3 Phil. 195

[G.R. No. 1380. January 18, 1904]

CONSOLACION MIJARES, PLAINTIFF AND APPELLANT, VS. DELFINA NERY ET AL., DEFENDANTS AND APPELLEES.

D E C I S I O N

TORRES, J.:

This is an appeal interposed by means of a bill of exceptions by the plaintiff, Consolacion Mijares y Borromeo, against the decision of April 11, 1903, rendered in favor of the defendants Delfina Nery, Carmen Mijares y Nery, and others, with the costs.

In the year 1899, the date and the month not having been established, Don Mariano Mijares died in the Province of Albay leaving property of the estimated value of 80,000 pesos. The deceased at the time of his death had no legitimate heirs, descendant or ascendant, but left a daughter, the present plaintiff, born in 1862 out of wedlock, although legally recognized as a natural child. He likewise left five other daughters born in like manner of Delfina Nery, who was a niece of the deceased, which said five daughters, who were born successively from the year 1862 until 1889, were acknowledged expressly and tacitly by Don Mariano Mijares during his lifetime as his own daughters. It does not appear why said Mijares and Nery never married notwithstanding the fact that a bull was issued on January 23, 1878, by Pope Pius IX authorizing the marriage of the deceased with his niece, Delfina Nery, as shown by a copy of said bull which was presented to the court.

Acting on the supposition that Don Mariano Mijares died intestate, the plaintiff, Consolacion Mijares y Borromeo, alleging that she is

the sole natural daughter of the deceased recognized by him, and that he left no legitimate descendants or ascendants, contends that she is the sole heir to her father's estate by reason of the fact that the five defendants, daughters of Delfina Nery, a niece of her said father, are illegitimate daughters, without the status of natural children under law 11 of Toro, in force on the date of the birth of said defendants, she therefore brought suit to be declared the sole universal heir *ab intestate* to her father's estate, and asks judgment in her favor as to the ownership and possession of the hereditary property held by the defendants, praying that they be ordered to make delivery thereof to her.

The defendants opposed this claim, alleging that although it is true that the daughters of the, deceased by his niece Delfina Nery, being illegitimate, could not enjoy the status of natural children under law 11 of Toro in force at the time of their birth, nevertheless under the Civil Code, which became operative in the Philippine Islands in 1880, they acquired the status of natural children, entitled to inherit, because they were acknowledged by their late father, and because, according to a will and codicil executed by the deceased during his lifetime, they were entitled to the several parts of the estate therein bequeathed to them, since the deceased had instituted all his daughters as his heirs in equal parts. It does not appear that the judge made any findings as to the validity or invalidity of the will and codicil, which were presented during the trial.

According to law 11 of Toro, which subsequently became Law 1, title 5, book 10 of the *Novisima Recopilacion,* natural children are those whose parents at the time of the conception or birth of the children were not disqualified to marry, provided that their fathers recognize them to be their children, although they may not have kept in their home the women by whom they may have had such children.

It follows, therefore, that children born of parents who at the time either of the birth or conception of their offspring were

disqualified to marry by reason of some impediment, whether removable by dispensation or not, could not possess the status of natural children. This was the old law which governed as to natural children, but which has been modified by the Civil Code, which has confined to the time of conception the period at which the parents must be free to marry, with or without dispensation.

Article 119 of the Civil Code says: "Only natural children may be legitimized. Natural children are those born out of wedlock of parents who at the time of the conception of the children could have married with or without dispensation."

From the context of this article it is evident that the first difference to be observed between law 11 of Toro and article 119 of the Civil Code consists in that according to the latter, in order to determine whether a child born out of wedlock is or is not a natural child, it is necessary to consider only the time of its conception—that is to say, to determine whether during any one of the first one hundred and twenty days of the three hundred preceding the birth of the child the parents were qualified to marry with or without dispensation, applying article 108, paragraph 2, of the Civil Code in the determination of the time of conception.

The second difference consists In that the code has placed on the same footing persons who could not marry without dispensation, and those who, because under no disability, could freely contract marriage. These provisions are entirely at variance with those contained in the law of Toro cited.

In order that their offspring might have the status of natural children it did not suffice that the father and mother could have married without despensation at the time of the conception or of the birth, but it was necessary, in addition thereto, according to the law of Toro, that the father should acknowledge the child as his.

Article 129 of the Civil Code provides: "A natural child may be acknowledged by the father and mother jointly or by only one of

them." Article 131 prescribes the form in which the acknowledgment of the natural child should be made. This acknowledgment is to a certain extent one of the rights of the natural child with respect to his parents, who are obliged to make such acknowledgment in the cases respectively set forth in articles 135 and 136 of the code, which became operative in these Islands on December 7, 1889, twenty days after its publication, which took place on the 17th of November of the same year.

The plaintiff and the five sisters, defendants, were born out of wedlock, and were acknowledged by Don Mariano Mijares, their father, as his daughters. The plaintiff was born of a woman whose name does not appear, and the five defendants were had with his niece, Delfina Nery, whom he might have married, notwithstanding the impediment of consanguinity, by virtue of the pontifical bull above referred to. If the plaintiff should be considered as an acknowledged natural child in accordance with law 11 of Toro, the live sisters, defendants, merit the same consideration as acknowledged natural children in accordance with article 119 of the Civil Code in relation to rule 1, part 2 of the transitory provisions thereof.

Notwithstanding the fact that the five daughters of Mijares had with Delfina Nery were born at a time when the old law was in force and prior to the enactment of the present Civil Code, it is nevertheless indisputable that the legal relations and the rights originated from the birth of the defendants and from their acknowledgment by their father, facts which took place under the former law, are to be determined by the Civil Code by virtue of paragraph 2 of rule 1 of the transitory provisions above cited.

This second paragraph says: "But if the right is declared for the first time in this code it shall be effective at once, even when the act which gave rise thereto may have taken place under the prior legislation, provided it does not prejudice other vested rights having the same origin."

The five daughters of Mijares with his niece, Nery, acquired the

status of natural children by virtue of article 119 of the Civil Code, because at the time of their conception the disability of their illegitimate parents to marry might have been removed by means of a dispensation, which in fact they subsequently obtained. This right to the status of natural children of their father who acknowledged them expressly and tacitly, was unknown to the former law, inasmuch as said law 11 of Toro required as a condition that the parents of a natural child should be qualified to marry at the time of the conception or the birth thereof, *without* dispensation, and it therefore results that it is a new right for the first time declared by the Civil Code in article 119 cited.

In the commissioner's preface to the Civil Code the following appears: "And whereas all rights originate necessarily from some fact, either dependent upon or independent of the will of man, the date of this fact, which may be prior or subsequent to the promulgation of this code, should determine the law which is to be applied to the right originated thereby. * * * But in the case of a new right for the first time declared in the code, and not recognized by the previous legislation, it should be governed by the code even though the fact wherefrom it originated should have occurred under the former law, unless it prejudices another right vested under that law;because in this case the one about to suffer the injury is more entitled to consideration than the one who is about to receive a gratuitous benefit. This doctrine was applied by the supreme court of Spain in its decision of June 28,1896.

It is therefore undeniable that by virtue of the provisions of paragraph 2 of rule 1 of the transitory provisions of the Code, article 119 operates retroactively in favor of the defendants, daughters of Mi j ares by his niece, Delfina Nery, since the Code has relieved them of the status of incestuous children, declaring them to be natural children because born of parents qualified to marry, and vesting them with all the rights inherent in acknowledged natural children.

Assuming that the five defendants were born prior to December 18,

1899, the date of General Orders, No. 68, of the Military Governor, winch put in force a new law as to marriage, and that the death of Mijares, their father, took place likewise prior to the time when said general orders went into force, it is evident that the provisions of this law are not to be given a retroactive effect, and are not applicable to the rights of the defendants. It is not necessary or timely to express an opinion as to what the effect of General Orders, No. 68, would be upon the rights of the defendants were the facts such as to make it applicable.

As a consequence of what has been stated, it is proper that we should now treat of the rights of natural children as regards the estate of their parents, confining at all times the quotations of the legal provisions to the questions at issue in this litigation.

When a father died intestate, his natural children, in the absence of legitimate issue or their legitimate descendants, inherited only a sixth part of his estate, which they shared with their mother, even though the father at the time of his death should have left a lawful wife. (Laws 8 and 9, title 13, partida 6.) In the absence of legitimate descendants or ascendants or collateral relatives within the fourth degree, inclusive, the natural children took the whole estate as lawful heirs to the exclusion of the widow and collateral relatives of the fifth and subsequent degrees. (Law of May 16,1835.)

The natural child was never a forced heir of his father by will; but in the absence of legitimate children, he was the forced heir of the mother, testate or intestate.

A father leaving legitimate children and descendants could leave one-fifth of his property to his natural children. In the absence of such legitimate heirs and descendants he could by will dispose of such part of his estate as he might wish, even should there be ascendants. (Law 10 of Toro, or law 6, title 2, book 10, of the *Novisima Recopilacion*.)

As may be seen, the natural child, according to the old law, did

not have, with respect to the succession of the father, the same right as with respect to the estate of the mother, aside from the right to support.

The Civil Code gave to acknowledged natural children the right to a legal portion from which they can not be excluded by legitimate descendants or ascendants, or by the husband or wife; but this hereditary portion can not be equal to that of the legitimate children.

One-half of the legal portion which corresponds to each one of the legitimate children who have received no betterment, is that prescribed by article 843 of the code as the hereditary portion of acknowledged natural children, provided it does not exceed the third part of the free property. When a testator does not leave legitimate children or descendants, but leaves legitimate ascendants, acknowledged natural children are entitled to one-half of that part of the estate which is at the free disposal of the testator, without prejudice to the widow’s legal portion. (Arts. 836 and 841 of the Civil Code.)

When the testator leaves no legitimate descendants or ascendants, acknowledged natural children are entitled to one-third part of the estate according to article 842 of the code. The remaining two-thirds may be disposed of at will by the parent, subject to the usufructuary interest of the widow.

In intestate successions, the law grants the inheritance to the legitimate and natural relations of the deceased, to the widow or to the widower, and to the State. In the absence of legitimate descendants or ascendants, natural children legally acknowledged succeed their parents, if intestate, in the whole of their property, as do also natural children legitimized by royal concession. (Art. 939, Civil Code.) But if the deceased who dies intestate should leave legitimate descendants or ascendants, natural children and legitimized children are only entitled to the part of the estate assigned them by articles 840 and 841. (Art.942, Civil Code.)

The following question now arises, When does the right to inherit vest? As an answer thereto we shall quote a part of the commissioner's preface to the code, applicable thereto, which is as follows: "If the existence, efficiency, or extent of the right depends on events independent of the will of the person who possesses the right, he may have an expectancy but not a vested right. For this reason the legal heirs and instituted heirs, as well as the legatees of persons still alive, have no vested right until the death of the latter, because the existence of the right they may enjoy in the future is subject to the contingency of their own demise, the vicissitudes of fortune, and the free and variable will of the testators."

So that with them until the death of the person from whom the estate is to proceed, hereditary rights can not be considered as vested or fully acquired. Mijares died in 1899, as is shown in the bill of exceptions. Therefore the right of his acknowledged natural daughters—the plaintiff and the five defendants—to succeed to his estate, vested in the same year under the Civil Code. Their status as acknowledged natural children did not give them a vested right to inherit until the death of their father, and consequently the provisions of the Civil Code are to be applied to the succession of the estate of Mijares. (Rule 12 of the transitory provisions.)

The jurisprudence established by the supreme court of Spain in the decision of June 24,1897, confirms the doctrine of the question quoted from the commissioner's preface to the code, because it says: "The succession of a person being open on the day of his death, which was subsequent to the publication of the Civil Code, the latter is applicable, in accordance with the first and penultimate clauses of the transitory provisions, to a suit for the determination of the right to the estate, because the principle of the non-retroactive effect of a new law only governs in1 the case of rights vested under the old law, and it is elementary that hereditary rights do not vest until the death of the person whose succession is involved. Therefore the court below did not violate laws 11 and 12, title 13, partida 6, and the transitory provisions of the Civil Code by so deciding."

Now then: Can the rights of the plaintiff be considered impaired and injured by the fact that the defendants have obtained the status of natural children, according to article 119 of the code, by virtue of the retroactive principle laid down in rule 1 of the transitory provisions of the code? We believe not, because the plaintiff, as the elder daughter of Mijares, could not have been prejudiced by the birth of the latter's other children, even if had with another woman. All, as natural daughters of the same father, enjoyed and still enjoy, all the rights which the law grants them, and the one as well as the others have a right to life and to the protection of the law.

As to their respective successory rights, it has already been stated that they originate only from the moment of the death of their father, which took place when the Civil Code was already in force, and therefore the provisions of the same are perfectly applicable to the succession, testate or intestate, of the deceased, as prescribed by rule 12 of the transitory provisions of said code.

It must be borne in mind that a successory right is a mere creation of positive law, which is always conformable to the principles of natural law, and the successor of a deceased person has no right to the estate other than that established by the law and recognized in his favor. This is confirmed by transitory provision No. 12.

One of the rights conferred upon an acknowledged natural child by article 134 of the Civil Code is that of receiving the legal portion determined by the code according to each case.

Can this successory right be considered as having vested in the plaintiff, Consolacion, prior to the death of her natural father in 1899? Undoubtedly not, since she only had the expectancy of inheriting, a potential right which could only become effective upon the death of her father, and this in accordance with the code, since natural children, according to the former law had no right to a legal portion. (Laws 8 and 9, title 13, partida 6.) The doctrine laid down by the decision of the supreme court of Spain, June 24, 1897, as well

as the part of the code, commissioner's preface, before quoted, supports our conclusion.

If, therefore, the plaintiff had no vested right to the succession of her natural father until the latter's death, which occurred when the Civil Code was already in force; if the exercise of said right did not depend on her will, and was a mere expectancy until the death of her father—and if successory rights and their respective extent are to be governed by the provisions of the code, under no possibility can it be held that the decision that the defendants are acknowledged natural children, made by virtue of said article 119 of the Civil Code, giving it a retroactive effect according to the first of the transitory provisions, injures or prejudices the right of the plaintiff, because this right was not vested or acquired until the death of her father, which took place when the new code, in accordance with the provisions whereof the questions at issue in this litigation must be decided, was already operative.

It is therefore unquestionable that the five daughters of Mijares and Delfina Nery, the defendants in this case, have an equal right to that of the plaintiff as to the succession of their father as acknowledged natural, daughters, and it is therefore neither just nor proper to declare Consolacion, the plaintiff, the sole universal heir of the deceased, or that she be allowed to take possession of all the property of the latter to the prejudice of her sisters, Carmen, Delfina, Engracia, Maria, and Luz.

The ratification of the decision appealed from is proper moreover inasmuch as the defendants have exhibited a will and codicil which is said to have been executed by the late Mijares, and the judge made no finding as to the validity or invalidity of said documents for the reasons stated in his decision.

It is therefore, in our opinion, proper to affirm the decision of April 11, 1903, with the costs to the appellant, without prejudice to such action as the court may take, at the instance of either of the parties, as regards the will and codicil. Twenty days after the

filing of this decision let judgment be entered in conformity therewith and let the case be remanded to the lower court. So ordered.

Arellano, C.J., Cooper, Willard, and *McDonough, JJ.,* concur.
Mapa and *Johnson, JJ.,* did not sit in this case.

Date created: January 08, 2019