

JUANA DIZON, IN HER OWN NAME AND AS GUARDIAN OF HER CHILDREN CARLOS AND ELVIRA DIZON, PLAINTIFF AND APPELLEE, VS. EDMUNDO ULLMANN, DEFENDANT AND APPELLANT.

G.R. No. 4899. March 02, 1909

Ponente: TORRES, J.

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TORRES, J.:

By a writing dated August 22, 1907, Juana Dizon, by direction of her counsel, petitioned, in her own name and as guardian of her children, Carlos and Elvira Dizon, that, after due process of law, the defendant, Edmundo Ullmann, be ordered to recognize the said children Carlos and Elvira as his own natural children; to pay to the plaintiff the sum of P150 monthly for their maintenance, and the costs, in addition to any further relief to which in the opinion of the court the plaintiff and her children might be entitled. She alleged that from December, 1895, to March, 1902, she and Edmundo Ullmann lived together as man and wife; that both were single at the time, and there was nothing to hinder marriage between them; that from this union there were had two children, the elder of which was born on the 4th of September, 1896, and was baptized under the name of Carlos, in the parish church of Intramuros, and the latter was born on the 23d of April, 1900, and baptized under the name of Elvira, in the parish church of Quiapo; that the said children, from the time of their respective births until March, 1902, continuously enjoyed the status of natural children of the defendant, and the latter constantly provided for their maintenance and furnished their necessities; that the defendant owns sufficient property to be able to contribute P150 monthly toward the support of the said children, while on the other hand the plaintiff lacks the means to provide for them. The defendant, through his counsel, filed a written answer on the 23d of the said month and year, praying that he be absolved from the complaint with the costs against the plaintiff, and that he be granted any other proper relief. To this effect he set forth that as to the first allegation of the complaint, he neither admitted nor denied it, for the reason that he had no exact information with regard to it; as to the second, third, and fourth allegations, he offered a general and specific denial, to each and every part thereof.

The case was duly tried and the documents offered in evidence by the plaintiff were made of record. On the 30th of April, 1908, the court below rendered judgment in the case and sentenced the defendant to recognize Carlos and Elvira as his natural children, and to allow the plaintiff, in whose company they live the sum of P40 monthly for their maintenance, and to pay the costs. The "defendant excepted to the above judgment and moved for new trial on the ground that it was contrary to the weight of the evidence; his motion was overruled, to which the petitioner excepted, and in due course the corresponding bill of exceptions was presented, and afterwards submitted to the clerk of this court.

The matter at issue is the recognition of two natural children born to two persons who at the time of the conception of the said children were free to marry. The recognition was claimed by the mother from the defendant father of the children in view of the fact that they had continuously enjoyed the status of natural children of the said defendant; claim was also made for provision for the maintenance of the said children as a consequence of the recognition sought.

As may be seen, the court below considered as proven certain facts which conclusively demonstrate that the children Carlos and Elvira had continuously enjoyed the status of natural children of the defendant Edmundo Ullmann; this appreciation of the result of the proofs submitted in the case is in accordance with the merits and the law.

In effect, it has been clearly proven in the case that the plaintiff, Juana Dizon, and the defendant, Edmundo Ullmann, were single persons, and free to contract marriage; that from the year 1895 until March, 1902, they lived together as man and wife in a house rented by the defendant and properly furnished by the man, except during the hours when he was engaged in the mercantile store of which he was a partner, and during the months when he was absent in Europe and other foreign places; and that in consequence and by reason of their living together in the same house during the said seven years and odd months, the plaintiff gave birth to four children, two of which died at a tender age and the other two are living. By the respective certificates of baptism offered in evidence at the trial the eldest was born on the 4th of September, 1896, and baptized under the name of Carlos, natural son of Juana Dizon and an unknown father; the younger was born on the 23d of October, 1900, and baptized by the name of Elvira, the natural daughter of Juana Dizon and an unknown father.

Since the year 1895, when the plaintiff and the defendant commenced to live together as man and wife, in the same house, with the children that they commenced to have from the following year, 1896, the said defendant has provided for the maintenance of the plaintiff as the mother of said children, and also for the latter; he paid the rental of the several houses that they successively occupied in Calle Arlegui, Tanduay, and in Calle Quiotan, Santa Cruz. On leaving this city to go to Paris, he left with the plaintiff, for the needs of herself and the said two children, some money, three carromatas and six horses for hire, so that the said mother and children might live with the returns from the said vehicles.

The defendant acknowledged under oath that he had paid all the expenses for the keeping of the aforesaid children Carlos and Elvira, the children of Juana Dizon, who he said was his mistress, from the time they were born until his departure from Manila in 1902; he added that, in order to maintain the said children and the plaintiff, he was obliged to spend not less than 26,000 to 28,000 pesos, and that when he left in that year, he gave them the vehicles and six horses above referred to in order that they might support themselves with the 150 pesos that the rental thereof produced.

Article 135 of the Civil Code provides:

"The father is obliged to acknowledge the natural child * * *

* * * * *

"2. When the child is in uninterrupted enjoyment of the status of a natural child of the defendant father, justified by direct acts of the said father * * *."

The doctrine established by the supreme court of Spain, among other decisions in that of November 7, 1896, is of the following tenor:

"The enjoyment of the status to which said article 135 refers, must necessarily be revealed by acts clearly showing the will of the father or, in certain cases, of his family, to recognize as his natural child him who claims compulsory recognition, by keeping him in his house, supporting and educating him as such, or by other similar acts of equal value and efficiency, showing that under the said character the child maintains constant relations with the author of his days, or with his family."

From the conduct of the defendant Ullmann since 1896 when the boy Carlos was born, until the year 1902 at which time he left this city, and long afterwards while he was in Paris, from which city he wrote various letters to

the plaintiff and her two children, in which he expressed his tender affection, and charged the mother to care for the children, averring that he was anxious in regard to her health and that of the children, it is logically and unquestionably inferred that the said Carlos and Elvira continuously enjoyed the status of natural children of the defendant father, plainly shown by the behaviour and the manifest and direct acts of the father himself.

The following facts are proven: that the defendant kept the children Carlos and Elvira in the various houses that he rented as dwellings from the time they were born; that one day he asked his neighbor, Rafael Enriquez, to stand as godfather at the christening of the girl Elvira, which Enriquez did, and the father gave him his own carriage for the purpose; that he paid for the maintenance of the said two children, and attended to all their needs as well as of the mother for almost seven years, prior to abandoning them in this city. For all of which the said Enriquez always thought and believed that the said children were the issue of the contending parties, seeing that the latter lived together in the same house as husband and wife with the children and treated them as their own; and it is natural that Carlos and Elvira should be considered by the public as the children of both, because if such was the opinion formed by the godfather, Enriquez, it is not to be wondered that other residents of the place, and everyone who knew them acquired the conviction that the said children were the issue of the defendant Ullmann by the plaintiff Dizon, and as such they continuously enjoyed the status of natural children of their known natural father, in accordance with the law.

In view of the foregoing and of the considerations contained in the judgment appealed from, it is our opinion that the same should be and it is hereby affirmed with the costs of this instance against the appellant.

Arellano, C. J., Mapa, Johnson, and Willard, JJ., concur.

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