

REPUBLIC OF THE PHILIPPINES, PETITIONER, VS. HON. ZENAIDA ELEPANO, PRESIDING JUDGE OF RTC KALOOKAN, BRANCH 128 AND CORAZON SANTOS PUNSALAN, RESPONDENTS.

G.R. No. 92542. October 15, 1991

Ponente: PARAS, J.

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PARAS, J.:

On January 3, 1990, private respondent Corazon Santos Punsalan filed a verified petition for adoption before the Regional Trial Court of Caloocan City, Branch CXXVIII praying that after due notice and hearing, the minors Pinky Gonzales Punsalan, the daughter of her full blood brother, and Ellyn Mae Punsalan Urbano, the daughter of her full blood sister, be declared her daughters by adoption for all intents and purposes.

On January 5, 1990, however, private respondent filed a "MOTION FOR TAKING OF DEPOSITION" on the ground that she received an urgent call from the United Nations Office in Geneva, Switzerland requiring her to report for work on January 17, 1990, so much so that she will not be able to testify at the hearing of her petition yet to be scheduled by the respondent judge.

On January 8, 1990, the respondent judge granted the motion and ordered that notice of the taking of the deposition on January 12, 1990 at 10:00 a.m. be furnished to the OSG (the only known oppositor in the case). On the same date, the respondent judge issued an order setting the hearing for the petition for adoption on February 27, 1990 at 10:00 a.m. and directed the publication of the said order once a week for three (3) consecutive weeks in a newspaper of general circulation in Metro Manila. A copy of said order as well as a copy of the said petition for adoption was likewise sent to the OSG.

On January 12, 1990, private respondent's deposition was taken. Despite notice, no representative from the OSG appeared to oppose the taking of the deposition.

The OSG, however, subsequently filed an "Opposition to the Deposition", averring that Section 1 of Rule 24 of the Rules of Court allows deposition by leave of Court after jurisdiction has been obtained over any defendant or property subject of the action. Since the jurisdictional requirement of publication has not been complied with, the OSG goes on to argue, the lower court had not yet acquired jurisdiction over the defendant so much so that the taking of the deposition cannot yet be allowed at this stage.

On February 14, 1990, the respondent judge denied the said Opposition.

Meanwhile, on February 27, 1990, after the notice of the hearing for the petition for adoption had been duly published in The Manila Chronicle in accordance with law (Exhibits "P", "Q", "R", "S" and "T"), counsel for private respondent presented evidence consisting of testimonies of witnesses and documentary exhibits, showing: that private respondent is a resident of Caloocan City, but is presently residing at 36 Avenue del Tilleuis, 1203 Geneva, Switzerland where she is employed by the United Nations as Statistical Assistant with a monthly salary of 7,500 Swiss Francs (Exh. "K"); that she seeks to adopt as her children the minors Pinky Gonzales Punsalan and

Ellyn Mae Punsalan Urbano who are her nieces of the full blood; that she has been taking care of said minors for the past several years by way of giving them moral, material and spiritual support; that they have grown to love each other; that the parents by nature of the said minors as well as the minors themselves have given their consent to the adoption (Exhs. "G", "H", "I" and "J"); and that the Department of Social Welfare and Development social worker has favorably recommended the adoption.

Again, despite notice, the OSG failed to appear in the said hearing and in all the subsequent hearings for the petition for adoption.

On July 12, 1990, the respondent judge granted the petition for adoption (p. 99, Rollo).

The OSG filed a motion for reconsideration of the aforesaid decision but the respondent judge denied the same.

Hence, the instant petition for certiorari.

In brief, the argument of the OSG is that depositions should not be allowed in adoption proceedings until the publication requirement has been fully complied with. In support of its position, the OSG cites Rule 24 Section 1 of the Rules of Court, which provides — paul

"Section 1. Depositions pending action, when may be taken. — By leave of court after jurisdiction has been obtained over any defendant or over property which is the subject of the action, or without such leave after an answer has been served, the testimony of any person, whether a party or not, may be taken, at the instance of any party, by deposition upon oral examination or written interrogatories." (italics supplied)

The petition has no merit.

The rule cited by the OSG is inapplicable to the case at bar.

While it is true that in an action in personam, personal service of summons within the forum or voluntary appearance in the case is essential for the court to acquire jurisdiction over the person of the defendant, in an adoption case which involves the status of a person, there is no particular defendant to speak of since the action is one in rem. In such case, jurisdiction over the person of the defendant is a non-essential condition for the taking of a deposition for the jurisdiction of the court is based on its power over the res, to render judgment with respect to such "thing" (or status, as in this case) so as to bar indifferently all who might be minded to make an objection against the right so established. (*Banco Espanol Filipino vs. Palanca*, 37 Phil. 921; *Greg Alba vs. de la Cruz*, 17 Phil. 49).

Indeed, publication of the scheduled hearing for the petition for adoption is necessary for the validity of a decree of adoption but not for the purpose merely of taking a deposition. In taking a deposition, no substantial rights are affected since depositions may or may not be presented or may even be objected to when formally offered as evidence at the trial of the main case later on.

In the instant case, We find no abuse of discretion committed by the respondent judge in allowing the taking of private respondent's deposition. Due to urgent and compelling reasons beyond her control, private respondent could not be present to testify at the trial of the main case for adoption. The OSG, however, was notified of the scheduled taking of the deposition, as well as of all the hearings of the petition for adoption, but the OSG chose not to attend ALL the said hearings, without explanation. The OSG, therefore, has no reason to invoke lack of procedural due process.

Finally, it must not be forgotten that the philosophy behind adoption statutes is to promote the welfare of the child and every reasonable intendment should be sustained to promote that objective. (*Santos et al. vs. Aranzanso, et al.* 16 SCRA 353). In the instant case, the record shows that private respondent's adoption of the minors shall

redound to the best interests of the latter.

WHEREFORE, the petition is hereby DISMISSED for lack of merit.

SO ORDERED.

Padilla and Regalado, JJ., concur.

Melencio-Herrera, J., on leave.

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