Support Of Unacknowledged Natural Children

By CESAR C. CLIMACO

AS EARLY as 1905, in the case of *Buenaventura vs. Urbano, 5 Phil. 1*, the Supreme Court ruled that an unacknowledged natural child has no rights whatever against its father. Reaffirming this doctrine, the Court in subsequent decisions exacted recognition as a condition precedent to a claim for bare support. (*Infante vs. Figueras, 4 Phil., 738; Siguiong vs. Siguiong, 8 Phil., 5; Concepcion vs. Untaran, 38 Phil., 736; Briz vs. Briz, 43 Phil., 763; Tuason vs. Tuason, 57 Phil., 1008*, unpublished). In other words, although children normally have the right to the parents' name, to support, and to inherit, unacknowledged natural children are absolutely destitute in so far as the father is concerned. True, such children may receive support from the mother when the fact of the delivery and the identity of the child are fully established; but it is only too well known that in the overwhelming majority of cases these children are born of poverty-stricken creatures who, after their misfortune, are usually disowned by relatives and friends and thereafter become social outcasts.

This paper seeks to answer the question: Is it in accordance with law, with reason and equity, and with sound public policy to deny an unacknowledged natural child any rights whatever as against the father? With due deference to the prestige and reputation for learning which our Supreme Court enjoys, the writer submits that its aforecited ruling is against the law, violates the principles of equity, and is not in consonance with sound public policy.

In the first place, it is submitted that under the law, unacknowledged natural children *are* entitled to support from the father. Article 139 of the Civil Code provides that "illegitimate children who do not have the legal qualification of natural children shall only be entitled to support from their parents * * *." This right may be claimed, among other conditions, when the paternity or maternity is inferred from a final sentence rendered in a criminal or civil proceeding (Art. 140, C.C.). In *Concepcion vs. Untaran, 38 Phil. 737*, which was an action to compel acknowledgment, the Supreme Court found as a fact that "the defendant is the father of the child in question"; and yet, since the circumstances of the case did not fall squarely within the requirements of Article 135 of the Civil Code, the Court reversed the judgment of the lower court requiring the defendant to recognize and support the child. The writer believes that Article 139 could very well have been applied to the case, since the child, in legal effect, was an illegitimate child not having the qualification of a natural offspring, whose paternity had been conclusively demonstrated in a civil proceeding. In other words, unacknowledged natural children may claim support under Article 139, even when they cannot bring an action for acknowledgment un-

der Article 135. The specific source of the right of unacknowledged natural children to support from the father is Article 139 of the Civil Code, for certainly they are "illegitimate children who do not have the legal qualification of natural children."

Although the law distinguishes between natural and spurious children, Article 139 refers to two classes only: illegitimate children having the status of natural children, and illegitimate children not having this status. An unacknowledged natural child who cannot compel acknowledgment because his case does not fall under Article 135 can and should be regarded as an illegitimate child not possessing the legal qualification of a natural child for purposes of Article 140 of the same Code.

Construing the phrase "illegitimate children who do not have the legal qualification of natural children" used in Art. 141 of the Civil Code (prohibiting the inquiry into the paternity of illegitimate child.), the Supreme Court in *Bores vs. Municipality of Panay, 42 Phil., 643, 656,* held: "It cannot, therefore, be said that as the investigation of the paternity of illegitimate children, other than natural, is expressly prohibited by Article 141 *a sensu contrario,* it should be permitted in the case of natural children. The prohibition subsists in either case." In legal effect, the Supreme Court then sustained the view that the phrase alluded to above *includes* unacknowledged natural children. If so for purposes of Art. 141, why not also in construing Art. 139?

Secondly, the writer submits that the doctrine of the Supreme Court which is the subject of this article is not in consonance with reason and equity. Commonly accepted convention places natural children on a higher social plane than spurious children, and the civil law concedes the former distinctly better consideration than the latter. This is but proper, for natural children are offsprings of parents who can marry and can legalize the status of their said children. If the civil status of natural children is deemed higher than that of spurious children, why grant the latter more rights than the former?

And in clear cases, as in *Concepcion vs. Untaran, supra,* and *Tuason vs. Tuason, supra,* where the paternity of illegitimate children has been established in a civil action, yet where nevertheless an action for compulsory acknowledgment cannot prosper under Article 135 of the Civil Code, to hold that the father is not in duty-bound to furnish his offspring support would certainly be to encourage and promote irresponsibility on the part of men, and to inhumanly punish innocent offsprings. A more liberal interpretation of the law in favor of the innocent children may go far towards decreasing illicit ante-nuptial relations. Justice and equity demand that the helpless young be adequately provided for. Voluntary acknowledgment covered by Art. 131 and compulsory acknowledgment required in Art. 135 fail to satisfactorily answer this demand because, in the final analysis, acknowledgment depends upon the will of the parent. In effect, he is not compelled to do anything. He is bound to acknowledge only when there is an indubitable writing expressly recognizing paternity, or when by direct acts he has allowed the child to enjoy continuously the status

of a natural child; but he cannot, of course, be forced to execute the indubitable writing or to perform the direct acts.

No policy upholding the general welfare of the community can be served by a system that encourages the irresponsible procreation of children without the complementary duty of supporting them. In *Tuason vs. Tuason, supra* the Court said: "Es lamentable que un hijo ilegitimo o un hijo natural no susceptible de reconocimiento no puede reclamar en esta jurisdicción alimentos de su padre natural cuando su filiación ha quedado plenamente demostrada como en el presente caso." Did equity and reason not then demand application of Art. 139? Even if the father's obligation to support is not strictly legal, it is at least his moral duty to see to it that his own flesh and blood does not become a public burden. (*Concepcion vs. Untaran, supra.*)

Our final point is that to deny —whether in law or in equity— the rights of an unacknowledged natural child to support from its father, is in contravention to the principles of Social Justice. One of the objects of the Constitution is the promotion of general welfare; the fundamental law recognizes the natural right and duty of parents to rear the youth for civic efficiency. Our statute books are replete with evidences of the desire on the part of the State to respect the relationship of parent and son, whether it be legitimate or not. Thus, the Marriage Law declares marriages between ascendants and descendants of any degree, whether legitimate or illegitimate, to be incestuous and void; and the Revised Penal Code holds guilty of parricide any person who shall kill his father or child, whether legitimate or illegitimate.

Even the Marriage Law (Act 3613) grants children born out of marriages annullable due to fraud or force employed in obtaining the consent of either party, the right to support and education (Sec. 33).

To summarize:

1. Unacknowledged natural children—at least where filiation is clearly shown, as in *Tuason vs. Tuason, supra*—have the right to demand support from their fathers. The high principles of justice are always in favor of the children and they should not be deprived of any means of improving their status, *Manresa, Vol. 1, p. 585, 5th ed.* Art. 139 of the Civil Code, is a specific source of this right.

2. To hold otherwise is to do violence to the principles of reason and equity, and highly offensive to public policy.

3. Should the courts in our own day still be unprepared to take a more enlightened view of the problem here discussed, the Legislature, for the reasons already indicated, and in response to the dictates of reason and public policy, should clearly and specifically provide for support of unacknowledged natural children by their fathers.

It is easy to see why the courts should hesitate to compel a man to support and recognize a child whose paternity is attributed to him. The peace and tranquility of the family must be maintained, and as far as possible scandals that an action for support entails, should be avoided. Where the relationship of parent and offspring can be readily traced, it might be asked, why should the

son not institute an action for acknowledgment? Our present laws are humane and just enough, it may be argued, for an unacknowledged natural child is in effect no progeny at all of the supposed father. If he were, his case should fall under Art. 131 or under Art. 135; he can then secure acknowledgment, whether voluntary or compulsory. It is inaccurate to hold that at present the legal anomaly exists that spurious children enjoy greater rights than unacknowledged natural children. If so at all and in a proper case, it would be because under Art. 140, a vital link, expressly recognized by the law between sire and son subsists. This link is not in evidence where an unacknowledged natural child claims support. All these may be correct, but in the cases of *Concepcion v. Untaran*, *supra* and *Tuason v. Tuason*, *supra* the Supreme Court recognized the *link*, and yet found itself helpless to answer the most elementary requirements of equity and public welfare?