

**ISABELITA S. LAHOM, PETITIONER, VS. JOSE MELVIN SIBULO
(PREVIOUSLY REFERRED TO AS DR. MELVIN S.
LAHOM), RESPONDENT.**

G.R. No. 143989. July 14, 2003

Ponente: VITUG, J.

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VITUG, J.:

The bliss of marriage and family would be to most less than complete without children. The realization could have likely prodded the spouses Dr. Diosdado Lahom and Isabelita Lahom to take into their care Isabelita's nephew Jose Melvin Sibulo and to bring him up as their own. At the tender age of two, Jose Melvin enjoyed the warmth, love and support of the couple who treated the child like their own. Indeed, for years, Dr. and Mrs. Lahom fancied on legally adopting Jose Melvin. Finally, in 1971, the couple decided to file a petition for adoption. On 05 May 1972, an order granting the petition was issued that made all the more intense than before the feeling of affection of the spouses for Melvin. In keeping with the court order, the Civil Registrar of Naga City changed the name "Jose Melvin Sibulo" to "Jose Melvin Lahom."

A sad turn of events came many years later. Eventually, in December of 1999, Mrs. Lahom commenced a petition to rescind the decree of adoption before the Regional Trial Court (RTC), Branch 22, of Naga City. In her petition, she averred -

"7. That x x x despite the proddings and pleadings of said spouses, respondent refused to change his surname from Sibulo to Lahom, to the frustrations of petitioner particularly her husband until the latter died, and even before his death he had made known his desire to revoke respondent's adoption, but was prevented by petitioner's supplication, however with his further request upon petitioner to give to charity whatever properties or interest may pertain to respondent in the future.

"x x x x x x x x x

"10. That respondent continued using his surname Sibulo to the utter disregard of the feelings of herein petitioner, and his records with the Professional Regulation Commission showed his name as Jose Melvin M. Sibulo originally issued in 1978 until the present, and in all his dealings and activities in connection with his practice of his profession, he is Jose Melvin M. Sibulo.

"x x x x x x x x x

"13. That herein petitioner being a widow, and living alone in this city with only her household helps to attend to her, has yearned for the care and show of concern from a son, but respondent remained indifferent and would only come to Naga to see her once a year.

"14. That for the last three or four years, the medical check-up of petitioner in Manila became more frequent in view of a leg ailment, and those were the times when petitioner would need most the care and support from a love one, but respondent all the more remained callous and utterly indifferent towards petitioner which is not expected of a son.

"15. That herein respondent has recently been jealous of petitioner's nephews and nieces whenever they would find time to visit her, respondent alleging that they were only motivated by their desire for some material benefits from petitioner.

"16. That in view of respondent's insensible attitude resulting in a strained and uncomfortable relationship between him and petitioner, the latter has suffered wounded feelings, knowing that after all respondent's only motive to his adoption is his expectancy of his alleged rights over the properties of herein petitioner and her late husband, clearly shown by his recent filing of Civil Case No. 99-4463 for partition against petitioner, thereby totally eroding her love and affection towards respondent, rendering the decree of adoption, considering respondent to be the child of petitioner, for all legal purposes, has been negated for which reason there is no more basis for its existence, hence this petition for revocation."[1]

Prior to the institution of the case, specifically on 22 March 1998, Republic Act (R.A.) No. 8552, also known as the Domestic Adoption Act, went into effect. The new statute deleted from the law the right of adopters to rescind a decree of adoption.

Section 19 of Article VI of R.A. No. 8552 now reads:

"SEC. 19. Grounds for Rescission of Adoption. - Upon petition of the adoptee, with the assistance of the Department if a minor or if over eighteen (18) years of age but is incapacitated, as guardian/counsel, the adoption may be rescinded on any of the following grounds committed by the adopter(s): (a) repeated physical and verbal maltreatment by the adopter(s) despite having undergone counseling; (b) attempt on the life of the adoptee; (c) sexual assault or violence; or (d) abandonment and failure to comply with parental obligations.

"Adoption, being in the best interest of the child, shall not be subject to rescission by the adopter(s). However, the adopter(s) may disinherit the adoptee for causes provided in Article 919 of the Civil Code." (emphasis supplied)

Jose Melvin moved for the dismissal of the petition, contending principally (a) that the trial court had no jurisdiction over the case and (b) that the petitioner had no cause of action in view of the aforementioned provisions of R.A. No. 8552. Petitioner asseverated, by way of opposition, that the proscription in R.A. No. 8552 should not retroactively apply, i.e., to cases where the ground for rescission of the adoption vested under the regime of then Article 348[2] of the Civil Code and Article 192[3] of the Family Code.

In an order, dated 28 April 2000, the trial court held thusly:

"On the issue of jurisdiction over the subject matter of the suit, Section 5(c) of R.A. No. 8369 confers jurisdiction to this Court, having been designated Family Court in A.M. No. 99-11-07 SC.

"On the matter of no cause of action, the test on the sufficiency of the facts alleged in the complaint, is whether or not, admitting the facts alleged, the Court could render a valid judgment in accordance with the prayer of said complaint (*De Jesus, et al. vs. Belarmino, et al.*, 95 Phil. 365).

"Admittedly, Section 19, Article VI of R.A. No. 8552 deleted the right of an adopter to rescind an adoption earlier granted under the Family Code. Conformably, on the face of the petition, indeed there is lack of cause of action.

"Petitioner however, insists that her right to rescind long acquired under the provisions of the Family Code should be respected. Assuming for the sake of argument, that petitioner is entitled to rescind the adoption of respondent granted on May 5, 1972, said right should have been exercised within the period allowed by the Rules. From the averments in the petition, it appears clear that the legal grounds for the petition have been discovered and known to petitioner for more than five (5) years, prior to the filing of the instant petition on December 1, 1999, hence, the action if any, had already prescribed. (Sec. 5, Rule 100 Revised Rules of Court)

"WHEREFORE, in view of the foregoing consideration, the petition is ordered dismissed."[4]

Via a petition for review on certiorari under Rule 45 of the 1997 Rules of Court, petitioner raises the following questions; viz:

- May the subject adoption, decreed on 05 May 1972, still be revoked or rescinded by an adopter after the effectivity of R.A. No. 8552?
- In the affirmative, has the adopter's action prescribed?

A brief background on the law and its origins could provide some insights on the subject. In ancient times, the Romans undertook adoption to assure male heirs in the family.[5] The continuity of the adopter's family was the primary purpose of adoption and all matters relating to it basically focused on the rights of the adopter. There was hardly any mention about the rights of the adopted.[6] Countries, like Greece, France, Spain and England, in an effort to preserve inheritance within the family, neither allowed nor recognized adoption.[7] It was only much later when adoption was given an impetus in law and still later when the welfare of the child became a paramount concern.[8] Spain itself which previously disfavored adoption ultimately relented and accepted the Roman law concept of adoption which, subsequently, was to find its way to the archipelago. The Americans came and introduced their own ideas on adoption which, unlike most countries in Europe, made the interests of the child an overriding consideration.[9] In the early part of the century just passed, the rights of children invited universal attention; the Geneva Declaration of Rights of the Child of 1924 and the Universal Declaration of Human Rights of 1948,[10] followed by the United Nations Declarations of the Rights of the Child,[11] were written instruments that would also protect and safeguard the rights of adopted children. The Civil Code of the Philippines[12] of 1950 on adoption, later modified by the Child and Youth Welfare Code[13] and then by the Family Code of the Philippines,[14] gave immediate statutory acknowledgment to the rights of the adopted. In 1989, the United Nations initiated the Convention of the Rights of the Child. The Philippines, a State Party to the Convention, accepted the principle that adoption was impressed with social and moral responsibility, and that its underlying intent was geared to favor the adopted child. R.A. No. 8552 secured these rights and privileges for the adopted. Most importantly, it affirmed the legitimate status of the adopted child, not only in his new family but also in the society as well. The new law withdrew the right of an adopter to rescind the adoption decree and gave to the adopted child the sole right to sever the legal ties created by adoption.

Petitioner, however, would insist that R.A. No. 8552 should not adversely affect her right to annul the adoption decree, nor deprive the trial court of its jurisdiction to hear the case, both being vested under the Civil Code and the Family Code, the laws then in force.

The concept of "vested right" is a consequence of the constitutional guaranty of due process[15] that expresses a present fixed interest which in right reason and natural justice is protected against arbitrary state action;[16] it includes not only legal or equitable title to the enforcement of a demand but also exemptions from new obligations created after the right has become vested.[17] Rights are considered vested when the right to enjoyment is a present interest,[18] absolute, unconditional, and perfect[19] or fixed and irrefutable.

In *Republic vs. Court of Appeals*,[20] a petition to adopt Jason Condat was filed by Zenaida C. Bobiles on 02 February 1988 when the Child and Youth Welfare Code (Presidential Decree No. 603) allowed an adoption to be sought by either spouse or both of them. After the trial court had rendered its decision and while the case was still pending on appeal, the Family Code of the Philippines (Executive Order No. 209), mandating joint adoption by the husband and wife, took effect. Petitioner Republic argued that the case should be dismissed for having been filed by Mrs. Bobiles alone and without being joined by the husband. The Court concluded that the jurisdiction of the court is determined by the statute in force at the time of the commencement of the action. The petition to adopt

Jason, having been filed with the court at the time when P.D. No. 603 was still in effect, the right of Mrs. Bobiles to file the petition, without being joined by her husband, according to the Court had become vested. In *Republic vs. Miller*,^[21] spouses Claude and Jumrus Miller, both aliens, sought to adopt Michael Madayag. On 29 July 1988, the couple filed a petition to formalize Michael's adoption having theretofore been taken into their care. At the time the action was commenced, P.D. No. 603 allowed aliens to adopt. After the decree of adoption and while on appeal before the Court of Appeals, the Family Code was enacted into law on 08 August 1988 disqualifying aliens from adopting Filipino children. The Republic then prayed for the withdrawal of the adoption decree. In discarding the argument posed by the Republic, the Supreme Court ruled that the controversy should be resolved in the light of the law governing at the time the petition was filed.

It was months after the effectivity of R.A. No. 8552 that herein petitioner filed an action to revoke the decree of adoption granted in 1975. By then, the new law,^[22] had already abrogated and repealed the right of an adopter under the Civil Code and the Family Code to rescind a decree of adoption. Consistently with its earlier pronouncements, the Court should now hold that the action for rescission of the adoption decree, having been initiated by petitioner after R.A. No. 8552 had come into force, no longer could be pursued.

Interestingly, even before the passage of the statute, an action to set aside the adoption is subject to the five-year bar rule under Rule 100^[23] of the Rules of Court and that the adopter would lose the right to revoke the adoption decree after the lapse of that period. The exercise of the right within a prescriptive period is a condition that could not fulfill the requirements of a vested right entitled to protection. It must also be acknowledged that a person has no vested right in statutory privileges.^[24] While adoption has often been referred to in the context of a "right," the privilege to adopt is itself not naturally innate or fundamental but rather a right merely created by statute.^[25] It is a privilege that is governed by the state's determination on what it may deem to be for the best interest and welfare of the child.^[26] Matters relating to adoption, including the withdrawal of the right of an adopter to nullify the adoption decree, are subject to regulation by the State.^[27] Concomitantly, a right of action given by statute may be taken away at anytime before it has been exercised.^[28]

While R.A. No. 8552 has unqualifiedly withdrawn from an adopter a consequential right to rescind the adoption decree even in cases where the adoption might clearly turn out to be undesirable, it remains, nevertheless, the bounden duty of the Court to apply the law. *Dura lex sed lex* would be the hackneyed truism that those caught in the law have to live with. It is still noteworthy, however, that an adopter, while barred from severing the legal ties of adoption, can always for valid reasons cause the forfeiture of certain benefits otherwise accruing to an undeserving child. For instance, upon the grounds recognized by law, an adopter may deny to an adopted child his legitimate and, by a will and testament, may freely exclude him from having a share in the disposable portion of his estate.

WHEREFORE, the assailed judgment of the court a quo is AFFIRMED. No costs.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Ynares-Santiago, Carpio, and Azcuna, JJ., concur.

[1] Rollo, pp. 25-26.

[2] Art. 348. The adopter may petition the court for revocation of the adoption in any of these cases:

- (1) If the adopted person has attempted against the life of the adopter;
- (2) When the adopted minor has abandoned the home of the adopter for more than three years;

(3) When by other acts the adopted person has definitely repudiated the adoption. (n)

[3] Art. 192. The adopters may petition the court for the judicial rescission of the adoption in any of the following cases:

(1) If the adopted has committed any act constituting a ground for disinheriting a descendant; or

(2)

When the adopted has abandoned the home of the adopters during minority for at least one year, or, by some other acts, has definitely repudiated the adoption. (41a, P.D. No. 603)

[4] Rollo, pp. 33-34.

[5] The Law of Adoption, Morton L. Leavy & Rey Weinbey, 4[th] Edition (1979).

[6] The Law on Adoption and Surrogate Parenting, Irving J. Sloan (1988).

[7] Ibid., p.7.

[8] Id. The earliest adoption statute was reported in Mississippi in 1846. In 1850, Texas and Vermont, USA passed their general adoption statutes, followed by Massachusetts and New York in 1851.

[9] A Comparative Study of the Adoption Law under the Spanish Civil Code and the Code of Civil Procedure, 4 Phil. L.J. 313-323 (1918).

[10] United Nation General Assembly, Resolution dated 10 December 1948.

[11] United Nation General Assembly/ 44/ 49 (1989).

[12] Presidential Decree No. 386.

[13] Presidential Decree No. 603 (10 June 1975), as amended by P.D. No. 1175 (15 August 1977).

[14] Executive Order 209 (03 August 1988).

[15] 16 CJS citing City of Los Angeles vs. Oliver, 283 P. 298, 102 Cal. App. 299.

[16] Ayog vs. Cusi, Jr. G.R. No. L-46729, 19 November 1982 (118 SCRA 492).

[17] 16 Am. Jur. 2d, Constitutional Law, p.651.

[18] Benquet Consolidated Mining Co. vs. Pineda, No. L-7231, 28 March 1956 (98 Phil. 711) quoting Pearsall vs. Great Northern R. Co., 161 U.S. 646.

[19] Reyes vs. Commission on Audit, G.R. No. 125129, 29 March 1999 (305 SCRA 512) as cited in Bernabe vs. Alejo, G.R. No. 140500, 21 January 2002 (374 SCRA 180).

[20] G.R. No. 92326, 24 January 1992 (205 SCRA 356).

[21] G.R. No. 125932, 21 April 1999 (306 SCRA 183).

[22] Section 26. Repealing Clause. Any law, presidential decree or issuance, executive order, letter of instruction, administrative order, rule, or regulation contrary to, or inconsistent with the provisions of this Act is hereby repealed, or modified, or amended accordingly.

[23] SEC. 5. Time within which to file petition.- A minor or other incapacitated person must file the petition for rescission or revocation of adoption within the five years following his majority, or if he was incompetent at the

time of the adoption, within the five (5) years following the recovery from such incompetency.

The adopter must also file the petition to set aside the adoption within five (5) years from the time the cause or causes giving rise to the rescission or revocation of the same took place. (emphasis supplied)

[24] Id. at 24, citing *Brearly School vs. Ward*, 210 NY 358, 40 LRA NS. 1215; also, *Cooley*, *Constitutional Limitations*, 7[th] Ed. p. 546.

[25] *Martin vs. Putman* (Miss) 427 So 2d 1373; There is no right of adoption. It is the extension of a privilege. *Eggleston vs. Landrum* 210 Miss 645, 50 So 2d 364, 23 ALR2d 696.

[26] *Browder vs. Harmeyer* (Ind App) as cited in *AmJur*, 2d, Vol. 2.

[27] Adoption has also been characterized as a status created by the state acting as *parens patriae*, the sovereign parent. *Douglas vs. Harrelson* (Ala App) 454 So 2d 984.

[28] 16 CJS citing *Robinsons vs. Mchugh*, 291 P. 330, 158 Wash. 157.

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