

**ROBIN FRANCIS RADLEY DUNCAN AND MARIA LUCY CHRISTENSEN,
PETITIONERS, VS. COURT OF FIRST INSTANCE OF RIZAL (BRANCH X)
PRESIDED OVER BY HON. JUDGE HERMINIO C. MARIANO,
RESPONDENT.**

G.R. No. L-30576. February 10, 1976

Ponente: ESGUERRA, J.

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ESGUERRA, J.:

Petition for review on certiorari of the decision of respondent court, dated June 27, 1968, dismissing petitioners' petition to adopt the minor, Colin Berry Christensen Duncan. It seeks to have the findings and conclusions of law contained in the decision annulled and revoked and to declare the petition for adoption meritorious and the child sought to be adopted, the minor Colin Berry Christensen Duncan, declared the child by adoption and heir of herein petitioners-appellants, Robin Francis Radley Duncan and Maria Lucy Christensen.[1]

Petitioners Robin Francis Radley Duncan and Maria Lucy Christensen are husband and wife, the former a British national residing in the Philippines for the last 17 years and the latter an American citizen born in and a resident of the Philippines. Having no children of their own but having previously adopted another child, said spouses filed a petition with respondent court (Sp. Proc. No. 5457) for the adoption of a child previously baptized and named by them as Colin Berry Christensen Duncan. The petition is filed and denominated as Sp. Proc. No. 5457.

In the decision rendered by respondent Court dated June 27, 1968, the petition for adoption was dismissed.[2]

The principal reason given for the dismissal of the petition was that "* * * the consent given in this petition Exhibit "J" is improper and falls short of the express requirement of the law".[3]

Rationalizing its action respondent Judge said:

"Art. 340 (of the Civil Code) provides that the written consent of the following to the adoption shall be necessary:

* * * * *

2. The parents, guardian or person in charge of the person to be adopted.

"Under the law aforementioned, it will be noted that the law is couched in mandatory terms by the word SHALL be necessary, and it enumerates the persons who will give the consent to the adoption in the order as follows: parents, guardian, or the person in charge of the person to be adopted.

"It is admitted by witness Velasquez that she knew the identity of the mother who gave her the child. This being the case, the proper person who is supposed to give the parental consent to the adoption should first be, in the order of preference, the parent or the mother herself."[4]

On the allegation of petitioners that their principal witness, Atty. Corazon de Leon Velasquez, under whose care

the newborn child was entrusted by the unwedded mother, could not reveal the identity of the mother because would violate the privileged communications between the attorney and client, respondent Judge explained: "The contention that for her (Atty. Corazon de Leon Velasquez, the witness for the petitioners who gave the written consent to the adoption of the child in her capacity as loco parentis to said child) to reveal the identity of the mother would be violative of the client-attorney relationship existing between her and the mother cannot hold water, because in the first place, there was no such relationship existing between them in so far as this case is concerned and secondly, it is not only a question of revealing the identity of the mother but rather, of giving consent to the adoption by that alleged unwed mother." [5]

Taking exception to respondent Judge's decision and the ratio decidendi thereof, appellants-petitioners alleged the following as errors committed by the trial court: [6]

- 1) The inviolability of privileged communication between attorney and client is only binding upon the attorney in the same case where such relationship of attorney and client arose when the client imparted the privileged communication and that elsewhere or in another case the attorney is not bound to the secrecy;
- 2) The infant that was given away by the natural mother, even without the latter providing for the child's maintenance and support, could not be considered as abandoned;
- 3) The stranger who received the baby or child, in this case, Atty. Corazon de Leon Velasquez, could not be considered as the guardian de facto and in loco parentis of the child, and therefore, is not empowered by law to give written consent to the adoption;
- 4) That whenever and as long as the natural mother is known to anybody, only said natural mother can give the written consent to the adoption;
- 5) That the term "person in charge of the person to be adopted", one of those who can give consent to the adoption under Article 340 of the Civil Code, means or refers to institutions or orphanages established for the purpose of rearing orphans, foundlings and destitute children.

The facts of this case are few and simple.

- a) Sometime in May, 1967, a child, less than a week old (only 3 days old) [7] was given to petitioners Robin Francis Radley Duncan and his wife Maria Lucy Christensen, for them to adopt, by Atty. Corazon de Leon Velasquez. The child was later on baptized as Colin Berry Christensen Duncan with the aforementioned spouses appearing in the records of said baptism as the parents of said child; [8]
- b) Atty. Corazon de Leon Velasquez on the other hand, received the infant from the child's unwed mother who told the former never to reveal her (the mother's) identity because she wanted to get married and did not want to destroy her future. The mother instructed Atty. Corazon de Leon Velasquez to look for a suitable couple who will adopt the child. The mother did not provide for the maintenance and support of her child; [9]
- c) In the petition for adoption filed by petitioners in September, 1967, Atty. Corazon de Leon Velasquez, as the de facto guardian or loco parentis of the child subject of the adoption petition, gave the written consent required by law; [10]
- d) Learning from the testimony of witness Atty. Corazon de Leon Velasquez that the natural mother of the child sought to be adopted was still alive, the court then pressed upon the witness to reveal the identity of said mother. The witness refused to divulge the same on the ground that there existed an attorney and client relationship between them. She had been instructed by her client not to reveal the latter's identity. She could not now violate such privileged communication. [11]

On the other hand, the Rules of Court (Rule 99) has this to say on those who are required to give consent in adoption:

Sec. 3. Consent to adoption.— There shall be filed with the petition a written consent to the adoption signed by the child, if fourteen years of age or over and not incompetent, and by the child's spouse, if any, and by each of its known living parents who is not an 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.

After examining the facts and the arguments presented, it appears to this Court that there is only one principal issue involved, i.e., whether or not the person who gave the consent for adoption, which in this case is Atty. Corazon de Leon Velasquez, is the proper person required by law to give such consent.

The law applicable is Art. 340 of the Civil Code, which provides:

Art. 340. The written consent of the following to adoption 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.

Going by the set of facts in this case, only one of two persons particularly described by law may be considered here as legally capable of giving the required written consent. They are:

Under Art. 340 of the Civil Code, the "parent, guardian or person in charge of the person to be adopted" while the other one is that mentioned in Section 3, Rule 99 of the Rules of Court, describing it as each of the known living parents "who has not abandoned such child." The father's consent here is out of the question as the child is illegitimate and unrecognized.

Since the person whose written consent to the adoption (Atty. Corazon de Leon Velasquez) is assailed by the trial court as being unauthorized and had consequently caused the rejection of the petition, this Tribunal will now look into her alleged authority or lack thereof to give the controverted consent.

Sometime in May of 1967, the child subject of this adoption petition, undisputedly declared as only three days old then, was turned over by its mother to witness Atty. Corazon de Leon Velasquez. The natural and unwedded mother, from that date on to the time of the adoption proceedings in court which started in mid-year of said 1967, and up to the present, has not bothered to inquire into the condition of the child, much less to contribute to the livelihood, maintenance and care of the same. In short, this parent is the antithesis of that described in the law as "known living parent who is not insane or hopelessly intemperate or has not abandoned such child." We are convinced that in fact said mother had completely and absolutely abandoned her child. This Court has previously declared that abandonment imports any conduct on the part of the parent which evinces a settled purpose to forego all parental claims to the child.[12] Applying this legal yardstick, the unidentified mother of the child in this case can be declared, as she is hereby declared, as having abandoned her child with all legal consequences attached thereto.

Having declared that the child was an abandoned one by an unknown parent, there appears to be no more legal need to require the written consent of such parent of the child to the adoption. As had been said by this Court in the aforecited case of Santos vs. Aranzanso, the parental consent required by the law in adoption proceedings refers to parents who have not abandoned their child.[13] The question now is whether or not Atty. Corazon de Leon Velasquez, the undisputed custodian of the abandoned waif, may be considered as the guardian under Art.

340 or the person standing in loco parentis of said infant contemplated in Art. 349 of the Civil Code.

It seems to Us that when the 3-day old baby was left to and placed in the hands of Atty. Corazon de Leon Velasquez, the helpless infant was in dire need of someone who could give it protection and sustain its delicate and fragile life. Atty. Velasquez was under no legal compulsion to accept the child and to extend to it the protection and care it badly needed. Since there had been no showing that the identity of the natural mother was made known to the trial court or to the herein petitioners, nor had said mother seen fit to present herself before the court despite the public notice given to the proceedings as required by law, there clearly appears only one person who could be considered as the guardian exercising patria potestas over such abandoned child. Since there was no guardian ad litem appointed by the court and the child not being in the custody of an orphan asylum, children's home or any benevolent society, there could not have been anyone other than Atty. Corazon de Leon Velasquez who could, with reason, be called the guardian of said infant. It was she who had actual physical custody of the infant and who, out of compassion and motherly instinct, extended the mantle of protection over the hapless and helpless infant which otherwise could have suffered a tragic fate, like being thrown into some garbage heap as had often happened to some unwanted illegitimate babies. The least this Court could do to recognize and acknowledge her good Samaritan deed is to extend, as it hereby extends, to her the recognition that she was a de facto guardian exercising patria potestas over the abandoned child.

The trial court in its decision had sought refuge in the ancient Roman legal maxim "Dura lex sed lex" to cleanse its hands of the hard and harsh decision it rendered. While this old adage generally finds apt application in many other legal cases, in adoption of children, however, this should be softened so as to apply the law with less severity and with compassion and humane understanding, for adoption is more for the benefit of unfortunate children, particularly those born out of wedlock, than for those born with a silver spoon in their mouths. All efforts or acts designed to provide homes, love, care and education for unfortunate children, who otherwise may grow from cynical street urchins to hardened criminal offenders and become serious social problems, should be given the widest latitude of sympathy, encouragement and assistance. The law is not, and should not be made, an instrument to impede the achievement of a salutary humane policy. As often as is legally and lawfully possible, their texts and intendments should be construed so as to give all the chances for human life to exist – with a modicum promise of a useful and constructive existence.

The herein petitioners, the spouses Robin Francis Radley Duncan and Maria Lucy Christensen, appear to be qualified to adopt the child. There is no showing that they suffer from any of the disqualifications under the law. Above all, they have the means to provide the child with the proper support, care, education and love that a growing child needs, even if they have previously adopted another child as theirs. The fact that even before they have applied for legal custody and adoption of the infant they have already showered it with love and care and had it baptized, with them appearing in the records of the baptism as the parents of the child, speaks well of the genuine desire of petitioners to have the child as their very own. The child was born in May, 1967, and he will be at this time, 1976, about 9 years of age. In all the years, from the time he was turned over to the herein petitioners when he was only about a week old, (there is no showing that the said child was ever placed at any time in the care and custody of some other persons) he had been cared for and loved by the spouses Robin Francis Radley Duncan and Maria Lucy Christensen. He must have known no other parents than these persons. If we are now to sustain the decision of the court below, this Tribunal will be doing a graver injustice to all concerned particularly to said spouses, and worse, it will be imposing a cruel sanction on this innocent child and on all other children who might be similarly situated. We consider it to be justifiable and more humane to formalize a factual relation, that of parents and son, existing between the herein petitioning spouses and the minor child baptized by them as Colin Berry Christensen Duncan, than to sustain the hard, harsh and cruel interpretation of the law that was done by the respondent court and Judge. It is Our view that it is in consonance with the true spirit and purpose of the

law, and with the policy of the State, to uphold, encourage and give life and meaning to the existence of family relations.

Wherefore, in the light of the foregoing, the decision of the respondent Judge of the Court of First Instance of Rizal, Branch X, in Sp. Proc. No. 5457, dated June 27, 1968, is hereby annulled, and We declare that the minor Colin Berry Christensen Duncan is the adopted child and the heir of petitioners Robin Francis Radley Duncan and Maria Lucy Christensen. No Costs. So ordered.

Teehankee (Chairman), Makasiar, Munoz Palma, and Martin, JJ., concur.

[1] Brief for Petitioners, p. 23; Rollo, p. 66.

[2] Decision, Annex "A", Petition for Certiorari; Rollo, p. 24.

[3] Ibid, p. 8; Rollo, p. 31.

[4] Ibid, pp. 6-7.

[5] Ibid, p. 7.

[6] Brief for Petitioners, Rollo, p. 66.

[7] Petition for certiorari, p. 3; Rollo, p. 12.

[8] Ibid, p. 6.

[9] Ibid, p. 7.

[10] Ibid, p. 7.

[11] Ibid, p. 7; Petition for Certiorari, p. 3; Rollo, p. 12.

[12] Santos vs. Aranzanso, L-23828, Feb. 28, 1966, 16 SCRA 344.

[13] Ibid.

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