

**REPUBLIC OF THE PHILIPPINES, PETITIONER, VS. HON.
CONCEPCION S. ALARCON VERGARA, IN HER CAPACITY AS
PRESIDING JUDGE OF THE REGIONAL TRIAL COURT, THIRD
JUDICIAL REGION, BRANCH 62...**

G.R. No. 95551. March 20, 1997

Ponente: ROMERO, J.

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ROMERO, J.:

On June 25, 1990, the spouses Samuel R. Dye, Jr. and Rosalina Due Dye filed a petition before the Regional Trial Court of Angeles City[1] to adopt Maricel R. Due and Alvin R. Due, ages 13 and 12 years old, respectively, younger siblings of Rosalina. Samuel R. Dye, Jr, a member of the United States Air Force, is an American citizen who resided at the Clark Air Base in Pampanga. His wife Rosalina is a former Filipino who became a naturalized American. They have two children. Both Maricel and Alvin Due, as well as their natural parents, gave their consent to the adoption.

After trial, the lower court rendered its decision on September 10, 1990 granting the petition and declaring Alvin and Maricel to be the children of the spouses Dye by adoption.[2] Respondent Regional Trial Court disregarded the sixteen-year age gap requirement of the law, the spouses being only fifteen years and three months and fifteen years and nine months older than Maricel Due, on the ground that a literal implementation of the law would defeat the very philosophy behind adoption statutes, namely, to promote the welfare of a child.[3] The court also found that the petitioning spouses are mentally and physically fit to adopt, possess good moral character, sufficient financial capability and love and affection for the intended adoptees.

The Republic filed this petition for review on a pure question of law, contending that the spouses Dye are not qualified under the law to adopt Maricel and Alvin Due.

The Court finds the petition meritorious and hereby grants it.

As a general rule, aliens cannot adopt Filipino citizens as this is proscribed under Article 184 of the Family Code which states:

"Art. 184. The following persons may not adopt:

xxx xxx xxx

(3) An alien, except:

(a) A former Filipino citizen who seeks to adopt a relative by consanguinity;

(b) One who seeks to adopt the legitimate child of his or her Filipino spouse; or

(c) One who is married to a Filipino citizen and seeks to adopt jointly with his or her spouse a relative by consanguinity of the latter.

Aliens not included in the foregoing exceptions may adopt Filipino children in accordance with the rules on inter-country adoption as may be provided by law."

Samuel Robert Dye, Jr. who is an American and, therefore, an alien is disqualified from adopting the minors Maricel and Alvin Due because he does not fall under any of the three aforementioned exceptions laid down by the law. He is not a former Filipino citizen who seeks to adopt a relative by consanguinity. Nor does he seek to adopt his wife's legitimate child. Although he seeks to adopt with his wife her relatives by consanguinity, he is not married to a Filipino citizen, for Rosalina was already a naturalized American at the time the petition was filed, thus excluding him from the coverage of the exception. The law here does not provide for an alien who is married to a former Filipino citizen seeking to adopt jointly with his or her spouse a relative by consanguinity, as an exception to the general rule that aliens may not adopt.

On her own, Rosalina Dye cannot adopt her brother and sister for the law mandates joint adoption by husband and wife, subject to exceptions. Article 29 of Presidential Decree No. 603 (Child and Youth Welfare Code) retained the Civil Code provision^[4] that husband and wife may jointly adopt. The Family Code amended this rule by scrapping the optional character of joint adoption and making it now mandatory. Article 185 of the Family Code provides:

"Art. 185. Husband and wife must adopt, except in the following cases:

- (1) When one spouse seeks to adopt his own illegitimate child;
- (2) When one spouse seeks to adopt the legitimate child of the other."

None of the above exceptions applies to Samuel and Rosalina Dye, for they did not petition to adopt the latter's child but her brother and sister.

The Court has previously recognized the ineligibility of a similarly situated alien husband with a former Filipino wife seeking to adopt the latter's nephews and niece in the case of *Republic v. Court of Appeals*.^[5] Although the wife in said case was qualified to adopt under Article 184, paragraph 3 (a), she being a former Filipino who seeks to adopt a relative by consanguinity, she could not jointly adopt with her husband under Article 185 because he was an alien ineligible to adopt here in the Philippines.

We are not unmindful of the main purpose of adoption statutes, which is the promotion of the welfare of children. Accordingly, the law should be construed liberally, in a manner that will sustain rather than defeat said purpose.^[6] The law must also be applied with compassion, understanding and less severity in view of the fact that it is intended to provide homes, love, care and education for less fortunate children.^[7] Regrettably, the Court is not in a position to affirm the trial court's decision favoring adoption in the case at bar, for the law is clear and it cannot be modified without violating the proscription against judicial legislation. Until such time however, that the law on the matter is amended, we cannot sustain the respondent-spouses' petition for adoption.

WHEREFORE, the instant petition is hereby GRANTED. The Decision of the Regional Trial Court of Angeles City in Special Proceeding No. 4203 (In the Matter of the Petition for Adoption of the minors Maricel R. Due and Alvin R. Due), dated September 10, 1990 is REVERSED AND SET ASIDE.
SO ORDERED.

Regalado, Puno, and Torres, JJ., concur.
Mendoza, J., concurs in the result.

[1] In the Matter of the Petition for Adoption of the Minors Maricel R. Due and Alvin R. Due, Spouses Robert

Dye, Jr. And Rosalina D. Dye, Petitioners, Special Proceeding No. 4203, Regional Trial Court of Angeles City, Branch 62.

[2] Decision of the Regional Trial Court penned by Judge Concepcion S. Alarcon Vergara, Rollo, pp. 21-24

[3] Ibid., p. 23. Article 183 of the Family Code provides in part that the adopter must be at least sixteen years older than the person to be adopted, unless the adopter is the parent by nature of the adopted, or is the spouse of the legitimate parent of the person to be adopted.

[4]Article 336.

[5]G.R. No. 100385, October 26, 1993, 227 SCRA 401.

[6] Santos v. Aranzaso, G.R. No. L-23828, February 28, 1966, 16 SCRA 344; Republic v. CA, G.R. No. 92326, January 24, 1992, 205 SCRA 356.

[7] Duncan v. CFI, G.R. No. L-30576, February 10, 1976, 69 SCRA 298.

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