

JESUS GUARIÑA, DOLORES GUARIÑA AND THE LATE AMANDO GUARIÑA, SURVIVED BY ELAVIA, MANUEL I, MANUEL II, AMANDO I, AMANDO II, AND RAMON, ALL SURNAMED GUARIÑA, PLAINTIFFS AND APPELLA...

G.R. No. 15707. October 31, 1960

Ponente: BENGZON, J.

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BENGZON, J.:

In May, 1956, the plaintiffs sued the widow and the legitimate children of Mario Guariña, Sr., demanding partition of the properties left by the latter, who had died intestate in 1935. They alleged they were acknowledged illegitimate children and grandchildren of the said Mario Guarina, Sr.

The defendants, among other defenses, denied the asserted relationship.

After hearing the evidence for the plaintiffs, the court of first instance of Sorsogon dismissed the case, upon motion of defendants. The documents presented, it said, were legally insufficient to prove acknowledgment of paternity by the deceased.

Wherefore, this appeal was perfected in due time, and submitted to the Court of Appeals. However, that court forwarded the record here inasmuch as no factual controversy existed.

In support of their contention, plaintiffs presented Exhibits B, C and D-all in the Spanish tongue. No one doubts their authenticity. Exh. C, dated "Sorsogon, Octubre 1902" is a compromise agreement in a case between Mario Guariña[1] on one side and Eduvigis Huertas and her parents Cipriano Huertas, and Saturnina Gualtero on the other, in the court of first instance of Sorsogon. It contains several paragraphs. In the first, Mario acknowledged as his natural children, those born of Eduvigis named Amando, Jesus and Dolores and promised to make the formal acknowledgment as soon as possible. In the second, Mario agreed to pay (for fifteen years) a monthly pension of \$6.66 to such children, through the Clerk of Court of First Instance or such other person as may be designated by the Judge thereof. In the third, he donated to Eduvigis and said three children, a parcel of land in Juban same province, valued at 500 Mexican pesos "and in case this valuation should prove to be excessive in the opinion of such experts as the Hon. Judge should designate, I (Mario) promise to pay the difference." The fourth says this: "Para satisfacer todas las reclamaciones atra-zadas de cualquier concepto, incluyendo la pension atrasada y demas gastos y perjuicio, el referido Mario se compromete a pagar dentro de SESENTA dias (60) de firmado el presente convenio, la cantidad de DOSCIENTOS CINCUENTA MEX. (250.00)." Other provisions referred to a bond which Mario offered to furnish, and his right to the custody of the children should Eduvigis contract marriage within 15 years. The agreement was signed by the above-mentioned parties, and by Hon. A.C. Carson, then presiding judge of Sorsogon, later an honored member of this Court for some time.

In the third page of said Exh. C, Judge A.C. Carson, appointed on October 30, 1902, commissioners to appraise the land donated by Mario, and designated the justice of the peace of Juban to receive, for Eduvigis, the monthly

pensions agreed upon.

Exh. B is a notarial document dated February 18, 1903, whereby Mario Guarina expressly acknowledged as his natural children: Amando, baptized January 22, 1899; Jesus, baptized December 23, 1899 and Dolores, baptized October 21, 1902.[2]

Exh. D is a document signed by Mario Guarina in the presence of two witnesses whereby he transferred to Edu-vigis and her children (of both) another piece of land because the one he had ceded through Exh. C turned out to be less than 500 Mexican pesos according to the experts. It is dated June 7, 1903.

The trial judge, examining Exh. B, found that on the date thereof the three children were minors. And in the light of Art. 133 of the Civil Code providing that "the approval of the court shall be necessary to the acknowledgment of a minor, unless such acknowledgment be made in a certificate of birth or in a will," he held the acknowledgment to be insufficient due to lack of judicial approval (of Exh. B).

In so doing, he obviously took a restricted view of the documents before it. He failed to give effect to Exh. C which was an agreement (submitted to the court to terminate a case there pending), whereby Mario Guarina acknowledged Amando, Jesus and Dolores as his natural children, and promised to give them financial support. The document is signed by the judge, which means approval thereof. In fact, the same judge took other steps to implement the agreement[3], like designating the experts and directing the justice of the peace of Juban to receive the monthly pensions.

If anything, the act of Judge A. C. Carson meant tacit approval of the agreement and, consequently, of the acknowledgment of the children, which was evidently the principal theme thereof. Considering our pronouncements in *Castellort vs. Pasion*, 68 Phil., 224, the liberality of the Code towards voluntary recognition[4] and the purpose of the New Civil Code further to liberalize voluntary recognition, "so that natural children may not suffer,"[5] we hold that the documents exhibited below satisfy substantially the requisites of Arts. 131 and 133 of the Civil Code.

Besides, in line with our views in *Apacible vs. Castillo*, 74 Phil., 589, the lack of judicial approval-supposing there was none under Art. 133-is no obstacle to the enforcement of the acknowledgment made by Mario Guarina.

It will be noted that Art. 133 reads as follows:

"Art. 133. An adult person may not be acknowledged as a natural child without his consent.

The approval of the court, to be granted after hearing the prosecuting officer, shall be necessary to the acknowledgment of a minor unless acknowledgment be made in a certificate of birth or in a will.

The minor may in any case contest the acknowledgment within the four years next following the attainment of his or her majority."

From the terms of this article, it may be clearly inferred that judicial approval[6] is meant for the benefit of the minor.

Therefore, the lack or insufficiency of such approval, is not a defect available to the recognizing parent, but one which the minor may raise or waive. If after reaching majority, the minor consents to the acknowledgment, the lack of judicial approval should make no difference.

In this case, the plaintiffs after reaching majority, kept the acknowledgment papers, used the Guarina surname, and now claim their rights as acknowledged natural children.[7] Such conduct amounts to consent and cures the absence-if any-of court confirmation.[8]

We, therefore, hold that plaintiffs are acknowledged natural children (and grandchildren) of Mario Guariña, Sr. and as such entitled to their legal shares in the properties he left upon his death. The record will be returned to the Sorsogon court for further proceeding in partition. So ordered.

Paras, C.J., Padilla, Bautista Angela, Labrador, Concepcion, Reyes J.B.L., Barrera, Gutierrez David, and Paredes, JJ., concur.

Case remanded to lower court for further proceedings.

[1] Now known as Mario Guariña, Sr.

[2] These are the plaintiffs, Amando is dead; but he is represented by his children.

[3] There is even this handwritten note on the left margin of the first page of Exh. C. "In my presence the sum of \$250.00 mentioned (illegible) was paid to Eduvigis Huertas by (illegible) atty. for Mario Guariña. A.C. Carson."

[4] Apacible vs. Castillo, 74 Phil., 589.

[5] Report of Code Commission, p. 37, Padilla, Civil Code, 1956 Ed. Vol. I, p. 484.

[6] Intervention of fiscal not needed. This portion of the article repealed. (Willard Notes; Fisher, Civil Code comment under same art.)

[7] and [8] "Javelona vs. Monteclaro, 74 Phil., 393, 402; Apacible vs. Castillo, supra.

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