

TEODORO PALMES HERNAEZ, JR., REPRESENTED BY HIS MOTHER AND NATURAL GUARDIAN, EVELYN PALMES, PETITIONER, VS. HON. INTERMEDIATE APPELLATE COURT, TEODORO HERNAEZ, SR., ESTRELLA G. ...

G.R. No. 73864. May 07, 1992

Ponente: NOCON, J.

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NOCON, J.:

This petition seeks the review of the decision dated November 6, 1985 of the Intermediate Appellate Court (now Court of Appeals)[1] in AC-G.R. No. SP-05928, Teodoro G. Hernaez, et al. vs. Hon. Regina G. Ordoñez Benitez, et. al., which held as void the decision of the Regional Trial Court of Manila, Branch XLVII, in Civil Case No. E-02786 declaring petitioner Teodoro Palmes Hernaez, Jr. as the recognized natural child of private respondent Teodoro G. Hernaez and entitled to a P400.00 monthly support.

It appears from the records that on September 2, 1980, petitioner represented by his mother and natural guardian, Evelyn Palmes, filed a complaint with the then Juvenile and Domestic Court (now Regional Trial Court) against Teodoro Hernaez for acknowledgment and support with support pendente lite. A decision dated March 23, 1984 was rendered by said court the dispositive portion of which reads:

"WHEREFORE, judgment is hereby rendered:

1. Declaring plaintiff, Teodoro Palmes Hernaez, Jr., the recognized natural child of defendant, Teodoro G. Hernaez;
2. Ordering said defendant to give a monthly support of P400.00 to the minor until he reaches the age of majority or completes his education or training commencing February 10, 1979. The total amount in arrears shall be paid in two equal, installments, the first, one (1) month after this Decision shall have become final and executory; and the second, two (2) months after the first installment. The monthly support for June, 1984 shall be paid within the first five (5) days of July, 1984. Thereafter, the monthly support shall be paid within the first five (5) days of the succeeding months, which shall be deposited with the Cashier of the Regional Trial Courts of Manila at City Hall, Manila, from whom plaintiff's mother or her duly authorized representative may withdraw the same; and
3. Ordering the defendant to give plaintiff the amount of P2,000.00 for attorney's fees."

On June 29, 1984, Teodoro Hernaez filed a notice of appeal of said decision which he received on May 31, 1984.

As the appeal was filed beyond the reglementary period of 15 days as mandated by Section 39 of Batas Pambansa 129, petitioner moved to dismiss the appeal as the decision of the trial court has become final and executory.

Realizing the defect in his notice of appeal, Teodoro Hernaez filed a Motion to Give Due Course to Appeal or Petition for Relief on August 8, 1984 which was denied in the Order of September 12, 1984 on the ground that the motion was filed out of time and the petition did not comply with Section 3 of Rule 38 of the Revised Rules of

Court.[3]

On September 19, 1984, Teodoro Hernaez thru his new counsel, filed another Petition for Relief from Judgment alleging that he was not aware of the decision of the lower court. On the same date, private respondent's wife, Estrella Hernaez, together with their six children likewise filed a Petition for Relief from Judgment with Motion to Intervene because they were not included as parties in the instant case, which petitions and motion were denied in the order of December 21, 1984[4] for lack of merit and on the ground that the decision had already become final and executory.

From said order, private respondents appealed, which was granted in an order dated January 25, 1985.

Petitioner, on the other hand, filed a motion for reconsideration of the order of January 25, 1985 which was also granted by the trial court on February 20, 1985.

Private respondents then filed a motion for clarification inquiring as to whether their appeal which was granted on January 25, 1986 was subsequently denied because of the order of February 20, 1985. The trial court issued an order declaring that there is no need for a clarification.

On March 20, 1985, petitioner filed a motion to require private respondent Teodoro Hernaez to deposit support in arrears or to be cited for contempt.

During the hearing of the motion for contempt, private respondents' counsel, requested for 10 days within which to comply with the questioned decision. However, on April 10, 1986, private respondents, instead of complying with said decision, filed a petition for certiorari, prohibition or mandamus or alternatively, an action for the annulment of judgment with preliminary injunction with the Intermediate Appellate Court,[5] which declared the decision of the trial court null and void for lack of summons by publication being an action in rem.[6]

Their motion for reconsideration having been denied on February 21, 1986, petitioner instituted this Petition for Review.

It is petitioner's contention that the requirement of publication is not necessary in an action for compulsory acknowledgment and support of an illegitimate child since said action is not one of the instances enumerated in Section 1 of Rule 72 of the Revised Rules of Court requiring publication of the petition before jurisdiction can be acquired by the Court. Under the "expressio unius est exclusio alterius" principle on statutory construction, this action should be considered a proceeding in personam.

We find merit in the petition.

An action for compulsory recognition of minor natural children is not among cases of special proceedings mentioned in Section 1, Rule 72 of the Rules of Court. Consequently, such an action should be governed by the rules on ordinary civil actions.

The case at bar does not fall under Rule 105 of the Rules of Court since the same applies only to cases falling under Article 281 of the Civil Code where there has been a voluntary recognition of the minor natural child, i.e., prior recognition of the minor natural child in a document other than a record of birth or a will, which is absent in the instant case.

Private respondents' claim that notice of an action for compulsory recognition should also be given to the wife and legitimate children of the putative parent, Teodoro Hernaez, Sr., is unmeritorious. First of all, in a case for compulsory recognition, the party in the best position to oppose the same is the putative parent himself.

Secondly, implicit in both Articles 283[7] and 285[8] of the Civil Code is the general rule that an action for

compulsory recognition should be brought against the putative father,[9] the exceptions being the instances when either the putative parent died during the minority of the child, or when after the death of the parent a document should appear of which nothing had been heard and in which either or both of the parents recognize the child, in which cases the action is brought against the putative parent's heirs.

In fine, an action for compulsory recognition is an ordinary civil action. Thus, service of summons on the putative parent shall be as provided for under Rule 14. Said action shall be brought against the putative parent only; his heirs may be made party defendants only under the circumstances mentioned in Article 285.

WHEREFORE, the decision of the Court of Appeals is hereby REVERSED and SET ASIDE, and the decision dated March 23, 1984 of the Regional Trial Court of Manila, Branch XLVII in Civil Case No. E-02786 is hereby REINSTATED and AFFIRMED. Costs against private respondents.

SO ORDERED.

Melencio-Herrera, (Chairman), Padilla, and Regalado, JJ., concur.
Paras, J., no part.

[1] Ponente: Justice Edgardo L. Paras; Justices Vicente Mendoza and Luis Javellana, concurring.

[2] RTC's Decision, p. 4; Rollo, p. 23.

[3] Annex "D", Petition, Rollo, p. 24.

[4] Annex "E", Petition, Rollo, pp. 25-26.

[5] Annex "F", Petition, Rollo, pp. 27-36.

[6] Annex "H", Petition, Rollo, pp. 43-44.

[7] Art 283. In any of the following cases, the father is obliged to recognize the child as his natural child:

(1) In cases of rape, abduction or seduction, when the period of the offense coincides more or less with that of the conception;

(2) When the child is in continuous possession of status of a child of the alleged father by the direct acts of the latter or of his family;

(3) When the child was conceived during the time when the mother cohabited with the supposed father;

(4) When the child has in his favor any evidence or proof that the defendant is his father.

[8] Art. 285. The action for the 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 cases, the action must be commenced within four years from the finding of the document.

[9] Tolentino, Civil Code of the Philippines, Vol I, p. 581; Paras, Civil Code of the Philippines, Vol. I, p. 688.

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