

99 Phil. 821

[G.R. No. L-10544. August 30, 1956]

NEIL S. MURDOCK, SR. AND LILIAN E. MURDOCK, PETITIONERS AND APPELLANTS VS. HORACIO CHUIDIAN, RESPONDENT AND APPELLEE.

D E C I S I O N

PADILLA, J.:

This is a petition for a writ of habeas corpus filed in this Court to secure the rightful custody of two minor children allegedly withheld by the respondent. The writ was made returnable to the Court of First Instance of the province of Rizal where the respondent resides.

The petitioners aver that they are the paternal grandparents of the minors Robert Murdock and Elizabeth Constance Murdock, 4 and 2 years old, respectively, who are the legitimate children of the spouses Neil S. Murdock, Jr., a native born citizen of the United States, and Belen Chuidian, a citizen of the Philippines, who died on 26 November, 1955 on the occasion of a fire which took place and burned their house on that date; that after the death of their parents the respondent, a maternal grandfather, brought them to his house; that pursuant to articles 349 and 355 of the new Civil Code they are entitled to exercise substitute parental authority over the minors, their grand-children, in preference to their maternal grandfather; that counsel for the petitioners requested the respondent to yield the custody of the minors but the latter has refused the former's request; that the deceased spouses left some properties to the minors among them some insurance policies, and for the administration thereof the respondent commenced guardianship proceedings and prayed therein that he be appointed guardian of the minors' estate (Sp. Proc. No. 2340, Court of First Instance of Rizal); that in the guardianship proceedings they will object to the appointments of the respondents as guardian of the persons of the minors but cannot pray that they be appointed as such because they are not residents of the Philippines; that being citizens of the United States the minors should be in the custody and care of and brought up by the paternal grandparents in preference to their maternal grandfather;

and that it is for the best interest and welfare of said minors that they be brought up and taken care of by the paternal grandparents. Upon the foregoing allegations they pray that the respondent, or whoever acts in his place and stead, be directed to appear and produce in Court the bodies of Robert Murdock and Elizabeth Constance Murdock and to state why the minors' custody, care and upbringing should not be entrusted to them.

The return in the form of an answer of the respondent alleges in substance that although article 355 of the new Civil Code provides for the order of preference by which parental authority shall be exercised by the grandparents in default of the parents, yet the said article applies only where there are no circumstances showing that the welfare of the minors will be best subserved by entrusting the custody, care and upbringing of the said minors to grand-parents not in the order of preference established in said article.

By agreement of the parties the financial ability of both the petitioners and the respondent to support the minors is admitted.

At the hearing the respondent testified that immediately after the death of the parents of the minors on the occasion of the fire that burned their house, he brought the minor children to his house and has taken care of them ever since; that the petitioners are residents of the United States and have never been to the Philippines; and that the transfer or sending of the minors to the United States, as petitioners pray, would work hardship on them.

After hearing, the Court dismissed the petition upon the ground that the welfare of the minor children will be best subserved by allowing the respondent, their maternal grandfather, to continue taking care of them and exercising the substitute parental authority. The petitioners have appealed.

We fail to find any reason why this conclusion arrived at by the trial court should be disturbed. The order of preference provided for in article 355 of the new Civil Code is mandatory, when there is no special circumstance that would require the exercise of substitute parental authority different from that provided for in said article. In other words, everything being equal the order provided for in said article must be followed. But if it appears that the welfare of the minor children would be best subserved by having their custody left in the hands of the maternal grandfather, the substitute parental authority by the latter should prevail over that by the paternal grandparents. The paramount aim is the welfare of the minor children.^[1]

The decree dismissing the petition for a writ of habeas corpus is affirmed, without costs.

Paras, C. J., Bengzon, Montemayor, Reyes, A., Bautista Angela, Labrador, Conepcion, Reyes, J. B, L., Endencia, and Felix, JJ., concur.

^[1] Article 363, New Civil Code.

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