

CONCHA C. APACIBLE AND ESPERANZA AGUILAR, PETITIONERS, VS. MARIA CASTILLO, RESPONDENT.

G.R. No. 49041. March 20, 1944

Ponente: OZAETA, J.

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OZAETA, J.:

Appeal by certiorari to review and reverse a decision of the Third Division of the Court of Appeals affirming an order entered by the Court of First Instance of Batangas in the intestacy of the deceased Vicente Castillo whereby the herein respondent Maria Castillo was declared a duly acknowledged natural child of said decedent, upon the following facts:

Maria Castillo was born in Manila on July 22, 1915. Her parents, Vicente Castillo (who died in Balayan, Batangas, on May 10, 1939) and Juana Malay to, lived as husband and wife for several years without being united in holy wedlock. On August 21, 1915, Vicente Castillo reported to the Bureau of Health the birth of Maria Castillo and subscribed to the prescribed form of certificate of birth in which, among other things, he gave the following (italicized) data:

Full name of child—Maria Castillo.

Legitimate?—No.

Date of birth—July 22, 1915.

Father

Full name—Vicente Castillo.

Residence—318 San Nicolas.

Birthplace—Balayan, Batangas.

Mother

Full name—Juana Malayto.

Residence—318 San Nicolas.

Birthplace—San Pablo, Laguna.

Certificate of Attending Physician or Midwife,
or of Father or Mother

I hereby certify that I attended the birth of this child, who was born alive at 8:00 a.m.

(Sgd.) Vicente Castillo

The father.

Five months later, to wit, on December 23, 1915, Vicente Castillo contracted marriage with the petitioner Esperanza Aguilar.

Vicente Castillo enrolled Maria Castillo as his daughter in St. Theresa's College, paying for all her expenses

during her stay there and signing on the back of her report cards as her father. On the occasion of her graduation recital in that college on January 8, 1939, a picture was taken with Maria Castillo, Vicente Castillo, and Juana Malayto on the stage.

The trial court and the Court of Appeals expressed the opinion that Maria Castillo was voluntarily acknowledged by Vicente Castillo as his natural child in accordance with article 131 of the Civil Code, which provides that "the acknowledgment of a natural child must be made in the record, of birth, in a will, or in some other public document."

It is not disputed that the certificate of birth filed by Vicente Castillo with the Bureau of Health (exhibit AA-I) is a public document, altho it is not the record of birth mentioned in said article but that prescribed in article 326 of the same Code, which was not put in force in the Philippines. (Samson vs. Corrales Tan, 48 Phil., 401, 404.) But the petitioners contend that the certificate of birth in question does not constitute a valid voluntary acknowledgment under article 131, in relation to article 133, of the Civil Code (1) because there is no proof that Maria Castillo was a "natural" daughter; (2) because said certificate does not contain an unequivocal expression by Vicente Castillo of a deliberate intention to acknowledge her as his natural daughter; and (3) because the supposed acknowledgment has not been approved by the court as required by article 133 of the Civil Code.

1. It is urged that there is no proof that at the time Maria Castillo was conceived her parents could have married with or without dispensation and that, therefore, it has not; been shown that she possesses the condition of a natural child. The same contention was urged before and decided by us adversely to the petitioners in the case of Jayme vs. Gamboa (G. R. No. 47820, November 28, 1942, 2 Off. Gaz., April, 1943, p. 382). That case involved the acknowledgment of Fortunato Jayme as the natural son of Antonio Jayme. Fortunato was born on April 17, 1883, his parents, Antonio Jayme and Efigenia Enriquez, never having been united in wedlock. Nine months after his birth, that is to say, on January 16, 1884, Antonio Jayme contracted marriage with Genoveva Gamboa. As to the civil status of the parents at the time the child was conceived and born, we said:

"* * * We think that from the fact that Antonio Jayme lawfully contracted marriage with Genoveva Gamboa on January 16, 1884, in the absence of any evidence to the contrary it may be presumed that he was an unmarried man on April 17, 1883, when Fortunato Jayme was born; for otherwise we would have to assume that he either committed bigamy or contracted a second marriage immediately or soon after a supposed first marriage was dissolved; and both hypotheses are contrary to the presumptions established by paragraphs 1 and 26, section 334 of Act No. 190, now paragraphs (a) and (z), section 69, Rule 123 of the new Rules of Court. Likewise, in the absence of any evidence to the contrary, it may be presumed that he had no such relationship of consanguinity with Efigenia Enriquez as that of brother and sister or uncle and niece; for otherwise he would have been guilty of incest. Once it has been proved that the father, Antonio Jayme, could legally marry with- out dispensation at the time Fortunato was born, there is no need to prove that Efigenia Enriquez, with whom he had the child, could also legally marry without dispensation, for such capacity is presumed by law in default of evidence to the contrary. (See Ramirez vs. Gmur, 42 Phil., 855, 861, 862; Allarde vs. Abaya, 57 Phil., 909, 923, and cases therein cited; Lajom vs. Viola, 1 Off. Gaz., August 1942, 452, 459, 460.) * * *." (Page 385.)

2. It is also contended that the mere admission of paternity made by Vicente Castillo in the certificate of birth without expressly stating therein that he recognized the child as his natural daughter, is not sufficient; in other words, that the acknowledgment must be made expressly and not incidentally. This same contention has also been decided by us adversely to the petitioners in the case of Javelona vs. Monteclaro, G. R. No. 48464 (promulgated October 4, 1943), wherein, insofar as it is pertinent here, we said:

"The main question at issue as to Agustin Monteclaro is whether Exhibit '1' constitutes a sufficient acknowledgment under Art. 131 of the Civil Code. Exh. '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:

" T.—Tiene usted hacienda en el barrio de San Rafael, Miagao, Iloilo?—'R.—Si, señor.

" 'P.—Quien es el administrador de esa hacienda?—'R.— Mi hi jo Agustin Monteclaro.

" 'P.—Hace cuanto tiempo a esta parte que es administrador de la hacienda de usted su hi jo Agustin Monteclaro?— 'R.—Unos cinco afios a esta parte.'

"Two inquiries arise: (1) whether Exh. T is a public document under Art. 131, Civil Code; and (2) whether Bias Monteclaro's incidental reference therein to Agustin Monteclaro as his son is sufficient acknowledgment under the law.

"* * * * *

"Upon the second point, whether a voluntary acknowledgement may be done incidentally in a public document, a distinction must be made between the two kinds of acknowledgement: (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, Art. 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 natural child. Thus, in the Sentence of July 5, 1906, the Supreme Tribunal of Spain held in an action to compel acknowledgment under Art. 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 Art. 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 Art. 135.

"But while in actions to compel recognition the foregoing principle is true with respect to indubitable writings according to Art. 135, par. 1, of the Civil Code, however, in cases of voluntary acknowledgment in a public document under Art. 131, the law is more liberal and permits an incidental recognition. This contrast is seen in the views of Manresa. He says, commenting on Art. 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 ej titulo y tratamiento de hijo en cartas familiares.'

"On the other hand, Manresa observes in his comment on Art. 131:

'Los terminos en que se haga el reconocimiento, son indiferentes, y asi, puede admitirse la opinion de Coyena, 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 indication de hijo natural suyo que haga el testator en la persona del legatario", el cual podra desde luego exigir sus derechos como hijo natural, aunque se revoque el testamento.'

"We adopted the same rule as to Art. 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 Art. 135 and incidental acknowledgment according to Art. 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 Art. 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 Art. 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 Art. 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 Art. 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."

3. The main contention of the petitioners is that the voluntary acknowledgment contained in the certificate of birth, exhibit AA-I, is void for lack of judicial approval as required by article 133 of the Civil Code, which reads as follows :

"Art. 133.—A person of full age may not be acknowledged as a natural child without his consent.

"The approval of the court, to be granted after hearing the prosecuting officer, shall be necessary to the acknowledgment of a minor, unless such acknowledgment be made in a certificate of birth or in a will.

"The minor may in any case contest the acknowledgment within the four years following the attainment of his or her majority."

The Court of Appeals held, in effect, that the second paragraph of article 133 is no longer in force—"that judicial approval xfor the acknowledgment of a minor as natural child in a public document is no longer necessary"—because provisions like those of articles 1794 and 1798 of the Spanish Law of Civil Procedure "are not found in our Code of Civil Procedure or in the Rules of Court," and because, it says, the Courts of First Instance are not vested by Act No. 136 with jurisdiction or power, to act in the premises. We do not concur in this view. Under section 56 (paragraph 5) of Act No. 136, Courts of First Instance have original jurisdiction "in all such special cases and proceedings as are not otherwise provided for." And section 6 of Rule 124, which was "taken from section 19 of Act No. 136 and section 610 of Act No. 190" (*Moran on Rules of Court*), provides as follows:

"Sec. 6.—Means to carry jurisdiction into effect.—When by law jurisdiction is conferred on a court or judicial officer, all auxiliary writs, processes and other means necessary to carry it into effect may be employed by such court or officer; and if the procedure to be followed in the exercise of such jurisdiction is not specifically pointed out by these rules, any suitable process or more of proceeding may be adopted which appears most conformable to the spirit of said rules."

But, is the lack of judicial approval necessarily fatal? Or, may it be supplied by the child's consent given after reaching majority ?

The evident purpose of the law in requiring the child's consent, if of age, or the judicial approval, if a minor, and in reserving to the child in any case the right to contest the acknowledgment after attaining majority, is to protect the child against any acknowledgment of it made in bad faith or to its prejudice. To reinforce this protective measure, article 138 further provides that "any person whose interests are injuriously affected thereby may contest the acknowledgment of any child not falling within the terms of the second paragraph of article 119, or who has been acknowledged without compliance with the provisions of this section." (The section referred to embraces articles 129- 138 of the Civil Code.)

It is true that in this case the acknowledgment made by the father in the public document exhibit AA-I took place while Maria Castillo was still a minor. But it is likewise true that she has never contested or rejected that acknowledgment; on the contrary, she has always acquiesced in it, she continued to accept the benefit resulting from the status of an acknowledged natural daughter of Vicente Castillo long after she attained majority on July 22, 1936, and she formally and unequivocally gave her consent to said acknowledgment when, on November 14, 1939, she filed the petition in the intestacy of Vicente Castillo that gave rise to the present appeal, wherein she prayed that she be considered an acknowledged natural daughter of the deceased with the right to participate in his inheritance. Neither does it appear that the herein petitioners as sister and wife, respectively, of Vicente Castillo, have ever contested the acknowledgment in question under article 138. Was the acknowledgment void ab initio for lack of judicial approval, or was it only voidable at the instance of the child or of any other person injuriously affected thereby? We are inclined to the latter view for the following reasons:

The second paragraph of article 133 does not fix any limitation of time within which the approval of acknowledgment by the court may be procured. In the Absence of such limitation we hold that the approval of the court may be procured at any time after the public document is executed and before it may have been revoked or withdrawn, and that in the meantime such acknowledgment is only voidable and not void ab initio. Were it void ab initio, it could not be approved or ratified later. It is voidable because, obviously, it may be confirmed or annulled "by the court's approval or disapproval; and indeed, even after the court's approval it is still contestable by the child within the prescriptive period after attaining majority. (Article 133, last paragraph.)

It is true that the acknowledgment of a natural child is not unilateral but mutual; and from this it is contended that the acknowledgment is not valid and produces no legal effect until it is approved by the court or accepted by the child. Granted, but that does not argue against the voidable character of the acknowledgment as we have indicated. As such, it is a standing offer from the father to the child which, unless subsequently withdrawn or revoked, the latter may accept or reject impliedly or expressly after attaining majority. To the contention that such a state of affairs is unjust to the acknowledging parent because there can be no mutuality of benefit until the offer is accepted, as, for instance, should the child die in the meantime the parent, could not inherit from it, we answer that the acknowledging parent may and should perfect the acknowledgment and attain mutuality of results by soliciting the court's approval if the child be a minor or by obtaining its consent if of age. Indeed, an infant can not be expected to solicit the court's approval; it is obviously incumbent upon the acknowledging parent to do that. He cannot be heard to complain against the consequences of his own neglect. Incapable of soliciting the court's

approval, all that the child can do is to consent to the acknowledgment after reaching majority.

After all, it is the child's consent that gives finality to the acknowledgment, because even with the court's approval it may be contested by the child upon reaching majority, in accordance with the last paragraph of article 133, We have held in the case of *Javelona vs. Monteclaro*, *supra*, that such consent may be given impliedly even after the father's death by means of the child's petitioning the court to be declared an heir of its natural father. On this point we said in deciding the case just cited:

"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. (Exhs. '3' and '4'.) Moreover, in these proceedings he petitions that he be declared an heir of Bias 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 Bias Monteclaro."

It may not be amiss to observe here that, without in any way intending to legitimize or sanction illegitimacy, this Court has, within reason and whenever legally possible, deemed it humane to mitigate the strictures of society on the unfortunate children whose parents have transgressed against its conventionalities, for which transgression they are in no way responsible. (Cf. *Donado vs. Menendez Donado*, 55 Phil., 861; *Allarde vs. Abaya*, 57 Phil., 909; *Castelltort vs. Pasion* [1939], 37 Off. Gaz., 3049; *Lajom vs. Viola* [1942], 1 Off. Gaz., 452; *Javelona vs. Monteclaro* [1943], G. R. No. 48464.) In the *Monteclaro* case we said:

"* * * 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. * * *".

Therefore, upon petitioners' third contention we hold that altho the second paragraph of article 133 of the Civil Code is still in force and that the court's approval of the acknowledgment of a minor child may be obtained thereunder, the lack of such approval may be supplied by the child's consent given after reaching majority, and that in the present case such consent was given by Maria Castillo not only by continuing to accept the status of an acknowledged natural daughter of Vicente Castillo after she had reached majority but also by expressly petitioning the court to consider her as such and to allow her to intervene in his intestacy as an heir of his.

The judgment is affirmed, with costs against the petitioner.

Yulo., C. J., Moran, Horrilleno, Paras, and Bocobo, JJ., concur.

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