665 Phil. 774

SECOND DIVISION

[G.R. No. 190710, June 06, 2011]

JESSE U. LUCAS, PETITIONER, VS. JESUS S. LUCAS, RESPONDENT.

D E C I S I O N

NACHURA, J.:

Is a *prima facie* showing necessary before a court can issue a DNA testing order? In this petition for review on *certiorari,* we address this question to guide the Bench and the Bar in dealing with a relatively new evidentiary tool. Assailed in this petition are the Court of Appeals (CA) Decision [1] dated September 25, 2009 and Resolution dated December 17, 2009.

The antecedents of the case are, as follows:

On July 26, 2007, petitioner, Jesse U. Lucas, filed a Petition to Establish Illegitimate Filiation (with Motion for the Submission of Parties to DNA Testing) [2] before the Regional Trial Court (RTC), Branch 72, Valenzuela City. Petitioner narrated that, sometime in 1967, his mother, Elsie Uy (Elsie), migrated to Manila from Davao and stayed with a certain "Ate Belen (Belen)" who worked in a prominent nightspot in Manila. Elsie would oftentimes accompany Belen to work. On one occasion, Elsie got acquainted with respondent, Jesus S. Lucas, at Belen's workplace, and an intimate relationship developed between the two. Elsie eventually got pregnant and, on March 11, 1969, she gave birth to petitioner, Jesse U. Lucas. The name of petitioner's father was not stated in petitioner's certificate of live birth. However, Elsie later on told petitioner that his father is respondent. On August 1, 1969, petitioner was baptized at San Isidro Parish, Taft Avenue, Pasay City. Respondent allegedly extended financial support to Elsie and petitioner for a period of about two years. When the relationship of Elsie and respondent ended, Elsie refused to accept respondent's offer of support and decided to raise petitioner on her own. While petitioner was growing up, Elsie made several attempts to introduce petitioner to respondent, but all attempts were in vain.

Attached to the petition were the following: (a) petitioner's certificate of live birth; (b) petitioner's baptismal certificate; (c) petitioner's college diploma, showing that he graduated from Saint Louis University in Baguio City with a degree in Psychology; (d) his Certificate of Graduation from the same school; (e) Certificate of Recognition from the University of the Philippines, College of Music; and (f) clippings of several articles from different newspapers about petitioner, as a musical prodigy.

Respondent was not served with a copy of the petition. Nonetheless, respondent learned of the petition to establish filiation. His counsel therefore went to the trial court on August 29, 2007 and obtained a copy of the petition.

Petitioner filed with the RTC a Very Urgent Motion to Try and Hear the Case. Hence, on September 3, 2007, the RTC, finding the petition to be sufficient in form and substance, issued the Order [3] setting the case for hearing and urging anyone who has any objection to the petition to file his opposition. The court also directed that the Order be published once a week for three consecutive weeks in any newspaper of general circulation in the Philippines, and that the Solicitor General be furnished with copies of the Order and the petition in order that he may appear and represent the State in the case.

On September 4, 2007, unaware of the issuance of the September 3, 2007 Order, respondent filed a Special Appearance and Comment. He manifested *inter alia* that: (1) he did not receive the summons and a copy of the petition; (2) the petition was adversarial in nature and therefore summons should be served on him as respondent; (3) should the court agree that summons was required, he was waiving service of summons and making a voluntary appearance; and (4) notice by publication of the petition and the hearing was improper because of the confidentiality of the subject matter. [4]

On September 14, 2007, respondent also filed a Manifestation and Comment on Petitioner's Very Urgent Motion to Try and Hear the Case. Respondent reiterated that the petition for recognition is adversarial in nature; hence, he should be served with summons.

After learning of the September 3, 2007 Order, respondent filed a motion for reconsideration. [5] Respondent averred that the petition was not in due form and substance because petitioner could not have personally known the matters that were alleged therein. He argued that DNA testing cannot be had on the basis of a mere allegation pointing to respondent as petitioner's father. Moreover, jurisprudence is still unsettled on the acceptability of DNA evidence.

On July 30, 2008, the RTC, acting on respondent's motion for reconsideration, issued an Order [6] dismissing the case. The court remarked that, based on the case of *Herrera v. Alba*, [7] there are four significant procedural aspects of a traditional paternity action which the parties have to face: a *prima facie* case, affirmative defenses, presumption of legitimacy, and physical resemblance between the putative father and the child. The court opined that petitioner must first establish these four procedural aspects before he can present evidence of paternity and filiation, which may include incriminating acts or scientific evidence like blood group test and DNA test results. The court observed that the petition did not show that these procedural aspects were present. Petitioner failed to establish a *prima facie* case considering that (a) his mother did not personally declare that she had sexual relations with respondent, and petitioner's statement as to what his mother told him about his father was clearly hearsay; (b) the certificate of live birth was not signed by respondent; and (c) although petitioner used the surname of respondent, there was no allegation that he was treated as the child of respondent by the latter or his family. The court opined that, having failed to establish a *prima facie* case, respondent had no obligation to present any affirmative defenses. The dispositive portion of the said Order therefore reads:

> WHEREFORE, for failure of the petitioner to establish compliance with the four procedural aspects of a traditional paternity action in his petition, his motion for the submission of parties to DNA testing to establish paternity and filiation is hereby denied. This case is DISMISSED without prejudice.
>
> SO ORDERED. [8]

Petitioner seasonably filed a motion for reconsideration to the Order dated July 30, 2008, which the RTC resolved in his favor. Thus, on October 20, 2008, it issued the Order [9] setting aside the court's previous order, thus:

> WHEREFORE, in view of the foregoing, the Order dated July 30, 2008 is hereby reconsidered and set aside.
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> Let the Petition (with Motion for the Submission of Parties to DNA Testing) be set for hearing on **January 22, 2009 at 8:30 in the morning**.
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> x x x x
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> SO ORDERED. [10]

This time, the RTC held that the ruling on the grounds relied upon by petitioner for filing the petition is premature considering that a full-blown trial has not yet taken place. The court stressed that the petition was sufficient in form and substance. It was verified, it included a certification against forum shopping, and it contained a plain, concise, and direct statement of the ultimate facts on which petitioner relies on for his claim, in accordance with Section 1, Rule 8 of the Rules of Court. The court remarked that the allegation that the statements in the petition were not of petitioner's personal knowledge is a matter of evidence. The court also dismissed respondent's arguments that there is no basis for the taking of DNA test, and that jurisprudence is still unsettled on the acceptability of DNA evidence. It noted that the new Rule on DNA Evidence [11] allows the conduct of DNA testing, whether at the court's instance or upon application of any person who has legal interest in the matter in litigation.

Respondent filed a Motion for Reconsideration of Order dated October 20, 2008 and for Dismissal of Petition, [12] reiterating that (a) the petition was not in due form and substance as no defendant was named in the title, and all the basic allegations were hearsay; and (b) there was no *prima facie* case, which made the petition susceptible to dismissal.

The RTC denied the motion in the Order dated January 19, 2009, and rescheduled the hearing. [13]

Aggrieved, respondent filed a petition for *certiorari* with the CA, questioning the Orders dated October 20, 2008 and January 19, 2009.

On September 25, 2009, the CA decided the petition for *certiorari* in favor of respondent, thus:

> WHEREFORE, the instant petition for certiorari is hereby GRANTED for being meritorious. The assailed Orders dated October 20, 2008 and January 19, 2009 both issued by the Regional Trial Court, Branch 172 of Valenzuela City in SP. Proceeding Case No. 30-V-07 are REVERSED and SET ASIDE. Accordingly, the case docketed as SP. Proceeding Case No. 30-V-07 is DISMISSED. [14]

The CA held that the RTC did not acquire jurisdiction over the person of respondent, as no summons had been served on him. Respondent's special appearance could not be considered as voluntary appearance because it was filed only for the purpose of questioning the jurisdiction of the court over respondent. Although respondent likewise questioned the court's jurisdiction over the subject matter of the petition, the same is not equivalent to a waiver of his right to object to the jurisdiction of the court over his person.

The CA remarked that petitioner filed the petition to establish illegitimate filiation, specifically seeking a DNA testing order to abbreviate the proceedings. It noted that petitioner failed to show that the four significant procedural aspects of a traditional paternity action had been met. The CA further held that a DNA testing should not be allowed when the petitioner has failed to establish a *prima facie* case, thus:

> While the tenor [of Section 4, Rule on DNA Evidence] appears to be absolute, the rule could not really have been intended to trample on the substantive rights of the parties. It could have not meant to be an instrument to promote disorder, harassment, or extortion. It could have not been intended to legalize unwarranted expedition to fish for evidence. Such will be the situation in this particular case if a court may at any time order the taking of a DNA test. If the DNA test in compulsory recognition cases is immediately available to the petitioner/complainant without requiring first the presentation of corroborative proof, then a dire and absurd rule would result. Such will encourage and promote harassment and extortion.
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> x x x x
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> At the risk of being repetitious, the Court would like to stress that it sees the danger of allowing an absolute DNA testing to a compulsory recognition test even if the plaintiff/petitioner failed to establish *prima facie* proof. x x x If at anytime, *motu proprio* and without pre-conditions, the court can indeed order the taking of DNA test in compulsory recognition cases, then the prominent and well-to-do members of our society will be easy prey for opportunists and extortionists. For no cause at all, or even for [sic] casual sexual indiscretions in their younger years could be used as a means to harass them. Unscrupulous women, unsure of the paternity of their children may just be taking the chances-just in case-by pointing to a sexual partner in a long past one-time encounter.

> Indeed an absolute and unconditional taking of DNA test for compulsory recognition case opens wide the opportunities for extortionist to prey on victims who have no stomach for scandal. [15]

Petitioner moved for reconsideration. On December 17, 2009, the CA denied the motion for lack of merit. [16]

In this petition for review on *certiorari*, petitioner raises the following issues:

> I.
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> WHETHER OR NOT THE COURT OF APPEALS ERRED WHEN IT RESOLVED THE ISSUE OF LACK OF JURISDICTION OVER THE PERSON OF HEREIN RESPONDENT ALBEIT THE SAME WAS NEVER RAISED IN THE PETITION FOR CERTIORARI.
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> I.A
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> WHETHER OR NOT THE COURT OF APPEALS ERRED WHEN IT RULED THAT JURISDICTION WAS NOT ACQUIRED OVER THE PERSON OF THE RESPONDENT.
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> I.B
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> WHETHER OR NOT THE COURT OF APPEALS ERRED WHEN IT FAILED TO REALIZE THAT THE RESPONDENT HAD ALREADY SUBMITTED VOLUNTARILY TO THE JURISDICTION OF THE COURT *A QUO*.
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> I.C
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> WHETHER OR NOT THE COURT OF APPEALS ERRED WHEN IT ESSENTIALLY RULED THAT THE TITLE OF A PLEADING, RATHER THAN ITS BODY, IS CONTROLLING.
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> II.
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> WHETHER OR NOT THE COURT OF APPEALS ERRED WHEN IT ORDERED THE DISMISSAL OF THE PETITION BY REASON OF THE MOTION (FILED BY THE PETITIONER BEFORE THE COURT *A QUO*) FOR THE CONDUCT OF DNA TESTING.
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> II.A
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> WHETHER OR NOT THE COURT OF APPEALS ERRED WHEN IT ESSENTIALLY RULED THAT DNA TESTING CAN ONLY BE ORDERED AFTER THE PETITIONER ESTABLISHES PRIMA FACIE PROOF OF FILIATION.