

FILED
13 MAY 1990 3:30 PM

Clerk:
Superior Court
Northern Mariana Islands

By: [Signature]
Deputy Clerk of Court

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

GUAM DEPARTMENT OF PUBLIC)	URESA CIVIL ACTION NO. 89-644
HEALTH and SOCIAL SERVICES)	
and FLORENCE S. CEPEDA,)	
)	
Petitioners,)	<u>MEMORANDUM OPINION AND ORDER</u>
)	
vs,)	
)	
JOSE C. DELEON GUERRERO,)	
)	
Respondent.)	
)	

This matter is before the Court on the petition of the Guam Department of Public Health and Social Services and Florence S. Cepeda for a determination of paternity and support against Respondent, Jose C. DeLeon Guerrero, originally filed in the Superior Court of Guam pursuant to that jurisdiction's version of the Uniform Reciprocal Enforcement of Support Act (URESA), Guam Code of Civil Procedure §§1500-31.

It being determined that the Respondent was residing in the CNMI the petition was forwarded to the CNMI Attorney General's Office who in turn, filed the same on June 13, 1989. Thereafter, summons was issued on the Respondent and returned served. At

this point in the proceedings, the parties and petition were subject to the CNKI URESA, 8 CMC §§1511-57 and this Court's jurisdiction.

The Respondent filed his answer to the petition on July 10, 1989 essentially denying paternity and any duty of support to Petitioner Cepeda's child. The Respondent also asserted that the petition failed to state a claim upon which relief could be granted and that he was not served with all the required URESA documents.

Although no copy is to be found in the Court's file, according to the CNMI prosecutor ^{1/} the I Superior - c u r entered an order on January 16, 1990 directing the Respondent to submit to blood tests for the purpose of determining paternity. Pursuant to this Order, the Government motioned this Court for an order directing Respondent to show cause why he should not be required to submit to blood tests to determine paternity. The Court granted the Government's motion and ordered the Respondent to appear before it on March 20, 1990 in response to its Order.

On March 12, 1990, Respondent filed a Memorandum in Opposition to Order to Show Cause which the Court took under advisement. The Attorney General has filed no brief in response. The Court now addresses the issues raised in Respondent's opposition memorandum,

The Respondent attacks this URESA proceeding on two fronts.

1/

-- §1542(b) vests the CNMI Attorney General with the power to prosecute all URESA cases filed in this jurisdiction.

First, the Respondent challenges the validity and enforceability of the Guam Superior Court Order directing him to submit to a blood test on the basis of lack of personal jurisdiction over him and subject matter jurisdiction over the events alleged in the petition.

The Court agrees that the Guam Superior Court Order (if in fact one has been entered: directing the Respondent to submit to blood testing is unenforceable against the Respondent for the simple reason that the Guam Superior Court lacks personal jurisdiction over the Respondent. Moreover, the Court is of the view that whatever jurisdiction the Guam Superior Court had in this action was ceded to this Court when the petition was forwarded to the CNMT and filed with the Clerk's Office of this Court. The idea of concurrent jurisdiction and the possibility of two courts entering conflicting orders militates against the Guam Superior Court's continuing jurisdiction in this matter.

Secondly, the Respondent attacks the URESA petition itself, claiming that the CNMT URESA cannot be used as a vehicle for paternity determinations. The Respondent argues that the proper procedure under CNMI law for a paternity determination is an action brought pursuant to the Uniform Parentage Act, 8 CMC §§1700-26. The Court disagrees. Section 1551 of the CNMI URESA provides in pertinent part:

"If the obligor asserts as a defense that he is not the father of the child for whom support is sought and it appears to the Court that the defense is not frivolous, and if both of the parties are present at the hearing or the proof required in the case indicates that the presence of either or both of the parties is not necessary, the Court may adjudicate the paternity issue."(emphasis added)

Applying this section to the instant case, the Court concludes that the Petitioners' presence at the URESA hearing is not required in order to prove the facts necessary to establish the Respondent's paternity. If for any reason Petitioner Cepeda's testimony is required, it may be taken in the form of a deposition. Therefore, the Court finds that it has authority to adjudicate paternity under the CNMI URESA in the case at bar.

Although respondent is correct when he asserts that URESA does not provide procedural guidelines for a paternity determination, nothing in URESA prevents the Court from employing the procedural provisions found in §§1710-23 of the UPA. In the absence of a showing to the contrary, all laws are presumed to be consistent with each other. 73 Am. Jur. 2d Statutes §254. Where it is possible to do so, it is the duty of the Courts, in the construction of statutes, to harmonize and reconcile laws, and to adopt that construction of a statutory provision which harmonizes and reconciles it with other statutory provisions. Id. Under similar circumstances, the Court in Clarkston v. Bridge, 539 P.2d 1094, 1099 stated:

"The URESA is a remedial statute designed to equalize the relative positions of resident and non-resident plaintiffs in support proceedings. While it reflects a legitimate interest in minimizing the additional burdens and expenses by non-resident plaintiffs, this interest must be balanced against a legislative concern for the sensitivity of paternity determinations and the corresponding legislative policy of providing procedural protections for such determinations"

Since the issues involved in establishing paternity in

proceedings under the CPA and URESA are the same, absent legislative intent to the contrary, the detailed provisions of the UPA for determining paternity should be followed in URESA proceedings.

The foregoing being resolved, there remains one final consideration to be addressed before the Court proceeds to exercise jurisdiction in this matter. Before committing limited CNMI judicial and other governmental resources in the pursuit of Petitioners' URESA claim, this Court must be satisfied that the Guam URESA is reciprocal to the CNMI URESA. In other words, the Guam URESA must either have a substantively similar provision corresponding to the paternity provision found in the CNMI URESA or it must be construed by Guam courts as implicitly permitting the adjudication of paternity claims brought by non-resident petitioners.

A review of the Guam URESA as filed with the petition in this matter reveals no corresponding provision similar to the CNMI URESA paternity provision found in 8 CMC §1551. The reason for this discrepancy between the two Acts is easily discovered.

In 1950, the National Conference of Commissioners on Uniform State Laws approved the Uniform Reciprocal Enforcement of Support Act. The Act was subsequently amended in 1952 and 1958 and revised in 1968. Guam adopted the amended 1952 version of URESA in 1954. Guam Code of Civ. Pro. §1500. The CNMI URESA was carried over from the Trust Territory Code and based on the 1968 revised Act. The CNMI URESA §1551 paternity provision was not a

part of the 1950, 1952 or 1958 versions of the Act 'cut first appeared in the 1968 revised Act. Guam has not adopted the 1968 revised Act

A number of cases reported out of jurisdictions which at the time of the particular decision had not adopted the 1968 revised Act have affirmatively answered the question of whether UKESA, absent the 1968 revised Act's provision expressly providing for paternity determination implicitly authorizes courts to determine paternity. See Greenstreet v. Clark, 239 N.W. 2d 143 (Iowa 1976); _____ v. Bridge, 530 P.2d 1094 (Oregon 1975); Yetter v. Commeau, 524 P.2d 901 (Wash. 1974).

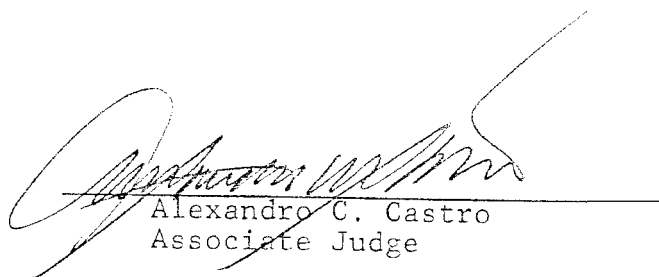
On the other hand, there are also reported cases holding that the 1950 Act and its 1952 and 1958 amended versions do not allow judicial determination of paternity. See Nye v. Dist. Court for County of Adams, 450 P.2d 669 (Colo. 1969); Aguilar v. Holcomb, 395 P.2d 998 (Colo. 1964); Smith v. Smith, 224 N.W. 2d 925 (Ohio 1955).

In the instant case, the Court is neither aware of nor been presented with any authority or evidence tending to show that the Guam URESA is construed by Guam courts as implicitly authorizing judicial determination of paternity in URESA actions brought by non-residents.

As the statutorily designated representative of the Petitioners and charged with diligently prosecuting URESA actions in the CNMI, it is incumbent upon the Attorney General to satisfy the Court's concern in this area.

Now therefore, IT IS HEREBY ORDERED that the Attorney General shall present authority and/or any evidence for the Court's review in determining whether the Guam URESA is construed by Guam courts as implicitly permitting judicial determination of paternity in URESA actions brought by non-resident petitioners' by May 31, 1990.

Entered this 31st day of May, 1990


Alexandro C. Castro
Associate Judge