

## **ERNESTINA BERNABE, PETITIONER, VS. CAROLINA ALEJO AS GUARDIAN AD LITEM FOR THE MINOR ADRIAN BERNABE, RESPONDENT.**

*G.R. No. 140500. January 21, 2002*

Ponente: PANGANIBAN, J.

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### **PANGANIBAN, J.:**

The right to seek recognition granted by the Civil Code to illegitimate children who were still minors at the time the Family Code took effect cannot be impaired or taken away. The minors have up to four years from attaining majority age within which to file an action for recognition.

#### Statement of the Case

Before us is a Petition[1] for Review on Certiorari under Rule 45 of the Rules of Court, praying for (1) the nullification of the July 7, 1999 Court of Appeals[2] (CA) Decision[3] in CA-GR CV No. 51919 and the October 14, 1999 CA Resolution[4] denying petitioner's Motion for Reconsideration, as well as (2) the reinstatement of the two Orders issued by the Regional Trial Court (RTC) of Pasay City (Branch 109) concerning the same case. The dispositive portion of the assailed Decision reads as follows:

“WHEREFORE, premises considered, the order of the lower court dismissing Civil Case No. 94-0562 is REVERSED and SET ASIDE. Let the records of this case be remanded to the lower court for trial on the merits.”[5]

#### The Facts

The undisputed facts are summarized by the Court of Appeals in this wise:

“The late Fiscal Ernesto A. Bernabe allegedly fathered a son with his secretary of twenty-three (23) years, herein plaintiff-appellant Carolina Alejo. The son was born on September 18, 1981 and was named Adrian Bernabe. Fiscal Bernabe died on August 13, 1993, while his wife Rosalina died on December 3 of the same year, leaving Ernestina as the sole surviving heir.

“On May 16, 1994, Carolina, in behalf of Adrian, filed the aforesaid complaint praying that Adrian be declared an acknowledged illegitimate son of Fiscal Bernabe and as such he (Adrian) be given his share in Fiscal Bernabe's estate, which is now being held by Ernestina as the sole surviving heir.

“On July 16, 1995, the Regional Trial Court dismissed the complaint, ruling that under the provisions of the Family Code as well as the case of Uyguangco vs. Court of Appeals, the complaint is now barred x x x.”[6]

#### Orders of the Trial Court

In an Order dated July 26, 1995, the trial court granted Ernestina Bernabe's Motion for Reconsideration of the trial court's Decision and ordered the dismissal of the Complaint for recognition. Citing Article 175 of the Family Code, the RTC held that the death of the putative father had barred the action.

In its Order dated October 6, 1995, the trial court added that since the putative father had not acknowledged or recognized Adrian Bernabe in writing, the action for recognition should have been filed during the lifetime of the alleged father to give him the opportunity to either affirm or deny the child's filiation.

#### Ruling of the Court of Appeals

On the other hand, the Court of Appeals ruled that in the interest of justice, Adrian should be allowed to prove that he was the illegitimate son of Fiscal Bernabe. Because the boy was born in 1981, his rights are governed by Article 285 of the Civil Code, which allows an action for recognition to be filed within four years after the child has attained the age of majority. The subsequent enactment of the Family Code did not take away that right.

Hence, this appeal.[7]

#### Issues

In her Memorandum,[8] petitioner raises the following issues for our consideration:

I

“Whether or not respondent has a cause of action to file a case against petitioner, the legitimate daughter of the putative father, for recognition and partition with accounting after the putative father's death in the absence of any written acknowledgment of paternity by the latter.

II

“Whether or not the Honorable Court of Appeals erred in ruling that respondents had four years from the attainment of minority to file an action for recognition as provided in Art. 285 of the Civil Code, in complete disregard of its repeal by the [express] provisions of the Family Code and the applicable jurisprudence as held by the Honorable Court of Appeals.

III

“Whether or not the petition for certiorari filed by the petition[er] is fatally defective for failure to implead the Court of Appeals as one of the respondents.”[9]

#### The Court's Ruling

The Petition has no merit.

#### First and Second Issues:

##### Period to File Action for Recognition

Because the first and the second issues are interrelated, we shall discuss them jointly.

Petitioner contends that respondent is barred from filing an action for recognition, because Article 285 of the Civil Code has been supplanted by the provisions of the Family Code. She argues that the latter Code should be given retroactive effect, since no vested right would be impaired. We do not agree.

Article 285 of the Civil Code provides the period for filing an action for recognition as follows:

“ART. 285. The action for the recognition of natural children may be brought only during the lifetime of the presumed parents, except in the following cases:

(1)

If the father or mother died during the minority of the child, in which case the latter may file the action before the expiration of four years from the attainment of his majority;

(2)

If after the death of the father or of the mother a document should appear of which nothing had been heard and in which either or both parents recognize the child.

“In this case, the action must be commenced within four years from the finding of the document.”

The two exceptions provided under the foregoing provision, have however been omitted by Articles 172, 173 and 175 of the Family Code, which we quote:

“ART. 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.”

“ART. 173. The action to claim legitimacy may be brought by the child during his or her lifetime and shall be transmitted to the heirs should the child die during minority or in a state of insanity. In these cases, the heirs shall have a period of five years within which to institute the action.

“The action already commenced by the child shall survive notwithstanding the death of either or both of the parties.”

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

“The action must be brought within the same period specified in Article 173, except when the action is based on the second paragraph of Article 172, in which case the action may be brought during the lifetime of the alleged parent.”

Under the new law, an action for the recognition of an illegitimate child must be brought within the lifetime of the alleged parent. The Family Code makes no distinction on whether the former was still a minor when the latter died. Thus, the putative parent is given by the new Code a chance to dispute the claim, considering that “illegitimate children are usually begotten and raised in secrecy and without the legitimate family being aware of their existence. x x x The putative parent should thus be given the opportunity to affirm or deny the child’s filiation, and this, he or she cannot do if he or she is already dead.”[10]

Nonetheless, the Family Code provides the caveat that rights that have already vested prior to its enactment

should not be prejudiced or impaired as follows:

“ART. 255. This Code shall have retroactive effect insofar as it does not prejudice or impair vested or acquired rights in accordance with the Civil Code or other laws.”

The crucial issue to be resolved therefore is whether Adrian’s right to an action for recognition, which was granted by Article 285 of the Civil Code, had already vested prior to the enactment of the Family Code. Our answer is affirmative.

A vested right is defined as “one which is absolute, complete and unconditional, to the exercise of which no obstacle exists, and which is immediate and perfect in itself and not dependent upon a contingency x x x.”[11] Respondent however contends that the filing of an action for recognition is procedural in nature and that “as a general rule, no vested right may attach to [or] arise from procedural laws.”[12]

Bustos v. Lucero[13] distinguished substantive from procedural law in these words:

“x x x. Substantive law creates substantive rights and the two terms in this respect may be said to be synonymous. Substantive rights is a term which includes those rights which one enjoys under the legal system prior to the disturbance of normal relations. Substantive law is that part of the law which creates, defines and regulates rights, or which regulates the rights and duties which give rise to a cause of action; that part of the law which courts are established to administer; as opposed to adjective or remedial law, which prescribes the method of enforcing rights or obtains redress for their invasion.”[14] (Citations omitted)

Recently, in Fabian v. Desierto,[15] the Court laid down the test for determining whether a rule is procedural or substantive:

“[I]n determining whether a rule prescribed by the Supreme Court, for the practice and procedure of the lower courts, abridges, enlarges, or modifies any substantive right, the test is whether the rule really regulates procedure, that is, the judicial process for enforcing rights and duties recognized by substantive law and for justly administering remedy and redress for a disregard or infraction of them. If the rule takes away a vested right, it is not procedural. If the rule creates a right such as the right to appeal, it may be classified as a substantive matter; but if it operates as a means of implementing an existing right then the rule deals merely with procedure.”[16]

Applying the foregoing jurisprudence, we hold that Article 285 of the Civil Code is a substantive law, as it gives Adrian the right to file his petition for recognition within four years from attaining majority age. Therefore, the Family Code cannot impair or take Adrian’s right to file an action for recognition, because that right had already vested prior to its enactment.

Uyguangco v. Court of Appeals[17] is not applicable to the case at bar, because the plaintiff therein sought recognition as an illegitimate child when he was no longer a minor. On the other hand, in Aruego Jr. v. Court of Appeals[18] the Court ruled that an action for recognition filed while the Civil Code was in effect should not be affected by the subsequent enactment of the Family Code, because the right had already vested.

Not Limited to  
Natural Children

To be sure, Article 285 of the Civil Code refers to the action for recognition of “natural” children. Thus, petitioner contends that the provision cannot be availed of by respondent, because at the time of his conception, his parents were impeded from marrying each other. In other words, he is not a natural child.

A “natural child” is one whose parents, at the time of conception, were not disqualified by any legal impediment from marrying each other. Thus, in De Santos v. Angeles,[19] the Court explained:

“A child’s parents should not have been disqualified to marry each other at the time of conception for him to qualify as a ‘natural child.’”[20]

A strict and literal interpretation of Article 285 has already been frowned upon by this Court in the aforesaid case of Aruego, which allowed minors to file a case for recognition even if their parents were disqualified from marrying each other. There, the Complaint averred that the late Jose Aruego Sr., a married man, had an extramarital liason with Luz Fabian. Out of this relationship were born two illegitimate children who in 1983 filed an action for recognition. The two children were born in 1962 and 1963, while the alleged putative father died in 1982. In short, at the time of their conception, the two children’s parents were legally disqualified from marrying each other. The Court allowed the Complaint to prosper, even though it had been filed almost a year after the death of the presumed father. At the time of his death, both children were still minors.

Moreover, in the earlier case *Divinagracia v. Rovira*,[21] the Court said that the rules on voluntary and compulsory acknowledgment of natural children, as well as the prescriptive period for filing such action, may likewise be applied to spurious children. Pertinent portions of the case are quoted hereunder:

“The so-called spurious children, or illegitimate children other than natural children, commonly known as bastards, include those adulterous children or those born out of wedlock to a married woman cohabiting with a man other than her husband or to a married man cohabiting with a woman other than his wife. They are entitled to support and successional rights. But their filiation must be duly proven.

“How should their filiation be proven? Article 289 of the Civil Code allows the investigation of the paternity or maternity or spurious children under the circumstances specified in articles 283 and 284 of the Civil Code. The implication is that the rules on compulsory recognition of natural children are applicable to spurious children.

“Spurious children should not be in a better position than natural children. The rules on proof of filiation of natural children or the rules on voluntary and compulsory acknowledgment for natural children may be applied to spurious children.

“That does not mean that spurious children should be acknowledged, as that term is used with respect to natural children. What is simply meant is that the grounds or instances for the acknowledgment of natural children are utilized to establish the filiation of spurious children.

“A spurious child may prove his filiation by means of a record of birth, a will, a statement before a court of record, or in any authentic writing. These are the modes of voluntary recognition of natural children.

“In case there is no evidence on the voluntary recognition of the spurious child, then his filiation may be established by means of the circumstances or grounds for compulsory recognition prescribed in the aforementioned articles 283 and 284.

“The prescriptive period for filing the action for compulsory recognition in the case of natural children, as provided for in article 285 of the Civil Code, applies to spurious children.”[22] (Citations omitted, italics supplied)

Thus, under the Civil Code, natural children have superior successional rights over spurious ones.[23] However, *Rovira* treats them as equals with respect to other rights, including the right to recognition granted by Article 285.

To emphasize, illegitimate children who were still minors at the time the Family Code took effect and whose putative parent died during their minority are thus given the right to seek recognition (under Article 285 of the Civil Code) for a period of up to four years from attaining majority age. This vested right was not impaired or taken away by the passage of the Family Code.

Indeed, our overriding consideration is to protect the vested rights of minors who could not have filed suit, on their own, during the lifetime of their putative parents. As respondent aptly points out in his Memorandum,[24] the State as *parens patriae* should protect a minor's right. Born in 1981, Adrian was only seven years old when the Family Code took effect and only twelve when his alleged father died in 1993. The minor must be given his day in court.

Third Issue:

Failure to Implead the CA

Under Section 4(a) of Rule 45 of the current Rules of Court, it is no longer required to implead "the lower courts or judges x x x either as petitioners or respondents." Under Section 3, however, the lower tribunal should still be furnished a copy of the petition. Hence, the failure of petitioner to implead the Court of Appeals as a party is not a reversible error; it is in fact the correct procedure.

WHEREFORE, the Petition is hereby DENIED and the assailed Decision and Resolution AFFIRMED. Costs against petitioner.

### **SO ORDERED.**

Melo, (Chairman), Sandoval-Gutierrez, and Carpio, JJ., concur.

Vitug, J., no part. Relationship with family.

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[1] Rollo, pp. 3-14. The Petition was signed by Atty. Wenceslao B. Trinidad.

[2] Special First Division; penned by J. Jesus M. Elbinias (presiding justice and Division chairman); concurred in by JJ Delilah Vidallon Magtolis and Edgardo P. Cruz (members).

[3] Rollo, pp. 33-37.

[4] Rollo, p. 18. J. Andres B. Reyes Jr. signed for J. Magtolis who was on leave.

[5] Assailed Decision, p. 5; Rollo, p. 37.

[6] Assailed Decision, pp. 1-2; Rollo, pp. 33-34.

[7] This case was deemed submitted for decision on August 16, 2000, upon this Court's receipt of petitioner's Memorandum signed by Atty. Jose Allan M. Tebelin. Respondent's Memorandum, signed by Attys. Felix D. Carao Jr. and R.A.V. Saguisag, was received by this Court on August 14, 2000.

[8] Rollo, pp. 103-116; original underscored and in upper case.

[9] Memorandum for petitioner, p. 4; Rollo, p. 106.

[10] Alicia V. Sempio-Diy, *Handbook on the Family Code* (1995 ed.), p. 282.

[11] *Reyes v. Commission on Audit*, 305 SCRA 512, 518, March 29, 1999, per Pardo, J.

[12] *Medina Investigation & Security Corporation v. Court of Appeals*, GR No. 144074, March 20, 2001, per Gonzaga-Reyes, J.

[13] 81 Phil. 648, March 8, 1949.

[14] *Ibid.*, pp. 649-650, per Tuason, J.

[15] 295 SCRA 470, 492, September 16, 1998.

[16] Ibid., p. 492, per Regalado, J.

[17] 178 SCRA 684, October 26, 1989.

[18] 254 SCRA 711, March 13, 1996.

[19] 251 SCRA 206, December 12, 1995.

[20] Ibid., p. 212, per Romero, J.

[21] 72 SCRA 307, August 10, 1976.

[22] Ibid., pp. 314-315, per Aquino, J. (later CJ).

[23] Cf. Jose C. Vitug, Compendium of Civil Law and Jurisprudence, (1993 rev. ed.), p.218.

[24] Pages 12-15.

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