

*EN BANC*

G.R. No. 208912 – AMADEA ANGELA K. AQUINO, *Petitioner*, v. RODOLFO C. AQUINO and ABDULAH C. AQUINO, *Respondents*; and

G.R. No. 209018 – RODOLFO C. AQUINO, *Petitioner*, v. AMADEA ANGELA K. AQUINO, *Respondent*.

Promulgated:

December 7, 2021

X-----*Perlas-Bernabe*-----X

**SEPARATE CONCURRING OPINION**

**PERLAS-BERNABE, J.:**

I concur in the result. The case should be remanded to the Regional Trial Court (RTC) for further proceedings to thresh out the issue of Amadea Angela K. Aquino's (Angela) filiation to her putative father, Arturo Aquino (Arturo), and ultimately, to resolve the issue of whether or not she is entitled to participate in the settlement of the estate of her putative grandfather, Miguel Aquino (Miguel), pursuant to the re-examined interpretation of Article 992 of the Civil Code, as will be discussed below. Before explaining my own reasons for concurrence, a brief background of this case is in order.

On May 7, 2003, Rodolfo C. Aquino (Rodolfo) filed before the RTC a petition for letters of administration of the estate of his deceased father, Miguel. In the said petition, Rodolfo alleged, *inter alia*, that Miguel was survived by: (a) his second wife, Enerie B. Aquino; (b) his sons from his first marriage, Abdulah Aquino (Abdulah) and himself (Rodolfo); and (c) the heirs of his other son, Wilfredo, who predeceased him. Notably, Miguel was also predeceased by his first wife and his other son, Arturo.<sup>1</sup>

On July 2, 2003, Angela filed a Motion to be Included in the Distribution and Partition of [Miguel's] Estate, claiming to be Arturo's only child.<sup>2</sup> Rodolfo opposed Angela's motion, pointing out that Arturo never recognized her as a natural child.<sup>3</sup> After Abdulah was appointed administrator of Miguel's estate, Angela filed another motion, claiming, among others, that she has a legal right to a monthly allowance, similar to those given to Miguel's other heirs.<sup>4</sup>

<sup>1</sup> See *ponencia*, p. 3.

<sup>2</sup> See *id.* at 3-4.

<sup>3</sup> See *id.* at 4.

<sup>4</sup> See *id.* at 4-5.

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In an Order dated April 22, 2005, the RTC granted Angela's motions, finding that the Aquino clan was already estopped from denying Angela's filiation, and thus, she should be entitled to a share in Miguel's estate. Aggrieved, Abdulah filed an appeal, while Rodolfo filed a petition for *certiorari* before the Court of Appeals (CA).<sup>5</sup>

In a Decision dated August 23, 2012, the CA denied Rodolfo's *certiorari* petition for being the wrong remedy, as well as on the grounds of forum shopping and *res judicata*. Upon denial of his motion for reconsideration, Rodolfo filed a petition before the Court, docketed as **G.R. No. 209018**.<sup>6</sup>

Meanwhile, in a Decision dated January 21, 2013, the CA granted the appeal of Abdulah, and accordingly, reversed the assailed RTC Orders. It held that Angela was unable to prove her filiation with Arturo, considering that: (a) she failed to present birth records showing Arturo's paternity or any document signed by Arturo confirming such paternity; and (b) she cannot establish open and continuous possession of her status as Arturo's child since the latter died before she was born. In addition, the CA ruled that assuming *arguendo* that Angela was able to establish her filiation with Arturo, she still cannot inherit *ab intestato* from her putative grandfather, Miguel, pursuant to the "Iron Curtain Rule" provided under Article 992<sup>7</sup> of the Civil Code.<sup>8</sup> Dissatisfied, Angela moved for reconsideration which was, however, denied in a Resolution dated July 24, 2013; hence, the petition before the Court in **G.R. No. 208912**.<sup>9</sup>

Initially, the Court, through its Third Division, consolidated G.R. Nos. 208912 and 209018, and thereafter, denied them in a Resolution dated November 11, 2013.<sup>10</sup> Upon motion of Angela, however, G.R. Nos. 208912 and 209018 were reinstated and referred to the Court *En Banc* to resolve the issue of **whether or not Angela may inherit from the estate of her putative grandfather, Miguel**.<sup>11</sup> Consequently, the Court *En Banc* conducted oral arguments, and required the parties to submit their respective memoranda.<sup>12</sup>

Essentially, Rodolfo contends that Angela is already barred from establishing her filiation to Arturo, whereas Abdulah argues that Angela failed to present competent proof of such filiation. In any event, both of them maintain that even if Angela is indeed Arturo's illegitimate child, she

<sup>5</sup> See *id.* at 5.

<sup>6</sup> See *id.* at 6.

<sup>7</sup> Article 992. An illegitimate child has no right to inherit *ab intestato* from the legitimate children and relatives of his father or mother; nor shall such children or relatives inherit in the same manner from the illegitimate child.

<sup>8</sup> See *ponencia*, pp. 6-7.

<sup>9</sup> See *id.* at 7.

<sup>10</sup> See *id.* at 8.

<sup>11</sup> See *id.* at 9-10.

<sup>12</sup> See *id.* at 10-13.

is nevertheless barred by Article 992 of the Civil Code from inheriting from Miguel's estate.<sup>13</sup>

On the other hand, Angela insists that she is not yet barred from proving her filiation to Arturo. Further, she pointed out that Rodolfo and Abdulah had already recognized and acknowledged her filiation to Arturo, and hence, are already estopped from claiming otherwise. Finally, Angela argues that Article 992 of the Civil Code should be re-interpreted to only prohibit reciprocal succession between collateral relatives, and not between direct ascendants and descendants.<sup>14</sup> Notably, this view squares with Justice Hugo E. Gutierrez Jr.'s (Justice Gutierrez) Dissenting Opinion in *Diaz v. Intermediate Appellate Court*<sup>15</sup> (*Diaz*).

***I. Angela is not time-barred from proving her filiation.***

As earlier intimated, Angela mainly alleges that she is the illegitimate daughter of Arturo, who is, in turn, the son of the decedent, Miguel. As Arturo had predeceased Miguel, Angela seeks to inherit from Miguel's estate being the latter's illegitimate granddaughter.

At the onset, it is apt to mention that Angela is not time-barred from proving her filiation to her father, Arturo, and hence, is not precluded from proving her status as Miguel's illegitimate granddaughter. Article 256 of the Family Code states that:

Article 256. This Code shall have retroactive effect insofar as it does **not prejudice or impair vested or acquired rights in accordance with the Civil Code or other laws.** (Emphasis supplied)

Having been born on October 9, 1978 (or prior to the effectivity of the Family Code), Angela's right to prove her filiation had already been "vested or acquired" under the legal auspices of the Civil Code and hence, cannot be prejudiced or impaired by any provision of the Family Code.

Relatedly, Article 285<sup>16</sup> of the Civil Code provides for the prescriptive period to file an "action for the recognition of natural children," under which

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<sup>13</sup> See *id.* at 10-11.

<sup>14</sup> See *id.* at 11-12.

<sup>15</sup> 261 Phil. 542 (1990).

<sup>16</sup> Article 285. The action for the recognition of natural children may be brought only during the lifetime of the presumed parents, except in the following cases:

(1) If the father or mother died during the minority of the child, in which case the latter may file the action before the expiration of four years from the attainment of his majority;

(2) If after the death of the father or of the mother a document should appear of which nothing had been heard and in which either or both parents recognize the child.

In this case, the action must be commenced within four years from the finding of the document.

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category “illegitimate children” fall.<sup>17</sup> Pursuant to this provision, “[i]f the father or mother died during the minority of the child, **[t]he latter may file the action before the expiration of four years from the attainment of his majority,**” which under the same Code, “commences [at] the age of twenty-one years.”<sup>18</sup>

Thus, from the time she was born up until four (4) years from reaching the age of 21, Angela may file an action for recognition. Since Angela was born on October 9, 1978, she had until **October 9, 2003** to file such action.<sup>19</sup> Given that Angela filed her Motion to be Included in the Distribution and Partition of [Miguel’s] Estate in July 2003, she is thus not barred from asserting her filiation to Arturo.<sup>20</sup>

***II. Angela’s filiation to the decedent has yet to be sufficiently proven because the trial court failed to conduct the proper hearing; hence, this case should be remanded.***

Since Angela was born during the effectivity of the Civil Code, then the Civil Code provisions on the manner of proving filiation should be made applicable to her. In this relation, Article 283<sup>21</sup> of the Civil Code states, *inter alia*, that “the father is obliged to recognize the child as his natural child[,] x x x [w]hen the child is in continuous possession of [the] status of a child of the alleged father **by the direct acts of the latter or of his family[.]**”

Based on the records, the question of Angela’s filiation to Miguel arose when she filed a Motion to be Included in the Distribution and Partition of the Estate<sup>22</sup> of the latter.<sup>23</sup> In an attempt to prove her status as Arturo’s daughter and consequently, Miguel’s heir, Angela alleged the following circumstances which purportedly demonstrate that she was in

<sup>17</sup> The provisions on recognition of natural children, *i.e.*, Articles 276 to 286, are found under Chapter 4, Title VIII, Book I of the Civil Code which talks about filiation of illegitimate children. Hence, natural children is a specific classification of illegitimate children (the other classification is called spurious children). (See *De Santos v. Angeles*, 321 Phil. 562, 576 [1995].)

<sup>18</sup> See Article 402 of the Civil Code.

<sup>19</sup> See *ponencia*, pp. 35-37.

<sup>20</sup> See *id.* at 37.

<sup>21</sup> Article 283. In any of the following cases, the father is obliged to recognize the child as his natural child:

(1) In cases of rape, abduction or seduction, when the period of the offense coincides more or less with that of the conception;

(2) When the child is in continuous possession of status of a child of the alleged father by the direct acts of the latter or of his family;

(3) When the child was conceived during the time when the mother cohabited with the supposed father;

(4) When the child has in his favor any evidence or proof that the defendant is his father.

<sup>22</sup> *Rollo* (G.R. No. 208912), pp. 89-96.

<sup>23</sup> As correctly pointed out by Justice Alfredo Benjamin S. Caguioa during the deliberations of this case, the issue of Angela’s filiation may be resolved in the same proceeding for the settlement of Miguel’s estate. (See *Abella v. Cabañero*, 816 Phil. 466, 478-480 [2017]; and *Briz v. Briz*, 43 Phil. 763, 769 [1922].)

continuous possession of her status as Arturo's child through the direct acts of the latter's family, particularly:

(a) Miguel paid for the medical expenses of Angela's mother, Susan, throughout the latter's pregnancy, and even had the Aquino family doctor take care of Susan;

(b) she was baptized as "Amadea Angela Aquino," thereby showing that Miguel allowed Susan to use "Amadea," the name of his first wife, as part of Angela's name, and allowed Angela to use the "Aquino" family name, and furthermore, Arturo's brother, Abdulah, agreed to be Angela's baptismal godfather;

(c) from Angela's birth until the filing of her Motion, she had been living in the Aquino ancestral home upon the express instructions of Miguel;

(d) Miguel had continually provided support for Angela, as he paid for her education, procured an educational plan for her benefit, would regularly visit her when she was living in Manila, and would send her extra money whenever she would travel abroad for vacations;

(e) at his deathbed, Miguel expressed his wish to bequeath a commercial lot to Angela, and shortly after Miguel's death, possession of said lot was delivered to her, and in fact, the lessees thereof had been paying rent directly to her;

(f) in the cockpit then-owned and operated by Miguel, there were seats with the name "Maggie" (Angela's nickname) on them, and fees collected from those who occupied said seats were all given to Angela for her support; and

(g) the employees of the Aquino clan have known Angela to be a member thereof, and such fact is well-known in the community.<sup>24</sup>

In support of said allegations, Angela attached the following documents to her Motion, namely: (i) Arturo's death certificate; (ii) a certification from the Davao Doctors Hospital stating that Arturo was listed as Angela's father; (iii) Angela's baptismal certificate; and (iv) the handwritten document of Miko Aquino, Rodolfo's son, which supposedly transcribed Miguel's words while the latter was dictating his dying wishes.<sup>25</sup> In response, Rodolfo filed an opposition,<sup>26</sup> averring that Angela's allegations

<sup>24</sup> See *rollo* (G.R. No. 208912), pp. 90-91.

<sup>25</sup> *Id.* at 97-100.

<sup>26</sup> See Opposition to Claimant's Motion to Be Included in the Distribution and Partition of the Estate dated November 12, 2003; *id.* at 101-107.

in her motion as well as the attached documents thereto are neither credible nor competent evidence of her filiation to Arturo.<sup>27</sup>

In an Order<sup>28</sup> dated April 22, 2005, the RTC ruled in favor of Angela, declaring that she had successfully established her filiation to Miguel.

However, records show that the Branch Clerk of Court of the RTC issued a Certification<sup>29</sup> dated April 21, 2015 attesting that “**no testimonial and documentary evidence was presented and offered both by [Rodolfo] and [Angela] pertaining to the April 22, 2005 Order of the [RTC].**” Thus, in the absence of any formal hearing for the reception of testimonial and/or documentary evidence which would support Angela’s allegations, it was error for the RTC to make the foregoing declaration since there was no proper evidentiary basis to conclude that Angela had established her filiation to Arturo and hence, an heir of Miguel. **Accordingly, the issue of Angela’s filiation is an unresolved matter that necessitates the remand of the case.** It is only when Angela’s allegations have been duly proven through the proper hearing may the same be factored in to establish her status as Arturo’s daughter in accordance with Article 283 of the Civil Code as above-stated.

At this juncture, it should be clarified that the fact that Rodolfo, the oppositor, did not specifically deny Angela’s allegations of filiation should not mean that the same are already judicially admitted and hence, already proven as facts in this case. On this score, it is apt to highlight that this case stemmed from a **special proceeding** and not an ordinary civil action between two (2) opposing parties where the threshold is mere preponderance of evidence. “**A special proceeding is a remedy by which a party seeks to establish a status, a right, or a particular fact.**”<sup>30</sup> In this particular case, the settlement of the estate of deceased persons is further considered as a **proceeding in rem** in that the same is directed against the thing or property or status of a person who seeks a judgment with respect thereto as against the whole world.<sup>31</sup> Accordingly, issues on filiation which arise in these proceedings essentially seek to “establish a status, a right, or a particular fact”;<sup>32</sup> and hence, require a high standard of proof.<sup>33</sup> In this relation, case law provides that paternity or filiation must be established by **clear and convincing evidence**<sup>34</sup> – which is described as “more than mere

<sup>27</sup> See *id.* at 103-105.

<sup>28</sup> *Id.* at 60-65.

<sup>29</sup> *Id.* at 497. Signed by Branch Clerk of Court Jocelyn M. Alibang-Salud.

<sup>30</sup> See Section 3 (c), Rule 1 of the Rules of Court.

<sup>31</sup> See *De Pedro v. Romasan Development Corporation*, 748 Phil. 706, 725 (2014).

<sup>32</sup> See Section 3 (c), Rule 1 of the Rules of Court.

<sup>33</sup> See *Baluyut v. Baluyut*, 264 Phil. 904, 912 (1990).

<sup>34</sup> See *Perla v. Baring*, 698 Phil. 323, 333 (2012); *Cabatania v. CA*, 484 Phil. 42, 50 (2004); and *Constantino v. Mendez*, 284-A Phil. 442, 448-449 (1992).

preponderance, but not to the extent of such certainty as is required beyond reasonable doubt in criminal cases.”<sup>35</sup>

Since the applicable threshold is clear and convincing evidence and not preponderance of evidence, the trial court, and consequently this Court, cannot simply conclude that a status, right, or particular fact has been established by simply weighing it against the evidence presented by an oppositor in the same case. The proceeding is one that is binding against the whole world and hence, the trial court must conduct a holistic factual determination to establish if such fact had been clearly and convincingly proven. In the same vein, an oppositor’s failure to specifically deny any claim in the special proceeding cannot be conveniently regarded as judicial admissions in the same way that they are treated in ordinary civil cases. Besides, a particular oppositor cannot simply judicially admit the claimant’s civil status in an *in rem* special proceeding since an admission thereof is tantamount to compromising one’s civil status which is statutorily prohibited.<sup>36</sup>

In sum, there is a need for the RTC to determine the veracity of Angela’s allegations by conducting a proper hearing for the due reception of her as well as any oppositor’s evidence. Since no such hearings were conducted, a remand of the case to the court *a quo* is in order.

It bears stressing, however, that before this case is remanded, the applicability of Article 992, or the “Iron Curtain Rule,” should be, as the *ponencia* correctly did, re-examined in order to guide the court of origin in the correct application of this provision in the event that Angela’s filiation is duly proven. Notably, this purely legal question was both squarely raised by the parties and keenly traversed by this Court during the oral arguments. Moreover, this issue has a clear determinative effect on the disposition of Angela’s ultimate claim to be declared as an heir and consequently, entitled to inherit from Miguel’s estate. Accordingly, it is imperative for the Court to pass upon this legal issue not only to accord complete relief to the parties in this case but also for the proper guidance of the Bench, the Bar, and the public on the application of Article 992 in future cases. Much more, as will be illumined below on the discussion relative to *Diaz*, the Court, as the final arbiter of the laws, has the responsibility to rectify any error in jurisprudence.

***III. The “Iron Curtain Rule” under Article 992 of the Civil Code applies only when one inherits “in his/her own right”; it has no application when the heir inherits “by right of***

<sup>35</sup> *The Insular Life Assurance Co., Ltd. v. Heirs of Jose H. Alvarez*, G.R. No. 207526, October 3, 2018, 881 SCRA 516, 545, citing *Spouses Manalo v. Roldan-Confesor*, 290 Phil. 311, 323 (1992). See also *Fortun v. Macapagal-Arroyo*, 684 Phil. 526, 596 (2012).

<sup>36</sup> See Article 2035 (1) of the Civil Code.

*representation” under Article 982 of the same Code.*

Article 992 of the Civil Code reads as follows:

Article 992. An illegitimate child has no right to inherit *ab intestato* from the legitimate children and relatives of his father or mother; nor shall such children or relatives inherit in the same manner from the illegitimate child.

Known as the “Iron Curtain Rule,” Article 992 creates a “legal iron curtain” prohibiting an illegitimate child from inheriting from the estate of the legitimate children and relatives of his father or mother. This prohibition operates vice versa. Notably, the provision is generally worded in that it refers to the “**right to inherit *ab intestato*” (intestate succession)**, which concept, as will be expounded below, may be further dichotomized into the manner in which one inherits, namely: (a) those who inherit in their own right; and (b) those who inherit through the right of representation.

The policy impetus behind the “Iron Curtain Rule” was explained in the 1990 case of *Diaz*. In particular, the Court stated that **due to the presumed animosity and antagonism between the legitimate and illegitimate lines**, our legislators intended to prohibit intestate succession between each class of relatives:

Article 992 of the New Civil Code provides a barrier or iron curtain in that it prohibits absolutely a succession *ab intestato* between the illegitimate child and the legitimate children and relatives of the father or mother of said illegitimate child. They may have a natural tie of blood, but this is not recognized by law for the purpose of Article 992. Between the legitimate family and the illegitimate family there is presumed to be an intervening antagonism and incompatibility. The illegitimate child is disgracefully looked down upon by the legitimate family; the family is in turn, hated by the illegitimate 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 illegitimate child nothing but the product of sin, palpable evidence of a blemish broken in life; the law does no more than recognize this truth, by avoiding further ground of resentment.<sup>37</sup>

The Court further explained that Article 992 originated from an identical provision in the Spanish Civil Code of 1889, and that the Philippines, through its reproduction in our own Civil Code, merely adhered to this ancient foreign principle:

Once more, We decline to agree with petitioner. We are fully aware of certain substantial changes in our law of succession, but there is

<sup>37</sup> *Diaz*, supra note 15, at 549, citing 7 Manresa 110, cited in *Grey v. Fabie*, 40 OG (First S) No. 3, p. 196.

no change whatsoever with respect to the provision of Article 992 of the Civil Code. Otherwise, by the said substantial change, **Article 992, which was a reproduction of Article 943 of the Civil Code of Spain**, should have been suppressed or at least modified to clarify the matters which are now the subject of the present controversy. While the New Civil Code may have granted successional rights to illegitimate children, those articles, however, in conjunction with Article 992, prohibit the right of representation from being exercised where the person to be represented is a legitimate child. Needless to say, the determining factor is the legitimacy or illegitimacy of the person to be represented. If the person to be represented is an illegitimate child, then his descendants, whether legitimate or illegitimate, may represent him; however, if the person to be represented is legitimate, his illegitimate descendants cannot represent him because the law provides that only his legitimate descendants may exercise the right of representation by reason of the barrier imposed in Article 992. In this wise, the commentaries of Manresa on the matter in issue, even though based on the old Civil Code, are still very much applicable to the New Civil Code because the amendment, although substantial, did not consist of giving illegitimate children the right to represent their natural parents (legitimate) in the intestate succession of their grandparents (legitimate). It is with the same line of reasoning that the three aforecited cases may be said to be still applicable to the instant case.

Equally important are the reflections of the Illustrious Hon. Justice Jose B.L. Reyes [Justice Reyes] which also find support from other civilists. We quote:

In the Spanish Civil Code of 1889 the right of representation was admitted only within the legitimate family; so much so that Article 943 of that Code prescribed that an illegitimate child cannot inherit *ab intestato* from the legitimate children and relatives of his father and mother. **The Civil Code of the Philippines apparently adhered to this principle since it reproduced Article 943 of the Spanish Code in its own Art. 992, but with fine inconsistency, in subsequent articles (990, 995 and 998)[,] our Code allows the hereditary portion of the illegitimate child to pass to his own descendants, whether legitimate or illegitimate.** So that while Art. 992 prevents the illegitimate issue of a legitimate child from representing him in the intestate succession of the grandparent, the illegimates of an illegitimate child can now do so. This difference being indefensible and unwarranted, in the future revision of the Civil Code we shall have to make a choice and decide either that the illegitimate issue enjoys in all cases the right of representation, in which case Art. 992 must be suppressed; or contrariwise maintain said article and modify Articles 992 and 998. The first solution would be more in accord with an enlightened attitude *vis-à-vis* illegitimate children.<sup>38</sup> (Emphases and underscoring supplied)

<sup>38</sup> Id. at 549-551, 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.

In *Diaz*, the Court went on to say that the “Iron Curtain Rule” includes the right of representation conferred to grandchildren and other descendants. In this regard, Article 982, governing the right of representation, reads:

Article 982. The grandchildren and other descendants shall inherit **by right of representation**, and if any one of them should have died, leaving several heirs, the portion pertaining to him shall be divided among the latter in equal portions. (Emphasis supplied)

It was then stated that “[t]he rules laid down in Article 982 that ‘grandchildren and other descendants shall inherit by right of representation’ and in Article 902 that ‘the rights of illegitimate children [x x x] are transmitted upon their death to their descendants, whether legitimate or illegitimate[’] are *subject to the limitation* prescribed by Article 992 to the end that ‘an illegitimate child has no right to inherit *ab intestato* from the legitimate children and relatives of his father or mother.’”<sup>39</sup>

Continuing this train of thought, the Court concluded that as regards the right of representation of a grandchild, “Article 982 is the general rule and Article 992 [is] the exception.”<sup>40</sup> In other words, the Court supposed that Article 982 is the general rule with respect to the right of representation by the illegitimate child to the legitimate child of the decedent, pointing out that the term “relatives” in Article 992 broadly includes both direct and collateral lines of the illegitimate child’s parent. **As definitively (albeit erroneously) held by the Court in *Diaz*, an illegitimate child cannot succeed his/her legitimate parent by right of representation.**<sup>41</sup> The *Diaz* interpretation of the “Iron Curtain Rule” would go on to be regarded as a cornerstone dictum in succession law.

However, as unraveled through the submissions during the oral arguments in this case, it has become apparent that **the *Diaz* ruling – specifically with respect to the interplay between Articles 982 and 992 of the Civil Code – actually runs anathema to the intent of the framers of the Civil Code.** As elucidated by herein *Amicus Curiae* Dean Cynthia R. Del Castillo,<sup>42</sup> the Code Commission released a memorandum on the interpretation on the provision of Article 992 two (2) years after the effectivity of the Civil Code, the pertinent portions of which reveal:

#### Article 902

Mr. Justice Reyes contends that the provisions of Articles 902, 989, and 998 confer the right of representation upon the illegitimate issue of an illegitimate child; **while the illegitimate issue of a legitimate child is**

<sup>39</sup> Id. at 548-549, citing *Amicus Curiae*’s Opinion by former Justice Minister Ricardo C. Puno, p. 12.

<sup>40</sup> Id. at 548.

<sup>41</sup> Id.

<sup>42</sup> See Opinion of *Amicus Curiae* Cynthia Roxas-Del Castillo; *rollo* (G.R. No. 208912), pp. 844-869.

**denied the right of representation by Article 992 and therefore unfair and unjustified.**

In answer to this claim of unfairness and injustice, we would like to cite the provisions of Article 982:

Article 982. The grandchildren and other descendants shall inherit by right of representation and if any one of them should have died, leaving several heirs, the portion pertaining to him shall be divided among the latter in equal portions.

**If the provisions of the above article are correctly interpreted and understood, do they exclude the illegitimate issue of a legitimate child? The terms “grandchildren and other descendants” are not confined to legitimate offspring.**

We submit that not only legitimate but also illegitimate descendants should be included in the interpretation of Articles 902, 989, and 998. In cases of this kind, where the Code does not expressly provide for specific rights, and for that matter, all codes have gaps, equity and justice should prevail, taking into consideration the fundamental purpose of the whole law on succession which, among other things, gives more rights to illegitimate children, thereby relaxing the rigidity of the old law, and liberating these unfortunate persons from the humiliating status and condition to which they have been dumped.

It may be mentioned in this connection that the old Civil Code fails to provide for several concurrences of heirs, but as the interpreters of the same have correctly said, justice and equity should prevail in such cases.<sup>43</sup> (Emphases and underscoring supplied)

As expressed in the memorandum, the term “grandchildren and other descendants” under Article 982, which specifically governs the right of representation, must be read to include both legitimate and illegitimate descendants based on one fundamental purpose of the law on succession – **to give more rights to illegitimate children on the basis of justice and equity**. Hence, based on the avowed intent of the Code Commission, Article 992 does not operate to restrict the right of representation granted by Article 982 to the “grandchildren and other descendants” insofar as it concerns the illegitimate line.

**In other words, the framers of the Civil Code themselves intended that, notwithstanding Article 992, illegitimate “grandchildren and other descendants” may be allowed to inherit from the legitimate ascendant of their parent (i.e., their grandfather), provided, that they may only do so via the right of representation under Article 982.**

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<sup>43</sup> Id. at 855-856, citing Memorandum to the Joint Congressional Committee on Codification dated February 22, 1951.

As above-mentioned, intestate succession contemplates two (2) classes of heirs relative to their method of inheriting by law. These are: (a) those who inherit in their own right; and (b) those who inherit through the right of representation.<sup>44</sup> **The Court's misconception in Diaz lies in its unfortunate failure to recognize this dichotomy in intestate succession.** As evoked by the explicit wording of Articles 982 and 992 of the Civil Code, Article 992 speaks of intestate succession in general (*i.e.*, “[a]n illegitimate child has no right to inherit *ab intestato*”); whereas Article 982 specifically pertains to intestate succession through the right of representation (*i.e.*, “[t]he grandchildren and other descendants shall inherit by right of representation”). Thus, pursuant to the statutory construction axiom of *lex specialis derogat generali*,<sup>45</sup> the general rule found in Article 992 should give way to the special rule laid down in Article 982. Also, as mentioned, this reading of the law is consistent with the intent of the Code Commission. Unfortunately, the Court, in *Diaz*, committed a misstep by having it the other way around. Article 982 entitles “grandchildren and other descendants” to succession through the right of representation, *without distinguishing between the legitimate and illegitimate lines*. Therefore, applying the principle of *ubi lex non distinguit nec nos distinguere debemus*,<sup>46</sup> the right of representation of the aforesaid heirs must be recognized, regardless of their legitimacy or illegitimacy.

Accordingly, the controlling interpretation should henceforth be that: **when it specifically comes to intestate succession by right of representation, Article 982 – which does not distinguish between legitimate or illegitimate lines – should apply; while, on the other hand, when it comes to intestate succession not by right of representation, but by one’s own right, the general provision of Article 992 should apply. Consequently, the “Iron Curtain Rule” only persists when one inherits in one’s own right.**

Aside from applying construction principles, there are likewise substantive considerations supporting the afore-stated position.

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<sup>44</sup> See *Intestate Estate of Petra V. Rosales v. Rosales*, 232 Phil. 73, 76 (1987), citing III Tolentino, Commentaries and Jurisprudence on the Civil Code of the Philippines 461, 1979 ed. See also Articles 970 and 971 of the Civil Code which respectively read:

Article 970. Representation is a right created by fiction of law, by virtue of which the representative is raised to the place and the degree of the person represented, and acquires the rights which the latter would have if he were living or if he could have inherited.

Article 971. The representative is called to the succession by the law and not by the person represented. The representative does not succeed the person represented but the one whom the person represented would have succeeded.

<sup>45</sup> “General legislation must give way to special legislation on the same subject, and generally is so interpreted as to embrace only cases in which the special provisions are not applicable. In other words, where two statutes are of equal theoretical application to a particular case, the one specially designed therefore should prevail.” (*Department of Health v. Philip Morris Philippines Manufacturing, Inc.*, 757 Phil. 212, 227 [2015], citing *Nieves v. Duldulao*, 731 Phil. 189, 201 [2014].)

<sup>46</sup> “Where the law does not distinguish, neither should we.” (*Spouses Plopenio v. Department of Agrarian Reform*, 690 Phil. 126, 132 [2012].)

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Case law describes the right of representation as a method of inheriting whereby the representative, by operation of law, steps into the shoes of a closer blood relative of the decedent:

**By right of representation, a more distant blood relative of a decedent is, by operation of law, “raised to the same place and degree” of relationship as that of a closer blood relative of the same decedent.** The representative thereby **steps into the shoes of the person** he represents and succeeds, not from the latter, but from the person to whose estate the person represented would have succeeded.<sup>47</sup> (Emphases and underscoring supplied)

The right of representation under Article 982 distinctly applies in a situation wherein the person represented is a predeceased child – and hence, a compulsory heir<sup>48</sup> – of the decedent. Under the law on succession, compulsory heirs occupy a “sacred” position, such that the law not only reserves certain portions of the decedent’s estate to them (called the legitime), but also provides for remedies should any of them be deprived thereof. Thus, Article 982 actually protects the represented-compulsory heir’s legitime by allowing his/her children, regardless of legitimacy or illegitimacy, to receive the same on behalf of the former. To deny his/her children the right of representation just because they are illegitimate would effectively result in the impairment of the represented-compulsory heir’s legitime.

On a fairness standpoint, the Code Commission recognized that an illegitimate descendant’s right to represent under Article 982 is reading “**justice and equity**” into the gaps of the law. An illegitimate grandchild, for instance, is after all, the son/daughter of a compulsory heir of the decedent; **this compulsory heir should have received his/her share in the estate were it not for the fact that he/she predeceased the decedent.** Therefore, as a matter of justice and equity, it is but fair for the compulsory heir’s share to pass on to his/her child, regardless of the latter’s illegitimate status. Otherwise, the compulsory heir’s legitime from his/her predeceased father/mother would be impaired. Verily, irrespective of the legitimate relatives’ presumed hate or antagonism against the illegitimate grandchild or descendant, the Code Commission’s recognition of the illegitimate’s right of representation under Article 982 is not about the acrimonious relationship between the two; but rather, it is about interpreting the law in a just and equitable way by preserving the share of the compulsory heir insofar as it allows for the said share to pass on to the person such compulsory heir is presumed to love the most, his/her own child.

In light of the foregoing, the “Iron Curtain Rule” under Article 992 of the Civil Code has no application when he/she stands to succeed in

<sup>47</sup> *Bagunu v. Piedad*, 400 Phil. 1380, 1385 (2000).

<sup>48</sup> See Article 887 of the Civil Code.

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representation of a compulsory heir. When one inherits by right of representation, Article 982 – which does not provide for any prohibitory distinction between the legitimate and illegitimate lines – specifically governs. Conversely, by logical inverse, the “Iron Curtain Rule” only applies when the illegitimate descendant stands to succeed in his/her own right.

Notably, it is acknowledged that there are reasoned sentiments expressing that the policy considerations behind Article 992 are already passé – and in fact, might even be unfair – based on modern day society values. As captured in Justice Gutierrez’ dissent in *Diaz*, the presumed antagonism between legitimates and illegitimates based on the outdated policy exported from the Spanish Civil Code does not exist anymore. In *Diaz*, Justice Gutierrez opined:

Unless the opposite is proved, I will always presume that a grand[parent] loves [his/her] grandchildren [whether legitimate or illegitimate]. The grand[parent] may be angry at the indiscretions of [his/her child] but why should the law include the innocent grandchildren as objects of that anger.<sup>49</sup>

Nevertheless, pursuant to Article 982 of the Civil Code, the only statutory basis allowing inheritance between legitimate and illegitimate relatives is restricted to the right of representation. However, insofar as inheriting by one’s own right, Article 992 subsists as the legal iron curtain preventing succession between the two.

By the bedrock principle of separation of powers, the Court’s main function is to interpret and not to make laws. While there is clear legal basis to now qualify *Diaz*’s overly expansive interpretation of Article 992 in that the same should not cover inheriting through representation, there is, however, no clear legal basis to interpret that Article 992 only applies to collaterals as Justice Gutierrez equally argues:

My dissent from the majority opinion is also premised on a firm belief that law is based on considerations of justice. The law should be interpreted to accord with what appears right and just. Unless the opposite is proved, I will always presume that a grandmother loves her grandchildren – legitimate or illegitimate – more than the second cousins of said grandchildren or the parents of said cousins. The grandmother may be angry at the indiscretions of her son but why should the law include the innocent grandchildren as objects of that anger. **“Relatives” can only refer to collateral relatives, to members of a separate group of kins but not to one’s own grandparents.**<sup>50</sup> (Emphasis supplied)

Disconcerting as it may seem, any perceived unfairness or insufficiency in our succession laws is not a license for the courts to engage

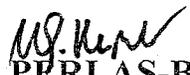
<sup>49</sup> See Justice Gutierrez’ Dissenting Opinion in *Diaz*, supra note 15, at 555.

<sup>50</sup> *Id.*; emphasis supplied.

in judicial legislation.<sup>51</sup> In resolving controversies, it is the Court's bounden duty to apply or interpret the law in accordance with the intent of the legislature. It is not within the Court's power to enlarge or abridge laws, else it will be guilty of usurping the prerogative of legislature. In one of the excerpts cited in *Diaz*, Justice Reyes ruminated that while the divide created by Article 992 of the Civil Code seems to be indefensible and unwarranted, the solution is in the future revision of the law.<sup>52</sup> Thus, up until Article 992 is completely amended by Congress through remedial legislation, the "Iron Curtain Rule," prohibiting illegitimates and legitimates from inheriting in their own respective rights from one another, remains good law and must be respected by the Court – but its application should be duly limited to the instances as above-described.

Consequently, as applied in this case, should Angela establish her status as Miguel's illegitimate granddaughter through clear and convincing evidence upon this case's remand to the court *a quo*, she should then be allowed to participate in the distribution of said decedent's estate. Article 992 would not apply since Angela – once proven to be filiated – stands to inherit by right of representation, and not in her own right. To repeat, when one is called to the succession by right of representation, Article 982 – which does not distinguish between legitimate or illegitimate lines – should apply; on the other hand, when one is called to the succession by his/her own right, the general prohibition under Article 992 applies. Simply stated, the "Iron Curtain Rule" only persists when one inherits in one's own right. Accordingly, *Diaz* and cases of similar import should be henceforth abandoned.

In fine, for the reasons herein explained, I vote to: (a) **PARTIALLY GRANT** petitioner Amadea Angela K. Aquino's Motion for Reconsideration in G.R. No. 208912, and accordingly **REVERSE** and **SET ASIDE** the Decision dated January 21, 2013 and the Resolution dated July 24, 2013 of the Court of Appeals in CA-G.R. CV No. 01633; and (b) **REMAND** the case to the court of origin for further proceedings, taking into particular consideration the Court's new interpretation of Article 992 *vis-à-vis* Article 982 of the Civil Code of the Philippines, and the abandonment of the *Diaz* doctrine.

  
**ESTELA M. PERLAS-BERNABE**  
Senior Associate Justice

<sup>51</sup> See *Silverio v. Republic*, 562 Phil. 953, 973 (2007).

<sup>52</sup> See *Diaz*, *supra* note 15, at 551, 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.