

**ILEANA A. CELIS ET AL., PETITIONERS AND APPELLEES, VS.
SOLEDAD CAFUIR ET AL., RESPONDENTS AND APPELLANTS.***G.R. No. L-3352. June 12, 1950*

Ponente: MONTEMAYOR, J.

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This is an appeal taken by the respondents, Soledad Cafuir and Jose Simeon, supposedly her husband, from a decision of the Court of First Instance of Manila in a habeas corpus case granting the petition for a writ of Habeas Corpus and ordering the Sheriff of Manila who then had custody of the boy Joel Cafuir (John Cafuir) to deliver said child to its mother, petitioner Ileana A. Celis. The appeal involving as it does only questions of law, we accept the findings of fact made by the trial court. The facts are few and quite simple and may be stated briefly as follows.

On July 10, 1946, petitioner, Ileana A. Celis, single, gave birth at the North General Hospital to a boy subsequently named Joel (John) Cafuir. The father seems to be unknown, although from what may be gathered from the decision appealed from, he was an American soldier who formed part of the American Liberation Forces. Due to the anger and extreme displeasure of the father of Ileana because of the alleged disgrace that she brought on herself and the family for having maintained illicit relations with a man to whom she had not been married and because of her father's objection to having her soft in the paternal home where Ileana was then living, nine days after delivery, Joel was given to the custody of the respondent Soledad Cafuir, who thereafter took him direct from the hospital to her house, ministered to his needs and comfort, and even employed a nurse to take care of him, Ileana herself spent several days in Soledad's house while recuperating; later, she returned to her own home leaving her child to the care of respondent Soledad. Thereafter, Ileana visited her child every Saturday, taking to him condensed milk, food, and a little money.

On September 17, 1948, Ileana married her co-petitioner Agustin C. Rivera. The couple thereafter decided to get back Joel Cafuir. Because of the refusal of respondent Soledad to give him up, petitioners sued out the corresponding writ of habeas corpus.

The theory of the respondents-appellants is that Ileana had definitely renounced her custody of and patria potestas over her child and that now she may not get him back. In support of this claim, Exhibits 4 and 1 were presented in evidence. The first exhibit is dated July 10, 1946, the same day that John Cafuir was born at the hospital, and reads as follows:

"July 10, 1946

"To whom it may concern:

"I hereby entrusted to Mrs. Soledad Cafuir of 131 Limasana, Quiapo, Manila, my son name John Cafuir, for the reason that I don't have the means to bring the child up.

"Anybody who may claim my son for adoption in the future without the consent of the under-signed is hereby ignored.

"(Sgd.) "Nenita Celis

"Mother"

The second, Exhibit 1, is dated November 2, 1946, and reads as follows:

"November 2, 1946

"To whom it may concern:

"I, Nenita Cells, of 1196 Singalong, Malate, Manila, hereby designate Mrs. Soledad Cafuir, residing at 131 Limasana, R. Hidalgo, Quiapo, Manila to be the real guardian of my son, name Johnny Cafuir.

"No one has the right to claim for adoption except Mrs. Soledad Cafuir.

(Sgd.) "Nenita Celis

"Mother"

The trial court found and rule)/that under these two exhibits signed by petitioner Ileana Cells, there is no basis for finding that she had renounced the custody of her child in favor of respondent Soledad. We agree with the said finding and ruling of the trial court.

In the case of Soria Diaz vs. Servando Estrera, (G.R, No. L-1155, June 30, 1947; 44 Off.Gaz., 4354), [1] this court in dismissing the petition for habeas corpus involving the custody of a child held that paternal authority or patria potestas may be waived, and it denied the petition of the mother to recover the custody of her child from the respondent Estrera. The facts in that case are, however, a little different from the those in the present case. There, the mother in giving up the custody of her child signed a document reading as follows:

"A quien concierna:

"Hago constar que yo, Soria Bernardo Diaz, filipina, mayor de edad y vecina del pueblo de Badian, Cebu, doy a mi hija Dulcisima que nacio en la propia casa de los esposos Senor y Señora, de Servando Estrera, del pueblo de Mandaue, Cebu, debido a su amor grande a mi hija y como correspondencia a sus preocupaciones y gastos con motivo de mi parto he ofrecido a ellos sin ninguna vacilacion o deseo de tener la referida niña,

"Hago entender que cuando firme este documento ha cesado mi autoridad sobre mi hija y si en los dias futuros intentare intervenir, reclamando dicha niña y sacandola, yo podria ser acusada ante los tribunales del pueblo para que me castiguen por la infraccion, que yo cometierte de este contrato que he firmado.

"He firmado esto en este dia 20 de Febrero del año 1944 en preseneia de los testigos que firman abajo.

(Fda.) "Soria Bernardo Diaz

"Madre de la niña"

From a reading of the above-quoted document it is not hard to see that the mother definitely gave up and renounced all right and claim to the custody of her child. She even imposed against herself a penal sanction

should she in the future try to claim her child. Moreover, in that case, the man to whom the mother gave the custody of her child was the latter's adulterine father and that circumstance seems to be one of the considerations which impelled this court to overrule the mother's claim and leave the custody of the child in status quo, for the reason that the respondent being the father, tho illegitimate, of the child, he had obligations and duties towards said child such as support, care, and education, and that said duties and obligations could best be complied with by keeping the child in his own home.

The facts in the present case, however, are quite different. The respondents, particularly Soledad, are strangers to the child. She is not related to him in any degree by consanguinity or affinity. Furthermore, the document wherein the boy's mother is supposed to have definitely renounced custody over the child cannot be reasonably interpreted as having contemplated such renunciation. In the first document she merely entrusted her son to Soledad because she did not have the means to bring him up. The word "entrusted" cannot convey the idea of definite and permanent renunciation of the mother's custody of her child.

The second document, Exhibit 1, merely designated respondent Soledad as the "real guardian" of the child. The designation of one as the guardian of another cannot and does not mean that said guardian will always assume and discharge the duties of the office or position. Guardianship is always or almost invariably understood to be temporary. While one is a minor or is incompetent, a guardian is appointed; but when minority has passed or incapacity has ceased, guardianship also terminates. The same reasoning may be applied in the present case. While petitioner Ileana was still unable to care for and support her child and because she could not bring said child to live with her in the home of her father, she entrusted its custody and care to respondent. Now that she has been emancipated from the parental authority of her father and now that she has already been married and is now in a position to care for and support her own child, this with the consent and desire of her husband, who joins her in the petition, there can no longer be any reason for depriving her of the custody of her boy. In her legitimate efforts, and to have her realize her natural desire in this respect, the law and this Court should give her every help.

Furthermore, the very last paragraph of Exhibit 1 to the effect that "no one has the right to claim for adoption except Mrs. Soledad Cafuir", envisages a future act; it means that no one else may adopt the boy except respondent Soledad. It does not mean, however, that she has already adopted him. She may or may not adopt him. It is something yet to be done in the future. This the respondent has not done.

Of course, we realize and understand the position and attitude of respondent Soledad. She must have come to love the boy whom she raised from baby-hood and on whom she may have lavished her affections and spent money for rearing him up» To separate the boy from her now will mean a loss and mental suffering. But to assuage such suffering she has her own children, four of them,

Now, let us look at the other side of the picture. It shows to us the case of the real and natural mother legitimately, anxiously, and desperately trying to get back her child in order to fill the void in her heart and existence. She wants to make up for what she has failed to do for her boy during the period when she was financially unable to help him and when she could not have him in her house because of the objection of her father. Now that she has her own home and is in a better financial condition, she wants her child back, and we repeat that she has not and has never given him up definitely or with any idea of permanence.

This court should avert the tragedy in the years to come of having deprived other and son of the beautiful associations and tender, imperishable memories engendered by the relationship of parent and child. We should not take away from a mother the opportunity of bringing up her own child even at the cost of extreme sacrifice due to poverty and lack of means; so that afterwards, she may be able to look back with pride and a sense of satisfaction at her sacrifices and her efforts, however humble, to make her dreams of her little boy come true. We should not

forget that the relationship between a foster mother and a child is not natural but artificial. If the child turns out to be a failure or forgetful of what its foster parents had done for him, said parents might yet count and appraise all that they have done and spent for him and with regret consider all of it as a dead loss, and even rue the day they committed the blunder of taking the child into their hearts and their home. Not so with a real natural mother who never counts the cost and her sacrifices, ever treasuring memories of her associations with her child, however unpleasant and disappointing. Flesh and blood count. On this point we quote with approval a paragraph in the decision of the trial court presided over by Judge Tiburcio Tancinco:

"El Juzgado mira con simpatia los esfuerzos hechos por la recurrida Soledad Cafuir y su familia por el cuidado del niño Joel, a quien se le ha rodeado de todas las comodidades y cuyos menores caprichos han sido satisfechos, y preve el dolor que causaria a ella y a los demas miembros de su familia la separacion del nino Joel, en quien se han acostumbrado a ver a un verdadero hijo. Pero si este carino es digno de adairacion y de fsspeto, existe otro amor mas grande y mas digno de respeto, que es el amor de madre, no solo porque esta recoaocido y amparado por las leyes y constltuye un derecho mejor, sino porque tiene su origen en la misma sangre."

The decision of the trial court does not assess the financial means of the mother to support and educate the boy. But bearing in mind the fact that she is now married to a man who with her is ready and willing to assume the responsibility of support and education, we may presume that the couple is able to discharge and cope with said responsibility. It is possible that the means of the respondent in this respect are more adequate, and that Joel would be better off staying and remaining with her. But financial means is not everything. Whether a child should stay permanently with a kindly stranger or with his own mother, is not to be determined alone by considerations of affluence or poverty. Poor youths who had to work their way thru school and college, have, not infrequently, scaled the heights of success, as easily and swiftly as their more favored companions, and done so with more, inner satisfaction, and credit to themselves and their humble parents.

As to the petition of respondents that they be indemnified in the sum of P5,531.15, the amount spent for the care and support of the child, we agree with the trial court that said claim should be made and established in a separate suit.

Pending the present appeal, upon motion of respondent Soledad, she was, by resolution of this Court dated October 14, 1949, given temporary custody of the boy Joel Cafuir, and pursuant thereto, the Sheriff had been directed to deliver said boy to Soledad, The dispositive part of the decision appealed from should therefore direct not the Sheriff but respondent Soledad to deliver the boy to petitioners. With this modification, the decision appealed from is affirmed, with costs.

Ozaeta, Pablo, Bengzon, and Reyes, JJ., concur.

[1] 78 Phil., 637.

OZAETA, J.:

I hereby certify that Mr. Chief Justice Moran and Mr. Justice Padilla voted for the affirmance of the decision.

TUASON, J., dissenting:

I keenly regret that I am unable to agree with the views of the majority and compelled to write this dissent.

The things that instantly meet the eye upon reading the record, the briefs, and the decisions themselves, both of

the lower court and of this Court, are issues of fact. The single question of law presented is itself directly dependent on matters of fact.

The main issue relates to whether plaintiff Ileana Solis executed Exhibits 1 and 4, which she disowns. This denial necessitated the introduction of a handwriting expert, who was subjected to prolonged examination and cross-examination. And even after this Court and the court below have found that Exhibits 1 and 4 are authentic, controversy as to facts is not eliminated; there still remains the question as to what the parties contemplated in those papers. As the language of Exhibits 1 and 4 is said to be ambiguous, the parties and the courts have resorted to the evidence, specially the parties' conduct, to discover the meaning and intent of the agreements.

That fundamental questions of fact, then, are involved is to me so manifest as to be beyond dispute. For this reason, I am of the opinion that this appeal has been erroneously brought to this Court and should be certified to the Court of Appeals.

But if this Court must decide the appeal on the merits, regarding jurisdiction as a simple matter of discretion, which of course is wrong, it is submitted that the judgment below is against the facts, the law and the equity of the case.

It is settled by various pronouncements of this Court that patria potestas may be renounced. In *Strong vs. Boishir*, (53 Phil. 331), the Court laid down this doctrine:

"In accordance with the facts stated, and with Act No. 3094, the Jtaerican Guardian Association legally assumed the care and custody of these minors, who are at present under the legal care and custody of the respondents, having been provisionally placed in his power for their adoption.

"By virtue of the instrument Exhibit 1, the applicant's right as natural mother of the minors ceased and passed to the American Guardian Association. The reason alleged by the court below in its judgment for holding that the rights and duties of the patria potestas cannot be renounced, is incorrect. Both the Civil Code and the Code of Civil Procedure in dealing with cases of adoption, and said Act 3094, itself, authorizes the renunciation of the patria potestas and the rights to the care and custody of infants, such renunciation being the basis for the purposes of said laws."

And in *Diaz vs. Estrera*, (44 Off. Gaz., 4354) [1], the Court expressed the same idea. In that case the petitioner was the natural mother of a child whose father was respondent Servando Estrera. On February 20, 1944 petitioner executed a document granting the custody and possession of her child to Servando Estrera and wife and renouncing her authority over said child. A petition for habeas corpus was subsequently brought by petitioner in the Court of First Instance of Cebu to recover from the respondents Servando Estrera and his wife the custody of the child. Upon these facts, the Court held.

"La patria potestad es renunciabile. No solo no hay nada en nuestras leyes y en nuestra jurisprudencia que prohiba esa renuncia, sino que una ley de la Legislatura Filipina, la Ley No. 3094, promulgada el 16 de Marzo, 1923, la permite y autoriza expresamente."

The distinctions which the majority cake between the case at hand and *Diaz vs. Estrera*, supra, relate to collateral, nonvital aspects which do not alter the underlying principle of the latter decision. In any case, if the present action could be differentiated from *Diaz vs. Estrera*, no reason is given why the ruling in *Strong vs. Boishir*, supra, should not control the case at bar.

It is plain beyond doubt, in my opinion, that it was the intention of the parties that defendant Soledad Cafuir should have permanent possession and custody of the child. The very fact that the parties deemed it necessary to put the agreements in writing is the best evidence of such intention. For, what co uld have been the purpose of

going into that formality if the understanding were that the mother could get her child any time she wanted? And would the defendant, who is not in any way related by blood to the child, have gone into the trouble and expense of hiring a nurse and rearing the child in her home if she had not felt secure in the belief that the child was to be hers for keep? Would she have gone to such trouble and expense if, as Ileana's mother would have the court believe, Soledad Cafuir promised that "at the end of two or three years she would return the child to the mother specially if and when the latter should get married?" And finally, why should plaintiff deny the authenticity of Exhibit 1 if it meant nothing more than what she says and this Court finds—that the defendant could keep the child only as long as the plaintiff would allow?

Further support of the contention that the renunciation by the mother of her right over the child was intended to be permanent, is the fact that the child was baptized in the Quiapo church on August 8, 1946, as John Cafuir, and Soledad Cafuir was registered in the parish record as the mother, and Bibiano and Emilia Ramirez, defendant Soledad's parents, as the maternal grandparents.

The plaintiff denies that she was aware of these entries. But the date of the child's baptism fell within the period, following plaintiff's discharge from the hospital, during which she lived with the defendants in their home. It is utterly inconceivable that Soledad Cafuir should have made herself appear in the parish record as the mother of a child of an unknown father without the plaintiff's knowledge or consent, let alone suggestion. The assumed maternity of the child by Soledad Cafuir did not offer her any material or spiritual benefit. It was not anything on which she could cash in or which she could have the avidity and' covetousness to appropriate stealthily. If we are to believe that the plaintiff did not know the name given her child at baptism, her ignorance would only confirm her lack of interest in it and her relinquishment of her right over its custody. However, Ileana did know that John Cafuir was her child's baptismal name, for in Exhibit 4, which is totally in her handwriting, that is the name she wrote.

At this point, it is significant to notice that the defendants attended to every detail of the baptism and defrayed all expenses incident thereto. The plaintiff and her mother who, unlike her father, remained friendly and helpful to her daughter, appear to have kept aloof from the ceremony so momentous to a Filipino family.

The plaintiff's mother testified that in June 1948, she or her daughter did not recover the child from the defendant "because I also wanted her (defendant) to have the child, because somehow I owe her gratitude." It is difficult to perceive how, by allowing the defendant to keep the child a little longer and make further sacrifices, the plaintiff was repaying gratitude. It seems more sensible to suppose that realization of an injustice, or shame and embarrassment at having to break a formal commitment, deterred the plaintiff or her parents.

No one would begrudge sympathy from a mother who gave up the custody of her child by force of Inexorable necessity or circumstances beyond her control. This was far from being the case here. The sole reason the plaintiff has given for not having her baby with her was that her father was furious over the disgrace she had brought upon the family and that she alone would be unable to support her child outside her parents' dwelling. But her parents' home was not the only place where she could live and give her son the care that she owed him before God and before the law, and she had the wherewithal to perform that duty. She could live in a separate house with her child as she has been doing with her husband. She lived with the defendants for more than one month after she left the hospital, and when she moved from Soledad's house after that period, "she had landed a job." That was as early as September 1946, more than one month before she signed Exhibit 1, which is dated November 2, 1946. However, plaintiff's mother gave a different reason for her daughter's reluctance to take her child along with her. Plaintiff's mother says the reason was that Soledad "began to act differently; she did not want to leave the child with the mother." If we are to give credence to this testimony, such attitude on the part of the defendant should go far to refute this witness' other testimony, namely: that, according to the agreements, Soledad was to have the child

tinder her care during the plaintiff's pleasure.

It is said that "This Court should avert the tragedy in the years to come of having deprived mother and son of the beautiful associations and tender, imperishable memories engendered by the relationship of parent and child. We should not take away from a mother the opportunity of bringing up her own child even at the cost of extreme sacrifice due to poverty and lack of means; so that afterwards, she may be able to look back with pride and a sense of satisfaction at her sacrifices and her efforts, however humble, to make her dreams of her little boy come true. We should not forget that the relationship between a foster mother and a child is not natural but artificial. If the child turns out to be a failure or forgetful of what its foster parents had done for him, said parents might yet count and appraise all that they have done and spent for him and with regret consider all of it as a dead loss, and even rue the day they committed the blunder of taking the child into their hearts and their home. Not so with a real natural mother who never counts the cost and her sacrifices, ever treasuring memories of her associations with her child, however unpleasant and disappointing. Flesh and blood count."

These are beautiful sentiments, but with all due respect, they are a generalization hardly justified by the facts obtaining in this case. The plaintiff has proved to be bereft of those tender affections which draw a mother to her child or a child to its parents. To say the least, substantial evidence is against the belief that flesh and blood mean much to the plaintiff or that she truly has "beautiful dreams about her little boy." Strange as it may seem, the evidence abundantly shows that it is the defendant who has real, genuine affections for the child and who is ever willing and ready to make sacrifices for him.

By their acts ye shall know them. As a Spanish saying goes, "El amor y la fe, en las obras se ve." What are the facts as revealed by the parties' conduct?

By the plaintiff's testimony, (for which liberal allowance should be made for exaggeration, bearing in mind her proven unreliability for truth), she visited her child in defendant's home only once a week, and gave the defendant P5 and two cans of condensed milk for the baby. And during the time the boy was in the sheriff's possession by order of the court below, an order which was revoked by this Court on certiorari, the mother, according to the sheriff, came to see her son every other day, spending with him a few hours each time and "bringing only fried potatoes once in a while."

Not so with Soledad Cafuir. According to the same sheriff, Soledad visited the boy every afternoon and slept with him at night. The boy, the sheriff said, played with his mother sometimes, but with the defendant, much. The sheriff declared that the defendant supplied the child's food daily, and to attend him she sent a nurse who stayed with the child all the time, day and night. He further stated that Soledad brought the child "many things, there were biscuits, milk and other things more." It was not Soledad alone who showed love and solicitude for the child; all the other members of her family came every day to visit him.

It was only the sheriff's fee for the custody of the child that the plaintiff equally shared with Soledad; and this was so because, it is reasonable to presume, the plaintiff had been required to do so in the court's order which, it is also to be assumed, she herself suggested but which Soledad fought with tenacity, going to the extent of bringing the case to this Court.

The placing of the child in the hands of the sheriff, which this Court regarded as unnecessary and cruel, speaks louder than any profession on the mother's part of love and concern for the child's comfort and welfare. This move, as above stated, was vigorously resisted by the defendants and was as vigorously defended by the so-called mother. Innocent and not intended as a bait, this incident nevertheless parallels Solomon's legendary method of determining the true mother of a disputed child. This incident unmasks who's who more eloquently than anything that could be devised and affords a good test of the comparative regard and affections which the parties have for

the child.

With this background, the real tragedy, in my opinion, lies in taking the child away from the defendants. The Court admits that "She (Soledad) must have come to love the boy whom she raised from babyhood and on whom she may have lavished her affections and spent money for rearing him up. To separate the boy from her now would mean a loss and mental suffering."

For contrast, what suffering would the mother have to endure if she were denied the possession of her son? Does she love him now more than she did when she voluntarily parted with his custody? Does affection grow or does it wane as separation lengthens, specially when there was never an association to remember? Is it not rather continued and endearing companionship that blossoms into fondness and personal attachment?

The plaintiff's cause deserves contempt rather than sympathy. She has shown herself denuded of the tender devotion of a mother when she turned her back on her child at a time it needed most a mother's care and attention. By casting behind her back her legal and moral obligation towards her child, she forfeited all claims to his custody. In this, precedent is not lacking. .

From the decision in *Castillo vs. Castillo*, (39 Off. Gaz., No. 37 p. 968), we quote the following syllabus:

"When the defendant was scarcely two years old, the plaintiff (her mother) delivered her to the possession and custody of R. H. and his wife, and since then never took care of her. Held: 'Having abandoned the defendant, the plaintiff is not entitled to be supported by her. Abandonment means neglect and refusal to perform the natural and legal obligation of care and support. If a parent withholds his presence, his love, his care, the opportunity to display filial affection, and neglects to lend support and maintenance, such parent relinquishes all parental claim and abandons the child.'"

I believe the present case is stronger, in that in the case just cited the child was abandoned when it was already two years old. Here, the abandonment took place when the child was at the most delicate stage of a normal life and needed the utmost care and attention of its mother.

The marriage of the plaintiff is offered as Justification for her plea Jibst she should be given her son now. But her marriage should be a hindrance instead of a help to her union with her child. Children by previous marriage are a frequent source of dissension and quarrel in the family. Such children are often a widowed deterrent to a widowed mother or father from marrying, human nature being as it is. How much more should It be so if the child is the product of an illicit intercourse?

With this idea in mind, I can not resist the suspicion that selfish motives not conducive to the child's wellbeing are behind this action. The boy will soon be big enough, if he is not already, to help in the chores about the house. Plaintiff's husband who is earning a meager salary is not in a financial condition to hire help. These are conjectures but when the welfare of a helpless child is at stake, it is well to weigh possibilities and not leave things to chance. The best policy under the present circumstances would be to leave well enough alone; to be satisfied with one bird in hand.

That, as the Court fears, the boy might in the future turn different from what the defendants expected of him, and the defendants might regret the sacrifices they had made and the hardship they had gone through to bring him up, has nothing to do with the case whatsoever. Besides, that is the defendants1 own lookout. They ought to know the risk, assuming the remote possibility that what they have been doing for the boy was prompted by mercenary considerations. But again, who would guaranty that the plaintiffs, specially the stepfather, would not curse the days when they brought up and reared the child If later in life the latter should fail to measure up to their expectations?

I am afraid we presume too much in favor of parents, assuming that parental love is universal and immutable like a phenomenon of physical science. We also err in assuming that only mothers could be capable of disinterested love and affections. Common observations give truth to the other Spanish adage, "El amor no mira linaje, ni fe ni pleito homenaje." Specific example of this truth is the tragedy that is exhibited before us; yes, the defendants' and the child's tragedy, with the court's blessing.

Insinuation is made that the defendants could begin a new action for reimbursement of their expenses. This is not even a palliative to a wounded heart and outraged feelings. It is encouraging the defendants to court new trouble and expense for nothing. Granting that they could feel something from the mother and/or step-father of the child, that would not assuage the defendants' disappointment, sorrow and anguish, which can not be appraised in terms of peso and centavos.

[1] 78 Phil., p. 637.

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