

BEN-HUR NEPOMUCENO, PETITIONER, VS. ARHBENCEL ANN LOPEZ, REPRESENTED BY HER MOTHER ARACELI LOPEZ, RESPONDENT.

G.R. No. 181258. March 18, 2010

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

Respondent Arhbencil Ann Lopez (Arhbencil), represented by her mother Araceli Lopez (Araceli), filed a Complaint^[1] with the Regional Trial Court (RTC) of Caloocan City for recognition and support against Ben-Hur Nepomuceno (petitioner).

Born on June 8, 1999, Arhbencil claimed to have been begotten out of an extramarital affair of petitioner with Araceli; that petitioner refused to affix his signature on her Certificate of Birth; and that, by a handwritten note dated August 7, 1999, petitioner nevertheless obligated himself to give her financial support in the amount of P1,500 on the 15th and 30th days of each month beginning August 15, 1999.

Arguing that her filiation to petitioner was established by the handwritten note, Arhbencil prayed that petitioner be ordered to: (1) recognize her as his child, (2) give her support pendente lite in the increased amount of P8,000 a month, and (3) give her adequate monthly financial support until she reaches the age of majority.

Petitioner countered that Araceli had not proven that he was the father of Arhbencil; and that he was only forced to execute the handwritten note on account of threats coming from the National People's Army.^[2]

By Order of July 4, 2001,^[3] Branch 130 of the Caloocan RTC, on the basis of petitioner's handwritten note which it treated as "contractual support" since the issue of Arhbencil's filiation had yet to be determined during the hearing on the merits, granted Arhbencil's prayer for support pendente lite in the amount of P3,000 a month.

After Arhbencil rested her case, petitioner filed a demurrer to evidence which the trial court granted by Order dated June 7, 2006,^[4] whereupon the case was dismissed for insufficiency of evidence.

The trial court held that, among other things, Arhbencil's Certificate of Birth was not prima facie evidence of her filiation to petitioner as it did not bear petitioner's signature; that petitioner's handwritten undertaking to provide support did not contain a categorical acknowledgment that Arhbencil is his child; and that there was no showing that petitioner performed any overt act of acknowledgment of Arhbencil as his illegitimate child after the execution of the note.

On appeal by Arhbencil, the Court of Appeals, by Decision of July 20, 2007,^[5] reversed the trial court's decision, declared Arhbencil to be petitioner's illegitimate daughter and accordingly ordered petitioner to give Arhbencil financial support in the increased amount of P4,000 every 15th and 30th days of the month, or a total of P8,000 a month.

The appellate court found that from petitioner's payment of Araceli's hospital bills when she gave birth to Arhbencil and his subsequent commitment to provide monthly financial support, the only logical conclusion to be

drawn was that he was Arhbencel's father; that petitioner merely acted in bad faith in omitting a statement of paternity in his handwritten undertaking to provide financial support; and that the amount of P8,000 a month was reasonable for Arhbencel's subsistence and not burdensome for petitioner in view of his income.

His Motion for Reconsideration having been denied by Resolution dated January 3, 2008,[6] petitioner comes before this Court through the present Petition for Review on Certiorari.[7]

Petitioner contends that nowhere in the documentary evidence presented by Araceli is an explicit statement made by him that he is the father of Arhbencel; that absent recognition or acknowledgment, illegitimate children are not entitled to support from the putative parent; that the supposed payment made by him of Araceli's hospital bills was neither alleged in the complaint nor proven during the trial; and that Arhbencel's claim of paternity and filiation was not established by clear and convincing evidence.

Arhbencel avers in her Comment that petitioner raises questions of fact which the appellate court had already addressed, along with the issues raised in the present petition.[8]

The petition is impressed with merit.

The relevant provisions of the Family Code[9] that treat of the right to support are Articles 194 to 196, thus:

Article 194. Support comprises everything indispensable for sustenance, dwelling, clothing, medical attendance, education and transportation, in keeping with the financial capacity of the family.

The education of the person entitled to be supported referred to in the preceding paragraph shall include his schooling or training for some profession, trade or vocation, even beyond the age of majority. Transportation shall include expenses in going to and from school, or to and from place of work.

Article 195. Subject to the provisions of the succeeding articles, the following are obliged to support each other to the whole extent set forth in the preceding article:

- The spouses;
- Legitimate ascendants and descendants;
- Parents and their legitimate children and the legitimate and illegitimate children of the latter;
- Parents and their illegitimate children and the legitimate and illegitimate children of the latter; and
- Legitimate brothers and sisters, whether of the full or half-blood.

Article 196. Brothers and sisters not legitimately related, whether of the full or half-blood, are likewise bound to support each other to the full extent set forth in Article 194, except only when the need for support of the brother or sister, being of age, is due to a cause imputable to the claimant's fault or negligence. (emphasis and underscoring supplied)

Arhbencel's demand for support, being based on her claim of filiation to petitioner as his illegitimate daughter, falls under Article 195(4). As such, her entitlement to support from petitioner is dependent on the determination of her filiation.

Herrera v. Alba[10] summarizes the laws, rules, and jurisprudence on establishing filiation, discoursing in relevant part as follows:

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 present case, Arhbencel relies, in the main, on the handwritten note executed by petitioner which reads:

Manila, Aug. 7, 1999

I, Ben-Hur C. Nepomuceno, hereby undertake to give and provide financial support in the amount of P1,500.00 every fifteen and thirtieth day of each month for a total of P3,000.00 a month starting Aug. 15, 1999, to Ahrbencel Ann Lopez, presently in the custody of her mother Araceli Lopez without the necessity of demand, subject to adjustment later depending on the needs of the child and my income.

The abovequoted note does not contain any statement whatsoever about Arhbencel's filiation to petitioner. It is, therefore, not within the ambit of Article 172(2) vis-à-vis Article 175 of the Family Code which admits as competent evidence of illegitimate filiation an admission of filiation in a private handwritten instrument signed by the parent concerned.

The note cannot also be accorded the same weight as the notarial agreement to support the child referred to in Herrera. For it is not even notarized. And Herrera instructs that the notarial agreement must be accompanied by the putative father's admission of filiation to be an acceptable evidence of filiation. Here, however, not only has petitioner not admitted filiation through contemporaneous actions. He has consistently denied it.

The only other documentary evidence submitted by Arhbencel, a copy of her Certificate of Birth,[11] has no probative value to establish filiation to petitioner, the latter not having signed the same.

At bottom, all that Arhbencel really has is petitioner's handwritten undertaking to provide financial support to her which, without more, fails to establish her claim of filiation. The Court is mindful that the best interests of the child in cases involving paternity and filiation should be advanced. It is, however, just as mindful of the disturbance that unfounded paternity suits cause to the privacy and peace of the putative father's legitimate family.

WHEREFORE, the petition is GRANTED. The Court of Appeals Decision of July 20, 2007 is SET ASIDE. The Order dated June 7, 2006 of Branch 130 of the Caloocan City RTC dismissing the complaint for insufficiency of evidence is REINSTATED.

SO ORDERED.

Puno, C.J., Leonardo-De Castro, Bersamin, and Villarama, Jr., concur.

[1] Rollo, pp. 117-120.

[2] Id. at 29, 87.

[3] Id. at 86-90.

[4] Id. at 109-116.

[5] Penned by Associate Justice Conrado M. Vasquez, Jr., with the concurrence of Associate Justices Edgardo F. Sundiam and Monina Arevalo-Zenarosa; id. at 53-65.

[6] Id. at 50-51.

[7] Id. at 25-48.

[8] Id. at 127-130.

[9] Executive Order No. 209 as amended.

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

[11] Rollo, p. 121.

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