

EN BANC

G.R. No. 184535 – SISTER PILAR VERSOZA, *petitioner*, v. PEOPLE OF THE PHILIPPINES, MICHELINA S. AGUIRRE-OLONDREZ, PEDRO AGUIRRE, AND DR. MARISSA PASCUAL, *respondents*.

X-----X

Promulgated: September 3, 2019

SEPARATE OPINION

“Disabled persons have the inherent right to respect for their human dignity. Disabled persons, whatever the origin, nature and seriousness of their handicaps and disabilities, have the same fundamental rights as their fellow-citizens of the same age, which implies first and foremost the right to enjoy a decent life, as normal and full as possible.”¹

United Nations Declaration on the Rights of Disabled Persons, 1975²

LEONEN, J.:

While there were doctrinal points that this Court unanimously agreed upon, I feel that we could have gone further. There are points that should have been discussed.

Parents and legal guardians have a duty to enable their children or their wards. Legal guardians commit to take care of their wards as if they were their own. They are to love and to sacrifice always in the child’s best interest. They have no prerogative to deprive them of any of their faculties. Parents and legal guardians have no right to decide on the reproductive rights of their children or wards.

Society has the general duty to protect its children. The Constitution declares the State to be the ultimate defender of a child’s right to a full,

¹ United Nations Declaration on the Rights of Disabled Persons, 1975. This Declaration called for a national and international framework for the protection of the rights of persons with disabilities. The result was the United Nations Convention on the Rights of Persons with Disabilities, to which the Philippines became a state party on September 25, 2007, and which it ratified on April 15, 2008.

² Though the Declaration used “Disabled Persons,” the United Nations has since adopted a People First Language, using “Persons with Disabilities.” On its website <<https://www.un.org/development/desa/disabilities/about-us/frequently-asked-questions-faqs.html#7>>, the United Nations noted that disability is an evolving concept, along with its language:

“The language used to refer to persons with disabilities has played a significant role in the persistence of negative stereotypes. Clearly, terms such as “crippled” or “mentally retarded” are derogative. Other terms such as “wheelchair-bound” or “disabled persons” emphasize the disability before the person.

“The drafters of this Convention were clear that disability should be seen as the result of the interaction between a person and his or her environment. Disability is not something that resides in the individual as the result of some impairment. This convention recognizes that disability is an evolving concept and that legislation may adapt to reflect positive changes within society.”

decent, and dignified life.³ This role is of even greater importance in this case. Apart from being a child, Laureano "Larry" Aguirre (Larry) has a cognitive disability that rendered him incapable of fully comprehending the repercussions of a vasectomy. At the time of the procedure, he was chronologically a 24-year-old man with a mental age of an 8-year-old. It would have been impossible for him to consent to the procedure. Undergoing bilateral vasectomy requires personal reflection as it involves one's reproductive health.

This Court was confronted with a novel issue of whether the bilateral vasectomy conducted on Larry constitutes child abuse. Cases involving child abuse are public matters in which the State is necessarily involved.⁴ This case is of unique importance because it deals with the rights of a child with disability, who is under the People of the Philippines' special mantle of protection no less.⁵

Child abuse is often committed in the confines of a home, in secret and away from public notice. The child suffers silently, powerless against the abusive parent or guardian, and will most likely frame a world that justifies the despicable acts done to him or her. In the same vein, the child's self-esteem suffers, and he or she will grow to believe that all adults will be like their parent or guardian.

Indeed, child abuse is a crime with among the greatest propensities to remain hidden but causes the most damage.

Our traditional concept for the prosecution of crimes is that it should be initiated by a private offended party or by a law enforcer. But, definitely in this case, Larry could not have done so. Chances are, no social worker or law enforcer would have noticed the procedure done on him. The crime's novelty as a potential form of abuse conspire with the act itself having no visible consequences to ensure that the act remains hidden.

³ CONST., art. XV, sec. 3(2) provides:
SECTION 3. The State shall defend:

(2) The right of children to assistance, including proper care and nutrition, and special protection from all forms of neglect, abuse, cruelty, exploitation and other conditions prejudicial to their development.

⁴ Republic Act No. 7610 (1992), sec. 2 provides:

SECTION 2. *Declaration of State Policy and Principles.* — It is hereby declared to be the policy of the State to provide special protection to children from all forms of abuse, neglect, cruelty, exploitation and discrimination and other conditions, prejudicial [to] their development; provide sanctions for their commission and carry out a program for prevention and deterrence of and crisis intervention in situations of child abuse, exploitation and discrimination. The State shall intervene on behalf of the child when the parent, guardian, teacher or person having care or custody of the child fails or is unable to protect the child against abuse, exploitation and discrimination or when such acts against the child are committed by the said parent, guardian, teacher or person having care and custody of the same.

⁵ Republic Act No. 7610 (1992), sec. 2

Vasectomy, in general, refers to a sterilization procedure for men⁶ where a segment of the vas deferens is cut to obstruct the flow of spermatozoa.⁷

Medical practitioners use various techniques in performing vasectomy.⁸ The transection of the vas deferens can be done through a conventional vasectomy, where the vas deferens “usually is grasped with a towel clip or an Allis forceps.”⁹ A more recent method is the no-scalpel vasectomy, which uses a minimally invasive technique. Both types are done by making a midline incision or bilateral scrotal incisions using a scalpel.¹⁰

The most common type of vasectomy, which was conducted on Larry, is called bilateral vasectomy¹¹ or bilateral partial vasectomy. In this procedure, the vas deferens in both scrotums are cut and removed or obstructed.¹²

There is a common misconception that vasectomy is a permanent method of birth control. On the contrary, it is medically possible to restore fertility through vasectomy reversal,¹³ where the cut ends of the vas deferens are reattached through microsurgery. The most common procedures are *vasovasostomy* and *vasoepididymostomy*.¹⁴ Reversal may even happen accidentally as a result of other medical procedures.¹⁵

The success of vasectomy reversal, however, depends on several factors. Patient evaluation is important. Factors such as the surgical skill, the patient’s medical history, and antibodies may influence its success rate.¹⁶

⁶ L. I. Smith-Harrison and Ryan P. Smith, *Vasectomy reversal for post-vasectomy pain syndrome* (2016), available at <<http://tau.amegroups.com/article/view/14896/15147>> last visited on September 2, 2019).

⁷ Aaron M. Bernia, et al., *Vasectomy reversal in humans* (2012), available at <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3521749/pdf/spmg-2-273.pdf>> last visited on September 2, 2019).

⁸ See Ira D. Sharlip, et al., *Vasectomy: American Urological Association Guideline* (2012), available at <<https://www.auajournals.org/doi/pdf/10.1016/j.juro.2012.09.080>> (last accessed on September 2, 2019).

⁹ Id. at 2485.

¹⁰ Id.

¹¹ *Rollo*, p. 13.

¹² Id.

¹³ Abhishek P Patel and Ryan P. Smith, *Vasectomy Reversal: a clinical update* (2016), available at <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4854082/pdf/AJA-18-365.pdf>> (last accessed on September 2, 2019).

¹⁴ The American Society for Reproductive Medicine, Birmingham, Alabama in collaboration with the Society for Male Reproduction and Urology *Vasectomy reversal*, 90 FERTILITY AND STERILITY 78 (2008), available at <[http://www.fertstert.org/article/S0015-0282\(08\)03721-7/pdf](http://www.fertstert.org/article/S0015-0282(08)03721-7/pdf)> (last visited on September 2, 2019); Jacob C. Parke, M.D., *Vasovasostomy and Vasoepididymostomy*, MEDSCAPE, December 21, 2016, available at <<http://emedicine.medscape.com/article/452831-overview>> (last visited on September 2, 2019).

¹⁵ David Rosenbloom, M.D., *Reversal of Sterility Due to Vasectomy* 7 FERTILITY AND STERILITY 540 (1956), available at <[http://www.fertstert.org/article/S0015-0282\(16\)32525-0/pdf](http://www.fertstert.org/article/S0015-0282(16)32525-0/pdf)> (last visited on September 2, 2019).

¹⁶ Abhishek P Patel and Ryan P. Smith, *Vasectomy Reversal: a clinical update* (2016), available at <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4854082/pdf/AJA-18-365.pdf>> (last accessed on September 2, 2019).

The gravity of the procedure conducted on Larry presents before this Court important questions on the extent of the right to a full and dignified life of a child with cognitive disability vis-à-vis parental authority as contemplated by law.

Therefore, it is necessary to determine, for the guidance of the bench, the bar, and the public, whether the bilateral vasectomy conducted on Larry is a form of child abuse. In the 17 years¹⁷ that have passed since his unconsented vasectomy, Larry's cognition may have developed enough for him to become more aware of the procedure's ramifications.

Vital for discussion are the following: (1) whether Larry qualifies as a child under the law; (2) how abuse, neglect, and cruelty are defined in jurisprudence; and (3) whether the vasectomy made on Larry constitutes abuse, cruelty, neglect, or exploitation, or is prejudicial to his development.

I

Child abuse, as contemplated in Republic Act No. 7610,¹⁸ is a general concept consisting of several punishable acts. Section 3(b) of Republic Act No. 7610 provides its definition:

SECTION 3. *Definition of Terms.* —

....

(b) "*Child abuse*" refers to the maltreatment, whether habitual or not, of the child which includes any of the following:

- (1) Psychological and physical abuse, neglect, cruelty, sexual abuse and emotional maltreatment;
- (2) Any act by deeds or words which debases, degrades or demeans the intrinsic worth and dignity of a child as a human being;
- (3) Unreasonable deprivation of his basic needs for survival, such as food and shelter; or
- (4) Failure to immediately give medical treatment to an injured child resulting in serious impairment of his growth and development or in his permanent incapacity or death.

¹⁷ *Rollo*, p. 13. The vasectomy was conducted on January 31, 2002.

¹⁸ Special Protection of Children Against Abuse, Exploitation, and Discrimination Act.

The acts constituting child abuse are amplified in the succeeding provisions of Republic Act No. 7610. Sections 5 and 6 deal with child prostitution and other forms of sexual abuse; Sections 7 and 8 cover child trafficking; Section 9 punishes obscene publications and indecent shows that involve a child.

To provide further protection to children, Republic Act No. 7610 expands the concept of child abuse to cover other acts of abuse.¹⁹ Section 10(a) of Republic Act No. 7610 states:

SECTION 10. Other Acts of Neglect, Abuse, Cruelty or Exploitation and Other Conditions Prejudicial to the Child's Development.

(a) Any person who shall commit any *other acts of child abuse, cruelty or exploitation or be responsible for other conditions prejudicial to the child's development including those covered by Article 59 of Presidential Decree No. 603, as amended, but not covered by the Revised Penal Code, as amended, shall suffer the penalty of prision mayor in its minimum period. (Emphasis supplied)*

Section 10(a) punishes four (4) distinct acts in addition to those already covered by Article 59 of Presidential Decree No. 603, as amended, namely: (1) other acts of child abuse; (2) cruelty; (3) exploitation; and (4) being responsible for conditions prejudicial to the child's development.²⁰ These offenses are independent of the child abuse acts specified in Republic Act No. 7610.²¹

For the acts in Section 10(a) to be punishable, the following elements must be accounted for: (1) the victim must be a child under the law; (2) the act committed is either abusive, cruel, or exploitative of the child, or is prejudicial to the child's development; and (3) the accused committed or is responsible for the act.²²

Recognizing an individual with cognitive disability as a child is nothing new in this jurisdiction. In *People v. Spouses Ybanez*,²³ the accused were convicted of qualified trafficking of persons. Among the three (3) victims was a girl who was more than 18 years old but was found to be "functioning within a mildly retarded level[.]"²⁴ She was deemed a child under Republic Act No. 9208:

¹⁹ *Araneta v. People*, 578 Phil. 876, 884 (2008) [Per J. Chico-Nazario, Third Division].

²⁰ *Id.* at 884–886.

²¹ *People v. Rayon, Sr.*, 702 Phil. 672, 682 (2013) [Per J. Brion, Second Division].

²² Republic Act No. 7610 (1992), sec. 10(a).

²³ 793 Phil. 877 (2016) [Per J. Peralta, Third Division].

²⁴ *Id.* at 884.

Trafficking in Persons refers to the recruitment, transportation, transfer or harboring, or receipt of persons with or without the victim's consent or knowledge, within or across national borders by means of threat or use of force, or other forms of coercion, abduction, fraud, deception, abuse of power or of position, taking advantage of the vulnerability of the person, or, the giving or receiving of payments or benefits to achieve the consent of a person having control over another person for the purpose of exploitation which includes at a minimum, the exploitation or the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery, servitude or the removal or sale of organs. *When the trafficked person is a child, a person below 18 years of age or one who is over 18 but is unable to fully take care of or protect himself/herself from abuse, neglect, cruelty, exploitation, or discrimination because of a physical or mental disability or condition, the offense becomes qualified. As supported by their birth certificates, Bonete was merely 15 years old and Antonio was 16 when they were hired in 2006. Although Turado was more than 18 years old when she started at Kiray, she was found to be functioning within a mildly retarded level, and therefore, incapable of protecting herself from abuse and exploitation.*²⁵ (Emphasis supplied, citations omitted)

Section 3(a) of Republic Act No. 7610 defines a child as a "person below eighteen (18) years of age *or* those over but are unable to fully take care of themselves or protect themselves from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition[.]" Recognizing the concept of mental age, the law deems that a person with cognitive disability is a child regardless of his or her chronological age. He or she would still be under the protection of the law.

In *People v. Quintos*,²⁶ where a person with intellectual disability was raped, this Court defined "twelve (12) years of age" under Article 266-A(1)(d) of the Revised Penal Code as either the chronological age of a child or the mental age if a person has intellectual disability. We held:

We are aware that the terms, "mental retardation" or "intellectual disability," had been classified under "deprived of reason." The terms, "deprived of reason" and "demented", however, should be differentiated from the term, "mentally retarded" or "intellectually disabled." An intellectually disabled person is not necessarily deprived of reason or demented. This court had even ruled that they may be credible witnesses. However, his or her maturity is not there despite the physical age. He or she is deficient in general mental abilities and has an impaired conceptual, social, and practical functioning relative to his or her age, gender, and peers. Because of such impairment, he or she does not meet the "socio-cultural standards of personal independence and social responsibility."

Thus, a person with a chronological age of 7 years and a normal mental age is as capable of making decisions and giving consent as a person with a chronological age of 35 and a mental age of 7. Both are

²⁵ Id. at 883-884.

²⁶ 746 Phil. 809 (2014) [Per J. Leonen, Second Division].

considered incapable of giving rational consent because both are not yet considered to have reached the level of maturity that gives them the capability to make rational decisions, especially on matters involving sexuality. Decision-making is a function of the mind. Hence, a person's capacity to decide whether to give consent or to express resistance to an adult activity is determined not by his or her chronological age but by his or her mental age. Therefore, in determining whether a person is "twelve (12) years of age" under Article 266-A(1)(d), the interpretation should be in accordance with either the chronological age of the child if he or she is not suffering from intellectual disability, or the mental age if intellectual disability is established.²⁷ (Emphasis supplied, citations omitted)

Though Larry was chronologically 24 years old when the procedure was conducted on him, he actually had a mental age of an 8-year-old. He also has a mild mental deficiency, which rendered him unfit to decide on matters on his own. Larry is, therefore, a child under the law.

Notably, psychiatrist Marissa B. Pascual (Dr. Pascual) reported that Larry's disability "could be associated with possible perinatal insults[.]"²⁸ While no explanation was provided in Dr. Pascual's psychiatric report, medical journals have discussed "perinatal insults" as having the effect of altering brain development.²⁹

Perinatal brain injury commonly manifests with neonatal encephalopathy or brain malfunctions, including seizures.³⁰ It is usually brought about by "cerebral ischemia, cerebral hemorrhage, or an ascending intrauterine infection."³¹ The most severe forms of perinatal brain damage lead to cerebral palsy, while a less severe damage may result in subtle changes in the child's neurodevelopment.³² Children "who suffer from perinatal brain injury often deal with dramatic consequences of this misfortune for the rest of their lives."³³

²⁷ Id. at 830–831.

²⁸ *Aguirre v. Secretary of the Department of Justice*, 571 Phil. 138, 147 (2008) [Per J. Chico-Nazario, Third Division].

²⁹ Tiago Savignon, Everton Costa, Frank Tenorio, Alex C. Manhães, and Penha C. Barradas, *Prenatal Hypoxic-Ischemic Insult Changes the Distribution and Number of NADPH-Diaphorase Cells in the Cerebellum* (2012), available at <<https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0035786>> (last visited on September 2, 2019).

³⁰ Henrik Hagberg, A. David Edwards, and Floris Groenendaal, *Perinatal brain damage: The Term Infant*, 92 NEUROBIOLOGY OF DISEASE 102, 102 (2016), available at <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4915441/pdf/main.pdf>> (last visited on September 2, 2019).

³¹ Berger, R., et al. *Perinatal brain damage: underlying mechanisms and neuroprotective strategies*, 9 J SOC GYNECOL INVESTIG. 319 (2002), available at <<https://www.ncbi.nlm.nih.gov/pubmed/12445595>> (last visited on September 2, 2019).

³² Henrik Hagberg, A. David Edwards, and Floris Groenendaal, *Perinatal brain damage: The Term Infant*, 92 NEUROBIOLOGY OF DISEASE 102, 108 (2016), available at <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4915441/pdf/main.pdf>> (last visited on September 2, 2019).

³³ Berger, R., et al. *Perinatal brain damage: underlying mechanisms and neuroprotective strategies*, 9 J SOC GYNECOL INVESTIG. 319 (2002), available at <<https://www.ncbi.nlm.nih.gov/pubmed/12445595>> (last visited on September 2, 2019).

Through no fault of his own, Larry's cognitive development has been severely hampered. Rather than the unfounded judgment that he would be incapable of making his own choices eventually as an adult, Pedro and Lourdes Aguirre (the Aguirre Spouses) should have extended their understanding and guidance to Larry as one would to a child, for however long it takes, to prepare him for the life to which he was entitled.

The Aguirre Spouses may have the authority to substitute Larry's decision with their own, but they must make one that is always *in favor of Larry's best interests*. Their failure to do so allows the State to intervene, especially if the act is tantamount to abuse, neglect, cruelty, or one that prejudices Larry's development.

II

Section 10(a) of Republic Act No. 7610 is unique in that it was designed to protect children from any and all forms of abuse. It broadened the definition and scope of child abuse to supply inadequacies in our existing laws, thus strengthening the State's policy on the protection of "the most vulnerable members of the population, the Filipino children[.]"³⁴

*Araneta v. People*³⁵ laid the rule that Section 10(a) punishes four (4) separate and distinct acts, thus:

Article VI of the statute enumerates the "other acts of abuse."
Paragraph (a) of Section 10 thereof states:

Article VI OTHER ACTS OF ABUSE

SEC. 10. Other Acts of Neglect, Abuse, Cruelty or Exploitation and Other Conditions Prejudicial to the Child's Development. —

(a) Any person who shall commit **any other acts of abuse, cruelty or exploitation or be responsible for other conditions prejudicial to the child's development** including those covered by Article 59 of Presidential Decree No. 603, as amended, but not covered by the Revised Penal Code, as amended, shall suffer the penalty of *prision mayor* in its minimum period. . . .

As gleaned from the foregoing, the provision punishes not only those enumerated under Article 59 of Presidential Decree No. 603, but also four distinct acts, i.e., (a) child abuse, (b) child cruelty, (c) child

³⁴ *Araneta v. People*, 578 Phil. 876, 883–884 (2008) [Per J. Chico-Nazario, Third Division].

³⁵ 578 Phil. 876 (2008) [Per J. Chico-Nazario, Third Division].

exploitation and (d) being responsible for conditions prejudicial to the child's development. The Rules and Regulations of the questioned statute distinctly and separately defined child abuse, cruelty and exploitation just to show that these three acts are different from one another and from the act prejudicial to the child's development. Contrary to petitioner's assertion, an accused can be prosecuted and be convicted under Section 10 (a), Article VI of Republic Act No. 7610 if he commits any of the four acts therein. The prosecution need not prove that the acts of child abuse, child cruelty and child exploitation have resulted in the prejudice of the child because an act prejudicial to the development of the child is different from the former acts.

Moreover, it is a rule in statutory construction that the word "or" is a disjunctive term signifying dissociation and independence of one thing from other things enumerated. It should, as a rule, be construed in the sense which it ordinarily implies. *Hence, the use of "or" in Section 10 (a) of Republic Act No. 7610 before the phrase "be responsible for other conditions prejudicial to the child's development" supposes that there are four punishable acts therein. First, the act of child abuse; second, child cruelty; third, child exploitation; and fourth, being responsible for conditions prejudicial to the child's development. The fourth penalized act cannot be interpreted, as petitioner suggests, as a qualifying condition for the three other acts, because an analysis of the entire context of the questioned provision does not warrant such construal.*³⁶ (Emphasis supplied, citations omitted)

The important element in determining if there was a violation of Section 10(a) of Republic Act No. 7610 is whether the act is or can be prejudicial to a child's development. This should be read together with Section 3(b). A fundamental rule of statutory construction is that courts should not distinguish where the law does not distinguish—"*ubi lex non distinguit, nec nos distinguere debemus.*"³⁷

It should be remembered that the Philippines is a signatory³⁸ to the Convention on the Rights of Persons with Disabilities. Its salient provisions state:

Article 1: Purpose

The purpose of the present Convention is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity. Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective

³⁶ Id. at 884–886.

³⁷ *United BF Homeowners' Association, Inc. v. The Barangay Chairman and the Sangguniang Barangay of BF Homes Parañaque*, 532 Phil. 660, 669 (2006) [Per J. Corona, Second Division].

³⁸ See *United Nations Treaty Collection*, available at https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-15&chapter=4&clang=_en (last visited on September 2, 2019). The Philippines became a state party on September 25, 2007. The Convention was ratified on April 15, 2008.

participation in society on an equal basis with others.

Article 23: Respect for home and the family

1. *States Parties shall take effective and appropriate measures to eliminate discrimination against persons with disabilities in all matters relating to marriage, family, parenthood and relationships, on an equal basis with others, so as to ensure that:*

- a) The right of all persons with disabilities who are of marriageable age to marry and to found a family on the basis of free and full consent of the intending spouses is recognized;
- b) The rights of persons with disabilities to decide freely and responsibly on the number and spacing of their children and to have access to age-appropriate information, reproductive and family planning education are recognized, and the means necessary to enable them to exercise these rights are provided;
- c) *Persons with disabilities, including children, retain their fertility on an equal basis with others.*

2. *States Parties shall ensure the rights and responsibilities of persons with disabilities, with regard to guardianship, wardship, trusteeship, adoption of children or similar institutions, where these concepts exist in national legislation; in all cases the best interests of the child shall be paramount.* States Parties shall render appropriate assistance to persons with disabilities in the performance of their child-rearing responsibilities.

3. *States Parties shall ensure that children with disabilities have equal rights with respect to family life.* With a view to realizing these rights, and to prevent concealment, abandonment, neglect and segregation of children with disabilities, States Parties shall undertake to provide early and comprehensive information, services and support to children with disabilities and their families. (Emphasis supplied)

This commitment to uphold everyone's fundamental right to human dignity is echoed in our very own Constitution. Article XIII, Section 1 states:

ARTICLE XIII
Social Justice and Human Rights

SECTION 1. The Congress shall give highest priority to the enactment of measures that protect and enhance the right of all the people to human dignity, reduce social, economic, and political inequalities, and remove cultural inequities by equitably diffusing wealth and political power for the common good.

To this end and in relation to family and reproductive rights, laws have been enacted with no less than the express recognition of equality and non-discrimination. The Responsible Parenthood and Reproductive Health Act of 2012,³⁹ for one, declares as state policy the eradication of “discriminatory practices, laws and policies that infringe on a person’s exercise of reproductive health rights.”⁴⁰ The reproductive concerns of men are also recognized as part of male responsibility.⁴¹ An entire section devoted on programs for persons with disabilities was included:

SECTION 18. Sexual and Reproductive Health Programs for Persons with Disabilities (PWDs). — The cities and municipalities shall endeavor that barriers to reproductive health services for PWDs are obliterated by the following:

(a) Providing physical access, and resolving transportation and proximity issues to clinics, hospitals and places where public health education is provided, contraceptives are sold or distributed or other places where reproductive health services are provided;

(b) Adapting examination tables and other laboratory procedures to the needs and conditions of PWDs;

(c) Increasing access to information and communication materials on sexual and reproductive health in braille, large print, simple language, sign language and pictures;

(d) Providing continuing education and inclusion of rights of PWDs among health care providers; and

(e) *Undertaking activities to raise awareness and address misconceptions among the general public on the stigma and their lack of knowledge on the sexual and reproductive health needs and rights of PWDs.* (Emphasis supplied)

For guidance, the Implementing Rules and Regulations of Republic Act No. 7610⁴² defines “child abuse,” “cruelty,” “neglect,” and “exploitation” as:

SECTION 2. *Definition of Terms.* — As used in these Rules, unless the context requires otherwise —

.....

b) “Child abuse” refers to the infliction of physical or psychological injury, cruelty to, or neglect, sexual abuse or exploitation of a child;

³⁹ Republic Act No. 10354 (2012).

⁴⁰ Republic Act No. 10354 (2012), sec. 2(6).

⁴¹ Republic Act No. 10354 (2012), sec. 4(i).

⁴² Rules and Regulations on the Reporting and Investigation of Child Abuse Cases (1993).

c) "Cruelty" refers to any act by word or deed which debases, degrades or demeans the intrinsic worth and dignity of a child as a human being. Discipline administered by a parent or legal guardian to a child does not constitute cruelty provided it is reasonable in manner and moderate in degree and does not constitute physical or psychological injury as defined herein;

.....

f) "Neglect" means failure to provide, for reasons other than poverty, adequate food, clothing, shelter, basic education or medical care so as to seriously endanger the physical, mental, social and emotional growth and development of the child;

.....

i) "Exploitation" means the hiring, employment, persuasion, inducement, or coercion of a child to perform in obscene exhibitions and indecent shows, whether live or in video or film, or to pose or act as a model in obscene publications or pornographic materials, or to sell or distribute said materials[.]

The infliction of physical injury as abuse is not difficult to comprehend. In *Torres v. People*,⁴³ this Court deemed the act of whipping a child thrice with a wet t-shirt as child abuse:

[P]etitioner's intention to debase, degrade, and demean the intrinsic worth and dignity of a child can be inferred from the manner in which he committed the act complained of.

To note, petitioner used a wet t-shirt to whip the child not just once but three (3) times. Common sense and human experience would suggest that hitting a sensitive body part, such as the neck, with a wet t-shirt would cause an extreme amount of pain, especially so if it was done several times. There is also reason to believe that petitioner used excessive force. Otherwise, AAA would not have fallen down the stairs at the third strike. AAA would likewise not have sustained a contusion.

Indeed, if the only intention of petitioner were to discipline AAA and stop him from interfering, he could have resorted to other less violent means. Instead of reprimanding AAA or walking away, petitioner chose to hit the latter.

We find petitioner liable for other acts of child abuse under Article VI, Section 10 (a) of Republic Act No. 7610, which provides that "a person who shall commit any other acts of child abuse, cruelty or exploitation or be responsible for other conditions prejudicial to the child's development . . . shall suffer the penalty of *prision mayor* in its minimum period."⁴⁴ (Citations omitted)

⁴³ 803 Phil. 480 (2017) [Per J. Leonen, Second Division].

⁴⁴ Id. at 490-491.

Unlike physical abuse, which ordinarily requires overt acts, neglect is committed by omission. It pertains to the withholding of a child's needs to fully participate in society, such as access to food, education, shelter, and care, all of which children are legally entitled to in recognition of their right to grow into adulthood under the best circumstances.⁴⁵

Neglect may be typified as: (1) physical; (2) educational; (3) emotional; and (4) medical.⁴⁶

Physical neglect refers to the failure to provide a child's basic needs, which consists of food, clothing, and shelter. Educational neglect consists in the failure to ensure that the child receives proper and adequate education. Emotional neglect is the failure to nurture by, among others, ignoring or isolating the child. Medical neglect pertains to the failure to provide proper healthcare to a child, as when, for instance, one ignores medical recommendations.⁴⁷

Neglect has also been expanded to recognize environmental neglect and supervisory neglect.⁴⁸ Environmental neglect pertains to a situation where a child is left in a hazardous or unclean location. Supervisory neglect refers to a situation where a child is abandoned or left under the custody of an inappropriate substitute.⁴⁹

Cruelty, on the other hand, is a much broader term as it includes acts done by word or deed. In any case, the act targets the child's intrinsic worth and dignity without regard to his or her humanity.

What comprises abuse depends on the circumstances of each case. For instance, this Court held in *Bongalon v. People*⁵⁰ that not every physical harm done on the child is child abuse:

Not every instance of the laying of hands on a child constitutes the crime of child abuse under Section 10 (a) of Republic Act No. 7610. Only when the laying of hands is shown beyond reasonable doubt to be intended by the accused to debase, degrade or demean the intrinsic worth and dignity of the child as a human being should it be punished as child abuse.

...

⁴⁵ UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3. The Philippines ratified the Convention on August 21, 1990.

⁴⁶ National Security for the Prevention of Cruelty to Children, *Neglect* <<https://www.nspcc.org.uk/what-is-child-abuse/types-of-abuse/neglect/#types>> (last visited on September 2, 2019).

⁴⁷ Id.

⁴⁸ Ferol E. Mennen, Kihyun Kim, Jina Sang, Penelope Trickett, *Child neglect: Definition and identification of youth's experiences in official reports of maltreatment*, 34 CHILD ABUSE AND NEGLECT THE INTERNATIONAL JOURNAL 647 (2011), available at <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2949068/>> (last visited on September 2, 2019).

⁴⁹ Id.

⁵⁰ 707 Phil. 11 (2013) [Per J. Bersamin, First Division].

....

... The records showed the laying of hands on Jayson to have been done at the spur of the moment and in anger, indicative of his being then overwhelmed by his fatherly concern for the personal safety of his own minor daughters who had just suffered harm at the hands of Jayson and Roldan. With the loss of his self-control, he lacked that specific intent to debase, degrade or demean the intrinsic worth and dignity of a child as a human being that was so essential in the crime of child abuse.⁵¹ (Citation omitted)

Although the intent of Republic Act No. 7610 was recognized in *Amanquiton v. People*,⁵² this Court cautioned that:

... this noble statute should not be used as a sharp sword, ready to be brandished against an accused even if there is a patent lack of proof to convict him of the crime. The right of an accused to liberty is as important as a minor's right not to be subjected to any form of abuse. Both are enshrined in the Constitution. One need not be sacrificed for the other.⁵³

In reconciling the guidelines, courts should carefully examine the particular act that is alleged to constitute child abuse with due regard to the child's intrinsic worth and dignity. The ultimate determination depends on whether the act done on the child debilitates or debases his fundamental integrity, harming his or her future growth and development.

III

The vasectomy conducted on Larry violates his fundamental right to life and liberty.

Article III, Section 1 of the Constitution states that “[n]o person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.” In *Rubi v. The Provincial Board of Mindoro*,⁵⁴ Associate Justice George Malcolm elaborated on the right to liberty:

Civil liberty may be said to mean that measure of freedom which may be enjoyed in a civilized community, consistently with the peaceful enjoyment of like freedom in others. The right to liberty guaranteed by the Constitution includes the right to exist and the right to be free from arbitrary personal restraint or servitude. The term cannot be dwarfed into mere freedom from physical restraint of the person of the citizen, but is

⁵¹ Id. at 14–21.

⁵² 612 Phil. 1253 (2009) [Per J. Corona, First Division].

⁵³ Id. at 1263.

⁵⁴ 39 Phil. 660 (1919) [Per J. Malcolm, En Banc].

deemed to embrace the right of man to enjoy the faculties with which he has been endowed by his Creator, subject only to such restraints as are necessary for the common welfare. As enunciated in a long array of authorities including epoch-making decisions of the United States Supreme Court, liberty includes the right of the citizen to be free to use his faculties in lawful ways; to live and work where he will; to earn his livelihood by any lawful calling; to pursue any avocation, and for that purpose, to enter into all contracts which may be proper, necessary, and essential to his carrying out these purposes to a successful conclusion. The chief elements of the guaranty are the right to contract, the right to choose one's employment, the right to labor, and the right of locomotion.

In general, it may be said that liberty means the opportunity to do those things which are ordinarily done by free men.⁵⁵ (Emphasis supplied)

Granted, this liberty is not impenetrable from interference. As early as 1910, this Court has recognized in *U.S. v. Toribio*⁵⁶ that "the State may interfere wherever the public interests demand it, and in this particular a large discretion is necessarily vested in the legislature to determine, not only what the interests of the public require, but what measures are necessary for the protection of such interests."⁵⁷

However, when public interest is not under threat, neither the State nor any individual may forcibly interfere with the life and choices of another.

There will always be a sphere of autonomy within an individual's life with which the State cannot interfere. This pertains to the exercise of his or her basic human rights. The protection of the inherent dignity of every individual is guaranteed by no less than the Constitution.⁵⁸ The State is obliged to ensure that every individual can make choices free from personal restraint, especially if what is at stake is a fundamental human right.

This is relevant in reproductive health rights. The area of freedom where decisions surrounding one's right to procreate are made is sacrosanct, the protection further bolstered by one's right to privacy.

Although the right to privacy is intertwined with the right to liberty, it is a distinct right that is equally entitled to protection under the Constitution.⁵⁹ Article III, Section 3(1) states that "[t]he privacy of communication and correspondence shall be inviolable except upon lawful order of the court, or when public safety or order requires otherwise as

⁵⁵ Id. at 705.

⁵⁶ 15 Phil. 85 (1910) [Per J. Carson, First Division].

⁵⁷ Id. at 98 citing *Lawson v. Steele*, 152 U.S., 133, 136.

⁵⁸ CONST., art. II, sec. 11 provides:

SECTION 11. The State values the dignity of every human person and guarantees full respect for human rights.

⁵⁹ See *Morfe v. Mutuc*, 130 Phil. 415 (1968) [Per J. Fernando, En Banc] and *Ople v. Torres*, 354 Phil. 948 (1998) [Per J. Puno, En Banc].

prescribed by law.”

The right to privacy, however, not only pertains to privacy of one's communication and correspondence. It has many dimensions, referred to as “zones of privacy,” which are embedded in other constitutionally guaranteed freedoms. In *Morfe v. Mutuc*:⁶⁰

[I]n view of the fact that there is an express recognition of privacy, specifically that of communication and correspondence which “shall be inviolable except upon lawful order of Court or when public safety and order” may otherwise require, and implicitly in the search and seizure clause, and the liberty of abode, the alleged repugnancy of such statutory requirement of further periodical submission of a sworn statement of assets and liabilities deserves to be further looked into.

In that respect the question is one of first impression, no previous decision having been rendered by this Court. It is not so in the United States where, in the leading case of *Griswold v. Connecticut*, Justice Douglas, speaking for five members of the Court, stated: “Various guarantees create zones of privacy. The right of association contained in the penumbra of the First Amendment is one, as we have seen. The Third Amendment in its prohibition against the quartering of soldiers ‘in any house’ in time of peace without the consent of the owner is another facet of that privacy. The Fourth Amendment explicitly affirms the ‘right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.’ The Fifth Amendment in its Self-Incrimination clause enables the citizen to create a zone of privacy which government may not force him to surrender to his detriment. The Ninth Amendment provides: ‘The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.’” After referring to various American Supreme Court decisions, Justice Douglas continued: “These cases bear witness that the right of privacy which presses for recognition is a legitimate one.”

The *Griswold* case invalidated a Connecticut statute which made the use of contraceptives a criminal offense on the ground of its amounting to an unconstitutional invasion of the right of privacy of married persons; rightfully it stressed “a relationship lying within the zone of privacy created by several fundamental constitutional guarantees.” It has wider implication though. The constitutional right to privacy has come into its own.

So it is likewise in our jurisdiction. The right to privacy as such is accorded recognition independently of its identification with liberty; in itself, it is fully deserving of constitutional protection. The language of Prof. Emerson is particularly apt: “The concept of limited government has always included the idea that governmental powers stop short of certain intrusions into the personal life of the citizen. This is indeed one of the basic distinctions between absolute and limited government. Ultimate and pervasive control of the individual, in all aspects of his life, is the hallmark of the absolute state. In contrast, a system of limited government safeguards a private sector, which belongs to the individual, firmly

⁶⁰ 130 Phil. 415 (1968) [Per J. Fernando, En Banc].

distinguishing it from the public sector, which the state can control. Protection of this private sector — protection, in other words, of the dignity and integrity of the individual — has become increasingly important as modern society has developed. All the forces of a technological age — industrialization, urbanization, and organization — operate to narrow the area of privacy and facilitate intrusion into it. In modern terms, the capacity to maintain and support this enclave of private life marks the difference between a democratic and a totalitarian society.”⁶¹ (Citations omitted)

Apart from the Constitution, our laws also recognize the zones of privacy. In *Ople v. Torres*:⁶²

Indeed, if we extend our judicial gaze we will find that the right of privacy is recognized and enshrined in several provisions of our Constitution. It is expressly recognized in Section 3(1) of the Bill of Rights:

“Sec. 3. (1) The privacy of communication and correspondence shall be inviolable except upon lawful order of the court, or when public safety or order requires otherwise as prescribed by law.”

Other facets of the right to privacy are protected in various provisions of the Bill of Rights, viz:

“Sec. 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

Sec. 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

.....

Sec. 6. The liberty of abode and of changing the same within the limits prescribed by law shall not be impaired except upon lawful order of the court. Neither shall the right to travel be impaired except in the interest of national security, public safety, or public health, as may be provided by law.

.....

⁶¹ Id. at 434-436.

⁶² 354 Phil. 948 (1998) [Per J. Puno En Banc].

Sec. 8. The right of the people, including those employed in the public and private sectors, to form unions, associations, or societies for purposes not contrary to law shall not be abridged.

Sec. 17. No person shall be compelled to be a witness against himself.”

Zones of privacy are likewise recognized and protected in our laws. The Civil Code provides that “[e]very person shall respect the dignity, personality, privacy and peace of mind of his neighbors and other persons” and punishes as actionable torts several acts by a person of meddling and prying into the privacy of another. It also holds a public officer or employee or any private individual liable for damages for any violation of the rights and liberties of another person, and recognizes the privacy of letters and other private communications. The Revised Penal Code makes a crime the violation of secrets by an officer, the revelation of trade and industrial secrets, and trespass to dwelling. Invasion of privacy is an offense in special laws like the Anti-Wiretapping Law, the Secrecy of Bank Deposits Act and the Intellectual Property Code. The Rules of Court on privileged communication likewise recognize the privacy of certain information.⁶³ (Emphasis supplied, citations omitted)

In his speech, “The Common Right to Privacy,” retired Chief Justice Reynato S. Puno distinguished among three (3) different aspects or “strands” of the right to privacy, namely: (1) locational privacy; (2) informational privacy; and (3) decisional privacy.⁶⁴

Locational privacy, also known as situational privacy, pertains to privacy that is felt in a physical space. It may be violated through an act of trespass or through an unlawful search.⁶⁵ Meanwhile, informational privacy refers to one’s right to control “the processing—*i.e.*, acquisition, disclosure, and use—of personal information.”⁶⁶

Decisional privacy, regarded as the most controversial among the three, refers to one’s right “to make certain kinds of fundamental choices with respect to their personal and reproductive autonomy.”⁶⁷ It finds relevance in matters that involve one’s reproductive health.

⁶³ Id. at 972–974.

⁶⁴ *Vivares v. St. Theresa’s College*, 744 Phil. 451, 467 (2014) [Per J. Velasco, Jr., Third Division] citing Retired Chief Justice Reynato S. Puno, *The Common Right to Privacy* (Forum on The Writ of Habeas Data and Human Rights, Innotech Seminar Hall, Commonwealth Avenue, Quezon City), March 12, 2008.

⁶⁵ See footnote 21 in *Vivares v. St. Theresa’s College*, 744 Phil. 451, 467 (2014) [Per J. Velasco, Jr., Third Division].

⁶⁶ William L. Prosser, *Privacy*, 48 CAL. L. REV. 382, 389 (1960), available at <<https://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?article=3157&context=californialawrevie>> (last visited on September 2, 2019); Jerry Kang, *Information Privacy in Cyberspace Transactions*, 50 STAN L. REV. 1193, 1203 (1998), available at <<https://www.ntia.doc.gov/legacy/ntiahome/privacy/files/CPRIVACY.PDF>> (last visited on September 2, 2019).

⁶⁷ See footnote 22 in *Vivares v. St. Theresa’s College*, 744 Phil. 451, 467 (2014) [Per J. Velasco, Jr., Third Division].

Several provisions in our Constitution, though not in express terms, are essentially related to reproductive health:

Article II, Section 12 of the Constitution states:

SECTION 12. The State recognizes the sanctity of family life and shall protect and strengthen the family as a basic autonomous social institution. It shall equally protect the life of the mother and the life of the unborn from conception. 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.

Article XV, Sections 1 and 3(1) state:

SECTION 1. The State recognizes the Filipino family as the foundation of the nation. Accordingly, it shall strengthen its solidarity and actively promote its total development.

SECTION 3. The State shall defend:

- (1) The right of spouses to found a family in accordance with their religious convictions and the demands of responsible parenthood[.]

One's autonomy over his or her life and body, therefore, is inextricably linked with the right to privacy.⁶⁸

Reproductive health rights, being within the sphere of autonomy, are protected from interference by private individuals, including parents and guardians. At most, they can only provide guidance and education. Larry will still grow, and his mental capacity will be beyond 18 at some point. In their premature judgment that Larry would be incapable of becoming a responsible adult, the Aguirre Spouses curtailed his liberty and violated his decisional privacy.

Ignorance and fear have infantilized persons with intellectual disability, broadly categorizing them as asexual juveniles. As a result, their display of affection and sexual behaviors are dismissed as less acceptable.⁶⁹

⁶⁸ See J. Leonen, Dissenting Opinion in *Spouses Imbong v. Ochoa*, 732 Phil. 1, 554-666 (2014) [Per J. Mendoza, En Banc].

⁶⁹ Abbas Ali Hosseinkhanzadeh, et al., *Attitudes to Sexuality in Individuals with Mental Retardation from Perspectives of their Parents and Teachers*, 4 INT. J. SOCIOL. ANTHROPOL. 134, 135 (2012), available at <https://academicjournals.org/article/1379603739_Hosseinkhanzadeh%20et%20al.pdf> (last visited on September 2, 2019).

Historically, this led to practices of “selective breeding” through surgical sterilization, which prevented persons with intellectual disability from fully realizing their sexual rights.⁷⁰

At present, there are available therapies and interventions that target and minimize the impairment level and improve the functionality of one with such disability.⁷¹ Intellectual disability does not disqualify an individual from becoming a parent.⁷² With adequate support and education, those with intellectual disability may have a healthy, appropriate expression of sexuality, and eventually, parenting skills and capacity to raise their own children.⁷³

The possibility of Larry understanding his right to reproduce in the future should not be disregarded simply because his development is medically considered “slow.” As a child in need of greater care and consideration, respondents should have acted more humanely and responsibly.

Moreover, Larry’s ability to exercise his right to procreate goes beyond a mere invocation of his reproductive health rights. It seeps into his capacity to form relationships, to start a family, to be a responsible parent, and to live his life as fully and as meaningfully as possible. Taking away his ability to sire children effectively debilitates him as a child and a human being. While Larry is not barred from engaging in a relationship or sexual relations that could lead to having a child, the vasectomy has severely limited his options to start a family of his own. The decision to undergo vasectomy, whether reversible or not, involves an act that is part of private rights. The right to reproduce forms part of how humans define themselves. The choice of whether to reproduce should be respected, even if the person has cognitive disability.

Thus, the vasectomy on someone with cognitive disability, without his or her consent, is both an act of cruelty and an act prejudicial to the person’s development.

⁷⁰ Id.

⁷¹ Sharma A. Sane, et al., *Cellular Therapy, a Novel Treatment Option for Intellectual Disability: A Case Report*, 5 J. CLIN. CASE REP. 483 (2015), available at <<https://www.neurogen.in/assets/frontend/pdf/scientific-publications/ID/03-ID.pdf>> (last visited on September 2, 2019); Sabyasachi Bhaumik, et al., *Psychological Treatments in Intellectual Disability: The Challenges of Building a Good Evidence Base*, 198 THE BRITISH JOURNAL OF PSYCHIATRY 428 (2011), available at <https://www.researchgate.net/publication/51180520_Psychological_treatments_in_intellectual_disability_The_challenges_of_building_a_good_evidence_base> (last visited on September 2, 2019).

⁷² 1 Sherri Melrose, et al., *Supporting Individuals with Intellectual Disabilities and Mental Illness: What Caregivers Need to Know* 86–88, 93 (2015), available at <https://web2.mlp.cz/koweb/00/04/24/15/72/supporting_individuals_with_intellectual_disabilities.pdf> (last accessed on September 2, 2019).

⁷³ Id.

Cruelty refers to something that debases, degrades, or demeans the intrinsic value of a child.⁷⁴ This may be seen in two (2) ways. On one hand, it can refer to an act and the manner by which it was done. On the other hand, it can also refer to the result of an act.

The unconsented vasectomy on Larry is clearly a case of cruelty, not so much for the manner it was done, but because of the circumstances surrounding its commission and the resulting limitations to the way Larry will be able to live the rest of his life.

The vasectomy was a decision made by respondents despite the medical finding that Larry, at that time, was unable to comprehend the procedure's long-term ramifications. While parents are capable of exercising authority over their children, this authority is by no means unlimited. Parental authority is both a right and an obligation, granted by law under the presumption that it will be exercised for the full development of a child's mind, heart, and senses.⁷⁵ Under no circumstances is it allowed to be exercised in a way that is violative of human dignity or will diminish another's intrinsic worth. *Santos, Sr. v. Court of Appeals*⁷⁶ describes the nature of parental authority as a "sum of duties":

[Parental authority] is a mass of rights and obligations which the law grants to parents for the purpose of the children's physical preservation and development, as well as the cultivation of their intellect and the education of their heart and senses. As regards parental authority, "there is no power, but a task; no complex of rights, but a sum of duties; no sovereignty but a sacred trust for the welfare of the minor."⁷⁷

The mark of a good parent is not measured by his or her material wealth or mental faculties. Rather, a good parent is one who exhibits the patience, love, and ability to sacrifice so that the child discovers what it is to be nurtured, protected, and resilient.

Being cognitively disabled is not a barrier to parenthood. A person's disability has no direct correlation to being a good parent:⁷⁸

It is important to separate personality from disability, to acknowledge that cognitive limitation is only about how people learn. Rarely is it the most significant factor in deciding whether someone can parent adequately.

....

⁷⁴ Rules and Regulations on the Reporting and Investigation of Child Abuse Cases, sec. 2(c).

⁷⁵ *Santos, Sr. v. Court of Appeals*, 312 Phil. 482, 487-488 (1995) [Per J. Romero, Third Division].

⁷⁶ Id.

⁷⁷ Id. at 487-488.

⁷⁸ Howard Mandeville, *Supported Parenting*, Wisconsin Coalition for Advocacy 181 <<http://www.disabilityrightswi.org/wp-content/uploads/2018/09/Supported-Parenting.pdf>> (last visited on September 2, 2019).

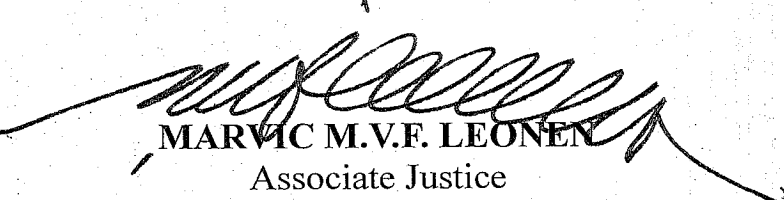
A parent's disability, in itself, does not necessarily determine whether a parent will be a "good enough" parent. While the individual characteristics of the parent are important, the characteristics of the supports available have a lot of influence over whether parents will succeed.⁷⁹

Under the philosophy of supported parenting, persons who are cognitively disabled are fully capable of being parents themselves if given wholehearted support by both their family and community.⁸⁰ This requires that their needs be identified, including "the parent's individual learning style; the parent's current knowledge, behavior, attitudes, beliefs, values; available support systems, and available resources."⁸¹

Yet, Larry's legal guardians, instead of acting *only* for his best interests, substituted his consent with their own under the guise of "protection."⁸² There were other options for Larry who, in time, could have children of his own. But this was taken away from him by the people who should have acted in Larry's best interest. To deprive him of all the options his life had to offer is an act of cruelty. It was an act borne out of selfishness, not love. It was not for them to conclude that Larry cannot become a parent or care for someone other than himself.

The State's responsibility to protect children with disabilities is both an international and constitutional commitment. When no one else is willing to take up the cudgels for Larry, the State must not renege on its duty to ensure the protection of his human dignity simply on the ground of procedural infirmity. The State must not allow the violation of a child's right made even in the misguided concept of parental authority.

ACCORDINGLY, I vote that the bilateral vasectomy conducted on Larry be considered as child abuse and a violation of Republic Act No. 7610.


MARVIC M.V.F. LEONEN
Associate Justice

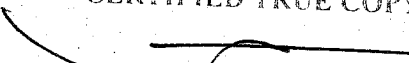
⁷⁹ Id.

⁸⁰ Id.

⁸¹ Id.

⁸² *Rollo*, p. 143. According to accused-respondent Pedro, he was prompted to act because of Larry's "emerging sexuality."

CERTIFIED TRUE COPY


EDGAR O. ARICHETA
Clerk of Court En Banc
Supreme Court