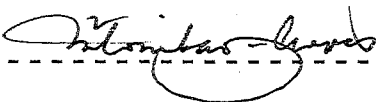


G.R. Nos. 208912 and 209018 - Amadea Angela K. Aquino v. Rodolfo C. Aquino, and Rodolfo C. Aquino v. Amadea Angela K. Aquino

Promulgated:

December 7, 2021

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SEPARATE CONCURRING OPINION

ZALAMEDA, J.:

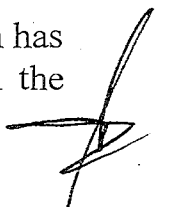
This case, at its core, revolves on the issue of whether Amadea Angela K. Aquino (Angela), an illegitimate grandchild, may inherit from her legitimate grandfather, Miguel Aquino (Miguel), by right of representation.

To recall, the *ponencia* revisited the interpretation and application of Article 992 to illegitimate children and concluded that the provision should be construed to qualify children, regardless of their births, to inherit from their direct ascendants by their right of representation. However, due to unsettled factual questions relating to the filiation of Angela to Arturo Aquino (Arturo), her alleged father, the *ponencia* remanded the case to the Court of origin for resolution in accordance with the principles espoused therein.

Upon meticulous study of the pertinent laws and jurisprudence, I concur in the result and in the *ponente's* interpretation of Article 992 of the Civil Code that illegitimate children may inherit from the legitimate relative-decedent, albeit for a different reason. The conclusion I put forward is based primarily on the proposition that Article 992 merely creates a disputable presumption which may be overturned by clear and convincing evidence.

Article 992 of the Civil Code merely creates a disputable presumption which may be overturned by clear and convincing proof.

Article 992 of the Civil Code embodies the iron curtain rule which has been applied to absolutely prohibit a succession *ab intestato* between the



illegitimate child and the legitimate children and relatives of the father or mother of said child. The rule was established because the law presumes that there is **an intervening antagonism and incompatibility between the legitimate and illegitimate family.**¹

In *Grey v. Fabie*,² the Court, quoting Manresa, explained:

Between the natural child and the legitimate relatives of the father or mother who acknowledged it, the Code denies any right of succession. They cannot be called relatives and they have no right to inherit. Of course, there is a blood tie, but the law does not recognize it. In this, Article 943³ is **based upon the reality of the facts and upon the presumptive will of the interested parties**; the natural child is disgracefully looked down upon by the legitimate family; the legitimate family in turn, hated by the natural child; the latter considers the privileged condition of the former and the resources of which it is thereby deprived; the former, in turn, sees in the natural child nothing but the product of sin, a palpable evidence of a blemish upon the family. Every relation is ordinarily broken in life; the law does no more than recognize this truth by avoiding further grounds of resentment.

Article 992 is patently grounded on the *presumed animosity and intervening antagonism and incompatibility* between members of the legitimate family and those of the illegitimate family.⁴

According to the Macmillan dictionary, the word “intervening” means “happening between two events or times” or “in the space between two people or things.” Hence, **the “intervening antagonism” referred to as the basis of the iron curtain rule necessarily pertains to the ensuing animosity between the two families during the legitimate relative-decedent's lifetime - from the birth of the illegitimate child until the death of the legitimate relative-decedent.** It is expected that, upon the legitimate ascendant's death, questions on succession will give rise to conflicts, maybe even dissension, among family members. The framers of the law predicted that allowing succession to flow between these two groups of heirs would only exacerbate the uneasy relations between them. Therefore, this impregnable successional barrier was created precisely to forestall such animosity between the two families from arising.

It must be underscored, however, that the “presumed animosity” is exactly that: presumed. And that presumption is predicated on the culture and values prevailing at the time the law was written. Such an animosity is not a fact that was sure to arise in every similar instance – it is merely a

¹ CIVIL CODE (1939)-(1985).

² 68 Phil. 128 (1939) [Per J. Concepcion].

³ CIVIL CODE, Art. 992.

⁴ Atty. Rosario Jurado-Benedicto and Judge Rolando B. Benedicto, *Comments and Jurisprudence on Succession (1991)*, citing *Cuartico v. Cuartico*. (CA), 52 Off. Gaz. 1489, p. 419.

presumption.

Presumptions are “inference[s] as to the existence of a fact not actually known, arising from its usual connection with another which is known, or a conjecture based on past experience as to what course human affairs ordinarily take.”⁵ These presumptions essentially embody values and revealed behavioral expectations under a given set of circumstances.

In law, a presumption is an inference of the existence or non-existence of a fact which courts are **permitted to draw from proof of other facts**,⁶ and is **mandatory unless rebutted**.⁷ At present, the Rules of Court⁸ identifies only two (2) kinds of conclusive presumptions which may not be overturned even by the strongest of contrary evidence. These presumptions are made conclusive not because there is an established uniformity in behavior whenever identified circumstances arise,⁹ but because they are declared as such under the law.¹⁰ They are based not on the truth of the presumptions, but on the principle of estoppel. Indeed, the term “conclusive presumption” is a legal aberration because it equates a presumption with a fact.

On the other hand, **disputable presumptions** are presumptions that may be overcome by contrary evidence.¹¹ **They are disputable in recognition of the variability of human behavior**.¹² Thus, the application of disputable presumptions on a given circumstance must be based on the existence of certain facts on which they are meant to operate.¹³ Since “[p]resumptions are not allegations, nor do they supply their absence[,]”¹⁴ disputable presumptions apply only in the absence of contrary evidence or explanations. They do not apply when there are no facts or allegations to support them. If the facts exist to set in motion the operation of a disputable presumption, courts may accept the presumption. Contrary evidence, however, may be presented to rebut the presumption. In fact, **courts cannot disregard contrary evidence offered to rebut disputable presumptions**.¹⁵

⁵ *University of Mindanao, Inc. v. Bangko Sentral ng Pilipinas*, 776 Phil. 401 (2016) [Per J. Leonen], citing *Martin v. Court of Appeals*, 282 Phil. 610 (1992) [Per J. Cruz].

⁶ *Vda. de De la Rosa v. Heirs of Rustia*, 516 Phil. 130 (2006) [Per J. Corona].

⁷ *Supra* at note 5.

⁸ Rule 131, Section 2: “(a) Whenever a party has, by his own declaration, act, or omission, intentionally and deliberately led another to believe a particular thing true, and to act upon such belief, he cannot, in any litigation arising out of such declaration, act or omission, be permitted to falsify it; (b) The tenant is not permitted to deny the title of his landlord at the time of the commencement of the relation of landlord and tenant between them.”

⁹ *Supra* at note 5.

¹⁰ *Id.*

¹¹ RULES OF COURT, Rule 131, Sec. 3.

¹² *Supra* at note 5.

¹³ *Id.*

¹⁴ *Id.* citing *De Leon v. Villanueva*, 51 Phil. 676 (1928) [Per J. Romualdez].

¹⁵ *Supra* at note 5.

As aptly pointed out by Prof. Avelino M. Sebastian, Jr., a respected professor and commentator on Wills and Succession, the Civil Code is silent as to whether or not the presumed animosity - the heart and basis of Article 992 - is conclusive or disputable.¹⁶ To my mind, the law, as currently worded, does not create a conclusive presumption of animosity.¹⁷ Rather, the successional barrier under Article 992 is anchored on a disputable presumption that may be controverted by clear and convincing evidence.

The theory herein espoused finds support from the fact that case law recognize situations where the presumed animosity does not arise or is not present based on evidence presented.

In testate succession, the presumed animosity between the legitimate and illegitimate family does not arise. It has been held that the successional barrier applies only in cases of succession by operation of law and finds no application in testamentary dispositions.¹⁸ This distinction created by law between succession by will and succession *ab intestato* stems from the fact that the former is precisely the express design of the decedent, while the latter is predicated on the decedent's presumed will. In executing a will and bequeathing to the illegitimate child a legacy or devise, the legitimate relative-decedent is deemed to have recognized his filiation with the illegitimate child and, in effect, permits succession to cross between the legitimate and illegitimate lines because the decedent has expressly allowed it to do so. Consequently, the need for the successional barrier is dispelled since the presumed animosity - the very basis of the iron curtain rule - never arises. Verily, there would be no basis for allowing a testamentary disposition made by a legitimate grandparent to an illegitimate grandchild if the animosity between legitimate and illegitimate descendants of a deceased were to be conclusively presumed.

The pronouncement in the case of *Suntay v. Cojuangco-Suntay*¹⁹ (*Suntay*) likewise strengthens the disputable presumption proposition. In *Suntay*, this Court essentially ruled that the legal presumption as provided in Article 992 may be overthrown by sufficient proof that there was no animosity between the legitimate and illegitimate family.

Further, human experience proves that such animosity does not necessarily exist between members of the legitimate family and those of the illegitimate family. As the *ponente* aptly underscored, the cultural and societal norms have already evolved and changed in time, and as such, the reasons for illegitimacy have already varied. Illegitimacy may now ensue

¹⁶ See Avelino M. Sebastian, Jr., *Wills And Succession*, 2nd ed., (2021), p. 1041. See also *Suntay v. Cojuangco-Suntay*, 635 Phil. 136 (2010) [Per J. Nachura].

¹⁷ *Id.*

¹⁸ *Manuel v. Ferrer*, 317 Phil 568 (1995) [Per J. Vitug].

¹⁹ *Supra* at note 16.

from various pretext which may not necessarily result to a divide between the legitimate and illegitimate families. Accordingly, the antagonism and hate towards the illegitimate blood does not automatically exist.

In this vein, it must be underscored that while Manresa's justification for the successional barrier might have been true in his time, it is not necessarily true at present. The rationale for the successional barrier has, therefore, been largely discredited and the presumption of animosity, antagonism, and hate is unwarranted. Indeed, this interpretation is in line with the intent of the framers of the Civil Code to: (1) grant the right of representation to grandchildren, both legitimate and illegitimate; and (2) confer more rights to illegitimate children.²⁰ As Justice Jose B.L. Reyes eloquently underlined, the delineation between the hereditary rights enjoyed by illegitimate and legitimate children highlighted by Article 992 is indefensible and unwarranted, and must hence be revisited to reflect the enlightened attitude towards illegitimate children.²¹

Ultimately, Article 992 merely creates a disputable presumption of animosity between the legitimate and illegitimate families. Since a mere disputable presumption cannot prevail over clear and convincing evidence to the contrary,²² the disputable presumption created by Article 992 may therefore be controverted, and illegitimate children may inherit *ab intestato* from the legitimate children and relatives of his or her mother or father upon sufficient proof of the decedent's intentions or wishes.

Otherwise stated, since the basis for applying the successional barrier to succession *ab intestato* is the presumed animosity between members of the legitimate and illegitimate families, the successional barrier cannot be upheld if the very basis for creating it does not exist. As such, **there is no justification for the exclusion of other evidence that would negate the existence of animosity between the legitimate and illegitimate families.** The party against whom the successional barrier is sought to be applied should be given the opportunity to disprove the existence of animosity, and to overturn the presumed will of the legitimate relative-decedent. As in the previous cases of *Tongoy v. CA*²³ and *Ramos v. Ramos*,²⁴ the Court is to consider the totality of the legitimate relative-decedent's actions, and their families should be allowed to prove the amicability and established ties between the two families during the decedent's lifetime.

²⁰ Memorandum to the Joint Congressional Committee on Codification, 22 February 1951; *see also* Congressional Records for Republic Act No. 386, pp. 649-652.

²¹ *See Diaz v. Intermediate Appellate Court*, 234 Phil. 636 (1987), *citing* Reflections on the Reform of Hereditary Succession, Journal of the Integrated Bar of the Philippines, First Quarter, 1976, Volume 4, Number 1, pp. 40-41.

²² *People v. Cabiles*, 810 Phil. 969 (2017) [Per J. Tijam].

²³ 208 Phil. 95 (1983) [Per J. Makasiar].

²⁴ 158 Phil. 935 (1974) [Per J. Aquino].

Angela timely filed an action for recognition; however, her allegations are yet to be substantiated by clear and convincing evidence

Considering the foregoing disquisition that illegitimate filiation does not automatically bar succession *ab intestato* by virtue of the successional barrier under Article 992, Angela should be allowed to present evidence on her filiation. I agree with the *ponente* that it is Angela's vested right to prove her filiation pursuant to the Civil Code, as in fact she did by timely filing her Motion to be Included in the Distribution and Partition of Miguel Aquino's Estate on 02 July 2003. As correctly underlined by Justice Alfredo Benjamin S. Caguioa, the issue of Angela's filiation may be resolved in the same proceeding for the settlement of Miguel's estate.

Further, I posit that Angela may be recognized as Arturo's natural child in accordance with Article 283 of the Civil Code. The same provides that the father is obliged to recognize the child as his natural child when the latter is "in continuous possession of status of a child of the alleged father by the direct acts of the latter or **his family**." Therefore, the law itself explicitly allows **direct acts of the family**, not just of the alleged parent, to be used as basis for claiming illegitimate filiation, in addition to any other evidence or proof. This Court likewise held in *Mendoza v. Court of Appeals*²⁵ that the rules of evidence – such as declarations about pedigree, baptismal certificate, common reputation respecting his pedigree – are applicable in proving paternity. Relatedly, the acts and declarations of Angela's relatives may be used to establish and prove her filiation to Arturo Aquino.

In the case at bar, however, I maintain that Angela has not yet proven her filiation to Arturo by clear and convincing evidence.²⁶ Clear and convincing evidence pertains to standard of proof that is less than proof beyond reasonable doubt (for criminal cases) but greater than preponderance of evidence (for civil cases).²⁷ It is worthy to note that Angela has yet to submit any evidence regarding the alleged acts of Arturo's family that establish her continuous possession of the status of Arturo's child. Basic is the rule that one who alleges a fact has the burden of proving it by means other than mere allegations.²⁸ It is elementary in procedural law that bare allegations, unsubstantiated by evidence, are not equivalent to proof under

²⁵ 278 Phil. 687 (1991) [Per J. Cruz].

²⁶ *Perla v. Baring*, 698 Phil. 323 (2012) [Per J. Del Castillo]; *Paterno v. Paterno*, 262 Phil. 688 (1990) [Per J. Narvasa].

²⁷ *Magalang v. Spouses Heretape*, G.R. No. 199558, 14 August 2019 [Per J. Lazaro-Javier], citing *Tankeh v. DBP*, 720 Phil. 641 (2013) [Per J. Leonen].

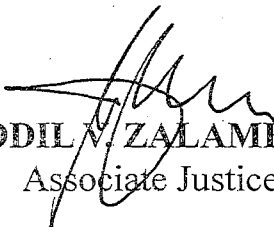
²⁸ *Social Security System v. Commission on Audit*, G.R. No. 243278, 03 November 2020 [Per J. Caguioa].

the Rules of Court.²⁹

At this juncture, it must be underscored that only questions of law should be raised in petitions filed under Rule 45. This court is not a trier of facts.³⁰ As aptly discussed by Justice Estela M. Perlas-Bernabe, and as properly adopted in the *ponencia*, the lower court should have determined the validity and veracity of Angela's allegations regarding her filiation by holding hearings for the reception and authentication of testimonial and/or documentary evidence to support said allegations, in order to decide the case in line with the required quantum of proof.³¹ Indeed, said question of fact should have been properly ventilated in the proceedings before the trial court to give the parties ample opportunity to substantiate their claims.³² Also, the applicability of the doctrine of estoppel will be better determined and ventilated in said proceedings before the lower court.³³ Since no hearings for such purpose were conducted, a remand of the case to the court *a quo* is in order.³⁴

In fine, I agree that the present case must be remanded to the lower court to properly ventilate the factual issue of Angela's filiation. Only upon substantially proving her filiation to Arturo can said court rule on whether or not Angela has successfully controverted the presumed animosity between Miguel's legitimate and illegitimate family in consonance with the pronouncements in the instant case as regards the application of Article 992. Once the aforementioned issues are resolved, the matter of Angela's inheritance may at last be put to rest.

ACCORDINGLY, I vote to REMAND the case to the trial court for the reception of evidence relative to Angela Aquino's claim of filiation, and consequently, for the determination of her right to inherit from Miguel Aquino, upon and in accordance with this Court's ruling on the proper interpretation and application of Article 992 of the Civil Code.


RODIL V. ZALAMEDA
Associate Justice

²⁹ *Rosaroso v. Soria*, 711 Phil. 644 (2013) [Per J. Mendoza].

³⁰ *Pascual v. Burgos*, 776 Phil. 167 (2016) [Per J. Leonen].

³¹ *See also supra* at note 1.

³² *Id.*

³³ *See C & S Fishfarm Corp. v. Court of Appeals*, 442 Phil. 279 (2002) [Per J. Austria-Martinez], and *Philippine Realty Holdings Corporation v. Firematic Philippines, Inc.*, 550 Phil. 586 (2007) [Per J. Callejo, Sr.].

³⁴ *Id.*