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SO ORDERED.

Teehankee (Chairman), Makasiar, Guerrero, De Castro, and *Melencio-Herrera, JJ.*, concur.

FIRST DIVISION

[G.R. Nos. L-43955-56. July 30, 1979]

RENATO LAZATIN alias RENATO STA. CLARA, *petitioner, vs.* **HONORABLE JUDGE JOSE C. CAMPOS, JR., NORA L. DE LEON, BERNARDO DE LEON, ARLENE DE LEON and IRMA L. VELOSO,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; SPECIAL PROCEEDINGS; ADOPTION; DEFINED AND DISCUSSED.**— Adoption is a juridical act, a proceeding *in rem*, which creates between two persons a relationship similar to that which results from legitimate paternity and filiation. Only an adoption made through the court, or in pursuance with the procedure laid down under Rule 99 of the Rules of Court is valid in this jurisdiction. It is not of natural law at all, but is wholly and entirely artificial. To establish the relation, the statutory requirements must be strictly carried out, otherwise, the adoption is an absolute nullity. The fact of adoption is never presumed, but must be affirmatively proved by the person claiming its existence. The destruction by fire of a public building in which the adoption papers would have been filed if existent does not give rise to a presumption of adoption nor is the destruction of the records of an adoption proceeding to be presumed. On the contrary, the absence of a record of adoption has been said to evolve a presumption of its non-existence. Where, under the provisions of the statute, an adoption is effected by a court order, the records of such court constitute the evidence by which such adoption may be established.

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2. ID.; EVIDENCE; EVIDENCE OF ACTS AND DECLARATIONS OF THE DECEASED DO NOT DISCHARGE THE MANDATORY PRESENTATION OF THE DECREE OF ADOPTION.— The absence of proof of such order of adoption by the court, as provided by the statute, cannot be substituted by parol evidence that a child has lived with a person, not his parent, and has been treated as a child to establish such adoption. Even evidence of declaration of the deceased, made in his lifetime, that he intended to adopt a child as his heir, and that he had adopted him, and of the fact that the child resided with the deceased, as a member of his family, from infancy until he attained his majority, is not sufficient to establish the fact of adoption. Nor does the fact that the deceased spouses fed, clothed, educated, recognized and referred to one like petitioner as an adopted child, necessarily establish adoption of the child. Withal, the attempts of petitioner to prove his adoption by acts and declarations of the deceased do not discharge the mandatory presentation of the judicial decree of adoption.

3. ID.; ID.; EXCEPTIONS TO HEARSAY RULE; ACT OR DECLARATION ABOUT PEDIGREE; CANNOT PROVE THE FACT OF ADOPTION.— We do not discount though that declarations in regard to pedigree, although hearsay, are admitted on the principle that they are natural expressions of persons who must know the truth. Pedigree testimony is admitted because it is the best that the nature of the case admits and because greater evil might arise from the rejection of such proof than from its admission. But, in proving an adoption, there is a better proof available and it should be produced. The whereabouts of the child's family and circulation of the jurisdiction in which they resided and investigation in those courts where adoption are usually granted would surely produce an adoption order, if indeed there was an order.

4. ID.; ID.; ID.; REQUIREMENTS THEREOF BEFORE IT CAN BE ADMITTED TO PROVE PEDIGREE OR ANCESTRY.— Since the point in favor of receiving hearsay evidence upon matters of family history or pedigree is its reliability, it has been set forth as a condition upon which such evidence is received that it emanate from a source within the family. Pursuant to this view, before a declaration of a deceased person can be admitted to prove pedigree, or ancestry, the relationship of the

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declarant, by either of blood or affinity to the family in question, or a branch thereof, must ordinarily be established by competent evidence.

5. ID.; ID.; ADMISSIBILITY; SECONDARY EVIDENCE; REQUIREMENTS THEREOF BEFORE IT MAY BE ADMITTED TO PROVE ADOPTION; CASE AT BAR.— Secondary evidence is nonetheless admissible where the records of adoption proceedings were actually lost or destroyed. But, prior to the introduction of such secondary evidence, the proponent must establish the former existence of the instrument. The correct order of proof is as follows: Existence; execution; loss; contents; although this order may be changed if necessary in the discretion of the court. The sufficiency of the proof offered as a predicate for the admission of an alleged lost deed lies within the judicial discretion of the trial court under all the circumstances of the particular case. As earlier pointed out, petitioner failed to establish the former existence of the adoption paper and its subsequent loss or destruction. Secondary proof may only be introduced if it has first been established that such adoption paper really existed and was lost. This is indispensable. Petitioner's supposed adoption was only testified to by him and is allegedly to be testified to by a brother of the deceased Mariano M. Lazatin or others who have witnessed that the deceased spouses treated petitioner as their child. If adoption was really made, the records thereof should have existed and the same presented at the hearing or subsequent thereto or a reasonable explanation of loss or destruction thereof, if that be the case, adduced. Assuming the mere fact that the deceased spouses treated petitioner as their child does not justify the conclusion that petitioner had been in fact judicially adopted by the spouses nor does it constitute admissible proof of adoption.

APPEARANCES OF COUNSEL

Ernesto T. Zshornack, Jr. for petitioner.

Jose W. Diokno Law Office for private respondents the Leons.

Arturo E. Balbastro for private respondent Veloso.

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DECISION

TEEHANKEE, *J.*:

The Court dismisses the petition which seeks to overrule respondent judge's orders declaring that petitioner has failed to establish by competent evidence his alleged status as an adopted child of the deceased Lazatin spouses and prays for judgment of this Court "declaring as established the fact of (his) adoption as a son of the deceased spouses entitling him to succeed in their estates as such." Respondent judge correctly ruled that he could not allow petitioner (who had filed a motion to intervene in the proceedings to probate the will of the late Margarita de Asis *Vda. de* Lazatin and to settle her estate as her adopted son, after having earlier filed a motion to intervene in the intestate proceedings of her pre-deceased husband as his admitted illegitimate [not natural] son), over the opposition of private respondents, to introduce evidence that he had "enjoyed . . . the status of an adopted child of the said spouses" without his first producing competent and documentary proof that there had been judicial proceedings for his legal adoption by the said spouses which resulted in the final judgment of a competent court decreeing his adoption.

On January 13, 1974, Dr. Mariano M. Lazatin died intestate in Pasay City, survived by his wife, Margarita de Asis, and his adopted twin daughters, respondent Nora L. de Leon, married to respondent Bernardo de Leon, and respondent Irma Lazatin, married to Francisco Veloso.

One month after Mariano's death, his widow, Margarita de Asis, commenced an intestate proceeding before the Court of First Instance of Pasay, docketed as Sp. Proc. No. 2326-P. Mariano, Oscar, Virgilio and Yvonne, claiming to be admitted illegitimate (not natural) children of Dr. Lazatin with one Helen Muñoz, intervened. Subsequently, one Lily Lazatin also intervened, claiming to be another admitted illegitimate (not natural) child.

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Two months after or on April 11, 1974, the widow, Margarita de Asis, also died, leaving a holographic will executed on May 29, 1970, providing, among others, for a legacy of cash, jewelry, and stocks to respondent Arlene de Leon, a granddaughter; a legacy of support to Rodolfo Gallardo, a son of her late sister; and a legacy of education to Ramon Sta. Clara, son of petitioner Renato Lazatin *alias* Renato Sta. Clara.

During her lifetime, Margarita de Asis kept a safety deposit box at the People's Bank and Trust Company, Roxas Boulevard branch, which either she or respondent Nora L. de Leon could open. Five days after Margarita's death, respondent Nora L. de Leon, accompanied by her husband, respondent Bernardo de Leon, opened the safety deposit box and removed its contents: (a) shares of stock; (b) her adoption papers and those of her sister, respondent Irma L. Veloso; and (c) jewelry belonging to her and to her mother. Respondent Nora L. de Leon claims that she opened the safety deposit box in good faith, believing that it was held jointly by her and her deceased mother. Her sole reason for opening the box was to get her stock certificates and other small items deposited therein. When she was to close the deposit box, the bank personnel informed her that she needed an authority from the court to do so, in view of her mother's death and so, she removed everything from the box.

On June 3, 1974, private respondents filed a petition to probate the will of the late Margarita de Asis, before docketed as Sp. Proc. No. 2341-P of respondent Court. Days after having learned that respondent Nora L. de Leon had opened this safety deposit box, petitioner's son, Ramon Sta. Clara, filed a motion in the probate court, claiming that the deceased had executed a will subsequent to that submitted for probate and demanding its production. He likewise prayed for the opening of the safety deposit box. Respondent Nora L. de Leon admitted that she opened the box but that there was no will or any document resembling a will therein.

Upon the order of the probate court, presided over by Judge Arsenio B. Alcantara, the safety deposit box was opened on November 6, 1974, at which time it was found to be empty,

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because prior thereto respondent Nora L. de Leon had already removed its contents.

On November 22, 1974, or seven months after the death of Margarita de Asis, petitioner intervened for the first time in the proceedings to settle the estate of the late Dr. Mariano M. Lazatin (Sp. Proc. No. 2326-P), as an admitted illegitimate (not natural) child.

Under the same date of November 22, 1974, petitioner's son, Ramon, filed a petition in the estate proceedings of Margarita de Asis to examine private respondents on the contents of the safety deposit box. Whereupon, on January 31, 1975, the probate court ordered respondent Nora L. de Leon to deliver the properties taken from the safety deposit box to the Clerk of Court. Subsequently, however, the two cases (Sp. Proc. No. 2326-P, Mariano Lazatin, and 2341-P, Margarita de Asis) were transferred to the sala of respondent Judge Jose C. Campos, Jr.

On May 29, 1975, Judge Campos issued an order requiring counsel for respondents Nora L. de Leon and Bernardo de Leon to produce all those papers and items removed from the safety deposit box and to deliver the same to the custody of the court within one week. Within the period ordered, respondent Nora L. de Leon deposited with the Clerk of Court, not the items themselves, but two keys to a new safety deposit box which could only be opened upon order of the court.

On August 20, 1975, petitioner Renato Lazatin *alias* Renato Sta. Clara filed a motion to intervene in the estate of Margarita de Asis, Sp. Proc. No. 2341-P, as an adopted child, on the basis of an affidavit executed by Benjamin Lazatin, brother of the deceased Dr. Mariano M. Lazatin, that petitioner was an "illegitimate son" of Dr. Lazatin and was later adopted by him. This affidavit was later modified on August 19, 1975 to state that petitioner was adopted by both Mariano M. Lazatin and his wife Margarita de Asis.

On September 29, 1975, Judge Campos found respondent Nora L. de Leon guilty of contempt of court for not complying

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with the orders of January 31, 1975 and May 29, 1975, requiring her to produce and deliver to the court all the papers and items removed from the safety deposit box. Her former counsel was also found guilty of contempt, sentenced to pay a fine of ₱100.00 and suspended from appearing in the two cases (Sp. Proc. No. 2326-P, Mariano M. Lazatin, and Sp. Proc. No. 2341-P, Margarita de Asis), on her testimony that she, Nora L. de Leon, acted upon his advice.

Respondent court heard petitioner's motion to intervene as an adopted son in the estate of Margarita de Asis, Sp. Proc. No. 2341-P, at which hearings petitioner presented no decree of adoption in his favor. Instead, petitioner attempted to prove, over private respondents' objections, that he had recognized the deceased spouses as his parents; he had been supported by them until their death; formerly he was known as "Renato Lazatin" but was compelled to change his surname to "Sta. Clara" when the deceased spouses refused to give consent to his marriage to his present wife; that at first, he and his wife stayed at the residence of Engracio de Asis, father of Margarita, but a few months later, they transferred to the Mercy Hospital at Taft Avenue, Manila, owned by the deceased spouses, where they continuously resided up to the present. Photographs were also intended to be presented by petitioner, *e.g.*, photograph of Irma Veloso where she addressed herself as sister of petitioner; photograph of deceased Margarita de Asis and petitioner when he was a boy; document showing that petitioner's real name is "Renato Lazatin."[1]

Respondent court first reserved its ruling on private respondents' objections to the admission of petitioner's evidence, but on November 14, 1975, when petitioner could not present evidence on the issue of his alleged legal adoption, respondent court discontinued the hearing and gave the parties time to file memoranda on the question of the admissibility of the evidence sought to be introduced by petitioner.

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[1] Annex 25, p. 1, Comment of respondents de Leon.

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On March 4, 1976, respondent court barred the introduction of petitioner's evidence because:

"All the evidence submitted by Renato and Ramon Sta. Clara through their counsel *do not prove or have no tendency to prove the existence of any judicial proceeding where the adoption of the parties above named were taken up by any court.* Neither do the evidence tend to establish the presence of any record of a proceeding in court where the adoption of the above named persons was held. *The evidence, however, tends to prove a status of a recognized natural child which, however, is not the legal basis for which Renato and Ramon seek to intervene in this proceedings.* In view thereof, and taking into consideration the evidence heretofore presented by the petitioners, any further introduction of similar evidence, documentary or oral, would not prove or tend to prove the fact of their adoption but rather of a recognized natural child."

Petitioner then filed on March 16, 1976, in both cases, a motion to declare as established the fact of adoption in view of respondent Nora L. de Leon's refusal to comply with the orders of respondent court to deposit the items she had removed from the safety deposit box of Margarita de Asis. As authority therefor, petitioner invokes the sanction of Rule 29, Section 3 of the Rules of Court, since according to him, the order of the court for the production of the items in the safety deposit box can be considered as an order for production and inspection of documents under Rule 27.

Private respondents opposed the motion, and on March 26, 1976, respondent court denied petitioner's motion. On April 26, 1976, respondent Nora L. de Leon deposited with respondent court the items she had removed from the safety deposit box. An inventory was conducted by respondent court, with notice to the parties, and the items surrendered consisted only of pieces of jewelry and stock certificates.

On June 3, 1976, respondent court, ruling on petitioner's motion for definite resolution on his previous motion to declare as established the fact of adoption, issued the following order:

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"As far as the case of Renato Sta. Clara is concerned and his Petition to establish his status as an adopted child, the Court has ruled that he has failed to establish such status. The Court denies any motion for reconsideration unless based on some documentary proof."

Hence, the petition at bar.

We find the ruling of the respondent court to be in conformity with law and jurisprudence.

1. Adoption is a juridical act, a proceeding *in rem*,[2] which creates between two persons a relationship similar to that which results from legitimate paternity and filiation.[3] Only an adoption made through the court, or in pursuance with the procedure laid down under Rule 99 of the Rules of Court is valid in this jurisdiction.[4] It is not of natural law at all, but is wholly and entirely artificial.[5] To establish the relation, the statutory requirements must be strictly carried out, otherwise, the adoption is an absolute nullity.[6] The fact of adoption is never presumed but must be affirmatively proved by the person claiming its existence. The destruction by fire of a public building in which the adoption papers would have been filed if existent does not give rise to a presumption of adoption nor is the destruction of the records of an adoption proceeding to be presumed. On the contrary, the absence of a record of adoption has been said to evolve a presumption of its non-existence.[7] Where, under the

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[2] Tolentino, *Civil Code of the Philippines*, Vol. I, 1974 ed., at 657; *Ellis v. Republic*, L-16922, 7 SCRA 962; *Van Matre v. Sankey*, 36 NE 628.

[3] Valverde 473; See Annotation in *Hofileña v. Republic*, L-26476, August 31, 1970, 34 SCRA 550.

[4] *In re*: *Adoption of Resaba Santos Yñigo v. Republic*, 94 Phil. 244 (1954).

[5] *Succession* of Pizzari, 75 So. 498.

[6] *Succession* of D'Asaro, 167 So. 2d 391; Appeal of Ritchie, 53 NW 2d 753.

[7] 2 CJS 444.

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provisions of the statute, an adoption is effected by a court order, the records of such court constitute the evidence by which such adoption may be established.[8]

2. Petitioner's flow of evidence in the case below does not lead us to any proof of judicial adoption. We can not pluck from his chain of evidence any link to the real existence of a court decree of adoption in his favor. Petitioner's proofs do not show or tend to show that at one time or another a specific court of competent jurisdiction rendered in an adoption proceeding initiated by the late spouses an order approving his adoption as a child of the latter. No judicial records of such adoption or copies thereof are presented or attempted to be presented. Petitioner merely proceeds from a nebulous assumption that he was judicially adopted between the years 1928 and 1932. By what particular court was the adoption decreed or by whom was the petition heard, petitioner does not even manifest, much less show. There are no witnesses cited to that adoption proceeding or to the adoption decree. Apparently on the assumption that the adoption was commenced in Manila, petitioner's counsel secured a certification from the Court of First Instance of Manila which, however, negatively reported "(T)hat among the salvaged records now available in this Office, there has not been found, after a diligent search, any record regarding the adoption of Mr. Renato Lazatin *alias* Renato Sta. Clara allegedly filed sometime in the years 1928 to 1931 by the spouses Dr. Mariano M. Lazatin and Margarita de Asis de Lazatin." The certification of the Local Civil Registrar of Manila "(T)hat our pre-war records relative to decisions of the Court of First Instance were either destroyed or burned during the Liberation of the City of Manila," does not furnish any legal basis for a presumption of adoption in favor of petitioner. This is because there was no proof that petitioner was really adopted in Manila or that an adoption petition was filed in the Court of First Instance of Manila by the deceased spouses, where, after hearing, a judgment of approval was rendered by said court. Moreover, if there was really such adoption, petitioner

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[8] *Quinn v. Quinn*, 58 NW 808; 2 CJS 444.

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could have conveniently secured a copy of the newspaper publication of the adoption as required under Section 4, Rule 99 of the Rules of Court (formerly Section 4, Rule 100) or a certification of the publishing house to that effect. Petitioner's failure on this point is another strong indication of the non-existence of the adoption paper. We also observed that the identity of the one who gave the written consent to the adoption (Section 3, Rule 99, Rules of Court), whether the parents or orphanage, does not appear in the trend of petitioner's evidence. The collation of proof on this point is not so difficult and such proof must be presented if only to prove the real existence of the adoption. And of course, if the adoption records were indeed destroyed or burned during the war, the clear right and duty of petitioner was to duly reconstitute the records as provided by law.

3. The absence of proof of such order of adoption by the court, as provided by the statute, cannot be substituted by parol evidence that a child has lived with a person, not his parent, and has been treated as a child to establish such adoption.[9] Even evidence of declaration of the deceased, made in his lifetime, that he intended to adopt a child as his heir, and that he had adopted him, and of the fact that the child resided with the deceased, as a member of his family, from infancy until he attained his majority, is not sufficient to establish the fact of adoption.[10] Nor does the fact that the deceased spouses fed, clothed, educated, recognized and referred to one like petitioner as an adopted child, necessarily establish adoption of the child.[11] Withal, the attempts of petitioner to prove his adoption by acts and declarations of the deceased do not discharge the mandatory presentation of the judicial decree of adoption. The thrust of petitioner's evidence is rather to establish his status as an admitted illegitimate child, not an adopted child — which status of an admitted illegitimate child was the very basis of his petition for intervention in the estate proceedings of the late Dr. Lazatin, as above stated. (*Supra*, at page 3 hereof)

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[9] *Coombs v. Cook*, 129 p. 698.

[10] *Haworth v. Haworth*, 100 SW 531.

[11] *Wohlgemuth v. Browning*, 384 SW 2d. 820.

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We do not discount though that declarations in regard to pedigree, although hearsay, are admitted on the principle that they are natural expressions of persons who must know the truth.[12] Pedigree testimony is admitted because it is the best that the nature of the case admits and because greater evil might arise from the rejection of such proof than from its admission.[13] But, in proving an adoption, there is a better proof available and it should be produced. The whereabouts of the child's family and circulation of the jurisdiction in which they resided and investigation in those courts where adoption are usually granted would surely produce an adoption order, if indeed there was an order.[14] Besides, since the point in favor of receiving hearsay evidence upon matters of family history or pedigree is its reliability, it has been set forth as a condition upon which such evidence is received that it emanate from a source within the family. Pursuant to this view, before a declaration of a deceased person can be admitted to prove pedigree, or ancestry, the relationship of the declarant, by either of blood or affinity to the family in question, or a branch thereof, must ordinarily be established by competent evidence.[15] Section 33 of Rule 130 states: "The act or declaration of a person deceased, or outside of the Philippines, or unable to testify, in respect to the pedigree of another person related to him by birth or marriage, may be received in evidence where it occurred before the controversy, and the relationship between the two persons is shown by evidence other than such act or declaration * * * "

4. Secondary evidence is nonetheless admissible where the records of adoption proceedings were actually lost or destroyed. But, prior to the introduction of such secondary evidence, the proponent must establish the former existence

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[12] See Sec. 33, Rule 130, Revised Rules of Court.

[13] Wigmore on *Evidence*, Sec. 1420.

[14] *In re: Estate of Helen M. Riggs*, 328 NYS 2d. 138; Moran, *Comments on the Rules of Court*, Vol. 5, 1970 ed., at 332, *et seq*.

[15] 29 Am Jur 2d 565.

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of the instrument. The correct order of proof is as follows: Existence; execution; loss; contents; although this order may be changed if necessary in the discretion of the court.[16] The sufficiency of the proof offered as a predicate for the admission of an alleged lost deed lies within the judicial discretion of the trial court under all the circumstances of the particular case.[17] "As earlier pointed out, petitioner failed to establish the former existence of the adoption paper and its subsequent loss or destruction. Secondary proof may only be introduced if it has first been established that such adoption paper really existed and was lost. This is indispensable.[18] Petitioner's supposed adoption was only testified to by him and is allegedly to be testified to by a brother of the deceased Mariano M. Lazatin or others who have witnessed that the deceased spouses treated petitioner as their child. If adoption was really made, the records thereof should have existed and the same presented at the hearing or subsequent thereto or a reasonable explanation of loss or destruction thereof, if that be the case, adduced.[19] Assuming the mere fact that the deceased spouses treated petitioner as their child does not justify the conclusion that petitioner had been in fact judicially adopted by the spouses nor does it constitute admissible proof of adoption.

We cannot entertain the plea of petitioner that the sanction of Rule 29 should be applied to consider as established the fact of his adoption due to the refusal of respondent Nora L. de Leon to produce the document of adoption, because *first*, the fact or real existence of petitioner's adoption had not been established; *second*, there is no proof that such document of adoption is in the possession of respondent Nora L. de Leon; *third*, the *motu proprio* order of the court for Nora de Leon to produce the items retrieved from the safety deposit box cannot be treated as a mode of discovery of production and inspection

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[16] Jones on *Evidence*, Vol. 1, 5th ed., at 458, *et seq.*

[17] *Burns v. Goodrich*, 382 SW 2d 501.

[18] Francisco, *Revised Rules of Court, Evidence*, 107.

[19] See *Eusebio v. Valmores*, 97 Phil. 167 (1955).

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of documents under Rule 27; and *fourth*, the items deposited in the safety deposit box have already been surrendered by respondent Nora L. de Leon on April 26, 1976 and no document of adoption in favor of petitioner was listed as found in the safety deposit box.

5. As a necessary consequence, petitioner Renato Lazatin *alias* Renato Sta. Clara cannot properly intervene in the settlement of the estate of Margarita de Asis, Sp. Proc. No. 2341-P as an adopted child because of lack of proof thereof. For one to intervene in an estate proceeding, it is a requisite that he has an interest in the estate, either as one who would be benefited as an heir or one who has a claim against the estate like a creditor.[20] A child by adoption cannot inherit from the parent by adoption unless the act of adoption has been done in strict accord with the statue. Until this is done, no rights are acquired by the child and neither the supposed adopting parent or adopted child could be bound thereby.[21] The burden of proof in establishing adoption is upon the person claiming such relationship. He must prove compliance with the statutes relating to adoption in the jurisdiction where the adoption occurred.[22] *A fortiori*, if no hereditary interest in the estate can be gained by a claimant who failed to submit proof thereof, whether the will is probated or not, intervention should be denied as it would merely result in unnecessary complication.[23] To succeed, a child must be legitimate, legitimated, adopted, acknowledged illegitimate natural child or natural child by legal fiction or recognized spurious child.[24]

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[20] *Ngo The Hua v. Chung Kiat Hua*, L-17091, Sept. 30, 1963, 9 SCRA 116; *Sumilang v. Ramagosa*, L-23135, Dec. 26, 1967, 21 SCRA 1369; *Teotico v. del Val*, L-18573, March 26, 1965, 13 SCRA 410.

[21] *In re Estate of Schick*, 274 NE 2d 291, quoting *McCollister v. Yard*, 57 NW 447.

[22] *In re Estate of Helen M. Riggs*, 328 NYS 2d 138.

[23] *Cacho v. Udan*, L-19996, April 30, 1965, 13 SCRA 697.

[24] See *Cid v. Burnaman*, L-24414, July 31, 1968, 24 SCRA 438-39.

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In the face of the verified pleadings of record (constituting judicial admissions) which show that petitioner sought to intervene on November 22, 1974 in the estate proceedings of his alleged adoptive father Dr. Mariano M. Lazatin (Sp. Proc. No. 2326-P) as an admitted illegitimate (not natural) child,[25] while his intervention on August 20, 1975 in the estate of Margarita de Asis, widow of the deceased Dr. Lazatin (Sp. Proc. No. 2341-P) was as her adopted child on the basis of the affidavit of a brother of the deceased Dr. Lazatin, Benjamin Lazatin, executed on August 19, 1975 (which affidavit modified a first affidavit executed on May 31, 1975, which failed to state by "oversight" that Dr. Lazatin and his wife had "jointly adopted" petitioner, but stated that affiant knew petitioner to be "an illegitimate son" of Dr. Lazatin who later "legally adopted (him) as a son before the Court of First Instance of Manila sometime between the years 1928 and 1931") and prescinding from the question of whether a natural or spurious child may be legally adopted by the putative father, we hold that no grave abuse of discretion nor error of law was committed by respondent judge in issuing the questioned orders of March 4, 1976, March 26, 1976 and June 3, 1976 denying petitioner's petition "to declare as established in this proceeding the fact of adoption" and denying "any motion for reconsideration unless based on some documentary proof." The Court finds no basis to grant the affirmative relief sought in this proceeding by petitioner for a rendition of judgment "declaring as established the fact of your petitioner's adoption as a son of the deceased spouses entitling him to succeed in their estates as such in accordance with the applicable law on succession as to his inheritance."

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[25] *Supra*, at page *3* hereof. In these cases involving both estates of the deceased spouses, petitioner asserts his claim of being an adopted child, on the ground that respondent court had "definitively ruled" that he "failed to establish such status (adoption)." Petitioner's Reply, *Rollo*, p. 241. In his Reply to other respondents, petitioner asserts that "there is actually no issue in the estate of Mariano Lazatin that your petitioner was an acknowledged illegitimate son of Mariano M. Lazatin" and "the only issue really is . . . whether (he) is also an adopted son of the deceased spouses." *Rollo*, pp. 248-249.

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Upon the filing of the petition, the Court issued on June 16, 1976 a temporary restraining order which as amended on July 21, 1976, restrained respondent judge "from proceeding with the hearing scheduled on June 17, 1976 at 8:30 a.m., requiring the submission of evidence to establish heirship in Special Proceedings No. 2326-P entitled '*Intestate Estate of the Late Mariano M. Lazatin*' and Special Proceedings No. 2341-P, entitled '*Testate Estate of the Late Margarita de Asis Vda. de Lazatin,*' and from proceeding with the probate of the alleged holographic will of the deceased Doña Margarita de Asis *Vda. de* Lazatin scheduled on June 29, 1976, August 10 and 12, 1976 and on any other dates." With the Court's determination of the issues as herein set forth, there is no longer any need for restraining the proceedings below and the said restraining order shall be immediately lifted.

On January 24, 1977, the Court upon petitioner's motion resolved to conditionally allow respondent judge "to take the deposition of petitioner's witnesses to perpetuate their testimonies pursuant to Rule 134, Section 7 of the Rules of Court, subject to the Court's ruling in due course on the admissibility of such testimonies." The Court thereby permitted in effect the advance testimonies of petitioner's witnesses, principally among them Rafael Lazatin and Esteban L. Lazatin, both brothers of the deceased Dr. Mariano L. Lazatin and as stated in petitioner's motion of January 11, 1977:

"Substantially, the testimony of the above named witnesses will be on the fact that they had been informed by the deceased spouses, Mariano and Margarita Lazatin that your petitioner was their [Mariano's and Margarita's] judicially adopted son and to elicit further from them the fact that your petitioner enjoys the reputation of being their judicially adopted son in the Lazatin family."

The Court's resolution allowing the advance testimonies of petitioner's witnesses was but in application of the Court's longstanding admonition to trial courts as reaffirmed in *Lamagan vs. De la Cruz,*[26] "to be liberal in accepting proferred evidence

[26] 40 SCRA 101, 110 (1971).

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since even if they were to refuse to accept the evidence, the affected party will nevertheless be allowed to spread the excluded evidence on the record, for review on appeal." The Court therein once again stressed the established rule that "it is beyond question that rulings of the trial court on procedural questions and on admissibility of evidence during the course of the trial are interlocutory in nature and may not be the subject of separate appeal or review on *certiorari*, but are to be assigned as errors and reviewed in the appeal properly taken from the decision rendered by the trial court on the merits of the case,"[27] and that a party's recourse when his proferred evidence is rejected by the trial court is to make a formal offer stating on the record what a party or witness would have testified to were his testimony not excluded, as well as to attach to the record any rejected exhibits.

At the continuation of the proceedings below for declaration of heirship and for probate of the alleged holographic will of the deceased Margarita de Asis *Vda. de* Lazatin, petitioner who has failed to establish his status as an alleged adopted child of Margarita de Asis (unless, as reserved to him by the court below, he can show some documentary proof) and whose intervention in the estate of the deceased Dr. Mariano Lazatin is as an admitted illegitimate child, will have to decide whether he will pursue his first theory of having the status of such admitted illegitimate child of said deceased. Whatever be his theory and his course of action and whether or not he may be duly allowed to intervene in the proceedings below as such alleged admitted illegitimate child, his recourse in the event of an adverse ruling against him is to make a formal offer of proof and of his excluded evidence, oral and documentary, and seek a reversal on an appeal in due course.

ACCORDINGLY, the petition is dismissed and the questioned orders denying petitioner's petition below " to declare as established in this proceeding the fact of [his] adoption" are hereby affirmed. The temporary restraining order issued on

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[27] *Idem*, at pages 106-107.

Supreme Court E-Library

June 16, 1976 and amended on July 21, 1976 is ordered lifted, effective immediately. Without costs.

SO ORDERED.

Makasiar, Fernandez, Guerrero, and *Melencio-Herrera, JJ.*, concur.

De Castro, J., took no part.

FIRST DIVISION

[G.R. Nos. L-44550-51 & L-44552-53. July 30, 1979]

NORA AGUILAR MATURA, *petitioner, vs.* **HON. ALFREDO C. LAYA, as Presiding Judge of Branch XII, Court of First Instance of Cebu, and THE PEOPLE OF THE PHILIPPINES,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; NEW TRIAL; LACK OF OFFICIAL COURT STENOGRAPHER IS NOT A GROUND FOR NEW TRIAL; REASON THEREFOR.— Without going into the veracity of petitioner's allegation that there was no court stenographer in the municipal court of Argao, it is clear from the decision rendered by the municipal court that the two criminal cases were tried jointly, the proceedings were duly recorded in accordance with R.A. 6031 and a detailed statement of the evidence presented by the prosecution and the defense was made. In the decision of respondent judge, he made express reference to "the transcripts of stenographic notes of the proceedings before the court below in its session of July 24, 1971 which stenographer Leonisa B. Gonzales took down." In *Celestino Luzano v. Hon. Honorio Romero, et al.*, this Court held that "even when there is no duly appointed court stenographer, the proceedings can still be recorded by a competent stenographer duly designated by the Judge or upon agreement of the parties."