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[G.R. No. L-5387. April 29, 1954]

IN THE MATTER OF THE ADOPTION OF THE MINORS MARIA LUALHATI MAGPAYO AND AMADA MAGPAYO. CLYDE E. MCGEE, PETITIONER AND APPELLEE, VS. REPUBLIC OF THE PHILIPPINES, OPPOSITOR AND APPELLANT.

D E C I S I O N

MONTEMAYOR, J.:

Appellee Clyde E. McGee, an American citizen is married to Leonarda S. Crisostomo by whom he has one child. The minors Maria and Amada, both surnamed Magpayo are Leonarda's children by her first husband Ernesto Magpayo who was killed by the Japanese during the occupation. McGee filed a petition in the Court of First Instance of Manila to adopt his two minor step-children Maria and Amada.

At the hearing, the Government filed its opposition to the petition on the ground that petitioner has a legitimate child and consequently, is disqualified to adopt under article 335, paragraph 1, of the new Civil Code which provides:

“ART. 335. The following cannot adopt:

(1) Those who have legitimate, legitimated, acknowledged natural children, or natural children by legal fiction;”

The trial court overruled the opposition and granted the petition, applying the provisions of article 338 of the same Civil Code, particularly paragraph 3 thereof, which reads:

“ART. 338. The following may be adopted:

* * * * *

(3) A step-child, by the step-father or step-mother.”

The Government is appealing from that decision. Only recently (December 21, 1953), and during the pendency of the present appeal, we have had occasion to decide a similar case wherein the same question was involved,^[1] namely, whether a husband having a legitimate child may adopt a step-child. Applying the provisions of article 335, we held that it cannot be done for the reason that although article 338 of the new Civil Code permits the adoption of a step-child by the step-father or the step-mother, nevertheless, because of the negative provisions of article 335, said permission is confined to those step-fathers and stepmothers who have no children of their own.

With the doctrine laid down in the *Ball vs. Republic* case, we could stop right here and sustain the appeal of the Government in the present case. However, it may not be unprofitable to further elaborate on the relation between the two articles—335 and 338, new Civil Code. The strongest argument of the trial court and of the appellee in support of the decision granting the adoption is that to hold that a step-father having a legitimate child may not adopt a step-child would be to render article 338, paragraph 3, meaningless and a surplusage inasmuch as without said article 338, a husband without a legitimate child may adopt a step-child anyway; or worse, article 338 contradicts article 335. At first blush, that is a formidable argument because the Legislature in enacting a law is supposed and presumed not to insert any section or provision which is unnecessary and a mere surplusage; that all provisions contained in a law should be given effect, and that contradictions are to be avoided. Furthermore, it is contended by appellee that article 335 prohibiting adoption by a parent who already has a child of his own should not be considered exclusively but rather in relation with article 338 so as to regard the latter as an exception to an exception. To meet and dispose of this argument we have to go

into the philosophy of adoption.

The purpose of adoption is to establish a relationship of paternity and filiation where none existed before. Where therefore the relationship of parent and child already exists whether by blood or by affinity as in the case of illegitimate and step-children, it would be unnecessary and superfluous to establish and superimpose another relationship of parent and child through adoption. Consequently, an express authorization of law like article 338 is necessary, if not to render it proper and legal, at least, to remove any and all doubt on the subject-matter. Under this view, article 338 may not be regarded as a surplusage. That may have been the reason why in the old Code of Civil Procedure, particularly its provisions regarding adoption, authority to adopt a step-child by a step-father was provided in section 766 notwithstanding the general authorization in section 765 extended to any inhabitant of the Philippines to adopt a minor child. The same argument of surplusage could plausibly have been advanced as regards section 766, that is to say, section 766 was unnecessary and superfluous because without it a step-father could adopt a minor step-child anyway. However, the insertion of section 766 was not entirely without reason. The Code of Civil Procedure was of common law origin. It seems to be an established principle in American jurisprudence that a person may not adopt his own relative, the reason being that it is unnecessary to establish a relationship where such already exists (the same philosophy underlying our codal provisions on adoption). So, some states have special laws authorizing the adoption of relatives such as a grandfather adopting a grandchild and a father adopting his illegitimate or natural child.

Another possible reason for the insertion of section 766 in the Code of Civil Procedure and article 338, paragraph 3, in the new Civil Code, authorizing the adoption of a step-child by the step-father or step-mother is that without said express legal sanction, there might be some doubt as to the propriety and advisability of said adoption due to the possibility, if not probability, of pressure brought to bear upon the adopting step-father or mother by the legitimate and natural parent.

One additional reason for holding that article 338 of the new Civil Code should be subordinated and made subject to the provisions of article 335 so as to limit the permission to adopt granted in article 338, to parents who have no children of their own, is that the terms of article 335 are phrased in a negative manner—the following *cannot* be adopted, while the phraseology of article 338 is only affirmative—the following *may* be adopted. Under the rule of statutory construction, negative words and phrases are to be regarded as mandatory while those in the affirmative are merely directory.

“. . . negative (prohibitory and exclusive words or terms are indicative of the legislative intent that the statute is to be mandatory, . . .” (Crawford, *Statutory Construction*, sec. 263, p. 523.)

“Ordinarily . . . the word ‘may’ is directory, . . . (Crawford, *op. cit.*, sec. 262, p. 519.)

“Prohibitive or negative words can rarely, if ever, be directory, or, as it has been aptly stated, there is but one way to obey the command ‘thou shalt not,’ and that is to completely refrain from doing the forbidden act. And this is so, even though the statute provides no penalty for disobedience.” (Crawford, *op. cit.*, sec. 263, p. 523.)

The principal reason behind article 335, paragraph 1 denying adoption to those who already have children is that adoption would not only create conflicts within the family but it would also materially affect or diminish the successional rights of the child already had. This objection may not appear as formidable and real when the child had by the adopting parent is by the very spouse whose child is to be adopted, because in that case, the legitimate child and the adopted one would be half-brothers or half-sisters, would not be total strangers to each other, and the blood relationship though half may soften and absorb the loss of successional rights and the possible diminution of the attention and affection previously enjoyed. But as not infrequently

happens, the step-father or step-mother adopting a child of his or her second wife or husband already may have a child of his or her own by a previous marriage, in which case, said child and the adopted one would be complete strangers to each other, with no family ties whatsoever to Bind them, in which event, there would be nothing to soften and reconcile the objection and resentment, natural to the legitimate child.

In conclusion, we hold that pursuant to the provisions of article 335, paragraph 1, a step-father who already has a child may not adopt a step-child regardless of the provisions of article 338, paragraph 3 of the same Code, the latter provisions being confined and applicable to those step-fathers and step-mothers who have no children of their own. The decision appealed from is hereby reversed, and the petition for adoption is denied. No pronouncement as to costs.

Paras, C. J., Pablo, Bengzon, Reyes, Jugo, Bautista Angelo, Labrador, and Concepcion, JJ., concur.

^[1] *In re* application of Norman H. Ball to adopt the minor George William York, Jr., Norman H, Ball vs. Republic of the Philippines, *supra*, p. 106.