

IN THE MATTER OF THE ADOPTION OF ELIZABETH MIRA. GILBERT R. BREHM AND ESTER MIRA BREHM, PETITIONERS, AND APPELLEES, VS. REPUBLIC OF THE PHILIPPINES, OPPOSITOR AND APPELLANT. D E...

G.R. No. 18566. September 30, 1963

Ponente: PAREDES, J.

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PAREDES, J.:

Finding that only legal issues are involved in the instant case, the Court of Appeals certified the same to this Court for disposition.

Gilbert R. Brehm is an American citizen, serving the U.S. Navy with temporary assignment at Subic Bay. On October 9, 1958, he married Ester Mira, a Filipina citizen, who had a daughter Elizabeth, by another man, also of the American navy, who left the country in 1952, and never heard from since then. After the marriage, the couple established residence at Intramuros, Manila, and the minor Elizabeth had always been under their care and support of Brehm.

On January 28, 1959, the spouses filed a Joint Petition with the Juvenile and Domestic Relations Court for the adoption of the minor Elizabeth, claiming that they have mutually given their consent to the adoption, not only to promote her best interest and well-being, but also to give her a legitimate status. They prayed that after the proper proceedings, judgment be entered, freeing the child Elizabeth Mira from all legal obligations of obedience and maintenance with respect to her natural father, and be, for all legal intents and purposes, the child of the petitioners, with all the rights pertinent thereto.

An opposition to the petition with respect to Gilbert R. Brehm was registered by the Republic of the Philippines, it appearing that Brehm testified that his residence in the Philippines was merely temporary same being effective only for purposes of his tour of duty with the Navy, thus disqualifying him from making an adoption (Art. 335 [4], New Civil Code; Sec. 2, Rule 100, Rules of Court), and that being a non-resident alien, the Court has no jurisdiction over him.

A reply to the opposition was presented by petitioners. They claim that Art335 does not apply in the case, reasoning out that it covers only adoptions for the purpose of establishing a relationship of paternity and filiation, where none existed, but not where the adopting parents are not total strangers to said child; that there is already a relation between the child and Brehm, created by affinity and that Art. 338 of the New Civil Code, expressly authorizes the adoption of a step-child by a step-father, in which category petitioner Brehm falls. Petitioners contend that the records show their residence in Manila, for while Brehm works at Subic, he always goes home to Manila, during week ends and manifested that he intends to reside in the Philippines permanently, after his tour of duty with the U.S. Naval Forces.

The Juvenile and Domestic Relations Court rendered the pertinent portions of which read—

" * * Since residence is principally a matter of intention, the Court is of the opinion that notwithstanding the nature of petitioner Gilbert R. Brehm's coming to the Philippines, his subsequent acts, coupled with his declared intention of permanently residing herein, have cured the legal defect on the point of residence.

Finally, we must consider the status of the minor Elizabeth Mira whose welfare deserves paramount consideration. Being a natural child of the petitioning wife, it cannot be in conscience be expected that when petitioners married, the mother would reduce her responsibility and her affection toward her child. * * *

Wherefore, finding that the principal allegations of the petitioners are true, it is hereby adjudged that henceforth the minor Elizabeth is freed from all obligations of obedience and maintenance with respect to her natural father, and is, to all legal intents and purposes, the child of the petitioners Gilbert R. Brehm and Ester Mira Brehm, said minor's surname being changed from 'Mira to 'Mira Brehm."

The Solicitor General took exception from the judgment, claiming that it was error for the Court in adjudging the minor Elizabeth Mira the adopted child of petitioner Gilbert R. Brehm. The appeal, however, did not assail the right of petitioner Ester Mira Brehm, the natural mother of the minor, to adopt her.

There is no question that petitioner Gilbert R. Brehm is a non-resident alien. By his own testimony, he supplied the conclusive proof of his status here, and no amount of reasoning will overcome the same. For this reason, he is not qualified to adopt. On this very point, we have recently declared—

"The only issue in this appeal is whether or not being permanent residents in the Philippines, petitioners are qualified to adopt Baby Rose. Article 335 of the Civil Code of the Philippines, provides that—

* * * * *

The following cannot adopt:

(4) Non-resident aliens

This legal provision is too clear to require interpretation. No matter how much we may sympathize with the plight of Baby Rose and with the good intentions of petitioners herein, the law leaves us no choice but to apply its explicit terms, which unqualifiedly deny to petitioners the power to adopt anybody in the Philippines (Ellis and Ellis vs. Republic, L-16922, April 30, 1963).

Prior to the above decision, We have also denied petitions to adopt by persons similarly situated as petitioner Brehm. Thus, in the case of Caraballo vs. Republic, G. R. No. L-15080, April 25, 1962, giving some reasons why non- resident aliens are disqualified to adopt, We said—

" * * . Looking after the welfare of a minor to be adopted, the law has surrounded him with safeguard 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." (See also S/Sgt. Katancik, vs. Republic G.R. No. L-15472, June 20, 1962).

This notwithstanding, petitioners press the argument that Brehm being now the step-father of the minor, he is qualified to adopt, in virtue of the provisions of par. 3, Art. 338, Civil Code, which states—

"The following may be adopted:

(1) The natural child, by the natural father

(2) Other legitimate children, by the father or mother

(3) A step-child by the step-father or step-mother."

We should construe, however, Article 338 in connection with Article 335. Art. 335 clearly states that "The fol-

lowing cannot adopt: * * * (4). Non-resident aliens". It is, therefore, mandatory, because it contains words of positive prohibition and is couched in the negative terms importing that the act required shall not be done otherwise than designated (50 Am. Jur. 51). On the other hand, Art. 338, provides "the following may be adopted: (3) a step-child, by the step-father or step-mother", which is merely directory, and which can only be given operation if the same does not conflict with the mandatory provisions of Art. 335. Moreover, as heretofore been shown, it is Article 385 that confers jurisdiction to be court over the case, and before Article 338 may or can be availed of, such jurisdiction must first be established. We ruled out the adoption of a step-child by a step-father, when the latter has a legitimate child of his own (Ball vs. Rep., 94 Phil., 106 50 Off. Gaz. p. 145; and McGee vs. Rep., 94 Phil., 820).

In view thereof, the decision appealed from, in so far as it affects the petitioner Gilbert R. Brehm, is hereby reversed, and his petition to adopt the child Elizabeth Mira, denied. Without costs.

Bengzon, C. J., Padilla, Bautista Angelo, Concepcion, Barrera, Dizon, Regala and Makalintal, JJ. concur.

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