

**WILLIAM LIYAO, JR., REPRESENTED BY HIS MOTHER CORAZON GARCIA, PETITIONER, VS. JUANITA TANHOTI-LIYAO, PEARL MARGARET L. TAN, TITA ROSE L. TAN AND LINDA CHRISTINA LIYAO, RESPONDENTS.**

*G.R. No. 138961. March 07, 2002*

Ponente: DE LEON, JR., J.

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**DE LEON, JR., J.:**

Before us is a petition for review on certiorari assailing the decision dated June 4, 1999 of the Court of Appeals in CA-G.R. C.V. No. 45394[1] which reversed the decision of the Regional Trial Court (RTC) of Pasig, Metro Manila, Branch 167 in declaring William Liyao, Jr. as the illegitimate (spurious) son of the deceased William Liyao and ordering Juanita Tanhoti-Liyao, Pearl Margaret L. Tan, Tita Rose L. Tan and Linda Christina Liyao to recognize and acknowledge William Liyao, Jr. as a compulsory heir of the deceased William Liyao and entitled to all successional rights as such and to pay the costs of the suit.

On November 29, 1976, William Liyao, Jr., represented by his mother Corazon G. Garcia, filed Civil Case No. 24943 before the RTC of Pasig, Branch 167 which is an action for compulsory recognition as “the illegitimate (spurious) child of the late William Liyao” against herein respondents, Juanita Tanhoti-Liyao, Pearl Margaret L. Tan, Tita Rose L. Tan and Linda Christina Liyao.[2] The complaint was later amended to include the allegation that petitioner “was in continuous possession and enjoyment of the status of the child of said William Liyao,” petitioner having been “recognized and acknowledged as such child by the decedent during his lifetime.”[3]

The facts as alleged by petitioner are as follows:

Corazon G. Garcia is legally married to but living separately from Ramon M. Yulo for more than ten (10) years at the time of the institution of the said civil case. Corazon cohabited with the late William Liyao from 1965 up to the time of William’s untimely demise on December 2, 1975. They lived together in the company of Corazon’s two (2) children from her subsisting marriage, namely:

Enrique and Bernadette, both surnamed Yulo, in a succession of rented houses in Quezon City and Manila. This was with the knowledge of William Liyao’s legitimate children, Tita Rose L. Tan and Linda Christina Liyao-Ortiga, from his subsisting marriage with Juanita Tanhoti Liyao. Tita Rose and Christina were both employed at the Far East Realty Investment, Inc. of which Corazon and William were then vice president and president, respectively.

Sometime in 1974, Corazon bought a lot from Ortigas and Co. which required the signature of her husband, Ramon Yulo, to show his consent to the aforesaid sale. She failed to secure his signature and, had never been in touch with him despite the necessity to meet him. Upon the advice of William Liyao, the sale of the parcel of land located at the Valle Verde Subdivision was registered under the name of Far East Realty Investment, Inc.

On June 9, 1975, Corazon gave birth to William Liyao, Jr. at the Cardinal Santos Memorial Hospital. During her

three (3) day stay at the hospital, William Liyao visited and stayed with her and the new born baby, William, Jr. (Billy). All the medical and hospital expenses, food and clothing were paid under the account of William Liyao. William Liyao even asked his confidential secretary, Mrs. Virginia Rodriguez, to secure a copy of Billy's birth certificate. He likewise instructed Corazon to open a bank account for Billy with the Consolidated Bank and Trust Company[4] and gave weekly amounts to be deposited therein.[5] William Liyao would bring Billy to the office, introduce him as his good looking son and had their pictures taken together.[6]

During the lifetime of William Liyao, several pictures were taken showing, among others, William Liyao and Corazon together with Billy's godfather, Fr. Julian Ruiz, William Liyao's legal staff and their wives while on vacation in Baguio.[7] Corazon also presented pictures in court to prove that that she usually accompanied William Liyao while attending various social gatherings and other important meetings.[8] During the occasion of William Liyao's last birthday on November 22, 1975 held at the Republic Supermarket, William Liyao expressly acknowledged Billy as his son in the presence of Fr. Ruiz, Maurita Pasion and other friends and said, "Hey, look I am still young, I can still make a good looking son." [9] Since birth, Billy had been in continuous possession and enjoyment of the status of a recognized and/or acknowledged child of William Liyao by the latter's direct and overt acts. William Liyao supported Billy and paid for his food, clothing and other material needs. However, after William Liyao's death, it was Corazon who provided sole support to Billy and took care of his tuition fees at La Salle, Greenhills. William Liyao left his personal belongings, collections, clothing, old newspaper clippings and laminations at the house in White Plains where he shared his last moments with Corazon.

Testifying for the petitioner, Maurita Pasion declared that she knew both Corazon G. Garcia and William Liyao who were godparents to her children. She used to visit Corazon and William Liyao from 1965-1975. The two children of Corazon from her marriage to Ramon Yulo, namely, Bernadette and Enrique (Ike), together with some housemaids lived with Corazon and William Liyao as one family. On some occasions like birthdays or some other celebrations, Maurita would sleep in the couple's residence and cook for the family. During these occasions, she would usually see William Liyao in sleeping clothes. When Corazon, during the latter part of 1974, was pregnant with her child Billy, Maurita often visited her three (3) to four (4) times a week in Greenhills and later on in White Plains where she would often see William Liyao. Being a close friend of Corazon, she was at the Cardinal Santos Memorial Hospital during the birth of Billy. She continuously visited them at White Plains and knew that William Liyao, while living with her friend Corazon, gave support by way of grocery supplies, money for household expenses and matriculation fees for the two (2) older children, Bernadette and Enrique. During William Liyao's birthday on November 22, 1975 held at the Republic Supermarket Office, he was carrying Billy and told everybody present, including his two (2) daughters from his legal marriage, "Look, this is my son, very guapo and healthy." [10] He then talked about his plan for the baptism of Billy before Christmas. He intended to make it "engrande" and "make the bells of San Sebastian Church ring." [11] Unfortunately, this did not happen since William Liyao passed away on December 2, 1975. Maurita attended Mr. Liyao's funeral and helped Corazon pack his clothes. She even recognized a short sleeved shirt of blue and gray [12] which Mr. Liyao wore in a photograph [13] as well as another shirt of lime green [14] as belonging to the deceased. A note was also presented with the following inscriptions: "To Cora, Love From William." [15] Maurita remembered having invited the couple during her mother's birthday where the couple had their pictures taken while exhibiting affectionate poses with one another. Maurita knew that Corazon is still married to Ramon Yulo since her marriage has not been annulled nor is Corazon legally separated from her said husband. However, during the entire cohabitation of William Liyao with Corazon Garcia, Maurita had not seen Ramon Yulo or any other man in the house when she usually visited Corazon.

Gloria Panopio testified that she is the owner of a beauty parlor and that she knew that Billy is the son of her neighbors, William Liyao and Corazon Garcia, the latter being one of her customers. Gloria met Mr. Liyao at

Corazon's house in Scout Delgado, Quezon City in the Christmas of 1965. Gloria had numerous occasions to see Mr. Liyao from 1966 to 1974 and even more so when the couple transferred to White Plains, Quezon City from 1974-1975. At the time Corazon was conceiving, Mr. Liyao was worried that Corazon might have another miscarriage so he insisted that she just stay in the house, play mahjong and not be bored. Gloria taught Corazon how to play mahjong and together with Atty. Brillantes' wife and sister-in-law, had mahjong sessions among themselves. Gloria knew that Mr. Liyao provided Corazon with a rented house, paid the salary of the maids and food for Billy. He also gave Corazon financial support. Gloria knew that Corazon is married but is separated from Ramon Yulo although Gloria never had any occasion to see Mr. Yulo with Corazon in the house where Mr. Liyao and Corazon lived.

Enrique Garcia Yulo testified that he had not heard from his father, Ramon Yulo, from the time that the latter abandoned and separated from his family. Enrique was about six (6) years old when William Liyao started to live with them up to the time of the latter's death on December 2, 1975. Mr. Liyao was very supportive and fond of Enrique's half brother, Billy. He identified several pictures showing Mr. Liyao carrying Billy at the house as well as in the office. Enrique's testimony was corroborated by his sister, Bernadette Yulo, who testified that the various pictures showing Mr. Liyao carrying Billy could not have been superimposed and that the negatives were in the possession of her mother, Corazon Garcia.

Respondents, on the other hand, painted a different picture of the story.

Linda Christina Liyao-Ortiga stated that her parents, William Liyao and Juanita Tanhoti-Liyao, were legally married.[16] Linda grew up and lived with her parents at San Lorenzo Village, Makati, Metro Manila until she got married; that her parents were not separated legally or in fact and that there was no reason why any of her parents would institute legal separation proceedings in court. Her father lived at their house in San Lorenzo Village and came home regularly. Even during out of town business trips or for conferences with the lawyers at the office, her father would change his clothes at home because of his personal hygiene and habits. Her father reportedly had trouble sleeping in other people's homes. Linda described him as very conservative and a strict disciplinarian. He believed that no amount of success would compensate for failure of a home. As a businessman, he was very tough, strong, fought for what he believed in and did not give up easily. He suffered two strokes before the fatal attack which led to his death on December 2, 1975. He suffered a stroke at the office sometime in April-May 1974 and was attended by Dr. Santiago Co. He then stayed in the house for two (2) to three (3) months for his therapy and acupuncture treatment. He could not talk, move, walk, write or sign his name. In the meantime, Linda and her sister, Tita Rose Liyao-Tan, ran the office. She handled the collection of rents while her sister referred legal matters to their lawyers. William Liyao was bedridden and had personally changed. He was not active in business and had dietary restrictions. Mr. Liyao also suffered a milder stroke during the latter part of September to October 1974. He stayed home for two (2) to three (3) days and went back to work. He felt depressed, however, and was easily bored. He did not put in long hours in the office unlike before and tried to spend more time with his family.

Linda testified that she knew Corazon Garcia is still married to Ramon Yulo. Corazon was not legally separated from her husband and the records from the Local Civil Registrar do not indicate that the couple obtained any annulment[17] of their marriage. Once in 1973, Linda chanced upon Ramon Yulo picking up Corazon Garcia at the company garage. Immediately after the death of Linda's father, Corazon went to Linda's office for the return of the former's alleged investments with the Far East Realty Investment, Inc. including a parcel of land sold by Ortigas and Company. Linda added that Corazon, while still a Vice-President of the company, was able to take out documents, clothes and several laminated pictures of William Liyao from the office. There was one instance when she was told by the guards, "Mrs. Yulo is leaving and taking out things again." [18] Linda then instructed the guards to bring Mrs. Yulo to the office upstairs but her sister, Tita Rose, decided to let Corazon Garcia go.

Linda did not recognize any article of clothing which belonged to her father after having been shown three (3) large suit cases full of men's clothes, underwear, sweaters, shorts and pajamas.

Tita Rose Liyao-Tan testified that her parents were legally married and had never been separated. They resided at No. 21 Hernandez Street, San Lorenzo Village, Makati up to the time of her father's death on December 2, 1975.[19] Her father suffered two (2) minor cardio-vascular arrests (CVA) prior to his death. During the first heart attack sometime between April and May 1974, his speech and hands were affected and he had to stay home for two (2) to three (3) months under strict medication, taking aldomet, serpadil and cifromet which were prescribed by Dr. Bonifacio Yap, for high blood pressure and cholesterol level control.[20] Tita Rose testified that after the death of Mr. Liyao, Corazon Garcia was paid the amount of One Hundred Thousand Pesos (P100,000.00) representing her investment in the Far East Realty Investment Inc. Tita Rose also stated that her family never received any formal demand that they recognize a certain William Liyao, Jr. as an illegitimate son of her father, William Liyao. After assuming the position of President of the company, Tita Rose did not come across any check signed by her late father representing payment to lessors as rentals for the house occupied by Corazon Garcia. Tita Rose added that the laminated photographs presented by Corazon Garcia are the personal collection of the deceased which were displayed at the latter's office.

The last witness who testified for the respondents was Ramon Pineda, driver and bodyguard of William Liyao from 1962 to 1974, who said that he usually reported for work at San Lorenzo Village, Makati to pick up his boss at 8:00 o'clock in the morning. At past 7:00 o'clock in the evening, either Carlos Palamigan or Serafin Villacillo took over as night shift driver. Sometime between April and May 1974, Mr. Liyao got sick. It was only after a month that he was able to report to the office. Thereafter, Mr. Liyao was not able to report to the office regularly. Sometime in September 1974, Mr. Liyao suffered from another heart attack. Mr. Pineda added that as a driver and bodyguard of Mr. Liyao, he ran errands for the latter among which was buying medicine for him like capasid and aldomet. On December 2, 1975, Mr. Pineda was called inside the office of Mr. Liyao. Mr. Pineda saw his employer leaning on the table. He tried to massage Mr. Liyao's breast and decided later to carry and bring him to the hospital but Mr. Liyao died upon arrival thereat. Mrs. Liyao and her daughter, Linda Liyao-Ortiga were the first to arrive at the hospital.

Mr. Pineda also declared that he knew Corazon Garcia to be one of the employees of the Republic Supermarket. People in the office knew that she was married. Her husband, Ramon Yulo, would sometimes go to the office. One time, in 1974, Mr. Pineda saw Ramon Yulo at the office garage as if to fetch Corazon Garcia. Mr. Yulo who was also asking about cars for sale, represented himself as car dealer.

Witness Pineda declared that he did not know anything about the claim of Corazon. He freely relayed the information that he saw Mr. Yulo in the garage of Republic Supermarket once in 1973 and then in 1974 to Atty. Quisumbing when he went to the latter's law office. Being the driver of Mr. Liyao for a number of years, Pineda said that he remembered having driven the group of Mr. Liyao, Atty. Astraquillo, Atty. Brillantes, Atty. Magno and Atty. Laguio to Baguio for a vacation together with the lawyers' wives. During his employment, as driver of Mr. Liyao, he does not remember driving for Corazon Garcia on a trip to Baguio or for activities like shopping.

On August 31, 1993, the trial court rendered a decision, the dispositive portion of which reads as follows:

WHEREFORE, judgment is hereby rendered in favor of the plaintiff and against the defendants as follows:

(a)

Confirming the appointment of Corazon G. Garcia as the guardian ad litem of the minor William Liyao, Jr.;

(b)

Declaring the minor William Liyao, Jr. as the illegitimate (spurious) son of the deceased William Liyao;

(c)

Ordering the defendants Juanita Tanhoti Liyao, Pearl Margaret L. Tan, Tita Rose L. Tan and Christian Liyao, to recognize, and acknowledge the minor William Liyao, Jr. as a compulsory heir of the deceased William Liyao, entitled to all succesional rights as such; and

(d)

Costs of suit.[21]

In ruling for herein petitioner, the trial court said it was convinced by preponderance of evidence that the deceased William Liyao sired William Liyao, Jr. since the latter was conceived at the time when Corazon Garcia cohabited with the deceased. The trial court observed that herein petitioner had been in continuous possession and enjoyment of the status of a child of the deceased by direct and overt acts of the latter such as securing the birth certificate of petitioner through his confidential secretary, Mrs. Virginia Rodriguez; openly and publicly acknowledging petitioner as his son; providing sustenance and even introducing herein petitioner to his legitimate children.

The Court of Appeals, however, reversed the ruling of the trial court saying that the law favors the legitimacy rather than the illegitimacy of the child and “the presumption of legitimacy is thwarted only on ethnic ground and by proof that marital intimacy between husband and wife was physically impossible at the period cited in Article 257 in relation to Article 255 of the Civil Code.” The appellate court gave weight to the testimonies of some witnesses for the respondents that Corazon Garcia and Ramon Yulo who were still legally married and have not secured legal separation, were seen in each other’s company during the supposed time that Corazon cohabited with the deceased William Liyao. The appellate court further noted that the birth certificate and the baptismal certificate of William Liyao, Jr. which were presented by petitioner are not sufficient to establish proof of paternity in the absence of any evidence that the deceased, William Liyao, had a hand in the preparation of said certificates and considering that his signature does not appear thereon. The Court of Appeals stated that neither do family pictures constitute competent proof of filiation. With regard to the passbook which was presented as evidence for petitioner, the appellate court observed that there was nothing in it to prove that the same was opened by William Liyao for either petitioner or Corazon Garcia since William Liyao’s signature and name do not appear thereon.

His motion for reconsideration having been denied, petitioner filed the present petition.

It must be stated at the outset that both petitioner and respondents have raised a number of issues which relate solely to the sufficiency of evidence presented by petitioner to establish his claim of filiation with the late William Liyao. Unfortunately, both parties have consistently overlooked the real crux of this litigation: May petitioner impugn his own legitimacy to be able to claim from the estate of his supposed father, William Liyao?

We deny the present petition.

Under the New Civil Code, a child born and conceived during a valid marriage is presumed to be legitimate.[22] The presumption of legitimacy of children does not only flow out from a declaration contained in the statute but is

based on the broad principles of natural justice and the supposed virtue of the mother. The presumption is grounded in a policy to protect innocent offspring from the odium of illegitimacy.[23]

The presumption of legitimacy of the child, however, is not conclusive and consequently, may be overthrown by evidence to the contrary. Hence, Article 255 of the New Civil Code[24] provides:

Article 255. Children born after one hundred and eighty days following the celebration of the marriage, and before three hundred days following its dissolution or the separation of the spouses shall be presumed to be legitimate.

Against this presumption no evidence shall be admitted other than that of the physical impossibility of the husband having access to his wife within the first one hundred and twenty days of the three hundred which preceded the birth of the child.

This physical impossibility may be caused:

1)

By the impotence of the husband;

2)

By the fact that husband and wife were living separately in such a way that access was not possible;

3)

By the serious illness of the husband.

Petitioner insists that his mother, Corazon Garcia, had been living separately for ten (10) years from her husband, Ramon Yulo, at the time that she cohabited with the late William Liyao and it was physically impossible for her to have sexual relations with Ramon Yulo when petitioner was conceived and born. To bolster his claim, petitioner presented a document entitled, "Contract of Separation,"[25] executed and signed by Ramon Yulo indicating a waiver of rights to any and all claims on any property that Corazon Garcia might acquire in the future.[26]

The fact that Corazon Garcia had been living separately from her husband, Ramon Yulo, at the time petitioner was conceived and born is of no moment. While physical impossibility for the husband to have sexual intercourse with his wife is one of the grounds for impugning the legitimacy of the child, it bears emphasis that the grounds for impugning the legitimacy of the child mentioned in Article 255 of the Civil Code may only be invoked by the husband, or in proper cases, his heirs under the conditions set forth under Article 262 of the Civil Code.[27] Impugning the legitimacy of the child is a strictly personal right of the husband, or in exceptional cases, his heirs for the simple reason that he is the one directly confronted with the scandal and ridicule which the infidelity of his wife produces and he should be the one to decide whether to conceal that infidelity or expose it in view of the moral and economic interest involved.[28] It is only in exceptional cases that his heirs are allowed to contest such legitimacy. Outside of these cases, none - even his heirs - can impugn legitimacy; that would amount to an insult to his memory.[29]

It is therefore clear that the present petition initiated by Corazon G. Garcia as guardian ad litem of the then minor, herein petitioner, to compel recognition by respondents of petitioner William Liyao, Jr, as the illegitimate son of the late William Liyao cannot prosper. It is settled that a child born within a valid marriage is presumed legitimate even though the mother may have declared against its legitimacy or may have been sentenced as an adulteress.[30] We cannot allow petitioner to maintain his present petition and subvert the clear mandate of the law that only the husband, or in exceptional circumstances, his heirs, could impugn the legitimacy of a child born

in a valid and subsisting marriage. The child himself cannot choose his own filiation. If the husband, presumed to be the father does not impugn the legitimacy of the child, then the status of the child is fixed, and the latter cannot choose to be the child of his mother's alleged paramour. On the other hand, if the presumption of legitimacy is overthrown, the child cannot elect the paternity of the husband who successfully defeated the presumption.[31]

Do the acts of Enrique and Bernadette Yulo, the undisputed children of Corazon Garcia with Ramon Yulo, in testifying for herein petitioner amount to impugnation of the legitimacy of the latter?

We think not. As earlier stated, it is only in exceptional cases that the heirs of the husband are allowed to contest the legitimacy of the child. There is nothing on the records to indicate that Ramon Yulo has already passed away at the time of the birth of the petitioner nor at the time of the initiation of this proceedings. Notably, the case at bar was initiated by petitioner himself through his mother, Corazon Garcia, and not through Enrique and Bernadette Yulo. It is settled that the legitimacy of the child can be impugned only in a direct action brought for that purpose, by the proper parties and within the period limited by law.

Considering the foregoing, we find no reason to discuss the sufficiency of the evidence presented by both parties on the petitioner's claim of alleged filiation with the late William Liyao. In any event, there is no clear, competent and positive evidence presented by the petitioner that his alleged father had admitted or recognized his paternity.

WHEREFORE, the instant petition is DENIED. The assailed decision of the Court of Appeals in CA-G.R. CV No. 45394 is hereby AFFIRMED. No costs.

**SO ORDERED.**

Bellosillo, (Chairman), Mendoza, Quisumbing, and Buena, JJ., concur.

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[1] Entitled, "William Liyao, Jr., represented by his mother and guardian ad litem, Corazon G. Garcia, plaintiff-appellee, v. Juanita Tanhoti-Liyao, Pearl Margaret L. Tan and Linda Christina Liyao, defendants-appellants, "Rollo, pp. 44-68.

[2] Records, Volume I, pp. 1-7.

[3] Records, Volume I, pp. 27-30; Rollo, pp. 69-72.

[4] Exhibit "K".

[5] Exhibit "K-3".

[6] Exhibits "J-1 - J-4, J-11 - J-13."

[7] Exhibits "N - N-5"

[8] Exhibits "N-10 - N-11, N-14 - N-15."

[9] TSN, January 15, 1987, p. 32.

[10] TSN, August 31, 1984, p. 23.

[11] TSN, August 31, 1984, p. 25.

[12] Exhibit "F-1".

[13] Exhibit "G-1".

[14] Exhibit “F”.

[15] Exhibit “G-1”.

[16] Exhibit “12”.

[17] Exhibit “3”.

[18] TSN, February 19, 1988, p. 45.

[19] Exhibit “13”.

[20] Exhibit “15”.

[21] CA Rollo, pp. 361-376.

[22] Article 255 of the Civil Code provides, “Children born after one hundred and eighty days following the celebration of the marriage, and before three hundred days following its dissolution or the separation of the spouses shall be presumed to be legitimate. xxx” Article 258 of the Civil Code also provides, “A child born within one hundred eighty days following the celebration of the marriage is prima facie presumed to be legitimate. x x x” A similar provision is now found in Article 164 of the Family Code which reads “Children conceived or born during the marriage of the parents are legitimate. Children conceived as a result of artificial insemination of the wife with the sperm of the husband or that of a donor are likewise legitimate children of the husband and his wife, provided that both of them authorized or ratified such insemination in a written instrument executed and signed by them before the birth of the child. The instrument shall be recorded in the civil registry together with the birth certificate of the child.”

[23] 10 Am Jur 2d, Bastards § 10 at 850.

[24] Article 166 of the Family Code has a similar provision.

[25] Exhibit “A”.

[26] Exhibit “B”.

[27] Now Article 171 of the Family Code.

[28] I Tolentino Civil Code 537 (1990) citing Bevilaqua, Familia, p.314 and Macadangdang v. CA, 100 SCRA 73 [1980].

[29] Ibid.

[30] Article 256 of the New Civil Code, now Article 167 of the Family Code.

[31] I Tolentino Civil Code 533 [1990] citing 1 Manresa 553.

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