

LEONARDA CONCEPCION, PLAINTIFF AND APPELLEE, VS. JULIAN UNTARAN, DEFENDANT AND APPELLANT.

G.R. No. 9958. October 07, 1918

Ponente: JOHNSON, J.

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JOHNSON, J.:

The only question presented by this appeal is whether or not, under the facts, the defendant can be (a) compelled to recognize, and (b) to support, a certain minor child. The plaintiff admits that she is the mother of the child and alleges that the defendant is its father. The lower court found that the evidence adduced showed that the defendant is the father of the child in question. After an examination of the record, we are convinced that the finding of the lower court upon that question is in accordance with a preponderance of the evidence.

It is also admitted that the plaintiff and the defendant could have married, with or without dispensation, at the date of the conception of the child in question. The child is, therefore, a natural child, and the defendant is its father and the plaintiff is its mother.

The father of a natural child may recognize it in two different ways: (1) by a voluntary recognition (Art. 131, Civ. Cod.); (2) by an involuntary recognition enforced by either a civil or criminal action (Art. 135, Civ. Cod.; art. 449, Pen. Cod.).

A voluntary recognition of a natural child may be made:

(a) in the record of births; (b) by will; and (c) by any other public instrument. (Art. 131, Civ. Cod.).

An involuntary recognition of a natural child is made: (a) by an incontrovertible paper written by the parent expressly recognizing his paternity; (b) by giving such child the status of a natural child of the father, justified by direct act of the father or his family (art. 135, Civ. Cod.); and (c) by a criminal action for rape, seduction or abduction. (Par. 2, art. 449, Pen. Cod.).

The plaintiff attempted to show during the trial of the cause that the defendant had recognized his paternity of the child in question by permitting that fact to appear in the record of births of the municipality. While, perhaps, the record of births does show that the defendant is the father of the child, the fact is that the defendant was not present at the time the record was made and never gave his assent thereto. We do not believe that a record, made during his absence, without his knowledge and to which he never gave his assent, can be held to be binding on him. We do not believe that a record made in that way in the record of births can be held to be a voluntary recognition of parentage such as is contemplated in article 131 of the Civil Code. No contention is made by the plaintiff that the defendant voluntarily recognized his parentage of the child, either by will or by any other public instrument. Our conclusion is, therefore, that the defendant has not voluntarily recognized his parentage of the child in question.

Has the defendant done anything which would justify the courts in compelling him to recognize the paternity of the child under article 135 of the Civil Code? No contention is made that any criminal action was commenced by

the plaintiff against the defendant. Is there any incontrovertible paper written by the defendant expressly recognizing his paternity, in existence? The plaintiff, herself, admitted during the trial of the case, that she requested the defendant to give her a written statement relating to his parentage of the child and that the defendant had refused so to do. There is no proof in the form of an incontrovertible paper written by the defendant by which he expressly recognized his parentage of the child.

Has the child in question enjoyed the continuous possession of the status of a natural child of the defendant, which status is justified by the direct act of the defendant or his family? The proof shows that the defendant very infrequently, if at all, visited the house where the plaintiff, and the mother, and the child lived after its birth. There is no proof at all that the child resided with the defendant or his family at any time. The proof does show that the defendant, perhaps after the birth of the child, gave the plaintiff small sums of money five different times—sometimes P2, sometimes P3 and sometimes P5. The proof also shows that the defendant paid one Tomas Erano, who was present and assisted at the time of the birth, the sum of P3. Can these contributions be considered as facts sufficient to justify an order, by the courts, compelling and requiring the defendant to recognize his parentage of the child in question? In a consideration of the sufficiency of the acts of the defendant which will be sufficient to constitute a recognition, the fact must not be lost sight of that, except in a criminal case, the acts of the alleged father of a natural child, whether of a voluntary or involuntary character, lie wholly within his own will and discretion. In other words, the alleged father may, or may not, do the things which constitute a voluntary recognition of a natural child. He must voluntarily (except in a criminal action), and with intention to recognize, do the things mentioned in article 135 (Civil Code) which will justify the courts in compelling him to recognize the child. The acts mentioned in article 134 (Civil Code) upon which the courts will compel a recognition, must show an express desire on the part of the father, or his family, to recognize the child as his natural child. (Decision of the supreme court of Spain, 7th of November, 1896; *Mendoza vs. Ibanez*, 4 Phil. Rep., 666.)

Our conclusion upon the first question is that the defendant has done nothing which justifies the court in holding that he has recognized the child in question. It cannot, therefore, be regarded as a recognized natural child. (*Buenaventura vs. Urbano*, 5 Phil. Rep., 1; *Mendoza vs. Ibañez*, 4 Phil. Rep., 666; *Benedicto vs. De la Rama*, 4 Phil. Rep., 746; *Tengco vs. Sanz*, 11 Phil. Rep., 163; *Serrano vs. Serrano Aragon*, 22 Phil. Rep., 10.)

Under the provisions of both the Civil and Penal Codes, it is absolutely necessary, before an illegitimate child be admitted into a legitimate family as a member thereof entitled to all the right and privileges of a legitimate child, that every requisite of the law shall be completely and fully complied with.

Not having recognized the child in question, can the defendant be compelled to support and maintain it? While, of course, there is a moral obligation upon the father of a natural child to maintain and support it, we find nothing in the law which justifies the courts in compelling such father, against his will, to do so.

In the case of *Infante vs. Figueras* (4 Phil. Rep., 738), this court said that "since the enactment of the Civil Code, the mere fact of the birth of a natural child imposes no obligation upon the father and gives no legal right to the child, except in the cases mentioned in the Penal Code." (Arts. 139 and 143, Civ. Cod.; *Mendoza vs. Ibañez*, 4 Phil. Rep., 666.)

It is well settled that at least since the enactment of the Civil Code the mere fact of birth of a natural child imposes no obligation whatever upon the father, and gives no legal rights whatever to the child, except in those cases arising under the Penal Code. Any obligation which the father may incur, and any right which the natural child may acquire, must arise from something else than the fact of birth.

A different rule, however, applies to the mother of a natural child. (Art. 136, Civ. Cod.) The fact of birth does impose upon the mother of a natural child the obligation of recognizing it.

Therefore, for the foregoing reasons the judgment of the lower court, requiring the defendant to recognize and support the child in question, is hereby revoked and the defendant is hereby relieved from all liability under the complaint, and without any finding as to costs. So ordered.

Arellano, C. J., Torres, Street, and Fisher, JJ., concur.

DISSENTING OPINION

MALCOLM, J., dissenting:

Predicated on the findings of fact of two trial judges, in connection with the decision of the supreme court of Spain of November 7, 1896, I think that the father has recognized the natural child and should accordingly be compelled to support it. Judgment should be affirmed.

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