LAUREANA VELASQUEZ AND MARIA BIHILDES VELASQUEZ, REPRESENTED BY HER MOTHER, LAUREANA VELASQUEZ, AS GUARDIAN-AD-LITEM, PLAINTIFFS-APPELLANTS, VS. FILIDORO ASIGNAR, DEFENDANT-APPE...

G.R. No. L-22133. May 31, 1971

Ponente: DIZON, J.

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DIZON, J.:

In Civil Case No. R-7184 of the Court of First Instance of Cebu entitled "Laureana Velasquez et al., Plaintiffs, versus Filidoro Asignar, Defendant," said court rendered judgment as follows:

> "IN VIEW THEREOF, Judgment is hereby rendered, condemning the defendant to pay the plaintiff, Laureana Velasquez, the sum of FOUR THOUSAND (P4,000.00) PESOS as damages, and to pay the costs of this action.
>
> The action to compel the defendant to recognize the plaintiff Maria Bihildes Velasquez as his acknowledged natural child is hereby dismissed."

Plaintiffs seasonably perfected an appeal from the above judgment insofar as it dismissed their action to compel the defendant to acknowledge the plaintiff Maria Bihildes Velasquez as his natural child, and did not order said defendant to support her and pay attorney's fees. Their action against appellee was for acknowledgment, sup-port and damages. The latter filed an answer in which he denied the material averments made in the complaint and alleged, by way of affirmative defenses, that the complaint did not state facts sufficient to constitute a cause of action against him, and that the action was in-stituted solely to harass, dishonor and embarrass him.

Upon the issues thus joined, the case was tried and subsequently decided as set forth above. We quote here the pertinent portion of the body of the appealed decision:

> "After a careful analysis of the con-flicting evidence on record, the following facts have been established by a clear preponderance of it:
>
> The plaintiff, Laureana Velasquez, and the defendant, Filidoro Asignar, are natives of barrio Po-ok, Mandawe, this province. They are both single. In February, 1959 he courted her. After pressing his suit, he was accepted by her. On February 14, 1960 which was Valen-tine Day, he gave her a Valentine Card. (Exh. A.) The inscription "Awing" on the said card is her nickname. On the following day, Feb-ruary 15, he gave her his picture (Exh. 2). The said picture was taken by him from his former sweetheart, a certain Milagros. This was given to her as proof that he and Milagros were already separated.
>
> On the evening of February 24, 1960, her parents went to see a movie, leaving her alone in their home in Po-ok. He visited her on the evening while they were absent. Taking advan-tage of her being alone, he kissed her; and then, not satisfied with kissing, he demanded of her proof of her love to him - meaning, of course, the surrender of her virtue. At first, she refused to yield, saying that they were not married yet; and, if they should become husband and wife, he could have the intercourse at anytime. But he pressed her, saying that she had no

fear because, after all, he was going to marry her. Because of his repeated promises to marry her and his insistence, she yielded her virtue to him. Thus, on February 24, 1960, she was deflowered by the defendant for the first time. After repeated assurance, she yielded her body to him for the second time on March 7, 1960.

After the coitus, she became apprehensive because her parents might discover her rela-tions with, him, and because she would become pregnant and she was naturally ashamed, not being married. So, she decided to go to Manila. She told her parents and him about her trip. The defendant tried to dissuade her from making her trip; but she disregarded his advice. She left Cebu for Manila on March 11, 1960, arriving there on March 13. She served as a laundry woman there for a living. After a week she observed that she had no Menstrua-tion. She was apprehensive and more convinced that she was pregnant. So, she wrote him on March 27, 1960, informing him of her incipient pregnancy, and imploring him to send her P30.00 to pay for her return trip to Cebu. She wrote him another letter with the same request. (Exhs. D, D-1, E, E-1). He never answered them. She looked for him, wanting to see him personally. She wrote him a letter on May 10, 1960 (Exhs. F, F-1); then again, on May 22, 1960. (Exhs, G, G-1.) It was only through the mediation of the common friends, Luis Suico and Sanorio, that she was able to meet the defendant. She ap-pealed to him to save her from her difficult situation and marry her; but he refused. It would appear that he was disgusted with her because she left Cebu for Manila in March, against his advice.

On November 27, she gave birth to her daughter, Maria Bihildes Velasquez. (Exh. H, I.) She asked him to give support to her child but he refused. She then sought the help of the Chief of Police of Mandawe, a certain Pris-ciliano Lumapas. Before the said official the defendant acknowledged the child as his own but refused to give her support – proposing, how-ever, to have the child placed in the custody of his mother. The plaintiff did not wish to give up the child. When pressed to give sup-port, he not only refused to do so, but even denied his paternity. Then she sought the help of a social welfare worker, a certain Mrs. Lydia Yadao, Mrs. Yadao visited the de-fendant in his office at the White Light Electrical Supply, Cebu City, and she persuaded him to appear at the Social Welfare Office. There he admitted his paternity but refused to give support because of lack of means, - pro-posing again to have the child placed under the custody of his mother. But the plaintiff did not accept the proposition. The plaintiff was thus compelled to file this action."

As appellee did not appeal, the findings of fact made by the trial court must be deemed to have become final as far as he is concerned. As a matter of fact, appellants are also bound by them because in their appeal they raise only questions of law as follows:

"I

THAT THE LOWER COURT ERRED IN DIS-MISSING THE ACTION TO COMPEL DEFENDANT TO RECOGNIZE PLAINTIFF CHILD AS HIS NATU-RAL CHILD.

II

THAT THE LOWER COURT ERRED IN NOT ORDERING THE DEFENDANT TO PAY PLAINTIFF SUPPORT AND ATTORNEY'S FEES."

It is obvious from the appealed decision that the trial court dismissed appellants' action upon the ground that the evidence of record does not show that appellant minor had been "in continuous possession of the status of a child of the alleged father by the direct acts of the latter or of his supposed family." On this question the court said:

"x x x. However, the evidence on record is not sufficient to establish the enjoyment by the plaintiff child of the continuous status as natural child of the defendant."

x x x

"In the case at bar, there is neither a will nor a court record, or any public docu-ment or writing expressly

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> recognizing the plaintiff child as the daughter of the defendant. Consequently, the basis for recognition must be possession of continuous status of an acknowledged natural child of the defendant. The fact that the defendant acknowledged his paternity before the Chief of Police and the Social Worker on different occasions is not sufficient to confer upon the child the re-quired status. The acts of recognition are intermittent - not continuous. They are of short duration. Indeed, he refused to give her support and denied his paternity later."

Appellants contend, however, that the trial court erred because the true basis of their action for acknowl-edgment is not appellant minor's continuous possession of the status of natural child of appellee but the fact that she had evidence to show that appellee is her father, thus imposing upon the latter the obligation to recognize her as his natural child in accordance with paragraph 4 of Article 283 of the New Civil Code.

The allegations made in paragraphs 2 to 6 of the complaint (Record on Appeal pp. 4-5) fully support appel-lants' contention.

In line with the theory upon which appellants' action was based, they presented evidence to prove that appellee is the father of Maria Bihildes Velasquez con-sisting of the testimony of her mother and co-appellant, Laureana Velasquez; that of the Chief of Police of Mandawe, Cebu, and Mrs. Lydia Yadao, and of the documents admitted in evidence as Exhs. A to I, inclusive.

Resolving the question of whether or not appellee is the father of the minor Maria Bihildes, the trial court said:

> "As for the second issue, it is proven that the defendant is the father of the plain-tiff, Maria Bihildes Velasquez. He admits having had sexual intercourse with her, al-though he claims that he had access to her in December, 1959; and, considering the fact that the child was born on November 27, 1960, he could not have been her father. On the question of the dates of the coitus between the plaintiff and the defendant, the Court is inclined to give more credit to the plaintiff. The Court takes judicial notice of the fact that Filipino women are timid and would not expose themselves to dishonor and shame, un-less it be true. In the case at bar, the plaintiff testified clearly and without hes-itation that it was the defendant who de-flowered her once in the later part of Feb-ruary, and second in the first week of March, 1960 - not in December of 1959. The defen-dant did not even insinuate, much less prove that the plaintiff had any illicit relation with another man. Consequently, her testi-mony on this score is to be believed."

It appears, therefore, that upon the evidence of record, the trial court made a positive finding "that the defendant is the father of the plaintiff Maria Bihildes Velasquez"; that appellee "admits having had sexual inter-course" with Laureana Velasquez, although he claimed that this took place in December 1959 and that this being so the appellant minor, who was born on November 27, 1960 could not have teen his daughter; that notwithstanding appellee's contention regarding the date when he had sex-ual intercourse with appellant Laureana Velasquez, the trial court gave "more credit" to the latter who testified that appellee had deflowered her in the month of February 1959, and that she had a second sexual intercourse with him in the first week of March 1960. The trial court further ad-ded that "the defendant did not even insinuate, much less prove, that the plaintiff (Laureana Velasquez) had any illicit relation with another man."

In view of its positive finding to the effect that appellee is, in truth and in fact, the father of the appellant minor, it seems clear that, pursuant to paragraph 4 of Article 283 of the New Civil Code, the trial court should have sentenced appellee to acknowledge said minor as his natural daughter. The legal provision just men-tioned says very clearly that when the child suing for acknowledgment as a natural child has in her favor any evidence or proof that the defendant is her father, the latter is "obliged to recognize" him or her "as his na-tural child." In the instant case the minor child suing for acknowledgment submitted such evidence or proof to the trial court, on the basis of which it made the posi-tive finding that appellee is her father. Appellee's obligation to acknowledge her is, therefore, clear.

The issue raised in the second and last assignment of error submitted in appellants' brief must also be re-solved in their favor, the same being the necessary con-sequence of our view that appellee is obliged to acknowl-edge appellant minor as his natural daughter.

WHEREFORE, the appealed portion of the decision of the Court of First Instance of Cebu is hereby reversed and another is hereby rendered declaring that appellant minor Maria Bihildes Velasquez is appellee's daughter and compelling the latter to acknowledge her as such. As a consequence and on the basis of the evidence of re-cord regarding appellee's earning capacity at the time of the trial, he is likewise sentenced to pay said minor appellant the sum of P75.00 as monthly support, to be paid within the first ten days of each and every month following the finality of this decision, and to pay appellants the sum of P500.00 by way of attorney's fees.

Concepcion, C.J., Reyes, J.B.L., Makalintal, Zaldivar, Fernando, Teehankee, Barredo, Villamor, and Makasiar, JJ., concur.
Ruiz Castro, J., took no part.

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