

**JENIE SAN JUAN DELA CRUZ AND MINOR CHRISTIAN DELA CRUZ
“AQUINO,” REPRESENTED BY JENIE SAN JUAN DELA
CRUZ, PETITIONERS, VS. RONALD PAUL S. GRACIA, IN HIS CAPACITY
AS CITY CIVIL R...**

G.R. No. 177728. July 31, 2009

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

For several months in 2005, then 21-year old petitioner Jenie San Juan Dela Cruz (Jenie) and then 19-year old Christian Dominique Sto. Tomas Aquino (Dominique) lived together as husband and wife without the benefit of marriage. They resided in the house of Dominique's parents Domingo B. Aquino and Raquel Sto. Tomas Aquino at Pulang-lupa, Dulumbayan, Teresa, Rizal.

On September 4, 2005, Dominique died.[1] After almost two months, or on November 2, 2005, Jenie, who continued to live with Dominique's parents, gave birth to her herein co-petitioner minor child Christian Dela Cruz "Aquino" at the Antipolo Doctors Hospital, Antipolo City.

Jenie applied for registration of the child's birth, using Dominique's surname Aquino, with the Office of the City Civil Registrar, Antipolo City, in support of which she submitted the child's Certificate of Live Birth,[2] Affidavit to Use the Surname of the Father[3] (AUSF) which she had executed and signed, and Affidavit of Acknowledgment executed by Dominique's father Domingo Butch Aquino.[4] Both affidavits attested, inter alia, that during the lifetime of Dominique, he had continuously acknowledged his yet unborn child, and that his paternity had never been questioned. Jenie attached to the AUSF a document entitled "AUTOBIOGRAPHY" which Dominique, during his lifetime, wrote in his own handwriting, the pertinent portions of which read:

AQUINO, CHRISTIAN DOMINIQUE S.T.

AUTOBIOGRAPHY

I'M CHRISTIAN DOMINIQUE STO. TOMAS AQUINO, 19 YEARS OF AGE TURNING 20 THIS COMING OCTOBER 31, 2005.[5] I RESIDE AT PULANG-LUPA STREET BRGY. DULUMBAYAN, TERESA, RIZAL. I AM THE YOUNGEST IN OUR FAMILY. I HAVE ONE BROTHER NAMED JOSEPH BUTCH STO. TOMAS AQUINO. MY FATHER'S NAME IS DOMINGO BUTCH AQUINO AND MY MOTHER'S NAME IS RAQUEL STO. TOMAS AQUINO. x x x.

x x x x

AS OF NOW I HAVE MY WIFE NAMED JENIE DELA CRUZ. WE MET EACH OTHER IN OUR HOMETOWN, TEREZA RIZAL. AT FIRST WE BECAME GOOD FRIENDS, THEN WE FELL IN LOVE WITH EACH OTHER, THEN WE BECAME GOOD COUPLES. AND AS OF NOW SHE IS PREGNANT AND FOR THAT WE LIVE TOGETHER IN OUR HOUSE NOW. THAT'S ALL.[6] (Emphasis and underscoring supplied)

By letter dated November 11, 2005,[7] the City Civil Registrar of Antipolo City, Ronald Paul S. Gracia (respondent), denied Jenie's application for registration of the child's name in this wise:

7. Rule 7 of Administrative Order No. 1, Series of 2004 (Implementing Rules and Regulations of Republic Act No. 9255 ["An Act Allowing Illegitimate Children to Use the Surname of their Father, Amending for the Purpose, Article 176 of Executive Order No. 209, otherwise Known as the `Family Code of the Philippines"']) provides that:

Rule 7. Requirements for the Child to Use the Surname of the Father

7.1 For Births Not Yet Registered

7.1.1 The illegitimate child shall use the surname of the father if a public document is executed by the father, either at the back of the Certificate of Live Birth or in a separate document.

7.1.2 If admission of paternity is made through a private handwritten instrument, the child shall use the surname of the father, provided the registration is supported by the following documents:

- a. AUSF[8]
- b. Consent of the child, if 18 years old and over at the time of the filing of the document.
- c. Any two of the following documents showing clearly the paternity between the father and the child:
 1. Employment records
 2. SSS/GSIS records
 3. Insurance
 4. Certification of membership in any organization
 5. Statement of Assets and Liability
 6. Income Tax Return (ITR)

In summary, the child cannot use the surname of his father because he was born out of wedlock and the father unfortunately died prior to his birth and has no more capacity to acknowledge his paternity to the child (either through the back of Municipal Form No. 102 - Affidavit of Acknowledgment/Admission of Paternity - or the Authority to Use the Surname of the Father). (Underscoring supplied)

Jenie and the child promptly filed a complaint[9] for injunction/registration of name against respondent before the Regional Trial Court of Antipolo City, docketed as SCA Case No. 06-539, which was raffled to Branch 73 thereof. The complaint alleged that, inter alia, the denial of registration of the child's name is a violation of his right to use the surname of his deceased father under Article 176 of the Family Code, as amended by Republic Act (R.A.) No. 9255,[10] which provides:

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. However, illegitimate children may use the surname of their father if their filiation has been expressly recognized by the father through the record of birth appearing in the civil register, or when an admission in a public document or private handwritten instrument is made by the father. Provided, the father has the right to institute an action before the regular courts to prove non-filiation during his lifetime. The legitime of each illegitimate child shall consist of one-half of the legitime of a legitimate child. (Emphasis and underscoring supplied)

They maintained that the Autobiography executed by Dominique constitutes an admission of paternity in a "private handwritten instrument" within the contemplation of the above-quoted provision of law.

For failure to file a responsive pleading or answer despite service of summons, respondent was declared in default.

Jenie thereupon presented evidence ex-parte. She testified on the circumstances of her common-law relationship with Dominique and affirmed her declarations in her AUSF that during his lifetime, he had acknowledged his yet unborn child.[11] She offered Dominique's handwritten Autobiography (Exhibit "A") as her documentary evidence-in-chief.[12] Dominique's lone brother, Joseph Butch S.T. Aquino, also testified, corroborating Jenie's declarations.[13]

By Decision[14] of April 25, 2007, the trial court dismissed the complaint "for lack of cause of action" as the Autobiography was unsigned, citing paragraph 2.2, Rule 2 (Definition of Terms) of Administrative Order (A.O.) No. 1, Series of 2004 (the Rules and Regulations Governing the Implementation of R.A. 9255) which defines "private handwritten document" through which a father may acknowledge an illegitimate child as follows:

2.2 Private handwritten instrument - an instrument executed in the handwriting of the father and duly signed by him where he expressly recognizes paternity to the child. (Underscoring supplied)

The trial court held that even if Dominique was the author of the handwritten Autobiography, the same does not contain any express recognition of paternity.

Hence, this direct resort to the Court via Petition for Review on Certiorari raising this purely legal issue of:

WHETHER OR NOT THE UNSIGNED HANDWRITTEN STATEMENT OF THE DECEASED FATHER OF MINOR CHRISTIAN DELA CRUZ CAN BE CONSIDERED AS A RECOGNITION OF PATERNITY IN A "PRIVATE HANDWRITTEN INSTRUMENT" WITHIN THE CONTEMPLATION OF ARTICLE 176 OF THE FAMILY CODE, AS AMENDED BY R.A. 9255, WHICH ENTITLES THE SAID MINOR TO USE HIS FATHER'S SURNAME.[15] (Underscoring supplied)

Petitioners contend that Article 176 of the Family Code, as amended, does not expressly require that the private handwritten instrument containing the putative father's admission of paternity must be signed by him. They add that the deceased's handwritten Autobiography, though unsigned by him, is sufficient, for the requirement in the above-quoted paragraph 2.2 of the Administrative Order that the admission/recognition must be "duly signed" by the father is void as it "unduly expanded" the earlier-quoted provision of Article 176 of the Family Code.[16]

Petitioners further contend that the trial court erred in not finding that Dominique's handwritten Autobiography contains a "clear and unmistakable" recognition of the child's paternity.[17]

In its Comment, the Office of the Solicitor General (OSG) submits that respondent's position, as affirmed by the trial court, is in consonance with the law and thus prays for the dismissal of the petition. It further submits that Dominique's Autobiography "merely acknowledged Jenie's pregnancy but not [his] paternity of the child she was carrying in her womb." [18]

Article 176 of the Family Code, as amended by R.A. 9255, permits an illegitimate child to use the surname of his/her father if the latter had expressly recognized him/her as his offspring through the record of birth appearing in the civil register, or through an admission made in a public or private handwritten instrument. The recognition made in any of these documents is, in itself, a consummated act of acknowledgment of the child's paternity; hence, no separate action for judicial approval is necessary.[19]

Article 176 of the Family Code, as amended, does not, indeed, explicitly state that the private handwritten instrument acknowledging the child's paternity must be signed by the putative father. This provision must, however, be read in conjunction with related provisions of the Family Code which require that recognition by the father must bear his signature, thus:

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

x x x x

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.

x x x x (Emphasis and underscoring supplied)

That a father who acknowledges paternity of a child through a written instrument must affix his signature thereon is clearly implied in Article 176 of the Family Code. Paragraph 2.2, Rule 2 of A.O. No. 1, Series of 2004, merely articulated such requirement; it did not "unduly expand" the import of Article 176 as claimed by petitioners.

In the present case, however, special circumstances exist to hold that Dominique's Autobiography, though unsigned by him, substantially satisfies the requirement of the law.

First, Dominique died about two months prior to the child's birth. Second, the relevant matters in the Autobiography, unquestionably handwritten by Dominique, correspond to the facts culled from the testimonial evidence Jenie proffered.[20] Third, Jenie's testimony is corroborated by the Affidavit of Acknowledgment of Dominique's father Domingo Aquino and testimony of his brother Joseph Butch Aquino whose hereditary rights could be affected by the registration of the questioned recognition of the child. These circumstances indicating Dominique's paternity of the child give life to his statements in his Autobiography that "JENIE DELA CRUZ" is "MY WIFE" as "WE FELL IN LOVE WITH EACH OTHER" and "NOW SHE IS PREGNANT AND FOR THAT WE LIVE TOGETHER."

In *Herrera v. Alba*,[21] the Court summarized the laws, rules, and jurisprudence on establishing filiation, discoursing in relevant part:

Laws, Rules, and Jurisprudence
Establishing Filiation

The relevant provisions of the Family Code provide as follows:

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

x x x x

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.

The Rules on Evidence include provisions on pedigree. The relevant sections of Rule 130 provide:

SEC. 39. Act or declaration about pedigree. -- The act or declaration of a person deceased, or unable to testify, in

respect to the pedigree of another person related to him by birth or marriage, may be received in evidence where it occurred before the controversy, and the relationship between the two persons is shown by evidence other than such act or declaration. The word "pedigree" includes relationship, family genealogy, birth, marriage, death, the dates when and the places where these facts occurred, and the names of the relatives. It embraces also facts of family history intimately connected with pedigree.

SEC. 40. Family reputation or tradition regarding pedigree. -- The reputation or tradition existing in a family previous to the controversy, in respect to the pedigree of any one of its members, may be received in evidence if the witness testifying thereon be also a member of the family, either by consanguinity or affinity. Entries in family bibles or other family books or charts, engraving on rings, family portraits and the like, may be received as evidence of pedigree.

This Court's rulings further specify what incriminating acts are acceptable as evidence to establish filiation. In *Pe Lim v. CA*, a case petitioner often cites, we stated that the issue of paternity still has to be resolved by such conventional evidence as the relevant incriminating verbal and written acts by the putative father. Under Article 278 of the New Civil Code, voluntary recognition by a parent shall be made in the record of birth, a will, a statement before a court of record, or in any authentic writing. To be effective, the claim of filiation must be made by the putative father himself and the writing must be the writing of the putative father. A notarial agreement to support a child whose filiation is admitted by the putative father was considered acceptable evidence. Letters to the mother vowing to be a good father to the child and pictures of the putative father cuddling the child on various occasions, together with the certificate of live birth, proved filiation. However, a student permanent record, a written consent to a father's operation, or a marriage contract where the putative father gave consent, cannot be taken as authentic writing. Standing alone, neither a certificate of baptism nor family pictures are sufficient to establish filiation. (Emphasis and underscoring supplied.)

In the case at bar, there is no dispute that the earlier quoted statements in Dominique's Autobiography have been made and written by him. Taken together with the other relevant facts extant herein - that Dominique, during his lifetime, and Jenie were living together as common-law spouses for several months in 2005 at his parents' house in Pulang-lupa, Dulumbayan, Teresa, Rizal; she was pregnant when Dominique died on September 4, 2005; and about two months after his death, Jenie gave birth to the child - they sufficiently establish that the child of Jenie is Dominique's.

In view of the pronouncements herein made, the Court sees it fit to adopt the following rules respecting the requirement of affixing the signature of the acknowledging parent in any private handwritten instrument wherein an admission of filiation of a legitimate or illegitimate child is made:

- 1) Where the private handwritten instrument is the lone piece of evidence submitted to prove filiation, there should be strict compliance with the requirement that the same must be signed by the acknowledging parent; and
- 2) Where the private handwritten instrument is accompanied by other relevant and competent evidence, it suffices that the claim of filiation therein be shown to have been made and handwritten by the acknowledging parent as it is merely corroborative of such other evidence.

Our laws instruct that the welfare of the child shall be the "paramount consideration" in resolving questions affecting him.[22] 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

1. 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.[23] (Underscoring supplied)

It is thus "(t)he policy of the Family Code to liberalize the rule on the investigation of the paternity and filiation of children, especially of illegitimate children x x x." [24] Too, "(t)he State as parens patriae affords special protection to children from abuse, exploitation and other conditions prejudicial to their development." [25]

In the eyes of society, a child with an unknown father bears the stigma of dishonor. It is to petitioner minor child's best interests to allow him to bear the surname of the now deceased Dominique and enter it in his birth certificate.

WHEREFORE, the petition is GRANTED. The City Civil Registrar of Antipolo City is DIRECTED to immediately enter the surname of the late Christian Dominique Sto. Tomas Aquino as the surname of petitioner minor Christian dela Cruz in his Certificate of Live Birth, and record the same in the Register of Births.

SO ORDERED.

Quisumbing, (Chairperson), Chico-Nazario, Leonardo-De Castro, and Peralta, [*] JJ., concur.

[*] Additional member per Special Order No. 664 dated July 15, 2009.

[1] Annex "B" (Certificate of Death), Petition; rollo, pp. 21-22.

[2] Annex "C," Petition; id. at 23-24. Under the "Affidavit of Acknowledgment /Admission of Paternity" portion of the child's birth certificate, only petitioner Jenie signed as the child's mother, leaving blank the space for the father's signature as the latter died about two months prior to the child's birth.

[3] Annex "D," Petition; id. at 25.

[4] Annex "E," id. at 26.

[5] Dominique was born on October 31, 1985 as shown in his Certificate of Live Birth; rollo, p. 27.

[6] Annex "A," Petition; rollo, p. 20.

[7] Annex "F," id. at 28-30.

[8] This Affidavit to Use Surname of the Father may be executed by "the father, mother, child if of age, or the guardian, x x x in order for the child to use the surname of the father" (Rule 3 of Administrative Order No. 1, Series of 2004).

[9] Rollo, pp. 15-19.

[10] "AN ACT ALLOWING ILLEGITIMATE CHILDREN TO USE THE SURNAME OF THEIR FATHER, AMENDING FOR THE PURPOSE, ARTICLE 176 OF EXECUTIVE ORDER NO. 209, OTHERWISE KNOWN AS THE 'FAMILY CODE OF THE PHILIPPINES'."

[11] Decision dated April 25, 2007 of the RTC of Antipolo City, Branch 73; rollo, p. 13.

[12] Ibid.

[13] Ibid.

[14] Id. at 12-14.

[15] Id. at 6.

[16] Id. at 7.

[17] Id. at 8.

[18] Id. at 55-56.

[19] De Jesus v. Estate of Decedent Juan Gamboa Dizon, G.R. No. 142877, October 2, 2001, 366 SCRA 499, 503.

[20] See Reyes v. Court of Appeals, No. L-39537, March 19, 1985, 135 SCRA 439, 450, citing Varela v. Villanueva, 95 Phil. 248 (1954).

[21] G.R. No. 148220, June 15, 2005, 460 SCRA 197, 206-208.

[22] Concepcion v. Court of Appeals, G.R. No. 123450, August 31, 2005, 468 SCRA 438, 457, citing Article 8 of Presidential Decree 603 (The Child and Youth Welfare Code).

[23] Cited in Concepcion v. Court of Appeals, id.

[24] Herrera v. Alba, supra note 21 at 219.

[25] Concepcion v. Court of Appeals, supra note 22.

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