THOMAS T. COLEMAN and MARYLEE AQUINO, Plaintiff-Appellees

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FRANCISCO T. PALACIOS and NICHOLAS T. PALACIOS, Defendants-Appellants

Civil Appeal No. 192

Appellate Division of the High Court February 27, 1978

Suit by persons excluded from participation in proceeds awarded by Micronesian Claims Commission for the benefit of the heirs of certain decedent. The Appellate Division of the High Court held that trial court properly found plaintiff to be natural child of decedent and his wife, and properly refused to allow wife to testify that she was not the mother of plaintiff, where wife gave information for birth certificate showing plaintiff to be child of decedent and his wife, a baptismal certificate was consistent with the birth certificate, and common law rule prohibited a parent from testifying so as to make parent's child illegitimate.

1. Infants-Paternity and Maternity

Trial court properly found plaintiff to be natural child of decedent and his wife, and properly refused to allow wife to testify that she was not the mother of plaintiff, where wife gave information for birth certificate showing plaintiff to be child of decedent and his wife, a baptismal certificate was consistent with the birth certificate, and common law rule prohibited a parent from testifying so as to make parent's child illegitimate.

2. Appeal and Error—Findings and Conclusions—Tests

Where party opposing, on appeal, lower court's finding that there was no partida by decedent made no showing that finding was erroneous, finding would not be disturbed on appeal.

3. Trial—Triable Issues—Non-Parties

In action by certain persons to determine whether they should share in proceeds awarded by Micronesian Claims Commission for the benefit of decedent's heirs, status of decedent's wife could not be determined where she knew of the action but was not a party to it and had not made any claim to the proceeds.

Counsel for Appellants: Counsel for Appellees: DOUGLAS F. CUSHINE, ESQ.

DAVID W. LOWE, ESQ., Office of the

Public Defender

Before BURNETT, Chief Justice, HEFNER, Associate Justice, and CRARY, Temporary Judge¹

Micronesian Claims Commission Decision No. 9584 awarded certain sums under Title I and Title II of the Micronesian Claims Act of 1971 to Francisco T. Palacios for the benefit of the heirs of Jose Fausto Palacios.

The plaintiffs filed suit when it appeared that they were to be excluded by defendant Francisco T. Palacios from participation in the proceeds.

The position of the defendants is clear. It is asserted that plaintiff Marilie Aquino* is not a natural child of Jose Fausto Palacios and his wife Rita T. Palacios, and therefore not an heir. Secondly, it is argued that the evidence during trial showed that a partida took place many years ago and the plaintiffs did not receive any property and therefore since the Micronesian Claims decision is based on ownership of the land, the plaintiffs should not participate in the award.

Both plaintiffs claim they are children and heirs of Jose Fausto Palacios and are entitled to share in the award since the money is to go to the heirs of Jose Fausto Palacios.

[1] The Trial Court found that the plaintiff Marilie T. Palacios was the child of Jose Fausto Palacios. A review of the record and exhibits 5 (Baptismal Certificate) and 6 (Birth Certificate) supports this finding and certainly it is not clearly erroneous. 6 TTC 355(2).

The defendants contend that the Court erred in refusing to allow Rita T. Palacios to testify that she was not the mother of Marilie. This ruling was pursuant to the common law which provides that a parent is prohibited from

¹ The Honorable E. Avery Crary, Senior Judge, United States District Court, C.D., California, appointed by the Secretary of the Interior, pursuant to Part IV, Secretarial Order 2918 (as amended).

^{*} The plaintiff's name appears in this opinion as spelled in the birth certificate and baptismal certificate.

testifying so as to bastardize the child. 10 Am.Jur.2d Bastards, Sec. 33.

In view of the fact that the information for the birth certificate of Marilie was given by Rita T. Palacios and the baptismal certificate is consistent therewith, we find the Court did not err in applying the common law rule and it was proper to refuse to allow Rita T. Palacios to testify and, in effect, bastardize Marilie.

- [2] The Trial Court also found that there was no partida by Jose Fausto Palacios. Once again, there is no showing by Appellants that this finding was clearly erroneous and it will not be disturbed on appeal.
- [3] Since the award of the Micronesian Claims Commission is to the heirs of Jose Fausto Palacios, the question is raised as to the status of Rita T. Palacios, the surviving spouse of Jose Fausto Palacios. However, Rita is not a party to the suit nor has she made any claim to the proceeds although she certainly knows about the matter, being called as a witness to attempt to deny the plaintiffs their shares.

We feel it would be beyond this Court's proper role in this appeal to determine the status of Rita. The only issue presented in this litigation at the trial level and appellate level is whether the plaintiffs are heirs and should share in the proceeds. We hold that they are, and as children of Jose Fausto Palacios, they share equally with the other children of Jose Fausto Palacios. This is what the Trial Court held, and we AFFIRM that judgment.