

INTESTATE ESTATE OF BLAS MONTECLARO. CONSOLACION JAVELONA ET AL., APPELLANTS, VS. AGUSTIN MONTECLARO ET AL., APPELLEES.

G.R. No. 48464. October 04, 1943

Ponente: BOCOBO, J.

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BOCOBO, J.:

This case arises out of the proceedings for the settlement of the intestate estate of the deceased Blas Monteclaro. It started with a petition by his widow, Consolacion Javelona and his legitimate children, Salvacion J., Jose J. and Remedios J. Monteclaro to be declared his only forced heirs. However, Agustin and Antonio Monteclaro, alleging that they were acknowledged natural children of Blas Monteclaro, also prayed that they be declared his forced heirs.

After due hearing, the Court of First Instance of Iloilo declared that the heirs of Blas Monteclaro were his widow and legitimate children above named, and also his acknowledged natural children, Agustin and Antonio Monteclaro.

As to these two, the trial court said:

"Agustin Monteclaro y Antonio Monteclaro alegan ser hijos naturales debidamente reconocidos por el difunto Bias Monteclaro con derecho a participar en la distribution de sus bienes en la proporcion establecida por la ley. En lo que a su pretencion respecta, los autos demuestran decisivamente que Bias Monteclaro, en su vida, les habia reconocido publicamente como hijos suyos, mantendiendolos, educandolos, tratandolos como tales y permitiendolos usar su apellido. Aun sin tener en cuenta la declaration de Pedro Monteclaro y de los interesados Agustin y Antonio, bastan para sostener esta conclusion los Exhibits '1', '2', '2-a', '3' y '4' presentados por los referidos Agustin y Antonio."

The widow and legitimate children appeal, claiming: (1) That appellees have not been acknowledged in a public document under article 131 of the Civil Code; (2) that the most that the documentary evidence shows is that appellees have enjoyed the continuous possession of status of natural children, but can not bring any action to compel recognition after the death of the alleged father, Bias Monteclaro; and (3) that appellee Antonio Monteclaro is a spurious child, so he can not be acknowledged as a natural child.

We do not believe the appellees were seeking a compulsory acknowledgment. Their theory is that they have been voluntarily acknowledged in a public document under article 131 of the Civil Code. This is why in their petition dated February 14, 1941, they simply allege that as acknowledged natural children of the late Bias Monteclaro, they have a right to be declared his forced heirs, and therefore ask to be declared as such forced heirs.

I. Antonio Monteclaro is alleged by appellants to be a spurious child and therefore he can not be acknowledged as a natural child. Exhibits "2" and "2-A" show Antonio Monteclaro to have been a minor on January 14 and August 12, 1929.

Exh. "2" is a certified copy of the complaint in ejectment filed on January 14, 1929, in the Justice of the Peace Court of Miagao, Iloilo. The title of the case is "Blas Monteclaro y su hijo menor, Antonio Monteclaro, Demandantes, contra Victorino Nuvero, Alejandro Mual y Mariano Mual, Demandados." The complaint commences thus:

"Comparece Bias Monteclaro por si y en representacion de su hijo menor, Antonio Monteclaro y al Hon. Juzgado respetuosamente expone."

The complaint above referred to is signed and sworn to by Blas Monteclaro.

Exh. "2-A" is a certified copy of a motion in the same case, dated August 12, 1929, referred to in Exh. "2", with the same title, and the opening of the motion reads:

"Comparece Bias Monteclaro por si y en representacion de su hijo menor, codemandante en esta cause y al Hon. Juzgado respetuosamente expone."

The foregoing motion is signed by Blas Monteclaro.

Now, then, Blas Monteclaro was married to Consolacion Javelona on November 8, 1905 (Exh. "A"). This marriage was dissolved by the husband's death in 1934. Antonio Monteclaro being a minor in January and August, 1929, he must have been born after 1905. It is clear, therefore, that Antonio Monteclaro was conceived when his father was already married to Consolacion Javelona, who is not Antonio Monteclaro's mother. He is thus a spurious child, who can not be recognized as a natural child, and not being a minor any longer in 1934 (the year the father died), he is not entitled to be supported by the heirs, under article 845 of the Civil Code.

II. Coming now to the status of Agustin Monteclaro, we deem it an undisputed fact that his father was free to marry at the time the child was conceived, for these reasons: (1) the trial court declared him to be a natural child, and there is nothing in the findings of the court showing that Bias Monteclaro, the father, was already married to Consolacion Javelona at the time Agustin Monteclaro was conceived; (2) appellants in their brief (p. 27) admit that Agustin Monteclaro was born in 1893 or 12 years before the father's marriage; and (3) while appellants in their brief (pp. 22- 24) contend that when Antonio Monteclaro was conceived, his father was already married to Consolacion Javelona, yet appellants do not make the same claim as to Agustin Monteclaro.

The main question at issue as to Agustin Monteclaro is whether Exhibit "1" constitutes a sufficient acknowledgement under article 131 of the Civil Code. Exhibit "1" is a certified copy of the testimony of the late Bias Monteclaro on March 19, 1930, in Civil Case No. 8182 in the Court of First Instance of Iloilo, entitled Fregiliano vs. Monteclaro. In that testimony, which was under oath, the following appears :

"P.—Tiene usted hacienda en el barrio de San Rafael, Miagao, Iloilo ?—

"R.—Si, senor—

"P.—Quien es el administrador de esa hacienda?

"R.—Mi hijo Agustin Monteclaro—

"P.—Hace cuanto tiempo a esta parte que es administrador de la hacienda de usted su hijo Agustin Monteclaro?

"R.—Unos cinco años a esta parte.—"

Two inquiries arise: (1) whether Exhibit "1" is a public document under article 131, Civil Code; and (2) whether Bias Monteclaro's incidental reference therein to Agustin Monteclaro as his son is sufficient acknowledgment under the law.

On the first point, we believe Exhibit "1" is a public document according to article 131 of the Civil Code. This legal provision reads:

"Art. 131. El reconocimiento de un hijo natural debera hacerse en el acta de nacimiento, en testamento o en otro documento publico."

Exhibit "1" under examination, being a testimony in court, is a record of a trial. Such a record of a judicial proceeding is certainly impressed with public character. It is true that the testimony has not been signed but this fact does not make the sworn declaration any the less a public document. Under article 131, if the nature of the document does not require the signature of the father, such signature is not necessary in order to give the document a public character. Thus, a record of birth is not so signed. Again, article 1216 of the Civil Code defines public documents thus:

"Art. 1216. Son documentos publicos los autorizados por un Notario empleado publico competent, con las solemnidades req-ueridas por la ley." (Italics supplied.)

Every testimony in a court of record is signed and certified to by the court stenographer, who is a competent public employee. Lastly, documents are either public or private. In no sense can the transcript of a testimony in court, signed by a court officer, be considered a private writing. Therefore, it is a public document.

Upon the second point, whether a voluntary acknowledgment may be done incidentally in a public document, a distinction must be made between the two kinds of acknowledgment: (1) voluntary, and (2) compulsory. In the former, recognition may be incidental, but in the latter, it must be direct and express.

In actions to compel the alleged father to acknowledge his natural child, based upon recognition in an indubitable writing, article 135, par. 1, of the Civil Code, requires that the father must "expressly recognize his paternity." This provision has been strictly construed by Spanish and Philippine jurisprudence against the alleged natural child. Thus, in the Sentence of July 5, 1906, the Supreme Tribunal of Spain held in an action to compel acknowledgment under article 135, that a mere allusion, more or less clear, by the alleged father to his supposed child, if there is no express recognition of his paternity, is not sufficient. In the Sentence of April 8, 1915, that same Tribunal declared that there should be an indubitable documentary proof or uninterrupted possession of the status of a natural child, excluding deductions and conjectures. As to Philippine cases, the same rule has been adhered to in several decisions by this court. Thus, in *Benedicto vs. De la Rama*, 4 Phil., 746, an action was filed to compel recognition of a natural child, based in part on a letter of defendant telling the mother of his affection toward her and asking her to take care of the child. This court held that the letter did not expressly recognize the child, under article 135. In *Buenaventura vs. Urbano*, 5 Phil., 1, the alleged father wrote the child a letter advising him how to conduct himself. This court held that the letter did not contain an express recognition under article 135.

But while in actions to compel recognition the foregoing principle is true with respect to indubitable writings according to article 135, par. 1 of the Civil Code, however, in cases of voluntary acknowledgment in a public document under article 131, the law is more liberal and permits an incidental recognition. This contrast is seen in the views of Manresa. He says, commenting on article 135:

"En cuanto al otro requisito de ser expreso el reconocimiento, tengase presente que no basta hacerlo por incidencia; es indispensable que se consigne en el escrito la voluntad indubitada, clara y terminante del padre, de reconocer por suyo al hijo, deliberadamente expresada con este fin, como se ordena en la base 5.a antes citada, de las aprobadas por la ley de 11 de Mayo de 1888; de suerte que el escrito, aunque contenga otros particulares, como sucede en los testamentos, ha de tener por objeto el reconocimiento deliberado y expreso del hijo natural. No llena, pues, ese objeto la manifestacion que incidentalmente haga el padre de ser hijo natural suyo la persona a quien se refiera, y mucho menos el dar a una persona el titulo y tratamiento de hijo en cartas familiares."

On the other hand, Manresa observes in his comment on article 131:

"Los terminos en que se haga el reconocimiento, son indiferentes, y asi, puede admitirse la opinion de Goyena, que, refiriendose al art. 124 del proyecto de 1851, se mostraba favorable a que el reconocimiento pudiera hacerse por incidencia y en cualesquiera terminos, con tal que de ellos aparezca suficientemente la intencion de hacerlo; 'basta, pues, añade, la simple indicacion de hijo natural suyo que haga el testador en la persona del legatario', el cual pocirti desde luego exigir sus derechos como hijo natural, aunque se revoque el testamento."

We adopted the same rule as to article 131 in the case of *Donado vs. Menendez Donado*, 55 Phil., 861, 872, when we held that an acknowledgment in a document need not be direct, but may even incidentally admit that the person whose name appears in the document is the subscriber's child.

The reasons for the above distinction between express recognition in article 135 and incidental acknowledgment according to article 131 are not far to seek. In the first place, a voluntary recognition is made in a public document (Art. 131) whereas the indubitable writing under article 135 is a private document. (Manresa, vol. 1, p. 579). The father would ordinarily be more careful about what he says in a public document than in a private writing, so that even an incidental mention of the child as his in a public document deserves full faith and credit. In the instant case, Bias Monteclaro in a sworn testimony in court referred to appellee Agustin Monteclaro as his son. Can there be any doubt about his having admitted that he was the father of Agustin Monteclaro, although such admission was made incidentally?

In the second place, in an action on Article 131 (voluntary recognition) the natural child merely asks for a share in the inheritance in virtue of his having been acknowledged as such, and is not trying to compel the father or his heirs to make the acknowledgment, whereas the action based on Article 135 is to compel the father or his heirs to recognize the child. In the former case, acknowledgment has been formally and legally accomplished because the public character of the document makes judicial pronouncement unnecessary, while in the latter case, recognition is yet to be ordered by the courts because a private writing, lacking the stronger guaranty and higher authenticity of a public document, is not self-executory. A judgment in favor of the status of a natural child according to Article 135 must therefore be based on an express recognition so found and declared by the court after hearing. At this juncture, it is to be noted that an action based on voluntary acknowledgment may be brought after the death of the father, but not an action to compel acknowledgment, as a general rule, (Art. 137, Civil Code) which shows the liberality of the law as to voluntary recognition, and its strictness toward compulsory acknowledgment.

Lastly, if there was any doubt in this case, we should be disposed to uphold the status of appellee Agustin Monteclaro as an acknowledged natural child. It is unquestionable that Bias Monteclaro did own his relationship as father to Agustin Monteclaro, having done so plainly and unmistakably under oath in a judicial proceeding. Whether such clear admission was done in a "public document" within the purview of article 131, and whether this avowal may be made incidentally, are the only points on which there is a divergence of opinion between the appellants and the appellees. We are satisfied, however, that both inquiries should be answered in the affirmative, as already set forth. But even if there was any hesitancy in our mind regarding these two matters, we should be ready to forget any qualm, inasmuch as the relationship has been declared under oath by the father himself in a judicial proceeding. Do not the two technical objections above mentioned seem so trivial in the face of the incontrovertible revelation by Bias Monteclaro, sanctioned by the sobering solemnity of his oath in court, that Agustin Monteclaro was his son? While the legitimate family should be shielded against the greed of unscrupulous interlopers, such protection must give way when the father's confession is as clear and unequivocal as in the instant case. Marriage is an institution that is fittingly honored and exalted in law and by society. But no less deserving of safeguard and consideration are the rights of acknowledged natural children, for the parents' fault can not be corrected by making the innocent children suffer therefor.' To do so were a grievous injustice

which no enlightened legislation would countenance. A wrong can never be righted by another wrong but by a righteous act. The law tries in a measure to repair the injury by ordaining that an acknowledged natural child is entitled to bear the surname of the father or mother acknowledging him, to be supported by and to be an heir of such parent. (Art. 134, Civil Code.) Consequently, in this case when the father himself has so plainly admitted his paternity, to deprive the natural child of his share of the inheritance goes far, very far, beyond the contemplation of the Spanish Civil Code, strict though that body of laws may be with regard to investigation of paternity. The sworn statement of the father admitting his relationship as such to Agustin Monteclaro takes this case out of the prohibition of the Civil Code. What that code forbids is the attempt to prove paternity in those instances where there is neither a conviction in a criminal action (Art. 135, last par.) nor an admission of paternity by the father (Arts. 131 and 135). But in this case there is a confession under oath by the father himself.

II. The next question is whether the consent of the appellee Agustin Monteclaro to his recognition has been given by him, as required by Art. 133 of the Civil Code. The Exhibits before us show that he used the surname of Monteclaro. (Exh. "3" and "4"). Moreover, in these proceedings he petitions that he be declared an heir of Blas Monteclaro on the ground that he is an acknowledged natural child of the deceased. These facts are sufficient evidence that he consented to his acknowledgment by Blas Monteclaro.

Therefore, Agustin Monteclaro is a natural child of Blas Monteclaro voluntarily acknowledged by the latter in a public instrument under Art. 131 of the Civil Code.

The order appealed from should be and is hereby modified: (1) by reversing the declaration of Antonio Monteclaro as an acknowledged natural child and an heir of Blas Monteclaro; (2) by adjudging that said Antonio Monteclaro, who is an adulterous child of Blas Monteclaro, is not entitled to be supported from the latter's estate because he was already of age when his father died; and (3) by affirming the conclusion that Agustin Monteclaro is an acknowledged natural child and an heir of said Blas Monteclaro, Without costs. So ordered.

Yulo, C. J., Aioran, Ozaeta, and Paras, JJ., concur.

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