ARIEL F. BERNARDO, PETITIONER-APPELLANT, V. ROWELL P. PANGILINAN, JON JON P. PANGILINAN AND VIOLETA P. PANGILINAN, RESPONDENTS-APPELLEES.

Ponente: ELBINIAS, J.

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ELBINIAS, J.:

For disposition is an Appeal[1] filed under Rule 41 of the Rules of Court. The Appeal assails the Decision[2] dated December 1, 2011 of the Regional Trial Court ("lower court" for brevity) of Gapan, Nueva Ecija, Branch 34 in SP. PROC. NO. 1647-11 for "Habeas Corpus".

The salient facts are those as stated in the lower court's assailed Decision[3] dated December 1, 2011, as follows:

> "This petition seeks the issuance of a writ of habeas corpus directing the above-named respondents to produce before the court the living bodies of minor children Aizel Jhan Pangilinan Bernardo, 5 years old, and Venice Amber Pangilinan Bernardo, 4 years old.
>
> The petition states, in substance, that the said minors are the illegitimate children of petitioner (petitioner-appellant here) and one Jennelyn P. Pangilinan who have lived together as husband and wife without the benefit of marriage since 2005. At the time the petition was filed, Jennelyn was allegedly in Dubai, United Arab Emirates.
>
> Petitioner (petitioner-appellant) claims that he (petitioner-appellant) has always been in custody of the said minors since their birth in his residence at Pasig City where Aizel Jhan was enrolled at the Pasig City Elementary School. Before Jennelyn left the country for Dubai on 12 September 2011, she took the children from the petitioner and left them in the custody of the respondents (respondents-appellees) at San Nicolas, Gapan City and Poblacion, San Isidro, Nueva Ecija. Despite demand made by petitioner (petitioner-appellant) upon the respondents (respondents-appellees), the latter (respondents-appellees) refused to return the children to him.
>
> In their Answer/Opposition with Special and Affirmative Defenses dated 5 October 2011, respondents (respondents-appellees) introduce[d] themselves as Jennelyn's mother and siblings. Denying the allegations in the complaint, they (respondents-appellees) claim that temporary custody of Aizel Jhan and Venice Amber was given to them by Jennelyn while she works overseas in the exercise of her sole parental authority over them pursuant to Article 176 of the Family Code."[4] (Emphasis Supplied)

On December 1, 2011, the lower court rendered the Decision[5] appealed from, dismissing petitioner-appellant Ariel Bernardo's ("petitioner-appellant" for brevity) Petition for Habeas Corpus.[6]

After petitioner-appellant's Motion for Reconsideration[7] was denied by the lower court in its Order[8] of February 9, 2012, petitioner-appellant filed the Appeal[9] at bench, praying as follows:

> "WHEREFORE, premises considered, petitioner most respectfully prays of this Honorable Court that the Decision dated December 1, 2011 and the Order dated February 9, 201[2] of the trial court be REVERSED and SET ASIDE and a new Decision be rendered awarding custody over the minor children AIZEL JHAN

> PANGILINAN BERNARDO and VENICE AMBER PANGILINAN BERNARDO to petitioner, with visitations right (sic) to their mother, JENNELYN P. PANGILINAN.
>
> Other reliefs and remedy, just and equitable in the premises, are likewise prayed for."[10]

Petitioner-appellant assigned these errors as having been committed by the lower court:

> "A. THE TRIAL COURT ERRED IN DISMISSING THE PETITION FOR HABEAS CORPUS AND NOT AWARDING CUSTODY OF MINOR CHILDREN AIZEL JHAN AND VENICE AMBER TO PETITIONER.
>
> B. THE TRIAL COURT ERRED IN FINDING THE SUBSTITUTE PARENTAL AUTHORITY AND TRANSFER OF CUSTODY MADE BY JENNELYN PANGILINAN TO RESPONDENTS AS VALID AND LEGAL."[11]

Contrary to petitioner-appellant's arguments in his assigned error A, petitioner-appellant was not entitled to the custody of his illegitimate minor children.

Petitioner-appellant had argued as follows:

> "The right to custody accorded to parents springs from the exercise of parental authority. xxx
>
> xxx
>
> Moreover, the parents' right to custody over their children, whether illegitimate or legitimate as the law does not qualif[y], is enshrined in law xxx
>
> xxx
>
> There is no dispute that the minors AIZEL JHAN and VENICE AMBER are the illegitimate children of ARIEL and JENNELYN. While Article 176 of the Family Code provides that 'illegitimate children shall be under the parental authority of their mother' and Article 213 of the Family Code provides that '[n]o child under seven years of age shall be separated from the mother, unless the court finds compelling reasons to order otherwise', the same are not absolute and subject to exception, such as when the mother defaults or is absent.
>
> xxx
>
> In the instant case, JENNELYN left the Philippines on September 15, 2011 to continue her work as OFW in Dubai. Hence, JENNELYN, who is already abroad in Dubai, cannot obviously exercise parental authority over their minor children, who are in the Philippines.
>
> In the absence of the mother, who should have priority in the custody of the minor children? Section 13 of the Rule on Custody of minors and Writ of Habeas Corpus in Relation to Custody of Minors provides the answer. xxx

xxx

> Moreover, Article 212 of the Family Code provides that 'In case of absence or death of either parent, the parent present shall continue exercising parental authority.'
>
> Hence, in accordance with the foregoing provisions of law, ARIEL, who is one of the parents of the subject minors, is present, is physically capable to take custody of and exercise parental authority over his children as he did so since the birth of those children, and stands second in the order of preference to have custody of the subject minors, ahead of the children's grandmother or their uncles, who are not even listed in the order of preference.
>
> Furthermore, in all controversies regarding the custody of minors, the sole and foremost consideration is the

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> physical, educational, social and moral welfare of the child concerned, taking into account the respective resources and social and moral situations of the contending parents.
>
> The subject minors have been living with ARIEL and JENNYLYN at No. 20 Lopez Jaena St., Barangay San Jose, Pasig City since their birth. When JENNELYN got pregnant with their first born AIZEL JHAN, and had to resign from work, it was ARIEL who supported and provided for the needs of the family. When JENNELYN left the Philippines in 2008 to work as OFW in Dubai, she left custody of the said minors to ARIEL, who exercised parental authority and care for their children. ARIEL's custody and parental authority over the minors were interrupted only when JENNELYN kept the minors in Nueva Ecija and refused to return the minors to their house in Pasig City after their trip in Hong Kong in September 1, 2011. As a consequence, ARIEL was deprived of his right as a parent to the subject minors and the minors were uprooted from their familiar surroundings and thrusted into a strange environment without consideration of their welfare."[12]

Negating petitioner-appellant's arguments however, is that Jennelyn, being the mother of the minor illegitimate children of petitioner-appellant, has the sole parental authority over her minor illegitimate children, and is therefore entitled to their sole custody. This is pursuant to Article 176, in relation to Article 209, of the Family Code, which provide:

> "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. xxx" (Emphasis Supplied)
>
> "Article. 209. Pursuant to the natural right and duty of parents over the person and property of their unemancipated children, parental authority and responsibility shall include the caring for and rearing them for civic consciousness and efficiency and the development of their moral, mental and physical character and well-being." (Emphasis Supplied)

Moreover, petitioner-appellant failed to show any compelling reasons for such minor children, who were under seven years of age, to be separated from their mother, Jennelyn. That this is to be so, is in accordance with Article 213 of the Family Code which states:

> "Article 213. xxx
>
> No child under seven years of age shall be separated from the mother, unless the court finds compelling reasons to order otherwise." (Emphasis Supplied)

All of these matters were as also found by the lower court, as follows:

> "Article 176 of the Family Code states:
>
> xxx
>
> Corollary to this rule is the second paragraph of Article 213 which states xxx
>
> xxx
>
> It is thus clear that Aizel Jhan and Venice Amber, both of whom are below seven (7) years of age, cannot be separated from their mother Jennelyn, unless the court is shown compelling reasons to order otherwise. Nothing has been presented to move the court into ordering the separation of these minor children from their mother. In the first place, by not impleading Jennelyn as respondent, and by his own admission, petitioner fully recognizes Jennelyn's parental authority and custodial right over their common illegitimate children under the above-quoted provisions of the law."[13] (Emphasis Supplied)

Given that Jennelyn has the sole parental authority over her minor illegitimate children, and is entitled to the sole custody over them, then Jennelyn's temporary absence for the purpose of working in another country[14] meant

that respondents-appellees Violeta, Rowell and Jon Jon, all surnamed Pangilinan, being Jennelyn's mother and brothers respectively, could exercise substitute parental authority over Jennelyn's minor illegitimate children, contrary to petitioner-appellant's assigned error B. That this is the consequence is pursuant to Article 216 of the Family Code, which provides:

> "Article. 216. In default of parents or a judicially appointed guardian, the following person shall exercise substitute parental authority over the child in the order indicated:
>
> (1) The surviving grandparent, as provided in Art. 214;
>
> (2) The oldest brother or sister, over twenty-one years of age, unless unfit or disqualified; and
>
> (3) The child's actual custodian, over twenty-one years of age, unless unfit or disqualified.
>
> xxx" (Emphasis Supplied)

No cogent reason was therefore shown to justify any deviation from the following findings of the lower court, which findings were shown to be supported by the facts and the law:

> "xxx it appears that the temporary absence of Jennelyn for the purpose of working in another country does not constitute a renunciation of her custody and parental authority over Aizel Jhan and Venice Amber, and her act of temporarily giving custody over them to her mother and brothers is an exercise of such parental authority. Thus, respondents cannot be charged of exercising unlawful custody over said minors. As they cannot be forced under the law to relinquish their temporary custody over Aizhal Jhan and Venice Amber, the court finds no compelling ground to order them to bring the children and turn them over to the custody to (sic) the petitioner."[15]

Indeed, the findings of the lower court are entitled to great weight and respect on appeal, and are in fact accorded finality considering that, as was in the case at bench, they are supported by substantial evidence on the record.[16]

After careful consideration of all the facts, arguments, and issues appearing on the records, as well as of the pertinent laws and jurisprudence, and in accordance with what is best determined to be proper under the circumstances, the following disposition is therefore made on these matters.

WHEREFORE, the Appeal is DENIED.

SO ORDERED.

Dicdican (Chairman) and Dimagiba,[*] JJ., concur.

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[*] Vice J. Paredes per Office Order No. 34-14-RSF

[1] Rollo, pp. 47-60

[2] Records, pp. 72-76

[3] Records, pp. 72-76

[4] Records, p. 72

[5] Records, pp. 72-76

[6] Records, p. 75

[7] Records, pp. 78-84

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[8] Records, p. 93

[9] Rollo, pp. 47-60

[10] Rollo, pp. 58-59

[11] Rollo, p. 53

[12] Rollo, pp. 53-56

[13] Records, pp. 73-74

[14] Records, p. 75

[15] Records, p. 75

[16] Spouses Patricio and Myrna Bernales v. Heirs of Julian Sambaan, G.R. No. 163271, January 15, 2010

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