

Fermina S. ADA

vs.

Pedro OGO

**Appellate No. 83-9003
Civil Action No. 81-240
District Court NMI**

Decided July 27, 1984

1. Paternity - Parties

In an action to establish paternity, the child is the real party in interest, whether the action is brought in the name of the child, or the mother as guardian for the child, or even in the name of the mother alone.

2. Paternity - Laches

The defense of laches is unavailable to an alleged father in a paternity action in that laches cannot be imputed to the child during its minority.

3. Laches - Elements

Before laches applies, a defendant must prove: (1) plaintiff had knowledge or a reasonable opportunity to discover facts constituting a cause of action; (2) there was an unreasonable delay by plaintiff in commencing the action; and (3) there is damage, prejudice or disadvantage to defendant, or an innocent third party, resulting from the delay.

**4. Statute of Limitations -
Tolling - Paternity Actions**

A child has a continuing right to support from her natural father until she reaches majority, and the statute of limitations as applied to paternity actions is tolled during the child's minority. 6 TTC §§305, 306 [7 CMC §2506.]

FILED
Clerk
District Court

JUL 27 1984

For The Northern Mariana Islands
By [Signature]
[Signature]

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3 IN THE DISTRICT COURT
4 FOR THE
5 NORTHERN MARIANA ISLANDS
6
7 APPELLATE DIVISION

7 FERMINA S. ADA,)
8 Plaintiff-Appellant,) DCA CASE NO. 83-9003
9 vs.) CTC CASE NO. 81-240
10 PEDRO OGO,) OPINION
11 Defendant-Appellee.)
12

13
14 BEFORE: Judges LAURETA, KEEP and LANE.*

15 LAURETA, District Judge:

16 On May 24, 1971 plaintiff Fermina Sablan, gave birth to
17 a baby girl, Judina Sablan. Plaintiff was not married at that
18 time.

19 On June 10, 1981, Fermina Sablan, now Fermina Sablan
20 Ada, filed a civil complaint against Pedro Ogo to establish the
21 paternity of the child and for child support. A part time judge
22 was appointed by the Commonwealth Trial Court to handle the case.

23
24 *Honorable Alan L. Lane, Associate Justice, Supreme Court of the
25 Republic of Palau, designated by the Chief Judge of the Common-
26 wealth Trial Court in accordance with P.L. 1-5 and sitting on
this panel in compliance with the requirements of 48 USC §1694b.

1 On December 22, 1981, defendant filed a Motion to Dis-
2 miss the complaint and attached the affidavit of Pedro Ogo. Ada
3 filed an opposition to this motion.

4 The court held a hearing on the motion on January 7,
5 1983. On January 14, 1983 the court granted the Motion to Dis-
6 miss, dismissing the complaint on the basis that the claim was
7 barred by the general six-year statute of limitations, 6 TTC
8 § 305.

9 Alternatively, the court stated that even if the
10 statute of limitations "could not be raised as a bar, the
11 plaintiff in this action would still be faced with the
12 insurmountable problem of the doctrine of laches and the due
13 process argument raised by defendant's brief."

14 Plaintiff filed a timely notice of appeal from this
15 decision on February 14, 1983. Plaintiff-Appellant appeals the
16 trial court's dismissal of her complaint on the basis that the
17 claim was barred by the general six-year statute of limitations.

18 For the reasons set forth below, the decision of the
19 trial court is REVERSED.

20 Appellant contends that the six-year statute of
21 limitations provided in 6 TTC § 305 does not bar this action
22 because 6 TTC § 306 provides that:

23 If the person entitled to a
24 cause of action is a minor or is
insane or is imprisoned when the
25 cause of action first accrues, the
action may be commenced within the
26 times limited in this chapter after
the disability is removed.

1 Appellant argues that though the complaint in this case
2 was brought by the mother in the mother's name, it was brought on
3 behalf of the child, and the fact that it was brought in the
4 mother's name is irrelevant. Appellant cites several cases in
5 support of this proposition. There is ample case law from
6 several jurisdictions supporting this position, but two Cali-
7 fornia cases are especially relevant here.

8 The California Court of Appeals has specifically held
9 that, in paternity and child support actions brought in the
10 mother's name only, it will be presumed that the mother acted in
11 the manner of a guardian ad litem. Van Buskirk v. Todd, 269
12 Cal.App.2d 680, 75 Cal.Rptr. 280 (1969). The court held that the
13 pleading should be liberally construed in favor of the child, the
14 real party in interest. This reasoning would especially apply
15 where, as here, the alleged father was not misled in any way by
16 the pleading [citations omitted].

17 Similarly, in Perez v. Singh, 21 Cal.App.3d 870, 97
18 Cal.Rptr. 920 (1971), the court held that an action to establish
19 paternity of an illegitimate child is brought by the mother on
20 behalf of the child, and in such action the child is the real
21 party in interest and the statute of limitations on the paternity
22 aspect of the case is tolled during the minority of the child.
23 Moreover, the obligation of the father to support his child,
24 whether legitimate or illegitimate, is a continuing duty against
25 which the statute of limitations does not run during the minority
26 of the child. 97 Cal.Rptr. at 921.

1 [] It is thus clear that in actions such as this, the
2 child is the real party in interest, whether the action is
3 brought in the name of the child, or the mother as guardian for
4 the child, or even in the name of the mother alone. There is a
5 general recognition by the courts that the suit is brought for
6 the benefit of the child, and to enforce the child's rights,
7 regardless of which name appears in the caption.

8 Moreover, the Washington Court of Appeals in Nettles v.
9 Beckley, 32 Wash.App. 606, 648 P.2d 508 (1982), held that a
10 paternity action is not barred by the statute of limitations
11 since the action could have been brought by the child regardless
12 of an authorizing state statute, and that the general statute of
13 limitations was tolled during the child's minority.

14 In Nettles, the father moved for summary judgment,
15 based upon the statute of limitations and laches, but the trial
16 court denied the motion conditioned upon the amendment of the
17 complaint to join the child, asserting his common law rights.
18 The trial court found the defendant to be the biological father,
19 and ordered him to pay child support.

20 On appeal, the court found that, while the general
21 tolling provision had never before been specifically applied to a
22 paternity action, it was applicable to such, and it operated to
23 toll the statute of limitations during the child's minority. The
24 court cited several cases in support of its finding, noting that
25 the majority of jurisdictions had reached the same conclusion.

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1 [2] In addition, the defense of laches is unavailable to an
2 alleged father in a paternity action in that laches cannot be
3 imputed to the child during its minority. Stearns v. Kean, 303
4 N.W.2d 408 (Iowa 1981); Bratton v. Bethlehem Steel Corp., 649
5 F.2d 658 (9th Cir. 1980).

6 [3] Before laches applies, a defendant must prove: (1)
7 plaintiff had knowledge or a reasonable opportunity to discover
8 facts constituting a cause of action; (2) there was an unreason-
9 able delay by plaintiff in commencing the action; and (3) there
10 is damage, prejudice or disadvantage to defendant, or an innocent
11 third party, resulting from the delay. Nettles v. Beckley,
12 supra, at 510. Like the Nettles case, although the mother here
13 had knowledge of the facts constituting a cause of action for
14 paternity against Mr. Ogo, the minor child probably did not.
15 Moreover, Mr. Ogo has made no showing of any damage or injury
16 resulting from the delay in bringing this action.^{1/}

17 [4] In conclusion, it is clear that were we to uphold the
18 trial court's dismissal of this action, the mother, or any other
19 interested person, could refile an identical action as guardian
20 or next friend of the child. There is no question that the child
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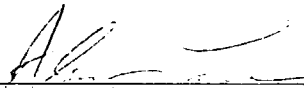
23 ^{1/}There was no opportunity for the presentation of evidence
24 on this issue and the factual matters with regard to such
25 could not be resolved on the pleadings. There is no indi-
26 cation on the face of the pleadings that the criteria of a
finding of laches were met. To the extent that the trial
court relied on this defense in dismissing appellant's
complaint, it was clear error.

1 has a continuing right to support from her natural father until
2 she reaches majority, and that the statute of limitations as
3 applied here to paternity actions is tolled during the child's
4 minority. Gomez v. Perez, 409 U.S. 535, 93 S.Ct. 872, 35 L.Ed.2d
5 56 (1973); Mills v. Hableutzel, 456 U.S. 91, 102 S.Ct. 1549, 71
6 L.Ed.2d 770 (1982). It would make no sense to recognize, on the
7 one hand, the child's right and interest in this lawsuit, and on
8 the other, to dismiss the action simply because the mother failed
9 to include the child's name in the caption.

10 We do not address here the constitutional questions
11 raised by the parties in their briefs on appeal. These issues
12 are left for determination on their merits by the trial court.

13 The decision of the trial court, dismissing plaintiff's
14 complaint, is REVERSED.

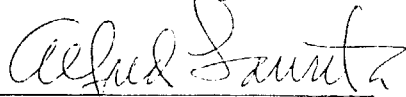
15 DATED: July 27, 1984

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18 ALAN L. LANE
19 Judge Designate

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21 JUDITH N. KEEP
22 District Judge

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25 ALFRED LAURETA
26 District Judge