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SECOND DIVISION

[G.R. No. 71370. July 7, 1986]

SLOBODAN BOBANOVIC and DIANNE ELIZABETH CUNNINGHAM BOBANOVIC, *petitioners, vs.* **HON. SYLVIA P. MONTES, (in her capacity as MINISTER OF SOCIAL SERVICES and DEVELOPMENT),** *respondent.*

SYLLABUS

REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *MANDAMUS;* THE ABSENCE OF ANY LAW THAT DIRECTS THE MINISTRY OF SOCIAL SERVICES AND DEVELOPMENT TO ISSUE A CLEARANCE TO TRAVEL WILL NOT PRECLUDE THE COURT TO ISSUE THE WRIT.— The claim of respondent MSSD that *mandamus* should not issue because there is no law specifically enjoining her to issue a clearance to travel or that such directive is not carried in the order granting adoption is a manifestly specious and absurd argument. As a judgment is not confined to what appears on the face of the decision but also to those necessarily included therein or is necessary thereto (*Unson vs. Lacson*, 25 SCRA 86) it follows, therefore, as a logical effect of the decree of adoption, that the adopted minor should be allowed to travel to Australia to join his adoptive parents. The absence of any law that directs respondent Minister to issue a clearance to travel will not preclude this Court from issuing the writ of *mandamus* prayed for. What respondent has overlooked is the basic principle that judgments, orders or processes of the court should be enforced by public officers and obeyed by those affected by the judgment of the court. As the right of the adoptive child and the adopting parents to live together is inherent in an order or judgment granting adoption, it becomes no less a duty of the public officers concerned to translate the effects of such a judgment or order into reality. Under Section 5, Rule 135 of the Rules of Court, it is an inherent power given to the courts to compel obedience to its judgments, orders and processes.

APPEARANCES OF COUNSEL

Ledesma, Saludo & Associates for petitioners.

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DECISION

ALAMPAY, *J.*:

As gleaned from the pleadings of the parties, it appears that on November 28, 1984, a petition to adopt the minor Adam Christopher Sales was filed by spouses Slobodan Bobanovic and Dianne Elizabeth Cunningham Bobanovic, both Australian citizens with established residence at 3 Rethel Close Keilor Downs, Melbourne, Victoria, Australia but who then were temporarily residing at No. 8 Aries, Bel-Air, Makati, Metro Manila. Said petition was docketed as Special Proceedings No. M-531, Branch 133 of the Regional Trial Court of Makati, Metro Manila.

It appears that upon the filing of the aforestated petition, the court *a quo* on the same date issued an order setting the hearing of the same on December 27, 1984, and caused copy of this order to be published at the expense of the petitioner in a newspaper of general circulation once a week for three (3) consecutive weeks. In the same order it was directed that a copy thereof be served upon the Solicitor General, the Local Civil Registrar and the Ministry of Social Services Development (MSSD). Said Ministry was directed to conduct a social case study of the minor sought to be adopted as well as on both his natural and adopting parents and to submit a report and recommendation on the matter at least one week before the date of the hearing and to intervene on behalf of the child if it finds that the petition should be denied.

From the case records, it is disclosed that at the initial hearing of the petition on December 27, 1984, the MSSD failed to comply with the stated Order of November 28, 1984. No case study was conducted by the Ministry regarding the aforesaid minor and his natural and adopting parents. Neither did the MSSD submit any report or recommendation. It did not intervene in the case. Due to such inaction, a Social Worker assigned to the aforementioned Regional Trial Court, by the name of Alma Algemco, RTC Staff Assistant V, conducted the requisite case

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study. She submitted the corresponding report to the court *a quo,* recommending favorable action on the petition for adoption.

On January 4, 1985, judgment was rendered granting the adoption of the minor Adam Christopher Sales by the petitioners herein. On January 21, 1985, a certificate of finality of the order granting the adoption was issued by the Officer-In-Charge of Regional Trial Court, Branch 133. In said certification, it was mentioned that copy of the order of January 4, 1985 granting adoption was received by the Solicitor General on January 4, 1985, and by the Ministry of Social Services and Development on January 5, 1985. Said certification also stated that the order of adoption not having been amended nor modified and without any appeal taken therefrom, the adoption order became final and executory.

Subsequently, petitioners as the adoptive parents, applied for a travel clearance with the Ministry of Social Services and Development in order that their adopted son, Adam Christopher Bobanovic, may travel to Australia. The Minister of Social Services and Development then, Minister Sylvia P. Montes, declined to issue the requested travel clearance on the ground that the MSSD, prior to the initial hearing of the adoption case, was allegedly not furnished with a copy of the petition for adoption nor with the court order dated November 28, 1984, requiring the MSSD to make a case study. Claiming that the MSSD was denied the opportunity to conduct the case study required by law and as it was supposedly deprived also of the opportunity to intervene in the case, it was respondent's contention that there was no basis for her to determine whether petitioners meet the specified eligibility criteria required by the provisions of the Australian Procedures Relating to Placement of Children from other countries for adoption. Without assurance afforded her that the adopted Filipino child will be in good hands, the respondent Minister averred that mandamus will not lie to compel her to issue the subject travel clearance.

Respondent appears to insist that the MSSD is the only agency authorized under the law to conduct the case study and no adoption case can be properly acted upon by the Court involved

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if no referral to the MSSD is made of the case for study, report and recommendation.

Due to the refusal of public respondent Minister to issue the travel clearance, a petition for *mandamus* was filed with this Court on July 22, 1985 by the adoptive parents, praying therein that public respondents be directed to issue in favor of their adopted child, Adam Christopher Bobanovic, the requisite clearance to travel.

In the resolution of this Court dated July 29, 1985, the public respondent Minister was required to comment on the petition. In the comment of public respondent filed with the Court on September 27, 1985, it was averred that the writ of *mandamus* prayed for in this instance should not be issued because there was no neglect of duty on the part of respondent Minister inasmuch as the issuance of a travel clearance by her office is not a ministerial duty but a matter necessarily involving the exercise of her judgment and discretion. Furthermore, it was pointed out that in the order or judgment granting adoption, there is no specific directive that the Minister of Social Services Development should issue a clearance to travel. Respondent Minister maintained the view that only after she finds that petitioner is qualified under Australian and the Philippine Laws on adoption and that the Filipino child will be in good hands that the issuance of the travel clearance certificate becomes a duty on her part to perform.

In their reply to the comment filed by the Solicitor General in behalf of respondent Minister, petitioners refute respondent's allegation that MSSD was not duly advised of the petition or the scheduled initial hearing of the case. In this regard, petitioners stress the fact that the court *a quo*, in denying public respondent's Motion for Reconsideration of the order granting adoption under its order of April 30, 1985, found otherwise. Petitioners submit, therefore, that the MSSD must be deemed duly notified of the petition and also of the scheduled hearing of the same on December 27, 1984. Petitioners contend that because it is an admitted fact that the decree of adoption dated January 4, 1985, had been served on and was received by the MSSD and as the

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said decree of adoption ultimately became final and executory, the respondent Minister can no longer properly question and negate its effects and subsequent implementation by denying the issuance of the requested certificate of clearance to travel. Petitioners argue that such denial would in effect frustrate and render meaningless the rights of adoption granted to the petitioners by the court.

In the resolution of this Court dated May 14, 1986, We resolved to give due course to the petition and to consider respondent's comment to the same as the latter's answer to the petition. The parties were also asked to file their respective memoranda.

In resolving the merits of the petition, We find it proper to consider the order of the court below dated January 4, 1985, granting the petition for adoption of the minor, Adam Christopher Bobanovic, and which is hereunder reproduced in full:

"Before this Court is the verified petition of Spouses Slobodan Bobanovic and Dianne Elizabeth Cunningham Bobanovic for the adoption of the minor Adam Christopher Sales also known as Adam Christopher Bobanovic.

"When this case was called for initial hearing on December 27, 1984, nobody appeared to oppose the instant petition notwithstanding publication of the order of hearing, (Exh. "A" in the "Filipino Times", a newspaper of general circulation, in its issues of November 29, December 7, and 14, 1984 (Exhs. "C", "C-1" to "C-4"). Copies of the same order were likewise sent and duly acknowledged by the Office of the Solicitor General, the Ministry of Social Services and Development and the Local Civil Registrar of San Juan, Metro Manila (Exhs. "B", "B-1" and "B-2").

"Evidence so adduced shows that petitioners are both of legal age, Australian citizen, legally married (Exhs. "H" and "H-1"), and presently residing at No. 8 Aries Bel Air III, Makati Metro Manila. They are childless since their marriage on November 16, 1979 due to primary infertility on the part of the wife petitioner (Exh. "M"). Petitioners have a combined income of A$42,384.00 as shown by their Income Tax Returns (Exhs. "J" and "Q"), and have assets totalling A$121,560.00 as evidenced by their Statement of Assets and Liabilities (Exhs. "K" and "K-1").

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"Adam Christopher Sales also known as Adam Christopher Bobanovic was born on April 5, 1984 to Lulu Sales as shown by her Birth Certificate (Exhs. "C" and "C-1"). She was given to the care and custody of the petitioners by her natural mother on November 19, 1984 as shown by the Deed of Surrender and Waiver (Exhs. "E" and "E-1") and gave her written consent to this Adoption (Exhs. "D" and "D-1 ").

"Petitioners have been certified to be of good moral character (Exhs. "N" and "N-1"), they have no derogatory records here in the Philippines as well as in their country (Exhs. "L", "L-1", "O", "O-1" and "P") and that they are both found to be physically and mentally fit to adopt (Exhs. "M" and "M-2" and "R"). Petitioners, being Australian citizen, are allowed by their laws to adopt a Filipino child (Exh. "I"). Petitioners have cared for and love the child as their own natural child and in case they will have a child of then own, they will treat him as their first child. They are also aware that the child will become their compulsory heir and that they will not inherit from him. (Tsn., Dec. 27, 1984, p. 4). Further, according to the report of the Social Worker, petitioners are aware of the responsibilities attached to the petition and they are found to be physically, emotionally and financially capable to rear the child Adam Christopher Sales also known as Adam Christopher Bobanovic (Exhs. "U", "U-1" and "U-2").

"Petitioners are therefore qualified under the Child and Youth Welfare Code (P.D. 603) to adopt the aforesaid minor. The trial custody required by Art. 35 of said code is dispensed for the best interest of his child and considering that the child is getting along well with his adoptive parents as depicted in his picture (Exhs. "I").

"WHEREFORE, judgment is hereby rendered, granting the petition and ordering that henceforth the minor Adam Christopher Sales also known as Adam Christopher Bobanovic is freed from all legal obedience and maintenance with respect to his natural parents, and to all intents and purposes, said minor is considered the legitimate child of the petitioners Slobodan Bobanovic and Dianne Elizabeth Cunningham Bobanovic. The local Civil Registrar of San Juan, Metro Manila is directed to issue the corresponding amended birth certificate of said child in accordance with Arts. 37 and 39 of PD. 603.

"That this judgment shall take effect as of November 28, 1984, the date of the filing of this petition.

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"Let copies of this Order be furnished upon the Local Civil Registrar of San Juan and Makati, Metro Manila.

"SO ORDERED.

"GIVEN this 4th day of January, 1985, at Makati, Metro Manila.

"SGD. ROSARIO R. VELOSO
J u d g e"

(Annex B. Petition, *Rollo*, p. 9)

In the light of the facts and circumstances above-stated and from what We see in the records, the Court finds merit in the petition.

Firstly, the claim of respondent MSSD that it was not served copy of the petition or the order of November 28, 1984, was clearly passed upon in the court below when it denied in its order of April 30, 1985, MSSD's motion for reconsideration of the adoption order based on its findings that:

"x x x the records show that the MSSD was served copy of the petition (Order of Nov. 28, 1984) which was published in the Filipino Times for 3 consecutive weeks, through the Court Social Worker, who is authorized to receive and act for MSSD as RTC Staff Assistant V (Supreme Court En Banc Resolution in Adm. Matter No. 85-27136-RTC. ù Re: Request of Minister Sylvia P. Montes for the issuance of a Court Circular to all Regional Trial Courts regarding the proper application of the provision on adoption of P.D. No. 603). x x x." (Order of April 30, 1985; *Rollo*, p. 86)

We fail to find any compelling circumstance or reason to disturb the findings of fact of the court below in this respect.

Undisputed also is the fact that the Order of November 28, 1984 was duly published in a newspaper of general publication and that copies of said Order were likewise sent and duly acknowledged by all government offices concerned including the one authorized to receive the same for the MSSD. Of greater significance is that when the Order granting adoption was promulgated by the Regional Trial Court on January 4, 1985, and upon denial of the motion for reconsideration of said order, filed by the MSSD, no appeal at all was interposed by the

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Ministry. The factual issue then of whether MSSD must be deemed to have received prior notice of the petition for adoption must now be considered foreclosed due to the absence of any appeal by MSSD. It is readily understandable that the alleged lack of notice to the MSSD of the petition or the stated. Order of November 28, 1984 would be asserted by the MSSD. Such explanation can provide the usual and convenient excuse for its non-compliance with its obligation to render the corresponding case study and report and/or to intervene in the adoption proceedings.

The evidence offered by the MSSD which is but its own certification that it did not receive a copy of the petition and the order of November 28, 1984 setting the initial hearing of the same is neither sufficient nor weighty as to disturb the factual findings of the lower court. Furthermore, the said order of November 28, 1984 was admittedly published in a newspaper of general circulation and copies of the order sent to all government offices concerned. By this it may also be presumed that MSSD would have knowledge of the adoption proceedings and could have intervened.

Respondent MSSD by its receipt of the said Order of January 4, 1984, granting adoption would inescapably be aware that the Social Worker assigned by the court *a quo*, had in fact conducted the corresponding case study and report and that the judgment rendered in the adoption case had given credit to said report.

When respondent MSSD filed on February 25, 1985 its motion to set aside the order of January 4, 1985 granting adoption, it should have as early as then, challenged or disputed the fitness of the petitioners to adopt the minor child, if at all MSSD has any reason to be apprehensive. Paradoxically however, MSSD has not at all shown or even intimated in all pleadings submitted to this Court during all the time elapsed since the instant case was commenced on July 25, 1985 that MSSD has found even one specific fact or circumstance warranting denial of the requested travel clearance certificate on the ground that the welfare of the adopted child would be adversely affected. Absent

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any submission and proof that prejudice would be caused the adopted child if allowed to join his adoptive parents, the MSSD should be faulted for declining to issue the necessary clearance certificate.

To dispel the farfetched qualms MSSD seemingly entertain, suffice it to point to the relevant portions of the order granting adoption which even make reference to pertinent certifications and exhibits. These, for convenience are hereunder again quoted:

x x x x x x x x x

"Petitioners have been certified to be of good moral character (Exhs. "N" and "N-1"), they have no derogatory records here in the Philippines as well as in their country (Exhs. "L", "L-1", "O", "O-1" and "P") and that they are both found to be physically and mentally fit to adopt (Exhs. "M" to "M-2" and "R"). Petitioners, being Australian citizen, are allowed by their laws to adopt a Filipino child (Exh. "T"). Petitioners have cared for and love the child as their own natural child and in case they will have a child of their own, they will treat him as their first child. They are also aware that the child will become their compulsory heir and that they will not inherit from him, (tsn. Dec. 27, 1984, p. 4). Further, according to the report of the Social Worker, petitioners are aware of the responsibilities attached to the petition and they are found to be physically, emotionally and financially capable to rear the child Adam Christopher Sales also known as Adam Christopher Bobanovic (Exhs. "U", "U-1" and "U-2") (supra, *Rollo*, pp. 9-10)

In the matter of the issuance of the travel clearance certificate, how simple it could have been for respondent MSSD to have just looked into and considered said report of the Social Worker and/or verified the same. In all the pleadings submitted by respondent MSSD to this Court, there is no insinuation that the report of the Social Worker submitted to the court below is in any way erroneous, incorrect or faulty. MSSD's stance appears to be just to stubbornly insist and maintain that the exclusive prerogative to make a case study pertains to that Ministry. Public respondent would disregard and ignore the favorable report and recommendation of the Social Worker referred to in the decision of the court *a quo* without any given

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reason except for its persistent invocation of what to this Court would now appear to be a frivolous technicality after the finality of the judgment or order decreed by the court below. By refusing to issue the travel clearance respondent Minister would in effect frustrate said judgment of adoption for the adopting parents who reside in a foreign country would consequently remain separated from their adopted child. The respondent Minister would in effect take away from the petitioners what already belongs to them as a vested legal right. The unfairness of such a situation created by the action of the public respondent is patently a wanton abuse of her discretion and a neglect of her plain duty to assist in the reasonable implementation of the final order of a proper court.

In refusing to grant the travel clearance certificate, respondent MSSD discounts and negates the effects of a valid and final judgment of the court, regarding which no appeal had even been taken from. Respondent MSSD should have realized that it would be incongruous to accept said judgment from which no appeal was made and yet render the same judgment ineffective by barring the implementation of the same. It is rather paradoxical that this particular Ministry should be overly concerned over its claimed exclusive prerogative to conduct the case study work instead of placing more importance on the possible prejudicial effects of its refusal on the welfare of the child. This is aside from the resulting bitter frustration MSSD inflicted on the adopting parents. When MSSD elected to no longer pursue an appeal from the Order of Adoption after its motion to set aside the judgment in this case was denied, undoubtedly, petitioners' hopes and expectations that they would now be able to bring to Australia the child they love and had adopted, to live with them permanently and at the soonest time, must have soared. It is almost cruel that petitioners should continue to be rebuffed by the rigid and inflexible attitude of a bureaucratic office which, over all the agencies should be more sensitive and have deep concern for human feelings.

Even assuming, that the issuance of a travel clearance certificate would require exercise of judgment, how simpler it could have been and much efforts of the petitioners and this

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Court could have been spared, if the MSSD, as workers in the government, had only been inspired to take the initiative to help instead of to hinder. All that MSSD had to do was to use a little of its time to verify the correctness of the case study report, prepared and submitted by the Social Worker who acted upon instructions of the court below. In a matter of days, this verification could have been accomplished. If at all there was any reason to impeach or assail said report, MSSD could then have so stated for the satisfaction of the parties and of this Court. Instead, We note that the arguments of the respondent herein are confined and restricted to its recalcitrant view that the MSSD having been allegedly denied opportunity to make a case study report, therefore it should not issue the travel clearance certificate. This claim has of course been rejected as without any factual basis and of no merit. It became also irrelevant after MSSD's awareness of the valid and final court judgment of adoption which therein made mention of a government worker's report regarding the subject minor Adam Christopher Bobanovic and his adopting parents. The undue importance which MSSD attaches to prerogatives which it claims belong exclusively to it, reflects poorly on its perception as to what truly are the more desirable values. As a government agency that is expected to be service oriented, its attitude shown in this case is rather disappointing.

The claim of respondent MSSD that mandamus should not issue because there is no law specifically enjoining her to issue a clearance to travel or that such directive is not carried in the order granting adoption is a manifestly specious and absurd argument. As a judgment is not confined to what appears on the face of the decision but also to those necessarily included therein or is necessary thereto (*Unson vs. Lacson*, 25 SCRA 86) it follows, therefore, as a logical effect of the decree of adoption, that the adopted minor should be allowed to travel to Australia to join his adoptive parents.

The absence of any law that directs respondent Minister to issue a clearance to travel will not preclude this Court from issuing the writ of *mandamus* prayed for. What respondent has overlooked is the basic principle that judgments, orders or

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processes of the court should be enforced by public officers and obeyed by those affected by the judgment of the court. As the right of the adoptive child and the adopting parents to live together is inherent in an order or judgment granting adoption, it becomes no less a duty of the public officers concerned to translate the effects of such a judgment or order into reality. Under Section 5, Rule 135 of the Rules of Court, it is an inherent power given to the courts to compel obedience to its judgments, orders and processes.

One final word. Respondent MSSD apparently has overlooked, forgotten, or has not taken time to be aware of what this Court had stated in previous other cases and which would now be worthwhile to reiterate.

"x x x adoption statutes, being humane and salutary, hold the interest and welfare of the child to be of paramount consideration. x x x are designed to provide homes, parental care and education for unfortunate, needy or orphaned children and give them the protection of society and family in the person of the adopter 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.*" (*Malkinson vs. Agrava*, 54 SCRA 66) (Citing *Santos vs. Aranzanso*, 16 SCRA 344 (1966); *Santos vs. Republic*, 21 SCRA 378 (1967); *Frasnick vs. Republic*, 98 Phil. 665 (1956).)

In *Duncan vs. CFI of Rizal*, L-30576, 69 SCRA 298, We again emphasized that "the rule of *Dura lex sed lex*" should not be applied but softened in matters relative to adoption of children or to acts designed to provide homes, love, care and education for unfortunate children. The widest lattitude of sympathy and assistance should be extended by courts because as therein said, "the law is not, and should not be made, as instrument to impede the achievement of a salutary humane policy." These pronouncements should be accorded fullest consideration and appreciation by the respondent Ministry of Social Service and Development.

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WHEREFORE, it is hereby ordered that the writ of mandamus be issued directing the present Minister of Social Services and Development, who now would be acting for the respondent Minister in this case, to forthwith issue without undue delay the requisite travel clearance certificate in favor of the herein petitioners' adopted child, ADAM CHRISTOPHER BOBANOVIC.

SO ORDERED.

Feria (Chairman), Fernan, Gutierrez, Jr., and *Paras, JJ.*, concur.

FIRST DIVISION

[G.R. No. 71989. July 7, 1986]

AVELINA CONDE, *petitioner, vs.* **HON. FELIX MAMENTA, JR., as Presiding Judge of Branch LXX of the Regional Trial Court, Third Judicial Region (Zambales), and the PEOPLE OF THE PHILIPPINES,** *respondents.*

SYLLABUS

REMEDIAL LAW; CRIMINAL PROCEDURE; CRIMINAL JURISDICTION; DEFINED.— It should be noted that neither one of the following enactments makes non-payment of fees an offense nor provides for punishment for violation. The judgment itself is bereft of any criminal sanction. The surcharge imposed by Section 5 B.05 Article B, Chapter V Revenue Code of Masinloc, Zambales for late or non-payment of monthly rentals is not a penalty under criminal law but an additional amount added to the usual charge. It is more of an administrative penalty, which should be recoverable only by civil action. There being no offense defined nor punishment prescribed, a criminal action will not lie, and the Municipal Circuit Trial Court was without criminal jurisdiction over the matter. Criminal jurisdiction is the authority to hear and try a particular offense