

**MACARIO TAMARGO, CELSO TAMARGO AND AURELIA TAMARGO,
PETITIONERS, VS. THE HON. COURT OF APPEALS; THE HON.
ARISTON L. RUBIO, RTC JUDGE, BRANCH 20, VIGAN, ILOCOS SUR;
VICTOR BUNDOC...**

G.R. No. 85044. June 03, 1992

Ponente: FELICIANO, J.

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FELICIANO, J.:

On 20 October 1982, Adelberto Bundoc, then a minor of 10 years of age, shot Jennifer Tamargo with an air rifle causing injuries which resulted in her death. Accordingly, a civil complaint for damages was filed with the Regional Trial Court, Branch 20, Vigan, Ilocos Sur, docketed as Civil Case No. 3457-V, by petitioner Macario Tamargo, Jennifer's adopting parent, and petitioner spouses Celso and Aurelia Tamargo, Jennifer's natural parents, against respondent spouses Victor and Clara Bundoc, Adelberto's natural parents with whom he was living at the time of the tragic incident. In addition to this case for damages, a criminal information for Homicide through Reckless Imprudence was filed [Criminal Case No. 1722-V] against Adelberto Bundoc. Adelberto, however, was acquitted and exempted from criminal liability on the ground that he had acted without discernment.

Prior to the incident, or on 10 December 1981, the spouses Sabas and Felisa Rapisura had filed a petition to adopt the minor Adelberto Bundoc in Special Proceedings No. 0373-T before the then Court of First Instance of Ilocos Sur. This petition for adoption was granted on 18 November 1982, that is, after Adelberto had shot and killed Jennifer.

In their Answer, respondent spouses Bundoc, Adelberto's natural parents, reciting the result of the foregoing petition for adoption, claimed that not they, but rather the adopting parents, namely the spouses Sabas and Felisa Rapisura, were indispensable parties to the action since parental authority had shifted to the adopting parents from the moment the successful petition for adoption was filed.

Petitioners in their Reply contended that since Adelberto Bundoc was then actually living with his natural parents, parental authority had not ceased nor been relinquished by the mere filing and granting of a petition for adoption.

The trial court on 3 December 1987 dismissed petitioners' complaint, ruling that respondent natural parents of Adelberto indeed were not indispensable parties to the action.

Petitioners received a copy of the trial court's Decision on 7 December 1987. Within the 15-day reglementary period, or on 14 December 1987, petitioners filed a motion for reconsideration followed by a supplemental motion for reconsideration on 15 January 1988. It appearing, however, that the motions failed to comply with Sections 4 and 5 of Rule 15 of the Revised Rules of Court -- that notice of the motion shall be given to all parties concerned at least three (3) days before the hearing of said motion; and that said notice shall state the time and place of hearing -- both motions were denied by the trial court in an Order dated 18 April 1988. On 28 April 1988,

petitioners filed a notice of appeal. In its Order dated 6 June 1988, the trial court dismissed the notice of appeal, this time ruling that the notice had been filed beyond the 15-day reglementary period ending 22 December 1987.

Petitioners went to the Court of Appeals on a petition for mandamus and certiorari questioning the trial court's Decision dated 3 December 1987 and the Orders dated 18 April 1988 and 6 June 1988. The Court of Appeals dismissed the petition, ruling that petitioners had lost their right to appeal.

In the present Petition for Review, petitioners once again contend that respondent spouses Bundoc are the indispensable parties to the action for damages caused by the acts of their minor child, Adelberto Bundoc. Resolution of this Petition hinges on the following issues: (1) whether or not petitioners, notwithstanding loss of their right to appeal, may still file the instant Petition; conversely, whether the Court may still take cognizance of the case even though petitioners' appeal had been filed out of time; and (2) whether or not the effects of adoption, insofar as parental authority is concerned, may be given retroactive effect so as to make the adopting parents the indispensable parties in a damage case filed against their adopted child, for acts committed by the latter when actual custody was yet lodged with the biological parents.

1. It will be recalled that petitioners' motion (and supplemental motion) for reconsideration filed before the trial court, not having complied with the requirements of Section 13, Rule 41, and Section 4, Rule 15, of the Revised Rules of Court, were considered pro forma and hence did not interrupt and suspend the reglementary period to appeal: the trial court held that the motions, not having contained a notice of time and place of hearing, had become useless pieces of paper which did not interrupt the reglementary period.[1] As in fact repeatedly held by this Court, what is mandatory is the service of the motion on the opposing counsel indicating the time and place of hearing.[2]

In view, however, of the nature of the issue raised in the instant Petition, and in order that substantial justice may be served, the Court, invoking its right to suspend the application of technical rules to prevent manifest injustice, elects to treat the notice of appeal as having been seasonably filed before the trial court, and the motion (and supplemental motion) for reconsideration filed by petitioner in the trial court as having interrupted the reglementary period for appeal. As the Court held in *Gregorio v. Court of Appeals*: [3]

“Dismissal of appeal purely on technical grounds is frowned upon where the policy of the courts is to encourage hearings of appeal on their merits. The rules of procedure ought not be applied in a very rigid technical sense, rules of procedure are used only to help secure not override, substantial justice. If a technical and rigid enforcement of the rules is made, their aim would be defeated.”[4]

2. It is not disputed that Adelberto Bundoc's voluntary act of shooting Jennifer Tamargo with an air rifle gave rise to a cause of action on quasi-delict against him. As Article 2176 of the Civil Code provides:

“Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence, if there is no pre-existing contractual relation between the parties, is called a quasi-delict x x x.”

Upon the other hand, the law imposes civil liability upon the father and, in case of his death or incapacity, the mother, for any damages that may be caused by a minor child who lives with them. Article 2180 of the Civil Code reads:

“The obligation imposed by article 2176 is demandable not only for one's own acts or omissions, but also for those of persons for whom one is responsible.

The father and, in case of his death or incapacity, the mother, are responsible for the damages caused by the minor children who live in their company.

x x x x x x x x

The responsibility treated of in this Article shall cease when the person herein mentioned prove that they observed all the diligence of a good father of a family to prevent damage.” (Underscoring supplied)

This principle of parental liability is a species of what is frequently designated as vicarious liability, or the doctrine of “imputed negligence” under Anglo-American tort law, where a person is not only liable for torts committed by himself, but also for torts committed by others with whom he has a certain relationship and for whom he is responsible. Thus, parental liability is made a natural or logical consequence of the duties and responsibilities of parents - their parental authority - which includes the instructing, control-ling and disciplining of the child.[5] The basis for the doctrine of vicarious liability was explained by the Court in *Cangco v. Manila Railroad Co.*[6] in the following terms:

“With respect to extra-contractual obligation arising from negligence, whether of act or omission, it is competent for the legislature to elect -- and our Legislature has so elected -- to limit such liability to cases in which the person upon whom such an obligation is imposed is morally culpable or, on the contrary, for reasons of public policy, to extend that liability, without regard to the lack of moral culpability, so as to include responsibility for the negligence of those persons whose acts or omissions are imputable, by a legal fiction, to others who are in a position to exercise an absolute or limited control over them. The legislature which adopted our Civil Code has elected to limit extra-contractual liability -- with certain well-defined exceptions -- to cases in which moral culpability can be directly imputed to the persons to be charged. This moral responsibility may consist in having failed to exercise due care in one's own acts, or in having failed to exercise due care in the selection and control of one's agents or servants, or in the control of persons who, by reasons of their status, occupy a position of dependency with respect to the person made liable for their conduct.”[7] (Underscoring supplied)

The civil liability imposed upon parents for the torts of their minor children living with them, may be seen to be based upon the parental authority vested by the Civil Code upon such parents. The civil law assumes that when an unemancipated child living with its parents commits a tortious act, the parents were negligent in the performance of their legal and natural duty closely to supervise the child who is in their custody and control. Parental liability is, in other words, anchored upon parental authority coupled with presumed parental dereliction in the discharge of the duties accompanying such authority. The parental dereliction is, of course, only presumed and the presumption can be overturned under Article 2180 of the Civil Code by proof that the parents had exercised all the diligence of a good father of a family to prevent the damage.

In the instant case, the shooting of Jennifer by Adelberto with an air rifle occurred when parental authority was still lodged in respondent Bundoc spouses, the natural parents of the minor Adelberto. It would thus follow that the natural parents who had then actual custody of the minor Adelberto, are the indispensable parties to the suit for damages.

The natural parents of Adelberto, however, stoutly maintain that because a decree of adoption was issued by the adoption court in favor of the Rapisura spouses, parental authority was vested in the latter as adopting parents as of the time of the filing of the petition for adoption that is, before Adelberto had shot Jennifer with an air rifle. The Bundoc spouses contend that they were therefore free of any parental responsibility for Adelberto's allegedly tortious conduct.

Respondent Bundoc spouses rely on Article 36 of the Child and Youth Welfare Code[8] which reads as follows:

“Article 36. Decree of Adoption. -- If, after considering the report of the Department of Social Welfare or duly licensed child placement agency and the evidence submitted before it, the court is satisfied that the petitioner is qualified to maintain, care for, and educate the child, that the trial custody period has been completed, and that

the best interests of the child will be promoted by the adoption, a decree of adoption shall be entered, which shall be effective as of the date the original petition was filed. The decree shall state the name by which the child is thenceforth to be known.” (Underscoring supplied)

The Bundoc spouses further argue that the above Article 36 should be read in relation to Article 39 of the same Code:

“Art. 39. Effect of Adoption. --The adoption shall:

x x x x x x x x

(2) Dissolve the authority vested in the natural parents, except where the adopter is the spouse of the surviving natural parent;”

x x x x x x x x”

(Underscoring supplied)

and urge that their parental authority must be deemed to have been dissolved as of the time the petition for adoption was filed.

The Court is not persuaded. As earlier noted, under the Civil Code, the basis of parental liability for the torts of a minor child is the relationship existing between the parents and the minor child living with them and over whom, the law presumes, the parents exercise supervision and control. Article 58 of the Child and Youth Welfare Code, re-enacted this rule:

“Article 58 Torts -- Parents and guardians are responsible for the damage caused by the child under their parental authority in accordance with the Civil Code.” (Underscoring supplied)

Article 221 of the Family Code of the Philippines[9] has similarly insisted upon the requisite that the child, doer of the tortious act, shall have been in the actual custody of the parents sought to be held liable for the ensuing damage:

“Art. 221. Parents and other persons exercising parental authority shall be civilly liable for the injuries and damages caused by the acts or omissions of their unemancipated children living in their company and under their parental authority subject to the appropriate defenses provided by law.” (Underscoring supplied)

We do not believe that parental authority is properly regarded as having been retroactively transferred to and vested in the adopting parents, the Rapisura spouses, at the time the air rifle shooting happened. We do not consider that retroactive effect may be given to the decree of adoption so as to impose a liability upon the adopting parents accruing at a time when the adopting parents had no actual or physical custody over the adopted child. Retro-active effect may perhaps be given to the granting of the petition for adoption where such is essential to permit the accrual of some benefit or advantage in favor of the adopted child. In the instant case, however, to hold that parental authority had been retroactively lodged in the Rapisura spouses so as to burden them with liability for a tortious act that they could not have foreseen and which they could not have prevented (since they were at the time in the United States and had no physical custody over the child Adelberto) would be unfair and unconscionable. Such a result, moreover, would be inconsistent with the philosophical and policy basis underlying the doctrine of vicarious liability. Put a little differently, no presumption of parental dereliction on the part of the adopting parents, the Rapisura spouses, could have arisen since Adelberto was not in fact subject to their control at the time the tort was committed.

Article 35 of the Child and Youth Welfare Code fortifies the conclusion reached above. Article 35 provides as follows:

“Art. 35. Trial Custody. - No petition for adoption shall be finally granted unless and until the adopting parents are given by the courts a supervised trial custody period of at least six months to assess their adjustment and emotional readiness for the legal union. During the period of trial custody, parental authority shall be vested in the adopting parents.” (Underscoring supplied)

Under the above Article 35, parental authority is provision-ally vested in the adopting parents during the period of trial custody, i.e., before the issuance of a decree of adoption, precisely because the adopting parents are given actual custody of the child during such trial period. In the instant case, the trial custody period either had not yet begun or had already been completed at the time of the air rifle shooting; in any case, actual custody of Adelberto was then with his natural parents, not the adopting parents.

Accordingly, we conclude that respondent Bundoc spouses, Adelberto's natural parents, were indispensable parties to the suit for damages brought by petitioners, and that the dismissal by the trial court of petitioners' complaint, the indispensable parties being already before the court, constituted grave abuse of discretion amounting to lack or excess of jurisdiction.

WHEREFORE, premises considered, the Petition for Review is hereby GRANTED DUE COURSE and the Decision of the Court of Appeals dated 6 September 1988, in C.A.-G.R. No. SP-15016 is hereby REVERSED and SET ASIDE. Petitioners' complaint filed before the trial court is hereby REINSTATED and this case is REMANDED to that court for further proceedings consistent with this Decision. Costs against respondent Bundoc spouses. This Decision is immediately executory.

SO ORDERED.

Gutierrez, Jr., (Chairman), Bidin, Davide, Jr., and Romero, JJ., concur.

[1] *Pojas v. Hon. Gozo-Dalole*, 192 SCRA 575 (1990).

[2] *Fecundo v. Berjamen*, 180 SCRA 235 (1989); *Filipinas Fabricators and Sales, Inc. v. Magsino*, 157 SCRA 469 (1988).

[3] 72 SCRA 120 (1976).

[4] *Id.*, at 126.

[5] See in this connection, Art. 311, 316, 357, Civil Code; *Exconde v. Capuno*, 101 Phil. 843 (1957).

[6] 38 Phil. 768 (1918).

[7] *Id.*, at 775-776.

[8] Presidential Decree No. 603, dated 10 December 1974.

[9] Executive Order No. 209, dated 6 July 1987.

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