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

IN THE MATTER OF THE ESTATE OF) Civil Action No. 95-626
LARRY LEE HILLBLOM)
)
) **ORDER GRANTING MOTION**
) **FOR DNA TESTING AND MOTION**
) **FOR COMMISSION TO PRODUCE**
) **BODILY SAMPLES**

This matter comes before the Court upon renewed motion by Petitioner Kinney for DNA testing and upon motion by Petitioner Moncrieff for commissions to take depositions, documents and bodily materials from Helen Anderson, Terry Hillblom and Grant Anderson.

I. FACTS

Larry Lee Hillblom died in a plane crash on or about May 21, 1995. His body was never recovered. On July 7, 1995, the Executor of his estate, Bank of Saipan, filed a Petition for Probate of Will and Issuance of Letters Testamentary. Petitioner Kinney, as Guardian and on behalf of Junior Hillbroom, filed her "Opposition of the Will to Probate and Motion for Hearing for Determination of Paternity and Heirship and For Declaratory Judgment," alleging that Junior Hillbroom is a pretermitted heir, on July 17, 1995. She initially filed her "Motion for DNA Testing" on July 28, 1995, asking this

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1 Court to Order the decedent's mother, Helen Anderson, brother, Terry Hillblom, and half-brother, Grant
2 Anderson ("Mr. Hillblom's relatives"), to submit to DNA testing to determine if Junior Hillbroom is the
3 decedent's son. Mr. Hillblom's relatives reside in California and are not parties to this proceeding. The
4 Executor submitted its Memorandum in Response to Petitioner's Motion for DNA Testing on August
5 8, 1995. Hearing of the motion was continued by Court Order dated August 15, 1995, but Petitioner
6 Kinney subsequently withdrew the motion.

7 The Executor accompanied Petitioner Kinney, in her search of the following for biological
8 samples from Mr. Hillblom: 1) Wreckage from a plane crash in Tinian that Mr. Hillblom was involved
9 in, on October 10, 1995; 2) Mr. Hillblom's Saipan residence, on October 10 and 11, 1995; 3) Mr.
10 Hillblom's Halfmoon Bay ranch, on October 22 and 23, 1995; and 4) Medical records and materials at
11 Davies Medical Center (on November 29, 1995) and Straub Hospital. Affidavit of David Olson, sworn
12 to on December 21, 1995, ¶¶ 3-6. Petitioner Kinney is in possession of miscellaneous items for DNA
13 testing, most significant of which includes a tissue block, known to be removed from Mr. Hillblom, found
14 at Davies Medical Center. *Id.* at ¶¶ 4-6. The relevance of these items is unknown.^{1/}

15 Petitioner Kinney renewed her motion for DNA testing on November 27, 1995, this time asking
16 the Court to Order only Helen Anderson, and Terry Hillblom to provide blood samples. On November
17 17, 1995, Petitioner Moncrieff, as Guardian and on behalf of Jellian Cuartero, filed his "Petition for
18 Declaratory Judgment of Paternity and Heirship" alleging Jellian Cuartero is a pretermitted heir. He
19 subsequently filed a "Motion for Commissions to take out of Jurisdiction Depositions and to Produce
20 Documents and Tangible Things" on December 7, 1995, in which he asked the Court to commission the
21 taking of depositions, documents and bodily materials for DNA testing from Mr. Hillblom's relatives.
22 The November 29, 1995 transfer of custody of Mr. Hillblom's tissue sample from Davies Medical Center
23 to Petitioner Kinney's expert, Edward T. Blake, was videotaped, pursuant to court order. Petitioner
24 Moncrieff did not visit the sites listed above to search for biological samples from Mr. Hillblom.

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26 ^{1/} The tissue block from Davies Medical Center is stored in formaldehyde, which breaks the DNA into
27 smaller pieces, limiting the number and type of gene capable of successful analysis. Declaration of
28 Edward T. Blake, D. Crim., executed on November 20, 1995, ¶ 9. The biological samples obtained from
the plane wreck and from Mr. Hillblom's residence are not known to be from Mr. Hillblom. *Id.* at ¶ 10.

1 Oral argument of Petitioners' motions was heard on January 12, 1996. Having considered the
2 arguments and submissions of the parties, the Court now renders its decision.

3 4 II. ANALYSIS

5 A. The Probate Code Governs This Proceeding

6 The Northern Mariana Islands Probate Code ("Probate Code") (8 CMC §§ 2101-2102) expressly
7 permits the determination of a decedent's heirs in a probate proceeding:

8 [T]he Commonwealth [Superior] Court shall have jurisdiction over all subject matter
9 relating to estates of decedents, including construction of wills and determination of heirs
and successors of decedents. 8 CMC § 2202(a).

10 Although the Uniform Parentage Act (the "UPA") (8 CMC §1700 *et. seq.*) defines the proper parties
11 to a paternity action^{2/} and limits persons who may be compelled to submit to blood tests,^{3/} its
12 requirements cannot be carried out where the father is dead. Since the UPA contemplates that the alleged
13 father is still alive, it is understood to govern only actions to establish paternity before the father's death.
14 *In Re Estate of Deleon Guerrero*, 3 N.M.I. 253, 260 (1992); *In Re Estate of Tudela*, 3 N.M.I. (1993).

15 As Mr. Hillblom is deceased, the Probate Code governs this proceeding. Unlike the UPA, the
16 Probate Code does not define the proper parties to an heirship proceeding and says little, specifically,
17 about who the Court may compel to submit to blood testing. Instead, it grants the Court broad authority
18 to:

19 make orders, judgments, and decrees and take all other action necessary and proper to
20 administer justice in the matters which come before it. 8 CMC § 2202(b).

21 Given this breadth of authority, the Court may order anyone within its jurisdiction to submit to blood
22 tests, provided it deems such order necessary and proper. *See. e.g. In Re Rogers*, 583 A.2d 782 (N.J.
23 App. Div. 1990); *Sudwischer v. Estate of Paul Hoffpauir*, 589 So. 2d 474 (La. 1991) (Court has

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25 ^{2/} [T]he natural mother, each man presumed to be the father under section 1704, and each man alleged
26 to be the natural father, shall be made parties.... 8 CMC § 1704.

27 ^{3/} The court may, and upon request of a party shall, require the child, mother, or alleged father to
28 submit to blood tests.... 8 CMC § 1711(a).

1 inherent authority to compel non-party witness to submit to blood tests to enable it to adjudicate
2 paternity).

3 **1. Necessary Evidence**

4 Petitioners represent that Mr. Hillblom's relatives have refused to voluntarily give the blood
5 samples requested and that the samples will lead to the discovery of relevant evidence. Petitioners also
6 represent that because Mr. Hillblom's body was not recovered, there is limited relevant evidence available
7 and that DNA tests using the blood samples from Mr. Hillblom's relatives are the most effective
8 resolution of the paternity issue. Declaration of Edward T. Blake, executed November 20, 1995, ¶ 12.

9 Under these circumstances, the Court finds Helen Anderson's and Terry Hillblom's^{4/} blood
10 samples necessary to reconstruct Mr. Hillblom's genetic profile. The Court also finds these samples
11 highly probative of the key issue in this proceeding: whether Mr. Hillblom is indeed the biological father
12 of Junior Hillbroom and Jellian Cuartero.

13 **2. Propriety of Compelled DNA Testing**

14 In evaluating the propriety of compelling Helen Anderson and Terry Hillblom to submit to DNA
15 testing, the Court finds that the need for facts which can be considered by the jury evaluating Petitioners
16 claims outweighs Helen Anderson's and Terry Hillblom's right to privacy. *See e.g. Rogers, supra;*
17 *Sudwischer, supra.* The blood draw requested by Petitioners, performed by a skilled technician, is a
18 routine, safe procedure. Affidavit of Howard C. Coleman, sworn to on November 28, 1995 ¶ 19. As
19 such, it is not brutal or offensive, and constitutes a minimal invasion of privacy. *Breithart v. Abram*, 77
20 S.Ct. 408 (1957), *citing Rochin v. California*, 72 S.Ct. 205 (1952). Because the requested blood draw
21 is a commonly accepted and safe practice, and because the blood samples are relevant to and highly
22 probative of heirship, the Court finds it proper to compel Helen Anderson and Terry Hillblom to give
23 blood samples for DNA testing.

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26 ^{4/} As a half-brother, Grant Anderson's blood sample is not useful to reconstruct Mr. Hillblom's genetic
27 profile, and the Court does not find it necessary to compel him to submit to DNA testing. *See* Petitioner
28 Kinney's Memorandum in Support of Blood Testing, dated November 25, 1995 at 3.

1 **B. Rule 35(a) is Inapplicable**

2 The Executor asserts that the Commonwealth Rules of Civil Procedure 35(a) expressly limits
3 the Court's power to subject persons to physical tests. It states that:

4 When the mental or physical condition (including the blood group) of a party, or of a person in
5 the custody or under the legal control of a party, is in controversy, the court in which the action
6 is pending may order the party to submit to a physical examination by a physician or to produce
7 for examination the person in his custody or legal control. The order may be made only on
8 motion for good cause shown. Com.R.Civ.Pro. 35(a).

9 This rule of procedure neither supersedes nor limits the broad authority granted under the Probate Code.
10 Furthermore, Rule 35(a) is not applicable here, because it authorizes physical or mental examination of
11 a party, and neither Helen Anderson nor Terry Hillblom are parties to this action.^{5/} See, e.g.
12 *Schlagenhauf v. Holder*, 85 S.Ct. 234 (1964). Although the Court, when interpreting a Federal Rule of
13 Procedure, should construe the rule liberally, it should not expand it by disregarding the plainly expressed
14 limitations. *Takahashi v. Inoue*, Civil Action No. 93-58 (Super.Ct. Jan. 3, 1994). Accordingly, Rule
15 35(a) cannot be applied in this situation where physical examinations of non-parties are in issue.

16 **III. CONCLUSION**

17 Exercising the broad authority granted under 8 CMC §2202(b), the Court finds it necessary and
18 proper to compel Helen Anderson and Terry Hillblom to provide bodily samples for DNA testing.^{6/}
19 Accordingly, the Court **ORDERS** as follows:

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22 ^{5/} Petitioner Moncrieff asserts that Helen Anderson and Terry Hillblom have appeared and are
23 therefore parties to this action by virtue of their executing waivers of service. The Court disagrees.
24 Neither individual has participated in this litigation or demonstrated an intent to submit to this Court's
25 jurisdiction. In addition, the Court finds the fact that Terry Hillblom is a beneficiary under the will
26 insufficient to make him a party to this litigation. See *In Re Kent's Estate*, 57 P.2d 901 (Cal. 1936).

27 ^{6/} The Court recognizes that its finding may contravene California law (*William M. v. Superior Court*,
28 225 Cal. App. 3d 447, 275 Cal. Rptr. 103 (1990); *Sanders v. Sanders*, 2 Cal. App. 4th 462, 3 Cal. Rptr.
2d 536 (1992)) and, that as a matter of public policy, the courts of California may refuse to enforce this
Order, if to do so would work an injustice as to its citizens. See, e.g. *Pan Energy v. Martin*, 813 P.2d
1142 (Utah 1992).

1 1. Petitioner Kinney's motion for DNA testing of Helen Anderson and Terry Hillblom is
2 **GRANTED**;

3 2. Petitioner Moncrieff's motion for commissions to produce bodily samples for DNA testing,
4 with respect to Helen Anderson and Terry Hillblom is **GRANTED**;

5 3. Petitioner Moncrieff's motion for commissions to produce bodily samples for DNA testing,
6 with respect to Grant Anderson is **DENIED**; and

7 4. Petitioner Moncrieff's motion for commissions to take out of jurisdiction depositions and to
8 produce documents is **DENIED**.^{7/}

9 5. Petitioners Kinney and Moncrieff submit proposed commissions for signature to the Court
10 within ten (10) days of this Order, specifying the date, time, place, bodily samples to be taken and
11 the technician designated to obtain the samples.

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13 So ORDERED this 6th day of February, 1996

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17 ALEXANDRO C. CASTRO, Presiding Judge

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27 ^{7/} The Court finds Petitioner Moncrieff's request for commissions to take depositions and to produce
28 documents unduly burdensome given that Helen Anderson, Terry Hillblom and Grant Anderson are not
parties to this litigation. In addition, the Court finds the probative value of these requests questionable.