34 Phil. 221

[G.R. No. 8135. March 13, 1916]

FRED J. LEGARE ET AL., PLAINTIFFS AND APPELLEES, VS. ANTONIA CUERQUES, DEFENDANT AND APPELLANT.

D E C I S I O N

ARELLANO, C.J.:

These proceedings relate to the civil status of a boy and a girl, both unquestionably the children of Antonia Cuerques, a resident of Iligan, district of Lanao, Moro Province. The girl is named Caridad Cuerques and under this name she was registered in the civil register of births kept by said municipality of Iligan as having been born on September 24, 1902, and in the church baptismal register of the parish of Iligan, as born on the date just mentioned "at half past two in the afternoon, to whom," says the parish priest, "I gave the name of Caridad Cuerques, she being a natural daughter of Antonia Cuerques, a native of Agusan, Province of Misamis and a resident of this pueblo (Iligan)." The boy Federico Cuerques, according to the church register, was baptized on December 31, 1904, "born on the 23d of the same month of the same year, at seven o'clock in the evening, to whom," says the parish priest, "I gave the name of Federico Cuerques, he being a natural son of Antonia Cuerques, a resident of this pueblo," while in the civil register his birth was entered as of December 31, 1904, the date of his baptism, not his birth.

In the two certificates issued by the secretary of the municipality of Iligan, relative to the birth of these two children, this official says:

> "I further certify that no memorandum whatever appears in said book of any acknowledgment made by the father of said girl (of said boy) or by any other person whomsoever, in accordance with the Civil Code."

Both certificates were issued in March, 1910.

Prior to this date, in 1902, the then secretary of the municipality of Iligan, issued a certificate of the following tenor, under date of October 21, 1902:

> "I certify that, *in accordance* with the civil register of births kept in this office under my charge, there appears, on the back of page 1 thereof, an entry, made on the twenty-fourth day of last September, of the birth of a girl, Caridad *Legare*, a natural daughter of Mr. Fred J Legare and Antonia Cuerques * **."

Under date of March 5, 1906, F. J. Legare executed two instruments before a witness, Eugenio Perez, and a notary, in which he recognized as his natural children Caridad Cuerques and Federico Eduardo Cuerques, born, respectively, on September 24, 1902, and December 23, 1904.

And on February 16, 1910, Fred J. Legare filed a petition with the Court of First Instance of Cebu, in which he requested that "judgment be rendered in this case by decreeing that Caridad Legare and Federico Cuerques Legare are natural children of and duly recognized by the plaintiff, Fred J. Legare, and that the court declare the plaintiff Fred J. Legare to be entitled to the custody of and to retain the said two minors, and that it order the defendant Antonia Cuerques to deliver the bodies of said Caridad Legare and Federico Cuerques Legare to the plaintiff Fred J. Legare, and to pay the costs of the suit."

On April 6, 1910, Fred J. Legare petitioned the court to appoint him guardian *ad litem* of the minor *plaintiffs* Caridad Legare and Federico Eduardo Cuerques Legare, which it did.

The grounds of the complaint are: That Legare legally recognized said two children; that record of the recognition of the girl Caridad was entered in the civil register of births of the municipality of Iligan, and of the boy Federico, in a public instrument executed before a notary; that said children were minors and their mother Antonia Cuerques refused to deliver them to Legare; and that Legare is qualified to exercise paternal authority (*patria potestad*) and has the means to support said children.

Although Antonia Cuerques was unable to answer the complaint as no notification whatever was served on her of the ruling on her demurrer (she was in Iligan Province, the place of her domicile, and the trial was held in Cebu), the court, on July 12, 1910, rendered judgment ordering defendant to deliver to plaintiff, Fred J. Legare, the two children Caridad and Federico, finding that these latter were in the custody of their mother; that said mother

Antonia Cuerques, by reason of her way of living, was not a fit person to have the custody of her children, and that the plaintiff Legare was a fit person to have said custody.

On April 23, 1911, Antonia Cuerques requested from the court information of the status of the case, and was told in reply that in September, 1910, the sheriff of the Moro Province had been notified of the judgment.

Legare's own attorney and that of Antonia Cuerques, having come to agreement, moved the court to revoke the order of default and of the aforementioned judgment, and the court, by an order of May 20, 1911, duly set aside said order and judgment.

After the hearing, judgment was rendered, ordering Antonia Cuerques and any other person who might take over the custody of said minors from Antonia Cuerques, to deliver the said minors to the plaintiff Fred J. Legare, in order that he might support and educate said natural children, and he was warned by the court that, if he failed to do so, they would be taken out of his control by means of proper judicial proceedings.

Defendant excepted to the judgment, moved for a new trial and, her motion being overruled, also excepted thereto.

The trial court based his judgment on the grounds that the children Caridad and Federico Cuerques were natural children of the plaintiff Fred J. Legare and of the defendant Antonia Cuerques, both single and free to marry, and that such natural children had a right to demand of their father all the consideration allowed by law in behalf of recognized children, wherefore Legare desired to place them in school for their maintenance and education; as to the law on the subject he cited article 154 of the Civil Code.

Plaintiff recognizes and admits that Caridad and Federico Cuerques are natural children of Antonia Cuerques. The court, in his two judgments, also recognizes them as such. Both plaintiff and the court recognize that the children were under the custody and control of the mother. She has exercised her parental authority over them since the time they were born, for the mother is always certainly known, the birth and identity of the child being common knowledge, and, in the present case, known to both the plaintiff and the court. Antonia Cuerques had them under her custody by natural right and substantive law.

Both her parental authority and her custody of her children were *acquired* rights. For the purpose of depriving Antonia Cuerques of her right of parental authority and of that of the custody of her natural children, no fact or reason whatever was alleged and proven to show

why her parental authority should terminate. She has not died, nor has either of her children; neither of these latter has been emancipated or adopted; the mother has not contracted a second marriage, nor has she been deprived of her parental authority, either by any final judgment in a criminal action or by final judgment in divorce proceedings (Civil Code, arts. 167, 168, and 169). So that neither the complaint nor the judgment rests on any basis of fact. In the first judgment, which was set aside, the court expressed the opinion that "Antonia Cuerques, by reason of her way of living is not a fit person to have the custody of her children;" but this statement of the court was not supported by any reason shown in the record; no evidence whatever was introduced in regard to this particular, unless it be some private and confidential assertion by plaintiff. If, by reason of her way of living, the mother had become unworthy to exercise her parental authority, an action should have been brought for the purpose of depriving her of her said right, but it should not have been taken away from her without due process of law.

> "The courts may deprive the parents of the parental authority or suspend the exercise thereof when they treat their children with excessive cruelty, or if they give them corrupting orders, advice, or examples." (Art. 171, Civil Code.)

None of these causes was alleged and proven in this case.

Plaintiff alleged something in his complaint that is not true, to wit, that he had acknowledged his daughter Caridad Legare in the civil register of births of the municipality of Iligan. A municipal secretary of Iligan, named Mariano Fuentecilla, duly certified as follows:

> "I certify that, as *recorded* in the civil register of births kept in this office under my charge, there appears on the back of page 1 thereof an entry of birth on the 24th day of last September of a girl Caridad *Legare*, the natural daughter of Mr. Fred J. Legare and Antonia Cuerques * * *. And in order that this certificate may be effective, I issue the same under the attestation of the municipal president. I certify to the foregoing in Iligan, this 21st day of October, 1902."

This document was presented by plaintiff; but the municipal secretary of Iligan, Patricio Arias, on March 26, 1910, certified:

> "That in the register of births of this municipality of Iligan, for the years 1902-1903, on page 2, line 9, there is written the name of Caridad Cuerques, daughter of Antonia Cuerques, born on September 24, 1902; and I further certify that no memorandum whatever appears in said register of any acknowledgment made in accordance with the Civil Code, by the father of said girl or by any other person whatever."

Plaintiff wished to recognize this same girl Caridad and her brother Federico Cuerques as his natural children before a witness, Eugenio Perez, and a notary whose signature is illegible; but the law is explicit on this point: "When the acknowledgment of the minor is not made in the record of birth or in a will, judicial approval, with a hearing of the department of public prosecution, shall be required." (Civil Code, art. 133, par. 2.) Consequently, an act before a notary is not sufficient; there must be a judicial proceeding.

A natural child, being a minor, may be acknowledged by conferring a benefit upon him, without prejudice to an acquired right; but when the minor is under the parental authority of his mother who at the time exercises it as an acquired right, then, until it is extinguised or until she who has acquired and exercises it has been deprived thereof, no other person may acquire or exercise the same; and the manner of its cancellation and deprivation has been set forth hereinabove. No man may be allowed with impunity to call himself the natural father of a child whose mother is known, and still less may he attempt to exercise his paternal authority over the child by forcibly removing it from the affection and attributes with which nature has endowed the mother, because, in some cases, such an act might imply criminal arrogance, and in others, a base affront to a mother's dignity. When the mother is unworthy to continue in the exercise of her acquired right, there is no other remedy than the action provided by law.

There is no proof whatever that plaintiff is what he claims to be, the natural father of the children in question.

The judgment appealed from is reversed, without special finding as to costs. So ordered.

Torres, Johnson, Trent, and *Araullo, JJ.,* concur.

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