

GERARDO B. CONCEPCION, PETITIONER, VS. COURT OF APPEALS AND MA. THERESA ALMONTE, RESPONDENTS.

G.R. No. 123450. August 31, 2005

Ponente: CORONA, J.

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CORONA, J.:

The child, by reason of his mental and physical immaturity, needs special safeguard and care, including appropriate legal protection before as well as after birth.[1] In case of assault on his rights by those who take advantage of his innocence and vulnerability, the law will rise in his defense with the single-minded purpose of upholding only his best interests.

This is the story of petitioner Gerardo B. Concepcion and private respondent Ma. Theresa Almonte, and a child named Jose Gerardo. Gerardo and Ma. Theresa were married on December 29, 1989.[2] After their marriage, they lived with Ma. Theresa's parents in Fairview, Quezon City.[3] Almost a year later, on December 8, 1990, Ma. Theresa gave birth to Jose Gerardo.[4]

Gerardo and Ma. Theresa's relationship turned out to be short-lived, however. On December 19, 1991, Gerardo filed a petition to have his marriage to Ma. Theresa annulled on the ground of bigamy.[5] He alleged that nine years before he married Ma. Theresa on December 10, 1980, she had married one Mario Gopiao, which marriage was never annulled.[6] Gerardo also found out that Mario was still alive and was residing in Loyola Heights, Quezon City.[7]

Ma. Theresa did not deny marrying Mario when she was twenty years old. She, however, averred that the marriage was a sham and that she never lived with Mario at all.[8]

The trial court ruled that Ma. Theresa's marriage to Mario was valid and subsisting when she married Gerardo and annulled her marriage to the latter for being bigamous. It declared Jose Gerardo to be an illegitimate child as a result. The custody of the child was awarded to Ma. Theresa while Gerardo was granted visitation rights.[9]

Ma. Theresa felt betrayed and humiliated when Gerardo had their marriage annulled. She held him responsible for the "bastardization" of Gerardo. She moved for the reconsideration of the above decision "IN SO FAR ONLY as that portion of the ... decision which grant(ed) to the petitioner so-called 'visitation rights'... between the hours of 8 in the morning to 12:00 p.m. of any Sunday." [10] She argued that there was nothing in the law granting "visitation rights in favor of the putative father of an illegitimate child." [11] She further maintained that Jose Gerardo's surname should be changed from Concepcion to Almonte, her maiden name, following the rule that an illegitimate child shall use the mother's surname.

Gerardo opposed the motion. He insisted on his visitation rights and the retention of "Concepcion" as Jose Gerardo's surname.

Applying the "best interest of the child" principle, the trial court denied Ma. Theresa's motion and made the following observations:

It is a pity that the parties herein seem to be using their son to get at or to hurt the other, something they should never do if they want to assure the normal development and well-being of the boy.

The Court allowed visitatorial rights to the father knowing that the minor needs a father, especially as he is a boy, who must have a father figure to recognize - something that the mother alone cannot give. Moreover, the Court believes that the emotional and psychological well-being of the boy would be better served if he were allowed to maintain relationships with his father.

There being no law which compels the Court to act one way or the other on this matter, the Court invokes the provision of Art. 8, PD 603 as amended, otherwise known as the Child and Youth Welfare Code, to wit: "In all questions regarding the care, custody, education and property of the child, his welfare shall be the paramount consideration."

WHEREFORE, the respondent's Motion for Reconsideration has to be, as it is hereby DENIED.[12]

Ma. Theresa elevated the case to the Court of Appeals, assigning as error the ruling of the trial court granting visitation rights to Gerardo. She likewise opposed the continued use of Gerardo's surname (Concepcion) despite the fact that Jose Gerardo had already been declared illegitimate and should therefore use her surname (Almonte). The appellate court denied the petition and affirmed in toto the decision of the trial court.[13]

On the issue raised by Ma. Theresa that there was nothing in the law that granted a putative father visitation rights over his illegitimate child, the appellate court affirmed the "best interest of the child" policy invoked by the court a quo. It ruled that "[a]t bottom, it (was) the child's welfare and not the convenience of the parents which (was) the primary consideration in granting visitation rights a few hours once a week." [14]

The appellate court likewise held that an illegitimate child cannot use the mother's surname *motu proprio*. The child, represented by the mother, should file a separate proceeding for a change of name under Rule 103 of the Rules of Court to effect the correction in the civil registry.[15]

Undaunted, Ma. Theresa moved for the reconsideration of the adverse decision of the appellate court. She also filed a motion to set the case for oral arguments so that she could better ventilate the issues involved in the controversy.

After hearing the oral arguments of the respective counsels of the parties, the appellate court resolved the motion for reconsideration. It reversed its earlier ruling and held that Jose Gerardo was not the son of Ma. Theresa by Gerardo but by Mario during her first marriage:

It is, therefore, undeniable - established by the evidence in this case - that the appellant [Ma. Theresa] was married to Mario Gopiao, and that she had never entered into a lawful marriage with the appellee [Gerardo] since the so-called "marriage" with the latter was void ab initio. It was [Gerardo] himself who had established these facts. In other words, [Ma. Theresa] was legitimately married to Mario Gopiao when the child Jose Gerardo was born on December 8, 1990. Therefore, the child Jose Gerardo - under the law - is the legitimate child of the legal and subsisting marriage between [Ma. Theresa] and Mario Gopiao; he cannot be deemed to be the illegitimate child of the void and non-existent "marriage" between [Ma. Theresa] and [Gerardo], but is said by the law to be the child of the legitimate and existing marriage between [Ma. Theresa] and Mario Gopiao (Art. 164, Family Code). Consequently, [she] is right in firmly saying that [Gerardo] can claim neither custody nor visitatorial rights over the child Jose Gerardo. Further, [Gerardo] cannot impose his name upon the child. Not only is it without legal basis (even supposing the child to be his illegitimate child [Art. 146, The Family Code]); it would tend to destroy the existing marriage between [Ma. Theresa] and Gopiao, would prevent any possible rapprochement between the married couple, and would mean a judicial seal upon an illegitimate relationship.[16]

The appellate court brushed aside the common admission of Gerardo and Ma. Theresa that Jose Gerardo was their son. It gave little weight to Jose Gerardo's birth certificate showing that he was born a little less than a year after Gerardo and Ma. Theresa were married:

We are not unaware of the movant's argument that various evidence exist that appellee and the appellant have judicially admitted that the minor is their natural child. But, in the same vein, We cannot overlook the fact that Article 167 of the Family Code mandates:

"The child shall be considered legitimate although the mother may have declared against its legitimacy or may have been sentenced as an adulteress." (underscoring ours)

Thus, implicit from the above provision is the fact that a minor cannot be deprived of his/her legitimate status on the bare declaration of the mother and/or even much less, the supposed father. In fine, the law and only the law determines who are the legitimate or illegitimate children for one's legitimacy or illegitimacy cannot ever be compromised. Not even the birth certificate of the minor can change his status for the information contained therein are merely supplied by the mother and/or the supposed father. It should be what the law says and not what a parent says it is.[17] (Emphasis supplied)

Shocked and stunned, Gerardo moved for a reconsideration of the above decision but the same was denied.[18] Hence, this appeal.

The status and filiation of a child cannot be compromised.[19] Article 164 of the Family Code is clear. A child who is conceived or born during the marriage of his parents is legitimate.[20]

As a guaranty in favor of the child[21] and to protect his status of legitimacy, Article 167 of the Family Code provides:

Article 167. The child shall be considered legitimate although the mother may have declared against its legitimacy or may have been sentenced as an adulteress.

The law requires that every reasonable presumption be made in favor of legitimacy.[22] We explained the rationale of this rule in the recent case of *Cabatanian v. Court of Appeals*[23]:

The presumption of legitimacy does not only flow out of a declaration in the statute but is based on the broad principles of natural justice and the supposed virtue of the mother. It is grounded on the policy to protect the innocent offspring from the odium of illegitimacy.

Gerardo invokes Article 166 (1)(b)[24] of the Family Code. He cannot. He has no standing in law to dispute the status of Jose Gerardo. Only Ma. Theresa's husband Mario or, in a proper case,[25] his heirs, who can contest the legitimacy of the child Jose Gerardo born to his wife.[26] Impugning the legitimacy of a child is a strictly personal right of the husband or, in exceptional cases, his heirs.[27] Since the marriage of Gerardo and Ma. Theresa was void from the very beginning, he never became her husband and thus never acquired any right to impugn the legitimacy of her child.

The presumption of legitimacy proceeds from the sexual union in marriage, particularly during the period of conception.[28] To overthrow this presumption on the basis of Article 166 (1)(b) of the Family Code, it must be shown beyond reasonable doubt that there was no access that could have enabled the husband to father the child.[29] Sexual intercourse is to be presumed where personal access is not disproved, unless such presumption is rebutted by evidence to the contrary.[30]

The presumption is quasi-conclusive and may be refuted only by the evidence of physical impossibility of coitus between husband and wife within the first 120 days of the 300 days which immediately preceded the birth of the child.[31]

To rebut the presumption, the separation between the spouses must be such as to make marital intimacy impossible.[32] This may take place, for instance, when they reside in different countries or provinces and they were never together during the period of conception.[33] Or, the husband was in prison during the period of conception, unless it appears that sexual union took place through the violation of prison regulations.[34]

Here, during the period that Gerardo and Ma. Theresa were living together in Fairview, Quezon City, Mario was living in Loyola Heights which is also in Quezon City. Fairview and Loyola Heights are only a scant four kilometers apart.

Not only did both Ma. Theresa and Mario reside in the same city but also that no evidence at all was presented to disprove personal access between them. Considering these circumstances, the separation between Ma. Theresa and her lawful husband, Mario, was certainly not such as to make it physically impossible for them to engage in the marital act.

Sexual union between spouses is assumed. Evidence sufficient to defeat the assumption should be presented by him who asserts the contrary. There is no such evidence here. Thus, the presumption of legitimacy in favor of Jose Gerardo, as the issue of the marriage between Ma. Theresa and Mario, stands.

Gerardo relies on Ma. Theresa's statement in her answer[35] to the petition for annulment of marriage[36] that she never lived with Mario. He claims this was an admission that there was never any sexual relation between her and Mario, an admission that was binding on her.

Gerardo's argument is without merit.

First, the import of Ma. Theresa's statement is that Jose Gerardo is not her legitimate son with Mario but her illegitimate son with Gerardo. This declaration an avowal by the mother that her child is illegitimate is the very declaration that is proscribed by Article 167 of the Family Code.

The language of the law is unmistakable. An assertion by the mother against the legitimacy of her child cannot affect the legitimacy of a child born or conceived within a valid marriage.

Second, even assuming the truth of her statement, it does not mean that there was never an instance where Ma. Theresa could have been together with Mario or that there occurred absolutely no intercourse between them. All she said was that she never lived with Mario. She never claimed that nothing ever happened between them.

Telling is the fact that both of them were living in Quezon City during the time material to Jose Gerardo's conception and birth. Far from foreclosing the possibility of marital intimacy, their proximity to each other only serves to reinforce such possibility. Thus, the impossibility of physical access was never established beyond reasonable doubt.

Third, to give credence to Ma. Theresa's statement is to allow her to arrogate unto herself a right exclusively lodged in the husband, or in a proper case, his heirs.[37] A mother has no right to disavow a child because maternity is never uncertain.[38] Hence, Ma. Theresa is not permitted by law to question Jose Gerardo's legitimacy.

Finally, for reasons of public decency and morality, a married woman cannot say that she had no intercourse with her husband and that her offspring is illegitimate.[39] The proscription is in consonance with the presumption in favor of family solidarity. It also promotes the intention of the law to lean toward the legitimacy of children.[40]

Gerardo's insistence that the filiation of Jose Gerardo was never an issue both in the trial court and in the appellate court does not hold water. The fact that both Ma. Theresa and Gerardo admitted and agreed that Jose Gerardo was born to them was immaterial. That was, in effect, an agreement that the child was illegitimate. If the Court were to

validate that stipulation, then it would be tantamount to allowing the mother to make a declaration against the legitimacy of her child and consenting to the denial of filiation of the child by persons other than her husband. These are the very acts from which the law seeks to shield the child.

Public policy demands that there be no compromise on the status and filiation of a child.[41] Otherwise, the child will be at the mercy of those who may be so minded to exploit his defenselessness.

The reliance of Gerardo on Jose Gerardo's birth certificate is misplaced. It has no evidentiary value in this case because it was not offered in evidence before the trial court. The rule is that the court shall not consider any evidence which has not been formally offered.[42]

Moreover, the law itself establishes the status of a child from the moment of his birth.[43] Although a record of birth or birth certificate may be used as primary evidence of the filiation of a child,[44] as the status of a child is determined by the law itself, proof of filiation is necessary only when the legitimacy of the child is being questioned, or when the status of a child born after 300 days following the termination of marriage is sought to be established.[45]

Here, the status of Jose Gerardo as a legitimate child was not under attack as it could not be contested collaterally and, even then, only by the husband or, in extraordinary cases, his heirs. Hence, the presentation of proof of legitimacy in this case was improper and uncalled for.

In addition, a record of birth is merely prima facie evidence of the facts contained therein.[46] As prima facie evidence, the statements in the record of birth may be rebutted by more preponderant evidence. It is not conclusive evidence with respect to the truthfulness of the statements made therein by the interested parties.[47] Between the certificate of birth which is prima facie evidence of Jose Gerardo's illegitimacy and the quasi-conclusive presumption of law (rebuttable only by proof beyond reasonable doubt) of his legitimacy, the latter shall prevail. Not only does it bear more weight, it is also more conducive to the best interests of the child and in consonance with the purpose of the law.

It perplexes us why both Gerardo and Ma. Theresa would doggedly press for Jose Gerardo's illegitimacy while claiming that they both had the child's interests at heart. The law, reason and common sense dictate that a legitimate status is more favorable to the child. In the eyes of the law, the legitimate child enjoys a preferred and superior status. He is entitled to bear the surnames of both his father and mother, full support and full inheritance.[48] On the other hand, an illegitimate child is bound to use the surname and be under the parental authority only of his mother. He can claim support only from a more limited group and his legitime is only half of that of his legitimate counterpart.[49] Moreover (without unwittingly exacerbating the discrimination against him), in the eyes of society, a "bastard" is usually regarded as bearing a stigma or mark of dishonor. Needless to state, the legitimacy presumptively vested by law upon Jose Gerardo favors his interest.

It is unfortunate that Jose Gerardo was used as a pawn in the bitter squabble between the very persons who were passionately declaring their concern for him. The paradox was that he was made to suffer supposedly for his own sake. This madness should end.

This case has been pending for a very long time already. What is specially tragic is that an innocent child is involved. Jose Gerardo was barely a year old when these proceedings began. He is now almost fifteen and all this time he has been a victim of incessant bickering. The law now comes to his aid to write finis to the controversy which has unfairly hounded him since his infancy.

Having only his best interests in mind, we uphold the presumption of his legitimacy.

As a legitimate child, Jose Gerardo shall have the right to bear the surnames of his father Mario and mother Ma. Theresa, in conformity with the provisions of the Civil Code on surnames.[50] A person's surname or family name identifies the family to which he belongs and is passed on from parent to child.[51] Hence, Gerardo cannot impose his surname on Jose Gerardo who is, in the eyes of the law, not related to him in any way.

The matter of changing Jose Gerardo's name and effecting the corrections of the entries in the civil register regarding his paternity and filiation should be threshed out in a separate proceeding.

In case of annulment or declaration of absolute nullity of marriage, Article 49 of the Family Code grants visitation rights to a parent who is deprived of custody of his children. Such visitation rights flow from the natural right of both parent and child to each other's company. There being no such parent-child relationship between them, Gerardo has no legally demandable right to visit Jose Gerardo.

Our laws seek to promote the welfare of the child. Article 8 of PD 603, otherwise known as the Child and Youth Welfare Code, is clear and unequivocal:

Article 8. Child's Welfare Paramount. - In all questions regarding the care, custody, education and property of the child, his welfare shall be the paramount consideration.

Article 3 (1) of the United Nations Convention on the Rights of a Child of which the Philippines is a signatory is similarly emphatic:

Article 3

- In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

The State as *parens patriae* affords special protection to children from abuse, exploitation and other conditions prejudicial to their development. It is mandated to provide protection to those of tender years.[52] Through its laws, the State safeguards them from every one, even their own parents, to the end that their eventual development as responsible citizens and members of society shall not be impeded, distracted or impaired by family acrimony. This is especially significant where, as in this case, the issue concerns their filiation as it strikes at their very identity and lineage.

WHEREFORE, the petition is hereby DENIED. The September 14, 1995 and January 10, 1996 resolutions of the Court of Appeals in CA-G.R. CV No. 40651 are hereby AFFIRMED.

Costs against petitioner.

SO ORDERED.

Panganiban, (Chairman), Sandoval-Gutierrez, and Garcia, JJ., concur.
Carpio Morales, J., no part.

[1] Universal Declaration of the Rights of the Child.

[2] Marriage Contract, Annex "A," Rollo, p. 41.

[3] Decision, Annex "E," Rollo, pp. 46-48.

[4] Certificate of Live Birth, Annex "M," Rollo, p. 127.

- [5] Petition, Annex "C," Rollo, pp. 38-40.
- [6] Marriage Certificate, Annex "B-1," Rollo, p. 43.
- [7] Supra at note 5.
- [8] Answer, Annex "D," Rollo, pp. 44-45.
- [9] Penned by Judge (now Court of Appeals Justice) Delilah Vidallon-Magtolis, CC No. 91-10935, Regional Trial Court, National Capital Judicial Region, Branch 107, Quezon City, Annex "E," Rollo, p. 46.
- [10] Motion for Reconsideration, Annex "F," Rollo, p. 49.
- [11] Id., p. 61.
- [12] Order, Annex "G," Rollo, pp. 53-54.
- [13] Penned by Associate Justice Ramon A. Barcelona and concurred in by Associate Justices Arturo B. Buena (a retired Associate Justice of the Supreme Court) and Serafin V.C. Guingona. Decision dated September 29, 1994, CA-G.R. CV No. 40651, Court of Appeals, Third Division; CA Rollo, pp. 55-64.
- [14] Id.
- [15] Id.
- [16] Penned by Associate Justice Ramon A. Barcelona and concurred in by Associate Justices Arturo M. Buena and Conchita Carpio Morales (now an Associate Justice of the Supreme Court). Resolution dated September 14, 1995, CA-G.R. CV No. 40651, Court of Appeals, Former Third Division; Rollo, Annex "A," pp. 29-32.
- [17] Id.
- [18] Resolution dated January 10, 1996, CA-G.R. CV No. 40651, Court of Appeals, Former Third Division; Rollo, Annex "B," pp. 34-37.
- [19] Article 2035 (1), Civil Code; Baluyut v. Baluyut, G.R. No. 33659, 14 June 1990, 186 SCRA 506.
- [20] Further, under Article 54 of the Family Code, a child who was conceived or born before the judgment of annulment or of absolute nullity of the marriage on the ground of psychological incapacity has become final and executory shall be considered legitimate. It also provides that a child who was born from a subsequent void marriage as a result of the failure of the contracting parties to comply with the mandatory provisions of Articles 52 and 53 of the Family Code shall likewise be considered legitimate.
- [21] Tolentino, Arturo, Civil Code of the Philippines with the Family Code, Commentaries and Jurisprudence, vol. I, 1990 edition, p. 528.
- [22] Bowers v. Bailey, 237 Iowa 295, 21 N.W. 2d 773.
- [23] G.R. No. 124814, October 21, 2004.
- [24] In particular, Article 166 (1)(b) provides:

Article 166. Legitimacy of a child may be impugned only on the following grounds:

- (1) That it was physically impossible for the husband to have sexual intercourse with his wife within the first 120 days of the 300 days which immediately preceded the birth of the child because of:

x x x x x x x x

(b) the fact that the husband and wife were living separately in such a way that sexual intercourse was not possible; or

x x x x x x x x

[25] Article 171 provides for the instances where the heirs of the husband may impugn the filiation of the child. Thus:

Article 171. The heirs of the husband may impugn the filiation of the child within the period prescribed in the preceding article only in the following cases:

- (1) If the husband should die before the expiration of the period fixed for bringing his action;
- (2) If he should die after the filing of the complaint without having desisted therefrom; or
- (3) If the child was born after the death of the husband.

[26] *Macadangdang v. Court of Appeals*, G.R. No. L-49542, 12 September 1980, 100 SCRA 73; Article 170, Family Code.

[27] *Liyao, Jr. v. Liyao*, 428 Phil. 628 (2002).

[28] *Supra* at note 21 citing *People v. Giberson*, 197 Phil. 509 (1982).

[29] *Supra* at note 26.

[30] *Id.* citing *Tolentino supra*.

[31] *Id.*

[32] *Id.*

[33] *Id.* citing *Estate of Benito Marcelo*, 60 Phil. 442 (1934).

[34] *Id.* citing 1 *Manresa* 492-500.

[35] *Supra* at note 8.

[36] *Supra* at note 5.

[37] *Supra* at note 26. See also Articles 170 and 171, Family Code.

[38] *Id.*

[39] *People ex rel. Gonzales v. Monroe*, 43 Ill. App 2d 1, 192 N.E. 2d 691.

[40] Cf. Article 220 of the Civil Code. It provides:

Art. 220. In case of doubt, all presumptions favor the solidarity of the family. Thus, every intendment of law or fact leans toward the validity of marriage, the indissolubility of the marriage bonds, the legitimacy of children, the community of property during marriage, the authority of parents over the children, and the validity of defense for any member of family in case of unlawful aggression.

While this provision of the Civil Code may have been omitted in the Family Code, the principles they contain are valid norms in family relations and in cases involving family members. They are even already embodied in jurisprudence. (*Tolentino, supra*, p. 506)

[41] *Supra* at note 19.

[42] Section 34, Rule 132, Rules of Court.

[43] Tolentino, *supra*, p. 539; Sempio-Diy, Alicia, *Handbook on the Family Code of the Philippines*, 1995 edition, p. 275.

[44] Articles 172 and 175, Family Code. Article 172 states:

Article 172. The filiation of legitimate children is established by any of the following:

- (1) The record of birth appearing in the civil register or a final judgment; or
- (2) An admission of legitimate filiation in a public document or a private handwritten instrument and signed by the parent concerned.

In the absence of the foregoing evidence, the legitimate filiation shall be proved by:

- (1) The open and continuous possession of the status of a legitimate child; or
- (2) Any other means allowed by the Rules of Court and special laws.

On the other hand, Article 175 provides:

Article 175. Illegitimate children may establish their illegitimate filiation in the same way and on the same evidence as legitimate children.

x x x x x x x x

[45] Cf. Article 169, Family Code.

[46] Article 410, Civil Code.

[47] *Dupilas v. Cabacungan*, 36 Phil. 254 (1917).

[48] Article 174, Family Code provides:

Article 174. Legitimate children shall have the right:

- (1) To bear the surnames of the father and the mother, in conformity with the provisions of the Civil Code on Surnames;
- (2) To receive support from their parents, their ascendants, and in proper cases, their brothers and sisters, in conformity with the provisions of this Code on Support; and
- (3) To be entitled to the legitime and other successional rights granted to them by the Civil Code.

[49] Article 176, Family Code states:

Article 176. Illegitimate children shall use the surname and shall be under the parental authority of their mother, and shall be entitled to support in conformity with this Code. The legitime of each illegitimate child shall consist of one-half of the legitime of a legitimate child. Except for this modification, all other provisions in the Civil Code governing successional rights shall remain in force.

[50] *Id.*

[51] *In the Matter of the Adoption of Stephanie Nathy Astorga Garcia*, G.R. No. 148311, 31 March 2005.

[52] *People v. Dolores*, G.R. No. 76468, 20 August 1990, 188 SCRA 660.

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