

[ G. R. No. L-10579. March 22, 1958 ]

**ELIZABETH CONSTANTINO, MINOR, REPRESENTED BY HER MOTHER LOURDES HISOLA, GUARDIAN AD LITEM AND LOURDES HISOLA, PETITIONERS, VS. THE COURT OF APPEALS, ET AL., RESPONDENTS.**

**D E C I S I O N**

**BAUTISTA ANGELO, J.:**

This is a petition for certiorari seeking to set aside a decision of the Court of Appeals and to obtain a favorable judgment for support.

In a complaint filed in the Court of First Instance of Manila, it is alleged that Elizabeth Constantino was the offspring of the illicit relations which Casimiro Constantino had maintained with Lourdes Hisola as a result of which the latter suffered damages. Casimiro denied this allegation and interposed several special defenses as well as a counterclaim. After hearing, the court rendered judgment declaring Elizabeth an illegitimate child of Casimiro and ordering the latter to pay her, through her guardian, the sum of P390 as support in arrears and an allowance of P30 a month from October 17, 1954. The court also ordered Casimiro to pay Lourdes Hisola the sum of P500 as damages and P200 as attorney's fees and costs.

When the case was taken to the Court of Appeals, the latter declared that there was no evidence to show that Elizabeth is an illegitimate child of Casimiro and, consequently, reversed the decision of the lower court. Hence this petition for review.

The facts found by the Court of Appeals are: On September 17, 1953 Lourdes Hisola gave birth to a baby girl at the Santo Tomas Hospital, Manila, who was registered in the local civil registrar's office as Elizabeth Constantino. Lourdes was employed as a servant in the house of Casimiro until February 2, 1953 when she transferred to the house of Lucia Labrador. After two months, Lucia noticed that Lourdes was getting unusually stout and asked the latter if she was pregnant. Lourdes broke into tears and admitted that she was in

fact pregnant and pointed to Casimiro as the author of her pregnancy.

Analyzing the evidence, the court made this comment: "We cannot take Lourdes seriously when, pointing to Elizabeth, she said: 'Ella es nuestra hija', (indicando al demandado Casimiro), For such statement is gratuitous without the proof of the illicit relations which the defendant had allegedly maintained with her, and that out of such illicit relations Elizabeth was born. No evidence to that end can be found in the record. \* \* \* There is no evidence that Elizabeth Constantino is an illegitimate child of Casimiro Constantino \* \* \*,"

It is now contended that even if the evidence is not sufficient to establish that Elizabeth is the illegitimate child of Casimiro, the Court of Appeals erred in dismissing the complaint because Casimiro should be deemed to have admitted his illicit relations with Lourdes when he interposed merely a general denial to this allegation. Thus, the complaint contains the following allegations: "4. That sometime during December, 1952, in his dwelling, defendant succeeded in cohabiting with plaintiff, Lourdes Hisola; 5. That plaintiff, Elizabeth Constantino, was conceived during the cohabitation between Lourdes Hisola and defendant;" whereas the answer of Casimiro merely meets these allegations in the following manner: "4. That defendant denies the averment contained in paragraphs 4 and 5 of the complaint." It is claimed that this is tantamount to a general denial.

There is no merit in this contention. Under Rule 9, Section 7, "The defendant must deal specifically with each material allegation of fact the truth of which he does, not admit and, whenever practicable, shall set forth the substance of the matters which he will rely upon to support his denial." Former Chief Justice Moran makes the following comment on this requirement:

"The purpose of requiring the defendant to make a specific denial is to make him disclose the matters alleged in the complaint which he sincerely intends to disprove at the trial, together with the matters which he relies upon to support the denial. Under the old procedure, the defendant was allowed to conceal, under a general denial, the true facts of his case, and at the same time compel the proving of facts alleged in the complaint which he, at the trial, does not even attempt to dispute. He was thus given the advantage, doably unfair, of presenting his true facts only ut the trial as a surprise to the plaintiff, and of compelling the latter to incur unnecessary expenses for proving facts not really disputed by him. The new system of specific denial removes this unfair advantage, unnecessary

expenses and waste of time, by compelling both parties to lay their cards on the table, thus reducing the controversy to its true terms. As was well said in a case, 'a litigation is not a game of technicalities in which one, more deeply schooled and skilled in the subtle art of movement and position, entraps and destroys the other. It is, rather, a contest in which each contending party fully and fairly lays before the court the facts in issue and then, brushing aside as wholly trivial and indecisive all imperfections of form and technicalities of procedure, asks that justice be done upon the merits. Lawsuits, unlike duels, are not to be won by a rapier thrust.<sup>1</sup>' (Moran, Comments on the Rules of Court, Vol. I, 1957 Ed., p. 158)

Indeed, the denial is not specific merely because it is so qualified by the defendant. If he "specifically denies, each and every allegation contained in each and every paragraph of the complaint," the denial is general regardless of the word "specifically" with which he tries to qualify his denial<sup>[1]</sup> In one case, the defendant's answer "partly admits and partly denies" all the allegations, except a minor one, in the complaint without specifying which allegations were admitted and which were denied, and the court said that "this answer was not only a defense but operated as an admission of the plaintiffs averments," and it added that "a denial is not specific simply because it is so qualified by the defendant. A general denial does not become specific by the use of the word 'specifically'" (Cortes vs. Kim, 90 Phil., 167).

But the answer of Constantino does not merely state that he "specifically denies each and every allegation contained in each and every paragraph of the complaint" as to characterize it as a mere general denial. Rather, it deals specifically with each material allegation of fact either by admitting or by denying the same, or by stating that he is without knowledge or information sufficient to form a belief as to the truth thereof. The answer even contains some affirmative defenses and a counter-claim. This is a substantial compliance with the rule.

It is true that with regard to paragraphs 4 and 5 of the complaint the answer merely states "That defendant denies the averment contained in paragraphs 4 and 5 of the complaint," but this is enough to comply with the rule, because said paragraphs contain only one material allegation each and both were specifically denied.

An indication that plaintiff was not taken by surprise and that she knew well that defendant

denied the allegation regarding cohabitation or illicit relation is the fact that she went to trial and presented evidence in support of said allegation. The only trouble is that such evidence was found to be incompetent or insufficient by the Court of Appeals, and to remedy the deficiency, appellant now resorts to this technicality. Such scheme cannot be permitted.

Wherefore, the decision appealed from is affirmed, without pronouncement as to costs.

*Paras, C. J., Montemayor, Labrador, Concepcion, Reyes, J. B. L., Endencia and Felix, JJ., concur.*

*Bengzon and Padilla, JJ., concur in the result.*

REYES, A., J.:

I concur in the result but without subscribing to the view that the answer has *specifically* denied the allegations of fact contained in paragraphs 4 and 5 of the complaint.

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<sup>[1]</sup> *El Hogar Filipino vs. Santos*, 74 Phil., 79; *Dacanay, et al. vs. Lucero*, 76 Phil., 139; *Phil., Trust Co. vs. Reyes*, 75 Phil., 760, 763; *Baetamo vs. Amador, et al.*, 74 Phil., 735; *Lichauco vs. Guash*, 76 Phil., 5; *Trias vs. Court of First Instance*, 75 Phil., 757; See also *Lagrimas, et al. vs. Lagrimas*, 95 Phil., 113.