

INTESTATE ESTATE OF THE LATE DON GIL MONTILLA. MERCEDES MONTILLA, ADMINISTRATRIX AND APPELLEE, VS. GERTRUDES MONTILLA INTERVENOR AND APPELLANT.

G.R. No. L-14462. June 30, 1961

Ponente: DE LEON, J.

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DE LEON, J.:

On January 24, 1947, Gil Montilla, Jr. filed with the Court of First Instance of Negros Occidental a petition for the appointment of his mother, Doña Mercedes Montilla, as judicial administratrix of the estate left by his father, Gil Montilla, who died on July 20, 1946 . The petition alleged that at the time of his death the deceased had real and personal properties with an estimated value of P30,000 and the following heirs: his child by the first marriage, Enriqueta Montilla de Esteban; his children by the second marriage, Gil Montilla, Jr., Jacinto Montilla, Jayme Montilla, Mercedes Montilla de Alvarez, Cesar Montilla, and Aida Montilla; and his surviving spouse Doña Mercedes Montilla.

No opposition having been registered to the petition, an order for letters of administration in favor of the surviving spouse was issued by the court on February 21, 1947 . Eight years later, however, or on March 18, 1955 , one Gertrudes Montilla filed a motion asking leave to intervene in the intestate proceedings. The motion was accompanied by a petition in intervention, alleging that the said Gertrudes Montilla is an acknowledged natural child of the late Don Gil Montilla and thus entitled as forced heir to inherit part of the properties left by the deceased.

Acting on the motion to intervene, the lower court, on December 15, 1956 , ordered the setting of a date for the reception of evidence on the petition in intervention. Upon the joining of the issues, the case was duly heard and the intervenor was allowed to present evidence to prove that she is, as she claims, an acknowledged natural child of the deceased. After hearing, the court, applying the provisions of the old Civil Code on the matter, and declaring that the evidence adduced by the intervenor is not sufficient to entitle her to be declared an acknowledged natural child of the deceased, issued an order denying the the petition. From the order of denial, the intervenor has appealed directly to Us raising only questions of law.

The pivotal issue is as to what law should be made to apply to the appellant's petition in intervention.

There is a transitional provision in our new Civil Code (Article 2263) which provides that the "rights to the inheritance of a person who died, with or without will, before the effectivity of this Code, shall be governed by the Civil Code of 1889, by other previous laws, and by the Rules of Court. Accordingly, since it appears that Gil Montilla, whose estate is now subject of intestate proceedings, died on July 20, 1946 , long before August 30, 1950 , when the new Civil Code took effect (See *Lara vs. del Rosario*, 94 Phil., 778; 50 Off. Gaz., 1975; *Velayo vs. Shell Co. P.I. Ltd.*, 100 Phil., 186; 54 Off. Gaz., 63; *Estayo vs. de Guzman*, 104 Phil., 1038; 55 Off. Gaz., [36] 7653; and *Laperal, et al. vs. Katigbak, et al.*, 104 Phil., 999) the old Code must be made to apply to the instant case. And the provisions thereof which are determinative of the issues raised in this appeal are as follows:

"ART. 129. A natural child may be acknowledged by the father and mother jointly or by either of them alone."

"ART. 131. An acknowledgment of a natural child must be made to the record of birth, in a will, or in some other public document."

In the application of the above articles to the case at bar, an examination of the evidence adduced by the intervenor-appellant, in her attempt to qualify as one of the heirs of the deceased is necessary. This will require, for our purposes, a piece-by-piece description of the exhibits introduced during the hearing, to wit:

Exhibit "A" appears to be an entry in the marriage book of the parish priest of Isabela, Negros Occidental, reciting that Gertrudes Montilla, daughter of Gil Montilla and Ines Serrano, was married to Horacio L. Ramos on June 23, 1933;

Exhibit "B" appears to be a will of the deceased Petronila Montilla, sister of Gil Montilla in which (par. 9, Exh. "B-1") the said Gertrudes is referred to as the daughter of Gil Montilla;

Exhibit "C" is purportedly a letter of Gil Montilla dated September 19, 1933 and addressed to "Horacio and Gertrudes" containing the complimentary ending "Vuestro Padre"; and

Exhibit "D" is supposed to be another letter of Gil Montilla dated May 14, 1942 containing the salutation "Querida Gertrudes" and the complimentary ending "Tu padre".

It is quite apparent that Exhibits "A" "C" and "D" are mere private writings and not one of them is a record of birth, a will, or a public document. They are, therefore, not the evidence of acknowledgment recognized in Article [3] of the old Civil Code.

While, admittedly, Exhibit "B" is a will, it is not that of the deceased Gil Montilla and cannot be considered evidence of acknowledgment for, according to the aforequoted Article 129, it is only the parents, jointly or separately, who can recognize a natural child as their own. In the case of *Canales vs. Arrogante, et al.* (91 Phil., 6), it has been held that a statement as to paternity is insufficient, if made without the intervention of the alleged parents and still in another case (*Pareja vs. Pareja, et al.*, 95 Phil., 167), the doctrine was emphasized that under the old Civil Code, recognition must be precise, express and solemn.

The intervenor-appellant, in claiming that the provisions of the new Civil Code, where the old Code's rigid rules on recognition or acknowledgment of natural children seem to have been relaxed are applicable to her case, relies upon the portion of Article 2253 of the new Code, which states that "* * * if a right should be declared for the first time in this Code, it shall be effective at once, even though the act or event which gives rise thereto may have been done or may have occurred under the prior legislation * * *" There is nothing to this citation. Acknowledgment or recognition of a natural child is not a new right declared for the first time in the new Civil Code, and this very article cited provides also that "the Civil Code of 1889 shall govern rights originating from said Code even though the new Civil Code may regulate it in a different manner." Furthermore, as correctly stated by the learned trial judge, the intervenor-appellant cannot invoke in her favor Article 2253 of the new Code, which is concerned with rights, in general, because Article 2263, which we have heretofore discussed, is a particular provision specially designed for cases like the one at bar and which should, therefore, prevail over the general transitional provisions.

Premises considered, the order appealed from should be, as it is hereby, affirmed in all respects, at appellant's costs,

Padilla, Labrador, Concepcion, Reyes, J.B.L., Barrera, Paredes, Dizon, and Natividad, JJ., concur.

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