

EDUARDO S. FLORES, PETITIONER, VS. MARIA DE LEON VDA. DE ESTEBAN, RESPONDENT.

G.R. No. L-8768. August 26, 1955

Ponente: JUGO, J.

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JUGO, J.:

Eduardo S. Flores in his petition filed with this Court, alleged in substance that he was married to Adoracion Esteban who died on foecember 27, 1953; that he had a son with her named Reynaldo Canon E. Flores born on December 22, 1946; that until her death she and her son Canon lived with her mother Maria de Leon Vda. de Esteban, the respondent herein; and that said respondent restrains the liberty of said minor and refuses to surrender him to the custody of the petitioner.

This Court ordered the respondent to file her answer with the Court of First Instance of Bulacan to which this case was referred. Said court forwarded here the answer of the respondent in which she alleged in substance that she has had the custody of the child since he was twenty days old until now that the child is eight years old, supporting him and sending him to the primary school in Norzagaray, Bulacan, paying for all school expenses; that she is not restraining the liberty of said minor but that the latter refuses to go with his father whom he hardly knows.

In view of the allegations of the parties, the Clerk of this Court was ordered to receive their evidence, whjch has been taken down by a stenographer and transcribed, the transcription being attached to the record.

It appears from the evidence that the petitioner has been away from this country since the respondent took care of and supported the child who was then only twenty days old; that she also has been supporting him until now when he is already eight years old, and is sending him to the primary school of Norzagaray, Bulacan, paying all school expenses. When the herein petitioner once went to Norzagaray to visit the child and take him away the child refused to go with him, whom he hardly recognized.

It is not the petitioner who, in fact, claims custody of the child but the paternal grandfather, Macario Flores (father of the petitioner), who resides in Pateros, Rizal Macario Flores testified that now and then he received checks from his son in Okinawa, Japan, and gave money to the deceased wife, mother of the child. He also gave the deceased sometimes small sums of money out of his own pocket. The evidence appears to Sustain the allegations of both parties. The parties agreed that both of them are capable of supporting the child.

It is clear that the petitioner cannot take care of the child because he is now working and living in Okinawa. The question is whether the child should be taken care of by the paternal grandfather or the maternal grandmother as a substitute guardian. The petitioner cites Articles 349 and 355 of the new Civil Code which read as follows:

"Art. 349. The following persons shall exercise substitute parental authority:

- (1) Guardians;
- (2) Teachers and professors;

- (3) Heads of children's homes, orphanages, and similar institutions;
- (4) Directors of trade establishments, with regards to apprentices;
- (5) Grandparents;
- (6) The oldest brother or sister."

"Art. 355. Substitute parental authority shall be exercised the grandparents in the following order:

- (1) Parental grandparents;
- (2) Maternal grandparents."

However, we should not lose sight of Article 363 of the same Code which says:

"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 reason for such measure."

In the present case what will be for the best interest and welfare of the child? It should be considered that the maternal grandmother is almost a mother to the child having taken care of him since he was twenty days old up to now, and feels the love of a mother for him. Since the death of the mother Adoracion the respondent has acted as the mother of the child. There exist mutual love between the grandmother and the child; her affection is as great or even greater than that of the mother herself. This is in accordance with human nature.

For the sake of the welfare of the child, we are of the opinion that the respondent grandmother should have the legal custody over him, without prejudice to the obligation of the father to contribute to his maintenance.

In view of the foregoing, it is decreed that the respondent Maria de Leon Vda. de Esteban have custody of the child. The petition is dismissed.

It is so ordered without pronouncement as to costs.

Bengzon, Acting C.J., Padilla, Montemayor, Reyes, A., Bautista Angelo, Labrador, Concepcion, and Reyes, J.B.L., JJ., concur.

Petition dismissed.

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