

WHEN A MARRIED WOMAN LOVES ANOTHER

Children born inside an existing marriage are legitimate, while those born outside of one are illegitimate. As the Supreme Court puts it, *“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.”*

This presumption of legitimacy can only be impugned by the husband or, in case the husband is already dead, by his heirs. Apart from these, nobody else, not even the mother, is allowed to question the legitimacy of a child, except to contest that the child was never hers to begin with.

Therefore, while a husband having extra-marital relations could lead to the birth of an illegitimate child, a wife having extra-marital relations could actually bring forth a new legitimate member of the family by the birth of a child not of her husband.

As demonstrated in this interesting Supreme Court case, this wrinkle in the law has significant repercussions in determining the rights of heirs.

Danilo and Carolina are married. During their marriage, Carolina gave birth to Jinkie and Jacqueline. However, the children were not Danilo's but actually Juan's. Juan even acknowledged in a notarized document that the children were his. On the other hand, Danilo simply kept quiet.

Juan was a very wealthy businessman with stockholdings in corporations and several real properties. When he died, Jinkie and Jacqueline filed an action seeking to get their inheritance as heirs of Juan. They presented as proof of their filiation the notarized document Juan had earlier signed.

The Supreme Court denied the petition holding that, having been born during the marriage of Danilo and Carolina, Jinkie and Jacqueline were presumed to be the legitimate children of Danilo and Carolina. Danilo, who had every right to impugn the legitimate status of Jinkie and Jacqueline did not do so within the period provided by law (one to three years from knowledge of birth of the child, depending on the circumstances), making the presumption of their legitimacy *conclusive, fixed, and unassailable*.

Juan's acknowledgment of Jinkie and Jacqueline as his children through a notarized document was of no consequence because such notarized document takes the form of a collateral attack on Jinkie and Jacqueline's status as legitimate children, which is not allowed because, as mentioned earlier, the presumption of legitimacy can only be attacked by the husband, Danilo. The proper forum to assail their legitimacy is in a separate civil action, which unfortunately, was never resorted to by Danilo.

Thus, Jinkie and Jacqueline cannot inherit from their wealthy biological father, Juan. They can, however, look forward to inheriting from Danilo, who is the eyes of law is their father.

(Based on G.R. No. 142877, October 2, 2001)