G.R. No. 184535 - SR. PILAR VERSOZA v. PEOPLE OF THE PHILIPPINES, MICHELINA S. AGUIRRE-OLONDRIZ, PEDRO AGUIRRE, AND DR. MARISSA PASCUAL

Promulgated on:
September 3, 2019

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SEPARATE OPINION

REYES, A., JR., *J.*:

I concur with the Resolution of the Court *en banc* insofar as it denied the present petition for having been rendered moot by the death of petitioner Sr. Pilar Versoza on September 9, 2012. I write this separate opinion to express my views on the proposed balancing of individual reproductive rights as against parental authority. Particularly implicated here is the individual's right to procreate as against the right and duty of parents to decide on behalf of their children who lack the capacity to consent to medical procedures which impinge on the right to procreate. As Larry's guardians and *de facto* parents, the spouses Aguirre's primary and natural right to bring up and care for Larry vests in them the right to decide what is best for the child they took in and raised as their own; and such decision is clothed with the presumption of good faith and legality until proven otherwise. Under our current legal regime, the right of parents or guardians to provide consent for medical procedures on behalf of intellectually disabled persons who are unable to provide such consent is part and parcel of their parental authority over their children or wards.

Mootness of the petition

It must be noted that the present petition stems from the Quezon City Regional Trial Court's (RTC) Order dated November 8, 2005 *dismissing* the *case* for violation of Republic Act (R.A.) No. 7610. Stated differently, an information has already been filed in court, arrest warrants have been issued, and bail bonds have been posted by the herein respondents. At that point in time, therefore, the People of the Philippines had become a party to the case, since the action had passed from the investigation phase to the trial phase with the filing of the information before the trial court.[1] However, it also bears emphasizing that *no appeal* from the aforesaid order was filed on

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[1] On this point, the trial court indicated its recognition of the fact that the action had passed into the trial phase when held in its November 8, 2005 Order that: "As to the first issue of whether or not the *case* should be dismissed, the Court finds merit to grant the motion." Order dated November 8, 2005, as cited in Resolution, p. 7.

behalf of the People of the Philippines. Sr. Versoza filed the appeal on her own without impleading or involving the People. The crux of the present petition, therefore, is the propriety of Sr. Versoza's filing of an appeal from the dismissal of the *criminal case* for violation of R.A. No. 7610 without impleading the People of the Philippines. Stated differently, *does Sr. Versoza, acting alone and in her personal capacity, have standing to appeal the dismissal of the criminal case for violation of R.A. No. 7610*?

As discussed in the Resolution, Sr. Versoza's right to appeal the dismissal of the case is personal to her. It is distinct and separate from the People's right to appeal as the designated plaintiff in criminal prosecutions — a right it chose not to exercise in the case at bar. Therefore, upon Sr. Versoza's demise, the issue of whether or not she can appeal the dismissal in her personal capacity has been rendered moot and academic.

Parental authority as a "primary and natural right"

The 1987 Constitution "recognizes the Filipino family as the foundation of the nation."[2] As such it commits the State to the "strengthen[ing of] the family as a basic **autonomous** social institution".[3] To further this State policy, the Constitution vests upon parents the "natural and primary right"[4] to rear their children. This right is reiterated in the Child and Youth Welfare Code, which expressly provides that parents have, "in relation to all other persons or institutions dealing with the child's development, the primary right and obligation to provide for their upbringing."[5]

The primary and natural right of parents to rear their children is fleshed out in the Family Code, in the form of the juridical institution known as *parental authority*, or *patria potestas*, whereby parents rightfully assume control and protection of their unemancipated children to the extent required by the latter's needs.[6]

Parental authority has been defined as the mass of rights and obligations which parents have in relation to the person and property of their children. This authority lasts until the children's majority age or emancipation, and even after this under certain circumstances. Parental authority is granted for the purpose of the children's physical preservation

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2 CONSTITUTION, Article XV, Section 1.
3 CONSTITUTION, Article II, Section 12.
4 Id.
5 PRESIDENTIAL DECREE NO. 603, Article 43.
6 *Santos v. CA*, 312 Phil. 482 (1995).

and development, the cultivation of their intellect, and the education of their heart and senses.[7]

As originally conceived in Roman law, parental authority was vested primarily in the father and amounted to a "near absolute right to his children, whom he viewed as chattel, a right with which courts were powerless to interfere."[8] Such right included the "power of life and death" (*jus vitae ac necis*) over children.[9] Over time, as recognition of children's rights expanded, *patria potestas* rights have been gradually reduced, first yielding some authority to the state as *parens patriae*; and later becoming subject to the *best interest of the child* standard. This modern conception of *patria potestas* animates the provisions of the Family Code. Nevertheless, the Family Code still reiterates the primary and natural right to parental child-rearing, *viz.*:

> Article 209. Pursuant to the **natural right and duty** of parents over the person and property of their unemancipated children, parental authority and responsibility shall include the caring for and rearing them for civic consciousness and efficiency and the development of their moral, mental and physical character and well-being.

The constitutional and statutory affirmation of the primacy of parental authority reiterates a self-evident fact: that parents are the primary caregivers and stewards of their children. Thus, courts have declared that, as a general rule, parental authority is superior to the power of the state over its minor citizens as *parens patriae*.[10] In *Sps. Imbong, et al. v. Hon. Ochoa, Jr., et al.*,[11] this Court struck down a provision of the Reproductive Health Law which dispensed with parental consent for access to modern methods of family planning if the minor is already a parent or has suffered a miscarriage for "disregard[ing] and disobey[ing] the constitutional mandate that the natural and primary right and duty of parents in the rearing of the youth for civic efficiency and the development of moral character shall receive the support of the Government." The Court cited 1986 Constitutional Commission member Fr. Joaquin Bernas:

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7 *Santos v. CA*, supra note 6; 1 Arturo M. Tolentino, Commentaries and Jurisprudence on the Civil Code of the Philippines 603 (1990), citing 2 Manresa 8.

8 *Whallon v. Lynn*, 230 F.3d 450 (2000), footnote 7.

9 Alicia V. Sempio-Diy, Handbook on the Family Code of the Philippines 333 (1995).

10 See *Troxel v. Granville*, 530 U.S. 57 (2000) and *Parham v. J.R.*, 442 U.S. 584 (1979). Parental prerogatives are entitled to considerable legal deference, subject only to the best interests of the child or important interests of the State. 67A C.J.S. 188-189, citing *State v. Koome*, 530 P.2d 260, 84 Wash.2d 901 (1975). See also *In re Roger S.*, 19 Cal.3d 921, 569 P.2d 1286, 141 Cal. Rptr. 298 (1977), holding that: "Parents x x x have powers greater than that of the state to curtail a child's exercise of the constitutional rights he may otherwise enjoy, for a parent's own constitutionally protected 'liberty' includes the right to 'bring up children', and to 'direct the upbringing and education of children.' As against the state, this parental duty and right is subject to limitation only 'if it appears that parental decisions will jeopardize the health or safety of the child, or have a potential for significant social burdens.'"

11 732 Phil. 1 (2014).

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> The 1987 provision has added the adjective "primary" to modify the right of parents. It imports the assertion that the right of parents is superior to that of the State. x x x The State cannot, without a compelling state interest, take over the role of parents in the care and custody of a minor child, whether or not the latter is already a parent or has had a miscarriage. Only a compelling state interest can justify a state substitution of their parental authority.[12]

This pronouncement was repeated in *Samahan ng mga Progresibong Kabataan, et al. v. Quezon City, et al.*, involving the constitutionality of curfew ordinances passed by three Metro Manila local governments, thus:

> By history and tradition, "the parental role implies a substantial measure of authority over one's children." In *Ginsberg v. New York*, the Supreme Court of the United States (US) remarked that "constitutional interpretation has consistently recognized that the parents' claim to authority in their own household to direct the rearing of their children is basic in the structure of our society." As in our Constitution, the right and duty of parents to rear their children is not only described as "natural," but also as "primary." The qualifier "primary" connotes the parents' superior right over the State in the upbringing of their children. x x x As our Constitution itself provides, the State is mandated to support parents in the exercise of these rights and duties. State authority is therefore, not exclusive of, but rather, complementary to parental supervision.[13]

Justice Leonen, in his Separate Opinion, concurred with these propositions and went on to state that:

> The addition of the qualifier "primary" unequivocally attests to the constitutional intent to afford primacy and preeminence to parental responsibility. More plainly stated, the Constitution now recognizes the superiority of parental prerogative. It follows, then, that state interventions, which are tantamount to deviations from the preeminent and superior rights of parents, are permitted only in instances where the parents themselves have failed or have become incapable of performing their duties.
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> x x x x
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> As it stands, the **doctrine of *parens patriae* is a mere substitute or supplement to parents' authority over their children**. **It operates only when parental authority is established to be absent or grossly deficient.** The wisdom underlying this doctrine considers the existence of harm *and* the subsequent inability of the person to protect himself or herself. This premise entails the incapacity of parents and/or legal guardians to protect a child.
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> To hold otherwise is to afford an overarching and almost absolute power to the State; to allow the Government to arbitrarily exercise its *parens*

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12 Id. at 192-193.

13 815 Phil. 1067, 1099-1100 (2017). Citations omitted.

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> *patriae* power might as well render the superior Constitutional right of parents inutile.
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> More refined applications of this doctrine reflect this position. In these instances where the State exercised its powers over minors on account of *parens patriae*, it was only because the children were prejudiced and it was *without* subverting the authority of the parents themselves when they have not acted in manifest offense against the rights of their children.[14]

Parental authority vis-à-vis standing under Republic Act No. 7610

The plenary and natural right of parental authority is vested primarily in the parent or guardian,[15] subject only to substitution *in case of default of the parent or guardian*[16] or to the creation of *special* parental authority under certain circumstances.[17] Parental authority is therefore vested first and foremost in the parent or guardian, and is only lost, transferred or supplemented in accordance with law.[18] Article 189(2) of the Family Code and Rule 96, Section 1 of the Rules of Court[19] provides:

> Article 189. Adoption shall have the following effects:
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> x x x x
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> (2) The **parental authority of the parents by nature over the adopted shall terminate and be vested in the adopters**, except that if the adopter is the spouse of the parent by nature of the adopted, parental authority over the adopted shall be exercised jointly by both spouses; x x x
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> x x x x
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> RULE 96
>
> General Powers and Duties of Guardians
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> SECTION 1. To what guardianship shall extend. — A **guardian** appointed **shall have the care and custody of the person of his ward**, and the management of his estate, or the management of the estate only, as the case may be. The guardian of the estate of a nonresident shall have the management of all the estate of the ward within the Philippines, and no court other than that in which such guardian was appointed shall have jurisdiction over the guardianship.

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14 Id. at 1170, 1172-1173, separate opinion of Justice Leonen. Emphasis supplied.

15 FAMILY CODE, Art. 211; A.M. No. 03-02-05-SC (Rule on Guardianship of Minors), Sec. 1.

16 FAMILY CODE, Art. 216, paragraph 1.

17 FAMILY CODE, Arts. 217 and 218.

18 FAMILY CODE, Art. 210.

19 Article 225 of the Family Code provides for the applicability of the Rules of Court provisions on guardianship "when the child is under substitute parental authority, or the guardian is a stranger, or a parent has remarried x x x".

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x x x x

The law is clear: adoption or guardianship transfers the full panoply of parental rights and duties to the adoptive parent or guardian, subject only to specific exceptions as provided for by law. Thus, once a licensed child-caring institution has transferred the custody of a child to a judicially constituted guardian, the right of the institution's representative to sue on behalf of the child ceases, except as provided for by law. In the case at bar, it has been established that the spouses Pedro and Lourdes Aguirre have been granted parental authority over Larry by virtue of the June 19, 1986 decision of the RTC of Balanga, Bataan. The judicial declaration of the spouses Aguirre's guardianship over Larry therefore had the effect of divesting Sr. Versoza and the Heart of Mary Villa of parental authority over Larry. Therefore, Sr. Versoza's standing to file a complaint for child abuse on Larry's behalf can only be based on the provision on standing under R.A. No. 7610[20] and not on the parental authority provisions of the Family Code.

I therefore take exception to the assertion in the Resolution that "the argument that all ties have been severed between Larry and the child-caring agency to which [Sr. Versoza] belonged on account of the transfer of parental authority does not hold water",[21] for it confuses the parental right to represent a child with standing to file a complaint under R.A. No. 7610. R.A. No. 7610's provision on standing was created precisely to address circumstances where child abuse is committed under the guise of parental authority. This grant of standing to sue on behalf of abused children is purely statutory in nature and is distinct and separate from the parents' or guardians' right to represent their children.

Scope and limitations of parental authority

American courts, in interpreting the term "custody,"[22] have conceded that the "complex of rights" embraced thereby have "no precise contours."[23] It has been held that parents with custody and control of their children have "the right to make all reasonable decisions for control and proper functioning of the family as a harmonious social unit,"[24] including the right

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20 REPUBLIC ACT NO. 7610, Section 27.

21 Resolution, p. 18.

22 Custody, in American family law, has been defined as "the care, control, and maintenance of a child awarded by a court to a responsible adult." It "involves legal custody (decision-making authority) and physical custody (caregiving authority), and an award of custody usually grants both rights. In a divorce or separation proceeding between the parents, the court usually awards custody to one of them, unless both are found to be unfit, in which case the court may award custody to a third party, typically a relative. In a case involving parental dereliction, such as abuse or neglect, the court may award custody to the state for placing the child in foster care if no responsible relative or family friend is willing and able to care for the child." Black's Law Dictionary (9th ed.) 441. Under the foregoing definition, the concept is essentially analogous to parental authority in Philippine law.

23 *Delgado v. Fawcett*, 515 P.2d 710 (1973).

24 67A C.J.S 188, citing *Commonwealth v. Brasher*, 270 N.E. 2d, 359 Mass. 550 (1971).

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to "make decisions regarding care and control, education, health, and religion."[25]

Under contemporary law, parental authority remains a plenary authority whose scope is almost all-encompassing, subject only to the limitations expressly provided for by statute and by the best interests standard. Parents and guardians are vested with this plenary power in view of their legal responsibility to support, educate, direct, and protect their children or wards.[26] The expansive scope of this authority is illustrated by the provisions of the Family Code, *viz.*:

> Article 209. Pursuant to the **natural right and duty** of parents over the person and property of their unemancipated children, parental authority and responsibility shall include the **caring for and rearing them for civic consciousness and efficiency and the development of their moral, mental and physical character and well-being**.
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> x x x x
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> Chapter 3. Effect of Parental Authority Upon the Persons of the Children
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> Article 220. The parents and those exercising parental authority shall have with the respect to their unemancipated children on wards the following rights and duties:
>
> (1) To keep them in their company, to support, educate and instruct them by right precept and good example, and to **provide for their upbringing in keeping with their means**;
>
> (2) To give them love and affection, advice and counsel, companionship and understanding;
>
> (3) To provide them with moral and spiritual guidance, inculcate in them honesty, integrity, self-discipline, self-reliance, industry and thrift, stimulate their interest in civic affairs, and inspire in them compliance with the duties of citizenship;
>
> (4) To furnish them with good and wholesome educational materials, **supervise their activities, recreation and association with others**, protect them from bad company, and **prevent them from acquiring habits detrimental to their health, studies and morals**;
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> (5) To **represent them in all matters affecting their interests**;
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> (6) To demand from them respect and obedience;
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> (7) To impose discipline on them as may be required under the circumstances; and

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25 Id., citing *Burge v. City and County of San Francisco*, 262 P.2d 6, 41 C.2d 608 (1953) and *Trompeter v. Trompeter*, 545 P.2d 297, 218 Kan. 535 (1976).

26 I Tolentino, supra note 7. See also *Salvaña and Saliendra v. Judge Gaela*, 55 Phil. 680 (1931).

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(8) **To perform such other duties as are imposed by law upon parents and guardians.**

x x x x (Emphases and underscoring supplied)

I submit that intellectually disabled persons, who are, for all intents and purposes, embraced under the definition of a child, are covered by the same concept of parental authority. Thus, under the aforecited provision, included in these "other duties as are imposed by law" is the duty and authority of parents or guardians to decide for their intellectually disabled children or wards on matters regarding the use of health services.

Section 10 of the Mental Health Law[27] lays down concrete guidelines regarding the consent of "persons with lived experience of any mental health condition including persons who require, or are undergoing psychiatric, neurologic or psychosocial care"[28] to medical treatment, *viz.*:

> SECTION 10. Legal Representative. — A service user may designate a person of legal age to act as his or her legal representative through a notarized document executed for that purpose.
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> (a) Functions. A service user's legal representative shall:
>
> (1) Provide the service user with support and help: represent his or her interests; and receive medical information about the service user in accordance with this Act;
>
> (2) Act as substitute decision maker when the service user has been assessed by a mental health professional to have temporary impairment of decision-making capacity;
>
> (3) Assist the service user vis-à-vis the exercise of any right provided under this Act; and
>
> (4) Be consulted with respect to any treatment or therapy received by the service user. The appointment of a legal representative may be revoked by the appointment of a new legal representative or by a notarized revocation.
>
> (b) Declining an Appointment. A person thus appointed may decline to act as a service user's legal representative.
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> However, a person who declines to continue being a service user's legal representative must take reasonable steps to inform the service user, as well as the service user's attending mental health professional or worker, of such decision.

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27 REPUBLIC ACT NO. 11036, 114 O.G. (No. 27) 4664.

28 REPUBLIC ACT NO. 11036, Sec. 4(t).

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> (c) Failure to Appoint. If the service user fails to appoint a legal representative, the following persons shall act as the service user's legal representative, in the order provided below:
>
> > (1) The spouse, if any, unless permanently separated from the service user by a decree issued by a court of competent jurisdiction, or unless such spouse has abandoned or been abandoned by the service user for any period which has not yet come to an end;
> >
> > (2) Non-minor children;
> >
> > **(3) Either parent by mutual consent, if the service user is a minor;**
> >
> > (4) Chief, administrator, or medical director of a mental health care facility; or
> >
> > (5) A person appointed by the court. (Emphasis and underscoring supplied.)

In so recognizing, I understand nonetheless that despite the primacy and plenary scope of parental authority, it remains subject to the power of the state as *parens patriae*,[29] but *only* where the exercise of parental authority is made in a manner that is harmful or abusive to the child. Nevertheless, as the natural and primary caregiver and custodian of their children, with the inherent right and duty "to develop their moral, mental and physical character and well-being" and "to represent them in all matters affecting their interests," parents are entitled to a presumption of good faith in the discharge of their *patria potestas* duties. However, the best interests of the child remain the paramount consideration, which the State, as *parens patriae* must promote; and to which, parental authority must yield in case of conflict. The sterilization of an intellectually disabled person, who is considered a child in the eyes of the law, presents one such instance, where the interests of the parents in ensuring the health and well-being of their child could conflict with the interests of the state in upholding the child's right to reproductive choice and corporal self-control. Thus, in the absence of allegations or proof that the parents acted in bad faith or against the best interests of their child, their right and duty to decide on their child's behalf must prevail.

The right to consent to sterilization of an intellectually disabled person

The sterilization of intellectually disabled individuals has been the

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29 *State v. Koome*, 530 P.2d 260, 84 Wash.2d 901 (1975).

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subject of a long line of decisions in the United States and Canada,[30] almost all of which involved the parent or guardian of an intellectually disabled individual applying for judicial authorization to perform some medical procedure which will render said individual unable to procreate; and in most instances since 1978, the appellate courts have either denied such applications[31] or remanded them to the lower court for the reception of evidence.[32] In this regard, the Canadian Supreme Court has held that:

> The court undoubtedly has the right and duty to protect those who are unable to take care of themselves, and in doing so it has a wide discretion to do what it considers to be in their best interests. But this function must not, in my view, be transformed so as to create a duty obliging the court, at the behest of a third party, to make a choice between the two alleged constitutional rights—the right to procreate or not to procreate—simply because the individual is unable to make that choice. All the more so since, in the case of non-therapeutic sterilization as we saw, the choice is one the courts cannot safely exercise.[33]

It must be noted that the North American courts unanimously recognize reproductive rights, including the right to choose to (or *not* to) undergo sterilization, as a fundamental human right, held by *all* individuals regardless of intellectual or mental ability. The doctrinal divergence lies not in the exercise of this right by intellectually disabled individuals, who, by reason of such disability, are unable to do so. Rather, the issues primarily revolve around whether the State should defer to the parents' wishes or substitute its own judgment as *parens patriae* on the individual's behalf; not the capacity of the individual to decide for himself or herself. The difficulties faced by the courts in resolving such matters have been summarized thusly:

> The case before us presents a situation that is difficult to characterize as either "compulsory" or "voluntary." "Compulsory" would refer to a sterilization that the state imposes despite objections by the person to be sterilized or one who represents his interests. Here, however, Lee Ann's parents and her guardian *ad litem* all agree that sterilization is in her best interests, and while the state may be acting in the constitutional sense, it would not be compelling sterilization. Lee Ann herself can comprehend neither the problem nor the proposed solution; without any such understanding it is difficult to say that sterilization would be against her will. Yet for this same reason, the label "voluntary" is equally inappropriate. Since Lee Ann is without the capacity for giving informed consent, any explanation of the proposed sterilization could only mislead her. Thus, what is proposed for Lee Ann is best described as neither

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30 See *Buck v. Bell,* 274 U.S. 200 (1927), which upheld the sterilization of a "mildly retarded woman"; *E (Mrs) v. Eve*, 2 S.C.R. 388 (1986) (Supreme Court of Canada), denying the application for judicial authorization to sterilize a 24-year old woman with acute expressive aphasia who was found to be mentally incapable of discharging the duties of a mother; and cases cited therein.

31 *Conservatorship of Valerie N.*, 707 P. 2d 760 (1985); *In Matter of Guardianship of Eberhardy*, 307 N.W. 2d 881 (1981); *E (Mrs) v. Eve*, supra, grant of authorization to hysterectomy reversed on appeal.

32 *In re Hayes*, 608 P. 2d 635 (1980); *In the Matter of Moe*, 432 N.E. 2d 712 (1982).

33 *E (Mrs) v. Eve,* 2 S.C.R. 388, 420 (1986) (Supreme Court of Canada).

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> "compulsory" nor "voluntary," but as lacking personal consent because of a legal disability.[34]

As such, in the absence of comprehensive evidence regarding the individual's physical and mental capacities, sexual proclivity, and psycho-social capabilities to discharge the duties of a parent,[35] courts in the United States have refrained from making such a choice in place of the intellectually disabled person. Ultimately, the determination of the most proper course of action would be an evidentiary matter that requires the reception of evidence and presentation of proof. In making such a determination, courts have considered evidence regarding the following factors: the intellectually disabled person's capacity to consent to the procedure;[36] their capability to reproduce;[37] their religious beliefs;[38] their present and future inability to understand the concepts of reproduction or contraception, and the likely permanence of such inability;[39] their ability to care for a child, either alone, or with the assistance of a prospective spouse;[40] possible trauma or psychological damage that may be brought on by childbirth or parenthood;[41] likelihood of voluntary engagement in sexual activity or exposure to situations where sexual intercourse is imposed;[42] advisability of sterilization at the time of the application rather than in the future;[43] evidence of scientific advances which may occur within the foreseeable future which will make possible either improvement of the individual's condition or alternative and less drastic sterilization procedures;[44] and a demonstration that the proponents of sterilization are seeking it in good faith, with the best interests of the individual in mind, rather than their own or the public's convenience.[45]

The case at bar

It is undisputed that Larry Aguirre is considered a child under the law,

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34 *In the matter of Grady*, 426 A.2d 467, 85 N.J. 235, at 247 (1981).

35 See *Estate of CW*, 640 A. 2d 427 (1994), application for authorization to consent to tubal ligation of a 24-year old woman with Down syndrome and a mental age of 3-5 years old; and *In re Conservatorship of Angela D.*, 83 Cal. Rptr. 2d 411 (1999), involving the sterilization of a 20-year-old severely developmentally disabled woman who suffers from epileptic seizures and diabetes.

36 53 Am. Jur. 2d. Mentally Impaired Persons §127, p. 576, citing *In re M.*, 627 P.2d 607; *In re Romero*, 790 P.2d 819; *In the Matter of Moe*, supra note 32; *In the matter of Grady*, supra; *In re Hayes*, supra note 32.

37 53 Am. Jur. 2d. Mentally Impaired Persons §127, p. 577, citing *In re M.*, supra; *In the matter of Grady,* supra; *In re Truesdell*, 63 NC. App. 258, 304 S.E.2d. 793, modified on other grounds 313 N.C. 421, 329 S.E.2d. 630.

38 Id., citing *In the Matter of Moe*, supra note 32.

39 Id., citing *In the matter of Grady*, supra.

40 Id., citing *In the matter of Grady,* id.; *In re M.*, supra.

41 Id., citing *In the matter of Grady*, id.

42 Id., citing *In the matter of Grady*, id; *In re Truesdell*, supra.

43 Id., citing *In the matter of Grady*, id.

44 Id., citing *In the matter of Grady*, id; *In the Matter of Moe*, supra note 32.

45 Id., citing *In the matter of Grady,* supra note 27; *In re M.*, supra.

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since his mental age is that of an 8-year old;[46] and he is incapable of making important life decisions on his own.[47] Likewise, the parties do not dispute that respondent Pedro Aguirre acquired parental authority over Larry's person by virtue of the June 19, 1986 decision of the RTC of Balanga, Bataan, which granted the spouses Pedro and Lourdes Aguirre joint guardianship over Larry's person and property.[48] The record likewise establishes that Larry has been in the care and custody of the Aguirre family since he was two years old.[49] It is therefore clear that the Aguirre spouses had parental authority over Larry. Consequently, they have the primary right and duty, under current laws, to decide what is best for Larry.

Turning now to the particular circumstances of Larry's situation, viewed in the light of the relevant factors mentioned in the preceding section, the undisputed findings made by Dr. Pascual in her Psychiatric Report, as cited in the case of *Aguirre v. Secretary of Justice*, must be accorded great weight. According to the report, Larry's mental development has been significantly delayed[50] because of mild to moderate mental deficiency.[51] Thus, his human figure is comparable to a seven or eight year old child.[52] He can perform most daily activities without assistance *but* still needs supervision to bathe.[53] He cannot prepare meals on his own and is not allowed to go out or run errands alone.[54] He has no friends and only has significant relationships with his adoptive family.[55] He has learned to smoke and drink but has no history of substance abuse.[56] As such, he is very much dependent on his family for his needs, adaptive functioning, direction, and in making major life decisions.[57] Finally, the report concluded that, at his capacity, Larry may never understand the nature, foreseeable risks, benefits, and consequences of the vasectomy sought by his parents for his protection.[58]

In contrast, there is no evidence on record to show that Larry understands the nature and consequences of his sexuality, his present and future inability to understand the concepts of reproduction or contraception; or of his ability to care for a child, either alone, or with the assistance of a

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46 Psychiatry Report dated 21 January 2002 signed by Dr. Marissa Pascual M.D., as cited in *Aguirre v. Secretary of the Dept. of Justice, et al.*, 571 Phil. 138, 146 (2008). Consolidated Reply, pp. 3-5, *rollo*, pp. 202-204.

47 Psychiatry Report dated 21 January 2002 signed by Dr. Marissa Pascual M.D., as cited in *Aguirre v. Secretary of the Dept. of Justice, et al.*, id at 147; Petition, p. 4, id. at 12.

48 *Aguirre v. Secretary of the Dept. of Justice, et al.*, id. at 143.

49 Id.

50 Id. at 145.

51 Id.

52 Id.

53 Id.

54 Id.

55 Id.

56 Id. at 146.

57 Id. at 147.

58 Id.

prospective spouse. No evidence was likewise presented as to the possibility of trauma or psychological damage that may be brought on Larry by the fact of childbirth or parenthood; or of the likelihood of his voluntary engagement in sexual activity or exposure to situations where sexual intercourse is imposed; much more of the *ponencia*'s claim that Larry's mental age will grow to be 18 years of age or beyond at some point in the future, or its theory of "supported parenting."

Given the dearth of evidence to guide the courts in deciding on Larry's behalf, they must defer to the parties with the constitutional primary right to decide for Larry: his parents. The parental authority vested in the spouses Aguirre includes the right to decide upon and consent to a vasectomy, on Larry's behalf, as a precautionary measure to ensure that Larry is able to live his best life, free from the possible complications and repercussions which may arise if he bears a child under the attendant circumstances in the case at bar. Such decisions should be presumed to have been made in Larry's best interest, unless proven otherwise.

All told, a binding resolution of the novel issue raised by the *ponencia* must await another case where an authorized trier of fact will be able to receive evidence from all parties concerned, hopefully with the guidance of medical, sociological, and psychological experts, and guided by international precedents.

IN VIEW OF THE FOREGOING, I vote to **DISMISS** the petition solely on the ground of mootness.

ANDRES B. REYES, JR.
Associate Justice

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EDGAR O. ARICHETA
Clerk of Court En Banc
Supreme Court