

PAULINA SANTOS AND AURORA SANTOS, PETITIONERS, VS. GREGORIA ARANZANSO AND DEMETRIA VENTURA, RESPONDENTS.

G.R. No. 23828. February 28, 1966

Ponente: BENGZON, J.P., J.

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BENGZON, J.P., J.:

A petition for adoption of Paulina Santos and Aurora Santos was filed by Simplicio Santos and Juliana Reyes in the Court of First Instance of Manila on June 4, 1949.[1] Paulina Santos was then 17 years old and Aurora Santos, 8 years old. The petition, which was under oath, alleged inter alia, that the whereabouts of the minors' nearest of kin, particularly their parents, were unknown; that since the outbreak of the war said minors have been abandoned by their respective parents; and that for years, since their infancy, said children have continuously been in petitioners' care and custody. A guardian ad litem Crisanto de Mesa, was thereafter appointed for the minors. Said guardian ad litem forthwith gave his written consent to the adoption. Paulina Santos, being over fourteen years of age, likewise gave her written consent thereto.[2]

After due publication and hearing, the adoption court (CFI) rendered on August 25, 1949 a decision, hereunder quoted in full:

"This is a petition for the adoption of the minors Paulina Santos Reyes and Aurora Santos Reyes by the spouses Simplicio Santos and Juliana R. Santos. After due publication in the 'National Weekly, a newspaper of general circulation in the City of Manila, once a week for three consecutive weeks, the case was then set for trial. The office of the Solicitor General was duly notified of the petition and at the hearing did not offer any objection.

"From the evidence presented at the hearing, it appears that the petitioners have been married for the past twenty-seven years and have no children of their own. They desire to adopt the minors Paulina Santos Reyes and Aurora Santos Reyes, both of whom are and for years have been living; under their care and custody; that the former, since she was barely three months old has already been taken care of by them up to the present time, and the latter has been cared for since she was only fifteen days old. Paulina Santos Reyes is now seventeen years old and has given her consent to the adoption as shown by her signature at the foot of the petition. She ratified the same in open Court. Both parents of the minors have long been unheard from and in spite of diligent efforts of the petitioners to locate them, they could not be found. The consent to the adoption has been given by the guardian ad litem appointed by the Court. The petitioners are both proprietors and have substantial income, more than enough to support and educate the minors. The Court is of the opinion that this adoption will be for the best interest and welfare of the minors.

Wherefore, the Court hereby grants the petition of the spouses Simplicio Santos and Juliana If. Santos to adopt

the minors Paulina Santos Reyes and Aurora Santos Reyes and in accordance with Rule 100 of the Rules of Court in the Philippines, hence forth, the minors are freed from all legal obligations of obedience and maintenance with respect to their natural parents and are, to all legal intents and purposes the children of the petitioners.

"SO ORDERED.

"Manila, Philippines, August 25, 1949."

No appeal was taken from the aforesaid decision.

Subsequently—eight years later—on October 21, 1957, Juliana Reyes died, in Manila, without testament. On November 25, 1957 Simplicio Santos filed in the Court of First Instance of Manila a petition for the settlement of the intestate estate of Juliana Reyes.[3] In said petition he stated among other things that the surviving heirs of the deceased are: he, as surviving spouse, Paulina Santos and Aurora Santos, 27 and 17 years of age, respectively. In the same petition, he asked that he be appointed administrator of the estate.

Gregoria Aranzanso, alleging that she is first cousin to the deceased, filed on January 2, 1958 an opposition to the petition for appointment of administrator. For her grounds she asserted that Simplicio Santos' marriage to the late Juliana Reyes was bigamous and thus void; and that the adoption of Paulina Santos and Aurora Santos was likewise void ab initio for want of the written consent of their parents, who were then living and had not abandoned them. An answer to the opposition was filed by Simplicio Santos on March 7, 1958 and oppositor Aranzanso filed a reply thereto on March 17, 1958.

Demetria Ventura, alleging likewise that she is the first cousin of the deceased Juliana Reyes and adding that she is the mother of the child Paulina Santos, filed on March 19, 1959 an opposition to the petition of Simplicio Santos to be named administrator, and, moreover, thereunder adopted, as her own, the pleadings filed by Gregoria Aranzanso.

By order of April 6, 1959, the Court of First Instance decided the point in dispute, ruling that the validity of the adoption in question could not be assailed collaterally in the intestate proceedings (Sp. Proc. No- 34354). From the order Gregoria Aranzanso and Demetria Ventura appealed to the Court of Appeals.

In its decision, promulgated on September 14, 1964, the Court of Appeals reversed the appealed order, finding instead that the adoption was null and void ab initio due to the absence of consent thereto by the natural parents of the minor children, which it deemed a jurisdictional defect still open to collateral attack.

After denial of their motion for reconsideration by the Court of Appeals, Paulina Santos and Aurora Santos appealed to this Court by way of petition for review, filed on November 18, 1964, to which due course was given. Five months after submission of this case for decision or on October 14, 1965—petitioners herein filed a petition for preliminary injunction, and later, on October 26, 1965, a supplemental petition therefor, to stop the trial court from allowing Gregoria Aranzanso and Demetria Ventura, as well as of two other persons, namely, Consuelo and Pacita Pasion, to intervene in the settlement proceedings or to withdraw cash advances from the estate.

It was alleged in the petition and supplemental petition for preliminary injunction that on September 22, 1965 the probate court issued an order allowing Gregoria Aranzanso and Demetria Ventura to intervene in the settlement proceedings of Juliana Reyes' estate (Sp. Proc. No. 34354) ; that on October 2, 1965 said court issued an order allowing, on previous motions therefor, withdrawal of the sum of P7,000 each, under bond, to all the parties,

including Gregoria Aranzanso and Demetria Ventura; that on October 7, 1965 two strangers to the proceedings—the aforesaid sisters Consuelo and Pacita Pasion—filed a motion, stating that they are also first cousins of the decedent and praying that an order be issued allowing them to withdraw the sum of P7,000 each under bond; that on October 13, 1965 the same Pasion sisters filed a supplemental motion in the same proceedings praying that their motion of October 7 be treated as a motion to intervene; that on October 18, 1965 the probate court issued an order allowing the Pasion sisters to intervene in the settlement proceedings and allowing them to withdraw under bond the sum of P7,000 each from the funds of the estate.

On November 4, 1965 respondents, together with Consuelo and Pacita Pasion—who thereby submitted themselves to this Court's jurisdiction and stated that they, "for purposes of expediency, are also denominated respondents"—filed their "Comment", as required by this Court, opposing the aforesaid petition for preliminary injunction. On November 15, 1965 this Court granted the prayer for preliminary injunction and the writ was issued upon posting of a. bond of P5,000 on November 20, 1965. Respondents however moved for reconsideration or modification thereof on November 23, 1965, stating inter alia that they would now be precluded from taking pail in the scheduled hearing for settlement of the accounts of the special administratrix (Araceli A. Pilapil). On November 26, 1965 we ordered modification of the preliminary injunction, so that on November 29, the writ was modified so as to enjoin the probate court, until further orders: (1) from hearing and/or approving the settlement of special administratrix's accounts; (2) from allowing any sale, disposition or disbursement of the estate except when essential for strictly maintenance purposes; and (3) from allowing respondents, Gregoria Aranzanso and Demetria Ventura, or Consuelo and Pacita Pasion, or any of them, to receive any advance, cash or otherwise, from the funds of the intestate estate.

The principal issue on the merits in this appeal is whether respondents-oppositors Aranzanso and Ventura, could assail in the settlement proceedings the adoption decree in favor of Paulina and Aurora Santos. In sustaining their right to make such a collateral attack, the respondent Court of Appeals rested as abovementioned on the premise that failure to obtain the consent of the natural parents was a jurisdictional defect rendering the adoption void ab initio. In its view, said consent was not properly dispensed with, not only because the evidence adduced in the adoption proceedings was insufficient to support a finding that the parents had abandoned the children, but also since the adoption court fatally omitted to expressly and specifically find that such abandonment in fact occurred.

In this regard it should be stated that the Court of Appeals completely relied on American jurisprudence and authorities to the effect that parental consent to the adoption is a jurisdictional requisite (E.g., 2 C.J.S., Adoption of Children, Section 45 [a] p. 435; Whetmore vs. Fratello, -----Or.-----, 282 P2d 667, 670). The point to remember, however, is that under our law on the matter, consent by the parents to the adoption is not an absolute requisite:

"SEC. 3. Consent to adoption.—There shall be filed with the petition a written consent to the adoption signed by the child, if over fourteen years of age and not incompetent, and by each of its known living parents who is not insane or hopelessly intemperate or has not abandoned such child, or if there are no s-such parents by the genera] 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." (Rule 100, Old Rules of Court)[4]

Stated otherwise, if the natural parents have abandoned their children, consent to the adoption by the guardian ad litem suffices. This brings us to the question whether in the proceedings at bar the Court of Appeals can still review the evidence in the adoption case and conclude that it was not sufficiently established therein that the

parents of Paulina and Aurora Santos had abandoned them.

First of all, it is not quite accurate to say that the adoption court made no determination of the fact of abandonment. As quoted earlier, it is stated in the decision of the adoption court, that:

"From the evidence presented of the hearing it appears that the petitioner." have been married for the past twenty-seven years and have no children of their own. They desire to adopt the minors Paulina Santos [y] Reyes and Aurora Santos [y] Reyes, both of whom are and for yearn have been living under their care and custody: that the former, since she was barely three months old has already been taken care of by them up to the present time, and the latter has been cared for since she was only fifteen days old. Paulina Santos [y] Reyes is now seventeen years old. * * * Both parents of the minors have long been unheard from and in spite of diligent efforts of the petitioners to locate them, they could not be found. The consent to the adoption has been given by the guardian ad litem appointed by the Court. * * *" (Italics supplied).

Abandonment—under persuasive American rulings— imports "any conduct on the part of the parent which evinces a settled purpose to forgo all parental duties and relinquish all parental claims to the child". It means "neglect or refusal to perform the natural and legal obligations of care and support which parents owe to their children." (2 Am. Jur. 2d, Adoption, Sec. 32, pp. 886-887.) It can thus readily be seen that altho the CFI judgment approving the adoption does not use the word "abandoned", its findings sufficiently contain a set of facts and circumstances which truly constitutes a finding of abandonment.

Coming now to the power of the Court of Appeals to review in this case the finding of abandonment made by the adoption court, we find that even under American jurisprudence—relied upon, as stated, by said Court—the settled rule is that even when the jurisdiction of an inferior or special tribunal depends upon the existence of a fact to be established before it, the determination of that fact by the tribunal cannot be questioned in a collateral attack upon its order (In re: Mc-Keag's Estate, 141 Cal. 403, 71 Par. 1039, 1040; In re: Camp's Estate, 131 Cal. 469, 63 Pac. 736).

Anent this point the rulings are summed up in 2 American Jurisprudence, 2nd Series, Adoption, Sec. 75 p. 922, thus:

"An adoption order implies the finding of the necessary facts and the burden of proof is on the party attacking it; it cannot be confide red void merely because the fact needed to show .statutory compliance is obscure. While a judicial determination of some particular fact, such as the abandonment of the minor by his parent, or the consent of his next of kin to the adoption, may be essential to the exercise of jurisdiction to enter the order of adoption, this does not make it essential to the jurisdictional validity of the decree that the fact be determined upon proper evidence, or necessarily in accordance with the truth; a mere error cannot affect the jurisdiction, and the determination must stand until reversed on appeal, and hence can not be collaterally attacked. If this were not the rule, the status of adopted children would always be uncertain, since the evidence might not be the same at all investigations, and might be regarded with different effect by different tribunals, and the adoption might be held by one court to have been valid, while another court would hold it to have been of no avail."

Freeman on Judgments says the same thing:

"In general, therefore, where the right of the court to assume jurisdiction of a cause and proceed to judgment, depends upon the ascertainment of facts in pais and the court retains jurisdiction it thereby impliedly adjudges

that the requisite jurisdictional facts exist and having found such facts in favor of jurisdiction, its decision in this respect, whether erroneous or not, cannot be questioned in a collateral proceedings, for a presumption arises in such cases, when the validity of the judgment is attacked, that the necessary jurisdictional facts were proven. * * * (Vol. I, Sec. 350, pp. 719-720).

The Supreme Court of Wisconsin, construing a statute akin to our law in this regard, said in *Parsons vs. Parsons*, 101 Wis. 76, 77 N.W. 147, 148:

"The statute to be considered is section 4022, Rev. St. 1878, which reads as follows: 'No such adoption shall be made without the written consent of the living parents of such child unless the court shall find that one of the parents has abandoned the child or gone to parts unknown.' Thus it will be seen that upon the fact being established that the living parent has abandoned his child, he is deemed by the statute to have thereby relinquished all parental right to be consulted in respect to the child's welfare, and his consent to the adoption is therefore dispensed with. The term 'abandon' obviously means no more than neglect or refusal to perform the natural and legal obligations of care and "support which parents owe to their children. The fact of abandonment, judicially determined, was essential to the jurisdiction; not essential that it should be determined on proper evidence, necessarily, or in accordance with the truth, because mere error in that regard does not affect jurisdiction. If jurisdiction be obtained to determine a fact, its determination wrong or on insufficient or improper evidence is immaterial on the question of legal right to proceed judicially to the next step. That is deemed to be elementary, * * * A judicial determination may be contrary to conclusive evidence, or legal evidence, or without any evidence, yet cannot be impeached for want of jurisdiction. *Van Fleet*, Coll. Attack, Secs. 663, 605. That rule applies to all judicial proceedings. * * *"

It follows, therefore, that the Court of Appeals erred in reviewing, under a collateral attack, the determination of the adoption court that the parents of Paulina and Aurora Santos had abandoned them. This is so even if such fact of abandonment is deemed jurisdictional, a point which we need not—and do not—rule upon in this case.

For the same reason, it is not in point to argue here that Simplicio Santos "in fact concealed the adoption proceedings from the natural parents, thereby rendering the judgment obtained therein null and void for being secured by extrinsic fraud. The rule is well recognized that a judgment can be set aside on the ground of extrinsic fraud only in a separate action brought for that purpose; not by way of collateral attack (*Gomez vs. Concepcion*, 47 Phil. 717; *Ramos vs. Mañalac*, 89 Phil. 270).

Anent the alleged lack of notice of the adoption proceedings on the natural parents, suffice it to mark that adoption is a proceeding in rem^[5] and that constructive notice, such as the publication duly made as aforesaid, is enough where the residence of the parents is unknown (2 Am. Jur. 2d, Adoption, Sec. 56, p. 906). Notice, moreover, is not required in adoption cases in regard to the abandoning parent (*Parsons vs. Parsons*, supra).

Assuming that Simplicio Santos was not validly married to Juliana Reyes, it will not make any difference as far as the right of respondents to intervene in the intestate proceedings is concerned. Juliana Reyes should then be deemed to have filed the petition for adoption as a person whose status is single, not married. The defect would then lie only as to Simplicio Santos, who, as allegedly married to another person (a point that we do not decide in this case), could not adopt without joining his wife in the petition.^[6] It being the estate—of Juliana Reyes that is the subject matter of the settlement proceedings, the flaw, if any, would not affect the consideration of the right of Paulina and Aurora Santos to succeed as adopted children of Juliana Reyes, to the exclusion of respondents.

It must not be forgotten that the philosophy behind adoption statutes is to promote the welfare of the child. Accordingly, the modern trend is to encourage adoption (*Prasnik vs. Republic*, 52 Off. Gaz., 1942) and every reasonable intendment should be sustained to promote that objective.

From 2 Corpus Juris Secundum 375-376 we quote:

"Accordingly, as the main purpose of adoption statutes is the promotion of the welfare of children, bereft of the benefits of the home and care of their real parents, whenever possible without doing violence to the terms of the statute, such a construction should be given adoption laws as will sustain, rather than defeat, this purpose.

"Although, as against the interests of the child, the proceedings must be strictly in accordance with the statute, there is n tendency on the part of the courts, however, where the adoption has been fully consummated, to construe the statute with a reasonable decree of liberality, to the end that the assumed relationship and the intention of the parties be upheld, particularly as against strangers to the proceedings collaterally attacking thorn. * * *"

From all the foregoing it follows that respondents-oppositors Aranzanso and Ventura and those who, like them (Pasion sisters), claim an interest in the estate of Juliana Reyes as alleged first cousins, cannot intervene, as such, in the settlement proceedings, in view of the fact that in the order of intestate succession adopted children exclude first cousins (Articles 979 and 1003, New Civil Code). The same holds true as long as the adoption must be—as in the instant case—considered valid.

Wherefore, the judgment of the Court of Appeals is ' hereby reversed and the order of the probate court a quo sustaining the adoption, dated April 6, 1959, is affirmed. Respondents Gregoria Aranzanso and Demetria Ventura as well as Consuelo and Pacita Pasion are declared without right to intervene as heirs in the settlement of the intestate estate of Juliana Reyes. The preliminary injunction heretofore issued is dissolved, except insofar as it enjoins the intervention or allowance of withdrawals of property from the estate by Gregoria Aranzanso, Demetria Ventura, Consuelo and Pacita Pasion, in the concept of heirs, as to which it is hereby made permanent. No costs. So ordered.

Bengzon, C. J., Bautista- Angelo, Concepcion, Reyes, J. B. L., Barrera, Dizon, Regala, Makalintal, Zaldivar and Sanchez, JJ., concur.

Decision reversed.

[1] Special Proceedings No. A-232.

[2] See CFI decision approving adoption, quoted in Petitioners' Brief, pp. 4-43, *infra*.

[3] Special Proceedings No. 34354.

[4] See also Sec. 3, Rule 99, Revised Rules of Court.

[5] Jacinto, Special Proceedings, 1965 Ed., p. 347; Van Matre vs. Sankey, 148 III. 536; 36 N.E. 628.

[6] Sec. 2, Rule 100, Rules of Court (old), then applicable.

RESOLUTION

May 19, 1966

BENGZON, J. P., J. :

Respondents, thru newly-retained counsel, Atty. Juan T. David, moved for reconsideration of our decision of February 28, 1966 and/or modification of its dispositive portion. A supplemental motion thereto was filed by respondents' other counsel, Atty. Cuadrajento A. Mendoza.

In addition, a motion to substitute pages 11 and 12 of the motion for reconsideration was made, which is hereby granted. The substitute pages are already in the record. Also, we received and take note of respondents' counsels' manifestation and comment.

1. The principal argument of movants is that the adoption court made no finding of abandonment by the natural parents of the children sought to be adopted. Altho the point has already been fully discussed in the decision, we will elaborate further on the same.

It is now argued that such long absence and status of being unheard from on the part of the natural parents, and their having left their children since infancy to the care and custody of others, is not abandonment, for the reason that abandonment must be willful and that time is not an element of abandonment.

As stated in the decision, abandonment, means, under persuasive American rulings, "any conduct on the part of the parent which evinces a settled purpose to forgo all parental duties and relinquish all parental claims to the child." [1] In other words, "neglect or refusal to perform the natural and legal obligations of care and support which parents owe to their children." [2]

Negligent and careless failure to perform the duties of parenthood is a significant element of abandonment, regardless of actual intention. (*Emmons vs. Dinelli*, 235 Ind. 249, 133 NE 2d 56.) And as to the element of time, far from being immaterial, it is recognized that: "A strong basis for a finding of the parents' abandonment of his or her child is found in the case where the parent has left the child permanently or indefinitely in the care of others, given it to another, or surrendered it entirely." (2 Am. Jur. 2d, 888; *Italics supplied*.)

It cannot seriously be disputed, therefore, that the adoption court did find that the fact of abandonment by the parents was attendant. It was ruled in *Re Asterbloom's Adoption*, 63 Nev. 190, 165 P 2d 157 that: "A parent who withholds his presence, his love, his care, and the opportunity to display filial affection, and neglects, to lend support and maintenance, relinquishes all parental claim and abandons the child." [3] Such elements of abandonment are what the findings of the adoption court, abovementioned, amount to.

2. Pursuing the argument, movants contend that, at any rate, according to the Court of Appeals, said finding of abandonment had totally no support in the evidence. For the Court of Appeals to arrive at such a conclusion, however, it had to pass under review the entire proceedings in the adoption court. And as ruled by us in the decision, it cannot do so in a collateral suit, but only in a direct action for that purpose. It must not be lost sight of that what was before the Court of Appeals was not an appeal from the decision of the adoption court, or a direct suit assailing the adoption, but an appeal from an order in the settlement proceedings where the adoption, was sought to be collaterally attacked. Accordingly, said Court was not in a position to determine that the findings of the adoption court had totally no support in the evidence. For even assuming that the findings of abandonment is jurisdictional, *Freeman on Judgments*, to repeat, states the settled rule that a finding that the requisite jurisdictional facts exist, whether erroneous or not, cannot be questioned in a collateral proceedings, for a presumption arises in such cases, where the validity of the judgment is thus attacked, that the necessary jurisdictional facts were proven. (Vol. I, Sec. 350, pp. 719-720)

3. In regard to the cases of *Hook vs. Wright*, 169 NE 479 and *In Re McCormick's Estate*, 81 NW 559, relied upon once more, by movants, suffice it to observe: First, that in the *Hook* case it was expressly ruled that "Neither the

petition nor the decree made any reference or finding as to such desertion." [4] Secondly, the McCormick case, far from overruling *Parsons vs. Parsons*, [5] distinguished therefrom, in that in the *Parsons* case the fact of abandonment was judicially determined, whereas, in the said *McCormick* case, there was no fact of abandonment being found by the lower court. [6] It being our view in the present case before us that the adoption court made a finding of the fact of abandonment, said cases invoked by movants do not apply.

4. Apparently in reply to our reference to the trend in modern jurisprudence to sustain adoption in the face of collateral attack, movants stress that parental ties are too noble and sacred to be lightly severed in the absence of a written consent of the parents. It cannot be stressed too much that the parental consent required by the law refers to parents who have not abandoned their child (Sec. 3, Rule 100, Rules of Court). And from the findings of the adoption court, it is rather something remarkable that the natural parents of the children herein involved paid no heed to the sanctity and nobility of the selfsame parental ties for almost twenty years. It would seem, from all that appears in this collateral attack, that only when a fortune was bequeathed and about to befall upon their children, did said parents come to the fore, not alas to assert parental rights in order to enhance the welfare of said children, but to defeat their claim to the estate as adopted children, so as to succeed to said estate themselves, as collateral heirs. Such attitude strikes us as too selfish for parents to take, so much so that it would not be surprising if said parents were impelled thereto by other would-be successors. At any rate, for such purposes, the sacredness of parental ties cannot be invoked. In such cases, the rule that favors sustaining the validity of adoptions under collateral attack holds true with full vigor.

5. It is also raised that if Juliana Reyes was not validly married to Simplicio Santos, a point we did not decide, their joint petition for adoption would be defective, since only Simplicio Santos signed the same. As we said, the petition would then be deemed that of Juliana Reyes alone; as to the signature, Simplicio Santos may likewise be deemed to have signed in behalf of Juliana Reyes, as her representative. Personal signature by the petitioner of the petition to adopt is not among the requisites of the law. At any rate, any defect on this has obviously been cured by Juliana Reyes' subsequent prosecution of the adoption case.

6. Respondent-movants would cite *Ragudo vs. Pasno*, 114 Phil. 865, where this Court stated:

"But this is not an adoption case. This is a civil action to annul an order of a justice of the peace court, allegedly obtained thru fraud. It is based on sec. 43 of Act 19fi. Of such action, justice of the peace courts can not take cognizance. And it falls within the general jurisdiction of courts of first instance.

"It is argued for the appellees that under Art. 348 of the new Civil Code, fraud is not one of the grounds for revocation of an adoption. The appellants reply, quite correctly, that those grounds refer only to an adoption validly decreed—not to an adoption void from the beginning because tainted with fraud. Anyway, this is an argument that should be submitted when the case is considered on the merits."

Said case, however, involved a direct action to annul an adoption decree on the ground of fraud. Furthermore, the ruling therein is simply that such direct action falls within the jurisdiction of the Court of First Instance, not the municipal court. The second paragraph above-quoted is, therefore, not *ratio decidendi*, as shown by the last sentence therein: "Anyway, this is an argument that should be submitted when the case is considered on the merits."

7. Anent the motion for modification of the dispositive portion of our decision, the same is due to the fear that the same may be interpreted as foreclosing respondents' avenue—if any is open at this stage—to a direct action to annul

the adoption decree. Suffice it therefore to clarify the same. Said dispositive portion ought to be read together with relevant discussions in the body of the decision, especially the last sentence immediately preceding it: "The same holds true as long as the adoption must be —as in the instant case—considered valid." Should respondents, therefore, succeed by a direct attack in invalidating the adoption, the dispositive portion of this Court's decision herein shall not be deemed to hinder their rights thereunder. Furthermore, said dispositive portion described the court a quo's order of April 6, 1959 as, sustaining the adoption, in the sense of holding it valid in the face of a collateral attack, nothing more. As to whether a direct attack will prosper or not, we say nothing, and can say nothing, in this case. Thus clarified, we see no further need to modify the dispositive portion of our decision.

Bengzon, C. J., Bautista Angelo, Dizon, Regala, Makalintal, Zaldivar and Sanchez, JJ., concur.

Motion denied.

[1] Am. Jur. 2d 886. Anent this definition, Atty. Cuadrajento Mendoza states that we inadvertently omitted the phrase "and to renounce and forsake the child entirely." Said phrase, however, follows after the superscript for footnote 9, and belongs to that for footnote 10; it is the definition of the majority of cases, found under footnote 9, that we referred to. See 2 Am. Jur. 2d 88(5-887. At any rate, they amount to the same things: (1) a settled purpose to forgo all parental duties and relinquish all parental claims to the child; and (2) a settled purpose to renounce and forsake the child entirely.

[2] Ibid.

[3] See 2 Am. Jur. 2d 887fi footnote 10.

[4] See p. 33 of supplemental motion quoting the same.

[5] 101 Wis. 76, 77 NW 147.

[6] Cf. p. 35 of supplemental motion.

RESOLUTION

June 7, 1966

Bengzon, J.P., J.:

Respondents filed a motion for leave to file second motion for reconsideration, attaching thereto the second motion for reconsideration. Acting thereon, we hereby admit the filing of the second motion for reconsideration. And discussing the four points raised therein, it will suffice to state:

(1) In *Ragudo vs. Pasno*, L-16642, April 18, 1962, the portion relied upon by movants is but obiter dictum; in fact, the ponente of said *Ragudo* case, now retired Chief Justice Cesar Bengzon, concurred in the resolution denying the motion for reconsideration, to the effect that said portion is not ratio decidendi. Said ponente's and this Court's view as to this is, to say the least, controlling.

(2) It was *Emmons vs. Dinelli*, 235 Ind. 249, 13 3NE 2d 56, not *Re Asterbloom's Adoption*, 63 Nev. 190, 165 P 2d 157, that this Court referred to in the resolution as authority that negligent and careless failure to perform the duties of parenthood is a significant element of abandonment regardless of actual intention. The fact that negligence in the *Asterbloom* case, *supra*, was intentional, does not alter the principle in the *Emmons* case that for purposes of abandonment neglect does not have to be intentional.

(3) In the Hook vs. Wright case, 160 N E479, the Supreme Court of California sustained a collateral attack because in its opinion there was no finding of abandonment in the adoption decree; in the present case, this Court rejects a collateral attack because, in its view, there is a finding of abandonment in the adoption decree in question: there lies the difference.

(4) As stated in the decision, authorities favor the rule that a judicial determination to the effect that the fact of abandonment obtains, once made, cannot be collaterally impeached, even assuming that such fact is essential to jurisdiction. Respondents' counsel should not say it is then impossible to assail such judicial determination, for such finding is subject, to direct attack. Said counsel should not insist on choosing the wrong remedy, or persist in seeking to collaterally intervene in the estate proceedings, at the expense of settled norms of procedure. From said procedural norms petitioners were and are not exempted. It is therefore without reason for movants now to allege that it is "morally unfair" for us to apply said norms to them.

Nonetheless, we take notice of counsel's earnest devotion to his clients' cause. For, indeed, in counsel's own words, the case involves "substantial value of property and legal issues of transcendental importance." [1] In response, we immediately properly considered the four points submitted. And overlooking here and there what movants consider "language. . . somewhat frank. . . [tho] no offense is meant or nothing personal is intended," which to us partakes more of pardonable emotional outbursts than arguments, we find the second motion for reconsideration without merit, and see no further need to set the same for oral argument, as respondents have also moved.

Concepcion. Actg., C.J., Reyes, J.B.L., Barrera, Dizon, Regala, Makalintal, Zaldivar and Sanchez, JJ., concur.

Motion for oral argument and second motion for reconsideration denied.

[1] Telegram of Attorneys David and Mendoza dated May 15, 1966.

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