

**EDNA PADILLA MANGULABNAN AS GUARDIAN AD LITEM FOR
MINOR ALFIE ANGELO ACERO, PETITIONER, VS. THE HONORABLE
INTERMEDIATE APPELLATE COURT AND AMBROCIO TAN CHEW
ACERO, RESPONDENTS.**

G.R. No. 71994. May 31, 1990

Ponente: GANCAYCO, J.

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GANCAYCO, J.:

This is a case of an illegitimate child who was denied support pendente lite by the appellate court. The child is confused as to what he is supposed to do. Petitioner pictured a big man eating a small child which will not fail to repel and horrify all decent men. She contends that this very image readily forms itself in the mind when we consider this case.

Petitioner filed in the Regional Trial Court of Quezon City an action for actual, compensatory and moral damages and support for her child Alfie Angelo. Pending the litigation an application for support pendente lite was filed to which an opposition was filed by private respondent. On November 2, 1984 the trial court ordered private respondent to pay monthly support in the amount of P1,500.00 to the minor child Alfie. Private respondent moved for a reconsideration but his motion was denied on December 5, 1984.

Hence, a petition for certiorari was filed in the Court of Appeals questioning the said order of the trial court.

In a decision dated March 29, 1984[1] the petition was granted and the orders of the trial court dated November 2, 1984 were annulled without pronouncement as to costs. A motion for reconsideration thereof filed by petitioner was denied on September 12, 1985.

Hence, the herein appeal by way of certiorari wherein petitioner raises the following issues:

"I

THE QUESTIONED JUDGMENT INSISTED IN IGNORING THE STATUTORY DISTINCTION BETWEEN A NATURAL CHILD AND OTHER ILLEGITIMATE CHILDREN;

II

THE APPELLATE COURT REFUSED TO ACCEPT THAT THE BIRTH CERTIFICATE IN THIS CASE CONSTITUTED VOLUNTARY RECOGNITION;

III

THE APPELLATE COURT IN ONE STROKE PUT TO NAUGHT THE REMEDY OR RELIEF PROVIDED BY SUPPORT PENDENTE-LITE."[2]

The petition is impressed with merit.

In the questioned decision of the appellate court, the following disquisitions were made:

"The petitioner's contention is well taken. While the child's paternity appears to have been established by the affidavits of the respondent Edna Padilla Manuglabnan as well as by the affidavits of her two witnesses, this fact alone would not be sufficient to order the petitioner to pay support to the child. In addition, it is necessary to prove that the petitioner has recognized the child. For these are two distinct questions. (*Crisolo v. Macadaeg* 94 Phil. 862 [1954]; *Cruz v. Castillo*, 28 SCRA 719 [1969]).

As the civil status of the child is the source from which the right to support is derived, there must be a declaration to that effect before support can be ordered. Such a declaration may be provisional, it being sufficient that affidavits are considered. (*Crisolo v. Macadaeg*, supra; *Mangoma v. Macadaeg*, 90 Phil. 508 [1951]; *Sanchez v. Francisco*, 68 Phil. 110 [1939]). But the question must nevertheless be squarely resolved. It may be that the birth certificate is prima facie evidence of acknowledgment of the child, so that until it is finally shown to be spurious it must be upheld. (Civil Code, Art. 410; Act No. 3753, sec. 13). On the other hand, it may be that its probative value is impaired by the verified opposition of the petitioner. These are, however questions for the trial court to resolve in passing on the application for support pendente lite."

In the subsequent resolution dated September 12, 1985, the appellate court also made the following observations:

"The contention has no merit. Although Art. 291, in enumerating those entitled to support, refers in paragraph 3 to 'acknowledged natural children,' and in paragraph 5 simply to 'illegitimate children who are not natural,' nonetheless there is a need for the latter class of children (spurious) to be recognized either voluntarily or by judicial decree, otherwise they cannot demand support. The private respondent contends that the cases cited in the decision (*Crisolo v. Macadaeg*, 94 Phil. 862 [1954] *Cruz v. Castillo*, 28 SCRA 719 [1969]) refer to the right of natural children to support. The principle, however, is the same. Thus in *Paulino v. Paulino*, 113 Phil. 697 [1961], which involves a claim to inheritance by a spurious child, it was held:

'An illegitimate (spurious) child to be entitled to support and successional rights from his putative or presumed parents must prove his filiation to them. Filiation may be established by the voluntary or compulsory recognition of the illegitimate (spurious) child. Recognition is voluntary when 'made in the record of birth, a will, a statement before a court of record, or in any authentic writing.' It is compulsory when by court action the child brings about his recognition.'

Article 291 of the Civil Code provides as follows:

"ART. 291. The following are obliged to support each other to the whole extent set forth in the preceding article:

- (1) The spouses;
- (2) Legitimate ascendants and descendants;
- (3) Parents and acknowledged natural children and the legitimate descendants of the latter;
- (4) Parents and natural children by legal fiction and the legitimate and illegitimate descendants of the latter;
- (5) Parents and illegitimate children who are not natural.

Brothers and sisters owe their legitimate and natural brothers and sisters, although they are only of the half-blood, the necessities of life, when by a physical or mental defect, or any other cause not imputable to the recipients, the latter cannot secure their subsistence. This assistance includes, in a proper case, expenses necessary for elementary education and for professional or vocational training."

From the foregoing provision it is clear that parents and illegitimate children who are not natural children are also obliged to support each other as specified in paragraph no. 5 above-cited. It is to be distinguished from the obligation to support each other as between the parents and acknowledged natural children and the legitimate or illegitimate children of the latter; and that between parents and natural children by legal fiction and the legitimate and illegitimate descendants of the latter under paragraphs (3) and (4) above-cited.

Under Article 287 of the Civil Code it is provided:

"ART. 287. Illegitimate children other than natural in accordance with Article 269 and other than natural children by legal fiction are entitled to support and such successional rights as are granted in this Code."

In this case petitioner established the paternity of the child Alfie not only by her own affidavit but also by the affidavits of two (2) witnesses. In addition thereto petitioner submitted a birth certificate of the child. The private respondent claims that the same is spurious as it was sworn before a notary public in Manila when the child was born in Cavinte Maternity Clinic in Las Piñas, Rizal.

There must be a declaration of the status of the child from which the right to support is derived and before support can be ordered. Such a declaration may be provisional, that is, by affidavits.[3]

While the appellate court claims that the birth certificate is prima facie evidence of acknowledgment of the child, and that until it is finally proved to be spurious it must be upheld,[4] it nevertheless observed that its probative value is impaired by the verified opposition of the private respondent.

Petitioner contends, however, that the child is entitled to support upon proof of filiation to private respondent without need of acknowledgment.

The appellate court disagrees and holds that even as to illegitimate children who are not natural children there is a need for the latter class of children (spurious children) to be recognized either voluntarily or by judicial decree, otherwise they cannot demand support, as in the case of an acknowledged natural child.

The Court disagrees. The requirement for recognition by the father or mother jointly or by only one of them as provided by law refers in particular to a natural child under Article 276 of the Civil Code. Such a child is presumed to be the natural child of the parents recognizing it who had the legal capacity to contract marriage at the time of conception.[5] Thus, an illegitimate child like the minor Alfie in this case whose father, the private respondent herein, is married and had no legal capacity to contract marriage at the time of his conception is not a natural child but an illegitimate child or spurious child in which case recognition is not required before support may be granted.[6]

However, under Article 887 of the Civil Code, in all cases of illegitimate children, their filiation must be proved. Such filiation may be proved by the voluntary or compulsory recognition of the illegitimate (spurious child). Recognition is voluntary when made in the record of birth, a will, a statement before a court of record or in any authentic writing.[7] It is compulsory when by court action the child brings out his recognition.[8]

As above related the affidavits of petitioner and the two (2) witnesses were presented to prove the paternity of the child, and a birth certificate was also presented to corroborate the same. The Court agrees with the court a quo that the status of the minor child had been provisionally established.

Indeed, in response to the resolution of this Court dated February 14, 1989, if the parties are still interested in prosecuting this case, petitioner in a manifestation filed on March 22, 1990, asserted that she is still interested and that in fact the Regional Trial Court in Civil Case No. A-39985 has rendered a decision dated April 9, 1987 granting to petitioner-appellant minor a monthly support of P5,000.00 to be paid on or before the fifth day of

every month.[9]

WHEREFORE, the petition is GRANTED. The questioned decision of the appellate court dated March 29, 1985 and its resolution dated September 12, 1985 are hereby REVERSED AND SET ASIDE and the order of the trial court dated November 2, 1984 granting a monthly support pendente lite in favor of the minor child Alfie in the amount of P1,500.00 is reinstated and AFFIRMED with costs against private respondent.

SO ORDERED.

Narvasa, (Chairman), Cruz, and Medialdea, JJ., concur.

Griño-Aquino, J., on leave.

[1] Justice Vicente V. Mendoza, ponente, concurred in by Justices Edgardo L. Paras and Luis A. Javellana.

[2] Page 15, Rollo.

[3] Crisolo vs. Macadaeg, 94 Phil. 862 (1954); Mangoma vs. Macadaeg, 90 Phil. 508 (1951); Sanchez vs. Zulueta, 68 Phil. 110 (1939).

[4] Article 410 Civil Code; Section 13, Act No. 375.

[5] Article 277, Civil Code.

[6] Crisolo v. Macadaeg, *supra*, at 862.

[7] Article 278, Civil Code.

[8] Paulino and Nieto vs. Paulino, 113 Phil. 697, 700 to 701 (1961).

[9] Page 49, Rollo.

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