

PAULA CONDE, PLAINTIFF AND APPELLEE, VS. ROMAN ABAYA, DEFENDANT AND APPELLANT.

G.R. No. 4275. March 23, 1909

Ponente: ARELLANO, C.J.

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ARELLANO, C.J.:

From the hearing of the appeal interposed by Roman Abaya in the special proceedings brought in the Court of First Instance of La Laguna for the settlement of the intestate estate and the distribution of the property of Casiano Abaya it appears:

I. As antecedents: that Casiano Abaya, unmarried, the son of Romualdo Abaya and Sabina Labadia, died on the 6th of April, 1899; that Paula Conde, as the mother of the natural children Jose and Teopista Conde, whom she states she had by Casiano Abaya, on the 6th of November, 1905, moved the settlement of the said intestate succession; that an administrator having been appointed for the said estate on the 25th of November, 1905, Roman Abaya, a son of the said Romualdo Abaya and Sabina Labadia, the parents of the late Casiano Abaya, came forward and opposed said appointment and claimed it for himself as being the nearest relative of the deceased; that this was granted by the court below on the 9th of January, 1906; that on the 17th of November, 1906, Roman Abaya moved that, after due process of law, the court declare him to be the sole heir of Casiano Abaya, to the exclusion of all other persons, especially of Paula Conde, and to be therefore entitled to take possession of all the property of said estate, and that it be adjudicated to him; and that on November 22, 1906, the court ordered the publication of notices for the declaration of heirs and distribution of the property of the estate.

II. That on the 28th of November, 1906, Paula Conde, in reply to the foregoing motion of Roman Abaya, filed a petition wherein she stated that she acknowledged the relationship alleged by Roman Abaya, but that she considered that her right, was superior to his and moved for a hearing of the matter, and, in consequence of the evidence that she intended to present she prayed that she be declared to have preferential rights to the property left by Casiano Abaya, and that the same be adjudicated to her together with the corresponding products thereof.

III. That the trial was held, both parties presenting documentary and oral evidence and the court below entered the following judgment:

"That the administrator of the estate of Casiano Abaya should recognize Teopista and Jose Conde as being natural children of Casiano Abaya; that the petitioner Paula Conde should succeed to the hereditary rights of her children with respect to the inheritance of their deceased natural father Casiano Abaya; and therefore, it is hereby declared that she is the only heir to the property of the said intestate estate, to the exclusion of the administrator, Roman Abaya."

IV. That Roman Abaya excepted to the foregoing judgment, appealed to this court, and presented the following statement of errors:

- The fact that the court below found that an ordinary action for the acknowledgment of natural children under articles 135 and 137 of the Civil Code, might be brought in special probate proceedings.

- The finding that after the death of a person claimed to be an unacknowledged natural child, the mother of such presumed natural child, as heir to the latter, may bring an action to enforce the acknowledgment of her deceased child in accordance with articles 135 and 137 of the Civil Code.
- The finding in the judgment that the alleged continuous possession of the deceased children of Paula Conde of the status of natural children of the late Casiano Abaya, has been fully proven in these proceedings; and
- On the hypothesis that it was proper to adjudicate the property of this intestate estate to Paula Conde, as improperly found by the court below, the court erred in not having declared that said property should be reserved in favor of relatives of Casiano Abaya to the third degree, and in not having previously demanded securities from Paula Conde to guarantee the transmission of the property to those who might fall within the reservation.

As to the first error assigned, the question is set up as to whether in special proceedings for the administration and distribution of an intestate estate, an action might be brought to enforce the acknowledgment of the natural child of the person from whom the inheritance is derived, that is to say, whether one might appear as heir on the ground that he is a recognized natural child of the deceased, not having been so recognized by the deceased either voluntarily or compulsorily by reason of a preexisting judicial decision, but asking at the same time that, in the special proceeding itself, he be recognized by the presumed legitimate heirs of the deceased who claim to be entitled to the succession opened in the special proceeding.

According to section 782 of the Code of Civil Procedure-

"If there shall be a controversy before the Court of First Instance as to who the lawful heirs of the deceased person are, or as to the distributive share to which each person is entitled under the law, the testimony as to such controversy shall be taken in writing, by the judge, under oath, and signed by the witness. Any party in interest whose distributive share is affected by the determination of such controversy, may appeal from the judgment of the Court of First Instance determining such controversy to the Supreme Court, within the time and in the manner provided in the last preceding section."

This court has decided the present question in the manner shown in the case of Juana Pimentel vs. Engracio Palanca (5 Phil. Rep., 436.)

The main question with regard to the second error assigned, is whether or not the mother of a natural child now deceased, but who survived the person who, it is claimed, was his natural father, also deceased, may bring an action for the acknowledgment of the natural filiation in favor of such child in order to appear in his behalf to receive the inheritance from the person who is supposed to be his natural father.

In order to decide in the affirmative the court below has assigned the following as the only foundation:

"In resolving a similar question Manresa says: 'An acknowledgment can only be demanded by the natural child and his descendants whom it shall benefit, and should they be minors or otherwise incapacitated, such person as legally represents them; the mother may ask it in behalf of her child so long as he is under her authority.' On this point no positive declaration has been made, undoubtedly because it was not considered necessary. A private action is in question and the general rule must be followed. Elsewhere the same author adds: 'It may so happen that the child dies before four years have expired after attaining majority, or that the document supporting his petition for acknowledgment is discovered after his death, such death perhaps occurring after his parents had died, as is supposed by article 137, or during their lifetime. In any case such right of action shall pertain to the descendants of the child whom the acknowledgment may interest.' (See Commentaries to arts. 135 and 137, Civil Code, Vol. I.)"

The above doctrine, advanced by one of the most eminent commentators of the Civil Code, lacks legal and doctrinal foundation. The power to transmit the right of such action by the natural child to his descendants can not

be sustained under the law, and still less to his mother.

It is without any support in law because the rule laid down in the code is most positive, limiting in form, when establishing the exception for the exercise of such right of action after the death of the presumed parents, as is shown hereafter. It is not supported by any doctrine, because up to the present time no argument has been presented, upon which even an approximate conclusion could be based.

Although the Civil Code considerably improved the condition of recognized natural children, granting them rights and actions that they did not possess under the former laws, they were not, however, placed upon the same plane as legitimate ones. The difference that separates these two classes of children is still great, as proven by so many articles dealing with the rights of the family and with succession in relation to the members thereof. It may be laid down as a legal maxim, that whatever the code does not grant to the legitimate children, or in connection with their rights must still less be understood as granted to recognized natural children or in connection with their rights. There is not a single exception in its provisions.

If legitimacy is the attribute that constitutes the basis of the absolute family rights of the child, the acknowledgment of the natural child is, among illegitimate ones, that which unites him to the family of the father or the mother who recognizes him, and affords him a participation in the rights of the family, relatively advantageous according to whether they are alone or whether they concur with other individuals of the family of his purely natural father or mother.

Thus, in order to consider the spirit of the Civil Code, nothing is more logical than to establish a comparison between an action to claim the legitimacy, and one to enforce acknowledgment.

"ART. 118. The action to claim its legitimacy may be brought by the child at any time of its lifetime and shall be transmitted to its heirs, should it die during minority or in a state of insanity. In such cases the heirs shall be allowed a period of five years in which to institute the action.

"The action already instituted by the child is transmitted by its death to the heirs, if it has not lapsed before then.

"ART. 137. The actions for the acknowledgment of natural children can be instituted only during the life 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 institute the action before the expiration of the first four years of its majority.

"2. If, after the death of the father or mother, some instrument, before unknown, should be discovered in which the child is expressly acknowledged.

"In this case the action must be instituted within the six months following the discovery of such instrument"

On this supposition the first difference that results between one action and the other consists in that the right of action for legitimacy lasts during the whole lifetime of the child, that is, it can always be brought against the presumed parents or their heirs by the child itself, while the right of action for the acknowledgment of a natural child does not last his whole lifetime, and, as a general rule, it can not be instituted against the heirs of the presumed parents, inasmuch as it can be exercised only during the life of the presumed parents.

With regard to the question at issue, that is, the transmission to the heirs of the presumed parents of the obligation to admit the legitimate filiation, or to recognize the natural filiation, there exists the most radical difference in that the former continues during the life of the child who claims to be legitimate, and he may demand it either directly and primarily from the said presumed parents, or indirectly and secondarily from the heirs of the latter; while the

second does not endure for life; as a general rule, it only lasts during the life of the presumed parents. Hence the other difference, derived as a consequence, that an action for legitimacy is always brought against the heirs of the presumed parents in case of the death of the latter, while the action for acknowledgment is not brought against the heirs of such parents, with the exception of the two cases prescribed by article 137 transcribed above.

So much for the passive transmission of the obligation to admit the legitimate filiation, or to acknowledge the natural filiation.

As to the transmission to the heirs of the child of the latter's action to claim his legitimacy, or to obtain the acknowledgment of his natural filiation, it is seen that the code grants it in the first case, but not in the second. It contains provisions for the transmission of the right of action which, for the purpose of claiming his legitimacy inheres in the Child, but it does not say a word with regard to the transmission of the right to obtain the acknowledgment of the natural filiation.

Therefore, the respective corollary of each of the two above-cited articles is: (1) That the right of action which devolves upon the child to claim his legitimacy under article 118, may be transmitted to his heirs in certain cases designated in the said article; (2) That the right of action for the acknowledgment of natural children to which article 137 refers, can never be transmitted, for the reason that the code makes no mention of it in any case, not even as an exception.

It is most illogical and contrary to every rule of correct interpretation, that the right of action to secure acknowledgment by the natural child should be presumed to be transmitted, independently, as a rule, to his heirs, while the right of action to claim legitimacy from his predecessor is not expressly, independently, or, as a general rule, conceded to the heirs of the legitimate child, but only relatively and as an exception. Consequently, the pretension that the right of action on the part of the child to obtain the acknowledgment of his natural filiation is transmitted to his descendants is altogether unfounded. No legal provision exists to sustain such pretension, nor can an argument of presumption be based on the lesser claim when there is no basis for the greater one, and when it is only given as an exception in well-defined cases. It is placing the heirs of the natural child on a better footing than the heirs of the legitimate one, when, as a matter of fact, the position of a natural child is no better than, nor even equal to, that of a legitimate child.

From the express and precise precepts of the code the following conclusions are derived:

The right of action that devolves upon the child to claim his legitimacy lasts during his whole life, while the right to claim the acknowledgment of a natural child lasts only during the life of his presumed parents.

Inasmuch as the right of action accruing to the child to claim his legitimacy lasts during his whole life, he may exercise it either against the presumed parents, or their heirs; while the right of action to secure the acknowledgment of a natural child, since it does not last during his whole life, but depends on that of the presumed parents, as a general rule can only be exercised against the latter.

Usually the right of action for legitimacy devolving upon the child is of a personal character and pertains exclusively to him, only the child may exercise it at any time during his lifetime. As an exception, and in three cases only, it may be transmitted to the heirs of the child, to wit, if he died during his minority, or while insane, or after action had been already instituted.

An action for the acknowledgment of a natural child may, as an exception, be exercised against the heirs of the presumed parents in two cases: first, in the event of the death of the latter during the minority of the child, and second, upon the discovery of some instrument, of express acknowledgment of the child, executed by the father or mother, the existence of which was unknown during the life of the latter.

But such action for the acknowledgment of a natural child can only be exercised by him. It can not be transmitted to his descendants, or to his ascendants.

In support of the foregoing the following authorities may be cited:

Sanchez Roman, in his Treatise on Civil Law, propounds the question as to whether said action should be considered transmissive to the heirs or descendants of the natural child, whether he had or had not exercised it up to the time of his death, and decides it as follows:

"There is an entire absence of legal provisions, and at most, it might be deemed admissible as a solution, that the right of action to claim the acknowledgment of a natural child is transmitted by analogy to his heirs on the same conditions and terms that it is transmitted to the descendants of a legitimate child, to claim his legitimacy, under article 118, but nothing more; because on this point nothing warrants placing the heirs of a natural child on a better footing than those of the legitimate child, and even to compare them would not fail to be a strained and questionable matter, and one of great difficulty for decision by the courts, for the simple reason that for the heirs of the legitimate child, the said article 118 exists, while for those of the natural child, as we have said, there is no provision in the code authorizing the same, although on the other hand there is none that prohibits it." (Vol. V.)

Diaz Guijarro and Martinez Ruiz in their work on "The Civil Code as construed by the supreme court of Spain," commenting upon article 137, say:

"Article 118, taking into account the privileges due to the legitimacy of children, grants them the right to claim said legitimacy during their lifetime, and even authorizes the transmission of said right for the space of five years to the heirs thereof, if the child die during his minority or in a state of insanity. But as article 137 is based on the consideration that in the case of a natural child, ties are less strong and sacred in the eyes of the law, it does not fix such a long and indefinite period for the exercise of the action; it limits it to the life of the parents, excepting in the two cases mentioned in said article; and it does not allow, as does article 118, the action to pass on to the heirs, inasmuch as, although it does not prohibit it, and for that reason it might be deemed on general principles of law to consent to it, such a supposition is inadmissible for the reason that a comparison of both articles shows that the silence of the law in the latter case is not, nor can it be, an omission, but a deliberate intent to establish a wide difference between the advantages granted to a legitimate child and to a natural one."

(Ibid., Vol. II, 171.)

Navarro Amandi (Cuestionario delCodigo Civil) raises the question: "Can the heirs of a natural child claim the acknowledgment in those cases wherein the father or mother are under obligation to acknowledge"? And says:

"Opinions are widely divergent. The court of Rennes held (on April 13, 1844) that the right of investigation forms a part of the estate of the child, and along with his patrimony is transmitted to his heirs. The affirmation is altogether too categorical to be admissible. If it were correct the same thing would happen as when the legitimacy of a child is claimed, and as already seen, the right of action to demand the legitimacy is not transmitted to the heirs in every case and as an absolute right, but under certain limitations and circumstances. Now, were we to admit the doctrine of the court of Rennes, the result would be that the claim for natural filiation would be more favored than one for legitimate filiation. This would be absurd, because it can not be conceived that the legislator should have granted a right of action to the heirs of the natural child, which is only granted under great limitations and in very few cases to those of a legitimate one. Some persons insist that the same rules that govern legitimate filiation apply by analogy to natural filiation, and that in this conception the heirs of the natural child are entitled to claim it in the cases prescribed by article 118. The majority, however, are inclined to consider the right to claim acknowledgment as a personal right, and consequently, not transmissive to the heirs. Really there are no legal grounds to warrant the transmission." (Vol. 2, 229.)

In a decision like the present one it is impossible to bring forward the argument of analogy for the purpose of considering that the heirs of the natural child are entitled to the right of action which article 118 concedes to the heirs of the legitimate child. The existence of a provision for the one case and the absence thereof for the other is a conclusive argument that *inclusio unius est exclusio alterius*, and it can not be understood that the provision of law should be the same when the same reason does not hold in the one case as in the other.

The theory of the law of transmission is also entirely inapplicable in this case. This theory, which in the Roman Law expressed the general rule that an heir who did not accept an inheritance during his lifetime was incapacitated from transmitting it to his own heirs, included at the same time the idea that if the inheritance was not transmitted because the heir did not possess it, there were, however, certain things which the heir held and could transmit. Such was the law and the right to accept the inheritance, for the existing reason that all rights, both real and personal, shall pass to the heir; *quia haeres representat defunctum in omnibus et per omnia*. According to article 659 of the Civil Code, "the inheritance includes all the property, rights, and obligations of a person, which are not extinguished by his death." If the mother is the heir of her natural child, and the latter, among other rights during his lifetime was entitled to exercise an action for his acknowledgment against his father, during the life of the latter, or after his death in some of the excepting cases of article 137, such right, which is a portion of his inheritance, is transmitted to his mother as being his heir, and it was so understood by the court of Rennes when it considered the right in question, not as a personal and exclusive right of the child which is extinguished by his death, but as any other right which might be transmitted after his death. This right of supposed transmission is even less tenable than that sought to be sustained by the argument of analogy.

The right of action pertaining to the child to claim his legitimacy is in all respects superior to that of the child who claims acknowledgment as a natural child. And it is evident that the right of action to claim his legitimacy is not one of those rights which the legitimate child may transmit by inheritance to his heirs; it forms no part of the component rights of his inheritance. If it were so, there would have been no necessity to establish its transmissibility to heirs as an exception in the terms and conditions of article 118 of the code. So that, in order that it may constitute a portion of the child's inheritance, it is necessary that the conditions and the terms contained in article 118 shall be present, since without them, the right that the child held during his lifetime, being personal and exclusive in principle, and therefore, as a general rule not susceptible of transmission, would and should have been extinguished by his death. Therefore, where no express provision like that of article 118 exists, the right of action for the acknowledgment of a natural child is, in principle and without exception, extinguished by his death, and can not be transmitted, as a portion of the inheritance of the deceased child.

On the other hand, if said right of action formed a part of the child's inheritance, it would be necessary to establish the doctrine that the right to claim such an acknowledgment from the presumed natural father and from his heirs is an absolute right of the heirs of the child, not limited by certain circumstances as in the case of the heirs of a legitimate child; and if it is unreasonable to compare a natural child with a legitimate one to place the heirs of a natural child and his inheritance on a better footing than those of a legitimate child would not only be unreasonable, but, as stated in one of the above citations, most absurd and illegal in the present state of the law and in accordance with the general principles thereof.

For all of the foregoing reasons we hereby reverse the judgment appealed from in all its parts, without any special ruling as to the costs of this instance.

Mapa, Johnson, Carson, and Willard, JJ., concur.

DISSENTING

TORRES, J.,

The questions arising from the facts and points of law discussed in this litigation between the parties thereto, decided in the judgment appealed from, and set up and discussed in this instance by the said parties in their respective briefs, are subordinate in the first place to the main point, submitted among others to the decision of this court, that is, whether the right of action brought to demand from the natural father, or from his heirs, the acknowledgment of the natural child which the former left at his death was, by operation of the law, transmitted to the natural mother by reason of the death of the said child acknowledged by her.

The second error assigned by the appellant in his brief refers exclusively to this important point of law.

Article 846 of the Civil Code prescribes:

"The right of succession which the law grants natural children extends reciprocally in similar cases to the natural father or mother."

Article 944 reads:

"If the acknowledged natural or legitimized child should die without issue, either legitimate or acknowledged by it, the father or mother who acknowledged it shall succeed to its entire estate, and if both acknowledged it and are alive, they shall inherit from it share and share alike."

It can not be inferred from the above legal provisions that from the right of succession which the law grants the natural father or mother upon the death of their natural child, the right of the heirs of any of the said parents to claim the acknowledgment of the natural child is excluded. No article is to be found in the Civil Code that expressly provides for such exclusion or elimination of the right of the heirs of the deceased child to claim his acknowledgment.

If under article 659 of said code, the inheritance includes all the property, rights, and obligations of a person, which are not extinguished by his death, it is unquestionable that among such rights stands that which the natural child had, while alive, to claim his acknowledgment as such from his natural father, or from the heirs of the latter. There is no reason or legal provision whatever to prevent the consideration that the right to claim acknowledgment of the filiation of a deceased child from his natural father, or from the heirs of the latter, is included in the hereditary succession of the deceased child in favor of his natural mother.

It is to be regretted that such an eminent writer as Manresa is silent on this special point, or that he is not very explicit in his comments on article 137 of the Civil Code. Among the various noted writers on law, Professor Sanchez Roman is the only one who has given his opinion in a categorical manner as to whether or not the right of action for the acknowledgment of a deceased natural child shall be considered transmissible to his heirs, as may be seen from the following:

"In order to complete the explanation of this article 137 of the Civil Code, three points must be decided: (1) Against whom shall an action for acknowledgment be brought under the cases and terms to which the two exceptions indicated in paragraphs 1 and 2 of article 137 refer? (2) Who is to represent the minor in bringing this action when neither the father nor the mother has acknowledged him? (3) Should this right of action be considered as transmitted to the heirs or descendants of the natural child whether or not it was exercised at the time of his death?

"With respect to the third, there is an entire absence of legal provisions, and at most, it might be deemed admissible as a solution, that the right of action to claim the acknowledgment of a natural child is transmitted

by analogy to his heirs on the same conditions and terms that it is transmitted to the descendants of the legitimate child, to claim his legitimacy, under article 118, but no more; because on this point nothing warrants placing the heirs of a natural child on a better footing than those of the legitimate child, and even to compare them would not fail to be a strained and questionable matter, and one of great difficulty for decision by the courts, for the simple reason that for the heirs of the legitimate child the said article 118 exists, while for those of the natural child, as we have said, there is no provision in the code authorizing the same, although on the other hand there is none that prohibits it."

Certainly there is no article in the Civil Code, or any special law that bars the transmission to the heirs of a natural child, particularly to his natural mother, of the right of action to claim the acknowledgment of said natural child from the heirs of his deceased natural father.

According to the above-cited article 944 of the Civil Code, the only persons designated to succeed to the intestate estate of a natural child who died during minority or without issue are his natural father or mother who acknowledged it; consequently if by operation of the law his parents are his legal successors or heirs, it is unquestionable that by reason of the child's death the property, rights, and obligations of the deceased minor were, as a matter of fact, transmitted to them, among which was the right to demand the acknowledgment of the said deceased natural child from the heirs of the deceased natural father or mother, respectively, on account of having enjoyed uninterruptedly the status of natural child of the said deceased parents. (Arts. 135 and 136, Civil Code.)

At the death of the children, Teopista in 1902, and Jose in 1908, during their minority, and after the death of their natural father which took place in 1899, the natural mother of the said minors, Paula Conde, succeeded them in all of their property and rights, among which must necessarily appear and be included the right of action to claim the acknowledgment of said two children from the heirs of Icasiano Abaya, their deceased natural father. There is no legal provision or precept whatever excluding such right from those which, by operation of the law, were transmitted to the mother, Paula Conde, or expressly declaring that the said right to claim such acknowledgment is extinguished by the death of the natural children.

It is true that, as a general rule, an action for acknowledgment can not be brought by a surviving natural child after the death of his parents, except in the event that he was a minor at the time of the death of either of his parents, as was the case with the minors Teopista and Jose Conde, who, if living, would unquestionably be entitled to institute an action for acknowledgment against the presumed heirs of their natural father; and as there is no law that provides that said right is, extinguished by the death of the same, and that the mother did not inherit; it from the said minors, it is also unquestionable that Paula Conde, the natural mother and successor to the rights of said minors, is entitled to exercise the corresponding action for acknowledgment.

If the natural mother had no right of action against the heirs of the natural father, for the acknowledgment of her natural child, the unlimited and unconditional reciprocity established by article 846 of the code would neither be true nor correct. It should be noticed that the relation of paternity and that of filiation between the above-mentioned father and children are both natural in character; therefore, the intestate succession of the said children of Paula Conde is governed exclusively by articles 944 and 945 of the said code.

It is true that nothing is provided by article 137 with reference to the transmission to the natural mother of the right to claim the acknowledgment of her natural children, but, as Sanchez Roman says, it does not expressly prohibit it; and as opposed to the silence of the said article, we find the provisions of articles 846 and 944 of the Civil Code, which expressly recognize the right of the natural mother to succeed her natural child, a right which is transmitted to her by operation of law from the moment that the child ceases to exist.

The question herein does not bear upon the right of a child to claim his legitimacy, as provided in article 118 of

the code, nor is it claimed that the rights of natural children and of their mother are equal to those of legitimate ones, even by analogy.

The foundations of this opinion are based solely on the provisions of the above-mentioned articles of the code, and I consider that they are sustainable so long as it is not positively proven that the so often-mentioned right of action for acknowledgment is extinguished by the death of the minor natural child, and is not transmitted to the natural mother by express declaration or prohibition of the law, together with the property and other rights in the intestate succession.

In view of the considerations above set forth it is my opinion that it should be held: That Paula Conde, as the natural mother and sole heir of her children Teopista and Jose, was and is entitled to the right to institute proceedings to obtain the acknowledgment of the latter as natural children of the late Icasiano Abaya, from Roman Abaya, as heir and administrator of the estate of the said Icasiano Abaya; and that the said Teopista and Jose who died during their minority, three years after the death of their father, should be considered and acknowledged as such natural children of the latter, for the reason that while living they uninterruptedly enjoyed the status of his natural children.

The judgment appealed from should be affirmed without any special ruling as to costs.

With regard to the declaration that the property of the late Icasiano, which Paula Conde might take, are of a reservable character, together with the other matter contained in the third error assigned by the appellant to the said judgment, the writer withholds his opinion until such time as the question may be raised between the parties in proper form.

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