



Republic of the Philippines
Supreme Court
Baguio City

SECOND DIVISION

JAMES CUA KO,
Petitioner,

G.R. No. 210984

Present:

-versus-

LEONEN, J., Chairperson,
LAZARO-JAVIER,
LOPEZ, M,
LOPEZ, J., and
KHO, JR., JJ.

REPUBLIC OF THE
PHILIPPINES,
Respondent.

Promulgated:
APR 12 2023

X-----X

DECISION

LEONEN, J.:

Legitimacy and filiation are two different concepts. Therefore, while the law grants the husband the sole right to impugn his child's legitimacy, the same child may bring an action to establish that she is not filiated to her mother's husband.

This Court resolves the Petition for Review on *Certiorari*¹ filed by James Cua Ko (James), assailing the Decision² and Resolution³ of the Court of Appeals. The Court of Appeals upheld the denial of James's Petition for

¹ *Rollo*, pp. 8-17.

² *Id.* at 19-24. The September 10, 2013 Decision in CA-G.R. CV No. 98417 was penned by Associate Justice Danton Q. Bueser and was concurred in by Associate Justices Amelita G. Tolentino and Ramon R. Garcia of the Fourth Division, Court of Appeals, Manila.

³ *Id.* at 26-27. The January 14, 2014 Resolution in CA-G.R. CV No. 98417 was penned by Associate Justice Danton Q. Bueser and was concurred in by Associate Justices Amelita G. Tolentino and Ramon R. Garcia of the Former Fourth Division, Court of Appeals, Manila.

Judicial Approval of Voluntary Recognition of a Minor Natural Child for being a collateral attack against the legitimacy of minor Jamie Shaye Punzalan, now named Jamie Shaye Ko (Jaime Shaye).

Sometime in 2003, one Shalimar Abellera (Shalimar) filed a petition for declaration of nullity of her marriage with one Kerwin Cruz Par (Kerwin). During trial, Shalimar testified that she and Kerwin had been separated since 1999.⁴

On January 23, 2004, while the petition for declaration of nullity of marriage was still pending in court, Shalimar gave birth to a baby girl named “Jamie Shaye.” In Jamie Shaye’s certificate of live birth, Shalimar indicated “James Cua Ko” as the name of Jamie Shaye’s father. James executed an Affidavit of Acknowledgment/Admission to support the entry of his name in Jamie Shaye’s certificate of live birth.⁵

Eventually, on November 28, 2006, Shalimar’s marriage to Kerwin was voided by the Regional Trial Court of Parañaque. On September 9, 2008, the Office of the Civil Registrar of Muntinlupa City changed Jamie Shaye’s surname in her certificate of live birth from “Punzalan” to “Ko.”⁶

James subsequently filed a Petition for Judicial Approval of Voluntary Recognition of a Minor Natural Child before the Regional Trial Court of Pasig City “to secure the best interest of Jamie Shaye.”⁷ However, in its September 28, 2011 Decision, the trial court denied the petition and James’s motion for reconsideration.⁸

In its September 10, 2013 Decision,⁹ the Court of Appeals affirmed the trial court’s Decision denying the petition for judicial approval of voluntary recognition of a minor natural child. The Court of Appeals held that Jamie Shaye, having been born during a valid marriage, is a legitimate child whose status as such is more favorable to her.¹⁰ To grant James’s Petition for judicial approval of voluntary recognition was for the Court of Appeals to impugn a favorable status to the detriment of Jamie Shaye.¹¹ The appeal was disposed of in this wise:

The appeal is unimpressed with merit.

It is well-settled that “a child born to a husband and wife during a valid marriage is presumed legitimate.” As expressly provided in the

⁴ *Id.* at 19.

⁵ *Id.* at 19–20.

⁶ *Id.* at 20.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.* at 19–24.

¹⁰ *Id.* at 21–22.

¹¹ *Id.* at 22.

the Family Code:

“Article 167. The child shall be considered legitimate although the mother may have declared against its legitimacy or may have been sentenced as an adulteress.”

As held by the Supreme Court in a case:

The presumption of legitimacy does not only flow out of a declaration in the statute but is based on the broad principles of natural justice and the supposed virtue of the mother. The presumption is grounded on the policy to protect the innocent offspring from the odium of illegitimacy.

“There is perhaps no presumption of the law more firmly established and founded on sounder morality and more convincing reason than the presumption that children born in wedlock are legitimate.” Hence, we agree with the court *a quo* when it held:

“xxx it appears that the intention of the law is to create a ‘force-field’ in favor of the legitimacy of the child who was born during the existence of a marriage. Thus, no matter how the child was conceived, whether naturally or artificially, whether during the good times or the bad times, whether during the physical cohabitation of the spouses or actually separated in bed, so long as the child was born during the marriage, the child is presumed [‘]legitimate[.’”]

In *Concepcion vs. the Court of Appeals*, the Supreme Court has held:

Public policy demands that there be no compromise on the status and filiation of a child. Otherwise, the child will be at the mercy of those who may be so minded to exploit his defenselessness.

Moreover, the law itself establishes the status of a child from the moment of his birth. Although a record of birth or birth certificate may be used as primary evidence of the filiation of a child, as the status of a child is determined by the law itself, proof of filiation is necessary only when the legitimacy of the child is being questioned, or when the status of a child born after 300 days following the termination of marriage is sought to be established.

xxx

The law, reason and common sense dictate that a legitimate status is more favorable to the child. In the eyes of the law, the legitimate child enjoys a preferred and superior status. He is entitled to bear the surnames of both his father and mother, full support and full inheritance. On the other hand, an illegitimate child is bound to use the surname and be under the parental authority only of his mother. He can claim support only from a more limited group and his



legitimate is only half of that of his legitimate counterpart. Moreover (without unwittingly exacerbating the discrimination against him), in the eyes of society, a 'bastard' is usually regarded as bearing a stigma or mark of dishonor. Needless to state, the legitimacy presumptively vested by law upon xxx favors his interest[.]”

Further, to give *imprimatur* to the petitioner-appellant's voluntary recognition has the effect of impugning the child's legitimacy. The law is clear, a paramour is not allowed to impugn the legitimacy of a child born to the mother. Only the husband and within periods allowed by law, can question the legitimacy of the child born to his wife since he is the one directly prejudiced by her lack of fidelity. In exceptional cases and likewise within the prescribed period, the husband's heirs may impugn the child's legitimacy. However, upon the expiration of these periods, the child's legitimate status becomes “fixed and unassailable.” The law recognizes that it is for the child's best interest that his status of legitimacy is conclusively established.

Finally, “*a minor cannot be deprived of his/her legitimate status on the bare declaration of the mother and/or even much less, the supposed father. In fine, the law and only the law determines who are the legitimate or illegitimate children for one's legitimacy or illegitimacy cannot ever be compromised. Not even the birth certificate of the minor can change his status for the information contained therein are merely supplied by the mother and/or the supposed father. It should be what the law says and not what a parent says it is.*”

WHEREFORE, premises considered, the Petition is **DENIED** and the decision dated 28 September 2011 rendered by the Regional Trial Court, Branch 162 of Pasig City is hereby **AFFIRMED** in **TOTO**.

SO ORDERED.¹² (Emphases in the original, citations omitted)

James filed a Motion for Reconsideration, which the Court of Appeals denied in its Resolution¹³ dated January 14, 2014.

Hence, petitioner filed the present Petition for Review on *Certiorari* before this Court.¹⁴

Upon the directive of this Court, the Republic, through the Office of the Solicitor General filed a Comment¹⁵ on November 20, 2014, to which petitioner replied¹⁶ on April 6, 2015.

The sole issue for this Court's resolution is whether the Court of Appeals erred in denying petitioner James Cua Ko's Petition for Judicial Approval of Voluntary Recognition of a Minor Natural Child for being

¹² *Id.* at 21–23.

¹³ *Id.* at 26–27.

¹⁴ *Id.* at 8–17.

¹⁵ *Id.* at 38–48.

¹⁶ *Id.* at 51–57.

contrary to the presumption of legitimacy and the best interest of the child rule.

Petitioner argues that applying Article 167¹⁷ of the Family Code and denying his Petition for Judicial Approval of Voluntary Recognition “would [be to] shackle[,] instead of liberate[,] [Jamie Shaye] from emotional stress and depression.”¹⁸ Although Jamie Shaye was born while her mother married Kerwin on paper, this marriage was subsequently voided. Consequently, it would be in Jamie Shaye’s best interest if her true status, albeit nonmarital,¹⁹ is legally recognized.²⁰

The Office of the Solicitor General counters that Article 167 of the Family Code is clear and unambiguous and must be applied as it is. It contends that the law, not the parents, determines legitimate or marital, or illegitimate or nonmarital children.²¹ “[A] minor cannot be deprived of [their] legitimate status on the bare declaration of the mother, even much less, the supposed father.”²² “The presumption of legitimacy does not only flow out of a declaration in the statute but is based on the broad principles of natural justice and the supposed virtue of the mother[.]”²³ It further argues that every reasonable presumption be made in favor of legitimacy “to protect the innocent offspring from the odium of illegitimacy.”²⁴

The Petition for Review on *Certiorari* is denied.

I

The Court of Appeals was correct in denying petitioner’s Petition for Judicial Approval of Voluntary Recognition of a Minor Natural Child.

Article 164 of the Family Code provides that “children conceived or born during the marriage are legitimate.” This means that legitimacy as a status attaches once when a person is born within wedlock. There is no dispute that Jamie Shaye was born before the marriage between her mother, Shalimar, and Kerwin was voided. Jamie Shaye is deemed born within

¹⁷ FAMILY CODE, art. 167 provides:

ARTICLE 167. The child shall be considered legitimate although the mother may have declared against its legitimacy or may have been sentenced as an adulteress.

¹⁸ *Rollo*, p. 12.

¹⁹ Whenever practicable and not required by direct reference to statute and jurisprudence, “marital” will be used for “legitimate,” and “nonmarital” for “illegitimate,” to refer to the status of a child in relation to their parents’ marital status, or lack thereof. *See Aquino v. Aquino*, G.R. No. 208912, December 7, 2021 [Per J. Leonen, En Banc].

²⁰ *Rollo*, pp. 12–13.

²¹ Whenever practicable and not required by direct reference to statute and jurisprudence, “marital” will be used for “legitimate,” and “nonmarital” for “illegitimate,” to refer to the status of a child in relation to their parents’ marital status or lack thereof. *See Aquino v. Aquino*, G.R. No. 208912, December 7, 2021 [Per J. Leonen, En Banc].

²² *Rollo*, p. 43.

²³ *Id.* citing *Cabatania v. Court of Appeals*, 484 Phil. 42, 52 (2004) [Per J. Corona, Third Division].

²⁴ *Id.*

wedlock, and, therefore, is considered a legitimate child.²⁵

To grant petitioner's Petition for Judicial Approval of Voluntary Recognition of a Minor Child would be to impugn the legitimate status of Jamie Shaye collaterally, contrary to Article 170 of the Family Code, which requires direct action to impugn a child's legitimacy. Further, Article 170 provides that only the husband and, in some instances, his heirs can bring this direct action but only on specified grounds. Even the mother is prohibited by law from declaring against her child's legitimacy. Articles 166, 167, 170, and 171 of the Family Code provide:

ARTICLE 166. Legitimacy of a child may be impugned only on the following grounds:

(1) That it was physically impossible for the husband to have sexual intercourse with his wife within the first 120 days of the 300 days which immediately preceded the birth of the child because of:

(a) the physical incapacity of the husband to have sexual intercourse with his wife;

(b) the fact that the husband and wife were living separately in such a way that sexual intercourse was not possible; or

(c) serious illness of the husband, which absolutely prevented sexual intercourse;

(2) That it is proved that for biological or other scientific reasons, the child could not have been that of the husband, except in the instance provided in the second paragraph of Article 164; or

(3) That in case of children conceived through artificial insemination, the written authorization or ratification of either parent was obtained through mistake, fraud, violence, intimidation, or undue influence.

ARTICLE 167. The child shall be considered legitimate although the mother may have declared against its legitimacy or may have been sentenced as an adulteress.

ARTICLE 170. The action to impugn the legitimacy of the child shall be brought within one year from the knowledge of the birth or its recording in the civil register, if the husband or, in a proper case, any of his heirs, should reside in the city or municipality where the birth took place or was recorded.

If the husband or, in his default, all of his heirs do not reside at the place of birth as defined in the first paragraph or where it was recorded, the period shall be two years if they should reside in the Philippines; and

²⁵ *Concepcion v. Court of Appeals*, 505 Phil. 529, 537 (2005) [Per J. Corona, Third Division].

three years if abroad. If the birth of the child has been concealed from or was unknown to the husband or his heirs, the period shall be counted from the discovery or knowledge of the birth of the child or of the fact of registration of said birth, whichever is earlier.

ARTICLE 171. The heirs of the husband may impugn the filiation of the child within the period prescribed in the preceding article only in the following cases:

- (1) If the husband should die before the expiration of the period fixed for bringing his action;
- (2) If he should die after the filing of the complaint, without having desisted therefrom; or
- (3) If the child was born after the death of the husband.

The presumption of legitimacy was expounded in *Concepcion v. Court of Appeals*,²⁶ where the child was declared legitimate by virtue of the mother's first marriage, this despite the mother's declaration that her child was not fathered by her first husband. In that case, this Court prohibited the putative father from impugning the legitimacy of the child because he is not the husband allowed by law to do so.

Similar to the child in *Concepcion*, Jamie Shaye retains her legitimate status despite the entries in her birth certificate and the declaration of her mother, Shalimar, that her father is not Kerwin but petitioner. Furthermore, not being the husband, petitioner has no right under the law to impugn Jamie Shaye's legitimacy by filing the Petition for voluntary recognition. The Court of Appeals did not err in denying petitioner's Petition.

II

The ruling in this case, however, is without prejudice to Jamie Shaye's right to establish her filiation to petitioner should she wish to do so. Articles 172, 173, and 175 of the Family Code provide:

ARTICLE 172. The filiation of legitimate children is established by any of the following:

- (1) The record of birth appearing in the civil register or a final judgment; or
- (2) An admission of legitimate filiation in a public document or a private handwritten instrument and signed by the parent concerned.

In the absence of the foregoing evidence, the legitimate filiation

²⁶ 505 Phil. 529 (2005) [Per J. Corona, Third Division].

shall be proved by:

- (1) The open and continuous possession of the status of a legitimate child; or
- (2) Any other means allowed by the Rules of Court and special laws.

ARTICLE 173. The action to claim legitimacy may be brought by the child during his or her lifetime and shall be transmitted to the heirs should the child die during minority or in a state of insanity. In these cases, the heirs shall have a period of five years within which to institute the action.

The action already commenced by the child shall survive notwithstanding the death of either or both of the parties.

ARTICLE 175. Illegitimate children may establish their illegitimate filiation in the same way and on the same evidence as legitimate children. The action must be brought within the same period specified in Article 173, except when the action is based on the second paragraph of Article 172, in which case the action may be brought during the lifetime of the alleged parent.

From the foregoing, filiation is established in the same manner, whether a child's parents were married when they had them. The action to establish filiation may be brought during the lifetime of the child, with the right of action transferrable to their heirs should they die during minority or be afflicted with insanity. However, in case of establishing "illegitimate filiation," the action must be brought during the lifetime of the parent if the ground for bringing the action is either the open and continuous possession of status as a nonmarital child or by another means established by law or the Rules of Court.

This right to establish filiation is consistent with Article 164 of the Family Code and the presumption of legitimacy. The concept of legitimacy is straightforward: it is a civil status established if the person is born during the subsistence of marriage.²⁷ Filiation, on the other hand, is a relationship, the state of being someone's offspring;²⁸ it is determined mainly by biology. It may be the law that solely declares who are legitimate children,²⁹ but in no way can it alter blood relationships.

Confusion arises because our legal concept of legitimacy assumes filiation when legitimacy and filiation are two different concepts.³⁰ To recall, Article 164 of the Family Code provides that "[c]hildren conceived or born during the marriage of the parents are legitimate." Thus, Article 164

²⁷ *Concepcion v. Court of Appeals*, 505 Phil. 529-546 (2005) [Per J. Corona, Third Division]. See also Estelito P. Mendoza and Ivy D. Patdu, *Filiation and Legitimacy*, 52 ATENEO L.J. 356, 362 (2007).

²⁸ *Id.*

²⁹ *Concepcion v. Court of Appeals*, 505 Phil. 529 (2005) [Per J. Corona, Third Division].

³⁰ Estelito P. Mendoza and Ivy D. Patdu, *Filiation and Legitimacy*, 52 ATENEO L.J. 356, 362 (2007).

assumes two things: (1) that the child was born during the subsistence of a marriage; and (2) that this subsisting marriage is the marriage of their parents.

The reality, however, is that a child can be born during the subsistence of a marriage, but not necessarily that of their biological parents. Nonetheless, under *Concepcion*, children born under similar circumstances would be legitimate, but doubts as to their filiation and identity will persist. For this reason, children should be allowed, as the law allows them, to establish their filiation notwithstanding the presumption of legitimacy. To reiterate, legitimacy and filiation are conceptually distinct.

This Court recognized this conceptual difference in *Estate of Rogelio Ong v. Diaz*.³¹ In that case, this Court allowed the conduct of DNA testing to compel the putative father's estate to recognize the minor child and give support, notwithstanding the child's birth during the subsistence of her mother's marriage to another man. *Estate of Ong* is notable because the child is legitimate under the law; she was born during the subsistence of her mother's marriage to another man, not the deceased Rogelio Ong. Nevertheless, the child was allowed to prove her filiation to her putative father primarily to get the recognition that she was the deceased's child and to get support. In *Estate of Ong*, a legitimate child was allowed to establish her filiation to a person, not her mother's husband.

In the same way that the child in *Estate of Ong* was allowed to bring an action to establish filiation, Jamie Shaye should likewise be allowed to establish her filiation to petitioner. However, it must be emphasized that the choice to do so would be hers and hers alone. After all, it is her interests that would be affected by such action.

The presumption of legitimacy and this Court's ruling in *Concepcion* are based on a laudable purpose: upholding the best interest of the child. However, *Concepcion* defined the "best interest of the child" in terms of successional rights.

The law, reason and common sense dictate that a legitimate status is more favorable to the child. In the eyes of the law, the legitimate child enjoys a preferred and superior status. He is entitled to bear the surnames of both his father and mother, full support and full inheritance. On the other hand, an illegitimate child is bound to use the surname and be under the parental authority only of his mother. He can claim support only from a more limited group and his legitime is only half of that of his legitimate counterpart[.]³² (Citations omitted)

Some may agree that having more property and successional rights are

³¹ 565 Phil. 215 (2007) [Per J. Chico-Nazario, Third Division].

³² *Concepcion v. Court of Appeals*, 505 Phil. 529, 544 (2005) [Per J. Corona, Third Division].

in their best interest. For others, establishing their true identity matters more than anything in the world. When the latter case is true, they should be allowed to establish their filiation, regardless of any presumption or legal fiction to the contrary.

However, for now, petitioner has no standing to impugn Jamie Shaye's legitimacy. He also has no standing to establish Jamie Shaye's filiation. Therefore, his Petition for voluntary recognition was correctly denied.

ACCORDINGLY, the Petition for Review on *Certiorari* for the Judicial Approval of Voluntary Recognition of a Minor Natural Child is **DENIED** for being a collateral attack against the legitimacy of minor Jamie Shaye Ko. The September 10, 2023 Decision and January 14, 2014 Resolution of the Court of Appeals in CA-G.R. CV No. 98417 are **AFFIRMED**.

SO ORDERED.

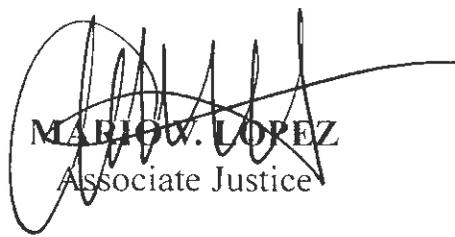


MARVIC M.V.F. LEONEN
Senior Associate Justice

WE CONCUR:



AMY C. LAZARO-JAVIER
Associate Justice



MARIOW. LOPEZ
Associate Justice



JHOSEP Y. LOPEZ
Associate Justice



ANTONIO T. KHO, JR.
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARVIC M.V.F. LEONEN
Senior Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



ALEXANDER G. GESMUNDO
Chief Justice