

**MINISTER MAMITA PARDO DE TAVERA OF THE MINISTRY OF
SOCIAL SERVICES AND DEVELOPMENT (MSSD) AND LOURDES
BALANON, OFFICER-IN-CHARGE, SCWU, MSSD, PETITIONERS, VS.
HON. BONIFACIO A. ...**

G.R. No. 76290. November 23, 1988

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

The Resolution of respondent Regional Trial Court, Branch XLVIII, Manila, of 1 October 1986 ordering the Chief of the Special Child and Welfare Unit of the Ministry of Social Services and Development (MSSD) to issue a travel clearance in favor of the adopted minor, Anthony Gandhi Gordon, within five (5) days from notice, under pain of contempt, is directly challenged in this Certiorari Petition for having been issued with grave abuse of discretion tantamount to lack of jurisdiction. At the same time the Petition seeks to annul the Decision dated 5 August 1986 of the same Court declaring the minor, Anthony Gandhi O. Custodio, the truly and lawfully adopted child of George Baxter Gordon and Gail Judith Milbourn Gordon (the Gordons, for brevity).

On 6 November 1986, we issued a Temporary Restraining Order enjoining Respondent Judge from enforcing the assailed Decision and Resolution.

Because of the official request of the MSSD addressed to this Court to require all Regional Trial Court Judges handling adoption cases to adhere strictly to the provision of the Child and Youth Welfare Code (P.D. No. 603), the Petition was given due course.

The antecedental facts disclose that, on 19 June 1986, in a verified Petition before the Regional Trial Court, Branch XLVIII, Manila, the Gordons sought to adopt the minor, Anthony Gandhi O. Custodio, a natural son of Adoracion Custodio. The Petition was set for hearing on 31 July 1986, with notice published in a newspaper of general circulation in the City of Manila for three (3) consecutive weeks.

On the date of hearing, nobody appeared to oppose the Petition. The Office of the Solicitor General, which was notified of the Petition and the hearing, failed to send any representative for the State. Thus, the Trial Court appointed the Branch Clerk of Court as Commissioner to receive the additional evidence, the deposition of some witnesses having been taken previously.

The principal evidence disclosed that the Gordons, as British citizens, are allowed by their home country to adopt foreign babies specifically from the Republic of the Philippines; that the husband is employed at the Dubai Hilton International Hotel as Building Superintendent; that they are financially secure and can amply provide for the education and support of the child; that Anthony's mother, Adoracion Custodio, had given her consent to the adoption realizing that her child would face a brighter future; that the Case Study Report submitted by the Social Worker of the Trial Court gave a favorable recommendation after observing that there existed a parent-child relationship between the Gordons and Anthony and that although the natural mother was having second thoughts

and experiencing lonesome feelings, her aspirations for the future betterment of her one-year-two-month old child prevailed so she agreed to the adoption.

After assessment of the evidence the Trial Court concluded, in its Decision of 5 August 1986, that the Gordons possessed all the qualifications and none of the disqualifications for adoption and declared Anthony the truly and lawfully adopted child of the Gordons, the Decree of Adoption to take effect from the filing of the petition on 19 June 1986.

On 11 August 1986, the Gordons wrote MSSD for a travel clearance for Anthony. The next day, 12 August, they also filed an Urgent Ex-parte Motion before the Trial Court stating that the Chief of the Passport Division of the then Ministry of Foreign Affairs refused to issue a passport to Anthony without a Case Study of the MSSD and praying that it be required to issue such passport.

Subpoenaed, the MSSD opposed the grant of a travel clearance on the principal grounds that the Report of the Court Social Worker and that of the Pastor of the International Christian Church of Dubai cannot take the place of a report of the MSSD or a duly licensed child placement agency; that the required six-month trial custody had not been met nor the reasons therefor given as required by Article 35 of the Child and Youth Welfare Code (P.D. No. 603); that the Gordons had given P10,000.00 to the natural mother, which is reflective of the undesirable attitude of the Gordons to shop for children as if they were shopping for commodities; that under Muslim law, which is the law in Dubai, Anthony cannot inherit from the adopting parents; that the Gordons had filed another petition for adoption of a baby girl before the Regional Trial Court, Quezon City, Branch 94, on 24 June 1986 but because she died a month later they tried to pass off another child to whom they gave the same name and represented that she was the very same girl they were adopting; and that there being no Memorandum of Agreement between Dubai and the Philippines there is no guarantee that the adopted child will not be sold, exchanged, neglected or abused.

Over the MSSD Opposition, the Trial Court, in its Resolution of 1 October 1986 ordered the MSSD to issue the travel clearance under pain of contempt and the Ministry of Foreign Affairs to issue the corresponding passport. It reasoned out that the Court Social Worker Report could take the place of a report from a duly licensed placement agency or of the MSSD; that the Court had impliedly dispensed with the six-month trial custody considering that the Gordons were foreigners whose livelihood was earned abroad; that the Decision had become final and executory and to entertain the MSSD objections at that point would put the MSSD above the Courts and its refusal to issue a travel clearance a defiance of a lawful Order of the Court.

In so resolving, the Trial Court relied on: (1) the Resolution of this Court in Administrative Matter No. 85-2-7136-RTC denying the request of the MSSD for a Supreme Court Circular to all Regional Trial Court Judges to the effect that, with the abolition of the Juvenile and Domestic Relations Courts, only the MSSD can make the required case study and submit its report and recommendation to the Courts. That denial was predicated on the following finding:

"x x x The law expressly provides that in a petition for adoption, a case study of a child to be adopted, his natural parents and the prospective adopting parents may be conducted by the Department of Social Welfare x x x or the Social Work and Counselling Division, in case of Juvenile and Domestic Relations Court, the functions of which are now exercised by the Regional Trial Courts Staff Assistant V (Social Worker), Regional Trial Court." (Italics supplied)

and 2) this Court's ruling in *Bobanovic vs. Hon. Montes* (G.R. No. L-71370, July 7, 1986, 142 SCRA 485), reading in part:

"By refusing to issue the travel clearance, respondent Minister would in effect frustrate said judgment of

adoption for the adopting parents who reside in a foreign country would consequently remain separated from their adopted child. The respondent Minister would in effect take away from the petitioners what already belongs to them as a vested legal right. The unfairness of such a situation created by the action of the public respondent is patently a wanton abuse of her discretion and a neglect of her plain duty to assist in the reasonable implementation of the final order of a proper court.

"In refusing to grant the travel clearance certificate, respondent MSSD discounts and negates the effects of a valid and final judgment of the Court regarding which no appeal had even been taken from (Bobanovic vs. Hon. Montes G.R. L-71370, July 7, 1986)."

It is true that in resolving a Motion for Reconsideration in that case on 31 January 1987, this Court deferred the implementation of its judgment directing the issuance of the requisite travel clearance certificate because of a Memorandum of Agreement between Australia and the Philippines belatedly brought to its attention which requires that a prospective adopter of a Filipino child should first undergo a Family Study to be conducted by the adopter's home state. In the case at bar, however, attention has not been called to any such agreement between Great Britain and the Philippines.

On the strength of the foregoing Circular and Decision, the challenged Decision and Resolution of respondent Court have to be upheld. Unequivocally, prior to Executive Order No. 91, issued on 17 December 1986, the Social Workers in Regional Trial Courts had the authority to conduct a case study of a child to be adopted. While Juvenile and Domestic Relations Courts have been abolished by B.P. Blg. 129, their functions have been merged with Regional Trial Courts, which were then provided with Social Workers to assist the Court in handling juvenile and domestic relations cases.

It may be that respondent Trial Court had not complied strictly with the provisions of P.D. No. 603 on adoption. As it had reasoned out, however, it was satisfied with the Case Study Report submitted by the Court Social Worker. Prior to Executive Order No. 91, amending the Child and Youth Welfare Code, the MSSD did not have the exclusive authority to make a case study in adoption cases. The Court evaluated the Report of its Social Worker and found that it was based on "very honest insight and opinion based on personal interviews and home study painstakingly made x x x. The objections which the MSSD have (sic) against the petitioners Gordon are all reflected in x x x the case study report and such have been passed upon by the Court in its decision granting the adoption" (p. 30, Rollo). The MSSD did not allege that the Social Worker Report was faulty or incorrect. It thus appears that the objective of trial custody had been substantially achieved, which is, "to assess the adjustment and emotional readiness of the adopting parents for the legal union" (Article 35, P.D. No. 603). And as far as the delegation of the reception of evidence to a Commissioner is concerned, that is permissible in the absence of any opposition.

The MSSD objection that the Gordons were making of the adoption case a commercial venture does not necessarily follow from the fact that they had given the natural mother the sum of P10,000.00. As the latter had explained, the amount was handed to her as a gesture of assistance. By receiving the same, the latter had not thereby made a "hurried decision caused by strain or anxiety to give up the child," which is sought to be avoided by Article 32, P.D. No. 603. As to the "changeling" referred to by the MSSD, it appears that the Gordons also wanted to adopt a baby girl in proceedings before the Regional Trial Court, Quezon City, but that was aborted as the first baby they selected was a "mongoloid" so they decided to surrender her to the International Alliance for Children where she eventually died. At any rate, as the Trial Court had stated, the questionable attitude of the Gordons, was belatedly raised and had yet to be proven and should not be made to prejudice Anthony. Moreover, the Gordons are British citizens and Muslim law, which is the law in Dubai, has no applicability to them. In the last analysis, it is not bureaucratic technicalities but the best interests of the child that should be the principal

criterion in adoption cases.

More significantly, as the Trial Court had opined, its judgment had become final and executory and, therefore, commands obeisance. The MSSD could have appealed through the Solicitor General when it learned of the Decision, but it did not. Its Opposition to the issuance of a travel clearance cannot be equated with a motion for reconsideration the request for a clearance being directed towards the implementation of the Trial Court judgment. Its present Petition for Certiorari cannot be a substitute for a lost appeal. And even assuming that the Trial Court judgment was erroneous, the same would not be correctible by Certiorari. Much less can such an extraordinary Writ be availed of for the annulment of a final judgment, exclusive appellate jurisdiction over which appertains to the Court of Appeals (Section 9[3] B.P. Blg. 129).

Since the filing of this case, this Court had issued Circular No. 12 to all Judges of the Regional Trial Courts hearing adoption cases, dated 2 October 1986, directing them:

"(1) to NOTIFY the Ministry of Social Services and Development, thru its local agency, of the filing of adoption cases or the pendency thereof with respect to those cases already filed;

"(2) to strictly COMPLY with the requirement in Art. 33 of the aforesaid decree that -

‘No petition for adoption shall be granted unless the Department of Social Welfare (now the Ministry of Social Services and Development), or the Social Work and Counselling Division, in the case of Juvenile and Domestic Relations Courts (now defunct), has made a case study of the child to be adopted, his natural parents as well as the prospective adopting parents, and has submitted its report and recommendations on the matter to the court hearing such petition. The Department of Social Welfare (now the Ministry of Social Services and Development) shall intervene on behalf of the child if it finds, after such case study, that the petition should be denied.’

"The Staff Assistant V (Social Worker) of the Regional Trial Courts, if any, shall coordinate with the Ministry of Social Services and Development representatives in the preparation and submittal of such case study.

"(3) to personally HEAR all adoption cases and desist from the practice of delegating the reception of evidence of the petitioner to the Clerk of Court."

With the foregoing directive, a happy solution has been arrived at. The understandable concern of the MSSD for Filipino children up for adoption by foreigners is recognized and appreciated; the prerogative of the Courts to render judgments based upon their assessment of the evidence inclusive of Case Study Reports that may be submitted is fully upheld; the guidelines for a modus vivendi in adoption cases between the executive and judicial departments of government, even with the advent of Executive Order No. 91 dated 17 December 1986, have been adequately laid down - all in proper fealty to the Constitutional mandate that the protection of minors is a paramount duty of the State (Section 3[2], Article XV, 1987 Constitution).

WHEREFORE, the assailed Decision of 5 August 1986 and Resolution dated 1 October 1986, both of respondent Regional Trial Court, Branch XLVIII, Manila, are hereby AFFIRMED. The Temporary Restraining Order heretofore issued is hereby lifted. No costs.

SO ORDERED.

Paras, Padilla, Sarmiento, and Regalado, JJ., concur.

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