

IN THE MATTER OF THE ADOPTION OF THE MINOR BERTHA ANN RIVERA ROBERT H. CATHEY AND HELEN O. CATHEY, PETITIONERS AND APPELLANTS, VS. REPUBLIC OF THE PHILIPPINES, OPPOSITOR AND APP...

G.R. No. L-22170. September 23, 1966

Ponente: BENGZON, J.P., J.

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BENGZON, J.P., J.:

On January 26, 1963, the spouses Robert H. Cathey and Helen O. Cathey petitioned the Court of Juvenile and Domestic Relations for the adoption of the minor Bertha Ann Rivera. Among other things their petition alleged that petitioners are both of legal age and residents of Manila; that Robert Cathey is an American citizen, residing in the Philippines since 1945 and Helen Cathey is a Filipino citizen residing here since birth; that they had the care and custody of the child Bertha Ann Rivera three days after her birth on January 19, 1963; that Bertha is the natural child of Violeta O. Rivera who has given her written consent to the adoption; that a copy of said consent is attached as Annex A to the petition; that the child's natural father is unknown; that petitioners have no children and are qualified to adopt.

Subsequently, upon orders of the Court, the petition was amended to further allege that petitioners are permanent residents living at 1331 Carola St., Sampaloc, Manila, and to attach thereto the child's birth certificate.

After petitioners had presented their evidence, without opposition from the Solicitor General, the Juvenile and Domestic Relations Court, on August 5, 1963, rendered a decision that denied the petition, for two reasons: (1) It was not convinced that genuine efforts were exerted to present Violeta O. Rivera before the Court, for inspite of her refusal to testify, other remedies could have been availed of under the Rules of Court to obtain her testimony; (2) As an alien, Robert Cathey is not qualified to adopt.

Petitioner appealed therefrom to Us, thereby raising questions purely of law.

Article 340 of the New Civil Code on consent to adoption provides that the written consent of the following shall be necessary: "(1) the person to be adopted, if fourteen years of age or over; (2) the parents, guardian or person in charge of the person to be adopted."

Section 3 of Rule 100 of the Old Rules of Court (now sec. 3 of Rule 99) likewise provides:

"SEC. 3. Consent to adoption. - There shall be filed with the petition a written consent to the adoption signed by the child, if over fourteen years of age and not incompetent, and by each of its known living parents who is not insane or hopelessly intemperate or has not abandoned such child, or if there are no such parents by the general guardian or guardian ad litem of the child, or if the child is in the custody of an orphan asylum, children's home, or benevolent society or person, by the proper officer or officers of such asylum, home, or society, or by such person; but if the child is illegitimate and has not been recognized, the consent of its father to the adoption shall not be required."

From these provisions, as correctly pointed out by petitioners, the requirement as to consent has been met, for both our substantive and procedural laws do not further require the testimony of the consenting parent before the court aside from the requisite written consent attached to the petition.

And contrary to the court's opinion that genuine efforts were not exerted to bring the mother to testify before it, the evidence before Us shows that petitioners, after their own efforts had failed (Tsn of May 8, 1963, pp. 14, 29), sought the help of the Chief of Police of Angeles, Pampanga to locate the mother. Patrolman Mariano Carbungco, the investigator assigned to locate the mother, finally found her in Pauline's Cavern where she worked as a night club hostess. She refused to reveal her residence and to testify in court, but she re-affirmed the fact that she has given her written consent to the adoption. Patrolman Carbungco executed an affidavit (Exhibit F) where such facts were attested to. Subsequently, she could not be found anymore.

While it would have been ideal, to remove all possible doubts, for the mother to have been presented in court, the primary consideration - the welfare of the child - should not be prejudiced by the absence of it in view of the circumstances showing that the petitioners did all they could and all that reasonably could have been expected from them. Even the Solicitor General, concerned about the child's welfare, filed a brief praying for the adoption to be granted, reasoning that the mother's act of leaving the baby to the Catheys three days after her birth constituted abandonment which under Sec. 3, Rule 100 (now Sec. 3, Rule 99) even dispenses with the need for consent. This, the Solicitor General believes, coupled with the affidavit of consent (Exhibit B) reaffirmed by her to Pat. Carbungco also, show that she too, a mother, with the interests of her child at heart, favors her adoption.

Anent the alienage of petitioner Robert H. Cathey, not all aliens are disqualified to adopt. Article 335 of the New Civil Code provides:

"ART. 335. The following cannot adopt:

xx xxx xx xx

"(4) Non-resident aliens;

"(5) Resident aliens with whose government the Republic of the Philippines has broken diplomatic relations;"

As this Court pointed out through Mr. Justice J.B.L. Reyes in *Uggi Thenkelsen vs. Republic*, L-21951, November 27, 1964: "the present Civil Code in force (Article 335) only disqualifies from being adopters aliens that are either (a) non-residents or (b) who are residents but the Republic of the Philippines has broken diplomatic relations with their government. Outside of these two cases, alienage by itself alone does not disqualify a foreigner from adopting under our laws."

Petitioner, Robert H. Cathey though an American citizen, is a resident alien entitled to remain in the Philippines, as his Immigrant Certificate of Residence (Exhibit D) shows. He is legally married to Helen Olalia and presently is the administrative officer of the U.S. Naval Construction office at Clark Air Base with an annual compensation of \$6,295.00 and has P25,000 worth of personal properties in the Philippines. As petitioners spouses have no child of their own, they wish to adopt Bertha Ann Rivera and thus make her their heir. The welfare of the child being the paramount consideration under the law (Art. 363, New Civil Code), the child now sought to be adopted being virtually unwanted by her own mother, who, by the way, has seven other children to feed (Tsn of May 2, 1963, p. 11), We see no reason why the adoption should not be granted.

WHEREFORE, the Judgment appealed from is hereby reversed and the court a quo is directed to allow the adoption sought. No costs.

SO ORDERED.

Concepcion, C.J., Reyes, J.B.L., Barrera, Dizon, Makalintal, Zaldivar, Sanchez, and Ruiz Castro, JJ., concur.
Regala, J., no part.

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