IN THE SUPREME COURT OF THE STATE OF HAWAI‘I

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JANE DOE, Respondent/Plaintiff-Appellant

vs.

JOHN DOE, Petitioner/Defendant-Appellee

and

JOHN DOE II, Respondent/Defendant-Appellee

NO. 22172

CERTIORARI TO THE INTERMEDIATE COURT OF APPEALS
(FC-P NO. 96-032K)

JULY 17, 2002

DISSENTING OPINION OF ACOBA, J.,
WITH WHOM RAMIL, J., JOINS

I respectfully disagree with the majority's position, inasmuch as (1) the question of the paternity of Plaintiff John Doe III (Son) was never actually litigated in the prior divorce proceeding so as to give res judicata or binding effect, under the doctrine of collateral estoppel or issue preclusion, to the divorce decree's statement that Son was the child of Respondent/Defendant-Appellee John Doe II (Presumed Father) in all subsequent proceedings and (2) the advent and, in this case,

availability of DNA testing[1] to determine paternity outweighs all other statutory prescriptions contained in Hawai‘i Revised Statutes (HRS) § 584-4 (Supp. 2001), which were adopted in aid of establishing paternity.

I.

The purpose of HRS chapter 584 is to provide a method whereby certain parties may ascertain the identity of the natural or biological father of a subject child. Confirming a paternity determination made in a divorce proceeding, when the issue has not been actually and fully litigated, as the majority does, violates the purpose evident in HRS chapter 584. Accordingly, I cannot agree with the majority's view that the identity of a child's natural and biological father, as set forth in a divorce action that does not actually and fully litigate the question of a child's paternity, is to be given res judicata status. Because the issue of the genetic identity of Son's natural or biological father is at the heart of a paternity action, I believe it is wrong to bind Respondent/Plaintiff-Appellant Jane Doe (Mother) to

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[1] As explained in Black's Law Dictionary 480 (6th ed. 1990),

> DNA profiling or fingerprinting is an analysis of Deoxyribonucleic Acid (DNA) resulting in the identification of an individual's patterned chemical structure of genetic information[; a] method of determining distinctive patterns in genetic material in order to identify the source of a biological specimen, such as blood, tissue or hair[; a] forensic technique used in . . . paternity cases to identify, or rule out, father of child.

(Citations omitted.)

a decision that purportedly established Presumed Father as Son's natural or biological father in such a previous divorce action.

II.

At odds with the purpose of chapter 584, the majority contends that (1) res judicata may prevent a party from asserting or denying paternity under HRS chapter 584 when a previous divorce decree has already adjudicated paternity, see Doe v. Doe, No. 22172, slip op. at 10 (Haw. July 10, 2002) [hereinafter Slip op.], and (2) under the facts of the instant case, issue preclusion bars Mother from bringing an action against Petitioner/Defendant-Appellee John Doe (Alleged Father) to establish paternity under HRS § 584-6 (1993), see id. at 24-25. Plainly, the application of the doctrine of issue preclusion in this case is incorrect.

The majority relies upon Dorrance v. Lee, 90 Hawai'i 143, 976 P.2d 904 (1999), for its rule of issue preclusion. See slip op. at 23-24. In defining that doctrine, however, the majority omits an important requirement of that doctrine, i.e., that "[i]ssue preclusion, or collateral estoppel, on the other hand, applies to a subsequent suit between the parties or their privies on a different cause of action and prevents the parties or their privies from relitigating any issue that was actually litigated and finally decided in the earlier action." Dorrance, 90 Hawai'i at 148, 976 P.2d at 909 (emphasis and citation

omitted) (emphasis added). "[T]he interest in providing an opportunity for a considered determination . . . outweighs the interest in avoiding the burden of relitigation." Id. at 149, 976 P.2d at 910 (internal quotation marks and citation omitted).

Actual litigation is defined as "[w]hen an issue is properly raised, by the pleadings or otherwise, and is submitted for determination, and is determined[.]" Restatement (Second) of Judgments § 27 cmt. d (1980). By contrast, a determination is not conclusive "as to issues which might have been but were not litigated and determined in the prior action." Id. § 27 cmt. e. As explained in the Restatement,

> [a]n issue is not actually litigated if the defendant might have interposed it as an affirmative defense but failed to do so; nor is it actually litigated if it is raised by a material allegation of a party's pleading but is admitted (explicitly or by virtue of a failure to deny) in a responsive pleading; nor is it actually litigated if it is raised in an allegation by one party and is admitted by the other before evidence on the issue is adduced at trial; nor is it actually litigated if it is the subject of a stipulation between the parties.

Id. In the present case, Son's paternity was never actually litigated in the divorce proceeding. The divorce decree stated that "[t]here are two children[,] the issue of this marriage[,]" but whether Presumed Father was, indeed, the natural or biological father of Son was never actually litigated. Instead, the divorce decree is more analogous to the examples of non-litigated circumstances cited in the Restatement comment above, such as when an admission is made and evidence relating to the issue is never heard before a court and a considered judgment is never made. This view applies to paternity actions:

> Where the paternity question is not contested in the divorce action, but a finding of paternity is made, the cases are not in agreement on the effect of the decision. The Restatement (Second) of Judgments limits collateral estoppel to those cases in which an issue is "actually litigated", defining that phrase to mean that the issue was properly raised by pleadings or otherwise, was submitted for determination and was determined. Some of the divorce cases would apparently go beyond the Restatement and hold that if a finding of paternity is made, even though not contested, it is binding on the husband in later proceedings. Others have held that if paternity was not actually contested in the divorce action, a husband or wife may raise and litigate the issue in later proceedings.

2 Homer H. Clark, Jr., The Law of Domestic Relations in the United States § 18.1, at 354-55 (2d ed. 1987) (footnotes omitted).

Accordingly, issue preclusion, as argued by Alleged Father and Presumed Father, is not applicable in the instant case.

III.

A.

Moreover, contrary to the majority's assertion, our case law does not support a finding of res judicata when paternity is not actually litigated in a divorce action, and then later challenged. In Blackshear v. Blackshear, 52 Haw. 480, 478 P.2d 852 (1971), the issue was whether the paternity of two of four minor children born to appellee Grace Blackshear (Mrs. Blackshear) while she was married to appellant Roy Blackshear (Mr. Blackshear) could be contested by way of a motion to modify child support, three years after their divorce decree was granted. In the course of the divorce, the parties had filed

with the trial court an agreement which specified in a separate provision the amount of child support to be paid for the support of the four minor children. See id. at 481, 478 P.2d at 853. The four children were designated by name. See id. The agreement was approved by the court and incorporated into the divorce decree. See id. There was no evidence that the parties had been separated any time prior to the divorce, or that the question of paternity had arisen at the time of the divorce. See id.

Several years later, Mr. Blackshire filed a motion to modify the agreed upon child support payments, due to alleged extraordinary expenses and for other reasons. See id. Mr. Blackshire also sought to have evidence placed into the record that two of the four children were not, in fact, his. See id. The family court determined that it had no jurisdiction to alter the terms of the child support agreement. See id. With regard to the attempt by Mr. Blackshire to raise the question of the children's paternity, the family court concluded that "[t]he matter of legitimacy was found to be res judicata." Id. Mr. Blackshire appealed.

On appeal, the majority of this court's analysis dealt with the question of jurisdiction to modify the child support agreement. As to the question of paternity, this issue was summarily dismissed with no analysis. As observed by the Intermediate Court of Appeals (ICA) in its opinion, see Doe v.

Doe, No. 22172 (Haw. Ct. App. Feb. 22, 2001) [hereinafater "ICA opinion"], the Blackshear court held, without any discussion, that Mr. Blackshear's "position as to [the children's] parentage is without merit, this issue having been finally adjudicated below." Id.

B.

The ICA majority concluded that Blackshear was decided under prior law and is thus distinguishable from the instant case. Prior to the adoption of the Uniform Parentage Act (UPA),[2] paternity and legitimacy were treated very differently than under current law. Under prior law, a child born to a married woman was presumptively the child of the mother's husband. See McMillan v. Peters, 30 Haw. 574, 578 (1928) ("When a child is born during the existence of a valid marriage the presumption is that it was begotten by the husband. Under certain conditions this presumption is one of law and therefore irrebuttable. Under others it is one of fact and therefore rebuttable."). Provisions relating to paternity occurred both in the statutes dealing with divorce and in a separate chapter, Revised Laws of Hawai‘i (RLH) chapter 332 (1955), the precursor to HRS chapter 584. Only under these provisions could the presumption of legitimacy be rebutted; otherwise, the presumption was irrebuttable.

[2] The Uniform Parentage Act was adopted in 1975 and became effective on January 1, 1976. See 1975 Haw. Sess. L. Act 66, at 115-26.

The rebuttability of the presumption was very limited under the statutes. Under RLH chapter 332, establishment of paternity could be petitioned for, but only under limited circumstances and never by the husband. RLH § 332-1 provided that

> [a]ny unmarried woman or any married women [sic] who was separated from and was not living with her husband prior to and at the time her child was conceived, when her pregnancy can be determined by competent medical evidence, or within two years after the delivery of her child, may petition . . . for an adjudication of paternity and for other relief under the provision of this chapter against the person whom she alleges is the father of such child.

RLH § 324-43 (1955), pertaining to divorce actions, allowed a husband to raise the question of paternity, but only when the divorce was predicated upon an allegation of adultery by the wife, and the legitimacy of the children was questioned. See id. ("A divorce [based on the wife's] adultery . . . shall not affect the legitimacy of the issue of the marriage, but the legitimacy of such children, if questioned, shall be tried and determined by the judge. In . . . such case the legitimacy of such children shall be presumed, until the contrary is shown."). No statutory authority existed for a husband to question the paternity of a child after that one opportunity in the divorce statute had elapsed, unused. Accordingly, under the law at the time of Blackshear, if the question of paternity was not raised under those circumstances, the presumption of legitimacy was irrebuttable.

As noted supra, the Blackshears were apparently living together at the time of conception. Thus, Mr. Blackshear's

opportunity to challenge the paternity of the two children could only be made at the time of the divorce pursuant to RLH § 324-43, and then only if Mrs. Blackshear was accused of adultery. This, apparently, was not the case. Mr. Blackshear could not reopen his divorce proceeding to question paternity of the two children, because there was no statutory authority for him to do so, inasmuch as that action could not be raised by a presumed or alleged father under any circumstances. Mr. Blackshear also lacked standing to raise the paternity issue under RLH chapter 332, as RLH § 332-1 excluded presumed or alleged husbands from bringing an action under that chapter. Hence, the Blackshear court could have determined that the presumption of paternity was, at the time of Mr. Blackshear's motion, irrebuttable.

The ICA majority relied solely upon RLH § 332-1, the existing paternity chapter, in concluding that, "[i]n light of [RLH] § 332-1 (1955), claim preclusion is not the only reasonable interpretation" of Blackshear's unexplained statement. ICA opinion at 25. Under that section, Mr. Blackshear had no standing to challenge the paternity of the children. I would observe that the Blackshear court could also have relied upon RLH § 324-43 in determining that, at the time of his motion, Mr. Blackshear's claim of non-paternity was irrebuttable and, thus, res judicta, because no statute allowed him to reopen the divorce proceedings. Hence, under the statutory context at the time of the Blackshear decision, as noted by the ICA, the paternity

provisions at that time did not allow Mr. Blackshear any other avenue for challenging paternity.

C.

Unlike the law in 1955, the current divorce statutes no longer expressly authorize paternity determinations, except when the divorce action is joined with an action for paternity under HRS chapter 584. See HRS § 584-8(a) (Supp. 2001) ("The [action brought under HRS chapter 584] may be joined with an action for divorce, annulment, separate maintenance, or support."). HRS § 571-50 (Supp. 2001), relating to the ability of a family court to modify an order or decree, states that the court's authority in this respect is limited for paternity determinations by the provisions in HRS chapter 584:

> Notwithstanding the foregoing provisions of this section the court's authority with respect to the review, rehearing, renewal, modification, or revocation of decrees, judgments, or orders entered in the hereinbelow listed classes of proceedings shall be limited by any specific limitations set forth in the statutes governing these proceedings or in any other specifically applicable statutes or rules. These proceedings are as follows: . . . [p]aternity proceedings under chapter 584[.]

Moreover, HRS chapter 584 does not provide for res judicata effect of divorce decrees or any other adjudication affecting the ability of parties to seek a paternity determination under its own provisions. It does, however, specifically address the res judicata effect of an order obtained under HRS chapter 584 on other proceedings, providing that a ruling under HRS chapter 584 "shall be determinative for all

purposes." HRS § 584-15 (Supp. 2001). Thus, in light of the change in our statutes, Blackshear does not provide authority that res judicata bars a subsequent paternity action based upon a prior divorce decree that did not actually litigate the question of paternity.

IV.

In its decision, the majority makes the blanket statement that the purpose of HRS chapter 584 is to provide each child with an identifiable legal father. See slip op. at 16-17. In thus construing HRS chapter 584, the majority suggests that this purported purpose may outweigh the truth of paternity, rendering the genetic heritage of a child, such as Son, unavailable to him and irrelevant to a paternity determination. I strongly disagree with these assertions. In the age of genetic testing, these suggestions are, frankly, and with all due respect, astounding.

In its opinion, the majority states that it "disagree[s] with the ICA that the policy enunciated by chapter 584 is to permit a 'presumptively legitimate child of questionable parentage' to 'know the truth of her [or his] parentage[.]'" Slip op. at 15 (alterations in original) (quoting ICA opinion at 21). In opposition, the majority asserts that the purpose of the UPA "is to ensure that every child, to the extent possible, has an identifiable legal father." Slip op. at 16

(emphasis added). This is plainly incorrect. As an initial matter, the majority misconstrues the purpose of the UPA, and from this faulty and dated understanding of "paternity," the majority's other erroneous conclusions flow. Therefore, the statutory language of HRS chapter 584, Hawaii's version of the UPA, and the correct context of the UPA must be examined.

V.

The determination of paternity relates not to the ascertainment of a legal father, but to the finding of the natural father. This is reflected in the statutory language in HRS chapter 584. HRS § 584-1 defines the "parent and child relationship" as including "the legal relationship existing between a child and the child's natural mother, between a child and father whose relationship as parent and child is established under this chapter, or between a child and the child's adoptive parents[.]" HRS § 584-3 (1993) describes the "parent and child relationship" as being between "a child and . . . [t]he natural father[.]" HRS § 584-4 discusses the presumptions of fatherhood in terms of the natural father, describing the circumstances under which "[a] man is presumed to be the natural father of a child[.]"

Furthermore, HRS § 584-12 (Supp. 2001) confirms that the "[e]vidence relating to paternity" includes, not familial

ties between a child and a putative father, but evidence relevant to biological connections.

> Evidence relating to paternity may include:
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> (1) Evidence of sexual intercourse between the mother and the alleged father at any possible time of conception;
> (2) An expert's opinion concerning the statistical probability of the alleged father's paternity based upon the duration of the mother's pregnancy;
> (3) Genetic test results, including blood test results, weighted in accordance with evidence, if available, of the statistical probability of the alleged father's paternity;
> (4) Medical or anthropological evidence relating to the alleged father's paternity of the child based on tests performed by experts. If a man has been identified as a possible father of the child, the court may, and upon request of a party shall, require the child, the mother, and the man to submit to appropriate tests;
> (5) A voluntary, written acknowledgment of paternity;
> (6) Bills for pregnancy and childbirth, including medical insurance premiums covering this period and genetic testing, without the need for foundation testimony or other proof of authenticity or accuracy, and these bills shall constitute prima facie evidence of amounts incurred for such services or for testing on behalf of the child; and
> (7) All other evidence relevant to the issue of paternity of the child.

Id. Nowhere in the provisions of HRS chapter 584 is there a suggestion that the purpose of the procedures included therein is to "ensure that every child, to the extent possible, has an identifiable legal father." Slip op. at 16.

Rather, the language of HRS chapter 584 manifestly supports the ICA's reading of this section, that HRS chapter 584 is aimed at determining the natural or biological father of a subject child. See ICA opinion at 21. Prior misunderstandings of who the natural father is cannot bar a proceeding to determine the truth, should there be a difference between a child's natural father and the child's presumed father, because "[a] presumptively legitimate child of questionable parentage should

know the truth of her [or his] parentage -- both, if there is a difference, her [or his] natural and her [or his] legal parentage." Id. (quoting Doe v. Roe, 9 Haw. App. 623, 626-27, 859 P.2d 922, 924 (1993)).

VI.

In consonance with this purpose, presumptions are set forth in HRS § 584-4 as an aid to determining the identity of the natural father of a subject child. Contrary to the majority's assertion that the network of presumptions incorporated in HRS § 584-4 were intended to "direct[to] the court which competing presumption on the facts is founded on the weightier considerations of policy and logic[,]" slip op. at 18, these competing presumptions were intended to provide inferences as to the identity of the natural or biological father of the subject child, because there was no conclusive scientific method available at the time. Thus, the UPA, as adopted by the legislature in 1975, relied upon the conflicting presumptions provision in HRS § 584-4, because of a dearth of reliable means by which to conclusively establish paternity.

The methods for determining the identity of the natural or biological father of a child have evolved over time. When initially used by courts to determine who was the true father of

a child, the accuracy of blood grouping testing[3] was recognized in statistically excluding a putative father, in some cases. Unlike genetic testing, however, blood group testing was not always determinative, and acts as a negative, rather than an affirmative test of paternity:

> Since millions of men belong to the possible groups and types, a blood grouping test cannot conclusively establish paternity. However, it can demonstrate nonpaternity, such as where the alleged father belongs to group O and the child is group AB. It is a negative rather than an affirmative test with the potential to scientifically exclude the paternity of a falsely accused putative father.

Little v. Streater, 452 U.S. 1, 7 (1981). "The substantial weight of medical and legal authority attests their accuracy, not to prove paternity and not always to disprove it, but 'they can disprove it conclusively in a great many cases provided they are administered by specially qualified experts.'" Id. (emphasis added) (quoting Cortese v. Cortese, 76 A.2d 717, 719 (N.J. Super. Ct. App. Div. 1950)).

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[3] As explained by the Supreme Court:

> The application of blood tests to the issue of paternity results from certain properties of the human blood groups and types: (a) the blood group and type of any individual can be determined at birth or shortly thereafter; (b) the blood group and type of every individual remain constant throughout life; and (c) the blood groups and types are inherited in accordance with Mendel's laws. If the blood groups and types of the mother and child are known, the possible and impossible blood groups and types of the true father can be determined under the rules of inheritance. For example, a group AB child cannot have a group O parent, but can have a group A, B, or AB parent. Similarly, a child cannot be type M unless one or both parents are type M, and the factor rh' cannot appear in the blood of a child unless present in the blood of one or both parents.

Little v. Streater, 452 U.S. 1, 7 (1981) (internal citations omitted).

On the other hand, genetic testing "can statistically exclude the rest of the world's male population by a probability formula. Thus, the putative father can now be conclusively included into the set of possible fathers which is infinitesimally small. Accordingly, the likelihood that a properly conducted positive paternity test is wrong is astronomically remote." E. Donald Shapiro, Stewart Reifler, & Claudia L. Psome, The DNA Paternity Test: Legislating the Future Paternity Action, 7 J.L. & Health 1, 3-4 (1992-93) [hereinafter The DNA Paternity Test].

VII.

When the UPA was first formulated in 1973, genetic testing, with its high degree of accuracy, was not available. See Nat'l Conf. of Comm'rs Unif. State Laws, Summary: The Uniform Parentage Act, http://www.nccusl.org/nccusl/uniformact_summaries/uniformacts-s-upa.asp (last revised or amended 2000). The National Conference of Commissioners on Uniform State Laws originally provided for blood testing, the scientific method used at the time, but, as previously mentioned, blood testing did not conclusively establish who was the natural or biological father:

> The 1973 Uniform Act provided for blood testing in a paternity action. The results were evidence in that action. The "blood" testing of the time could help identify a natural father, but was nowhere as certain and determinative as genetic testing subject to rigorous standards as the 2000 Uniform Act contemplates. Precise genetic testing has changed determination of parentage dramatically.

Id. (emphases added). Because blood typing was not conclusive, the Commission created "[a] network of presumptions . . . for application to cases in which proof of external circumstances indicate a particular man to be the probable father." UPA § 204 cmt. (2000). However, the 2000 revision to the UPA eliminates the conflicting presumptions provision, because "[t]he existence of modern genetic testing obviates this old approach to the problem of conflicting presumptions when a court is to determine paternity." Id.

VIII.

The majority contends that "the genetic presumption is not more important than the other presumptions; it is one of several that must be considered in light of the fundamental purpose of [HRS] chapter 584." Slip op. at 18. This statement misapprehends the nature of the presumptions in HRS § 584-4, and apparently views them, erroneously, as a mix of factors to be considered. The presumptions within HRS § 584-4 represent a list of inferences, rather than a mix of factors to be considered in determining who should be designated as the legal father of a child.

The presumptions are distinct from one another, and what is necessary to rebut one presumption may differ from what is required to rebut another presumption. For example, with the presumption that a man not excluded as the natural father after

genetic testing is the natural father, may be rebutted by challenging the reliability of the testing procedures or the results, see, e.g., Cable v. Anthou, 699 A.2d 722 (Pa. 1997), or that the tester is not an expert qualified to perform paternity blood tests, see, e.g., Bain v. State, 937 S.W.2d 670, 673-74 (Ark. Ct. App. 1997). As observed by the California Court of Appeal, genetic testing may be rebutted in such a way as challenges the test results themselves:

> First, if the defendant introduces evidence the expert testing was conducted improperly, or the wrong gene frequency table was used, or the opposing expert is biased, the defendant may demonstrate his paternity index is not 100 or more. . . . Second, the defendant may prove he is infertile or otherwise had no access to the mother during the period of conception. . . . Third, a defendant might prove another man who had access to the mother also has a high paternity index, which would raise a competing or "inconsistent" presumption. For example, two related men could have access to the mother.

County of El Dorado v. Misura, 38 Cal. Rptr. 2d 908, 913-14 (Cal. Ct. App. 1995). The presumption raised by the results of genetic testing are thus challengeable on the basis of the test results.

On the other hand, the presumption of legitimacy is challengeable on the basis of genetic testing demonstrating that another man has a high probability of paternity. See, e.g., Tindle v. Tindle, 891 S.W.2d 617 (Tenn. Ct. App. 1994). Thus, while the genetic testing presumption is one of several, the other presumptions -- legitimacy, attempted marriage, legitimizing by marriage, holding out of the child as one's own, and voluntary acknowledgment -- may be rebutted by the "clear and convincing" proof afforded by genetic testing. Hence, as stated

by the ICA, the genetic testing presumption may be seen to control the other presumptions.

IX.

The majority also erroneously suggests that the 1995 amendment to HRS § 584-4, see 1995 Haw. Sess. L. Act 106, § 1, at 176, "established several legal presumptions that are to be employed in a paternity action." Slip op. at 17 (emphasis added). The 1995 amendment to HRS § 584-4 added the presumption of genetic testing to an already-existing list of presumptions. See 1995 Haw. Sess. L. Act 106, § 1, at 176.[4] Rather than including this presumption as simply "one of several [presumptions] that must be considered in light of the fundamental purpose of [HRS] chapter 584[,]" as maintained by the majority, slip op. at 18, the legislature amended the pre-existing presumptions for an entirely different reason.

The legislative history reveals that this provision was added in order to "ensure compliance with the requirements of the Omnibus Reconciliation Act of 1993."[5] Hse. Conf. Comm. Rep. No.

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[4] Act 106 also added the presumption of paternity based upon a voluntary acknowledgment of paternity filed with the department of health. See HRS § 584-4(6) (Supp. 2001).

[5] The Omnibus Reconciliation Act of 1993 required that states meet certain thresholds in establishing paternity of non-marital children each year:

> [T]he Omnibus Budget Reconciliation Act of 1993, established new paternity establishment percentages[, i.e., the total number of non-marital children in the State under one year of age for whom paternity is established or acknowledged during the fiscal year, to the total number of non-marital children born in the State during such fiscal

(continued...)

14, in 1995 House Journal, at 959. The provision, then, did not express a legislative intent that genetic testing be one of the mix of factors, subject to a policy that every child have an identifiable legal father; rather, the legislative intent was to comply with a federal mandate related to child support.

As noted supra, the provision relating to genetic testing was not included as a presumption until 1995. See 1995 Haw. Sess. L. Act 106, § 1, 176. Accordingly, Hawaii's adoption of the UPA, incorporated as HRS chapter 584, encompassed the "old

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[5](...continued)

> year,] which States must meet in operating their child support enforcement programs. The bill also made technical changes in how the paternity establishment percentage is calculated.

139 Cong. Rec. S15942 (daily ed. Nov. 17. 1993) (Statements on Introduced Bills and Joint Resolutions). Under the State Paternity Programs, each state was required to create "[p]rocedures which create a rebuttable or, at the option of the State, conclusive presumption of paternity upon genetic testing results indicating a threshold probability that the alleged father is the father of the child." 139 Cong. Rec. H5881 (daily ed. Aug. 4, 1993) (Conf. Rep. on H.R. 2264, Omnibus Budget Reconciliation Act of 1993).

The purpose of these provisions was to aid in child support enforcement.

> The Child Support Enforcement Program was enacted as part of the Social Security Act in 1975. The States operate their own programs within Federal law and regulations. The Federal Government pays for 66 percent of the administrative costs. States are responsible for establishing paternity, locating absent parents, establishing child support orders, and enforcing child support. The Federal role includes monitoring and evaluating State programs, providing technical assistance, and in certain instances, helping States locate absent parents and collect child support payments. The Internal Revenue Service (IRS) collects some child support in arrears by offsetting income tax refunds otherwise due to taxpaying obligors.
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> The provision would require each State to have in effect laws requiring the use of additional procedures . . . which create a rebuttable or, at the option of the State, conclusive presumption of paternity upon genetic testing results indicating a threshold probability of the alleged father being the father of the child[.]

Id. at H6018.

approach" that the network of presumptions was required, because no sufficiently exact method of determining who was the natural or biological father existed. The inclusion of genetic testing as a recognized method of determining paternity in 1995 obviates other presumptions. Thus, when genetic testing is conducted, depending upon the results of that test, it is determinative of who the natural or biological father is, subject to rebuttal challenges to the test results. If genetic testing is not conducted, the network of presumptions apply, because, without genetic testing, those assumptions are helpful in assessing who is likely to be the natural or biological father.

X.

Also, the policy behind the UPA, as stated in our case law, is to provide for a legal relationship between a child and his or her natural or biological parents and for the child to know the truth about his or her parentage. As declared by the ICA in Doe v. Roe, the purpose of HRS chapter 584 is not to "give [children] parents." 9 Haw. App. at 626, 859 P.2d at 924.

> From its inception in 1975, HRS § 584-6(a) permitted certain specified person to bring an action for the purpose of declaring the "nonexistence" of the father and child relationship. The language expressly allowing a presumed father to bring such an action was added to HRS § 584-6(a) by Act 224, § 1, 1991 Haw. Sess. Laws 518, effective June 6, 1991. Thus, the family court was wrong in stating that "the purpose of the Uniform Parentage Act is not to take fathers from kids, but to give them parents."

Id. The UPA plainly establishes that the biological parentage of a child may be a separate matter from the legal parentage of a

child, and both are relevant.

Additionally, our statutes establish that the purpose of HRS chapter 584 is not simply to assure that every child has an assigned father but, rather, that every child be assured of some legal relationship to his or her natural or biological father. Had our laws been intended to ensure the former, paternity of a child born to a married mother would be conclusive. No provision would be made that would allow such a presumption to be rebutted. There would be no need to, inasmuch as the child would have "an identifiable legal father." Slip op. at 16 (emphasis added). By contrast, HRS chapter 584 endeavors to allow various interested parties to ascertain the identity of the natural father of the child.

XI.

Public policy supports an accurate determination of the truth of a child's genetic parentage, regardless of who instigates the action. The United States Supreme Court has stated that a child and an alleged father share an interest "in an accurate and just determination of paternity." Little, 452 U.S. at 14. As the ICA observed, the child's interests in such a determination should predominate, due to the importance of accurately ascertaining the rights, benefits, and knowledge of his or her genetic heritage. "A child's interests in an accurate paternity determination are broader than the interests of all

others and include support, inheritance, and medical support. An accurate determination of paternity results in intangible, psychological, and emotional benefits for the child, including familial bonds and learning of cultural heritage." In re State, Div. of Child Support Enforcement, ex rel. NDB, 35 P.3d 1224, 1228 n.7 (Wyo. 2001) (citing Hall v. Lalli, 977 P.2d 776, 781 (Ariz. 1999)).

These policies of allowing a child to know the truth of his or her parentage and to participate as the natural or biological child in the resources of his or her parent do not support a blind following of an unlitigated conclusion as to paternity. When paternity is not fully litigated in the divorce proceeding, the "truth" is not brought to light, and the child's substantial interests are ignored. Given the accuracy of genetic testing, the majority's conclusion that such testing is only one of many factors to consider is simply untenable.

Accordingly, I would affirm the ICA's decision and remand this case for further proceedings consistent with its opinion.