

IN RE: PETITION FOR ADOPTION OF MICHELLE P. LIM, MONINA P. LIM, PETITIONER.

G.R. Nos. 168992-93. May 21, 2009

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

This is a petition for review on certiorari filed by Monina P. Lim (petitioner) seeking to set aside the Decision^[1] dated 15 September 2004 of the Regional Trial Court, General Santos City, Branch 22 (trial court), in SPL. PROC. Case Nos. 1258 and 1259, which dismissed without prejudice the consolidated petitions for adoption of Michelle P. Lim and Michael Jude P. Lim.

The Facts

The following facts are undisputed. Petitioner is an optometrist by profession. On 23 June 1974, she married Primo Lim (Lim). They were childless. Minor children, whose parents were unknown, were entrusted to them by a certain Lucia Ayuban (Ayuban). Being so eager to have a child of their own, petitioner and Lim registered the children to make it appear that they were the children's parents. The children^[2] were named Michelle P. Lim (Michelle) and Michael Jude P. Lim (Michael). Michelle was barely eleven days old when brought to the clinic of petitioner. She was born on 15 March 1977.^[3] Michael was 11 days old when Ayuban brought him to petitioner's clinic. His date of birth is 1 August 1983.^[4]

The spouses reared and cared for the children as if they were their own. They sent the children to exclusive schools. They used the surname "Lim" in all their school records and documents. Unfortunately, on 28 November 1998, Lim died. On 27 December 2000, petitioner married Angel Olario (Olario), an American citizen.

Thereafter, petitioner decided to adopt the children by availing of the amnesty^[5] given under Republic Act No. 8552^[6] (RA 8552) to those individuals who simulated the birth of a child. Thus, on 24 April 2002, petitioner filed separate petitions for the adoption of Michelle and Michael before the trial court docketed as SPL PROC. Case Nos. 1258 and 1259, respectively. At the time of the filing of the petitions for adoption, Michelle was 25 years old and already married, while Michael was 18 years and seven months old.

Michelle and her husband gave their consent to the adoption as evidenced by their Affidavits of Consent.^[7] Michael also gave his consent to his adoption as shown in his Affidavit of Consent.^[8] Petitioner's husband Olario likewise executed an Affidavit of Consent^[9] for the adoption of Michelle and Michael.

In the Certification issued by the Department of Social Welfare and Development (DSWD), Michelle was considered as an abandoned child and the whereabouts of her natural parents were unknown.^[10] The DSWD issued a similar Certification for Michael.^[11]

The Ruling of the Trial Court

On 15 September 2004, the trial court rendered judgment dismissing the petitions. The trial court ruled that since petitioner had remarried, petitioner should have filed the petition jointly with her new husband. The trial court ruled that joint adoption by the husband and the wife is mandatory citing Section 7(c), Article III of RA 8552 and Article 185 of the Family Code.

Petitioner filed a Motion for Reconsideration of the decision but the motion was denied in the Order dated 16 June 2005. In denying the motion, the trial court ruled that petitioner did not fall under any of the exceptions under Section 7(c), Article III of RA 8552. Petitioner's argument that mere consent of her husband would suffice was untenable because, under the law, there are additional requirements, such as residency and certification of his qualification, which the husband, who was not even made a party in this case, must comply.

As to the argument that the adoptees are already emancipated and joint adoption is merely for the joint exercise of parental authority, the trial court ruled that joint adoption is not only for the purpose of exercising parental authority because an emancipated child acquires certain rights from his parents and assumes certain obligations and responsibilities.

Hence, the present petition.

Issue

Petitioner appealed directly to this Court raising the sole issue of whether or not petitioner, who has remarried, can singly adopt.

The Court's Ruling

Petitioner contends that the rule on joint adoption must be relaxed because it is the duty of the court and the State to protect the paramount interest and welfare of the child to be adopted. Petitioner argues that the legal maxim "dura lex sed lex" is not applicable to adoption cases. She argues that joint parental authority is not necessary in this case since, at the time the petitions were filed, Michelle was 25 years old and already married, while Michael was already 18 years of age. Parental authority is not anymore necessary since they have been emancipated having attained the age of majority.

We deny the petition.

Joint Adoption by Husband and Wife

It is undisputed that, at the time the petitions for adoption were filed, petitioner had already remarried. She filed the petitions by herself, without being joined by her husband Olario. We have no other recourse but to affirm the trial court's decision denying the petitions for adoption. *Dura lex sed lex*. The law is explicit. Section 7, Article III of RA 8552 reads:

SEC. 7. Who May Adopt. - The following may adopt:

(a) Any Filipino citizen of legal age, in possession of full civil capacity and legal rights, of good moral character, has not been convicted of any crime involving moral turpitude, emotionally and psychologically capable of caring for children, at least sixteen (16) years older than the adoptee, and who is in a position to support and care for his/her children in keeping with the means of the family. The requirement of sixteen (16) year difference between the age of the adopter and adoptee may be waived when the adopter is the biological parent of the adoptee, or is the spouse of the adoptee's parent;

(b) Any alien possessing the same qualifications as above stated for Filipino nationals: Provided, That his/her country has diplomatic relations with the Republic of the Philippines, that he/she has been living in the

Philippines for at least three (3) continuous years prior to the filing of the application for adoption and maintains such residence until the adoption decree is entered, that he/she has been certified by his/her diplomatic or consular office or any appropriate government agency that he/she has the legal capacity to adopt in his/her country, and that his/her government allows the adoptee to enter his/her country as his/her adopted son/daughter: Provided, further, That the requirements on residency and certification of the alien's qualification to adopt in his/her country may be waived for the following:

- (i) a former Filipino citizen who seeks to adopt a relative within the fourth (4th) degree of consanguinity or affinity; or
- (ii) one who seeks to adopt the legitimate son/daughter of his/her Filipino spouse; or
- (iii) one who is married to a Filipino citizen and seeks to adopt jointly with his/her spouse a relative within the fourth (4th) degree of consanguinity or affinity of the Filipino spouses; or
- (c) The guardian with respect to the ward after the termination of the guardianship and clearance of his/her financial accountabilities.

Husband and wife shall jointly adopt, except in the following cases:

- (i) if one spouse seeks to adopt the legitimate son/daughter of the other; or
- (ii) if one spouse seeks to adopt his/her own illegitimate son/daughter: Provided, however, That the other spouse has signified his/her consent thereto; or
- (iii) if the spouses are legally separated from each other.

In case husband and wife jointly adopt, or one spouse adopts the illegitimate son/daughter of the other, joint parental authority shall be exercised by the spouses. (Emphasis supplied)

The use of the word "shall" in the above-quoted provision means that joint adoption by the husband and the wife is mandatory. This is in consonance with the concept of joint parental authority over the child which is the ideal situation. As the child to be adopted is elevated to the level of a legitimate child, it is but natural to require the spouses to adopt jointly. The rule also insures harmony between the spouses.[12]

The law is clear. There is no room for ambiguity. Petitioner, having remarried at the time the petitions for adoption were filed, must jointly adopt. Since the petitions for adoption were filed only by petitioner herself, without joining her husband, Olario, the trial court was correct in denying the petitions for adoption on this ground.

Neither does petitioner fall under any of the three exceptions enumerated in Section 7. First, the children to be adopted are not the legitimate children of petitioner or of her husband Olario. Second, the children are not the illegitimate children of petitioner. And third, petitioner and Olario are not legally separated from each other.

The fact that Olario gave his consent to the adoption as shown in his Affidavit of Consent does not suffice. There are certain requirements that Olario must comply being an American citizen. He must meet the qualifications set forth in Section 7 of RA 8552 such as: (1) he must prove that his country has diplomatic relations with the Republic of the Philippines; (2) he must have been living in the Philippines for at least three continuous years prior to the filing of the application for adoption; (3) he must maintain such residency until the adoption decree is entered; (4) he has legal capacity to adopt in his own country; and (5) the adoptee is allowed to enter the adopter's country as the latter's adopted child. None of these qualifications were shown and proved during the trial.

These requirements on residency and certification of the alien's qualification to adopt cannot likewise be waived pursuant to Section 7. The children or adoptees are not relatives within the fourth degree of consanguinity or

affinity of petitioner or of Olario. Neither are the adoptees the legitimate children of petitioner.

Effects of Adoption

Petitioner contends that joint parental authority is not anymore necessary since the children have been emancipated having reached the age of majority. This is untenable.

Parental authority includes caring for and rearing the children for civic consciousness and efficiency and the development of their moral, mental and physical character and well-being.[13] The father and the mother shall jointly exercise parental authority over the persons of their common children.[14] Even the remarriage of the surviving parent shall not affect the parental authority over the children, unless the court appoints another person to be the guardian of the person or property of the children.[15]

It is true that when the child reaches the age of emancipation -- that is, when he attains the age of majority or 18 years of age[16] -- emancipation terminates parental authority over the person and property of the child, who shall then be qualified and responsible for all acts of civil life.[17] However, parental authority is merely just one of the effects of legal adoption. Article V of RA 8552 enumerates the effects of adoption, thus:

ARTICLE V

EFFECTS OF ADOPTION

SEC. 16. Parental Authority. - Except in cases where the biological parent is the spouse of the adopter, all legal ties between the biological parent(s) and the adoptee shall be severed and the same shall then be vested on the adopter(s).

SEC. 17. Legitimacy. - The adoptee shall be considered the legitimate son/daughter of the adopter(s) for all intents and purposes and as such is entitled to all the rights and obligations provided by law to legitimate sons/daughters born to them without discrimination of any kind. To this end, the adoptee is entitled to love, guidance, and support in keeping with the means of the family.

SEC. 18. Succession. - In legal and intestate succession, the adopter(s) and the adoptee shall have reciprocal rights of succession without distinction from legitimate filiation. However, if the adoptee and his/her biological parent(s) had left a will, the law on testamentary succession shall govern.

Adoption has, thus, the following effects: (1) sever all legal ties between the biological parent(s) and the adoptee, except when the biological parent is the spouse of the adopter; (2) deem the adoptee as a legitimate child of the adopter; and (3) give adopter and adoptee reciprocal rights and obligations arising from the relationship of parent and child, including but not limited to: (i) the right of the adopter to choose the name the child is to be known; and (ii) the right of the adopter and adoptee to be legal and compulsory heirs of each other.[18] Therefore, even if emancipation terminates parental authority, the adoptee is still considered a legitimate child of the adopter with all the rights[19] of a legitimate child such as: (1) to bear the surname of the father and the mother; (2) to receive support from their parents; and (3) to be entitled to the legitime and other successional rights. Conversely, the adoptive parents shall, with respect to the adopted child, enjoy all the benefits to which biological parents are entitled[20] such as support[21] and successional rights.[22]

We are mindful of the fact that adoption statutes, being humane and salutary, hold the interests and welfare of the child to be of paramount consideration. They are designed to provide homes, parental care and education for unfortunate, needy or orphaned children and give them the protection of society and family, as well as to allow childless couples or persons to experience the joys of parenthood and give them legally a child in the person of the adopted for the manifestation of their natural parental instincts. Every reasonable intendment should be sustained

to promote and fulfill these noble and compassionate objectives of the law.[23] But, as we have ruled in *Republic v. Vergara*: [24]

We are not unmindful of the main purpose of adoption statutes, which is the promotion of the welfare of the children. Accordingly, the law should be construed liberally, in a manner that will sustain rather than defeat said purpose. 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. 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. (Emphasis supplied)

Petitioner, being married at the time the petitions for adoption were filed, should have jointly filed the petitions with her husband. We cannot make our own legislation to suit petitioner.

Petitioner, in her Memorandum, insists that subsequent events would show that joint adoption could no longer be possible because Olario has filed a case for dissolution of his marriage to petitioner in the Los Angeles Superior Court.

We disagree. The filing of a case for dissolution of the marriage between petitioner and Olario is of no moment. It is not equivalent to a decree of dissolution of marriage. Until and unless there is a judicial decree for the dissolution of the marriage between petitioner and Olario, the marriage still subsists. That being the case, joint adoption by the husband and the wife is required. We reiterate our ruling above that since, at the time the petitions for adoption were filed, petitioner was married to Olario, joint adoption is mandatory.

WHEREFORE, we DENY the petition. We AFFIRM the Decision dated 15 September 2004 of the Regional Trial Court, General Santos City, Branch 22 in SPL. PROC. Case Nos. 1258 and 1259. Costs against petitioner.

SO ORDERED.

Puno, C.J., (Chairperson), Corona, Leonardo-De Castro, and Bersamin, JJ., concur.

[1] Penned by Judge Antonio C. Lubao. Records of SPL. PROC. Case No. 1258, pp. 161-162 and SPL. PROC. Case No. 1259, pp. 163-164.

[2] Three children were actually entrusted to petitioner and Lim. The third, who was named Primo Jude P. Lim, was still a minor at the time the petition for adoption was filed. The case was docketed as SPL. PROC. No. 1260. Petitioner opted not to appeal the decision insofar as the minor Primo Jude P. Lim was concerned.

[3] Records (SPL. PROC. Case No. 1258), pp. 94-96.

[4] Records (SPL. PROC. Case No. 1259), pp. 69-71.

[5] Section 22 of RA 8552 provides:

SEC. 22. Rectification of Simulated Births.- A person who has, prior to the effectivity of this Act, simulated the birth of a child shall not be punished for such act: Provided, That the simulation of birth was made for the best interest of the child and that he/she has been consistently considered and treated by that person as his/her own son/daughter: Provided, further, That the application for correction of the birth registration and petition for adoption shall be filed within five (5) years from the effectivity of this Act and completed thereafter: Provided, finally, That such person complies with the procedure as specified in Article IV of this Act and other requirements

as determined by the Department.

[6] An Act Establishing the Rules and Policies on the Domestic Adoption of Filipino Children and For Other Purposes, otherwise known as the "Domestic Adoption Act of 1998." Approved on 25 February 1998.

[7] Records (SPL. PROC. Case No. 1258), pp. 147-148.

[8] Id. at 147.

[9] Id. at 149.

[10] Id. at 145.

[11] Records (SPL. PROC. Case No. 1259), p. 8.

[12] Republic v. Toledano, G.R. No. 94147, 8 June 1994, 233 SCRA 9.

[13] Article 209, Family Code.

[14] Article 210, Family Code.

[15] Article 212, Family Code.

[16] Republic Act No. 6809, An Act Lowering the Age of Majority from Twenty-One to Eighteen Years, Amending for the Purpose Executive Order Numbered Two Hundred Nine, and For Other Purposes.

[17] Article 236, Family Code, as amended by Republic Act No. 6809.

[18] Section 33, Article VI, Rules and Regulations to Implement the Domestic Adoption Act of 1998.

[19] Article 174, Family Code.

[20] Section 34, Article VI, Rules and Regulations to Implement the Domestic Adoption Act of 1998.

[21] Article 195, Family Code.

[22] Section 18, Article V, RA 8552.

[23] Bobanovic v. Montes, 226 Phil. 404 (1986).

[24] 336 Phil. 944, 948-949 (1997).

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