

PEDRO CRISOLO, PETITIONER, VS. HON. HIGINO B. MACADAEG, ETC., ET AL., RESPONDENTS.*G.R. No. L-7071. April 29, 1954*

Ponente: BENGZON, J.

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This is a petition for certiorari to annul the order of the respondent judge requiring Pedro Crisolo to pay a monthly pension pendente lite to a minor allegedly his daughter.

Petitioner asserts that, summoned to answer Marieta Villa's complaint for support of Maria Erlinda Crisolo as his and her natural daughter, he denied such paternity in an answer properly filed; that upon request of complainant, the respondent judge, acting in excess of jurisdiction, before hearing the case, and without affording petitioner a chance to object, issued an order directing him to pay Marieta Villa P50 monthly for support pendente lite and for medical expenses of said minor Maria Erlinda; and that his motion for reconsideration was denied.

Respondents reply that support pendente lite was ordered in the interest of justice, after the judge had been shown the birth certificate of the child and a medical certificate showing she had been suffering from Little's Disease and had been confined at the Children's Hospital (National Indigent) for about three years.

The petitioner invokes *Francisco vs. Zandueta*'s holding^[1] that where a minor through a guardian ad litem, brings an action for support on the ground that he is a son of the defendant, and the defendant denies his paternity, the court has no jurisdiction to award support pendente lite, because paternity having been denied and this civil status, from which the right to support is derived, being an issue, there is no authority to grant support pendente lite until a positive declaration has been made as to the existence of the relationship.

Without going into the question whether the documents exhibited to the respondent judge established prima facie the disputed relationship in this case, and whether upon such proofs provisional maintenance could be decreed,^[2] we deem it sufficient to observe that the complaint merely averred that Maria Erlinda Crisolo was the natural daughter of Pedro Crisolo. It did not aver that she was his recognized natural daughter. And yet under the Civil Code and the new Civil Code a natural daughter, as such, has no right to maintenance, unless she has been recognized.^[3]

It is earnestly urged that an unrecognized natural child would thus be in worse condition than other illegitimate children, who are admittedly entitled to support. But such was the juridical situation under the Civil Code for sixty years. It was criticized on that score—it was defended too. The Congress in the new Civil Code (Art. 291) elected not to alter the situation. Ours is not the duty nor the power to amend the statute, which by the way, presents no interstitial space wherein to insert, in the words of Cardozo, "judge-made innovations."

It is alleged however that: (a) the complaint for support was precisely a petition to compel recognition of a natural child; (b) recognition was in order, the certificate of birth being prima facie evidence of paternity and (c) consequently support pendente lite was justified. These three propositions will separately be discussed and

rebutted.

A. The complaint did not expressly ask for recognition. Neither did it impliedly ask for recognition, because it related no facts either of voluntary recognition by defendant under article 278, or of compulsory recognition under article 283 of the new Civil Code. It merely proceeded on the theory—erroneous indeed—that as Erlinda was defendant's natural daughter, support should be furnished by him. Furthermore, acknowledgment could not have been properly asked, because the action had been initiated by Marieta Villa, the mother, and not by the daughter[4] Litigations for recognition are between parent and child (Arts. 283, 284, 285 new Civil Code)—not between one parent and the other, unless one litigates as guardian of the child.

And the circumstance that at the ex-parte hearing of the petition for support pendente lite some paper was exhibited—supposedly competent evidence of fatherhood—did not have the effect of altering the issues or competing theories as previously outlined by the respective pleadings. To hold the contrary view would sanction the employment of surreptitious maneuvers definitely out of place in judicial proceedings.

B. The certificate of birth, it is argued, which was exhibited to the judge, constituted prima facie evidence of filiation. We disagree.

It is a document, filed with the Local Civil Register of Iloilo, and signed by "Clarita Gustillo, informant" on March 4, 1948, stating that Maria Erlinda Crisolo had been born in Iloilo on February 5, 1945, the legitimate daughter of Marieta Villa and Pedro Crisolo. Under article 410 of the new Civil Code this would be prima facie proof that Erlinda was the legitimate daughter of the persons mentioned. But having alleged and admitted that Maria Erlinda was not a legitimate daughter, plaintiff completely destroyed the certificate's worth as evidence.

If it be contended that such certificate could, at least, be proof that Maria Erlinda was the daughter of Pedro Crisolo, the maxim falsus in uno, falsus in omnibus would at once come to mind poisoning the question whether it applies to documents as well as witnesses. At any rate there is another line of thought compelling outright rejection of such certificate as proof of bastard father-and-child relationship: Had it expressly so state—that Maria Erlinda was the illegitimate daughter of the persons mentioned—the certificate would not have been recorded (and would not be prima facie evidence) because it was signed only by Clarita Gustillo, and not by the parents of the infant.

SEC. 5. Registration and certification of birth.—The declaration of the physician or midwife in attendance at the birth or, in default thereof, the declaration of either parent of the newborn child, shall be sufficient for the registration of a birth in the civil register. * * * In case of an illegitimate child, the birth certificate shall be signed and sworn to jointly by the parents of the infant or only by the mother if the father refuses. In the latter case, it shall not be permissible to state or reveal in the document the name of the father who refuses to acknowledge the child, or to give therein any information by which such father could be identified. (Act No. 3753) (*Italics ours.*)

However, because the certificate described the child as legitimate it was accepted for registration upon the information of a third person, Clarita Gustillo. It is plain to see that to give the document probative value in court would be to approve evasion or circumvention of the above- indicated requirement, not to mention the violation of the specific prohibition against the revelation in the certificate of the name of the father without his consent.

Again, pursuant to section 5, of article 3753, the local civil register had no authority to make of record the paternity (illegitimate) of Pedro Crisolo upon the information of a third party. Wherefore his record could not be competent evidence of such paternity. Records of public officers which are admissible "are limited to those matters which the public officer has authority to record." [5] And it is essential, to authorize admission of a copy of the record of a private instrument that such instrument "be made in accordance with the statutory

requirements."^[6]

Give this certificate evidential relevancy, and we thereby pave the way for any scheming unmarried mother to extort money for her child (and for herself) from any eligible bachelor or affluent pater familias. How? She simply causes the midwife to state in the birth certificate that the newborn babe is her legitimate offspring with that individual and the certificate will be accepted for registration, and it will be evidence for support pendente lite. And any lawyer with sufficient imagination will realize the exciting possibilities for mischief of such prima facie evidence—when and if the "father" dies in ignorance of the fraudulent design. The spirit of liberality towards illegitimate children need not be carried to that extent.

Divested of its official character, the document signed by Clarita Gustillo, the "certificate of birth", is undoubtedly incompetent evidence of fathership against Pedro Crisolo. As to him it is hearsay, it is *res inter alios acta*.

C. Supposing that the complaint amounted to a petition for recognition as natural child, and that the certificate of birth was prima facie evidence, the question remains whether support pendente lite may be decreed. The argument might be advanced that as defendant is obliged to support only an acknowledged natural child, his obligation to support begins only from the moment he acknowledged i. e., only after he is compelled to acknowledge by decree of court at the petition of plaintiff. Nevertheless the angle need not be explored, because the two major premises on which it is constructed happen to be without foundation as above demonstrated.

Wherefore, in the absence of legal basis for Maria Erlinda's support, this petition will be granted,^[7] and the questioned order is hereby declared null and void. No costs.

Pablo, Montemayor, and Reyes, JJ., concur.

Jugo and Bautista Angelo, JJ., concur in the result.

[1] 161 Phil., 762.

[2] cf. Sanchez vs. Zulueta, 68 Phil., 112; Mangoma vs. Macadaeg, 90 Phil., 508; Moran, Rules of Court (1952) Vol. II p. 118.

[3] Concepcion vs. Untaran, 38 Phil., 736; Buenaventura vs. Urbano, 5 Phil., 1; Potot vs. Ycong, 40 Off. Gaz., July 26, 1941; Art. 291 (8) new Civil Code.

[4] The complaint is entitled "Marieta Villa as the natural mother of Maria Erlinda Crisolo," plaintiff vs. Pedro Crisolo, defendant. And the prayer asks that defendant be ordered to give plaintiff support for Maria Erlinda.

[5] See 20 Am. Jur., Sec. 1024.

[6] See 20 Am. Jur., p. 880.

[7] cf. Saavedra vs. Ibañez, 56 Phil., 33.

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