

RE ADOPTION OF THE MINORS FRANCIS, ALEX, MARIA TERESA, JOSEPH, GREG AND GERMAN, ALL SURNAMED MILLENDEZ. SINFOROSA T. MILLENDEZ, PETITIONER-APPELLANT.

G.R. No. L-28195. June 10, 1971

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

Appeal from the decision of the Court of First Instance of Negros Occidental in Sp. Proc. No. 337, denying the petition of Sinforosa T. Vda. de Millen-dez for the adoption of her grandchildren, by reason of her disqualification under Article 335 of the new Civil Code.

On 15 February 1967, Sinforosa T. Vda. de Millendez petitioned the Court of First Instance of Negros Occidental for adoption of minors Francis Millendez, Alex Millendez, Maria Teresa Millendez, Joseph Millendez, Greg Millendez and German Millendez. It was alleged in the petition that the minors were the children of her only son, Bobby Millendez, who had abandoned them for over three years; that petitioner's said son had been with bad company and did not have the welfare and future of the children at heart; that her said son in fact was disinherited by his father (petitioner's deceased husband) in his will,[1] which will was duly probated by the court on 1 February 1965; that petitioner cherished and loved the minors as her own children and the adoption was prompted by her sincere desire to protect their welfare; that the minors' natural mother, Hannah A. Millendez, had consented to the petition; and that petitioner was financially capable of making the adoption. The petition was published, and heard by the court.

In its order of 10 July 1967, the court denied the petition. It was ruled that while the adoption would benefit the minors, the same can not be granted on account of the express prohibition of Article 335 of the new Civil Code. Petitioner having a child - Bobby Millendez, the father of the minors - she is disqualified under the law to adopt anybody. At any rate, the court pointed out, the purpose of the minors' mother and grandmother can still be achieved by the latter's executing a will, or having Bobby Millendez declared a spendthrift.

Petitioner thus appealed to this Court, contending that the circumstances of this case warrant a liberal interpretation of Article 335 of the new Civil Code.

The Civil Code expressly provides:

"ART. 335. The following cannot adopt:

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

x x x x x x x x

There can be no question, in view of the explicit provision of the law, that petitioner-appellant having already a legitimate child, Bobby Millendez, is disqualified to adopt anyone. In urging the removal of this case from the

legal prohibition, however, appellant points to the facts that her son has been prodigal and has not provided her with filial love and respect; that he was even disinherited by her husband, his own father, for having attempted on the latter's life; that her said son, Bobby Millendez, had allegedly consented to the proposed adoption of his own children by herein appellant; that it is appellant's love for her grandchildren and her fear that Bobby Millendez would just dissipate whatever properties he might inherit from her, leaving nothing to the said children, that prompted this petition for adoption. It is, therefore, maintained that with the foregoing facts, it would be precisely in pursuance of the purpose of adoption statutes - which is the promotion of the welfare of the children - that the present petition for adoption should be granted.

Adoption, as a privilege granted by law, can be exercised by any person of age and in full possession of his civil rights.[2] It is, however, withdrawn from certain persons enumerated in Article 335 of the Civil Code, among whom are those who have children of their own, whether the children are legitimate, legitimated or illegitimate. And the provision, being clear and explicit, had to be enforced although its suspension or waiver would have worked to the benefit or well-being of the child proposed to be adopted. Thus, in one case, where after the child was taken from his natural parents the adopting couple begot children of their own, a petition subsequently filed to make formal the adoption of the child was denied, on the ground that the adopters were already disqualified because of the presence of their own children.[3] It is for the same reason that the petition of a step-father to adopt his wife's child had by a previous marriage was refused, because there were already children of that second marriage.[4] For, while it is true that the intentment of adoption statutes is the promotion of the welfare of the children, such that the modern trend is to encourage adoption[5] by persons who can provide them with proper care and education,[6] adoption may be allowed only where it is possible without doing violence to the terms of the statute.[7]

It is of no significance in this case that appellant's child has consented to the adoption, or that such child has become wayward and led a dishonorable life. Article 335 of the Civil Code creates a disqualification on the adopter himself, not on the child, that there is nothing about the behaviour of the latter short of his losing the status of a child (if there is any such means in the law) that would remove the disqualification prescribed in the article.

The reason for the prohibition to adopt under Article 335 (1) of the Civil Code is not difficult to find. Not only would the adoption introduce a foreign conflicting element into the family unit, but it would, in the present case, result in the reduction of the legitime of the son to the benefit of the prospective adoptees, who are not forced heirs of the would-be adopter, thereby producing an indirect disinheritance in a manner not authorized by law,[8] i.e., by a testament expressly stating the legal cause for the disinheritance. Not only this, but the adoption would make the disinheritance of the son permanent and irrevocable, contrary to the policy of the law that "a subsequent reconciliation between the offender and the offended person deprives the latter of the right to disinherit and renders in-effectual any disinheritance that may have been made".[9] This same policy inspires Article 1033, that permits an unworthy heir to succeed if the de cujus should condone the unworthiness in writing. The consent of the son to the adoption of his own children by his mother is likewise ineffective to circumvent the statutory bar, as by Article 905, of the Civil Code, every renunciation of a future legitime is void, and of no effect.

Appellant's claim that no disqualification attaches to her having one legitimate child because Article 335 speaks of "children", is equally devoid of merit. The use of the word "children" in the law does not mean that an adopter must have more than one legitimate, legitimated or illegitimate child before the disqualification to adopt shall attach. No such intention can be discerned from the provision. The use of the word "children", instead of "child", appears more to have been called for by grammatical correctness than anything else, to complement the plural subject "those".

WHEREFORE, finding no error in the order appealed from, the dismissal of the petition is affirmed, with costs against the appellant.

Concepcion, C.J., Dizon, Makalintal, Zaldivar, Fernando, Teehankee, Barredo, and Makasiar, JJ., concur.
Ruiz Castro and Villamor, JJ., did not take part.

[1] The disinheritance was based on the son's attempts on the life of the father.

[2] Article 334, Civil Code of the Philippines.

[3] In re-Adoption of Resaba, 95 Phil. 244.

[4] McGee vs. Republic, L-5387, 29 April 1954.

[5] Prasnik vs. Republic, L-8639, 23 March 1956, 98 Phil. 666.

[6] Santos, Jr. vs. Republic, L-22523, 29 September 1967, 21 SCRA 379.

[7] Santos vs. Aranzanso, L-2382 8, 28 February 1966, 16 SCRA 344.

[8] Civil Code, Article 916.

[9] Civil Code, Article 922.

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