

4 Phil. 666

[ G.R. No. 1772. August 17, 1905 ]

**MARIA MENDOZA ET AL., PLAINTIFFS AND APPELLEES, VS. PEDRO IBANEZ, DEFENDANT AND APPELLANT.**

**D E C I S I O N**

**TORRES, J.:**

In an amended complaint dated August 12, 1903, counsel for Maria Mendoza, in her behalf and in her capacity as guardian *ad litum* of her minor children, Pedro Ibanez and Pedro Segundo Ibanez, petitioned the Court of First Instance of Cebu for judgment in her favor and against the defendant, Pedro Ibanez, for damages in the sum of 10,000 pesos, and asked that the defendant be required to pay to the plaintiff the sum of 150 pesos per month for the maintenance and education of the said minors. She further frayed for the custody of the children during their minority and asked that the defendant be compelled to recognize the minors, Pedro Ibanez and Pedro Segundo Ibanez, as his own natural children, and to pay the costs of the proceedings, and for such other and further relief as the court might deem proper.

The defendant, Pedro Ibanez, in his answer stated that he only recognized the minor Pedro Ibanez as his natural child; that he had never refused to provide for his support and asked that the complaint be dismissed, with costs against the plaintiff, and that she be perpetually enjoined from further or future proceedings in connection herewith, and that she be ordered to deliver the custody of the minor child, Pedro Ibanez, to him for support and education.

The court, after considering the allegations made by the parties and

the evidence introduced during the trial, entered judgment October 16, 1903, perpetually enjoining the plaintiff from any further or future claim for damages. Judgment was also entered against the defendant declaring that he was the father of the two children, Pedro Ibanez and Pedro Segundo Ibanez, and directing that he pay to the plaintiff, Maria Mendoza, the sum of 48 pesos per month for the maintenance and education of the aforesaid minor children, who were to remain in the custody and care of the plaintiff, Maria Mendoza, and the defendant to pay the costs of the proceedings.

Counsel for plaintiff consented to the first part of the judgment in favor of the defendant, whereby the former was perpetually enjoined from any further or future claim as to certain demands enumerated in her complaint, and which demands were disallowed by the court. This decision, therefore, shall only deal with that part of the judgment to which the defendant's exception and the bill sent up to this court relate.

The first question decided in the second part of the judgment appealed from relates to the relationship of Pedro Ibanez to his alleged son, Pedro Segundo Mendoza, who is by the said judgment declared to be his natural child.

The defendant, Pedro Ibanez, admitted that he was the father of the minor child, Pedro Ibanez. The question is therefore limited to the other minor, Pedro Segundo Mendoza, whom defendant refused to recognize as his natural son.

The proof is insufficient to show the filiation of Pedro Segundo, and therefore the judgment appealed from can not be sustained in this particular.

The obligation on the part of the father under article 135 of the Civil Code to recognize his natural child is limited to the cases especially provided for in that article. In all other cases the law forbids any investigation as to the paternity of the child.

In order to maintain an action for the recognition of a natural

child against the father who refuses to recognize it as such, it is necessary that the action be based upon an indisputable paper wherein he expressly recognizes the paternity of the claimant, or upon the allegation that the child is in the uninterrupted enjoyment of the status of a natural child of the defendant father, justified by direct acts of the said father, or of his family. Either fact may be established by any of the means prescribed by law. (Arts. 129, 131, and 135 of the Civil Code.)

No authentic instrument, either public or private, was introduced in evidence to show that Pedro Ibanez had therein expressly recognized the minor Pedro Segundo Mendoza as his own natural child. The two letters introduced in evidence, copies of which appear in the bill of exceptions, are not sufficient to prove an express recognition of the paternity of this child by the defendant.

There is no proof of record to show that Pedro Segundo Mendoza was in the uninterrupted enjoyment of the status of a natural child of the defendant, Pedro Ibanez, nor that the said Pedro Segundo was generally and publicly considered as the child of the said defendant. The acts of the defendant in regard to the child Pedro Segundo do not show that the latter ever enjoyed the status of a natural child, or that he was publicly considered as such a natural child of the defendant as required by the provisions of articles 135 of the Civil Code, above cited.

The supreme court of Spain, in a judgment rendered November 7, 1896, interpreted and construed article 135 of the Civil Code now in force and held that the enjoyment of the status of a natural child referred to in the said article must necessarily be proved by acts showing an express desire on the part of the father, or of his family, as the case may be, to recognize the claimant as his natural child, such as the keeping of the child in his own house, the support and education of the child, or by other analogous acts, of equal weight and efficacy, showing that such relationship exists between the child and the alleged father or his family.

There is no proof of any final judgment having been rendered in any criminal case against the defendant, Pedro Ibanez, for abduction; therefore there is no occasion here to pass upon the question as to whether the defendant should be compelled to recognize the minor Pedro Segundo because of an abduction of the said minor's mother. Therefore the finding of the court below that the defendant was the father of the minor Pedro Segundo can not be sustained, and we hold that the child has no right to support, it not having been proved that he was ever recognized by the defendant as his natural child.

As to the right to support recognized by the court below in favor of the minor Pedro Ibanez, as the natural child of the defendant, the decision of the trial court is not in conformity with article 149 of the Civil Code, which reads as follows:

"The person obliged to give support may, at his option, do so either by paying the pension that may be fixed or by receiving and supporting in his or her own home the person having a right thereto."

So that the right to elect the manner in which this support shall be given is a right conferred by law upon the person whose duty it is to give such support, and in the case at bar this right is coupled with the authority which the father, and, in his absence, the mother, has over his natural child. (Arts. 154 and 155 of the Civil Code.)

As to the costs of this appeal, they should be taxed in accordance with the latter part of section 487 of the Code of Civil Procedure in view of the findings contained herein.

For the reasons above stated, this court finds that the minor Pedro Ibanez is the natural child of the defendant, Pedro Ibanez, he having expressly recognized him as such, and that he, Pedro Ibanez, as such natural father, is obliged to support such natural son, and he is accordingly hereby directed to pay to the said minor the sum of 30 pesos per month for his support, and, further, to defray the necessary expenses for his education and instruction, in accordance with article 142 of the Civil Code unless he shall elect to avail himself of the

option given him in article 149 of the said code and support his child in his own home.

The petition of Maria Mendoza, as the guardian of the minor, Pedro Segundo Mendoza, is hereby disallowed, and in this respect the complaint is dismissed, each party to pay his own costs in this instance and the costs of the court below in accordance with the order of the said court.

After the expiration of twenty days let judgment be entered in accordance herewith and the case be remanded to the trial court for execution.

*Arellano, C. J., Mapa, Johnson, and Carson, JJ.*, concur.  
*Willard, J.*, did not sit in this case.

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