

TOMASA DALISTAN ET AL., PLAINTIFFS AND APPELLEES, VS. EMILIANO ARMAS, DEFENDANT AND APPELLANT.

G.R. No. 9362. December 24, 1915

Ponente: TRENT, J.

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TRENT, J.:

This appeal brings up a judgment rendered by the Court of First Instance of the Province of Pangasinan condemning the defendant and appellant to recognize and support the two infant daughters of the plaintiff.

It is urged that the trial court erred (1) in admitting evidence for the purpose of showing the relations which existed between the plaintiff, Tomasa Dalistan, and the defendant prior to the birth of the two children; (2) in admitting Exhibits A and B; (3) in finding that the defendant had recognize Agustina and Ildefonsa as his natural children; and (4) in fixing the monthly allowance to be paid for the maintenance of the two children.

This action was not only instituted for the purpose of compelling the defendant to recognize and maintain the two children, but also for damages for the alleged breach of a contract of marriage. It was claimed by the plaintiff that she maintained for a number of years illicit relations with the defendant because the latter had on numerous occasions promised to marry her. The trial court properly held that the plaintiff could not recover damages for the breach of this contract for the reason that it was based upon an illicit consideration; and all the testimony upon that point may be properly excluded in the consideration of the questions presented to us by this appeal.

Exhibits A and B are the baptismal certificates of the two children taken from the church records. According to these certificates, the two little girls are the legitimate children of the plaintiff and defendant. When each of these children was baptised, they were taken to the church by the defendant himself and it was he who stated to the church authorities that they were his legitimate children by the plaintiff. The two certificates were presented as corroborative evidence to show the conduct of the defendant toward the two little girls. It was conclusively established that the defendant, upon various occasions and at all times before he abandoned the plaintiffs, treated the two girls as his children and maintained them, took them with him about the town, led people to believe that they were his children, and they were so considered not only by the people who knew them, but also by his own family. These facts are amply sufficient to show that the children enjoyed the uninterrupted status of natural children and, entitles them to recognition in accordance with paragraph 2 of article 135 of the Civil Code. Under all the circumstances of this case, we agree with the trial court that a pension of P15 per month for each of the children is not excessive.

The Judgment appealed from being correct, the same is hereby affirmed, with costs against the appellant. So ordered.

Arellano, C.J., Torres, Johnson, Carson, and Araullo, JJ., concur.

CONCURRING

MORELAND, J.,

I agree to the result in this case but not with the statement in the opinion that "the trial court properly held that the plaintiff could not recover damages for the breach of the contract for the reason that it was based upon a illicit consideration" or with the headnote which states that "damages for breach of marriage promise based upon the consideration of illicit sexual intercourse cannot be recovered for the reason that the consideration is illegal." as applicable to the present action.

The action is one for damages for breach of a contract to marry as well as for the recognition of natural children, and evidence of sexual relations between the parties is always admissible as one of the elements aggravating the damage where it appears that such relations were induced by the promise to marry. The holding of the court on that question destroyed one of the well recognized elements of damages in actions for breach of contract to marry.

Judgment affirmed.

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