

ADELA ONGSIACO VDA. DE CLEMEÑA, PETITIONER, VS. AGUSTIN ENGRACIO CLEMEÑA, ET AL., RESPONDENTS.*G.R. No. L-24845. August 22, 1968*

Ponente: REYES, J.B.L., J.

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Adela Ongsiaco Vda. de Clemeña instituted, on 29 January 1965, Special Proceeding No. 59712 in the Court of First Instance of Manila for the settlement of the estate of the late Engracio Clemeña, and being the surviving consort, was appointed Special Administratrix on 2 February; she qualified and was issued letters of administration.

At the hearing of the aforesaid petition, respondent Agustin Engracio Clemeña, claiming to be decedent's illegitimate (not natural) child, sub-mitted written opposition, alleging wrong venue, because at his death the decedent was a resident of Rizal. The intervention of Agustin was objected to by the Administratrix on the ground that oppositor had no legal interest, not having been recognized by the decedent, either voluntarily or compul-sorily; that said Agustin's action to establish his illegitimate paternity was already barred, since, by his own admission, he was born on 28 August 1928, and was, therefore, past the age of majority when the alleged father died on 26 September 1964; that no action to establish illegitimate filiation was receivable after the death of the alleged illegitimate progenitor.

Respondent Judge Geronimo, however, instead of dismissing the opposition, required oppositor to produce evidence of his claimed filiation, over the objection of petitioner Administratrix. After three witnesses had testified, the Administratrix moved for suspension of the hearing and objected to further reception of evidence. The court overruled the ob-jection, on the ground of absence of settled jurisprudence on whether il-legitimate not natural paternity may be investigated after the death of the alleged parent.

Reconsideration having been denied, the Administratrix applied to this Court for writs of certiorari, prohibition, and preliminary injunction, on the ground of abuse of discretion amounting to lack of jurisdiction for subjecting the deceased's legitimate family to scandal and social humiliation. The petition was given due course.

The issue squarely posed in the present case is whether or not an alleged illegitimate child not natural (vulgarly designated as "spurious") may still bring an action or proceeding in court for the purpose of establishing his illegitimate paternity even after the death of the person he claims to have been his father, when on the date of such death the claimant is already over 21 years of age.

The Civil Code of the Philippines, in its Article 285, expressly prescribes that "the action for the recognition of natural children may be brought only during the lifetime of the presumed parents", unless (a) the latter have died during the claimant's minority or (b) after the death of the parents a hitherto unknown document recognizing the child is discovered. But with regard to issue that is illegitimate but not natural (i.e., whose parents could not have married each other at the time of the child's conception), the Civil Code, although providing (Article 289) that the investigation of their paternity is permitted in the circumstances specified for illegitimate natural children, is,

nevertheless, silent on the duration of the action that may be brought.

The petitioners-appellants urge that the action for the declaration of the paternity of illegitimate children not natural is subject to the limitation fixed by Article 285, and can not outlive the presumed father, when the child is of age on the date of the parents' demise.

While there has been heretofore no square pronouncement by this Court on this issue (other than two contradictory obiter dicta in *Reyes, et al. vs. Zuzuarregui* (1957) 102 Phil. 346 and in *Barleys vs. Ponce Enrile*, G.R. No. L-12894, September 30, 1960), we are of the opinion, after mature deliberation, that reason and history support the thesis of the appellants that the action to establish paternity of spurious children (illegitimates not natural) should be at least subject to the same limitations prescribed by law to actions by natural illegitimate children seeking compulsory recognition (Art. 285, Civil Code). The main reasons for this are the following:

(a) As pointed out in the *Barles vs. Ponce Enrile* case, both actions are substantially identical in nature and purpose: both seek to establish a generation link between the claimant and the alleged parent. While one action is designated as one for compulsory acknowledgment while the other is labeled for declarations of paternity, the distinction is purely nominal, for the purpose in either case is to have the Court investigate and determine if plaintiff is in fact the child of the defendant, provided any of the circumstances required by Articles 283 and 284 are present (See Article 289). And if the nature and basis of the two actions are identical, there is no cogent reason why the same time limit should not apply to both, there being no express legal provision to the contrary.

(b) The considerations of fairness and justice that underlie the time limit fixed in Article 285 of the Civil Code for actions seeking compulsory acknowledgment of natural children are fully applicable, if not more, to actions to investigate and declare the paternity of illegitimate children that are not natural. The motive that led the codifiers to restrict the period for bringing actions for compulsory recognition of natural children were stated by this Court, in *Serrano vs. Aragon*, 22 Phil. 18, to be as follows:

“----- The writers of the code no doubt had in mind that there would arise instances where certain illegitimate children, on account of the strong temptation due to the large estates left by deceased persons, would attempt to establish that they were natural children of such persons in order to get part of the property; and furthermore, they considered that it is nothing but just and right that alleged parents should have a personal opportunity to be heard. It was for these reasons and others equally as well founded that article 137 was enacted.”

Surely it can not be argued that while it is just and right that the natural parent should have a personal opportunity to be heard and explain his side, yet it would be neither just nor right that the parent of an illegitimate child not natural should be accorded a similar opportunity to be heard. Illegitimate paternity, natural or not natural, is not paraded for every one to see; but it is normally enshrouded in secrecy, and kept hidden from the members of the legitimate family. The latter are not in a position to explain or contradict the circumstances surrounding the procreation of the illegitimate progeny. To inquire into those circumstances after the parent has died, when he or she alone has full knowledge thereof, when no one else can fully prove the truth or falsity of the alleged filiation of a claimant, is to penalize unnecessarily the legitimate family that constitutes one of the foundation blocks of society.

(c) Nor can it be denied that by allowing the one who claims illegitimate filiation to wait for the death of the putative parent, when he had opportunity to confront the latter while alive, is to facilitate, if not encourage, blackmailing suits. And as illegitimate not natural paternity presupposes either adultery (concubinage) or incest or murder[1], the magnitude of the threatened scandal is a weapon that becomes more difficult to resist for the legitimate family that desires to protect the memory of the deceased.

The very liberality of the present Civil Code, that admits "any evidence or proof that the defendant is his father" (Article 283, No. 4), should caution against indiscriminating admission of post mortem actions to investigate de facto paternity of illegitimate children.

(d) Like its predecessor, the Spanish Code of 1889, the new Civil Code of the Philippines establishes a gradation in the rights of children according to the circumstances that surround their conception. The greatest sum of rights corresponds to the legitimates, i.e., those conceived in valid matrimony; while of the illegitimates, those that are natural (actually or by fiction) enjoy greater rights than the illegitimates not natural (adulterous or incestuous).

Thus, the successional rights of the three classes of children vary in the proportions 10:5:4, since the legitime of the acknowledged natural children is merely one half of that of the legitimates; while the legitime of an illegitimate child not natural is four fifths (4/5ths) of that of an acknowledged natural child (Article 895), i.e., it is only 2/5ths as large as the legitime a legitimate child. These proportions are preserved even in intestate succession (Article 983).

And this gradation is followed in other rights as well. The right of action to claim legitimacy lasts during the whole lifetime of the child and can be brought against the presumed parents, if alive, and against their heirs if the parents are no longer living (Article 268); while the action to compel acknowledgment of an illegitimate natural child may be brought only during the lifetime of the presumed parents and therefore not against the parent's heirs, except in two cases: (1) where the parent has died during the minority of the child, or (2) when a hitherto unknown document of recognition is discovered after the parent's death (Article 285). Furthermore, while an action to claim legitimacy may exceptionally pass to the heirs of the child claimant (as when he dies insane or still a minor) (Article 268), the right to compel recognition never passes to the heirs of the natural child (*Conde vs. Abaya*, 13 Phil. 249).

On the other hand, as between the two classes of illegitimates, only those that are natural can be elevated to the category of legitimates by the process of legitimation; while those that are not natural are denied this improvement of their condition (Article 269).

Thus, to hold with the court below that an illegitimate child not natural, already over 21 years of age at the death of its alleged parent, may still implead the latter's legal heirs or representatives to obtain a declaration that the deceased is his progenitor is certainly to upset the carefully categorized scheme of rights ordained by the Civil Code for the various classes of children. Because such a holding would not only place the spurious child on a more advantageous position vis-a-vis the illegitimate but natural child, but actually place him on an equal footing with legitimates, whose paternity suits last as long as they live; and this advantage would be granted to the illegitimates not natural children on no other basis than the mere silence of the Code, when the right of legitimate sons and daughters to file paternity suits despite the death of their progenitors had to be expressly conferred by Article 268. In our opinion, the ruling under appeal goes against the spirit, the system, and the logic of the Civil Code.

In resume, we rule that the action of an illegitimate child, not natural, to secure a judicial investigation and declaration of his paternity may not be instituted beyond the time limits prescribed by Article 285 of the Civil Code of the Philippines.

IN VIEW OF THE FOREGOING, the ruling of the Court of First Instance of Manila admitting evidence of the paternity of the private respondent, over and against the objections of the legal representative of the deceased alleged parent, is in grave abuse of discretion, and is hereby set aside; hence, said respondent must be declared without legal interest in the estate of the de-cedent. The records of the case are ordered remanded to the court of origin for further proceedings conformably to this opinion. No costs.

Concepcion, C.J., Dizon, Makalintal, Zaldivar, Sanchez, Castro, Angeles, and Fernando, JJ., concur.

[1] See Articles 80, 81 and 82, Civil Code of the Philippines.

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