

## **SPECIAL SIXTEENTH DIVISION**

**[ CA-G.R. CV NO. 95045, May 23, 2014 ]**

**IN RE: PETITION FOR THE ADOPTION OF ANDREI CHRISTIAN VALDEZ BUSUEGO, SPOUSES FRANCISCA MANZANO SALAMANCA AND GEORGE WILLIAM MARSHALL, PETITIONERS-APPELLANTS, VS. REPUBLIC OF THE PHILIPPINES, OPPOSITOR-APPELLEE.**

### **D E C I S I O N**

**CORALES, J.:**

This is an appeal<sup>[2]</sup> from the November 27, 2009 Decision<sup>[3]</sup> of the Regional Trial Court (RTC), Branch 39, San Jose City, Nueva Ecija in Sp. Proc. No. 940 denying Spouses Francisca Manzano Salamanca (Francisca) and George William Marshall's (George but collectively referred as Spouses Marshall) petition to adopt Andrei Christian Valdez Busuego (Andrei).

#### **The Antecedents**

Francisca was still a Filipino when she married George, a Scot, on March 18, 1979. Since then, Francisca became a Scot citizen as well but in May 2007, she had taken her oath of allegiance as a Filipino citizen.<sup>[6]</sup>

The couple is childless and intends to adopt Andrei, the son of Francisca's first cousin<sup>5</sup> Rosario M. Valdez (Rosario) with her husband Ramon S. Busuego (Ramon but collectively referred herein as Spouses Busuego), who was born on September 17, 1982.<sup>6</sup> Spouses Busuego has six children and Andrei is their third child. They do not have any real property and Ramon is employed as an Administrative Officer III in CLSU Munoz, Nueva Ecija with a monthly income of P15,000.00. Spouses Busuego's second child had already been adopted and is now living in Las Vegas.<sup>[7]</sup>

On June 20, 2008, Spouses Marshall filed their petition for adoption and submitted the written consent of Andrei as well as those of his biological parents<sup>[8]</sup> They alleged that they have cared for and treated Andrei as their own child since he was 8 years old; they had provided for his education and other needs and mutual love, care, and respect exist between them.

At the time of the filing of the petition, Francisca is a retired nurse with a monthly pension of £420 or P26,460.00 while George is a disablement pensioner of the United Kingdom with a £675 or P42,525.00 monthly allowance. Spouses Marshall allegedly own a house and lot, a family home and an agricultural farm in San Jose City, Nueva Ecija with an annual income of approximately P30,000.00, and maintain a bank account in Scotland. According to George, their joint annual income amounts to P1,590,135.24<sup>[9]</sup> and they could save 50% thereof. The couple claimed that they live a simple and frugal life and with their combined income, they had saved more than enough to provide a bright future for Andrei.<sup>[10]</sup>

George also averred that he had known Andrei for 5 or 6 years already and among the children of Spouses Busuego, he prefers to adopt Andrei because he is industrious, helpful, willing to learn different things, and is there whenever George needs him. If the petition would be granted, he plans to bring Andrei to Scotland and enrol him in a university.<sup>[11]</sup> On the other hand, Francisca alleged that the adoption would be beneficial to Andrei because he would be her legal child and an heir to her estate.<sup>[12]</sup>

When Rosario testified, she confirmed that she is Francisca's first cousin, their mothers being full-blood sisters. According to her, Spouses Marshall had given Andrei financial assistance and moral advice since he was 8 years old and Francisca even financed his studies in Consumer Electronics and Auto Electricity. Rosario also affirmed the contents of her and her husband's affidavit of consent having been assured that Andrei would have a brighter future with Spouses Marshall. She is aware that upon the grant of the petition for adoption, she would lose control and authority over Andrei.<sup>[13]</sup>

Andrei likewise affirmed his affidavit of consent to his adoption. He stated that Francisca is his "auntie," being his mother's cousin and he had known Spouses Marshall for some 20 or 22 years. He calls Spouses Marshall "Mommy" and "Daddy" as he is already emotionally attached to them; in turn, they call him "son". Spouses Marshall also provide him with financial, emotional, and spiritual support, including funds for his education and they want to continue financing his schooling at "Edenberg University" in Scotland. Andrei believes that the adoption would be beneficial to him and he agrees to go to Scotland with his adoptive parents, use their surname Marshall, and continue his education there.<sup>[14]</sup>

The Child Study and Home Study Reports of the RTC's Social Worker, Fidelita Armas<sup>[15]</sup> favorably recommended the grant of adoption while the Psychological Report done by one Pacita P. Tudla, Ph.D.<sup>[16]</sup> stated that Spouses Marshall are both mentally and psychologically fit to be the adoptive parents of Andrei.

### **The Ruling of the RTC**

On November 27, 2009, the RTC rendered its assailed Decision<sup>[17]</sup> denying Spouses Marshall's petition for adoption for failure to possess the qualification under the Domestic Adoption Act of 1998 (Domestic Adoption Act) particularly the requirement that an adopter who is married to a Filipino citizen should adopt jointly with his spouse a relative within the fourth (4<sup>th</sup>) degree of consanguinity or affinity of the Filipino spouse. The court *a quo* found that Francisca is Andrei's relative of the sixth civil degree but she and her husband George failed to submit the documentary requirements under the law on adoption.

Spouses Marshall sought reconsideration but to no avail.<sup>[18]</sup> Hence, the instant appeal with this lone assigned error:<sup>[19]</sup>

THE TRIAL COURT ERRED IN APPLYING NO. (2) OF SECTION 4, A.M. NO. 02-6-02-SC, RULE ON ADOPTION INSTEAD OF NO. (1) THEREOF.

Largely reiterating the arguments in their Motion for Reconsideration, Spouses Marshall insist that the RTC erred in concluding that they jointly seek to adopt

Andrei. According to them, only Francisca wishes to adopt Andrei and she is merely joined in the petition by George.<sup>[20]</sup>

The Office of the Solicitor General (OSG) defends the assailed Decision, citing the mandate under the Domestic Adoption Act that the husband and wife shall jointly adopt save only in exceptional cases which are allegedly not applicable herein. It further contends that Spouses Marshall failed to comply with the various requirements prescribed by law, such as the submission of (a) a certification from the Scottish government that George had legal capacity to adopt and that Andrei would be allowed to enter the country as his adopted son; (b) proof of his good moral character; (c) proof that he was not convicted of any crime involving moral turpitude; and (d) continuous residence in the Philippines for at least 3 years prior to the filing of the application for adoption and maintaining such residence until entry of the adoption decree. At the same time, George's own admission during his testimony that he had known Andrei for only 5 or 6 years supposedly precluded him from availing of the provisions of Section 8 of the Domestic Adoption Act.<sup>[21]</sup>

### **This Court's Ruling**

The petition lacks merit.

Under Section 7, Article III of the Domestic Adoption Act, husband and wife are mandated to adopt jointly, except in the following instances:

- (i) if one spouse seeks to adopt the legitimate son/daughter of the other;
- (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.

As explained in the case of *In Re: Petition For Adoption Of Michelle P. Lim, Monina P. Lim*,<sup>[22]</sup> the use of the word "shall" in Section 7, Article III of the Domestic Adoption Act 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.

Indisputably, Spouses Marshall are legally married at the time of the filing of the petition for adoption and the exceptions mentioned above are not attendant in this case. Thus, their argument that it is only Francisca who wishes to adopt Andrei will not in any way help their case; instead, it will only cause the outright dismissal of the petition for adoption for failure to comply with the mandate of the law.

It is also crystal clear from the contents of the petition for adoption that the same was jointly filed by Spouses Marshall. Notably, both of them signed the verification and certificate of non-forum shopping. George also testified that he prefers to adopt Andrei because of his personal traits. These only show that it is not only Francisca who wishes to adopt Andrei. Accordingly, George must possess the qualifications under paragraph (b), Section 7, Article III of the Domestic Adoption Act which reads: