

**BELEN JOVE LAGRIMAS, REPRESENTED BY HER MOTHER,
PONCIANA JOVE AS GUARDIAN AD-LITEM, PLAINTIFFS AND
APPELLANTS, VS. TITO LAGRIMAS, DEFENDANT AND APPELLEE.**

G.R. No. L-6462. May 28, 1954

Ponente: BENGZON, J.

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BENGZON, J.:

Represented by her mother Ponciana Jove as guardian ad litem, Belen Jove Lagrimas, seven years old, sued Tito Lagrimas for support, in the court of First Instance of Samar, in June 1947.

Her complaint alleged that from September 1926 up to the year 1940 defendant lived with Ponciana Jove as her common-law husband, and as fruit of such cohabitation she was born in November 1939; that for one year defendant supported her by delivering thirty pesos every month to her mother Ponciana; that defendant stopped giving support in 1940 when he found another woman; that Ponciana was poor and sickly; that defendant was financially able to furnish support, because he was mayor of the town of Iriga, received regular pensions from the United States Navy and owned some real property; and that despite repeated demands, defendant refused to maintain the plaintiff, who needed at least one hundred pesos monthly for sustenance and education.

The defendant's answer on July 28, 1947 stated:

"That he admits the allegation in paragraph 1 of the complaint but denies all and every allegation in paragraph 2, 3, 4, 5, 6, 7, 8, 9 and 10 because each and every one of them are not true.

Wherefore, the defendant prays for the dismissal of this case, with costs against the plaintiff."

Soon thereafter plaintiff's attorney moved for judgment on the pleadings, pointing out that defendant had denied the allegations generally—and not specifically, as required by the Rules. "To this motion defendant agreed but contended that the complaint failed to allege that the minor Belen Jove Lagrimas is an acknowledged natural child of the defendant (and) the complaint should be dismissed".

Quoting and following article 140 of the Civil Code the trial judge dismissed the complaint, with the explanation that the paternity of the defendant, "not having been established in accordance" with said article, plaintiff was not entitled to support. "The mere allegation in the complaint" wrote the judge "that the defendant is the father of the minor plaintiff, although deemed admitted by him thru his failure to specifically deny the same is not enough to entitle" plaintiff to support.

At the proper time and in due form, the plaintiff took the litigation to the Court of Appeals, wherein briefs were presented by both sides in regular course. However the record had to be forwarded to us much later, upon discovery that the matter involved issues of law only.

Nobody questions that under Rule 9 section 7 of the Rules of Court, and according to our applicable decisions, the defendant's answer in this case was in effect a general denial^[1] amounting to admission of the complaint's factual

averments, the most salient of which were: (a) plaintiff was the illegitimate daughter of defendant; (b) plaintiff's mother was unable to maintain plaintiff; (c) defendant refused to furnish support although he was economically able to do so; and (d) plaintiff needed P100 monthly for sustenance and education.

In our opinion, the admitted allegations of fact constituted a sufficient cause of action, because under the Civil Code[2] an illegitimate child—not natural—is entitled to support (Article 139).

The trial judge apparently believed that pursuant to article 140 of the Civil Code an illegitimate child may not claim support until and after a final judgment has been rendered establishing defendant's paternity in a separate criminal or civil action. Said article reads as follows:

"The right to support referred to in the preceding article can be claimed only:

- If the paternity or maternity is established by final judgment rendered in a criminal or civil action.
- If the paternity or maternity is shown by some document unquestionably executed by the father or mother, in which the filiation is expressly acknowledged.
- With regards to the mother, if the fact of the birth and the identity of the child are fully proven."

The first paragraph of this article means that no support shall be payable unless and until there is a final judgment declaring defendant's illegitimate paternity.

Ordinarily such judicial declaration of relationship occurs in proceedings other than those wherein support is demanded, because in the absence of such previous declaration—or of a document expressly acknowledging filiation—the judicial demand for support will fail if the defendant (as is usually the case) denies the relationship. The reason for the failure is that in such action for support the plaintiff will not be permitted, over defendant's objection, to prove filiation, pursuant to Article 141 of the Civil Code:

"ART. 141. With the exception of the cases mentioned in pars. 1 and 2 of the next preceding article no court shall permit the filing of any complaint, the purpose of which may be to investigate, either directly or indirectly, the paternity of illegitimate children who have not the legal status of natural children."

But luckily for plaintiff in this case, defendant Tito Lagrimas admitted her filiation, no investigation of paternity was involved, the prohibition in article 141 did not operate, and the way was clear for a judgment declaring her to be illegitimate daughter of Tito Lagrimas. And there seems to be no legal impediment to reckoning such judgment a sufficient compliance with article 140 par. 1 Civil Code. We are shown no authority saying it is essential that such judgment of filiation be promulgated in a proceeding different from and previous to the action for support[3]. And we perceive no valid reason for such restricted view of the law. In the same action for support, a declaration of paternity may be made,—if defendant fails to object, or admits his paternity—and then the defendant may be required to furnish support once the judgment becomes final and executory.

But, it might be argued, there is no occasion for actions for support, if defendant admits the filiation. There may be. Suppose defendant admits filiation, but pleads lack of means, or forfeiture of the right to support, or questions the reasonableness of the amount demanded. That would be litigation about support in which the paternity is declared, and other points in controversy resolved in accordance with the evidence.

The defendant Lagrimas takes the position that plaintiff is an unrecognized natural child, and therefore she is not entitled to support, citing repeated decisions of this Court[4]. However, it must be observed that the complaint averring birth outside wedlock contained no allegations describing plaintiff as natural daughter. No assertion was made that at the time she was conceived the defendant and her mother were legally free to marry each other. (Article 119 Civil Code)[5].

In this connection, some members of the Court are inclined to believe that probably Belen Jove Lagrimas was a natural child. "Probably" is advisedly used. They also believe that the circumstances might justify recognition as such. However sensing procedural and technical difficulties in the way of a declaration now that she is a recognized natural daughter,[6] and realizing the need of affording prompt relief, they agreed to vote for this decision, with the understanding that it will not prevent the plaintiff from hereafter asserting her rights as recognized natural child, should she be able, in appropriate proceedings,[7] with issues clearly outlined, fully justify such civil status, which undoubtedly entails superior rights to those of a mere illegitimate child.

Wherefore, subject to the reservation indicated, let judgment be entered declaring that plaintiff is the illegitimate daughter of defendant, and ordering the latter, once this judgment becomes final, to give support to the said plaintiff in the amount of one hundred pesos every month, until she reaches the age of majority. The defendant will pay all costs.

Paras, C. J., Montemayor, Reyes, A., Jugo, Bautista Angelo, Labrador, and Concepcion, JJ., concur.

[1] See Moran, Rules of Court, 1952 ed., Vol. I, p. 199 and cases cited therein.

[2] New Civil Code not considered here, because none of the parties invokes it, and the litigation was submitted for judicial award in 1947

[3] Cases happen where such declaration of paternity is made separately, e. g., in cases of rape, seduction, etc.

[4] Infante vs. Figueras, 4 Phil., 738; Buenaventura vs. Urbano 5, Phil., 1; Concepcion vs. Untaran, 38 Phil., 736; Potot vs. Ycong, Off. Gaz., July 26, 1941 p. 748; Dusepec vs. Torres, 39 Phil., 760.

[5] Serrano vs. Aragon, 22 Phil., 10.

[6] Some points to consider: (a) Plaintiff impliedly alleged she was natural daughter? (b) Implied admission by answer extends to implied allegations? (c) Implied admission by attorney constitutes acknowledgment by defendant, even if recognition was not specifically asked? (d) New Civil Code was not in force when defense took its stand.

[7] In such suit she would enjoy the added advantage of more liberal provisions of the New Civil Code.

CONCURRING:

PABLO, M.:

La mayoría decide que la demandante es hija ilegítima—no natural—del demandado y tiene derecho a alimentos. Declara que no es hija natural porque "no assertion was made that at the time she was conceived the defendant and her mother were legally free to marry each other."

No estoy conforme con esta conclusion. Belen Jove Lagrimas, reconocida hija ilegítima, debe ser considerada hija natural, a falta de prueba en contrario, con derecho a alimentos. El Tribunal Supremo de España en sentencias de 11 de octubre de 1882 y 11 de mayo de 1887 declaró que "los hijos ilegítimos se presumen naturales, salvo prueba en contrario." (Leyes Civiles de España, 58.) Apoyase la primera sentencia en "el principio de derecho penal de que el delito no se presume jamás, y en la jurisprudencia del Tribunal Supremo, consignada en sentencia de 12 de noviembre de 1858, que al ocuparse de la bastardia natural, forma siempre presunción en contra del daitado y punible ayuntamiento, consignando que en caso de duda debe conceptuarse natural al hijo, porque declarado el primer concepto expresado, relativo a la filiación, se presume por derecho que ellos pertenecen a la clase mas

general de ilegítimos, o que sus progenitores no eran inhábiles para el matrimonio, mientras no se comprobara lo contrario." (1 Manresa 589.)

"Cuando el padre reconoce en realidad a un hijo ilegítimo, la presunción que surge es la de que los padres tenían capacidad para contraer matrimonio al tiempo del nacimiento o concepción del hijo, y que este es hijo natural y, por tanto, capaz de ser reconocido. La obligación de probar lo contrario incumbe al que impugna la legalidad del reconocimiento." (Ramirez contra Gmur, 42 Jur. Fil., 902.)

Por tanto, voto por que se conceda a Belen Jove Lagrimar pensión alimenticia de acuerdo con el párrafo 4.º y no de acuerdo con el párrafo 5.º del artículo 143 del Código Civil.

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