

BIENVENIDO RODRIGUEZ, PETITIONER, VS. COURT OF APPEALS AND CLARITO AGBULOS, RESPONDENTS.

G.R. No. 85723. June 19, 1995

Ponente: QUIASON, J.

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QUIASON, J.:

This is a petition for review on certiorari under Rule 45 of the Revised Rules of Court of the Decision of the Court of Appeals dated November 2, 1988 in CA-G.R. SP No. 14276, which allowed, in an action for compulsory recognition, the testimony of the mother of a natural child on the identity of the putative father.

I

On October 15, 1986, an action for compulsory recognition and support was brought before the Regional Trial Court, Branch 9, Baguio-Benguet, by respondent Alarito (Clarito) Agbulos against Bienvenido Rodriguez, petitioner herein. At the trial, the plaintiff presented his mother, Felicitas Agbulos Haber, as first witness. In the course of her direct examination, she was asked by counsel to reveal the identity of the plaintiff's father but the defendant's counsel raised a timely objection which the court sustained.

The plaintiff filed before this Court a petition for review on certiorari questioning the said order in UDK 8516 entitled "Clarito Agbulos v. Hon. Romeo A. Brawner and Bienvenido Rodriguez." On March 18, 1988, this Court referred the petition to the Court of Appeals (CA-G.R. SP No. 14276), which promulgated the questioned Decision dated November 2, 1988.

II

In the instant petition for review on certiorari, petitioner alleged that the Court of Appeals erred: (1) in not dismissing the petition for certiorari on the ground that the order of the trial court disallowing the testimony of Felicitas Agbulos Haber was interlocutory and could not be reviewed separately from the judgment; and (2) in reversing the said order and allowing the admission of said testimony.

As a rule, errors of judgment or of procedure, not relating to the court's jurisdiction nor involving grave abuse of discretion, are not reviewable by certiorari under Rule 65 of the Revised Rules of Court (*Villalon v. Intermediate Appellate Court*, 144 SCRA 443 [1986]). However, there are exceptions to said rule. For instance, certiorari is justified in order to prevent irreparable damages and injury to a party, where the trial judge capriciously and whimsically exercised his judgment, or where there may be danger of failure of justice. Certiorari may also be availed of where an appeal would be slow, inadequate and insufficient (*Presco v. Court of Appeals*, 192 SCRA 232 [1990]; *Saludes v. Pajarillo*, 78 Phil. 754 [1947]).

We find that had the appellate court sanctioned the trial court's disallowance of the testimony of plaintiff's mother, private respondent would have been deprived of a speedy and adequate remedy considering the importance of said testimony and the erroneous resolution of the trial court.

On the merits of his petition, petitioner contended that Felicitas Agbulos Haber should not be allowed to reveal the name of the father of private respondent because such revelation was prohibited by Article 280 of the Civil Code of the Philippines. Said Article provided:

"When the father or the mother makes the recognition separately, he or she shall not reveal the name of the person with whom he or she had the child; neither shall he or she state any circumstance whereby the other party may be identified."

On the other hand, private respondent argued that his mother should be allowed to testify on the identity of his father, pursuant to paragraph 4, Article 283 of the Civil Code of the Philippines and Section 30, Rule 130 of the Revised Rules of Court.

Article 283 of the Civil Code of the Philippines provided:

"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."

Section 30, Rule 130 of the Revised Rules of Court provides:

"Testimony generally confined to personal knowledge; hearsay excluded. - A witness can testify only to those facts which he knows of his own knowledge, that is, which are derived from his own perception, except as otherwise provided in these rules."

Private respondent cannot invoke our decision in *Navarro v. Bacalla*, 15 SCRA 114 (1965). While we ruled in *Navarro* that the testimony of the mother of the plaintiff in said case, could be used to establish his paternity, such testimony was admitted during the trial without objection and the defendant accepted the finding of the trial court that he was the father of the plaintiff.

In the case at bench, petitioner timely objected to the calling of the mother of private respondent to the witness stand to name petitioner as the father of said respondent.

Likewise, in *Navarro* we clearly stated:

"We are not ruling whether the mere testimony of the mother, without more, is sufficient to prove the paternity of the child. Neither are we ruling on the scope of Art. 280, New Civil Code which enjoins the mother in making a separate and voluntary recognition of a child from revealing the name of the father, specifically, as to whether the mother's testimony identifying the father is admissible in an action to compel recognition if and when a timely objection to such oral evidence is interposed" (at p. 117).

Navarro, therefore, is not the end but only the beginning of our quest, which felicitously was reached with our conclusion that the prohibition in Article 280 against the identification of the father or mother of a child applied only in voluntary and not in compulsory recognition. This conclusion becomes abundantly clear if we consider the relative position of the progenitor of Article 280, which was Article 132 of the Spanish Civil Code of 1889, with the other provisions on the acknowledgement of natural children of the same Code.

Article 132 was found in Section I (Acknowledgment of Natural Children), Chapter IV (Illegitimate Children),

Title V (Paternity and Filiation), Book First (Persons) of the Spanish Civil Code of 1889.

The first article in said Section provided:

"ART. 129 - A natural child may be acknowledged by the father and mother jointly or by either of them alone."

The next article provided:

"ART. 130 - In case the acknowledgment is made by only one of the parents, it shall be presumed that the child is a natural one if the parent acknowledging it was, at the time of the conception, legally competent to contract marriage."

The article immediately preceding Article 132 provided:

"ART. 131 - The acknowledgment of a natural child must be made in the record of birth, in a will, or in some other public document."

Article 132 of the Spanish Civil Code provided:

"When the acknowledgment is made separately by the father or the mother, the name of the child's other parent shall not be revealed by the parent acknowledging it, nor shall any circumstance be mentioned by which such person might be recognized.

"No public officer shall authenticate any document drawn in violation of this provision and should he do so notwithstanding this prohibition shall be liable to a fine of from 125 to 500 pesetas, and the words containing such revelation shall be stricken out."

Article 280 of the Civil Code of the Philippines was found in Section 1 (Recognition of Natural Children), Chapter 4 (Illegitimate Children), Title VIII (Paternity and Filiation) of said Code. The whole section was repealed by the Family Code.

The first article of this section was Article 276 which was a reproduction of Article 129 of the Spanish Civil Code. The second article was Article 277 which was a reproduction of Article 130 of the Spanish Civil Code. The third article was Article 278 which was a reproduction of Article 131 of the Spanish Civil Code.

However, unlike in the Spanish Civil Code, wherein the progenitor of Article 280 followed immediately the progenitor of Article 278, a new provision was inserted to separate Article 280 from Article 278. The new provision, Article 279, provided:

"A minor who may contract marriage without parental consent cannot acknowledge a natural child, unless the parent or guardian approves the acknowledgment, or unless the recognition is made in the will."

If the sequencing of the provisions in the Spanish Civil Code were maintained in the Civil Code of the Philippines, and Article 280 was numbered Article 279, it becomes clear that the prohibition against the identification by the parent acknowledging a child of the latter's other parent refers to the voluntary recognition provided for in Article 278.

Senator Arturo M. Tolentino is of the view that the prohibition in Article 280 does not apply in an action for compulsory recognition. According to him:

"The prohibition to reveal the name or circumstance of the parent who does not intervene in the separate recognition is limited only to the very act of making such separate recognition. It does not extend to any other act or to cases allowed by law. Thus, when a recognition has been made by one parent, the name of the other parent may be revealed in an action by the child to compel such other parent to recognize him also" (I

Commentaries and Jurisprudence on the Civil Code of the Philippines 590 [1985]).

Justice Eduardo Caguioa also opines that the said prohibition refers merely to the act of recognition. "It does prevent inquiry into the identity of the other party in case an action is brought in court to contest recognition on the ground that the child is not really natural because the other parent had no legal capacity to contract marriage" (I Comments and Cases on Civil Law 380 [1967] citing *In re Estate of Enriquez*, 29 Phil. 167 [1915]).

We have not lost sight of our decision in *Infante v. Figueras*, 4 Phil. 738 (1905), where we rejected the testimony of the mother of a child that the defendant was the father of the plaintiff. The action for recognition in that case was brought under Article 135 of the Spanish Civil Code, which limited actions to compel recognition to cases when an indubitable writing existed wherein the father expressly acknowledged his paternity and when the child was in the uninterrupted possession of the status of a natural child of the defendant father justified by the conduct of the father himself or that of his family.

The action filed by private respondent herein was brought under Article 283 of the Civil Code of the Philippines, which added new grounds for filing an action for recognition: namely,

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"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."

Likewise, the testimony of the mother of the plaintiff in *Infante* was not admissible under the procedural law then in force, which was the Law of Bases of May 11, 1888. Said law in pertinent part provided:

"No se admitira la investigation de la paternidad si no en los casos de delito o cuando existe escrito del padre en el que conste su voluntad indubitada de reconocer por suyo al hijo, deliberadamente expresada con ese fin, o cuando medie posesion de estado. Se permitira la investigacion de la maternidad."

Traditionally, there was a free inquiry into the paternity of children allowed by French royal decrees but the investigation of paternity was forbidden by the French Revolutionary Government in order to repress scandal and blackmail. This prohibition passed to the French Civil Code and from it to the Spanish Civil Code of 1889 (I Reyes and Puno, *An Outline of Philippine Civil Code* 266 [4th ed.]).

Worth noting is the fact that no similar prohibition found in Article 280 of the Civil Code of the Philippines has been replicated in the present Family Code. This undoubtedly discloses the intention of the legislative authority to uphold the Code Commission's stand to liberalize the rule on the investigation of the paternity of illegitimate children.

Articles 276, 277, 278, 279 and 280 of the Civil Code of the Philippines were repealed by the Family Code, which now allows the establishment of illegitimate filiation in the same way and on the same evidence as legitimate children (Art. 175).

Under Article 172 of the Family Code, filiation of legitimate children is by any of the following:

"The filiation of legitimate children is established by any of the following:

`(1) The record of birth appearing in the civil register or a final judgment; or

`(2) An admission of legitimate filiation in a public document or a private handwritten instrument and signed by the parent concerned.'

"In the absence of the foregoing evidence, the legitimate filiation shall be proved by:

`(1) The open and continuous possession of the status of a legitimate child; or

`(2) Any other means allowed by the Rules of Court and special laws. (265a, 266a, 267a)' "

Of interest is that Article 172 of the Family Code adopts the rule in Article 283 of the Civil Code of the Philippines, that filiation may be proven by "any evidence or proof that the defendant is his father."

WHEREFORE, the Decision of the Court of Appeals is AFFIRMED. The trial court is DIRECTED to PROCEED with dispatch in the disposition of the action for compulsory recognition.

SO ORDERED.

Davide, Jr., Bellosillo, and Kapunan, JJ., concur.

Padilla, J., (Chairman), no part.

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