

DAISIE T. DAVID, PETITIONER, VS. COURT OF APPEALS, RAMON R. VILLAR, RESPONDENTS.

G.R. No. 111180. November 16, 1995

Ponente: MENDOZA, J.

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MENDOZA, J.:

Petitioner Daisie T. David worked as secretary of private respondent Ramon R. Villar, a businessman in Angeles City. Private respondent is a married man and the father of four children, all grown-up. After a while, the relationship between petitioner and private respondent developed into an intimate one, as a result of which a son, Christopher J., was born on March 9, 1985 to them. Christopher J. was followed by two more children, both girls, namely Christine, born on June 9, 1986, and Cathy Mae on April 24, 1988.

The relationship became known to private respondent's wife when Daisie took Christopher J. to Villar's house at Villa Teresa in Angeles City sometime in 1986 and introduced him to Villar's legal wife.

After this, the children of Daisie were freely brought by Villar to his house as they were eventually accepted by his legal family.

In the summer of 1991, Villar asked Daisie to allow Christopher J., then six years of age, to go with his family to Boracay. Daisie agreed, but after the trip, Villar refused to give back the child. Villar said he had enrolled Christopher J. at the Holy Family Academy for the next school year.

On July 30, 1991, Daisie filed a petition for habeas corpus on behalf of Christopher J.

After hearing, the Regional Trial Court, Branch 58 at Angeles City, rendered a decision, the dispositive portion of which reads:

WHEREFORE, premises considered, judgment is hereby rendered in favor of the petitioner and against the respondent:

1. the rightful custody of the minor Christopher J. T. David is hereby given to the natural mother, the herein petitioner Daisie T. David;
2. respondent is hereby ordered to give a temporary support of P3,000.00 a month to the subject minor Christopher J. T. David, Christine David and Cathy Mae David to take effect upon the finality of this decision; and
3. to pay the costs of this suit.

SO ORDERED.

On appeal, the Court of Appeals reversed, holding:

We agree with the respondent-appellant's view that this is not proper in a habeas corpus case.

Law and jurisprudence wherein the question of custody of a minor child may be decided in a habeas corpus case contemplate a situation where the parents are married to each other but are separated. This is so because under the Family Code, the father and mother have joint parental authority over their legitimate children and in case of separation of the parents there is need to determine rightful custody of their children. The same does not hold true in an adulterous relationship, as in the case at bar, the child born out of such a relationship is under the parental authority of the mother by express provision of the law. Hence, the question of custody and support should be brought in a case singularly filed for the purpose. In point of fact, this is more advisable in the case at bar because the trial court did not acquire jurisdiction over the other minor children of the petitioner-appellee and respondent-appellant and, therefore, cannot properly provide for their support.

Admittedly, respondent-appellant is financially well-off, he being a very rich businessman; whereas, petitioner-appellee depends upon her sisters and parents for support. In fact, he financially supported petitioner-appellee and her three minor children. It is, therefore, for the best interest of Christopher J that he should temporarily remain under the custody of respondent-appellant until the issue on custody and support shall have been determined in a proper case.

WHEREFORE, the decision appealed from is hereby SET ASIDE, and a NEW ONE ENTERED dismissing the petition for habeas corpus in Special Proceeding No. 4489.

Daisie in turn filed this petition for review of the appellate court's decision.

Rule 102, §1 of the Rules of Court provides that "the writ of habeas corpus shall extend to all cases of illegal confinement or detention by which any person is deprived of his liberty, or by which the rightful custody of any person is withheld from the person entitled thereto."

It is indeed true, as the Court of Appeals observed, that the determination of the right to the custody of minor children is relevant in cases where the parents, who are married to each other, are for some reason separated from each other. It does not follow, however, that it cannot arise in any other situation. For example, in the case of *Salvaña v. Gaela*,^[1] it was held that the writ of habeas corpus is the proper remedy to enable parents to regain the custody of a minor daughter even though the latter be in the custody of a third person of her free will because the parents were compelling her to marry a man against her will.

In the case at bar, Christopher J. is an illegitimate child since at the time of his conception, his father, private respondent Ramon R. Villar, was married to another woman other than the child's mother. As such, pursuant to Art. 176 of the Family Code, Christopher J. is under the parental authority of his mother, the herein petitioner, who, as a consequence of such authority, is entitled to have custody of him.^[2] Since, admittedly, petitioner has been deprived of her rightful custody of her child by private respondent, she is entitled to issuance of the writ of habeas corpus.

Indeed, Rule 102, §1 makes no distinction between the case of a mother who is separated from her husband and is entitled to the custody of her child and that of a mother of an illegitimate child who, by law, is vested with sole parental authority, but is deprived of her rightful custody of her child.

The fact that private respondent has recognized the minor child may be a ground for ordering him to give support to the latter, but not for giving him custody of the child. Under Art. 213 of the Family Code, "no child under seven years of age shall be separated from the mother unless the court finds compelling reasons to order otherwise."^[3]

Nor is the fact that private respondent is well-off a reason for depriving petitioner of the custody of her children, especially considering that she has been able to rear and support them on her own since they were born. Petitioner

is a market vendor earning from P2,000 to P3,000 per month in 1993 when the RTC decision was rendered. She augments her income by working as secretary at the Computer System Specialist, Inc. earning a monthly income of P4,500.00. She has an arrangement with her employer so that she can personally attend to her children. She works up to 8:00 o'clock in the evening to make up for time lost during the day. That she receives help from her parents and sister for the support of the three children is not a point against her. Cooperation, compassion, love and concern for every member of the family are characteristics of the close family ties that bind the Filipino family and have made it what it is.

Daisie and her children may not be enjoying a life of affluence that private respondent promises if the child lives with him. It is enough, however, that petitioner is earning a decent living and is able to support her children according to her means.

The Regional Trial Court ordered private respondent to give temporary support to petitioner in the amount of P3,000.00 a month, pending the filing of an action for support, after finding that private respondent did not give any support to his three children by Daisie, except the meager amount of P500.00 a week which he stopped giving them on June 23, 1992. He is a rich man who professes love for his children. In fact he filed a motion for the execution of the decision of the Court of Appeals, alleging that he had observed his son "to be physically weak and pale because of malnutrition and deprivation of the luxury and amenities he was accustomed to when in the former custody of the respondent." He prayed that he be given the custody of the child so that he can provide him with the "proper care and education."

Although the question of support is proper in a proceeding for that purpose, the grant of support in this case is justified by the fact that private respondent has expressed willingness to support the minor child. The order for payment of allowance need not be conditioned on the grant to him of custody of the child. Under Art. 204 of the Family Code, a person obliged to give support can fulfill his obligation either by paying the allowance fixed by the court or by receiving and maintaining in the family dwelling the person who is entitled to support unless, in the latter case, there is "a moral or legal obstacle thereto."

In the case at bar, as has already been pointed out, Christopher J., being less than seven years of age at least at the time the case was decided by the RTC, cannot be taken from the mother's custody. Even now that the child is over seven years of age, the mother's custody over him will have to be upheld because the child categorically expressed preference to live with his mother. Under Art. 213 of the Family Code, courts must respect the "choice of the child over seven years of age, unless the parent chosen is unfit" and here it has not been shown that the mother is in any way unfit to have custody of her child. Indeed, if private respondent loves his child, he should not condition the grant of support for him on the award of his custody to him (private respondent).

WHEREFORE, the decision of the Court of Appeals is REVERSED and private respondent is ORDERED to deliver the minor Christopher J. T. David to the custody of his mother, the herein petitioner, and to give him temporary support in the amount of P3,000.00, pending the fixing of the amount of support in an appropriate action.

SO ORDERED.

Narvasa, C.J., (Chairman), Regalado, and Puno, JJ., concur.
Francisco, J., on leave.

[1] 55 Phil. 680 (1931).

[2] Family Code, Art. 220 provides that "The parents and those exercising parental authority shall have with respect to their unemancipated children or wards the following rights and duties: (1) To keep them in their company, ...

[3] Art. 363 of the Civil Code originally provided that "no mother shall be separated from her child under seven years of age, unless the court finds compelling reasons for such measure." This was changed by the Child and Youth Welfare Code (P.D. No. 603), §17 of which provided that "in case of separation of his parents, no child under five years of age shall be separated from his mother, unless the court finds compelling reason to do so." The Family Code, Art. 213 thus restores the original provision of the Civil Code.

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