November 23, 2007 at 1:30 p.m. in Courtroom
16 205A. Petitioner, Sharee Demapan Diaz (“Petitioner”), was present and represented by
17 counsel Ramon K. Quichocho, Esq. Respondent, Barrie Keith Reyes Maratita (“Respondent”),
18 was also present and represented by counsel Lucia Blanco-Maratita.

19 **PROCEDURAL BACKGROUND**

20 On January 30, 2007, the Court issued a Divorce Decree granting the parties joint custody
21 of the minor child, with primary custody to Petitioner. Respondent was awarded liberal
22 visitation.

23 Since the divorce, the parties have filed a series of motions seeking the modification of
24 child custody, temporary restraining orders, and orders of protection. On July 24, 2007,
25 Respondent, through his attorney, filed a Motion to Modify Child Custody and For a
26 Temporary Restraining Order Prohibiting Removal of the Child from the Commonwealth,
27 FCD-DI Civil Action No. 06-0159. On August 1, 2007, Petitioner filed a Petition Pursuant to
28 Public Law 12-19 “Domestic and Family Violence Prevention Act of 2000” Section 201, under

1 FCD-FP Civil Action No. 07-0442. On August 2, 2007, Petitioner filed an Order to Show
2 Cause and Temporary Restraining Order (“TRO”), under FCD-FP Civil Action No. 07-0442.
3 The Court granted the TRO and scheduled an evidentiary hearing on the order of protection for
4 August 6, 2007. On September 26, 2007, the Respondent filed a Motion to Set Aside
5 Judgment.

6 Based on the arguments of counsel, testimonies of the parties, and the motions submitted
7 for consideration, the Court hereby *denies* the Respondent’s Motion to Set Aside the Judgment
8 for the following reasons.

9
10 **DISCUSSION**

11 Following the August 6, 2007 TRO hearing, the Respondent voluntarily underwent a
12 paternity test in an attempt to resolve the on-going dispute over non-paternity. According to
13 the Respondent, “At the conclusion of the TRO matter, I decided to have a paternity test done,
14 at my expense, in order to address the issue of paternity once and for all so to prove that
15 Aeyanna is my biological daughter and so that Sharee would not be able to bring up the issue
16 of non-paternity in the future again as a form of harassment.” Decl. of Resp. ¶ 5.

17 The paternity test stated that the Respondent was excluded as the biological father of
18 Aeyanna Skye Diaz Maratita. In response to this finding, the Respondent filed a motion with
19 the Court to set aside the Divorce Decree because it states that he is the natural father of the
20 child. Thus, the Respondent wishes to set aside those portions of the Divorce Decree that state
21 he is the natural father of Aeyanna and that he is responsible for paying child support. More
22 specifically, the Respondent argues that because he is not the biological father of Aeyanna, he
23 “should not be obligated by law to support her....” *See* Decl. of Resp., ¶ 9.

24 Though the Court sympathizes with the Respondent, it cannot grant his motion for two
25 reasons. First, under the Commonwealth law, the Respondent is prohibited from declaring the
26 nonexistence of the father and child relationship. Second, such a finding is not in the best
27 interest of the child.

1 **A. Declaring the nonexistence of a father and child relationship is prohibited under 8**
2 **CMC § 1706(a)(2).**

3 Under the Commonwealth Code, the Court is prohibited from finding the nonexistence of a
4 father-child relationship. The relevant section of the code states:

5 For the purpose of declaring the **nonexistence** of the father and
6 child relationship presumed under 8 CMC § 1704(a)(1), (2), or (3)
7 only if the action is brought within a reasonable time after
8 obtaining knowledge of relevant facts, but in **no event later than**
9 **five years after the child's birth**. After the presumption has been
10 rebutted, paternity of the child by another man may be determined
11 in the same action, if he has been made a party.

12 8 CMC § 1706(a)(2) [Emphasis added]. The facts of this case do not lend themselves to an
13 analysis under sections 1704(a)(1) or (2). Rather, the facts of this case fall under section
14 1704(a)(3). More specifically, 1704(a)(3)(B) and (C), which states:

15 (a) A man is presumed to be the natural father of a child if... (3)
16 After the child's birth, he and the child's natural mother have
17 married...each other by a marriage solemnized in apparent
18 compliance with law...and...(B) with his consent, he is named as
19 the child's father on the child's birth certificate, or (C) he is
20 obligated to support the child under a written voluntary promise or
21 by court order.

22 8 CMC § 1704(a)(3)(B) & (C). In applying this section of the code to section 1706(a)(2), the
23 Court must analyze the facts under a three-pronged test: (1) Whether the Respondent is/was
24 legally presumed to be the natural father under section 1704(a)(3)(B) and/or (C); (2) Whether
25 the Respondent brought this action within a reasonable amount of time after obtaining
26 knowledge of relevant facts; and (3) Whether the child is five years of age or older.

27 **1. The Respondent was legally presumed to be the natural father under 8 CMC §**
28 **1704(a)(3)(B) and (C).**

In applying the facts of the case to section 1704(a)(3)(B) and (C), the Court finds that the
Respondent is/was legally presumed to be the natural father of Aeyanna Skye Diaz Maratita.
First, the child was born on March 15, 2002 in Honolulu, Hawaii. On the child's birth

1 certificate, the Respondent is listed as the child's father. Thus, under section 1074(a)(3)(B),
2 the Respondent is legally presumed to be the natural father.

3 Second, the Respondent is obligated to pay child support under a written voluntary promise
4 *and* a court order. In an Agreement for Divorce, dated March 30, 2006 and signed by both
5 parties, the Respondent voluntarily agreed to pay child support "for the support, maintenance,
6 and care of the minor child." Agreement for Divorce, ¶ 7, p. 4. In recognition of this
7 Agreement, the Court ordered the Respondent to pay \$300.00 a month in child support through
8 the Divorce Decree dated January 30, 2007. Thus, under section 1704(a)(3)(C), the
9 Respondent is legally presumed to be the natural father.

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11 **2. The Respondent failed to bring this action within a reasonable amount of time.**

12 Based on the testimony proffered during the TRO hearing and the Respondent's
13 Declaration in Support of Motion to Set Aside Judgment, the Court finds that the Respondent
14 failed to bring this action within a reasonable amount of time after being told that Aeyanna
15 may not be his biological daughter. First, the Respondent had reason to doubt that Aeyanna
16 was his natural daughter as early as 2002. During the TRO hearing, both parties testified that
17 prior to entering into the marriage, the Petitioner had told the Respondent that Aeyanna may
18 not be his natural daughter. Second, in the Respondent's Declaration, he reiterates the fact that
19 he had been warned by the Petitioner that Aeyanna may not be his daughter. In a footnote, the
20 Respondent states, "Although I raised concerns with Sharee whether Aeyanna is my child (as
21 Sharee had previously told me that she was not), Sharee assured me before our marriage that
22 Aeyanna was and did not mention during the course of the divorce proceedings that I am not
23 Aeyanna's father and as a result, the court determined that I was the legal father." Decl. of
24 Resp. p. 2, fn. 1.

25 In consideration of the above facts, the Court finds that the Respondent waited an
26 unreasonable amount of time to bring this action. He knew, or should have known, that there
27 was reason to doubt Aeyanna's lineage prior to entering into the marriage and/or openly
28 holding the child out as his natural child for five (5) years. Now, after the child knows the

1 Respondent as her father, and his family as her family, is not an appropriate time to bring this
2 action.

3 **3. The child is five (5) years of age and a strict application of 8 CMC § 1706(a)(2)**
4 **prohibits the Court from declaring the nonexistence of a father and child**
5 **relationship.**

6 The language of section 1706(a)(2) is clear. An action to declare the nonexistence of a
7 father and child relationship can “in no event” be brought later than five years after the child’s
8 birth. 8 CMC § 1706(a)(2). Aeyanna was born on March 15, 2002. The Respondent did not
9 file the Motion to Set Aside Judgment until September 26, 2007, more than five years after the
10 child’s birth. Thus, the Court cannot declare the nonexistence of a father and child
11 relationship.

12 **B. It is not in the best interest of the child to declare the nonexistence of a father and**
13 **child relationship**

14 In *In re the Adoption of Olopai*, the Court held that, “the best interest of the child is the
15 paramount criteria to consider in a proceeding to terminate the parental rights of a parent or
16 parents.” *In re the Adoption of Olopai*, 2 N.M.I. 91, p.102-103 (1991). Likewise, the criterion
17 is paramount in a proceeding wherein the Court is asked to declare the nonexistence of a
18 father-child relationship.

19 Factors that are taken into consideration when analyzing the best interest of the child
20 include, but are not limited to, the fundamental relationship that exists between the child and
21 the parents, the age of the child, the extent of the bond, and the ability of the parents to provide
22 adequate and proper love, care, attention, and guidance to the child. *Id.* at p. 104. When
23 taking these factors into consideration, the Court finds that it is in the best interest of this child
24 to have and to foster a relationship with the Respondent, the man whom she has known as her
25 father for the entire duration of her life. Furthermore, the Court finds that the Respondent is a
26 loving and caring father. It is evident through his testimony that he deeply loves and cares for
27 Aeyanna. Terminating this bond would not be in the best interest of the child.
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CONCLUSION

Based on the reasons set forth above, the Court hereby denies the Respondent's Motion to Set Aside Judgment. The Court is statutorily prohibited from declaring the nonexistence of a father-child relationship and the Court finds that such a declaration would not be in the best interest of the child as the Respondent and the child appear to have a healthy and loving relationship.

The Court is interested in protecting this child from the unpleasant and unhealthy rift that exists between the parties and their families. Thus, in an attempt to protect and promote the relationship that exists between the parties and the child, the parties and their families are prohibited from telling the child that the Respondent is not her natural father until the child reaches the age of majority. Should either party or a party's family member be found to have used this information to manipulate the child, or harass the other party, the Court will issue an Order to Show Cause. A hearing will be held on the matter, and the child will be called to the stand to testify against either party and/or a family member.

IT IS SO ORDERED this 24th day of December, 2007

/S/ _____
KENNETH L. GOVENDO
Associate Judge