COMMENT:

THE NOVEL RULE IN ELCANO VS. HILL ANALYZED AND CRITICIZED

J. CEZAR SANGCO*

In *Elcano, et al. v. Hill,*[1] Reginald Hill, the minor but married son of Atty. Marvin Hill living with and getting subsistence from him, killed plaintiff's son and was prosecuted and tried therefor but was acquitted. Plaintiffs thereafter filed a civil action for damages for the death of their son against both Reginald and his father Marvin Hill, based on quasi-delict under Article 2180 in relation to Article 2176 of the Civil Code. Defendants filed a motion to dismiss said civil action on the following grounds:

"1. The present action is not only against but a violation of section 1, Rule 107 which is now Rule III of the Rules of Court;

2. The action is barred by a prior judgment which is now final and/or in *res judicata;*

3. The complaint had no cause of action against Marvin Hill because he was relieved as guardian of the other defendant through emancipation by marriage."

The trial court granted the motion and dismissed the case. Plaintiffs appealed the order of dismissal to the Supreme Court.

As stated by the Supreme Court the two decisive issues presented for resolution are:

1. "Is the present civil action for damages barred by the acquittal of Reginald in the criminal case wherein the action for civil liability was not reserved?

2. May Article 2180 (2nd and last paragraphs) of the Civil Code be applied against Atty. Hill, notwithstanding the undisputed fact that at the time of the occurrence complained of, Reginald, though a minor, living with and getting subsistence from his father, was already legally married?"

More precisely, and in the interest of clarity and easier comprehension, the issues in this case may be more fully restated thus:

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[1] G.R. No. L-24803, May 26, 1977, 77 SCRA 98 (1977).

1st. Where the right to institute a separate civil action was not expressly reserved in the criminal case against the minor Reginald and was consequently deemed instituted together with the criminal action pursuant to Section 1 of Rule 111 of the Rules of Court, is the final judgment in the criminal case, wherein no damages were awarded in view of the acquittal of said accused, a bar to a subsequent civil action for damages against said minor and his father Marvin Hill under Article 2180 in relation to Article 2176 of the Civil Code?

2nd. May the father be held liable under Article 2180 for the tort of his married minor son living with and getting subsistence from him, even if the person of said minor was completely emancipated from his parental authority but that over his property only qualifiedly under Article 399?

On the first issue, in holding "that the acquittal of Reginald Hill in the criminal case has not extinguished his liability for *quasi-delict*, hence, that acquittal is not a bar to the instant action against him", the Court said:

> According to the Code Commission: "The foregoing provision (Article 2177) though at first sight startling, is not so novel or extraordinary when we consider the exact nature of criminal and civil negligence. The former is a violation of the criminal law, while the latter is a *'culpa aquiliana'* or *quasi-delict*, of ancient origin, having always had its own foundation and individuality, separate from criminal negligence. Such distinction between criminal negligence and *'culpa extra-contractual'* or *'cuasi-delito'* has been sustained by decisions of the Supreme Court of Spain and maintained as clear, sound and perfectly tenable by Maura, an outstanding Spanish jurist. Therefore, under the proposed article 2177, acquittal from an accusation of criminal negligence, whether on reasonable doubt or not, shall not be a bar to a subsequent civil action, not for civil liability arising from criminal negligence, but for damages due to a *quasi-delict* or *'culpa aquiliana'*. But said article forestalls a double recovery." (Report of the Code Commission, p. 162).
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> Although, again, this Article 2177 does seems to literally refer to only acts of negligence, the same argument of Justice Bocobo about construction that upholds "the spirit that giveth life" rather than that which is literal that killeth the intention of the lawmaker should be observed in applying the same. And considering that the preliminary chapter on human relations of the new Civil Code definitely establishes the separability and independence of liability in a civil action for acts criminal in character (under Articles 29 to 32) from the civil responsibility arising from crime fixed by Article 100 of the Revised Penal Code, and, in a sense, the Rules of Court, under Sections 2 and 3 (c), Rule 111, contemplate also the same separability, it is "more congruent with the spirit of law, equity and justice, and more in harmony with mo-

> dern progress", to borrow the felicitous relevant language in Rakes vs. Atlantic Gulf and Pacific Co., 7 Phil. 359, to hold, as We do hold, that Article 2176, where it refers to "fault or negligence," covers not only acts "not punishable by law" but also acts criminal in character, whether intentional and voluntary or negligent. Consequently, a separate civil action lies against the offender in a criminal act, whether or not he is criminally prosecuted and found guilty or acquitted, provided that the offended party is not allowed, if he is actually charged also criminally, to recover damages on both scores, and would be entitled in such eventuality only to the bigger award of the two, assuming the awards made in the two cases vary. In other words, the extinction of civil liability referred to in Par. (e) of Section 3, Rule 111, refers exclusively to civil liability founded on Article 100 of the Revised Penal Code, whereas the civil liability for the same act considered as a *quasi-delict* only and not as a crime is not extinguished even by a declaration in the criminal case that the criminal act charged has not happened or has not been committed by the accused. Briefly stated, we here hold, in reiteration of Garcia, that *culpa aquiliana* includes voluntary and negligent acts which may be punishable by law.

In relation to the first issue, what the Court is really trying to say here is that, what need be reserved and if not reserved is deemed instituted with the criminal case under Section 1 of Rule 111, and is extinguished either by acquittal on grounds other than reasonable doubt or by a declaration in the judgment in the criminal case that no crime was committed pursuant to Section 3(e) of the same Rule, is the civil liability based on the crime under Article 100 of the Revised Penal Code. Since the same criminal act or omission causing the death of the same person may also be considered a *quasi-delict* according to the rule in *Barredo v. Garcia*[2] and Article 2177, and when so considered is one of the independent civil actions meant to be completely separated from the crime and is therefore unaffected by the result of the criminal action pursuant to Articles 29 to 32 of the Chapter on Human Relations of the Civil Code, the judgment in said criminal case against Reginald Hill will not bar the subsequent civil action based on *quasi-delict* against him under Article 2176, nor that against his father under Article 2180, although the offended party is not allowed to recover damages under both causes of action according to Article 2177. Assuming, however, that they are sued civilly under both causes of action and the award for damages in both vary, the offended party or his privy can choose only the bigger award.

What is incomprehensible and legally untenable is, why the plaintiff, who is not permitted to recover damages based on both delict and quasi-delict caused by the same act or omission and who

[2] Barredo v. Garcia, 70 Phil. 607 (1942).

is allowed only to choose between the two actions under the *Garcia* rule and Article 2177, should be allowed to maintain both actions simultaneously and not only obtain a judgment under both but also choose the one granting the greater award, as this decision quite clearly belabored to imply and emphasize. The proscription is not only against recovering twice for the same act or omission of the defendant, but necessarily also against litigating the same cause of action more than once, either simultaneously or successively, which the law considers as equally abhorrent to the administration of justice. This line of thinking is as incomprehensible and legally untenable as the rule in *Padua v. Robles*,[3] where it was first enunciated in the same writer's concurring opinion in said case.

On the second issue, in support of its holding "that the conclusion of appellees that Atty. Hill is already free from responsibility cannot be upheld", the Court said:

> It must be borne in mind that, according to Manresa, the reason behind the joint and solidary liability of parents with their offending child under Article 2180 is that it is the obligation of the parent to supervise their minor children in order to prevent them from causing damage to third persons. On the other hand, the clear implication of Article 399, in providing that a minor emancipated by marriage may not, nevertheless, sue or be sued without the assistance of the parents, is that such emancipation does not carry with it freedom to enter into transactions or do any act that can give rise to judicial litigation. (See Manresa, *id.*, Vol. II, pp. 766-767, 776.). And surely killing someone else invites judicial action. Otherwise stated, the marriage of a minor does not relieve the parents of the duty to see to it that the child, while still a minor, does not give cause to any litigation, in the same manner that the parents are answerable for the borrowings of money and alienation or encumbering of real property which cannot be done by their minor married children without their consent. (Art. 399; Manresa, *supra.*)
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> Accordingly, in Our view, Article 2180 applies to Atty. Hill notwithstanding the emancipation by marriage of Reginald. However, inasmuch as it is evident that Reginald is now of age, as a matter of equity, the liability of Atty. Hill has become merely subsidiary to that of his son.

Although the Court made a rather extensive analysis of the law on *culpa aquiliana*, no similar effect was made on the dual character of parental authority and the effect of emancipation by marriage on each of its component parts in relation to parental liability for the minor's tort, which evidently is not only the determinative but also the novel issue in this case.

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[3] G.R. No. L-40486, August 29, 1975, 66 SCRA 485 (1975).

In relation to the effect of emancipation by marriage on the dual character of parental authority and consequently on parental responsibility under Article 2180, the rule in this case may be more precisely restated thus: So long as the minor's parent or guardian can be held liable under their parental authority over his property, they can be held liable under Article 2180 of the Civil Code for the minor's injurious acts or omissions predicated on their parental authority over his person, even if such authority has been completely terminated by his marriage. This rule clearly equates parental authority over the minor's person with that over his property, or suggest that the two are either inseparable or that parental authority upon which parental responsibility for the minor's torts under Article 2180 is founded, is indivisible. We perceive in this rule an oversight of the diverse purposes of the law in granting parental rights and imposing corresponding obligations predicated thereon, under these two components of what generally constitute parental authority.

There is no question that the civil liability of parents which the law imposes upon the father, and, in case of his death or incapacity, the mother, for any damages that may be caused by the minor child, is a necessary consequence of the parental authority they exercise over him.[4] When by his fault or negligence the minor under parental authority causes damage to another, the law immediately infers or presumes that the parent or guardian was remiss in the exercise of his parental authority over him, and imposes on the former liability for the latter's tort on that basis. Since *culpa aquiliana* or *extra-contractual culpa* refers to the minor's wrongful act or conduct and implies a failure on the part of the parents to exercise proper supervision over him, the presumed parental dereliction involved is clearly that over the minor's person, not that over his property. Parental authority over the minor's person upon which his parent's or guardian's liability for his torts is based, like the concept of the institution of *culpa aquiliana* of which it is an integral part, may be generally distinguished from the other portion of parental authority in that it is aimed wholly at the protection of the interests of third persons and the public in general; whereas parental authority over the minor's property is aimed primarily, if not exclusively, at the protection of his property, if he has any, or mainly for his own personal benefit. This divergence in concept and purpose precludes any notion of indivisibility or inseparability of the two aspects of parental authority and any analogy between the liability of the parent or guardian under one

[4] Exconde v. Capuno, 101 Phil. 843 (1957); Pres. Decree No. 603 (1975), art. 58 otherwise known as the CHILD & YOUTH WELFARE CODE.

with those under the other. Consequently, the Court's rationale and conclusion that the parent or guardian could and should be held liable for the torts of the minor despite the fact that his person has been completely emancipated from parental authority by his marriage, because he did not thereby similarly acquire an absolute or unqualified right to dispose of his property, is a clear case of *NON SEQUITUR.*

But, parental authority generally obtains only over unemancipated children, and that the latter are obliged to obey their parents or guardian only so long as they are under parental power.[5] It necessarily and logically follows from this that parents or guardians are not and could not be held liable for the torts of their minor children, whether living with them or not, who are emancipated by marriage or whose persons are no longer under their parental authority. This is as it should be because it would be unjust to impose responsibility after the corresponding authority upon which it is based has been withdrawn.

According to the Civil Code, "Parental authority terminates: x x x (2) Upon emancipation."[6] and "Emancipation takes place: (1) By the marriage of the minor."[7] "Emancipation by marriage x x x shall terminate parental authority over the child's person. It shall enable the minor to administer his property as though he were of age, but he cannot borrow money or alienate or encumber real property without the consent of his father or mother, or guardian. He can sue or be sued in court only with the assistance of his father, mother or guardian."[8] Article 399, aforequoted, not only treats parental authority over the minor's person separately from that over his property but declare in rather mandatory terms, that emancipation by marriage is complete or absolute as to the first and only partially or qualifiedly as to the second.

Although the minor's otherwise plenary power of administration over his property is qualified, the limitations thereover are specified, to wit: he cannot borrow money, alienate or encumber his real property without the consent of his parents or guardians, and concomitantly, can sue or be sued with respect to these limitations only with their assistance. The limitation on the minor's right to sue or be sued in the last sentence of Article 399 must necessarily refer only to his property rights, not merely because residual parental authority resulting from emancipation by marriage is only with respect to the minor's property, but because such limitation

[5] CIVIL CODE, art. 311.
[6] CIVIL CODE, art. 327.
[7] CIVIL CODE, art. 397.
[8] CIVIL CODE, art. 399.

is one of those enumerated in said article in respect thereof. Capacity is the rule, incapacity the exception, and where the limitations are stated they should be strictly construed and must be restricted to those specified. Except for the powers of administration over his property specifically reserved, the law quite clearly meant to make the minor's emancipation complete even with respect to his property as indicated by the phrase "shall enable the minor to administer his property as though he were of age" and a person of age "is qualified for all acts of civil life"[9] which includes the right to appear and prosecute or defend a criminal action.[10] Moreover, where the law grants full power to the minor as to his person and only a qualified one to his property, it would be incongruous to infer therefrom that the limitation on the power to sue or be sued applies to both.

Following the rule that power not withheld is power granted, the minor emancipated by marriage accordingly has full and complete power to acquire and dispose of all properties other than real under this article. Thus, the minor may freely dispose of any of his personal properties without the consent of his parents since such consent is required only with respect to the alienation and encumbrance of real property, and may accordingly sue or be sued in respect thereof alone, as a concomitant of this plenary power.[11] Upon the same principle, the minor emancipated by marriage may sue or be sued, likewise alone, for damages arising from tort or quasi-delict, which evidently would not involve borrowing money or alienating or encumbering real property. In any case, it is difficult to see what civil liability of the parents or guardian could conceivably arise or be created by their consenting to or advising their married child to borrow money or alienate or encumber his real property either to pay or to secure a loan, unless they themselves in some other capacity or go beyond merely consenting or advising him in respect thereof; or from assisting him in bringing or defending suits to enforce or protect his property rights, which is all there is left of their parental authority over him; and if such liability over the minor's property can and does arise from such limited parental obligations, what relevance it has on the child's torts or how it can be the basis of the parent's or guardian's liability for the latter. It is evident that in the fulfillment of these limited parental obligations over the minor's property, the parent or guardian could, if at all, incur only contractual liability in his personal capacity, or

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[9] CIVIL CODE, art. 402.

[10] U.S. vs. De La Santa, 9 Phil. 22 (1907).

[11] See also 2 MANRESA, COMMENTARIOS EL CODIGO CIVIL ESPAÑOL 735-736 (1944); 5 SANCHEZ ROMAN, ESTUDIOS DE DERECHO CIVIL 1202-1203 (1912) cited in 1 TOLENTINO, COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE OF THE PHILIPPINES 698 (1968).

liability for his own acts or omisisons in connection therewith, and not for the child's wrongful act or conduct towards others which are the ones contemplated or involved in Article 2180. In requiring the assistance of the parent or guardian when a married minor child wants to borrow money or to alienate and encumber his property, the law simply meant to make sure as far as practicable not only that the minor's judgment in respect thereof is sound or advisable, but more importantly, that he is not taken advantage of by those with whom he deals because of his minority. By rendering such assistance the parent or guardian certainly does not become a party to the minor's transaction nor does he become personally liable therefor. In clearly implying that he becomes personally liable for the transaction when the parent or guardian renders such assistance, the court not only changes the character of this limited parental authority over the minor's property from that for the minor's protection to that of protection of those with whom he deals, but imposes as well an entirely new parental obligation not contemplated by law. This, we submit, is a misconception both of parental authority over the minor's property in general and the limitations set on his emancipation therefrom in particular.

The Court sought justification for holding the parent or guardian liable for the child's tort in the supposed liability which they incur or may incur by reason of or arising from their residual parental authority over the child's property, evidently because it can no longer do so under their parental authority over the minor's person as that was taken away from them completely by his marriage. As earlier intimated, this is possible only on the specious theory that liability based on parental authority is indivisible.

The fact that the married minor still lives with his parents is of no legal significance since "Emancipation is final and irrevocable."[12] Furthermore, unlike parental authority over his property, the minor's emancipation from parental authority over his person by marriage is unqualified. The settled rule is that where the law does not qualify, the Court should not do so. The significant fact that Article 399 qualified the minor's emancipation from parental authority over his property but not that over his person makes clear the intent of the legislator and renders observance of this injunctive rule imperative. Article 399 being mandatory and plenary as to the emancipation of the minor's person, there is neither reason nor justification for the inference or qualification that the minor may impliedly repudiate, waive or forfeit such absolute freedom by continuing to live with and receive support from his father because

[12] CIVIL CODE, art. 401.

he is in no position to provide these for himself; or that his father, in permitting him to do so for that reason and not as a matter of legal duty, thereby reacquires parental authority over his person and the burdens that go with it. To so hold would not only constitute unwarranted judicial legislation but would amount to punishing the father for being compassionate with his own son, and to compel him, in order to avoid such punishment, to throw his son out of his house and let him starve. This the law could not and did not intend. Nor is it written in the law. Over and above all these, it is contrary to the final and irrevocable character of the emancipation in question which precludes equating the physical with the legal custody of the married minor.

The last piece of judicial legislation in this case is the ruling that "inasmuch as it is evident that Reginald is now of age, as a matter of equity, the liability of Atty. Hill has become merely subsidiary to that of his son." Although vicarious, the liability of the father under Article 2180, like that of his son under Article 2176, is direct and primary. It is not subsidiary. The father's liability is subsidiary only under Article 103 of the Revised Penal Code, which requires the prior conviction of the son in the criminal case and proof of failure on his part to satisfy the damage awarded against him in the judgment rendered therein due to his insolvency. This basic doctrine is as old as the hills. Reginald was acquitted and no damages were awarded against him in the criminal case on that account. The Court's ruling here made attainment of majority not only a new mode of extinguishing obligations but of creating a new one in lieu thereof.

It would seem that whatever is inexplicable, contrary to or cannot be justified in law may be overcome and overriden by or in the name of equity. Nothing can be more unsettling, nor more convenient for that purpose. Indeed, since the Court has become equity minded after Martial Law, ostensibly following the trend towards what is described as a more compassionate society, many established and cherished doctrines and even expressed provisions of law have been struck down or simply ignored in its name. The trouble with judgments by compassion is that they are as variable, as fickle and as unpredictable as the human heart or emotions. And this is reflected in the emerging state of our jurisprudence. Relying and predicting Supreme Court action on the basis of existing doctrines, including even the most recent ones, is becoming a hazardous task for both lower court judges and practicing lawyers. There are no guidelines to go by as to when one may disregard existing law and settled jurisprudence and resort to equity. Or, is this meant to be an exclusive Supreme Court prerogative?

The rule in this case is manifestly a very strained construction and application of parental responsibility under Article 2180 in relation to Article 399 of the Civil Code, and for that reason does not inspire either unquestioned acceptance or unqualified adherence to it. It is perceptibly too sophisticated. Such a far-reaching doctrine quite obviously deserves a more careful analysis than was given to it and should be re-examined when the case comes back on the merits.