

**EUTQUIO MARQUINO AND MARIA TERENAL-MARQUINO SURVIVED
BY: LUZ T. MARQUINO, ANA T. MARQUINO AND EVA T. MARQUINO,
PETITIONERS, VS. THE HON. INTERMEDIATE APPELLATE COURT,
FIRST CIV...**

G.R. No. 72078. June 27, 1994

Ponente: PUNO, J.

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PUNO, J.:

For resolution are the following issues: (1) the effect of the death of the natural child during the pendency of her action for recognition; and (2) the effect of the death of the putative parent also during the pendency of the case.

The facts are as follows:

Respondent Bibiana Romano-Pagadora filed Civil Case No. 5197, an action for Judicial Declaration of Filiation, Annulment of Partition, Support, and Damages against petitioner Eutiquio Marquino on January 10, 1971 before the then Court of First Instance of Negros Occidental. Also impleaded as defendants, were Maria Terenal-Marquino, wife of Eutiquio Marquino, and their legitimate children Luz, Ana, and Eva, all surnamed Terenal-Marquino.

The records show that Bibiana was born on December 2, 1926 at Piapi, Dumaguete City, of Gregoria Romano and allegedly of Eutiquio Marquino.[1] At that time, Eutiquio was still single. Bibiana became personally known to the Marquino family when she was hired as domestic helper in their household at Luke Wright Street, Dumaguete City. She always received financial assistance from them. Thus, she claimed that she enjoyed continuous possession of the status of an acknowledged natural child by direct and unequivocal acts of her father and his family. The Marquinos, on the other hand, strongly denied her allegations.

During the pendency of the case and before respondent Bibiana could finish presenting her evidence, she died on March 17, 1979. On March 23, 1979, her heirs were ordered substituted for her as parties-plaintiffs. On May 17, 1983, petitioners filed a Motion to Dismiss. They averred that the action for recognition is intransmissible to the heirs being a personal act.[2] The trial court dismissed the case.

Respondents appealed to the respondent Intermediate Appellate Court (now Court of Appeals). On August 20, 1983, Eutiquio Marquino died while the case was pending appeal. On June 17, 1985, respondent court invoking the case of *Banaga vs. Pascacio*, (No. 4848-R, July 31, 1954, 50 O.G. No. 12, p. 5908) reversed the controverted order. It ruled:

"[A]fter the death of the natural child, the heirs of said deceased natural child, cannot bring the action to compel recognition, but may however, continue the action already filed to compel recognition.

x x x

Summarizing, We hold that the death of the putative parent while the case against him for recognition of his

alleged child is pending will not extinguish the action but the same can be continued with the heirs substituted for said deceased parents because:

- a) the law does not require that the case be brought and decided while the putative parent is alive;
- b) that would be adding another requisite for the action which is not sanctioned by the law or jurisprudence;
- c) it would be unfair to the plaintiff child to have his action for recognition depend on the speed of the Court in disposing of the case and on a fortuitous event. This is because if the court takes, let us say, 10 years to decide the case, the chances that the defendant parent would survive the case is very much less, especially if he was already of advanced age at the time the action is brought;
- d) there are no compelling reasons not to allow substitution of the deceased parent with his heirs, for with the death of the defendant parent, the effects of recognition will practically be limited to successional rights.

WHEREFORE, finding merit in this appeal, we hereby SET ASIDE the Order of the trial Court dated August 13, 1983 and remand the case to the Court of origin for continuation of the trial by the heirs of plaintiff against the heirs of defendant Eutiquio Marquino, without pronouncement as to costs.

SO ORDERED."[3]

The Motion for Reconsideration was denied on May 19, 1985. Hence, this petition for review on certiorari.

Petitioners hold respondent court to be in error, in these respects:

I

IN RULING THAT AFTER THE DEATH OF THE NATURAL CHILD, THE HEIRS OF SAID DECEASED NATURAL CHILD, CANNOT BRING THE ACTION TO COMPEL RECOGNITION, BUT THEY MAY HOWEVER, CONTINUE THE ACTION ALREADY FILED TO COMPEL RECOGNITION.

II

IN RULING THAT THE DEATH OF THE PUTATIVE PARENT WHILE THE CASE AGAINST HIM FOR RECOGNITION OF HIS ALLEGED CHILD IS PENDING WILL NOT EXTINGUISH THE ACTION BUT THE SAME CAN BE CONTINUED WITH THE HEIRS SUBSTITUTED FOR SAID DECEASED PARENT."[4]

The Court writes finis to this controversy after twenty-three (23) years of protracted litigation.

The first issue to be resolved is whether or not the right of action to compel recognition is intransmissible in character.

Article 285 of the Civil Code provides that an action for recognition of natural children may be brought only during the lifetime 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 file the action before the expiration of four years from the attainment of his majority;
- (2) If after the death of the father or of the mother a document should appear of which nothing had been heard and in which either or both parents recognize the child.

In this case, the action must be commenced within four years from discovery of the document

The rationale for the rule is to give the alleged parents opportunity to be heard. The reason for the exceptions is to

protect the heirs.[5]

In *Conde vs. Abaya*,[6] we held that the right of action for the acknowledgement of natural children to which Article 285 (Article 137, Old Civil code) refers, can never be transmitted. The reason is that the code makes no mention of it in any case, not even as an exception.[7]

In the case at bench, it is evident that Bibiana was a natural child. She was born out of wedlock on December 2, 1926, of Gregoria Romano and allegedly of Eutiquio Marquino who at that time was single. Bibiana sued for compulsory recognition while Eutiquio was still alive. Sadly, she died on March 17, 1983 before she could present her proof of recognition. Her death tolled the action considering its personal nature and intransmissibility. As explained in the case of *Conde vs. Abaya*,[8] viz:

"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 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 child is not better than, nor even equal to, that of a legitimate child."

This ruling was reiterated in the recent case of *Heirs of Raymundo C. Banas vs. Heirs of Bibiano Banas*'[9] thus:

"Granting that, after the death of Bibiano Banas Raymundo could file an action for compulsory recognition against Bibiano's heirs, still plaintiffs-appellants cannot invoke Raymundo's right to file such action, because it is not transmissible to the natural child's heirs; the right is purely a personal one to the natural child."

The second issue for resolution is whether or not after the death of the putative father the action for recognition of a natural child can be continued against the heirs of the former.

We rule against its continuance. In an action for compulsory recognition, the party in the best position to oppose the same is the putative parent himself.[10] The need to hear the side of the putative parent is an overwhelming consideration because of the unsettling effects of such an action on the peace and harmonious relationship in the family of the putative parent. For this reason, Article 285 provides only two (2) exceptions when an action for recognition transcends the death of the putative parent. Neither of these exceptions obtains in the case at bench. Firstly, the death of Eutiquio did not occur during the minority of Bibiana. In fact, she was already forty-five (45) years old when the recognition case was filed on January 10, 1971. Secondly, no document was discovered, before unknown, in which Bibiana was expressly acknowledged as a natural child. Consequently, the respondent court erred in ruling that the action can still be continued against the heirs of Eutiquio.[11]

Our public policy at that time supports the rule limiting actions for recognition during the lifetime of the presumed parents, to quote:

"Public policy, indeed public necessity, demands that before an illegitimate child be admitted into a legitimate family, every requisite of the law must be completely and fully complied with. No one should ever be permitted upon doubtful evidence to take from legitimate children the property which they and their parents have, by industry, fidelity, and frugality, acquired. To do so would in many instances where the legitimate children had 'labored unsparingly in order that they might have the comforts of life and joys of home,' be manifestly contrary to every plainest principles of justice. And again, if this can ever be done upon oral testimony alone, after the lips of the alleged father and mother have been closed by death, such testimony must

be clear, strong, and convincing." [12]

Our law providing for the intransmissibility of an action for recognition, however, has been superseded by the New Family Code which took effect on August 3, 1988. Under Article 173 of the Family Code, it is now provided:

"The action to claim legitimacy may be brought by the child during his or her lifetime and shall be transmitted to the heirs should the child die during minority or in a state of insanity. In these cases, the heirs shall have a period of five (5) years within which to institute the action.

The action commenced by the child shall survive notwithstanding the death of either or both of the parties."
(Emphasis supplied)

Pursuant to this provision, the child can bring the action during his or her entire lifetime (not during the lifetime of the parents) and even after the death of the parents. In other words, the action does not prescribe as long as he lives. [13]

Be that as it may, Article 173 of the Family Code cannot be given retroactive effect so as to apply to the case at bench because it will prejudice the vested rights of petitioners transmitted to them at the time of the death of their father, Eutiquio Marquino. "Vested right" is a right in property which has become fixed and established and is no longer open to doubt or controversy. [14] It expresses the concept of present fixed interest, which in right reason and natural justice should be protected against arbitrary State action. [15]

WHEREFORE, the decision of the Court of Appeals dated June 17, 1985 is REVERSED and SET ASIDE. The Complaint in Civil Case No. 5197 of the then Court of First Instance of Negros Occidental is DISMISSED.

No costs.

SO ORDERED.

Narvasa, C.J., (Chairman), Padilla, Regalado, and Mendoza, JJ., concur.

[1] Rollo, p. 37.

[2] Id., pp. 87-88.

[3] Decision, Caguioa, Eduardo F., J. Ponente, Gaviola, Ramon G., Jr., Losa, Ma. Rosario Q., and Luciano, Leonor I., JJ, concurring.

[4] Rollo, pp. 8-9.

[5] Villalon vs. Villalon, 71 Phil. 98, [1940].

[6] 13 Phil. 249, [1909].

[7] Padilla Ambrosio, Civil Law, Civil Code Annotated, 1975 Edition, Vol. I-A, pp. 159-160; Paras, Civil Code of the Philippines, 11th ed., 1989, Vol. I, p. 285.

[8] Supra., at pp. 256-257.

[9] G.R. No. L-25715, January 31, 1985, 143 SCRA 260.

[10] Hernaez vs. Intermediate Appellate Court, G.R. No. 73864, May 7, 1992, 208 SCRA 449.

[11] Supra., Conde vs. Abaya.

[12] Supra.

[13] Dy, Alicia S., J., Handbook on the Family Code of the Philippines, 1988 ed., p. 247.

[14] Ayog vs. Cusi, Jr., G.R. No. L-46729, November 19, 1982, 118 SCRA 492.

[15] Supra.

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