

CASIMIRO MENDOZA, PETITIONER, VS. HON. COURT OF APPEALS AND TEOPISTA TORING TUÑACAO,

G.R. No. 86302. September 24, 1991

Ponente: CRUZ, J.

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CRUZ, J.:

The private respondent claimed she was the illegitimate daughter of Casimiro Mendoza, but the latter denied her claim. He denied it to his dying day. The trial court believed him and dismissed her complaint for compulsory recognition. The appellate court did not and reversed the judgment of the court below. Now the issue is before us on certiorari.

The complaint was filed on August 21, 1981, in the Regional Trial Court in Cebu City. Teopista Toring Tuñacao, the herein private respondent, alleged that she was born on August 20, 1930, to Brigida Toring, who was then single, and defendant Casimiro Mendoza, married at that time to Emiliana Barrientos. She averred that Mendoza recognized her as an illegitimate child by treating her as such and according her the rights and privileges of a recognized illegitimate child.

Casimiro Mendoza, then already 91 years old, specifically denied the plaintiff's allegations and set up a counterclaim for damages and attorney's fees.

Amplifying on her complaint, Teopista testified that it was her mother who told her that her father was Casimiro. She called him Papa Miroy. She lived with her mother because Casimiro was married but she used to visit him at his house. When she married Valentin Tuñacao, Casimiro bought a passenger truck and engaged him to drive it so he could have a livelihood. Casimiro later sold the truck but gave the proceeds of the sale to her and her husband. In 1977, Casimiro allowed her son, Lolito Tuñacao, to build a house on his lot and later he gave her money to buy her own lot from her brother, Vicente Toring. On February 14, 1977, Casimiro opened a joint savings account with her as a co-depositor at the Mandaue City branch of the Philippine Commercial and Industrial Bank. Two years later, Margarita Bate, Casimiro's adopted daughter, took the passbook from her, but Casimiro ordered it returned to her after admonishing Margarita.[1]

Lolito Tuñacao corroborated his mother and said he considered Casimiro his grandfather because Teopista said so. He would kiss his hand whenever they saw each other and Casimiro would give him money. Casimiro used to invite him to his house and give him jackfruits. When his grandfather learned that he was living on a rented lot, the old man allowed him to build a house on the former's land.[2]

Two other witnesses testified for Teopista, namely, Gaudencio Mendoza and Isaac Mendoza, both relatives of Casimiro.

Gaudencio said he was a cousin of Casimiro and knew Brigida Toring because she used to work with him in a saltbed in Opao. Casimiro himself told him she was his sweetheart. Later, Gaudencio acted as a go-between for their liaison, which eventually resulted in Brigida becoming pregnant in 1930 and giving birth to Teopista.

Casimiro handed him P20.00 to be given to Brigida at Teopista's baptism. Casimiro also gave him P5.00 every so often to be delivered to Brigida.[3]

Isaac testified that his uncle Casimiro was the father of Teopista because his father Hipolito, Casimiro's brother, and his grandmother, Brigida Mendoza, so informed him. He worked on Casimiro's boat and whenever Casimiro paid him his salary, he would also give him various amounts from P2.00 to P10.00 to be delivered to Teopista. Isaac also declared that Casimiro intended to give certain properties to Teopista.[4]

Casimiro himself did not testify because of his advanced age, but Vicente Toring took the stand to resist Teopista's claim.

Vicente, who professed to be Casimiro's only illegitimate child by Brigida Toring, declared that Teopista's father was not Casimiro but a carpenter named Ondoy, who later abandoned her. Vicente said that it was he who sold a lot to Teopista, and for a low price because she was his half-sister. It was also he who permitted Lolito to build a house on Casimiro's lot. This witness stressed that when Casimiro was hospitalized, Teopista never once visited her alleged father.[5]

The last statement was shared by the other defense witness, Julieta Ouano, Casimiro's niece, who also affirmed that Vicente Toring used to work as a cook in Casimiro's boat. She flatly declared she had never met Teopista but she knew her husband, who was a mechanic.[6]

The rules on compulsory recognition are embodied in Article 283 of the Civil Code, which has been held to be applicable not only to natural children but also to spurious children.[7] The said article provides:

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.

This article has been substantially reproduced in the Family Code as follows:

Art. 172. 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.

Art. 175. Illegitimate children may establish their illegitimate filiation in the same way and on the same evidence as legitimate children.

In his remarkably well-written decision, Judge Leoncio P. Abarquez rejected the plaintiff's claim that she was in continuous possession of the status of a child of the alleged father by the direct acts of the latter or of his

family. His Honor declared:

In this particular case the established evidence is that plaintiff continuously lived with her mother, together with her sister Paulina. Neither the plaintiff nor her husband had come to live with the defendant. At most, only their son, Lolito Tuñacao was allowed to construct a small house in the land of the defendant, either by the defendant himself, as claimed by the plaintiff, or by Vicente Toring, as claimed by the witnesses of the defendant. The defendant never spent for the support and education of the plaintiff. He did not allow the plaintiff to carry his surname. The instances when the defendant gave money to the plaintiff were, more or less, off-and-on or rather isolatedly periodic. They were made at considerable intervals and were not given directly to the plaintiff but through a third person. Thus, while it may be conceded that: a) the defendant's parents, as well as the plaintiff himself, told Gaudencio Mendoza and Isaac Mendoza that Teopista is the daughter of the defendant; b) that Teopista calls the defendant as "Papa Miro"; c) that Teopista would kiss defendant's hand when she met him; d) that the defendant gave to her and her husband the income of the passenger truck as well as the proceeds of the sale thereof, all these acts, taken altogether, are not sufficient to show that the plaintiff had possessed continuously the status of a recognized illegitimate child.

On appeal, however, the respondent court[8] disagreed and arrived at its own conclusion as follows:

Contrary to the conclusion of the court a quo, We find that appellant has sufficiently proven her continuous possession of such status. Although the court a quo did not pass on the credibility of the various witnesses presented, We consider the witnesses for the plaintiff as credible and unbiased. No proof was shown to render them otherwise. There is no showing that Isaac and Gaudencio testified falsely. They were disinterested parties with no axe to grind against the appellee or the people actively acting in his behalf. In fact even the court a quo conceded to the truthfulness of some of their testimonies.

By contrast, it continued, Vicente Toring was an interested party who was claiming to be the sole recognized natural child of Casimiro and stood to lose much inheritance if Teopista's claim were recognized. He had earlier filed theft charges against his own sister and libel charges against her husband. As for Julieta Ouano, the respondent court found it difficult to believe that she had never met Teopista although both of them have been living in the same barangay since birth.

The decision of the Court of Appeals was promulgated on August 11, 1988. A motion for reconsideration was filed, and it was only from the opposition thereto of the private respondent that Casimiro's counsel learned that his client had died on May 31, 1986. He immediately informed the respondent court but the motion for reconsideration was denied without any substitution of parties having been effected. The said counsel, now acting for Vicente Toring, then asked this Court to substitute the latter for the deceased Casimiro Mendoza in the present petition.

The applicable provisions of the Rules of Court are Sections 16 and 17 of Rule 3, reading as follows:

Sec. 16. Duty of attorney upon death, incapacity or incompetency of party. — Whenever a party to a pending case dies, becomes incapacitated or incompetent, it shall be the duty of his attorney to inform the court promptly of such death, incapacity or incompetency, and to give the name and residence of his executor, guardian or other legal representative.

Sec. 17. Death of party. — After a party dies and the claim is not thereby extinguished, the court shall order, upon proper notice, the legal representative of the deceased to appear and to be substituted for the deceased, within a period of thirty (30) days, or within such time as may be granted. If the legal representative fails to appear within said time the court may order the opposing party to procure the appointment of a legal representative of the deceased within a time to be specified by the court, and the representative shall immediately appear for and on behalf of the interest of the deceased. The court charges involved in procuring such appointment, if defrayed by the opposing party, may be recovered as costs. The heirs of the deceased may

be allowed to be substituted for the deceased, without requiring the appointment of an executor or administrator and the court may appoint guardian ad litem for the minor heirs.

In the early case of *Masecampo vs. Masecampo*,^[9] it was settled that:

The subsequent death of the father is not a bar to the action commenced during his lifetime by one who pretended to be his natural son. It may survive against the executor, administrator, or any other legal representative of the testate or intestate succession.

Pursuant to the above rules and jurisprudence, we hereby allow the substitution of Casimiro Mendoza pro haec vice and nunc pro tunc by Vicente Toring, who appears to be the former's illegitimate son. This disposes of the private respondent's contention that the lawyer-client relationship terminated with Casimiro's death and that Vicente has no personality now to substitute him.

Now to the merits.

We note that both the trial court and the respondent court, in arriving at their respective conclusions, focused on the question of whether or not Teopista was in continuous possession of her claimed status of an illegitimate child of Casimiro Mendoza. This was understandable because Teopista herself had apparently based her claim on this particular ground as proof of filiation allowed under Article 283 of the Civil Code.

To establish "the open and continuous possession of the status of an illegitimate child," it is necessary to comply with certain jurisprudential requirements. "Continuous" does not mean that the concession of status shall continue forever but only that it shall not be of an intermittent character while it continues.^[10] The possession of such status means that the father has treated the child as his own, directly and not through others, spontaneously and without concealment though without publicity (since the relation is illegitimate).^[11] There must be a showing of the permanent intention of the supposed father to consider the child as his own, by continuous and clear manifestation of paternal affection and care.^[12]

With these guidelines in mind, we agree with the trial court that Teopista has not been in continuous possession of the status of a recognized illegitimate child of Casimiro Mendoza, under both Article 283 of the Civil Code and Article 172 of the Family Code.

The plaintiff lived with her mother and not with the defendant although they were both residents of Omapad, Mandaue City. It is true, as the respondent court observed, that this could have been because defendant had a legitimate wife. However, it is not unusual for a father to take his illegitimate child into his house to live with him and his legitimate wife, especially if the couple is childless, as in this case. In fact, Vicente Toring, who also claimed to be an illegitimate child of Casimiro, lived with the latter and his wife, apparently without objection from the latter. We also note that Teopista did not use the surname of Casimiro although this is, of course, not decisive of one's status. No less significantly, the regularity of defendant's act of giving money to the plaintiff through Gaudencio Mendoza and Isaac Mendoza has not been sufficiently established. The trial court correctly concluded that such instances were "off-and-on," not continuous and intermittent. Indeed, the plaintiff's testimony on this point is tenuous as in one breath she said that her mother solely spent for her education and in another that Casimiro helped in supporting her.^[13]

But although Teopista has failed to show that she was in open and continuous possession of the status of an illegitimate child of Casimiro, we find that she has nevertheless established that status by another method.

What both the trial court and the respondent court did not take into account is that an illegitimate child is allowed to establish his claimed filiation by "any other means allowed by the Rules of Court and special laws," according to the Civil Code, or "by evidence or proof in his favor that the defendant is her father," according to the Family

Code. Such evidence may consist of his baptismal certificate, a judicial admission, a family Bible in which his name has been entered, common reputation respecting his pedigree, admission by silence, the testimonies of witnesses, and other kinds of proof admissible under Rule 130 of the Rules of Court.[14]

The trial court conceded that "the defendant's parents, as well as the plaintiff himself, told Gaudencio Mendoza and Isaac Mendoza, that Teopista was the daughter of the defendant." It should have probed this matter further in light of Rule 130, Section 39, of the Rules of Court, providing as follows:

Sec. 39. Act or declaration about pedigree. — The act or declaration of a person deceased, or unable to testify, in respect to the pedigree of another person related to him by birth or marriage, may be received in evidence where it occurred before the controversy, and the relationship between the two persons is shown by evidence other than such act or declaration. The word "pedigree" includes relationship, family genealogy, birth, marriage, death, the dates when and the places where these facts occurred, and the names of the relatives. It embraces also facts of family history intimately connected with pedigree.

The statement of the trial court regarding Teopista's parentage is not entirely accurate. To set the record straight, we will stress that it was only Isaac Mendoza who testified on this question of pedigree, and he did not cite Casimiro's father. His testimony was that he was informed by his father Hipolito, who was Casimiro's brother, and Brigida Mendoza, Casimiro's own mother, that Teopista was Casimiro's illegitimate daughter.[15]

Such acts or declarations may be received in evidence as an exception to the hearsay rule because "it is the best the nature of the case admits and because greater evils are apprehended from the rejection of such proof than from its admission.[16]" Nevertheless, precisely because of its nature as hearsay evidence, there are certain safeguards against its abuse. Commenting on this provision, Francisco enumerates the following requisites that have to be complied with before the act or declaration regarding pedigree may be admitted in evidence:

- The declarant is dead or unable to testify.
- The pedigree must be in issue.
- The declarant must be a relative of the person whose pedigree is in issue.
- The declaration must be made before the controversy arose.
- The relationship between the declarant and the person whose pedigree is in question must be shown by evidence other than such declaration.[17]

All the above requisites are present in the case at bar. The persons who made the declarations about the pedigree of Teopista, namely, the mother of Casimiro, Brigida Mendoza, and his brother, Hipolito, were both dead at the time of Isaac's testimony. The declarations referred to the filiation of Teopista and the paternity of Casimiro, which were the very issues involved in the complaint for compulsory recognition. The declarations were made before the complaint was filed by Teopista or before the controversy arose between her and Casimiro. Finally, the relationship between the declarants and Casimiro has been established by evidence other than such declaration, consisting of the extrajudicial partition of the estate of Florencio Mendoza, in which Casimiro was mentioned as one of his heirs.[18]

The said declarations have not been refuted. Casimiro could have done this by deposition if he was too old and weak to testify at the trial of the case.

If we consider the other circumstances narrated under oath by the private respondent and her witnesses, such as the financial doles made by Casimiro to Brigida Toring, the hiring of Teopista's husband to drive the passenger truck of Casimiro, who later sold the vehicle and gave the proceeds of the sale to Teopista and her husband, the

permission he gave Lolito Tuñacao to build a house on his land after he found that the latter was living on a rented lot, and, no less remarkably, the joint savings account Casimiro opened with Teopista, we can reasonably conclude that Teopista was the illegitimate daughter of Casimiro Mendoza.

We hold that by virtue of the above-discussed declarations, and in view of the other circumstances of this case, Teopista Toring Tuñacao has proved that she is the illegitimate daughter of Casimiro Mendoza and is entitled to be recognized as such. In so holding, we give effect to the policy of the Civil Code and the Family Code to liberalize the rule on the investigation of the paternity of illegitimate children, without prejudice to the right of the alleged parent to resist the claimed status with his own defenses, including evidence now obtainable through the facilities of modern medicine and technology.

WHEREFORE, the petition is DENIED. Judgment is hereby rendered DECLARING Teopista Toring Tuñacao to be the illegitimate child of the late Casimiro Mendoza and entitled to all the rights appurtenant to such status. Costs against the petitioner.

SO ORDERED.

Narvasa, (Chairman), Griño-Aquino, and Medialdea, JJ., concur.

[1] TSN, March 21, 1983, pp. 49-60, Ibid., April 22, 1983, pp. 6-12; Exhibit "A."

[2] Id., July 1, 1982, pp. 7-17.

[3] id., July 12, 1982, pp. 3-11.

[4] id., August 16, 1982, pp. 7-14; id., September 30, 1982, pp. 31-40.

[5] id., May 9, 1983, pp. 17-21, 25-30, 34-36.

[6] id., July 7, 1983, pp. 3-9; id., August 8, 1983, pp. 6-12.

[7] Paulino vs. Paulino, 113 Phil. 697; Divinagracia vs. Rovira, 72 SCRA 307.

[8] Penned by Justice Chua, with Purisima and Lapeña, JJ., concurring.

[9] 11 Phil. 1.

[10] De Jesus vs. Syquia, 58 Phil. 866.

[11] J.B.L. Reyes and R.C. Puno, Outline of Philippine Civil Law, Vol. 1, 1964 ed., pp. 269-270 citing Coquia vs. Coquia, CA 50, O.G. 3701.

[12] Tolentino, Civil Code of the Philippines, Vol. 1, 1983 ed., p. 602.

[13] TSN, March 21, 1983, p. 51; Ibid., April 22, 1983, p. 5.

[14] Justice Alicia Sempio-Diy, Handbook on the Family Code of the Philippines, 1988 ed., p. 246.

[15] TSN, September 30, 1982, pp. 31-32.

[16] 20 Am. Jur. 409.

[17] Francisco, Revised Rules of Court in the Philippines, Vol. VII, Part 1, 1990 ed., pp. 567-572.

[18] Exhibit "E."

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