

MARIA N. BANZON, PETITIONER, VS. PEDRO ALVIAR, TERESA ALVIAR AND RUBY ALVIAR, RESPONDENTS.

G.R. No. L-8806. May 25, 1955

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

This is a petition for the issuance of the writ of habeas corpus to enable petitioner Maria N. Banzon to recover the custody of her minor son, 9-year old Angelo N. Banzon, who is allegedly being detained and restrained of his liberty by respondents Pedro Alviar, Teresa Alviar, and Ruby Alviar.

In their answer, respondents admitted that the child was in their custody, but pleaded in defense that the boy was entrusted to their care by his father, Colonel Jose Banzon; that they are sending the child to school through the help of his father; and that he is being cared for and reared in a manner that befits the son of a Colonel.

During the trial before the commissioner appointed by this Court, petitioner presented evidence showing that the child Angelo is her child with her husband, Colonel Jose Banzon of the Philippine Army, who is at present assigned as Philippine Military Attache at Saigon; that in June, 1954, she sent the boy to his father in Saigon for a vacation, that the boy returned to the Philippines sometime in September, 1954 with respondent Ruby Alviar, and had been staying with the respondent Alviars since then; and that petitioner repeatedly tried to obtain the custody of the child from the respondents, but the latter refused to surrender him without an order from the proper authorities, hence this petition for habeas corpus.

Respondents did not introduce evidence on their part, but claimed that the child was no longer in their custody, because he had allegedly been brought back to Saigon by his father. Petitioner then moved that respondents be declared in contempt for delivering the custody of the child Angelo to another person without any court order, thus defeating the purpose of these proceedings. During the pendency of the motion for contempt, however, respondents filed a manifestation that the child had arrived in Manila from Saigon on April 11, 1955 in an Army plane and is at present in the care and custody of his aunt, Atty. Soledad Banzon, of Baliwag, Bulacan; that they have no claim to said child; and that they are willing to surrender him to whosoever would be declared by this Court to be legally entitled to his care and custody.

The only issue to be decided, therefore, is: Who is entitled to the care and custody of the minor Angelo N. Banzon?

Article 311 of the New Civil Code provides that "the father and mother jointly exercise parental authority over their legitimate children who are not emancipated", and Art. 316 of the same Code imposes upon the parents the duty to support their unemancipated children, and to have them in their company, educate and instruct them in keeping with their means. There is thus no question that petitioner herein, being the mother of the minor Angelo N. Banzon, is entitled to his custody and care, her husband being unable to exercise the parental authority in view of his mission abroad in the service of the Republic.

Wherefore, judgment is hereby rendered ordering the respondents to return the minor Angelo N. Banzon to the custody of his mother, petitioner Maria N. Banzon. Costs against respondents.

Pablo, Bengzon, Padilla, Montemayor, Reyes, A., Bautista Angelo, Labrador, and Concepcion, JJ., concur.

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