95 Phil. 244

[G.R. No. L-6294. June 28, 1954]

IN THE MATTER OF THE ADOPTION OF THE MINOR MARCIAL ELEUTERIO RESABA. LUIS SANTOS-YÑIGO AND LIGIA MIGUEL DE SANTOS-YÑIGO, PETITIONERS AND APPELLEES, VS. REPUBLIC OF THE PHILIPPINES, OPPOSITOR AND APPELLANT.

D E C I S I O N

BAUTISTA ANGELO, J.:

On June 24, 1952, a petition was filed in the Court of First Instance of Zamboanga by Luis Santos-Yñigo and his wife for the adoption of a minor named Marcial Eleuterio Resaba. It is alleged that the legitimate parents of said minor have given their consent to the adoption in a document which was duly signed by them on March 20, 1950, and that since then petitioners had reared and cared for the minor as if he were their own. It is likewise alleged that petitioners are financially and morally able to bring up and educate the minor.

By order of the court, copy of the petition was served on the Solicitor General who, in due time, filed a written opposition on the ground that petitioners have two legitimate children, a boy and a girl, who are still minors, and as such they are disqualified to adopt under the provisions of the new Civil Code.

The court granted the petition holding that, while petitioners have two legitimate children of their own, yet said children were born after the agreement for adoption was executed by petitioners and the parents of the minor. The court found that said agreement was executed before the new Civil Code went into effect and while the petition may not be granted under this new Code, it may be sanctioned under the old because it contains no provision which prohibits adoption in the form and

manner agreed upon by the parties. From this decision, the Solicitor General took the present appeal.

The errors assigned by the Solicitor General are:

"I

"The lower court erred in granting the petition to adopt in violation of the provisions of paragraph 1, article 335, new Civil Code.

"II

"The lower court erred in giving Exhibit 'A', the agreement to adopt, a binding effect."

There is merit in the contention that the petition should not be granted in view of the prohibition contained in article 335, paragraph 1, of the new Civil Code. This article provides that persons who have legitimate children cannot adopt, and there is no doubt about its application because the petition was filed on June 24, 1952 and at that time petitioners had two legitimate children, one a boy born on November 12, 1950 and the other, a girl born on April 13, 1952. This case therefore comes squarely within the prohibition. This prohibition is founded on sound moral grounds. The purpose of adoption is to afford to persons who have no child of their own the consolation of having one by creating, through legal fiction, the relation of paternity and filiation where none exists by blood relationship. This purpose rejects the idea of adoption by persons who have children of their own, for, otherwise, conflicts, friction, and differences may arise resulting from the infiltration of foreign element into a family which already counts with children upon whom the parents can shower their paternal love and affection (2 Manresa, 6th ed., 108-109). This moral consideration must have influenced the framers of the new Civil Code when they reiterated therein this salutary provision.

But it is contended, this prohibition in the new Civil Code cannot have application to the present case because, to do so, as it is now attempted, would impair the acquired right of petitioners over the adopted child in violation of the transitory provisions of article 2252 of said Code. It is pointed out that petitioners reared and took care of the child, since February 24, 1950, and on March 20, 1950 they and the parents of the child executed the adoption agreement in accordance with the Rules of Court, and since these rules do not forbid adoption to. persons who have legitimate children, that agreement shall be given full effect in the same manner as any other contract which is not contrary to law, morals and public order.

We find no merit in this contention. While the adoption agreement was executed at the time when the law applicable to adoption is Rule 100 of the Rules of Court and that rule does not prohibit persons who have legitimate children from adopting, we cannot agree to the proposition that such agreement has the effect of establishing the relation of paternity and filiation by fiction of law without the sanction of court. The reason is simple. Rule 100 has taken the place of Chapter XLI of the Code of Civil Procedure (sections 765-772, inclusive), which in turn replaced the provisions of the Spanish Civil Code on adoption. (Articles 173-180.) As was stated in one case, said chapter of the Code of Civil Procedure "appears to be a complete enactment on the subject of adoption, and may thus be regarded as the expression of the whole law thereof. So. viewed, that chapter must be deemed to have repealed the provisions of the Civil Code on the matter." (*In re* adoption of Emiliano Guzman, 73 Phil., 51.)
Now, said rule expressly provides that a person desiring to adopt a minor shall present a petition to the court of first instance of the province where he resides (section 1). This means that the only valid adoption in this jurisdiction is that one made through court, or in pursuance of the procedure laid down by the rule, which shows that the agreement under consideration can not have the effect of adoption as now pretended by petitioners.

Some members of the Court have advanced the opinion that, notwithstanding the enactment of the Code of Civil Procedure or the

adoption of the present Rules of Court concerning adoption, those provisions of the Spanish Civil Code that are substantive in nature cannot be considered as having been impliedly repealed, such as the one providing that a person who has a legitimate child is prohibited to adopt (article 74). But the majority is of the opinion that the repeal is complete as declared by this Court in the case of *In re* adoption of Emiliano Guzman, *supra*.

At any rate, this matter is not now of any consequence considering the fact that when the adoption agreement was executed the petitioners had not yet any legitimate child. Their children were born subsequent to that agreement.

We are sympathetic to the plea of equity of counsel considering the fact that petitioners had taken custody of the child and had reared and educated him as their own much prior to the approval of the new Civil Code and that all this was done with the consent of the natural parents to promote the welfare and happiness of the child, but the inexonerable mandate of the law forbids us from adopting a different course of action. Our duty is to interpret and apply the law as we see it in accordance with sound rules of statutory construction.

The order appealed from is set aside, without pronouncement as to costs.

Paras, C. J., Pablo, Padilla, Montemayor, Reyes, A., Jugo, Labrador and Concepcion, JJ., concur

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