

ZENAIDA MEDINA, ASSISTED BY HER HUSBAND, FELICIANO CASERO, PETITIONER-APPELLANT, VS. DRA. VENANCIA L. MAKABALI, RESPONDENT-APPELLEE.

G.R. No. L-26953. March 28, 1969

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

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

Once more Courts are asked to arbitrate between rights and duties of parents and children, and between parent and foster parent.

Appellant's claim for custody of a minor boy, Joseph Casero, was sought to be enforced by habeas corpus proceedings in the Court of First Instance of Pampanga, in its Special Proceeding No. 1947. After hearing, the writ was denied by the Court, and the case was appealed directly to this Supreme Court exclusively on points of law.

Uncontested facts found by the Court below are that on February 4, 1961, petitioner Zenaida Medina gave birth to a baby boy named Joseph Casero in the Makabali Clinic in San Fernando, Pampanga, owned and operated by respondent Dra. Venancia Makabali, single, who assisted at the delivery. The boy was Zenaides third, had with a married man, Feliciano Casero.

The mother left the child with Dra. Makabali from his birth. The latter took care and reared Joseph as her own son; had him treated at her expense for poliomyelitis by Dra. Fe del Mundo, in Manila, until he recovered his health; and sent him to school. From birth until August 1966, the real mother never visited her child, and never paid for his expenses.

The trial disclosed that petitioner Zenaida Medina lived, with Feliciano Casero with her two other children apparently with the tolerance, if not the acquiescence, of Casero's lawful wife who resides elsewhere, albeit the offspring of both women are in good terms with each other; that Casero makes about P400.00 a month as a mechanic, and Zenaida herself earns from 4 to 5 pesos a day.

"The Court, upon calling Joseph on the witness stand, observed that the boy is fairly intelligent as a witness. He never knew his mother, Zenaida. He was calling the respondent his 'Mammy'. The Court informed him that his real mother is Zenaida. He was asked with whom to stay - with his real mother or the respondent. The boy pointed to the respondent and said 'Mammy.' The Court asked him, 'Why do you choose to stay with your "Mammy?"' He answered, 'She is the one rearing me.' This confrontation was made in the presence of the two women, Zenaida, the petitioner, and the respondent, Dra. Makabali, in open court." (C.F.I. Rollo, p. 39).

After extracting from Dra. Makabali a promise to allow the minor a free choice with whom to live when he reaches the age of 14, the Court held that it was for the child's best interest to be left with his foster mother, and denied the writ prayed for. The real mother appealed, as already stated.

We see no reason to disturb the order appealed from. While our law recognizes the right of a parent to the custody

of her child, Courts must not lose sight of the basic principle that "in all questions of the care, custody, education and property of children, the latter's welfare shall be paramount" (Civil Code of the Philippines, Art. 363), and that for compelling reasons, even a child under seven may be ordered separated from the mother (Do.). This is as it should be, for in the continual evolution of legal institutions, the patria protestas has been transformed from the jus vitae ac necis (right of life and death) of the Roman law, under which the offspring was virtually a chattel of his parents, into a radically different institution, due to the influence of Christian faith and doctrines. The obligational aspect is now supreme. As pointed out by Puig Peña, now "there is no power, but a task; no complex of rights (of parents) but a sum of duties; no sovereignty, but a sacred trust for the welfare of the minor." [1]

As a result, the right of parents to the company and custody of their children is but ancillary to the proper discharge of parental duties to provide the children with adequate support, education, moral, intellectual and civic training and development (Civil Code, Art. 356). As remarked by the Court below, petitioner Zenaida Medina proved remiss in these sacred duties; she not only failed to provide the child with love and care but actually deserted him, with not even a visit, in his tenderest years, when he needed his mother the most. It may well be doubted what advantage the child could derive from being coerced to abandon respondent's care and love to be compelled to stay with his mother and witness her irregular menage a trois with Casero and the latter's legitimate wife.

it is hinted that respondent's motivation in refusing to surrender the boy is to coerce petitioner to pay for the rearing of the child. This is not acceptable, for Dra. Makabali knew (at least at the trial) that any expectation on her part is illusory, given Zenaida's meager resources, yet expressed willingness to care and educate him.

No abuse of discretion being shown, but on the contrary, the appealed order being justified in fact and law, we hold that said order should be, and hereby is,

AFFIRMED. Costs against appellant.

Concepcion, C.J., Dizon, Makalintal, Zaldivar, Sanchez, Ruiz Castro, Fernando, Capistrano, Teehankee, and Barredo, JJ., concur.

[1] Puig Peña, Derecho Civil, Vol. 2, part II, p. 153.

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