

**RICHARD PERCIVAL O. DE GUZMAN, PETITIONER-APPELLANT, VS.
HON. MA. CELESTINA C. MANGROBANG, PRESIDING JUDGE OF
RTC-MANILA, BRANCH 38 AND ARLENE LOURDES B. DE GUZMAN,
RESPONDENT-A...**

Ponente: TIJAM, J.

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TIJAM, J.:

The contentious issue[1] involving this case is whether or not the trial court correctly ordered the transfer of permanent custody of a minor child to her mother pursuant to Article 213 of the Family Code.

Petitioner Richard Percival De Guzman and Private Respondent Arlene Lourdes De Guzman got married in a civil wedding solemnized on June 26, 1994 followed by a church wedding ceremony on December 24, 1994. Their union was blessed with 4 children namely, Richard Paolo, Ian Dominic, Marie Danielle, and Marie Gabrielle.[2]

In January 2007, Arlene left for Equatorial Guinea to work, leaving behind Richard to take care of their children. Arlene's employment, however, permits her to visit the Philippines for 2 weeks for every after 8 work week schedule in Guinea.

On July 26, 2010, Arlene filed with the RTC of Manila, Branch 38, a Petition for Declaration of Nullity of Marriage against Richard. Incidental thereto, she filed a Manifestation with Urgent Motion for Permanent Custody of Minor Gabrielle and Temporary Custody of Danielle alleging that Gabrielle was not properly taken cared of by Richard. Arlene attached in the said Manifestation the written observations of Gabrielle's teachers indicating that: (1) she has been going to school untidy and not properly groomed to the point that she was avoided by her female classmates; (2) she frequently hangs out with her male classmates which accounts for her unruly behavior in class; (3) Gabrielle's poor attendance affects her performance in class; and (4) she too often misses her assignments in school.

Richard, however, argued that Gabrielle's poor performance was due to Arlene's fault of frequently bringing Gabrielle to malls, shopping centers, and restaurants whenever she is on vacation in the Philippines, which hinders the child to study and prepare for school the following day.

After due proceedings, respondent Judge, in her Order[3] dated February 3, 2012 granted Arlene's Manifestation and ordered that the permanent custody of Gabrielle be transferred to Arlene. The dispositive portion of the Order[4] states:

"WHEREFORE, premises considered, petitioner's Manifestation with Urgent Motion for Permanent Custody of minor Marie Gabrielle B. De Guzman and Temporary Custody of Minor Marie Danielle B. De Guzman is partially granted, as to the transfer of permanent custody of Minor Marie Gabrielle B. De Guzman, from his father/respondent Richard Percival O. De Guzman, to her mother/petitioner Arlene Lourdes B. De Guzman.

As to the auxiliary prayer for the temporary transfer of custody of minor Marie Danielle B. De Guzman, let the hearing thereon be conducted on February 16, 2012, at 8:30 a.m.

Accordingly, respondent and his counsel are directed to appear and bring the subject child on the said date and time.

Furthermore, respondent, through counsel, is ordered to subject the respondent and his children for interview by the Court Social Welfare Worker, Ms. Mylah De Leon within five (5) days from receipt of this Order and for the Court Social Worker to submit the pertinent report on or before the next scheduled hearing.

Finally, hearing on the main case is tentatively set on April 12 and May 17, 2012 both at 8:30 a.m.

SO ORDERED."

Richard filed a Motion for Reconsideration of the said Order and argued that since Arlene is always abroad, he is in a better position to take care of Gabrielle. However, his motion was denied in an Order^[5] dated May 28, 2012, which ruled that permanent custody should belong to Arlene not only because Gabrielle is less than 7 years old, but more importantly, Gabrielle longs for the care and affection of her mother as validated by the Court Social Worker's case study report.

Richard thus filed this instant petition alleging that —

"RESPONDENT JUDGE COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO EXCESS OR LACK OF JURISDICTION IN GRANTING PERMANENT CUSTODY OVER GABRIELLE IN FAVOR OF PRIVATE RESPONDENT AS IT DISREGARDS THE ADMISSION THAT PRIVATE RESPONDENT IS ALWAYS ABROAD AND ITS OBVIOUS AND PATENT PREJUDICIAL IMPLICATION TO THE RIGHTS OF PETITIONER AND THE BEST INTEREST OF GABRIELLE." ^[6]

The petition is devoid of merit.

Grave abuse of discretion is committed when an act is (1) done contrary to the Constitution, the law or jurisprudence, or (2) executed whimsically or arbitrarily in a manner so patent and so gross as to amount to an evasion of a positive duty, or to a virtual refusal to perform the duty enjoined. What constitutes grave abuse of discretion is such capricious and arbitrary exercise of judgment as that which is equivalent, in the eyes of the law, to lack of jurisdiction.^[7]

In this case, We hold that the respondent Judge did not commit grave abuse of discretion.

In determining who has the rightful custody over a child, the child's welfare is the most important consideration. The application of this principle of law in this case is undoubtedly called for. No less than the Convention on the Rights of the Child provides that [i]n all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies the best interests of the child shall be a primary consideration.^[8]

In this way, Courts are mandated to take into account all relevant circumstances that would have a bearing on the children's well-being and development. Aside from the material resources and the moral and social situations of each parent, other factors may also be considered to ascertain which one has the capability to attend to the physical, educational, social and moral welfare of the children. Among these factors are the previous care and devotion shown by each of the parents; their religious background, moral uprightness, home environment and time availability; as well as the children's emotional and educational needs.^[9]

The principle of best interest of the child pervades Philippine cases involving, among others, child custody. In choosing the parent to whom custody is given, the welfare of the minors should always be the paramount consideration.^[10] Certainly, the Court is not bound by any legal right of a person over a child.

In *Bagtas v. Santos*^[11], it was held:

"The controversy does not involve the question of personal freedom, because an infant is presumed to be in the custody of someone until he attains majority age. In passing on the writ in a child custody case, the court deals with a matter of an equitable nature. Not bound by any mere legal right of parent or guardian, the court gives his or her claim to the custody of the child due weight as a claim founded on human nature and considered generally equitable and just. Therefore, these cases are decided, not on the legal right of the petitioner to be relieved from unlawful imprisonment or detention, as in the case of adults, but on the court's view of the best interests of those whose welfare requires that they be in custody of one person or another. Hence, the court is not bound to deliver a child into the custody of any claimant or of any person, but should, in the consideration of the facts, leave it in such custody as its welfare at the time appears to require. In short, the child's welfare is the supreme consideration." (Emphasis Ours)

On one hand, Arlene insists that, based on Article 213 of the Family Code, her minor child cannot be separated from her. On the other hand, Richard contends that for compelling reasons, he must be awarded custody of the said child. This contentious issue has been correctly resolved by the trial court by adhering strictly to the principles enshrined in the immediately preceding jurisprudence.

Significantly, the de facto separation of Richard and Arlene invites the application of Article 213 of the Family Code, which provides:

"ART. 213. In case of separation of the parents, parental authority shall be exercised by the parent designated by the court. The court shall take into account all relevant considerations, especially the choice of the child over seven years of age, unless the parent chosen is unfit.

No child under seven years of age shall be separated from the mother, unless the court finds compelling reasons to order otherwise." (Emphasis Ours)

The foregoing provision governs the custody of the child when the parents are separated, legally or otherwise.[12] The same provision takes its bearing from Article 363 of the Civil Code, which reads:

"Art. 363. In all questions on the care, custody, education and property of children, the latter's welfare shall be paramount. No mother shall be separated from her child under seven years of age, unless the court finds compelling reasons for such measure." (Emphasis Ours)

The general rule that children under seven years of age shall not be separated from their mother finds its *raison d'être* in the basic need of minor children for their mother's loving care.[13] In explaining the rationale for Article 363 of the Civil Code, the Code Commission stressed, thus:

"The general rule is recommended in order to avoid a tragedy where a mother has seen her baby torn away from her. No man can sound the deep sorrows of a mother who is deprived of her child of tender age. The exception allowed by the rule has to be for 'compelling reasons' for the good of the child: those cases must indeed be rare, if the mother's heart is not to be unduly hurt. If she has erred, as in cases of adultery, the penalty of imprisonment and the (relative) divorce decree will ordinarily be sufficient punishment for her. Moreover, her moral dereliction will not have any effect upon the baby who is as yet unable to understand the situation." (Report of the Code Commission, p. 12)[14]

Gabrielle, being less than 7 years of age at the time the case was decided by the RTC, cannot be taken from her mother's custody in the absence of any compelling reason. The mere fact that Arlene is working abroad alone is not a valid reason not to award to her the custody of her minor child. There is thus no question that Arlene, being the mother, is entitled to the custody of said minor. She cannot be deprived of such right and she may not even renounce or transfer it except in the cases authorized by law.[15]

WHEREFORE, the petition for certiorari is DENIED. The assailed Orders of the RTC Manila, Branch 38 are

AFFIRMED.

SO ORDERED.

Lopez, M.V. and Garcia-Fernandez, M.V., JJ. , concur.

[1] See Petition for Certiorari filed under Rule 65 of the Rules of Court; Rollo, pp. 3-20.

[2] Born on April 4, 1995, October 9, 1997, May 6, 1999, and November 23, 2005, respectively. Annexes "B" to "B-3"; Rollo, pp. 38-41.

[3] Rollo, pp. 24-26.

[4] Rollo, p. 26.

[5] Rollo, pp. 27-29.

[6] Petition, p. 6; Rollo, p. 8.

[7] Tugade v. COMELEC, G.R. No. 171063, March 2, 2007.

[8] Pablo-Gualberto v. Gualberto V, G.R. No. 154994& 156254, June 28, 2005.

[9] Id.

[10] Id.

[11] G.R. No. 166682, November 27, 2009 citing Sombong v. Court of Appeals, 322 Phil. 737, 750-751 (1996).

[12] Pablo-Gualberto v. Gualberto V, G.R. No. 154994& 156254, June 28, 2005.

[13] Id.

[14] Pablo-Gualberto v. Gualberto V, G.R. No. 154994& 156254, June 28, 2005.

[15] Article 210, Family Code provides that parental authority and responsibility may not be renounced or transferred except in the cases authorized by law.

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