

## TWENTIETH DIVISION

[ CA-G.R. CV NO. 03663, November 21, 2014 ]

**SUSANA DIMAPILIS, PETITIONER-APPELLEE, VS. REPUBLIC OF  
THE PHILIPPINES, OPPOSITOR-APPELLANT.**

### D E C I S I O N

**QUIJANO-PADILLA, J.:**

This appeal<sup>[1]</sup> seeks to assail the Orders<sup>[2]</sup> dated April 16, 2010 of the Regional Trial Court, Branch 18, Hilongos, Leyte in SP. PROC. CASE NO. H-346, which granted the Petition for adoption of minors Ryan Rey Pelicano and Judith Margaret Serano to herein petitioner-appellee Susan Dimapilis and the Order dated July 21, 2010 which denied the motion for reconsideration thereof.

#### **The Antecedents**

The facts as succinctly narrated in the oppositor-appellant's brief are as follows:

Petitioner-appellee Susana Dimapilis is 61 years old. She is both a Filipino and American citizen. She has been residing in Maljo, Inopacan, Leyte, where she had been living for more than two and a half years prior to the filing of the instant petition.<sup>[3]</sup> She has been regularly taking long-term stays<sup>[4]</sup> in the Philippines even before she filed the petition for adoption.<sup>[5]</sup>

Petitioner-appellee is legally married to Reynaldo Dimapilis (Reynaldo)<sup>[6]</sup>, also a Filipino-American and a retired US navy man, but they have been separated in fact since 1999.<sup>[7]</sup> However, petitioner-appellee has not submitted a judicial decree of their separation.

Petitioner-appellee seeks to adopt the minors Ryan Rey Pelicano (Ryan), born on November 9, 1994,<sup>[8]</sup> and Judith Margaret Serano (Judith), born on June 15, 2005. Ryan is the child of petitioner-appellee's relative, Denia Pelicano (Pelicano). The alleged biological father of Ryan never claimed the latter as his biological son. As proof of her decision to relinquish her parental authority over Ryan Pelicano, she signed a Deed of Voluntary Commitment<sup>[9]</sup> of Ryan to the Department of Social Welfare and Development (DSWD). Ryan has been under the care and custody of petitioner-appellee for at least a year already. Meanwhile, Judith was an abandoned child. Petitioner-appellee presented Judith's certificate of foundling<sup>[10]</sup> to the court. Judith has been under petitioner-appellee's care and custody for at least two years now.<sup>[11]</sup> Petitioner-appellee seeks to adopt Ryan and Judith since she and Reynaldo were not able to conceive a child.<sup>[12]</sup>

Petitioner-appellee claims to be in full civil capacity and legal rights, and of good

moral character. She also claims that she has not been convicted of any crime involving moral turpitude. She likewise claims to be physically, emotionally, and psychologically capable of caring for Ryan and Judith.

Petitioner-appellee asserts that she is also financially capable of providing Ryan and Judith their basic needs and adequate education. Petitioner-appellee is employed at the US Federal Navy in Guam where she has been receiving a monthly salary of about \$400.00 a month.<sup>[13]</sup> She also receives a share in the monthly pension of Reynaldo as a retired US navy man.<sup>[14]</sup> Petitioner-appellee likewise owns rice lands in Magnangoy and Inopacan where she harvests copra and rice. She derives a quarterly income of P30,000.00 from her copra sales and a bi-annual income of P60,000.00 from her rice sales. She also has a bank deposit in Metrobank Baybay.<sup>[15]</sup>

Petitioner-appellee claims that she possesses all the qualifications and none of the disqualifications to adopt Ryan and Judith. Ryan and Judith are presently living with petitioner-appellee. Petitioner-appellee has plans of taking Ryan and Judith to the USA so that they can be provided with a good future.<sup>[16]</sup>

Petitioner-appellee's husband Reynaldo has given his Affidavit of Consent<sup>[17]</sup> to the adoption. Petitioner-appellee also presented the home and child study reports of the DSWD social worker concerned.

### **Ruling of the Regional Trial Court**

On April 16, 2010, the Regional Trial Court Branch 18, Hilongos, Leyte thru Judge Ephrem S. Abando rendered the Order or the Decision on the petition<sup>[18]</sup>. The dispositive portion of the Decision states:

**"WHEREFORE,** the Petition under consideration is hereby GRANTED as Petitioner SUSANA DIMPILIS has adduced substantial evidence complying the requirements set by law pursuant to A.M. No. 02-6-02-SC (August 22, 2002).

Consequently, minors RYAN REY PELICANO and JUDITH MARGARET SERANO are DECLARED free from all legal obligations and maintenance with respect to their natural parents and be, for all legal intents and purposes, now the lawfully adopted children of the Petitioner Susana Bague Dimapilis and to be known as RYAN REY BAGUE DIMAPILIS and JUDITH MARGARET BAGUE DIMAPILIS, respectively.

**SO ORDERED."**<sup>[19]</sup>

On May 27, 2010, a motion for reconsideration<sup>[20]</sup> was filed by the oppositor-appellant relative to the Decision promulgated by the RTC Branch 18 of Hilongos, Leyte.

However, the said court denied the motion. The Order dated July 21, 2010, in turn, reads:

**"WHEREFORE,** it appearing that no compelling reasons are found to reconsider the ORDER of this court dated April 16, 2010, it is hereby UPHELD, and motion for reconsideration [is] DENIED for lack of merit.

**SO ORDERED."**<sup>[21]</sup>

With the denial of his Motion for Reconsideration<sup>[22]</sup>, oppositor-appellant, through the Office of the Solicitor General sought recourse to this Court, raising the following as grounds:

PETITIONER-APPELLEE FAILED TO COMPLY WITH THE LEGAL REQUIREMENT OF DOMESTIC ADOPTION THAT HUSBAND AND WIFE SHALL JOINTLY ADOPT IN THE ABSENCE OF A DECREE OF LEGAL SEPARATION.<sup>[23]</sup>

PETITIONER-APPELLEE FAILED TO SUBMIT IN EVIDENCE THE HOME STUDY REPORT WITH A PHYSICAL AND MEDICAL EVALUATION BY A DULY LICENSED PHYSICIAN.<sup>[24]</sup>

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

The appeal is impressed with merit.

After a careful perusal of records, We found that the petitioner failed to faithfully comply with the substantive requirements of the law for domestic adoption which are: first, that husband and wife shall jointly adopt<sup>[25]</sup> and second, that the adoptive parents must secure a written consent of their child<sup>[26]</sup> warranting the dismissal of the Petition.

The mandatory nature of the requirements that the husband shall jointly adopt and to secure a written consent of their child are determined not only by the language of the statute but also by sound public policy.

In the present case, petitioner-appellee solely filed the instant petition without joining her husband Reynaldo as a co-petitioner. She claims that she has been separated in fact from Reynaldo since 1999.<sup>[27]</sup> However, she has not presented any evidence such as a judicial decree of legal separation to prove that she was legally separated from her husband, thus, disallowing her to solely petition the adoption of children.

The law is explicit regarding the mandatory joint adoption, to wit:

Section 7, Article III of the Republic Act No. 8552, otherwise known as the "Domestic Adoption Act of 1998":

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

xxx xxx xxx

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. (*Emphasis supplied*)

Petitioner-appellee failed to show that she falls under any of the exceptions under Section 7, Article III of the Domestic Adoption Act. *First*, she does not seek to adopt the legitimate son or daughter of her spouse. *Second*, she does not seek to adopt her own illegitimate son or daughter. *Third*, the petitioner-appellee and her husband are not legally separated from each other by judicial edict.

Furthermore, Section 19 (c) of A.M. No. 02-11-11-SC expressly provides that the registered decree shall be the best evidence to prove the legal separation of the parties. Petitioner-appellee's failure to offer in evidence the registered decree of legal separation is fatal to the petition.

Unfortunately, the petition for adoption cannot be granted in her favor alone without violating Section 7 Article III of R.A. No. 8552 which mandates a joint adoption by the husband and wife.

The historical evolution of this provision is clear. Presidential Decree 603 (The Child and Youth Welfare Code), provides that husband and wife "may" jointly adopt.<sup>[28]</sup> Executive Order No. 91 issued on December 17, 1986 amended said provision of P.D. 603. It demands that both husband and wife "shall" jointly adopt if one of them is an alien.<sup>[29]</sup> Finally, Republic Act No. 8552, otherwise known as the "Domestic Adoption Act of 1998" was enacted. Said law adheres to the provision ordained in E.O.91, as it requires that husband and wife "shall" jointly adopt. These laws were so crafted to protect Filipino children who are put up for adoption. The Family Code reiterated the rule by requiring that husband and wife "must" jointly adopt, except in the cases mentioned before. Under the said new law, joint adoption by husband and wife is mandatory.<sup>[30]</sup> This is in consonance with the concept of joint parental authority over the child, which is the ideal situation.<sup>[31]</sup> 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.<sup>[32]</sup>

In a careful review of the records, We have come across with the Feedback Report<sup>33</sup> on the petitioner-appellee's husband, Mr. Reynaldo Dimapilis submitted by the Regional Director of the DSWD Field Office IV-A. The report is remarkable as said husband declares that:

xxx	xxx	xxx
8. xxx	xxx	xxx

xxx he agreed to give consent to adoption with the understanding that **he is not responsible to any financial support** aside from the support that he regularly sends to his wife in the amount of \$400 monthly. He discussed already to his wife when they met sometime in July or August 2008 that **she would be solely responsible in taking care of them and supporting all their basic needs.** However, there is no written agreement between him and his wife about this matter. Also, he is **not willing to appear in court to testify in the adoption of the children.**<sup>[34]</sup> (*Emphasis supplied*)

Corollary, in his affidavit of consent, he stated his consent in this manner:

xxx

xxx

xxx

3. That being the husband of Susana B. Dimapilis, I am agreeable to her petition for Adoption of Ryan Rey Pelicano and Judith Margaret Servano, and I am hereby giving my CONCENT (sic) and APPROVAL hereof; and

xxx

xxx

xxx<sup>[35]</sup>

We are not unmindful of the previous decision of the Supreme Court in the case of Republic of the Philippines vs. Court of Appeals and Zenaida Bobiles, G.R. No. 92326 January 24, 1992, wherein the Highest Court approved the adoption sans the inclusion of a spouse in the wife's petition for adoption in view of the affidavit of consent that was executed by the latter.

The ruling thereof is not squarely applicable to the instant case as the husband of the petitioner therein categorically stated his willingness to adopt, viz:

xxx

xxx

xxx 2. That my wife, ZENAIDA

O. CORTEZA BOBILES *and I mutually desire to adopt as our child*, a boy named JASON CONDAT, still a minor being six (6) years old, likewise residing at 18 C. Imperial Street, Legaspi City, Albay, also in the Philippines;

3. That *we are filing* the corresponding Petition for Adoption of said minor child, JASON CONDAT, before the Juvenile and Domestic Relations court, now the Regional Trial Court in Legaspi City, Albay in the Philippines;

4. That I, Dioscoro C. Bobiles as the husband and father, am giving my lawful consent to this adoption of said minor child, JASON CONDAT;

5. That further, my wife ZENAIDA O. CORTEZA BOBILES, and I have continuously reared and cared for this minor child, JASON CONDAT since birth;

6. That as a result thereof, my wife and I have developed a kind of maternal and paternal love for the boy as our very own, exercising therein the care, concern and diligence of a good father toward him;

7. That I am executing this document, an AFFIDAVIT OF CONSENT for whatever it is worth in the premises as to the matter of adoption of this minor child, JASON CONDAT, by my wife ZENAIDA O. CORTEZA BOBILES *and by me, DIOSCORO C. BOBILES*, in any court of justice; (Emphasis supplied.)

It is clear that the two cases are not similarly situated such that We cannot adopt the above ruling wherein the husband had expressly and categorically made his consent clear that he joins his wife in adopting the child without any condition to the instant case where the unimpleaded husband, in his affidavit of consent declares on the contrary. In fact, he has expressly made his conditions that he cannot provide the children being petitioned on adoption.

The danger of granting the petition for adoption filed solely by a spouse is the possibility of disagreement in the adjudication of the inheritance of both the adopted children and the adoptive parents. One of the effects of adoption is that the adoptee shall be considered legitimate child of the adopter for all intents and purposes 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