IN THE SUPERIOR COURT
FOR THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

DOLORES S. WILLBANKS Plaintiffs, v. FRANCISCO B. STEIN, JESUS B. STEIN, OLYMPIA R. SABLAN, TERESITA R. RASA, ANTONIA R. TENORIO, and RICHARD B. STEIN, Defendants.	Civil Action No. 91-337 DECISION AND ORDER

Plaintiff Dolores S. Willbanks brought this action to quiet title, claiming a share of ownership in real estate parcel EA 899 located in Talofofo, Saipan. She claims that she is the child out-of-wedlock of decedent Juan Delos Reyes Stein. Defendants were previously adjudicated the intestate heirs to the property in probate action 90-512. Accordingly, they oppose her claim to a share of the property and deny that she is their half-sister.

I. FACTUAL BACKGROUND

Decedent Juan Delos Reyes Stein ("Juan") died in July, 1944. At the time of his death he was married to Maria Borja Stein. The marriage of Juan and Maria Stein produced seven children: Jesus, Francisco, Olympia, Richard, David, Teresita, and Antonia. David

died in childhood. The six surviving children are Defendants in this action.

Plaintiff Dolores S. Willbanks ("Dolores") was born on May 21, 1937, to Maria Santos. In approximately 1940, Maria Santos left Saipan and was never heard from again. Dolores was raised by her maternal grandparents until the age of eighteen.

At his death, Juan was the owner of Lot No. 1307 in I-Denni, containing about 3.3 hectares. In approximately 1962, this land was exchanged for lot EA 899 in Talofofo, containing 13.88 hectares.

On May 21, 1990, Francisco filed a Petition for Letters of Administration to probate his father's estate. Civil Action No. 90-512. He was appointed administrator on June 22, 1990. According to the Petition for Letters of Administration, Juan died intestate. The Court issued the Decree of Final Distribution on November 6, 1990, distributing the estate to Defendants as "the heirs of Juan Delos Reyes Stein per stirpes."

Dolores testified that she was never notified by the Administrator of the probate action, and that she heard of the action through her brother Joseph in March or April, 1991. She filed this action on April 23, 1991. Defendants introduced no evidence of having notified Dolores of the probate petition.

II. GOVERNING LAW

There is no dispute that, since Juan died in 1944, the current Probate Code does not, of its own force, govern this dispute. See 8 CMC § 2102 (property of persons who die before February 15, 1984 passes according to Trust Territory Code and

other applicable law); Estate of Mariana C. Deleon Guerrero, No. 89-017, slip op. at 4 (N.M.I. 1990). Since the prior Trust Territory Code contained no provision governing intestate succession or inheritance by children out-of-wedlock (see, e.g., 13 TTC), and since Chamorro custom has been found to apply to both issues, the Court holds that Chamorro custom governs. 1 TTC § 102-3; Estate of Manuel Fausto Aldan, No. 90-045, slip op. at 9 (N.M.I. 1991).

The parties dispute whether, and under what conditions, Chamorro custom allows for inheritance by children out-of-wedlock. In Aldan, supra, the Commonwealth Supreme Court held that Probate Code §§ 2107(c) and 2918(b)(2) embodied and codified existing Chamorro custom on the question of inheritance by children out-of-wedlock. See also 8 CMC § 2104(b)(1) (an underlying purpose of the Probate Code is "to simplify and clarify the law and custom concerning the affairs of decedents...."); Estate of Santiago Tudela, 92-010/011, slip op. at 8 (N.M.I. 1993). Thus, while the parties submitted conflicting expert testimony and other authority on Chamorro customs towards inheritance by children out-of-wedlock, this Court looks to 8 CMC §§ 2107(c) and 2918(b)(2) as the best evidence of applicable Chamorro custom:

> § 2107(c). "Child" includes any individual entitled to take as a child under this law by intestate succession from the parent whose relationship is involved. It includes adopted children **and children born out of wedlock** ....
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> § 2918. Meaning of Child. If, for the purposes of intestate succession, a relationship by parent and child must be established to determine succession by, through, or from a person:

> (b) ... [A] person is also a child of the father if:
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> (2) the paternity is established by an adjudication before the death of the father **or is established thereafter by clear and convincing proof** .... (emphasis added).[1/]

Both parties raise Constitutional arguments as to whether a statutory scheme requiring children out-of-wedlock to be legitimated during the father's life or accepted by the family would offend the Equal Protection Clause or Article I of the CNMI Constitution. However, the Court finds the applicable law to impose no such requirements beyond an adjudication of paternity. Therefore, the Court is not required to reach the parties' Constitutional arguments.

III. EVIDENCE OF DOLORES' PARENTAGE

Applying the standards described above, the Court finds that Dolores has proven by clear and convincing evidence that she is the daughter of Juan. The following evidence supports this finding:

Defendant Teresita Rasa ("Teresita") testified that, in approximately 1963, her mother acknowledged having heard that Dolores was Juan's daughter. Teresita further testified that her brother Jesus introduced Dolores to Teresita when they were

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1/ But see Spoehr, The Ethnology of a War-Devastated Island, 141 (Chicago Natural History Museum, 1954) ("an illegitimate child does not share equally in inheritance with legitimate children"). This citation notwithstanding, Defendants' efforts to read into Aldan a requirement that the child be legitimated in order to take under intestate succession (see Defendants' Closing Argument at 14-16) are unavailing. Nothing in Aldan even hints at such a requirement; and given Aldan's explicit statement that the Probate Code codifies Chamorro custom, we cannot adopt a reading of Aldan which would essentially nullify 8 CMC §§ 2107(c) and 2918(b)(2).

children, telling Teresita that Dolores was "our sister from outside."

Plaintiff introduced testimony from several relatives and community members corroborating that: 1) Defendants, particularly Olympia R. Sablan ("Olympia"), referred to Dolores as "sister" and her son as "nephew"; and 2) it was a shared opinion among elder relatives of Juan's generation that Dolores was his daughter.

Plaintiff introduced evidence of a "DNA fingerprinting" test which compared DNA from a sample of Dolores' blood with DNA from a sample of Teresita's blood. These samples were analyzed by Cellmark Diagnostics Laboratory. According to the deposition testimony of Dr. Amanda Sozer, admitted at trial over Defendants' objection,[2/] the "DNA fingerprinting" test showed that Dolores and Teresita shared 44.4% of their DNA in common, whereas unrelated individuals typically share approximately 25% of DNA or less. On the basis of this finding, Dr. Sozer testified that she had "greater than 99%" confidence that the two tested individuals are second degree relatives. Deposition of Amanda Sozer, January 21, 1993, at 46.

On July 25, 1991, Defendant Richard B. Stein wrote a letter to his sister Teresita (Plaintiff's Exhibit 20) in which he stated "We grew up hearing and accepting the notion that [Dolores] was our sister."

The testimony of Olympia was highly self-contradictory as to whether she knew Dolores as a child or believed her to be a half-

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[2/] Dr. Sozer's deposition was taken in Germantown, Maryland. Defendants' counsel did not attend the deposition. As Dr. Sozer is not a resident of the CNMI, her deposition was admitted as evidence at trial under Com.R.Civ.P. 32(a)(3)(B). See Part VII, below.

sister. While she initially testified that she heard "rumors" at age ten or eleven and knew Dolores in grade school (Deposition of Olympia R. Sablan, October 15, 1991, at 8, 17); she also testified that she did not know Dolores until the 1970's, in California. She further admitted to introducing Dolores to other friends as "my sister," but denied that this meant she considered Dolores a sister. Id. at 23-4.

In Plaintiff's Exhibit 2, Defendant Francisco is shown with his arm around Dolores in what both parties have described as a family portrait taken during the 1980's at a family reunion. When asked about the photograph, Francisco testified that Dolores "forced herself" into the photograph. The Court finds this post hoc explanation inconsistent with the physical evidence of the portrait and other photographs taken at the same gathering.

The foregoing physical evidence and testimony from third parties -- and from Defendants themselves -- corroborates Dolores' own testimony that she was treated as a sister by the Stein family from the time she was approximately nine years old, and confirms her claim that she is in fact the daughter of Juan. Defendants' denials of this fact are self-contradictory and uncorroborated. Thus, the Court finds that Dolores has submitted the requisite proof of her parentage.

IV. PARTIDA

Defendant Jesus testified that, prior to his death, Juan made an oral partida while digging a foxhole in which he was later killed. According to Jesus, Juan specifically named his seven children from his marriage to Maria B. Stein as the ones who

should inherit the I Denni property. This evidence was not corroborated by any other testimony. Moreover, the evidence is undisputed that this alleged partida was never mentioned in the course of Civil Action No. 90-512 to probate Juan's estate, and that the estate was distributed according to the laws of intestate succession. The fact that Defendants did not act on this alleged partida during the probate proceeding casts doubt upon Jesus' testimony.

Furthermore, even if the Court were to accept Jesus' testimony at face value, the fact that Defendants' failed to mention any partida when they probated Juan's estate estopps them from asserting the partida here. Res judicata precludes a party from re-litigating issues concluded in prior litigation, including issues that could have been concluded in prior litigation. Where the opposing party in the second litigation is not the same as in the first, issue preclusion still applies to the party who was present in both suits "unless he lacked a full and fair opportunity to litigate the issue in the first action or other circumstances justify affording him an opportunity to litigate the issue." Restatement (2d) of Judgments, § 29;[3/] 7 CMC § 3401; see also Bernhard v. Bank of Am. Nat'l Trust & Sav. Ass'n, 122 P.2d 892, 895 (Cal. 1944) (estoppel proper in probate action where issue in first litigation was same as second litigation, where there was a final judgment on the merits, and where party against

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[3/] Comment (e) to § 21 counsels against issue preclusion where a party that could have joined the prior action asserts res judicata "offensively" against a party to the prior action. Here, Dolores could not have joined the probate action, because she had no notice of it until it had been concluded. Therefore, Comment (e) is inapplicable.

whom estoppel is asserted was a party or privy to first litigation).

Here, there was nothing to prevent Defendants from probating their father's estate based on the claimed partida, rather than intestate succession. This is not a case of evidence discovered after the probate had closed; Defendants had as much information during the probate process as they have had since. The Court therefore holds that Defendants had a full and fair opportunity to assert the partida during the course of Civil Action No. 90-512; their failure to do so bars them from claiming the benefit of it now.

V. STATUTE OF LIMITATIONS

Defendants argue that Dolores' complaint is barred by the statutes of limitations contained in 7 CMC §§ 2504-10. They contend that Dolores' cause of action against Juan's estate accrued when she was 14 years old (see Defendants' Closing Argument at 27), apparently on the theory that under 7 CMC § 2505 she had six years after Juan's death to contest the Stein children's (then unexpressed) intention to exclude her from the estate.[4/]

The argument is without merit. The applicable statute of limitations is 7 CMC § 2504, which provides that:

> Any action by or against the executor, administrator or other representative of a deceased person for a cause of action in favor of, or against, the deceased shall be brought only within two years after the executor,

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[4/] Defendants reason that Dolores was thus time-barred in 1961, "six years after she reached the age of majority", apparently applying 7 CMC § 2506 (for minors' actions, statute of limitations begins to run at majority).

> administrator or other representative is appointed or first takes possession of the assets of the deceased.

See Estate of Francisco Deleon Guerrero, No. 91-014, slip op. at 8-9 (N.M.I. 1992) (where decedent died in 1942, § 2504's limitation on action by unrecognized child for share of probate estate began to run when administratrix was appointed).

Here, the administrator of Juan's estate was appointed on May 21, 1990. Civil Action No. 90-512. Dolores filed her complaint on April 23, 1991, well within the two-year period. This action is therefore not time-barred.

VI. TESTIMONY OF TERESITA RASA

Defendants argue that Teresita is estopped from testifying as to Dolores' parentage because Teresita failed to notify Dolores of the probate action or to contest the distribution on Dolores' behalf.[5/] This argument misapprehends the nature of equitable estoppel as to witnesses in probate proceedings. Equitable estoppel applies where a beneficiary to a will has acquiesced in and had the benefit of the provisions of a will or trust, and later challenges that will or trust for his or her own benefit. See e.g., In Re Estate of Powers, 515 P.2d 368, 374-5 (Mont. 1973) (children of testator who benefitted from execution of trust documents were estopped from contesting parent's capacity to execute will signed on same day). Such self-serving testimony is deemed "not credible as a matter of law." Id. Here, Teresita's testimony was not self-interested; in fact, she stood to lose a

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[5/] Plaintiff disputed this contention in her papers; however, neither party submitted any authority on the question.

portion of her own inheritance by testifying in support of Dolores' claim to be Juan's daughter.

Moreover, equitable estoppel is not applied to a witness to a probate proceeding unless the witness previously acted in such a way as to invite reliance by the party asserting estoppel. In Re Estate of McKiddy, 737 P.2d 317, 321 (Wash. App. 1987) set forth the traditional requirements for estoppel: an act inviting reliance, reliance by the opposing party on that act, and injury as a result of that reliance. Here, the evidence showed that during the probate proceeding Teresita urged Francisco, the administrator, to notify Dolores of the proceeding and include her as an heir to Juan's estate. These actions could hardly foster a belief among the other Defendants that Teresita agreed with their position on Dolores' parentage. Thus, equitable estoppel does not bar Teresita's testimony.

VII. ADMISSIBILITY OF DNA EVIDENCE

Defendants further contest the admission of the "DNA fingerprinting" tests performed on samples of Dolores' and Teresita Rasa's blood. Defendants' challenge is twofold: 1) the DNA tests are irrelevant to the proceedings; and 2) the DNA tests are unreliable because they are not correlated against "the proven average based on the racial composition of the Chamorro people." Defendants' Closing Argument at 34. Both arguments fail.

As to relevancy, Defendants cite to two cases holding that Uniform Parentage Act (UPA) is the sole means of establishing

paternity in California heirship proceedings:[6] LeFevre v. Sullivan, 785 F. Supp. 1402, 1407 (S.D. Cal. 1992),[7] and Sanders v. Sanders, 3 Cal. Rptr. 2d 536 (Cal. Ct. App. 1992). In that limited context, these cases hold DNA fingerprinting analysis to be irrelevant outside the use contemplated by the UPA. However, under the California UPA, DNA fingerprinting evidence is considered relevant to establish paternity. See LeFevre, 785 F. Supp. at 1407. Other jurisdictions have more widely accepted DNA fingerprinting as evidence of parentage. In Tipps v. Metropolitan Life Ins. Co., 768 F. Supp. 577, 578 (S.D. Tex. 1991) the court admitted DNA fingerprinting results from Cellmark Diagnostics (the testing facility at issue here) as well as the testimony of the testing expert that he was 99% certain that the individuals tested were half-siblings. See also Alexander v. Alexander, 537 N.E. 2d 1310, 1314 (Ohio Prob. Ct. 1988) ("The accuracy and infallibility of the DNA tests are nothing short of remarkable," obviating past evidentiary uncertainties in heirship proceedings). Defendants have cited no authority, and the Court has found none, holding that DNA testing is irrelevant to an adjudication of paternity for the purposes of heirship. The evidence and expert testimony admitted here were both relevant to and probative of Dolores' claim.

With respect to the accuracy of DNA testing given the particular racial characteristics of the Chamorro people,

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[6] As discussed in Part II above, the UPA is not the sole means of establishing paternity in this jurisdiction. See Francisco Guerrero, supra, at 6.

[7] In Defendants' papers, this case was incorrectly cited as Ground v. Sullivan, 785 F. Supp. 1407.

Defendants have submitted no evidence that the test or the results were so unreliable as to require their exclusion. It may be true that further testing or more refined testing based on local population data would produce more conclusive results. But that possibility, without more, cannot mandate the exclusion of the tests already performed. In Williams v. Williams, 801 P.2d 495, 500 (Ariz. App. 1990) the court held that in order to exclude a DNA fingerprint test from evidence, a putative father must make a particularized objection "reasonably supported by indicia of its objectionable nature." A mere allegation that another test would be "more technically advanced" was insufficient. Id. Likewise here, Defendants must make an evidentiary showing -- something beyond the unsupported hypotheses of counsel -- that the tests were unreliable in order to exclude this evidence.

VIII. ORDER

Having heard the testimony and evaluated the credibility of the witnesses and examined the proofs of the parties, and having heard the arguments of counsel, this Court orders:

1. Plaintiff Dolores S. Willbanks is hereby adjudged to be the daughter of the decedent Juan Delos Reyes Stein.

2. Plaintiff is entitled to and is hereby awarded a 1/7 undivided share of the parcel of real property known as Lot EA 899 located in Talofofo, Saipan, as well as a 1/7 share of any sale or

rental proceeds which were received by Defendants between November 6, 1991 and the present.

Entered this 19 day of July, 1993.

MIGUEL S. DEMAPAN, Associate Judge