

**IN RE GUARDIANSHIP OF THE MINOR ISABELA DOLOJAN,
DOMINADOR GUERRERO, PETITIONER-APPELLEE, VS. SEGUNDO
DOLOJAN, OPPOSITOR-APPELANT.***G.R. No. L-4631. February 26, 1952*

Ponente: BAUTISTA ANGELO, J.

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On July 20, 1948, the Provincial Fiscal of Cotabato filed a petition for a writ of habeas corpus in behalf of Isabela Dolojan against Pablo Canto alleging, among other things, that Pablo Canto had under his custody Isabela Dolojan, a girl fifteen years old, and was depriving her of her personal liberty, and that a criminal case for abduction with consent had been filed against Pablo Canto. After the respondent had been summoned and had answered the petition, and the court had given the parties an opportunity to be heard, the court found that Isabela Dolojan went voluntarily to the house of one Dominador Guerrero where the respondent was residing because she and respondent had love affairs, and she became pregnant, and that while respondent was willing and ready to marry her, they could not realize their marriage because her father would not give his consent thereto. There being no proof that Isabela Dolojan had been abducted by respondent, or that she was being deprived of her liberty, the court dismissed the petition. The court, however, suggested that guardianship proceedings be commenced immediately so that the court could appoint a guardian for her in order to facilitate her marriage to respondent.

Following the suggestion made by the court, Dominador Guerrero, at the instance of Isabela Dolojan, instituted the present guardianship proceedings. Segundo Dolojan, father of Isabela, opposed the petition. After hearing, the court ordered that letters of guardianship be issued in favor of Dominador Guerrero. From this order Segundo Dolojan appealed to the Court of Appeals. The case was later certified to this Court on the ground that it involves only questions of law.

The question to be determined is whether Segundo Dolojan can be deprived of his parental authority over his minor daughter Isabela Dolojan on the sole ground that he refused to give his consent to her marriage to Pablo Canto who was willing and ready to marry her.

The main reason found by the lower court in depriving Segundo Dolojan of his parental authority over his minor daughter Isabela is the fact that he stubbornly refused to give his consent to her marriage to Pablo Canto because of the inability of the latter to pay him the sum of P2,000 notwithstanding the fact that her daughter was already in a family way. This attitude, according to the court, made him unworthy of being her father and so, under Article 171 of the old Civil Code, it deprived him of his parental authority.

On the other hand, it is claimed by appellant that his refusal to give his consent to the marriage was not principally founded on the non-payment of the sum of P2,000. This it is claimed is but a mere incident. His fundamental objection was that his elder daughter Arsenia Dolojan, then still a minor, had previously been seduced by Pablo Canto, and while this man and Arsenia were living together as man and wife without the benefit of marriage, the former seduced his other minor daughter Isabela. Pablo Canto later abandoned Arsenia and went to live with

Isabela. Segundo Dolojan has another minor daughter, and his greatest fear was that if Isabela is allowed to marry Pablo Canto he will have another chance to seduce his third minor daughter. This is the reason why appellant has consistently refused to give his consent to the marriage of Isabela.

The facts which appellant is now advancing in support of his refusal to give his consent to the marriage are apparently new as they do not appear in the order appealed from. However, we are inclined to give them credit because they were not denied nor disputed by the appellee. The record shows that the appellee did not file any brief and limited merely to submitting the case on the basis of the order of the court a quo and the brief of the oppositor-appellant. Not having been disputed, and it appearing that these facts are borne out by the record of criminal case No. 401 of the Court of First Instance of Cotabato, in our opinion they justify the refusal of the appellant to give his consent to the marriage of his daughter, or at least they bolster up his claim that the deprivation of his parental authority by the lower court is unwarranted.

In any event, we find that this case has now become moot, it appearing that when these proceedings were instituted in 1948 Isabela Dolojan was already sixteen years old. At present she must be over eighteen. Under the law, a female who is eighteen years old or more can contract marriage without the need of parental consent (Article 61, new Civil Code), and if she is under twenty-three, she should obtain at most the advice of her parents, and if this advice is not obtained, she still could marry by filing only with the civil registrar a sworn statement stating the fact that her parents have refused to give their consent (Article 62, Id.). Upon these facts, we consider of no useful purpose to appoint now a guardian to accomplish the coveted marriage which gave rise to the present proceedings. There is, therefore, no need to decide this case on the merits.

Wherefore, the petition for guardianship is hereby dismissed, without pronouncement as to costs.

Paras, Feria, Pablo, Bengzon, Padilla, Tuason, Montemayor, Reyes, and Jugo, JJ., concur.

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