

KRISTEEN RHOSE A. TAN, PETITIONER, VS. LORENZE RAYMOND T. REYES, PRIVATE RESPONDENT,

Ponente: DIMAAMPAO, J.

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DIMAAMPAO, J.:

This Amended Petition for Annulment of Judgment[1] seeks to nullify the Decision[2] dated 25 September 2013 of the Regional Trial Court, Third Judicial Region of Tarlac City, Branch 65, in SP. PROC. No. 4981.

The factual backdrop of the case follows.

Petitioner Kristeen Rhose Tan (Kristeen), out of wedlock, gave birth to minor Noelle Ana Loreen (Noelle) on 27 February 2009.[3] Private respondent Lorenze Raymond Reyes (Lorenze) acknowledged in Noelle's birth certificate that he is her father.

In July 2011, Kristeen was able to obtain work in Saudi Arabia as a nurse. While she was there, Noelle stayed with her mother's parents, the spouses Philip (Philip) and Rosario (Rosario) Tan. Upon the other hand, Lorenze was allowed to visit and take Noelle on weekends whenever he would fetch her.

Sometime in 2013, however, Lorenze grumbled that Philip and Rosario were preventing him from seeing or visiting his daughter. Thence, he filed a Petition for Custody of minor Noelle Ana Loreen Tan Reyes. In the Petition, Lorenze prayed that—

"a. An Order immediately issue directing the respondents to appear in Court; produce the living body of minor NOELLE ANA LOREEN TAN REYES; to show cause and explain the cause and reasons for the complained detention and restrained on the said child of her freedom to communicate with her own father, on one hand, and why they are preventing her own father, on one hand, and why they are preventing the petitioner from exercising his parental rights over his child by barring him from seeing or communicating with her, on the other hand, in violation of the Family Code;

b. That after due hearing and presentation of evidence, the custody of the said minor NOELLE ANA LOREEN TAN REYES be awarded to the herein petitioner in accordance with his entitlements under the provisions of Article 212 of the Family Code and in view of the absence of and/or during the absence of the mother Kristeen Rhose Aurelio Tan, in order that he may continue exercising parental authority over his child, especially during her formative years, free from restraint or interference of the respondents, and without prejudice to the exercise of 'joint parental authority' whenever the mother is present in the country;

c. That thereupon, petitioner be NOT deprived of his rights as a parent (father) within meaning of all the applicable provisions of the Family Code in the event that the mother may be in the country at any time.

Petitioner prays for such other relief and remedies just and equitable to the premises, the Honorable Court shall find appropriate in his favor."[4]

In the course of the proceedings, the court a quo issued a Writ of Habeas Corpus directing Philip and Rosario to produce the body of Noelle. After several hearings, the court a quo rendered the impugned Decision,[5] the fallo

of which reads:

"WHEREFORE, premises considered, the custody of the said minor NOELLE ANA LOREEN TAN REYES is hereby awarded to the herein petitioner, Lorenze Raymond T. Reyes, in accordance with his entitlements under the provisions of Article 212 of the Family Code and in view of the absence of and/during the absence of, the mother Kristeen Rhose Aurelio Tan, in order that he may continue exercising parental authority over his child, especially during her formative years, free from restraint or interference of the respondents, and without prejudice to the exercise of 'joint parental authority' whenever the mother is present in the country.

Likewise, petitioner should not be deprived of his rights as a parent (father) within the meaning of all the applicable provisions of the Family Code in the event that the mother Kristeen Rhose Aurelio Tan may be in the country at any time.

SO ORDERED."[6]

Displeased, Philip and Rosario filed a Petition for Relief from Judgment[7] on the ground of excusable negligence. Thereafter, they filed a Motion to Withdraw Petition for Relief from Judgment[8] as the same became moot and academic in view of Kristeen's filing of a separate action before Us. She decided to stay permanently in the country.

For the nonce, Kristeen filed with Us the instant Petition proffering this solitary issue:

WHETHER OR NOT THE ASSAILED DECISION DATED 25 SEPTEMBER 2013 MAY BE DECLARED AS NULL AND VOID.

Kristeen (now, petitioner) asseverates that the assailed Decision should be annulled on the ground of lack of jurisdiction. Invariably, she propounds the following postulations:

"LACK OF CAUSE OF ACTION – the minor child Noelle Ana Loreen Tan Reyes is the illegitimate child of petitioner and private respondent and being so, sole parental authority is exercised by the mother pursuant to Article 176 of the Family Code

NON-INCLUSION OF AN INDISPENSABLE PARTY – private respondent prayed for the custody of the minor child during the time that petitioner is (sic) abroad and for the joint custody of the minor child during the time that petitioner is (sic) in the country, however, petitioner was not impleaded as a party to the Petition for Habeas Corpus/Custody

THE RIGHT OF THE PRIVATE RESPONDENT AS PROVIDED BY LAW IS LIMITED TO HAVING VISITORIAL RIGHTS on account that the minor is an illegitimate child and private respondent's acknowledgment only serves as a basis to compel him to give support which sadly, is not at present extended to the minor child

THERE WAS NO COMPELLING REASON TO TAKE AWAY FROM THE PETITIONER SOLE CUSTODY OF THE CHILD – petitioner has not abandoned nor committed any act that may be a ground for her custody over her daughter be taken away from her. Although she is working abroad, she has constant communication with the child through the phone and the internet and is the one who makes final decision on matters concerning her child

THE PRIVATE RESPONDENT IS NOT CAPABLE OF TAKING CARE OF THE CHILD DUE TO HIS VIOLENT TENDENCIES AND DRUG USE"[9]

Discernibly, the instant case is one involving custody of the minor, Noelle. Lorenze (now, private respondent) availed of the Writ of Habeas Corpus to take custody of Noelle. In cases involving minors, the purpose of a petition for habeas corpus is not limited to the production of the child before the court but mainly to determine

who has the rightful custody over the child.[10]

Private respondent posits that the sole issue in the Habeas Corpus proceeding is: "Who is entitled to the custody of the minor Noelle Ana Loreen, in the absence of the mother: is it the grandparents or the father present?" This being so, he did not implead petitioner as he cashes in on Article 212 of the Family Code which provides:

"Article 212. In case of absence or death of either parent, the parent present shall continue exercising parental authority. The remarriage of the surviving parent shall not affect the parental authority over the children, unless the court appoints another person to be the guardian of the person or property of the children."

Inveighing against private respondent's theory, petitioner asserts that she has the sole parental authority over Noelle, she being an illegitimate child pursuant to Article 176 of the Family Code, as amended by Republic Act (RA) No. 9255,[11] viz:

"Article 176. Illegitimate children shall use the surname and shall be under the parental authority of their mother, and shall be entitled to support in conformity with this Code. However, illegitimate children may use the surname of their father if their filiation has been expressly recognized by the father through the record of birth appearing in the civil register, or when an admission in a public document or private handwritten instrument is made by the father. Provided, the father has the right to institute an action before the regular courts to prove non-filiation during his lifetime. The legitime of each illegitimate child shall consist of one-half of the legitime of a legitimate child"

In light of the foregoing proviso, petitioner is considered as indispensable party and therefore, must be impleaded in the custody case. Lamentably, private respondent debarred her from participating in the proceedings. Perforce, the Decision is null and void on the ground of lack of jurisdiction over an indispensable party.

A sedulous review of the records, illumined by applicable law and jurisprudence, convinced Us that the Petition is impressed with merit.

Parental authority over illegitimate children is bestowed on the mother. Since parental authority is given to the mother, then custody over the minor children also goes to the mother, unless she is shown to be unfit.[12] In sooth, the custody of Noelle legally belongs to petitioner. Appropriately, she should have been impleaded in the proceedings below. The fact that petitioner was abroad during the time the instant Petition was filed does not justify her exclusion from the proceedings. Her absence blows no hole in her status as indispensable party. All the more reason that respondent should not pull a fast on petitioner simply because she was abroad. As adumbrated above, the law categorically gives her custody over the child and should therefore be informed and/or included in all actions which could affect the Noelle's well-being.

Here, it is not disputed that petitioner is an indispensable party. Section 7, Rule 3 of the Rules of Court defines indispensable parties as parties in interest without whom no final determination can be had of an action. An indispensable party is one whose interest will be affected by the court's action in the litigation. As such, they must be joined either as plaintiffs or as defendants.[13] On this score, the Supreme Court, in the case of *Arcelona v. Court of Appeals*,[14] sapiently held:

"The general rule with reference to the making of parties in a civil action requires, of course, the joinder of all necessary parties where possible, and the joinder of all indispensable parties under any and all conditions, their presence being a sine qua non for the exercise of judicial power. It is precisely 'when an indispensable party is not before the court (that) the action should be dismissed.' The absence of an indispensable party renders all subsequent actions of the court null and void for want of authority to act, not only as to the absent parties but even as to those present."

Quite palpably, petitioner's resort to the instant Petition for annulment of judgment passes judicial muster. Settled

is the rule that where a petition for annulment of a judgment or a final order of the RTC filed under Rule 47 of the Rules of Court is grounded on lack of jurisdiction over the person of the respondent or over the nature or subject of the action, the petitioner need not allege in the petition that the ordinary remedy of new trial or reconsideration of the final order or judgment or appeal therefrom is no longer available through no fault of his own, precisely because the judgment rendered or the final order issued by the RTC without jurisdiction is null and void and may be assailed any time either collaterally or in a direct action or by resisting such judgment or final order in any action or proceeding whenever it is invoked, unless barred by laches.[15]

WHEREFORE, the Petition is hereby GRANTED. Perforce, the Decision dated 25 September 2013 of the Regional Trial Court, Third Judicial Region of Tarlac City, Branch 65, in SP. Proc. No. 4981, is ANNULLED AND SET ASIDE.

SO ORDERED.

Ybañez, and Manahan, JJ., concur.

[1] Rollo, pp. 49-62.

[2] Id., pp. 227-232.

[3] Id., p. 25.

[4] Rollo, pp. 97-98.

[5] Rollo, p. 102.

[6] Ibid.

[7] Id., pp. 109-119; later on Philip and Rosario Tan amended the same, Id., pp. 138-148.

[8] Id., pp. 163-164.

[9] Rollo, pp. 53-54.

[10] See *Bagtas v. Santos*, 606 SCRA 101, 111 (27 November 2009).

[11] An Act Allowing Illegitimate Children to Use the Surname of their Father, Amending for the Purpose Article 176 of Executive Order No. 209, Otherwise known as the "Family Code of the Philippines"

[12] See *Grande v. Antonio*, 716 SCRA 698, 706 (18 February 2014).

[13] *Bulawan v. Aquende*, 652 SCRA 585, 596 (22 June 2011).

[14] 280 SCRA 20, 37-38 (2 October 1997).

[15] See *Spouses Paulino v. Court of Appeals*, G.R. Nos. 205065 and 207533 (4 June 2014).

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