

FIRST DIVISION

[G.R. No. 205752, October 01, 2019]

IN RE: PETITION FOR ADOPTION OF JAN AUREL MAGHANOY BULAYO WITH APPLICATION FOR CHANGE OF NAME OF ADOPTEE FROM "JAN AUREL MAGHANOY BULAYO" TO "JAN AUREL BULAYO KIMURA,"

SPOUSES MARY JANE B. KIMURA AND YUICHIRO KIMURA, PETITIONERS.

D E C I S I O N

BERSAMIN, C.J.:

The petitioners implore us to determine whether or not the illegitimate child of the spouse of an adopting alien falls within the ambit of the clause "*relative by consanguinity or affinity within the fourth civil degree*" contained in Section 7 (b)(i) and (iii), Article III, of Republic Act No. 8552, otherwise known as the *Domestic Adoption Act of 1998*, which pertinently provides:

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

x x x x

(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; x x x. (Bold underscoring supplied for emphasis)

The Case

This appeal seeks to reverse and undo the judgment and order by the Regional Trial Court (RTC), Branch 33, in Davao City on February 14, 2012^[1] and January 22, 2013, ^[2] respectively, dismissing their petition for the adoption of the minor Jan Aurel Maghanoy Bulayo (Jan Aurel) in SP. Proc. No. 10, 718-2010, and denying their motion for reconsideration.

Antecedents

The antecedent facts are as follows:

Spouses Mary Jane B. Kimura, a Filipino national, and Yuichiro Kimura, a Japanese national, got married on June 12, 2004.

Prior thereto, petitioner Mary Jane gave birth to her son Jan Aurel on November 24, 1997. However, she was not married to her son's biological father, Jun Baldoza, thus making Jan Aurel her illegitimate child. Her last communication with the minor's father was when she was four (4) months pregnant with [Jan Aurel]. From then on, she has no knowledge of his whereabouts.

On March 15, 2009, petitioners filed a joint petition for adoption of Jan Aurel seeking, among others, to have him declared as their legitimate son, enjoying the rights and observing the duties of an adopted child as provided by law.

During trial, petitioners presented the Department of Social Welfare and Development Minor's Case Study and Home Study Report which recommended approval of said petition.

Likewise, petitioners presented the following documents to show that they are in possession of full civil capacity and legal rights to adopt, of good moral character, have not been convicted of any crime involving moral turpitude, and emotionally and psychologically capable of caring for children, x x x.^[3]

Specifically, the petitioners presented the following documents to support their petition for adoption, namely; (1) the marriage contract of the petitioners; (2) the permanent registration in Japan of petitioner Yuichiro Kimura (Yuichiro); (3) the medical certificates issued to the petitioners; (4) the neuro-psychological reports for the petitioners; (5) the certificates of attendance in adoption orientation conducted by Department of Social Welfare and Development (DSWD); (6) the NBI clearances issued to the petitioners; (7) the police clearances of the petitioners; (8) the Prosecutor's clearances issued to the petitioners; (9) the court clearances of the petitioners; (10) the income tax return of Yuichiro; (11) the certificate of employment Yuichiro.

Nonetheless, on February 14, 2012, the RTC denied the petition for adoption because Yuichiro, being a Japanese citizen, did not comply with the requirements laid down under Section 7 of R.A. No. 8552 and Section 7 of Administrative Matter No. 02-6-02-SC.^[4] The RTC observed that Yuichiro was not exempt from the residency and certification requirements under Section 7(b) of R.A. No. 8552 because Jan Aurel was the illegitimate child of co-petitioner Mary Jane Kimura (Mary Jane).^[5]

Hence, this direct appeal by petition for review on *certiorari*.

Issues

The petitioners hereby raise the following questions of law, to wit:

- (1) Whether or not an illegitimate child is within the fourth degree of consanguinity or affinity in the contemplation of Section 7(b)(iii) of R.A. No. 8552;
- (2) Whether or not an illegitimate child is contemplated in Section 7(b)(ii) of R.A. No. 8552; and,
- (3) Whether or not the existence of diplomatic relations between the Philippines and Japan is within judicial notice of the courts.^[6]

Decisive is the correct interpretation of Section 7(b)(i) and (iii) of R.A. No. 8552, particularly the clause "*a relative within the fourth degree of consanguinity or affinity*"?

Ruling of the Court

The appeal has merit.

I.**Section 7(b)(i) and (iii) of R.A. 8552 should extend and apply even to illegitimate children**

In contending that the RTC should have granted their petition for adoption, the petitioners emphasize that they are exempt from the requirements for the reason that Jan Aurel was a relative by consanguinity within the fourth civil degree of Mary Jane. They insist that Section 7 necessarily includes all relatives – whether legitimate or illegitimate – within the fourth degree of consanguinity or affinity; that an illegitimate child is a relative within the first degree of consanguinity of the biological mother or father; that excluding an illegitimate child from the contemplation of Section 7(b)(i) and (iii) of R.A. No. 8552 is tantamount to saying that it is easier for an alien spouse to jointly adopt with the Filipino spouse the latter's cousin, a relative within the fourth degree, or the nephew or niece, a relative within the third degree of consanguinity or affinity,^[7] than the Filipino spouse's own biological child.

The petitioners' insistence is upheld.

A relative is either a "kinsman" or "a person connected with another by blood or affinity."^[8] Under the *Civil Code*, the degree of relationship is determined as follows:

Relationship

ARTICLE 963. Proximity of relationship is determined by the number of generations. Each generation forms a degree.

ARTICLE 964. A series of degrees forms a line, which may be either direct or collateral.

A direct line is that constituted by the series of degrees among ascendants and descendants.

x x x x

ARTICLE 965. The direct line is either descending or ascending.

x x x x

ARTICLE 966. In the line, as many degrees are counted as there are generations or persons, excluding the progenitor.

In the direct line, ascent is made to the common ancestor. Thus, the child is one degree removed from the parent, two from the grandfather, and three from the great-grandparent.

Pursuant to the foregoing, an illegitimate child is a relative within the first civil degree of consanguinity of his biological mother. Unlike a nephew and niece, an illegitimate child belongs to the direct maternal lineage, which is never uncertain,^[9] and which is not as remote as the nephew and niece. The word "*child*" referred to in Article 966 of the *Civil Code* is used in a general term and is without qualification. This is so because the provision contemplates blood relation, not status. When the provision does not distinguish between legitimate and illegitimate relatives, we, too, must not. Let us adhere to the Latin maxim that declares: *ubi lex non distinguit, nec nos distinguera debemus* (where the law does not distinguish, nor the interpreter must distinguish).

To put more clarity on the legislative intent, we refer to the deliberations on Senate Bill No. 1523 (now, R.A. No. 8552) in identifying *who can adopt* and *who may be adopted* under Section 7(b), Article III, of R.A. No. 8552, to wit:

The President. x x x

In respect to former Filipino citizen referred to in line 2 of page 6-- meaning the exception where aliens may adopt-- why are relatives here limited to those by consanguinity and it does not include those who are so by affinity?

Senator Santiago. This is a reflection of a native cultural bias, or prejudice in favor of blood relations. This is a peculiarly Asian world view.

The President. So, the committee has no intention of expanding this to include relatives by affinity.

Senator Santiago. If there are reasonable grounds for advancing an argument, the committee would be happy to consider it.

The President. Up to what degree of relatives by consanguinity or affinity, up to what degree?

Senator Santiago. Generally, in trial courts, this phrase is construed in an open-ended way. **As long as there is a tie of consanguinity, no matter how remote, then it falls under the coverage of this exception.**

The President. Is that the clear intention of this provision?

Senator Santiago. Yes, Mr. President.

x x x x

Senator Maceda. x x x

Now, I support the stand of the Senate President on the question of consanguinity or affinity, especially if this former Filipino citizen is probably

going to leave again. If the idea is, as stated, to try to encourage more adoptions, especially for those who have some relations, the matter of allowing relatives by consanguinity or affinity within the fourth degree, in my opinion, should be allowed.

So if the Senate President will propose that amendment, I shall certainly support it.

Now, still on page 6 (b) and (c), I see the difference here. It says:

"(b) One who seeks to adopt the legitimate child OR CHILDREN 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."

This is basically the same except, probably, the difference is the joint adoption. Would that be correct?

Senator Santiago. Under paragraph (b), the subject is only the legitimate child. But under paragraph (c), the subject is a bigger group, because it covers relatives by consanguinity who do not necessarily have to be children.

Senator Maceda. Exactly, Mr. President. On the other hand, a legitimate child is also within the ambit of relative by consanguinity. Is that not correct?

Senator Santiago. That is correct, Mr. President.

x x x x^[10] (Emphasis supplied)

GONZALES AMENDMENTS

May the Chair offer this amendment? In line 3, delete the semicolon (;) and add the following phrase: OR, AFFINITY WITHIN THE FOURTH CIVIL DEGREE.

Senator Santiago. May I please just clarify? It would now read: "...who seeks to adopt a **relative by consanguinity OR AFFINITY WITHIN THE FOURTH CIVIL DEGREE.**" So the limitation on civil degree will apply to both consanguinity and affinity?

The President. That is correct. That is the intention of the amendment.

Senator Santiago. I am delighted to accept the amendment, Mr. President.

The President. Is there any objection? [*Silence*] There being none, the amendment is approved.^[11]

Although Senate Bill No. 1523 originally indicated that the exception should only cover relatives by consanguinity, the lawmakers were in agreement during the period of individual amendments to include the phrase "*or affinity within the fourth civil degree*" in order to expand the coverage to more children or relatives under the preferential exception embodied in Section 7. The reason was stated in Section 2 of the law, which declares that it is the State's policy "to ensure that every child remains under the care and custody of his/her parent(s) and be provided with love, care, understanding and security towards the full and harmonious development of his/her personality."

R.A. No. 8552 undoubtedly intended to include Jan Aurel, the biological child of Mary Jane, in the term "*relatives*" under Section 7(b)(iii) because he was her relative within the first civil degree. Finding otherwise would engender a situation where the alien adopter would be able to undergo a speedy and less expensive adoption process by being able to adopt, say, his Filipina spouse's nephew or niece instead of the Filipino spouse's own child.

It is relevant to note that the Office of the Solicitor General (OSG) joins the petitioners' position, and emphasizes that "if the law exempts the alien adopter from residency and certification requirements if he/she will adopt the brother/sister, nephew/niece or cousin of his/her Filipino spouse (who are within the 4th civil degree of consanguinity or affinity), then there is no reason to exclude the application of the said exemption if the adoptee is the illegitimate child of the said Filipino spouse."^[12]

At any rate, had the legislators intended that only the legitimate children were contemplated by Section 7(b)(i) and (iii), then Congress should have been written the law as explicitly. Indeed, Congress did so in Section 7(b)(ii)^[13] by including the term "legitimate" to describe the children contemplated by that clause. Section 7(b)(i) and (iii) clearly covered both legitimate and illegitimate relatives as long as they were within the fourth civil degree of consanguinity *or* affinity.

II

Courts may take judicial notice of the existence of diplomatic relations between the Philippines and Japan

The petitioners assert that their petition for adoption has indicated the existence of the diplomatic relations between Philippines and Japan, but they did not anymore prove the same during the trial because the existence of such diplomatic relations was within the judicial notice of the courts.^[14]

The OSG has not refuted the petitioners' assertion.

Section 1 and Section 2, Rule 129 of the *Rules of Court* state:

Section 1. Judicial notice, when mandatory. — A court shall take judicial notice, without the introduction of evidence, of the existence and territorial extent of states, their political history, forms of government and symbols of nationality, the law of nations, the admiralty and maritime courts of the world and their seals, the political constitution and history of the Philippines, the official acts of legislative, executive and judicial departments of the Philippines, the laws of nature, the measure of time, and the geographical divisions. (1a)

Section 2. Judicial notice, when discretionary. — A court may take judicial notice of matters which are of public knowledge, or are capable of unquestionable demonstration, or ought to be known to judges because of their judicial functions.

The courts of the Philippines are bound to take judicial notice of the existence of the diplomatic relations between our country and Japan pursuant to both Section 1 and Section 2, *supra*. Diplomatic relations form part of the official acts of the Executive Department of our Government. They are also matters of public knowledge.

There is no dispute, indeed, that the Philippines and Japan have had a long history of diplomatic relations.^[15] In 1888, Japan already established a diplomatic office in Manila, and expanded it as a Consulate General in 1919. Eventually, Japan declared its office in Manila an embassy in 1943 during the Japanese occupation of the country. Both countries were also signatories to the *Vienna Convention on Diplomatic Relations*, an indication that they wished to have a more prominent diplomatic presence in each other by sending of diplomatic missions. This further shows that both countries, being signatories to the *Vienna Convention*, aimed to have the representation of the interests of the sending state and promoting friendly relations with the receiving state.^[16] The countless efforts to maintain their diplomatic relations no longer required the presentation of proof of the existence of diplomatic relations.

WHEREFORE, the Court **GRANTS** the petition for review on *certiorari*; **REVERSES** and **SETS ASIDE** the judgment and order rendered, respectively, on February 14, 2012 and January 22, 2013 by the Regional Trial Court, Branch 33, in Davao City in SP. Proc. No. 10, 718-2010; **GRANTS** the petition for adoption; **DECLARES** that henceforth, **JAN AUREL MAGHANOY BULAYO**, is freed from all legal obligations of obedience and maintenance with respect to his biological father, and shall be, to all intents and purposes, the child of the Spouses Mary Jane B. Kimura and Yuichiro Kimura, with his surname to be changed to **KIMURA**.

Let a copy of this decision be each furnished to the Office of the Solicitor General; the Department of Social Welfare and Development, Regional Office, Region XI, in Davao

City; and the Local Civil Registrar of Davao City.

No pronouncement on costs of suit.

SO ORDERED.

Perlas-Bernabe, Gesmundo, Carandang, and Zalameda, JJ., concur.

[1] *Rollo*, pp. 25-26; penned by Judge Lope L. Calio.

[2] *Id.* at 28.

[3] *Id.* at 218.

[4] *Id.* at 25-26.

[5] *Id.* at 26.

[6] *Id.* at 14.

[7] *Id.* at 15-17.

[8] *Black's Law Dictionary*, Fifth Edition, p. 1158.

[9] *Macadangdang v. Court of Appeals*, G.R. No. L-49542, September 12, 1980, 100 SCRA 73, 89.

[10] See Record of the Senate on the Interpellations re: Sen. Santiago's Sponsorship Speech on Senate Bill No. 1523 dated February 5, 1998.

[11] *Id.*

[12] *Rollo*, p. 224.

[13] Section 7(b)(ii) is the provision applicable to one who seeks to adopt the **legitimate** son/daughter of the Filipino spouse;

[14] *Rollo*, p. 21.

[15] See <https://www.officialgazette.gov.ph/diplomatic-relations/japan/>

[16] *Minucher v. Court of Appeals*, G.R. No. 142396, February 11, 2003, 397 SCRA 244, 254-255.



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