

IN RE: PETITION FOR THE ADOPTION OF ANDREI CHRISTIAN VALDEZ BUSUEGO, SPOUSES FRANCISCA MANZANO SALAMANCA AND GEORGE WILLIAM MARSHALL, PETITIONERS-APPELLANTS, VS. REPUBLIC OF THE...

Ponente: CORALES, J.

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CORALES, J.:

This is an appeal[2] from the November 27, 2009 Decision[3] of the Regional Trial Court (RTC), Branch 39, San Jose City, Nueva Ecija in Sp. Proc. No. 940 denying Spouses Francisca Manzano Salamanca (Francisca) and George William Marshall's (George but collectively referred as Spouses Marshall) petition to adopt Andrei Christian Valdez Busuego (Andrei).

The Antecedents

Francisca was still a Filipino when she married George, a Scot, on March 18, 1979. Since then, Francisca became a Scot citizen as well but in May 2007, she had taken her oath of allegiance as a Filipino citizen.[6]

The couple is childless and intends to adopt Andrei, the son of Francisca's first cousin⁵ Rosario M. Valdez (Rosario) with her husband Ramon S. Busuego (Ramon but collectively referred herein as Spouses Busuego), who was born on September 17, 1982.⁶ Spouses Busuego has six children and Andrei is their third child. They do not have any real property and Ramon is employed as an Administrative Officer III in CLSU Munoz, Nueva Ecija with a monthly income of P15,000.00. Spouses Busuego's second child had already been adopted and is now living in Las Vegas.[7]

On June 20, 2008, Spouses Marshall filed their petition for adoption and submitted the written consent of Andrei as well as those of his biological parents[8] They alleged that they have cared for and treated Andrei as their own child since he was 8 years old; they had provided for his education and other needs and mutual love, care, and respect exist between them.

At the time of the filing of the petition, Francisca is a retired nurse with a monthly pension of £420 or P26,460.00 while George is a disablement pensioner of the United Kingdom with a £675 or P42,525.00 monthly allowance. Spouses Marshall allegedly own a house and lot, a family home and an agricultural farm in San Jose City, Nueva Ecija with an annual income of approximately P30,000.00, and maintain a bank account in Scotland. According to George, their joint annual income amounts to P1,590,135.24[9] and they could save 50% thereof. The couple claimed that they live a simple and frugal life and with their combined income, they had saved more than enough to provide a bright future for Andrei.[10]

George also averred that he had known Andrei for 5 or 6 years already and among the children of Spouses Busuego, he prefers to adopt Andrei because he is industrious, helpful, willing to learn different things, and is there whenever George needs him. If the petition would be granted, he plans to bring Andrei to Scotland and enrol him in a university.[11] On the other hand, Francisca alleged that the adoption would be beneficial to Andrei

because he would be her legal child and an heir to her estate.[12]

When Rosario testified, she confirmed that she is Francisca's first cousin, their mothers being full-blood sisters. According to her, Spouses Marshall had given Andrei financial assistance and moral advice since he was 8 years old and Francisca even financed his studies in Consumer Electronics and Auto Electricity. Rosario also affirmed the contents of her and her husband's affidavit of consent having been assured that Andrei would have a brighter future with Spouses Marshall. She is aware that upon the grant of the petition for adoption, she would lose control and authority over Andrei.[13]

Andrei likewise affirmed his affidavit of consent to his adoption. He stated that Francisca is his "auntie," being his mother's cousin and he had known Spouses Marshall for some 20 or 22 years. He calls Spouses Marshall "Mommy" and "Daddy" as he is already emotionally attached to them; in turn, they call him "son". Spouses Marshall also provide him with financial, emotional, and spiritual support, including funds for his education and they want to continue financing his schooling at "Edenberg University" in Scotland. Andrei believes that the adoption would be beneficial to him and he agrees to go to Scotland with his adoptive parents, use their surname Marshall, and continue his education there.[14]

The Child Study and Home Study Reports of the RTC's Social Worker, Fidelita Armas[15] favorably recommended the grant of adoption while the Psychological Report done by one Pacita P. Tudla, Ph.D[16] stated that Spouses Marshall are both mentally and psychologically fit to be the adoptive parents of Andrei.

The Ruling of the RTC

On November 27, 2009, the RTC rendered its assailed Decision[17] denying Spouses Marshall's petition for adoption for failure to possess the qualification under the Domestic Adoption Act of 1998 (Domestic Adoption Act) particularly the requirement that an adopter who is married to a Filipino citizen should adopt jointly with his spouse a relative within the fourth (4th) degree of consanguinity or affinity of the Filipino spouse. The court *a quo* found that Francisca is Andrei's relative of the sixth civil degree but she and her husband George failed to submit the documentary requirements under the law on adoption.

Spouses Marshall sought reconsideration but to no avail.[18] Hence, the instant appeal with this lone assigned error:[19]

THE TRIAL COURT ERRED IN APPLYING NO. (2) OF SECTION 4, A.M. NO. 02-6-02-SC, RULE ON ADOPTION INSTEAD OF NO. (1) THEREOF.

Largely reiterating the arguments in their Motion for Reconsideration, Spouses Marshall insist that the RTC erred in concluding that they jointly seek to adopt Andrei. According to them, only Francisca wishes to adopt Andrei and she is merely joined in the petition by George.[20]

The Office of the Solicitor General (OSG) defends the assailed Decision, citing the mandate under the Domestic Adoption Act that the husband and wife shall jointly adopt save only in exceptional cases which are allegedly not applicable herein. It further contends that Spouses Marshall failed to comply with the various requirements prescribed by law, such as the submission of (a) a certification from the Scottish government that George had legal capacity to adopt and that Andrei would be allowed to enter the country as his adopted son; (b) proof of his good moral character; (c) proof that he was not convicted of any crime involving moral turpitude; and (d) continuous residence in the Philippines for at least 3 years prior to the filing of the application for adoption and maintaining such residence until entry of the adoption decree. At the same time, George's own admission during his testimony that he had known Andrei for only 5 or 6 years supposedly precluded him from availing of the provisions of Section 8 of the Domestic Adoption Act.[21]

This Court's Ruling

The petition lacks merit.

Under Section 7, Article III of the Domestic Adoption Act, husband and wife are mandated to adopt jointly, except in the following instances:

- (i) if one spouse seeks to adopt the legitimate son/daughter of the other;
- (ii) if one spouse seeks to adopt his/her own illegitimate son/daughter: Provided, however, that the other spouse has signified his/her consent thereto; or
- (iii) if the spouses are legally separated from each other.

As explained in the case of *In Re: Petition For Adoption Of Michelle P. Lim, Monina P. Lim*,^[22] the use of the word "shall" in Section 7, Article III of the Domestic Adoption Act means that joint adoption by the husband and the wife is mandatory. This is in consonance with the concept of joint parental authority over the child which is the ideal situation. As the child to be adopted is elevated to the level of a legitimate child, it is but natural to require the spouses to adopt jointly.

Indisputably, Spouses Marshall are legally married at the time of the filing of the petition for adoption and the exceptions mentioned above are not attendant in this case. Thus, their argument that it is only Francisca who wishes to adopt Andrei will not in any way help their case; instead, it will only cause the outright dismissal of the petition for adoption for failure to comply with the mandate of the law.

It is also crystal clear from the contents of the petition for adoption that the same was jointly filed by Spouses Marshall. Notably, both of them signed the verification and certificate of non-forum shopping. George also testified that he prefers to adopt Andrei because of his personal traits. These only show that it is not only Francisca who wishes to adopt Andrei. Accordingly, George must possess the qualifications under paragraph (b), Section 7, Article III of the Domestic Adoption Act which reads:

(b) Any alien possessing the same qualifications as above stated for Filipino nationals; Provided, That his/her country has diplomatic relations with the Republic of the Philippines, that he/she has been living in the Philippines for at least three (3) continuous years prior to the filing of the application for adoption and maintains such residence until the adoption decree is entered, that he/she has been certified by his/her diplomatic or consular office or any appropriate government agency that he/she has the legal capacity to adopt in his/her country, and that his/her government allows the adoptee to enter his/her country as his/her adopted son/daughter: Provided, Further, That the requirements on residency and certification of the alien's qualification to adopt in his/her country may be waived for the following:

- (i) a former Filipino citizen who seeks to adopt a relative within the fourth (4th) degree of consanguinity or affinity; or
- (ii) one who seeks to adopt the legitimate son/daughter of his her Filipino spouse; or
- (iii) one who is married to a Filipino citizen and seeks to adopt jointly with his/her spouse a relative within the fourth (4th) degree of consanguinity or affinity of the Filipino spouse; or

xxx

The documentary evidence submitted by Spouses Marshall falls short of that required by law. The requirements on George's residency and the certification of alien's qualification to adopt in Scotland were never offered in evidence. As aptly ruled by the RTC, George is not excused from presenting these documentary evidence. The testimonies of the witnesses readily show that Andrei is the son of Francisca's first cousin; thus, he is not related

to Francisa within the fourth civil degree of affinity or consanguinity.[23] Therefore, the instant case falls outside the ken of Section 7(b)(iii) of the Domestic Adoption Act and, at the point of being repetitive, is not excepted from the residency and certification requirements under the law.

While the Court recognizes that Spouses Marshall has only the best of intentions for Andrei, there are legal infirmities that militate against the reversal of the ruling of the RTC. The provision of the Domestic Adoption Act as to the joint adoption of husband and wife and the qualifications that should be possessed by an alien are clear and without any ambiguity. It cannot be modified without violating the proscription against judicial legislation. Until such time, however, that the law on the matter is amended, We cannot sustain Spouses Marshall's petition for adoption.[24]

WHEREFORE, the appeal is hereby DENIED. Accordingly, the November 27, 2009 Decision of the Regional Trial Court, Branch 39, San Jose City, Nueva Ecija in Sp. Proc. No. 940 is hereby AFFIRMED, without prejudice to the proper re-filing of the petition for adoption.

SO ORDERED.

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

Villion, J., and[1]Inting, JJ., concur.

[1] Vice Justice Florito S. Macalino, per Office Order No. 224-14-ABR in relation to Office Order No. 227-14-ABR.

[2] See Notice of Appeal in relation to the April 15, 2010 Order giving due course thereto, records, pages 76 and 90, respectively.

[3] Penned by Presiding Judge Cynthia Martinez Florendo, rollo, pages 42-46.

[4] See Oath of Allegiance, records, page 13.

[5] See TSN, Francisca Manzano Salamanca, February 9, 2009.

[6] See Petition, records, pages 3-4.

[7] See TSN, Rosario Valdez Busuego, May 4, 2009; See also DSWD Case Study, *ibid.*, pages 23-25.

[8] See Spouses Busuego's Affidavit of Consent in relation to Andrei's own affidavit, *ibid.*, pages 6 and 7, respectively.

[9] See George's letter dated February 26, 2009 letter, Exhibit "P" and series, *ibid.*, pages 48-54.

[10] See TSN, Francisca Manzano Salamanca, February 9, 2009; TSN, George William Marshall, February 9, 2009.

[11] See TSN, George William Marshall, February 9, 2009.

[12] See TSN, Francisca Manzano Salamanca, February 9, 2009.

[13] See TSN, Rosario Valdez Busuego, May 4, 2009.

[14] TSN, Andrei Christian Valdez Busuego, August 3, 2009.

[15] See Exhibits “E” and “F” and their respective series, records, pages 23-25 and 26-30, respectively.

[16] See Exhibit “G” and series, exhibit folder.

[17] Supra, at note 3.

[18] See Motion for Reconsideration and March 29, 2010 Order, records, pages 64-65 and 70, respectively.

[19] Page 3 of Appeal Brief, rollo, page 18.

[20] See Appeal Brief, *ibid.*, pages 15-19.

[21] Section 8. Who May Be Adopted. – The following may be adopted:

(d) A person of legal age if, prior to the adoption, said person has been consistently considered and treated by the adopter(s) as his/her own child since minority;

[22] G.R. Nos. 168992-93. May 21, 2009.

[23] Art. 966. In the line, as many degrees are counted as there are generations or persons, excluding the progenitor.

In the direct line, ascent is made to the common ancestor. Thus, the child is one degree removed from the parent, two from the grandfather, and three from the great grandparent. In the collateral line, ascent is made to the common ancestor and then descent is made to the person with whom the computation is to be made. Thus, a person is two degrees removed from his brother, three from his uncle, who is the brother of his father, four from his first cousin, and so forth.

[24] See Republic v. Vergara, G.R. No. 95551. March 20, 1997.

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