

**SPOUSES ERNESTO S. NIETO AND MATILDE NILO NIETO,
PETITIONERS, VS. HON. ROMEO D. MAGAT JUDGE-DESIGNATE OF
THE COURT OF FIRST INSTANCE OF PANGASINAN, THIRD JUDICIAL
DISTRICT, BRAN...**

G.R. No. 62465. May 24, 1985

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

This is a petition to review the decision of the defunct Court of First Instance of Pangasinan in Special Proceedings No. A-540 for adoption of a minor child.

The spouses Ernesto S. Nieto and Matilde Nilo Nieto filed a petition to adopt Roy Nieto Sumintac, their nephew. The spouses are childless and they reared Roy from his birth in 1971 until 1975 and they continue to support him. Roy had to be left in the Philippines when the spouses went to Guam where the husband is employed.

The Ministry of Social Services and Development favorably recommended the adoption to the court. It said that the petitioners are in a better position to provide for the minor child considering that his natural parents are impoverished. Despite the favorable recommendation, the court denied the petition. It said:

"Under the facts and evidence adduced, the petition should be DENIED. Firstly, the adopting parents are non-residents of the Philippines. The report of the Ministry of Social Services and Development, through its Social Worker, is explicit in this regard. Secondly, the trial custody as required by PD 603 cannot be effected as the petitioners are non-residents. Presumably, they are already aliens. In this situation, technicalities may later be encountered should the petition be granted." (Rollo, p. 10.)

In the resolution of February 21, 1983, the respondent judge as well as the Minister of Social Services and Development were required to comment on the petition. Because of bureaucracy the latter's comment was filed only on April 23, 1985. It prays that the judgment of the trial court be reversed and another rendered granting the petition for adoption of the minor Roy Nieto Sumintac. We agree.

That the adopting parents are non-residents of the Philippines (albeit presumably temporarily only) is an uncontested fact. That "they are already aliens" is an unjustified conclusion; it has no basis.

Does the fact that the petitioners reside temporarily in Guam disqualify them from adopting the minor child? A reading of Articles 27 and 28 of P.D. No. 603 gives a negative answer. They provide as follows:

"Art. 27. Who May Adopt. - Any person of age and in full possession in his civil rights may adopt: Provided, That he is in a position to support and care for his legitimate, legitimated, acknowledged natural children, or natural children by legal fiction, or other illegitimate children, in keeping with the means, both material and otherwise, of the family.

"In all cases of adoption, the adopter must be at least fifteen years older than the person to be adopted.

"Art. 28. Who May Not Adopt. - The following persons may not adopt:

- (1) A married person without the written consent of the spouse;
- (2) The guardian with respect to the ward prior to final approval of his accounts;
- (3) Any person who has been convicted of a crime involving moral turpitude;
- (4) An alien who is disqualified to adopt according to the laws of his own country or one with whose government the Republic of the Philippines has broken diplomatic relations." (Rollo, pp. 46-47.)

The trial court also said that adoption had to be denied because "the trial custody as required by PD 603 cannot be effected as the petitioners are non-residents." But Art. 35 of P.D. No. 603 specifically authorizes the court, either upon its own or on petitioner's motion, to dispense with the trial custody if it finds that it is to the best interest of the child. The Minister of Social Services and Development suggests that the trial custody is unnecessary because:

"We submit that the six months trial custody is only observed to insure the emotional adjustment of the child to his adoptive family, which is now at this point unnecessary, considering that both parties are ready for their legal union. It was indicated that the minor is comfortable with the adopters. Moreover, the petitioners can obviously discipline the child without being doubtful if the child can accept them as his own true parents. The adoption of minor-nephew would even strengthen the family solidarity of petitioners and the child with all the rights and duties appertaining thereto." (Rollo, pp. 49-50.)

WHEREFORE, the petition is granted; the decision of the court a quo is reversed; the petition for adoption is granted. No costs.

SO ORDERED.

Makasiar, (Chairman), Aquino, Concepcion, Jr., Escolin, and Cuevas, JJ., concur.

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