

IN THE MATTER OF THE ADOPTION OF THE MINOR, EDWIN VILLA Y MENDOZA, LUIS E. SANTOS, JR. AND EDIPOLA V. SANTOS, PETITIONERS-APPELLANTS, VS. REPUBLIC OF THE PHILIPPINES, OPPOSITOR-...

G.R. No. L-22523. September 29, 1967

Ponente: ANGELES, J.

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ANGELES, J.:

An appeal from the decision of the Juvenile and Domestic Relations Court, in Special Proceed-ing No. 0001, dismissing the petition instituted by the spouse Luis R. Santos, Jr. and Edipola V. Santos for the adoption of the minor Edwin Villa y Mendoza.

The issue before Us is, whether or not an elder sister may adopt a younger brother.

The trial court dismissed the petition reasoning thus:

"A critical consideration in this case is the fact that the parents of the minor to be adopted are also the parents of the petitioner-wife. The minor, therefore, is the latter's legitimate brother.

"In this proceeding, the adoption will result in an incongruous situation where the minor Edwin Villa, a legitimate brother of the petitioner-wife, will also be her son. In the opinion of the court, that incongruity, not neutralized by other circumstances absent herein, should prevent the adoption."

The petitioners moved to reconsider the decision but the decision was denied. Hence, this appeal.

The facts are not disputed.

The above-named spouses filed the petition be-fore the court a quo on January 8, 1963, praying that the minor Edwin Villa y Mendoza, 4 years old, be declared their (petitioner's) son by adoption. Evidence was presented that the order setting the case for hearing has been duly published, Exhibit A. There having been no opposition registered to the petition, the petitioners were permitted to adduce their evidence.

It was established that the petitioners are both 32 years of age, Filipinos, residing in the City of Manila. They were married in 1957 and have maintained a conjugal home of their own. They do not have a child of their own blood. Neither spouse has any legitimate, legitimated, illegitimate, acknowledged natural child, or natural child by legal fiction; now has any one of them been convicted of a crime involving moral turpitude. Edwin Villa y Mendoza, 4 years old, is a child of Francisco Villa and Florencia Mendoza who are the common parents of the petitioner-wife Edipola Villa Santos and the minor. Luis E. San-tos, Jr., is a lawyer, with-business interest in a textile development enterprise and the IBA electric plant, and is the general manager of Medry, Inc. and the secretary-treasurer of Bearen Enterprises. His income is approximately P600.00 a month. His co-petitioner-wife, is a nurse by profession, with an average monthly earning of about P300.00.

It was also shown that Edwin Villa y Mendoza was born on May 22, 1958, Exhibit C. He was a sickly child since

birth. Due to the child's im-pairing health, his parents entrusted him to the petitioners who reared and brought him up for the years thereafter, and as a result, there developed between the petitioners and the child, a deep and profound love for each other. The natural parents of the minor testified that they have voluntarily given their consent to the adoption of their son by the petitioners, and submitted their written consent and conformity to the adoption, and that they fully understand the legal consequences of the adoption of their child by the petitioners.

We are not aware of any provision in the law, and none has been pointed to Us by the Solicitor General who argues for the State in this case, that relatives by blood or by affinity, are prohibited from adopting one another. The only objection raised is the alleged "incongruity" that will result, in the relation of the petitioner-wife and the adopted, in the circumstance that the adopted who is the legitimate brother of the adopter, will also be her son by adoption. The theory is, therefore, advanced that adoption among people who are related by nature should not be allowed, in order that dual relationship should not result, reliance being made upon the views expressed by this Court in *McGee vs. Republic*, G.R. No. L-5387, April 29, 1954, 94 Phil. 820.

In that case, an American citizen, Clyde E. McGee, married to a Filipina by whom, he had one child, instituted a proceeding for the adoption of two minor children of the wife had by her first husband. The lower court granted the petition of McGee to adopt his two minor step-children. On appeal by the State, We reversed the decision. We said:

"The purpose of adoption is to establish a relationship of pater-nity 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 inserting of section 766 was not entirely without reason. 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."

Notwithstanding the views thus expressed, a study of American precedents would reveal that there is a variance in the decisions of the courts in different jurisdictions regarding the matter of adoption of relatives. It cannot be stated as a general proposition that the adoption of a blood relative is contrary to the policy of the law, for in many states of the Union, no restriction of that sort is contained in the statute authorizing adoption, although laws of other jurisdictions expressly provide that adoption may not take place within persons within a certain degree of relationship (1 Am. Jur. 628-629). Courts in some states hold that in the absence of express statutory restriction, a blood relationship between the parties is not a legal impediment to the adoption of one by the other, and there may be a valid adoption where the relation of parent and child already exists by nature (2 Am. Jur. 2d 869). Principles vary according to the particular adoption statute of a state under which any given case is considered. It would seem that in those states originally influenced by the civil law countries where adoption originated, the rules are liberally construed, while in other states where common law principles pre-dominate, adoption laws are more strictly applied because they are to be in derogation of the common law.

Article 335 of the Civil Code enumerates those persons who may not adopt, and it has been shown that petitioners-appellants herein are not among those prohibited from adopting. Article 339 of the same code names those who cannot be adopted, and the minor child whose adoption is under consideration, is not one of those excluded by the law. Article 338, on the other hand, allows the adoption of a natural child by the natural father or mother, of other illegitimate children by their father or mother, and of a step-child by the step-father or step-mother. This last article is, of course, necessary to remove all doubts that adoption is not prohibited even in these cases where there already exist a relationship of parent and child between them by nature. To say that adoption should not be allowed when the adopter and the adopted are related to each other, except in these cases enumerated in Article 338, is to preclude adoption among relatives no matter how far removed or in whatever degree that relationship might be, which in our opinion is not the policy of the law. The interest and welfare of the child to be adopted should be of paramount consideration. Adoption statutes, being humane and salutary, and designed to provide homes, care and education for unfortunate children, should be construed so as to encourage the adoption of such children by person who can properly rear and educate them (*In re Havsgord's Estate*, 34 S.D. 131, 147 N.W. 378).

With respect to the objection that the adoption in this particular case will result in a dual relationship between the parties, that the adopted brother will also be the son of the adopting elder sister, that fact alone should not prevent the adoption. One is by nature, while the other is by fiction of law. The relationship established by the adoption is limited to the adopting parents and does not extend to their other relatives, except as expressly provided by law. Thus, the adopted child cannot be considered as a relative of the ascendants and collaterals of the adopting parents, nor of the legitimate children which they may have after the adoption except that the law imposes certain impediments to marriage by reason of adoption. Neither are the children of the adopted considered as descendants of the adopter (*Tolentino*, Civil Code, Vol. I, 1960 Ed., p. 652, citing 1 *Oyuelos* 284; *Perez Gonzalez and Castan*; 4-11 *Enneccerus*, *Kipp & Wolff* 177; *Muñoz*, p. 104). So even considered in relation to the rules on succession which are in *pari materia*, the adoption under consideration would not be objectionable on the ground alone of the resulting dual relationship between the adopter and the adopted. Similar dual relationship also result under our law on marriage when persons who are already related, by blood or by affinity, marry each other. But as long as the relationship is not within the degrees prohibited by law, such marriage are allowed, notwithstanding the resulting dual relationship. And as we do not find any provision in the law that expressly prohibits adoption among relatives, they ought not to be prevented.

For all the foregoing considerations, the decision appealed from is set aside, and the petition for the adoption of the subject minor, granted. No pronouncement as to costs.

Concepcion, C.J., Reyes, Dizon, Makalintal, Bengzon, Zaldivar, Sanchez, Castro, and Fernando, JJ., concur.

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