

NGEAOL OLEKERIIL, Plaintiff
v.
VALENTINA BASILIUS, Defendant
Civil Action No. 216
Trial Division of the High Court
Palau District
April 6, 1961

Application for writ of habeas corpus by alleged adoptive mother of child against natural mother who took possession of child without prior notice to alleged adoptive mother. The Trial Division of the High Court, Chief Justice E. P. Furber, denied application for writ and held that defendant is entitled to retain possession and custody of child and that plaintiff has no right to custody in nature of lien on child to secure anything that may be due her. Application for writ denied.

1. Palau Custom—Adoption

Adoption under Palau custom is very different from adoption by court under Trust Territory Code or provisions of statutes for adoption usual in United States.

2. Palau Custom—Adoption

Adoption under Palau custom does not cut off all of natural mother's connection with and rights over child.

3. Palau Custom—Adoption

Under Palau custom, natural mother retains right to revoke adopting mother's right to custody at any time.

4. Palau Custom—Adoption

Under Palau custom, natural mother is expected to exercise her right to custody if child is not getting along with mother by adoption.

5. Palau Custom—Adoption

Where natural mother takes possession of child without notifying adopting mother, and acts without degree of politeness called for under Palau custom, natural mother is nevertheless entitled to retain possession and custody of child.

6. Palau Custom—Adoption

Under Palau custom, adopting mother has no right to custody in nature of lien on child to secure anything that may be due her.

FURBER, *Chief Justice*

This memorandum of decision is filed for the future guidance of the parties and any others involved in similar

situations covering the question of custody of children who have been adopted under the Palau custom.

[1-4] The court is firmly of the opinion that an adoption under Palau custom is very different from adoption by a court under the Trust Territory Code or the provisions of statutes for adoption usual in the United States. An adoption under Palau custom definitely does not cut off all of the natural mother's connection with and rights over the child. She retains a right to revoke the adopting mother's right to custody at any time, and is expected to exercise this right, if the child is not getting along well with the mother by adoption.

A writ of habeas corpus was applied for in this action by one who considered herself the mother of a child by adoption against the natural mother who had resumed custody of the child and taken possession of her without prior notice to the alleged mother by adoption. The natural mother questioned whether the plaintiff really was a mother by adoption since the child had originally been adopted by the plaintiff's deceased sister, and the defendant alleged that the child should either have been returned to the defendant or a new arrangement made with the defendant after the sister died and before the plaintiff assumed custody. For the purposes of this application for a writ of habeas corpus, however, it is assumed that the plaintiff is in the position of a mother by adoption.

[5, 6] The plaintiff complains especially that the defendant took possession of the child without notifying the plaintiff and caused her great worry and concern in searching for the child and implies that she should have some damages. The court is satisfied that the defendant did act rather abruptly and without the degree of politeness that is usually called for under Palau custom, but holds that, regardless of this, the defendant is entitled to

retain possession and custody of the child and that the plaintiff has no right to custody in the nature of a lien on the child to secure anything that may be due her. The application for writ of habeas corpus was therefore denied.

The court, in denying the application however, does not mean to express or imply any opinion as to whether any sort of damages may be due because of the defendant's taking the child without notice. Counsel for the plaintiff has intimated that the plaintiff should have what is called "*tngarkireng*". Certainly as a matter of politeness and assurance of good will, some small amount might properly be paid by the defendant to the plaintiff under the custom, but the court is in grave doubt as to whether this is just a matter of politeness and courtesy, carrying only moral obligation which the courts should not try to enforce, or is a matter of legal obligation. It further appears that any question of possible liability for *tngarkireng* may also be influenced by any lack of consideration the plaintiff may have shown the defendant in taking custody of the child after the plaintiff's sister's death without making any new arrangement with the natural mother. If the parties and their relatives are not able to agree on these matters through traditional channels, they may be taken up as a separate case in the District Court.