

**MARY DE LA PEÑA, IN BEHALF OF THE MINOR TERESITA LIM,
PLAINTIFF AND APPELLANT, VS. PENG HUAN LIM, DEFENDANT AND
APPELLEE.**

G.R. No. 15146. May 30, 1961

Ponente: NATIVIDAD, J.

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NATIVIDAD, J.:

This is an action for acknowledgment and support. It was filed in the Court of First Instance of Negros Occidental by the plaintiff Mary de la Peña, in behalf of her minor daughter Teresita Lim, against the defendant Peng Huan Lim to compel the latter to acknowledge said minor as his natural child and to pay her P6,150.00 as support in arrears, and a monthly support of P50.00, plus attorney's fees in the sum of P1,000.00, and the cost of the proceedings.

The complaint alleges as cause of action that from January, 1946 to October, 1947, plaintiff Mary de la Peña and the defendant Peng Huan Lim lived together as husband and wife without the benefit of clergy in the city of Iloilo; that of that union the minor Teresita Lim was born on June 24, 1947; that at the time of Teresita's conception both plaintiff Mary de la Peña and defendant Peng Huan Lim were single; that the defendant paid the fees of the midwife who attended to the birth of Teresita, and from the latter's birth up to October, 1947, when plaintiff and defendant agreed to live separately, she has been enjoying the status of a natural child of defendant, and was supported by the latter who used to carry her in his arms, exhibiting her to the neighbors, and informing them that she was his child; that since November, 1947 up to the time the amended complaint in this case was filed in the court below (May 26, 1958), the defendant had failed to support the minor Teresita Lim, who is now in the primary grade of the North Elementary School in Bacolod City; that for this reason, the defendant owed said minor P6,150.00 as support in arrears for the period November, 1947 to February 28, 1958, which must be paid to her, plus P50.00 a month from March, 1958 until she attains the age of majority as monthly support. Hence, plaintiff asks that the defendant be ordered to pay to the minor Teresita Lim the sum of P6,150.00 as support in arrears for the period November, 1947 to February 28, 1958, with legal interest from March, 1958 until fully paid, and another sum of P50.00 a month from March 1, 1958 until said minor attains the age of majority, plus P1,000.00 as attorney's fees and the costs of the proceedings.

Defendant's answer consists of specific denials and affirmative defenses and a counterclaim. As affirmative defense, defendant alleges that the plaintiff has no legal capacity to institute the present action, and that the complaint states no cause of action. In counterclaim, he asks for judgment in the sum of P2,000.00 as moral damages, P300.00 as compensatory damages, and attorney's fees in the sum of P800.00.

After trial, the lower court rendered judgment dismissing plaintiff's complaint as well as defendant's counterclaim, without pronouncement as to the costs, on the finding that the plaintiff failed to present evidence sufficient to substantiate the allegations of her complaint. From this judgment, the plaintiff appealed.

The main questions raised in this appeal may be reduced to the following propositions: (1) whether or not plaintiff

had the legal capacity to initiate the present action; and (2) whether or not the trial court erred in finding that the evidence of the plaintiff failed to substantiate her complaint, and that the minor Teresita Lim was the natural child of the defendant and as such entitled to support from the latter, thus discrediting plaintiff Mary de la Peña and her witness, and believing the defendant and finding that the facts are as testified to by the latter.

It is thus seen that while an issue of law is raised in this appeal, nevertheless the other issue raised is essentially of fact. This case therefore is one in which issues of law and of fact are raised, and consequently the review of the judgment therein rendered by the trial court falls under the exclusive jurisdiction of the Court of Appeals (Section 17, par. 3 [5] of the Judiciary Act; *Estrada vs. Noble*, 87 Phil., 408; 48 Off. Gaz., 141; *Manuel C. Ramos, et al., vs. People's Surety and Insurance Co., Inc.*, G. R. No. L-7607, August 31, 1960; *Rosita Masangcay, et al., vs. Marcelo Valencia, et al.*, 109 Phil., 213.)

Wherefore, the Clerk of Court is hereby directed to certify this case to the Court of Appeals for proper action.

Bengzon, C.J., Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., Barrera, Paredes, Dizon, and De Leon, JJ., concur.

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