

**FLAVIANO S. GASPAY, JR., AND ERIBERTA S. GASPAY, PETITIONERS,
VS. THE HON. COURT OF APPEALS AND GUADALUPE GASPAY
ALFARO, RESPONDENTS.**

G.R. No. 102372. November 15, 1994

Ponente: PUNO, J.

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PUNO, J.:

This is a petition for certiorari seeking to reverse the Decision of the respondent Court of Appeals in CA-G.R. CV No. 25872.

The facts reveal that Flaviano Gaspay died without a last will and testament on October 14, 1983 in Tacloban City. He was then married to Agueda Denoso. They were childless.

On July 6, 1988, private respondent Guadalupe Gaspay Alfaro filed a petition in the trial court[1] alleging, among others, that she is the acknowledged illegitimate daughter of the deceased Flaviano Gaspay, who died without a will and left certain real and personal properties. She identified her mother as Claudia Pason with whom decedent allegedly had an illicit relationship. She prayed for issuance of letters of administration of the decedent's estate.

Petitioners Flaviano S. Gaspay, Jr., and Eriberta Salvatieva Gaspay opposed the petition with motion to dismiss. Flaviano, Jr., is an adopted son of the decedent while Eriberta is also not a next of kin. They alleged that private respondent is a stranger and even assuming her illegitimate status, there is no proof of her recognition or acknowledgment.

The motion to dismiss was denied. The trial court[2] ruled it was not based on indubitable grounds. Evidence was then adduced by private respondent. In an Order dated December 6, 1989, the trial court dismissed the petition. It held: (1) the testimonial and documentary evidence[3] failed to prove the purported status of private respondent; (2) they also failed to show that private respondent, then already of age consented to her recognition as an illegitimate child;[4] and (3) even if the petition were to be treated as an action to compel recognition, it would not prosper because it should have been filed during the lifetime of Flaviano Gaspay.[5]

Private respondent appealed to the respondent Court of Appeals. In a Decision promulgated September 30, 1991, the Special Third Division[6] of the respondent court reversed the trial court. It held: (1) the evidence is ample to prove the filiation and recognition of private respondent as an illegitimate child of the decedent; (2) the evidence is also sufficient to show that private respondent consented to her recognition by the decedent; and (3) actions based on voluntary recognition can be instituted after the death of the putative father.

Thus, private respondent filed the instant petition for certiorari contending:

I

THE APPELLATE COURT ERRED IN DISTURBING THE FINDINGS OF FACT OF THE TRIAL COURT WITH REGARDS TO THE CREDIBILITY OF WITNESS MARTIN GARIN WHICH WAS NOT EVEN MADE AN ASSIGNED ERROR IN APPELLANT'S BRIEF (IN VIOLATION OF SECTION 7, RULE 51 OF THE RULES OF COURT)

II

THE APPELLATE COURT ERRED IN FINDING THAT THE ALLEGED OPEN AND CONTINUOUS POSSESSION OF GUADALUPE OF THE STATUS OF AN ILLEGITIMATE CHILD CAN STILL BE BROUGHT AFTER THE DEATH OF THE ALLEGED PARENT (WHICH IS CONTRARY TO THE PROVISIONS OF ARTICLE 175 IN RELATION TO SECOND PARAGRAPH OF ARTICLE 172 OF THE FAMILY CODE).

III

THE APPELLATE COURT ERRED IN FINDING THAT GUADALUPE IS ENTITLED TO LETTERS OF ADMINISTRATION.

We find no merit in the appeal.

Anent the first error, it cannot be gainsaid that private respondent assailed on appeal the correctness of the trial court's conclusion of fact that the evidence failed to prove her allegation that she was recognized as an illegitimate daughter by the decedent. In resolving this factual issue, the respondent court did not err in exhaustively examining each and every specie of evidence relevant thereto and one of them involves the truth of the testimony of witness Martin Garin. Indeed, this key issue cannot be resolved authoritatively without considering the testimony of Garin, the principal witness of the private respondent.

We now come to the competence and credibility of witness Garin. The trial court did not give any value to his testimony. The respondent court did. We sustain the respondent court. Garin testified that the two (2) letters marked as Exhibits "K" and "L" were written by the decedent. These letters are vital evidence for the private respondent for they show that the decedent acknowledged her as his daughter. Exhibit "K" written in "waray" dialect was translated in the trial court as follows:

"Tomalisties Caibiran Leyte

March 10, 1980

My dear Child,

Lupe, I received your letter and I understood your purpose that you are asking for money in the sum of P500.00 pesos because you are going to use it for the operation of the feet of your child Marilyn.

But Lupe, because I am short of money, accept in the meantime this P200.00 pesos because this is the only amount I can raise to send you here at Southern Island Hospital Cebu City, for I pity you because you are my child and Marilyn my grandchild.

Your father,

(Sgd.) Flaviano Gaspay"

On the other hand, Exhibit "L" also written in "waray" was translated as follows

"Tomalties, Caibiran, Leyte

August 14, 1983

My children Toming and Lupe,

Because I feel my body is about to weaken already. I urge you to verify my lands located in Culaba and in Caibiran so that the share of Lupe will be assured.

Toming, this letter to you is my gift on your birthday today.

Your father,

(Sgd.) Flaviano Gaspay"

The trial court dismissed the testimony of Garin on two (2) grounds. First, it held that Garin did not even bother to examine the letters, Exhibits "K" and "L". The records do not sustain this ruling. We quote the relevant testimony of Garin, viz:

"Court:

Q Are you familiar with the signature of Flaviano Gaspay?

A Yes, your Honor.

Atty. Bacolod (counsel for petitioner):

Q You are familiar with the signature of Flaviano Gaspay, are you familiar with his penmanship?

A Yes, sir.

Q Showing to you this document which the same had been marked as EXHIBIT "K" will you take a look at this, do you see that?

A Yes, sir.

Q Whose penmanship is this and the signature?

A Flaviano Gaspay and that is the signature of Flaviano Gaspay.

Q Why do you say that that is his penmanship and this is his signature?

A I am familiar with his penmanship and signature.

Q Why do you know that this is his penmanship and signature?

A I was an agent of his concession for 18 years second, we were both government officials of Culaba from 1955 to 1959.

Atty. Nilo T. Bacolod:

Q You said that you are an agent of his logging concession for 18 years, from what year up to what year?

A From 1932 to 1951.

Atty. Bacolod:

We request your Honor that the signature of Flaviano Gaspay as identified by this witness be marked as our EXHIBIT "K-1".

Q We have here a document marked as Exhibit "L" please look at it, do you see that?

A Yes, sir.

Q Whose penmanship is that and whose signature is this?

A That is Flaviano Gaspay's penmanship and signature.

We request your Honor that the signature below be marked as our EXHIBIT "L-1".

Court:

What date is that?

Atty. Bacolod:

August 14, 1983 Exh. "K" and August 10, 1980. May I be allowed to borrow the Exhibits of the Respondents about the supposed letter which were marked in their Annexes from "A" to "I".

Atty. Gaspay:

May we know the purpose your Honor.

Atty. Bacolod:

For him to identify your Honor.

Court:

Lend him your Exhibits.

Atty. Bacolod:

Q Will you take a look at this document, this one marked as Exhibit "1"?

A Yes, sir.

Q This Exhibit "2"?

A Yes, sir.

Q This Exhibit "3"?

A Yes, sir.

Q Another Exhibit "4," take a look at this one?

A I see it.

Q Take a look at Exhibit "5"?

A I see that already.

Q Take a look at Exhibit "6"

A I have seen it.

Q Exhibit "7"?

A Yes I see it.

Q Exhibit "8"?

A Yes I see it.

Q Exhibit "9"?

A Yes sir I see it.

Q Exhibit "10"?

A Yes I see it.

Q Exhibit "11"?

A Yes sir.

Q Exhibit "12"?

A Yes I see it.

Q What can you say about these document marked as Exhibits to "1" to "12"?

A That is not the one.

Q What is that which is not the one?

A That is not written by Flaviano Gaspay.

Q Not the one written by whom?

A That are not letters of Gaspay.

Q Who is that Gaspay you are referring to?

A Flaviano Gaspay.

Q Now let's go back to the joint affidavit, Exhibit "S" in this affidavit you signed you made mention of names, Flaviano Gaspay and Claudia Pason, who this Claudia Pason?

A Mistress of Flaviano Gaspay.

Q Why did you say that Claudia Pason is the paramour or kerida of Flaviano Gaspay?

A Because he had a real wife.

Q Who is that wife?

A Agueda Denoso.

Q When was this when Claudia Pason was the kerida of Flaviano Gaspay?

A From 1934, 35, 36 and 37.

Q How did you know that this Claudia Pason is the kerida of Flaviano Gaspay?

A We are neighbors ours houses are less than four arms length to the house of Claudia Pason.

Q In what place is that?

A Culaba, Leyte.

Q That place where Claudia Pason was living who was her husband then?

A Flaviano Gaspay.

Q You mean to convey to this Honorable Court that they were living as husband and wife?

A Yes, sir.

Q As a result of this illicit relationship of the two, what happened?

A They bore a child.

Q What do you mean when you said bore one child?

A Claudia Pason gave birth to a child.

Q Do you know who this child is?

A Yes, sir.

Q Who?

A Guadalupe Gaspay Alfaro.

Q Who is the mother of Guadalupe Gaspay?

A Claudia Pason.

Q Who is the father of Guadalupe Gaspay?

A Flaviano Gaspay.

Court

That is not allowed.

Atty. Bacolod:

Q Of your own knowledge, if you know whether Guadalupe Gaspay had come to school?

A Yes, sir.

Q Where at?

A Culaba.

Q Do you know who supported her schooling?

A Yes, sir.

Q Why do you know that?

A We are neighbors.

Q Do you know if this Guadalupe Gaspay is already married?

A Yes sir, she is married.

Q Do you know who her husband is?

A Yes sir, Bartolome Alfaro.

Q Do you know the nickname of Bartolome Alfaro?

A Yes sir, Toming Alfaro.

Q Do you know if this Guadalupe Gaspay has nickname?

A Yes sir.

Q What is the nickname of Guadalupe Gaspay?

A Lupe.

Atty. Bacolod:

That will be all your Honor."[7]

Secondly, the trial court noted that the last time Garin received a letter from the decedent was in 1961 and the last time he saw him write was in 1959. It held that Garin had no competence to testify about the authenticity of Exhibit "L" written in 1980 and Exhibit "M" written in 1983. In reversing this ruling, the respondent court held and we agree that the trial court "unfairly assumes that Flaviano Gaspay's penmanship actually metamorphosed into something divergent or different from what Garin saw him write in 1959 and 1961. For it is a fact that there are people whose hand remain steady over the years, and whose eyes even acquire better vision in their twilight years." We hasten to add that petitioners did not present any evidence to prove any change in the penmanship of Gaspay, Sr.

We are also satisfied that the evidence profusely proved that private respondent consented to her voluntary recognition as an illegitimate child by the decedent. As well analyzed by the respondent court:

"To begin with, petitioner has been sporting the name Guadalupe Gaspay since childhood up to the time she got married to Bartolome Alfaro on May 22, 1953 and even up to the present her acknowledged name is Guadalupe Gaspay Alfaro (Exhibits J, J-1 and J-2). And then when she filed the subject petition in this case she used the same surname Gaspay after her father and Alfaro after her lawful spouse since her marriage, thereby accepting the fact and telling the world that she is the recognized daughter of the deceased Flaviano Gaspay. At the time the present petition was filed on July 26, 1988 petitioner was already over 51 years old, having been born on December 12, 1936. All these undisputed facts are sufficient evidence that she consented to her acknowledgment by the decedent. (Javelona, et al. vs. Monteclaro, 74 Phil. 393). Whether or not judicial approval of such acknowledgment is required was answered in the negative in Apacible, et al. vs. Castillo, 74 Phil. 589, where the Supreme Court held that such approval may be supplied by the child's consent given after reaching majority, which obtained in the case at bar."

In light of the above, the death of Flaviano Gaspay, Sr., does not constitute a time bar to private respondent's claim as his acknowledged illegitimate daughter. Settled is the rule that "actions based on voluntary acknowledgment may be brought even after the father's death." [8]

In sum, private respondent has proved her entitlement to be administrator of the estate of Flaviano Gaspay, Sr., her father. Section 6 of Rule 78 is in her favor, thus:

"SEC. 6. When and to whom letters of administration granted. - If no executor is named in the will, or the executor or executors are incompetent, refused the trust, or fail to give bond, or a person dies intestate, administration shall be granted:

x

x

(b) If such surviving husband or wife, as the case may be, or next of kin, or the person selected by them, be incompetent or unwilling, or if the husband or widow, or next kin, neglects for thirty (30) days after time death of the person to apply for administration or to request that administration be granted to some other person, it

may be granted to one or more of the principal creditors, if competent and willing to serve;

(c) If there is no such creditor competent and willing to serve, it may be granted to such other person as the court may select."

For a fact, petitioners neglected to apply for letters of administration thirty (30) days after the death of Gaspay, Sr. IN VIEW WHEREOF, the petition for certiorari is dismissed there being no reversible error in the Decision of the respondent court dated September 30, 1991 in CA-G.R. CV No. 25872. Costs against petitioner.

SO ORDERED.

Narvasa, C.J., (Chairman), Regalado, and Mendoza, JJ., concur.

[1] RTC of Naval, Branch 16, Biliran, Leyte.

[2] Presided by Judge Adriano Villamor.

[3] Exhibits "K" and "L".

[4] Article 281, Civil Code.

[5] Article 172 in relation to Article 175 of the of the Family Code.

[6] Composed of Associate Justice Santiago M. Kapunan (Chairman), Associate Justice Segundino G. Chua (ponente) and Associate Justice Quirino D. Abad Santos (member).

[7] TSN, October 12, 1989, pp. 6 to 11.

[8] Vda. de Sy Quia vs. Court of Appeals, 125 SCRA 835.

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