

IN THE MATTER OF THE ADOPTION OF THE MINOR NORMA LEE CABER. RICARDO R. CARABALLO, PETITIONER AND APPELLEE, VS. REPUBLIC OF THE PHILIPPINES, OPPONENT AND APPELLANT.

G.R. No. L-15080. April 25, 1962

Ponente: PADILLA, J.

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PADILLA, J.:

In a verified petition filed on 26 September 1958 in the Court of First Instance of Pampanga, Ricardo R. Caraballo, an American citizen enlisted in the United States Air Force as staff sergeant detailed in Clark Field, Angeles, Pampanga, where he and his wife Graciela G. Caraballo live, alleges that he and his wife have no legitimate, legitimated, acknowledged natural children, natural children by legal fiction or any other descendant; that with his wife's written consent (Exhibit C) he desires to adopt as his child Norma Lee Caber, a five-day old natural daughter of Mercedes J. Caber begotten by an unknown father, who gave her consent to the adoption in a sworn statement (Exhibit B); that since the day following her birth Norma Lee Caber has been reared and cared for by him and his wife who have developed love and affection for her; that he never has been convicted of any crime involving moral turpitude; that financially and morally he is able to support, bring child for all intents and purposes, free from any obligation of obedience and maintenance with respect to her natural mother Mercedes J. Caber (Sp. proc. No. 1391).

On 26 September 1958 the Court ordered the verified petition filed by Ricardo R. Caraballo to be published and was published in the Daily Mirror once a week for three consecutive weeks setting the petition for hearing on 18 October 1958. (Exhibit A). As at the hearing nobody appeared to object to the petition for adoption, petitioner's counsel) prayed for an order of default, which was entered against all interested parties, except the Solicitor General or Provincial Fiscal who, according to the Court, must appear in adoption cases.

On 27 October 1958 the Provincial and Assistant Provincial Fiscal of Pampanga moved for the dismissal of the petition for adoption on the ground that it states no cause of action and that the petitioner, being a non-resident alien, is not qualified to adopt.

On 28 October 1958 the Court granted the petitioner ten days within which to file an answer to the motion to dismiss and submit a memorandum of authorities, and the fiscal the same number of days to reply.

On 3 November 1958 the petitioner filed an answer or objection to the motion to dismiss, to which on 14 November the Provincial Fiscal replied.

On 17 November 1958 the Court denied the motion to dismiss.

On 12 December 1958 the petitioner moved that the case be set for hearing. On 15 December 1958 the Court set the petition for hearing on 22 December 1958 at 9:00 o'clock in the morning.

After hearing, the Court found the following:

* * * Petitioner is 32 years old while the child sought to be adopted is three months old, having been born on September 20, 1958 (Exhibit E). The petitioner has been residing at Clark Air Base for the last 25 months. He has had the child, Norma Lee Caber, in his household as a daughter since the day following that of her birth and has developed a fondness for her and intends to bring her up and educate her as his own to the best of his ability. He has never had any children, either with his wife, Graciela G. Caraballo, with whom he has been married for 12 years, or with any other woman.

He is a staff sergeant in the United States Air Force and receives approximately \$465.00 a month, including allowances. He expects to retire as a master sergeant after 6 years and 3 months, and as such, he would receive a monthly pension of about \$175.00 to \$190.00 for the rest of his life. He has an allotment check made out to a bank for \$84.00 a month. He has two insurance policies with an aggregate value of P15,000.00 and has a savings of \$6,000.00 to \$7,000.00 which he has been accumulating for the last 15 to 20 years. After retirement, he intends to settle down permanently in the Philippines where he will engage in the tourist business by putting up a hotel.

It also appears that petitioner has never been convicted of any crime whatsoever.

and rendered a decree as follows:

PREMISES CONSIDERED, the court believes that it would be to the best interests of the child to be placed under the care and custody of petitioner who is materially and morally able to educate and bring her up properly and adequately, and, therefore, adjudges that henceforth Norma Lee Caber shall be, for all legal intents and purposes, the child of Ricardo R. Caraballo and shall be freed from all legal obligations of obedience and maintenance with respect to her natural mother, Mercedes Caber, and that her surname shall be changed to that of petitioner, and pursuant to Article 346 of the Civil Code of the Philippines, this decision shall be recorded in the local civil registry of Angeles, Pampanga, and the name and surname of the said minor shall thereafter be Norma Lee Caraballo.

* * * * *

The point to determine is whether under the law the petitioner is a person qualified to adopt. The Government contends that he is not, invoking the provisions of article 335 of the Civil Code. The article provides:

The following cannot adopt—

- (1) Those who have legitimate, legitimated, acknowledged natural children, or natural children by legal fiction;
- (2) The guardian, with respect to the ward, before the final approval of his accounts;
- (3) A married person, without the consent of the other spouse;
- (4) Non-resident aliens;
- (5) Resident aliens with whose government the Republic of the Philippines has broken diplomatic relations;
- (6) Any person who has been convicted of a crime involving moral turpitude, when the penalty imposed was six months' imprisonment or more.

A person is deemed a resident of a place in a country or state where he has his abode and lites there permanently. It is a place chosen by him freely and voluntarily, although he may later on change his mind and live elsewhere. A place in a country or state where he lives and stays permanently and to which he intends to return after a temporary absence, no matter how long, is his domicile. A sojourner such as a tourist though actually present at a place of his free choice cannot be deemed a resident of that place. A foreigner who has a business or interest therein or property located in a country or state and goes and stays in that country or state to look after his

business or property or to check up the manner or way his business or property is being conducted or run by his manager but does not intend to remain in the country indefinitely cannot be deemed a resident of such country. Actual or physical presence or stay of a person in a place, not of his free and voluntary choice and without intent to remain there indefinitely, does not make him a resident of the place. Looking after the welfare of a minor to be adopted the law has surrounded him with safeguards to achieve and insure such welfare. It cannot be gainsaid that an adopted minor may be removed from the country by the adopter, who is not a resident of the Philippines, and placed beyond the reach and protection of the country of his birth.

Ricardo R. Caraballo, the petitioner, an American citizen who now lives in Clark Field, municipality of Angeles, province of Pampanga, Republic of the Philippines, because of his assignment as staff sergeant in the United States Air Force—his stay in the Philippines then being temporary—is a non-resident alien who, pursuant to clause 4 of the above quoted article of the Civil Code, is disqualified to adopt a child in the Philippines.

The decree appealed from is set aside and the petition dismissed, without pronouncement as to costs.

Bengzon, C. J., Bautista Angelo, Labrador, Reyes, J. B. L., Paredes, and Dizon, JJ., concur.
Concepcion, J., concurs in the result.

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