

REPUBLIC OF THE PHILIPPINES, PETITIONER, VS. THE HONORABLE COURT OF APPEALS AND THE SPOUSES JAMES ANTHONY HUGHES AND LENITA MABUNAY HUGHES, RESPONDENTS.

G.R. No. 100835. October 26, 1993

Ponente: VITUG, J.

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VITUG, J.:

James Anthony Hughes, a natural born citizen of the United States of America, married Lenita Mabunay Hughes, a Filipino citizen, who herself was later naturalized as a citizen of that country. On 29 June 1990, the spouses jointly filed a petition with the Regional Trial Court of Angeles City, Branch 60, to adopt Ma. Cecilia, Neil and Mario, all surnamed Mabunay, minor niece and nephews of Lenita, who had been living with the couple even prior to the filing of the petition. The minors, as well as their parents, gave consent to the adoption.

On 29 November 1990, the Regional Trial Court rendered a decision granting the petition. A Petition for Review on Certiorari was filed with this Court, assailing the trial court's decision. This Court referred the case to the Court of Appeals which, on 09 July 1991, affirmed the trial court's decision.

Hence, the present petition. The petitioner assigned a lone error on the part of the respondent court, thus -

THE LOWER COURT ERRED IN GRANTING THE PETITION FOR ADOPTION OF SPOUSES JAMES ANTHONY HUGHES AND LENITA MABUNAY HUGHES BECAUSE THEY ARE NOT QUALIFIED TO ADOPT UNDER PHILIPPINE LAW.

It is clear that James Anthony is not qualified to adopt. Executive Order No. 209, otherwise known as "The Family Code of the Philippines," is explicit.

"Art. 184. The following persons may not adopt:

- (1) The guardian with respect to the ward prior to the approval of the final accounts rendered upon the termination of their guardianship relation;
- (2) Any person who has been convicted of a crime involving moral turpitude;
- (3) An alien, except:
 - (a) A former Filipino citizen who seeks to adopt a relative by consanguinity;
 - (b) One who seeks to adopt the legitimate child of his or her Filipino spouse; or
 - (c) One who is married to a Filipino citizen and seeks to adopt jointly with his or her spouse a relative by consanguinity of the latter.

Aliens not included in the foregoing exceptions may adopt Filipino children in accordance with the rules on inter-country adoption as may be provided by law."

While James Anthony unquestionably is not permitted to adopt under any of the exceptional cases enumerated in paragraph (3) of the aforequoted article, Lenita, however, can qualify pursuant to paragraph (3)(a). The problem in her case lies, instead, with Article 185 of Executive Order No. 209, expressing, as follows:

"Art. 185. Husband and wife must jointly adopt, except in the following cases:

- (1) When one spouse seeks to adopt his own illegitimate child; or
- (2) When one spouse seeks to adopt the legitimate child of the other."

Lenita may not thus adopt alone since Article 185 requires a joint adoption by the husband and the wife, a condition that must be read along together with Article 184.

The old law on adoption, Presidential Decree No. 603 (The Child and Youth Welfare Code), exactly adopted that found in then Article 336 of the Civil Code. Article 29, Section B, Chapter I, Title II, of the said decree provided:

"Art. 29. Husband and wife may jointly adopt. In such case, parental authority shall be exercised as if the child were their own by nature."

Observe that the law then in force used the word "may" under which regime, a joint adoption by the spouses was apparently not made obligatory. The provision was later amended, however, by Executive Order No. 91, dated 17 December 1986, of President Corazon C. Aquino. The new Article 29 expressed, thus -

"Art. 29. Husband and Wife may jointly adopt. In such case, parental authority shall be exercised as if the child were their own by nature.

If one of the spouses is an alien, both husband and wife shall jointly adopt. Otherwise, the adoption shall not be allowed."

As amended by Executive Order 91, Presidential Decree No. 603, had thus made it mandatory for both the spouses to jointly adopt when one of them was an alien. The law was silent when both spouses were of the same nationality.

The Family Code has resolved any possible uncertainty. Article 185 thereof now expresses the necessity for a joint adoption by the spouses except in only two instances –

- (1) When one spouse seeks to adopt his own illegitimate child; or
- (2) When one spouse seeks to adopt the legitimate child of the other.

It is in the foregoing cases when Article 186 of the Code, on the subject of parental authority, can aptly find governance.

"Article 186. In case husband and wife jointly adopt or one spouse adopts the legitimate child of the other, joint parental authority shall be exercised by the spouses in accordance with this Code." -

The respondent court, in affirming the grant of adoption by the lower court, has theorized that James Anthony should merely be considered a "nominal or formal party" in the proceedings. This view of the appellate court cannot be sustained. Adoption creates a status that is closely assimilated to legitimate paternity and filiation with corresponding rights and duties that necessarily flow from adoption, such as, but not necessarily confined to, the exercise of parental authority, use of surname of the adopter by the adopted, as well as support and successional rights. These are matters that obviously cannot be considered inconsequential to the parties.

We are not unmindful of the possible benefits, particularly in this instance, that an adoption can bring not so much for the prospective adopting parents as for the adopted children themselves. We also realize that in proceedings of

this nature, paramount consideration is given to the physical, moral, social and intellectual welfare of the adopted for whom the law on adoption has in the first place been designed. When, however, the law is clear and no other choice is given,[1] we must obey its full mandate.

Even then, we find it difficult to conclude this opinion without having to call the attention of the appropriate agencies concerned to the urgency of addressing the issue on inter-country adoption, a matter that evidently is likewise espoused by the Family Code (Article 184, last paragraph, Family Code).

WHEREFORE, the petition is GRANTED and the decision of the respondent court is REVERSED and SET ASIDE. No costs.

SO ORDERED.

Feliciano, (Chairman), Bidin, Romero, and Melo, JJ., concur.

[1] At least until such time as the "rules on inter-country adoption" are provided for by law pursuant to Article 184 of the Family Code.

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