

THIRD DIVISION

[G.R. No. 171713, December 17, 2007]

ESTATE OF ROGELIO G. ONG, PETITIONER, VS. MINOR JOANNE RODJIN DIAZ, REPRESENTED BY HER MOTHER AND GUARDIAN, JINKY C. DIAZ, RESPONDENT.

D E C I S I O N

CHICO-NAZARIO, J.:

This is a petition for Review on *Certiorari* under Rule 45 of the Revised Rules of Civil Procedure assailing (1) the Decision^[1] of the Court of Appeals dated 23 November 2005 and (2) the Resolution^[2] of the same court dated 1 March 2006 denying petitioner's Motion for Reconsideration in CA-G.R. CV No. 70125.

A Complaint^[3] for compulsory recognition with prayer for support pending litigation was filed by minor Joanne Rodjin Diaz (Joanne), represented by her mother and guardian, Jinky C. Diaz (Jinky), against Rogelio G. Ong (Rogelio) before the Regional Trial Court (RTC) of Tarlac City. In her Complaint, Jinky prayed that judgment be rendered:

- (a) Ordering defendant to recognize plaintiff Joanne Rodjin Diaz as his daughter.
- (b) Ordering defendant to give plaintiff monthly support of P20,000.00 *pendente lite* and thereafter to fix monthly support.
- (c) Ordering the defendant to pay plaintiff attorney's fees in the sum of P100,000.00.
- (d) Granting plaintiff such other measure of relief as maybe just and equitable in the premises.^[4]

As alleged by Jinky in her Complaint in November 1993 in Tarlac City, she and Rogelio got acquainted. This developed into friendship and later blossomed into love. At this time, Jinky was already married to a Japanese national, Hasegawa Katsuo, in a civil wedding solemnized on 19 February 1993 by Municipal Trial Court Judge Panfilo V. Valdez.^[5]

From January 1994 to September 1998, Jinky and Rogelio cohabited and lived together at Fairlane Subdivision, and later at Capitol Garden, Tarlac City.

From this live-in relationship, minor Joanne Rodjin Diaz was conceived and on 25 February 1998 was born at the Central Luzon Doctors' Hospital, Tarlac City.

Rogelio brought Jinky to the hospital and took minor Joanne and Jinky home after

delivery. Rogelio paid all the hospital bills and the baptismal expenses and provided for all of minor Joanne's needs - recognizing the child as his.

In September 1998, Rogelio abandoned minor Joanne and Jinky, and stopped supporting minor Joanne, falsely alleging that he is not the father of the child.

Rogelio, despite Jinky's remonstrance, failed and refused and continued failing and refusing to give support for the child and to acknowledge her as his daughter, thus leading to the filing of the heretofore adverted complaint.

After summons had been duly served upon Rogelio, the latter failed to file any responsive pleading despite repeated motions for extension, prompting the trial court to declare him in default in its Order dated 7 April 1999. Rogelio's Answer with Counterclaim and Special and Affirmative Defenses was received by the trial court only on 15 April 1999. Jinky was allowed to present her evidence *ex parte* on the basis of which the trial court on 23 April 1999 rendered a decision granting the reliefs prayed for in the complaint.

In its Decision^[6] dated 23 April 1999, the RTC held:

WHEREFORE, judgment is hereby rendered:

1. Ordering defendant to recognize plaintiff as his natural child;
2. Ordering defendant to provide plaintiff with a monthly support of P10,000.00 and further
3. Ordering defendant to pay reasonable attorney's fees in the amount of P5,000.00 and the cost of the suit.

On 28 April 1999, Rogelio filed a motion to lift the order of default and a motion for reconsideration seeking the court's understanding, as he was then in a quandary on what to do to find a solution to a very difficult problem of his life.^[7]

On 29 April 1999, Rogelio filed a motion for new trial with prayer that the decision of the trial court dated 23 April 1999 be vacated and the case be considered for trial *de novo* pursuant to the provisions of Section 6, Rule 37 of the 1997 Rules of Civil Procedure.^[8]

On 16 June 1999, the RTC issued an Order granting Rogelio's Motion for New Trial:

WHEREFORE, finding defendant's motion for new trial to be impressed with merit, the same is hereby granted.

The Order of this court declaring defendant in default and the decision of this court dated April 23, 1999 are hereby set aside but the evidence adduced shall remain in record, subject to cross-examination by defendant at the appropriate stage of the proceedings.

In the meantime defendant's answer is hereby admitted, subject to the right of plaintiff to file a reply and/or answer to defendant's counterclaim within the period fixed by the Rules of Court.

Acting on plaintiff's application for support pendente lite which this court finds to be warranted, defendant is hereby ordered to pay to plaintiff immediately the sum of P2,000.00 a month from January 15, 1999 to May 1999 as support pendente lite in arrears and the amount of P4,000.00 every month thereafter as regular support pendente lite during the pendency of this case.^[9]

The RTC finally held:

The only issue to be resolved is whether or not the defendant is the father of the plaintiff Joanne Rodjin Diaz.

Since it was duly established that plaintiff's mother Jinky Diaz was married at the time of the birth of Joanne Rodjin Diaz, the law presumes that Joanne is a legitimate child of the spouses Hasegawa Katsuo and Jinky Diaz (Article 164, Family Code). The child is still presumed legitimate even if the mother may have declared against her legitimacy (Article 167, Ibid).

The legitimacy of a child may be impugned only on the following grounds provided for in Article 166 of the same Code. Paragraph 1 of the said Article provides that there must be physical impossibility for the husband to have sexual intercourse with the wife within the first 120 days of the 300 days following the birth of the child because of –

- a) physical incapacity of the husband to have sexual intercourse with his wife;
- b) husband and wife were living separately in such a way that sexual intercourse was not possible;
- c) serious illness of the husband which prevented sexual intercourse.

It was established by evidence that the husband is a Japanese national and that he was living outside of the country (TSN, Aug. 27, 1999, page 5) and he comes home only once a year. Both evidence of the parties proved that the husband was outside the country and no evidence was shown that he ever arrived in the country in the year 1997 preceding the birth of plaintiff Joanne Rodjin Diaz.

While it may also be argued that plaintiff Jinky had a relationship with another man before she met the defendant, there is no evidence that she also had sexual relations with other men on or about the conception of Joanne Rodjin. Joanne Rodjin was her second child (see Exh. "A"), so her first child, a certain Nicole (according to defendant) must have a different father or may be the son of Hasegawa K[u]tsuo.

The defendant admitted having been the one who shouldered the hospital bills representing the expenses in connection with the birth of plaintiff. It is an evidence of admission that he is the real father of plaintiff. Defendant also admitted that even when he stopped going out with Jinky,

he and Jinky used to go to motels even after 1996. Defendant also admitted that on some instances, he still used to see Jinky after the birth of Joanne Rodjin. Defendant was even the one who fetched Jinky after she gave birth to Joanne.

On the strength of this evidence, the Court finds that Joanne Rodjin is the child of Jinky and defendant Rogelio Ong and it is but just that the latter should support plaintiff.^[10]

On 15 December 2000, the RTC rendered a decision and disposed:

WHEREFORE, judgment is hereby rendered declaring Joanne Rodjin Diaz to be the illegitimate child of defendant Rogelio Ong with plaintiff Jinky Diaz. The Order of this Court awarding support pendente lite dated June 15, 1999, is hereby affirmed and that the support should continue until Joanne Rodjin Diaz shall have reached majority age.^[11]

Rogelio filed a Motion for Reconsideration, which was denied for lack of merit in an Order of the trial court dated 19 January 2001.^[12] From the denial of his Motion for Reconsideration, Rogelio appealed to the Court of Appeals. After all the responsive pleadings had been filed, the case was submitted for decision and ordered re-raffled to another Justice for study and report as early as 12 July 2002.^[13]

During the pendency of the case with the Court of Appeals, Rogelio's counsel filed a manifestation informing the Court that Rogelio died on 21 February 2005; hence, a Notice of Substitution was filed by said counsel praying that Rogelio be substituted in the case by the Estate of Rogelio Ong,^[14] which motion was accordingly granted by the Court of Appeals.^[15]

In a Decision dated 23 November 2005, the Court of Appeals held:

WHEREFORE, premises considered, the present appeal is hereby GRANTED. The appealed Decision dated December 15, 2000 of the Regional Trial Court of Tarlac, Tarlac, Branch 63 in Civil Case No. 8799 is hereby SET ASIDE. The case is hereby REMANDED to the court *a quo* for the issuance of an order directing the parties to make arrangements for DNA analysis for the purpose of determining the paternity of plaintiff minor Joanne Rodjin Diaz, upon consultation and in coordination with laboratories and experts on the field of DNA analysis.

No pronouncement as to costs.^[16]

Petitioner filed a Motion for Reconsideration which was denied by the Court of Appeals in a Resolution dated 1 March 2006.

In disposing as it did, the Court of Appeals justified its Decision as follows:

In this case, records showed that the late defendant-appellant Rogelio G. Ong, in the early stage of the proceedings volunteered and suggested that he and plaintiff's mother submit themselves to a DNA or blood testing to settle the issue of paternity, as a sign of good faith. However, the trial court did not consider resorting to this modern scientific

procedure notwithstanding the repeated denials of defendant that he is the biological father of the plaintiff even as he admitted having actual sexual relations with plaintiff's mother. We believe that DNA paternity testing, as current jurisprudence affirms, would be the most reliable and effective method of settling the present paternity dispute. Considering, however, the untimely demise of defendant-appellant during the pendency of this appeal, the trial court, in consultation with out laboratories and experts on the field of DNA analysis, can possibly avail of such procedure with whatever remaining DNA samples from the deceased defendant alleged to be the putative father of plaintiff minor whose illegitimate filiations is the subject of this action for support.^[17]

Hence, this petition which raises the following issues for resolution:

I

WHETHER OR NOT THE COURT OF APPEALS ERRED WHEN IT DID NOT DISMISS RESPONDENT'S COMPLAINT FOR COMPULSORY RECOGNITION DESPITE ITS FINDING THAT THE EVIDENCE PRESENTED FAILED TO PROVE THAT ROGELIO G. ONG WAS HER FATHER.

II

WHETHER OR NOT THE COURT OF APPEALS ERRED WHEN IT DID NOT DECLARE RESPONDENT AS THE LEGITIMATE CHILD OF JINKY C. DIAZ AND HER JAPANESE HUSBAND, CONSIDERING THAT RESPONDENT FAILED TO REBUT THE PRESUMPTION OF HER LEGITIMACY.

III

WHETHER OR NOT THE COURT OF APPEALS ERRED WHEN IT REMANDED THE CASE TO THE COURT A QUO FOR DNA ANALYSIS DESPITE THE FACT THAT IT IS NO LONGER FEASIBLE DUE TO THE DEATH OF ROGELIO G. ONG.^[18]

Petitioner prays that the present petition be given due course and the Decision of the Court of Appeals dated November 23, 2005 be modified, by setting aside the judgment remanding the case to the trial court for DNA testing analysis, by dismissing the complaint of minor Joanne for compulsory recognition, and by declaring the minor as the legitimate child of Jinky and Hasegawa Katsuo.^[19]

From among the issues presented for our disposition, this Court finds it prudent to concentrate its attention on the third one, the propriety of the appellate court's decision remanding the case to the trial court for the conduct of DNA testing. Considering that a definitive result of the DNA testing will decisively lay to rest the issue of the filiation of minor Joanne, we see no reason to resolve the first two issues raised by the petitioner as they will be rendered moot by the result of the DNA testing.

As a whole, the present petition calls for the determination of filiation of minor Joanne for purposes of support in favor of the said minor.