

LEOUEL SANTOS, SR., PETITIONER-APPELLANT, VS. COURT OF APPEALS, AND SPOUSES LEOPOLDO AND OFELIA BEDIA, RESPONDENTS-APPELLEES.

G.R. No. 113054. March 16, 1995

Ponente: ROMERO, J.

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ROMERO, J.:

In this petition for review, we are asked to overturn the decision of the Court of Appeals [1] granting custody of six-year old Leouel Santos, Jr. to his maternal grandparents and not to his father, Santos, Sr. What is sought is a decision which should definitively settle the matter of the care, custody and control of the boy.

Happily, unlike King Solomon, we need not merely rely on a "wise and understanding heart," for there is man's law to guide us and that is, the Family Code.

The antecedent facts giving rise to the case at bench are as follows:

Petitioner Leouel Santos, Sr., an army lieutenant, and Julia Bedia a nurse by profession, were married in Iloilo City in 1986. Their union begot only one child, Leouel Santos, Jr. who was born July 18, 1987.

From the time the boy was released from the hospital until sometime thereafter, he had been in the care and custody of his maternal grandparents, private respondents herein, Leopoldo and Ofelia Bedia.

Petitioner and wife Julia agreed to place Leouel Jr. in the temporary custody of the latter's parents, the respondent spouses Bedia. The latter alleged that they paid for all the hospital bills, as well as the subsequent support of the boy because petitioner could not afford to do so.

The boy's mother, Julia Bedia-Santos, left for the United States in May 1988 to work. Petitioner alleged that he is not aware of her whereabouts and his efforts to locate her in the United States proved futile. Private respondents claim that although abroad, their daughter Julia had been sending financial support to them for her son.

On September 2, 1990, petitioner along with his two brothers, visited the Bedia household, where three-year old Leouel Jr. was staying. Private respondents contend that through deceit and false pretensions, petitioner abducted the boy and clandestinely spirited him away to his hometown in Bacong, Negros Oriental.

The spouses Bedia then filed a "Petition for Care, Custody and Control of Minor Ward Leouel Santos Jr.," before the Regional Trial Court of Iloilo City, with Santos, Sr. as respondent. [2]

After an ex-parte hearing on October 8, 1990, the trial court issued an order on the same day awarding custody of the child Leouel Santos, Jr. to his grandparents, Leopoldo and Ofelia Bedia. [3]

Petitioner appealed this Order to the Court of Appeals. [4] In its decision dated April 30, 1992, respondent appellate court affirmed the trial court's order. [5] His motion for reconsideration having been denied, [6] petitioner now brings the instant petition for review for a reversal of the appellate court's decision.

The Court of Appeals erred, according to petitioner, in awarding custody of the boy to his grandparents and not to himself. He contends that since private respondents have failed to show that petitioner is an unfit and unsuitable father, substitute parental authority granted to the boy's grandparents under Art. 214 of the Family Code is inappropriate.

Petitioner adds that the reasons relied upon by the private respondents in having custody over the boy, are flimsy and insufficient to deprive him of his natural and legal right to have custody.

On the other hand, private respondents aver that they can provide an air-conditioned room for the boy and that petitioner would not be in a position to take care of his son since he has to be assigned to different places. They also allege that the petitioner did not give a single centavo for the boy's support and maintenance. When the boy was about to be released from the hospital, they were the ones who paid the fees because their daughter and petitioner had no money. Besides, Julia Bedia-Santos, their daughter, had entrusted the boy to them before she left for the United States. Furthermore, petitioner's use of trickery and deceit in abducting the child in 1990, after being hospitably treated by private respondents, does not speak well of his fitness and suitability as a parent.

The Bedias argue that although the law recognizes the right of a parent to his child's custody, ultimately the primary consideration is what is best for the happiness and welfare of the latter. As maternal grandparents who have amply demonstrated their love and affection for the boy since his infancy, they claim to be in the best position to promote the child's welfare.

The issue to be resolved here boils down to who should properly be awarded custody of the minor Leouel Santos, Jr.

The right of custody accorded to parents springs from the exercise of parental authority. Parental authority or patria potestas in Roman Law is the juridical institution whereby parents rightfully assume control and protection of their unemancipated children to the extent required by the latter's needs. [7] It is a mass of rights and obligations which the law grants to parents for the purpose of the children's physical preservation and development, as well as the cultivation of their intellect and the education of their heart and senses. [8] As regards parental authority, "there is no power, but a task; no complex of rights, but a sum of duties; no sovereignty but a sacred trust for the welfare of the minor." [9]

Parental authority and responsibility are inalienable and may not be transferred or renounced except in cases authorized by law. [10] The right attached to parental authority, being purely personal, the law allows a waiver of parental authority only in cases of adoption, guardianship and surrender to a children's home or an orphan institution. [11] When a parent entrusts the custody of a minor to another, such as a friend or godfather, even in a document, what is given is merely temporary custody and it does not constitute a renunciation of parental authority. [12] Even if a definite renunciation is manifest, the law still disallows the same. [13]

The father and mother, being the natural guardians of unemancipated children, are duty-bound and entitled to keep them in their custody and company. [14] The child's welfare is always the paramount consideration in all questions concerning his care and custody. [15]

The law vests on the father and mother joint parental authority over the persons of their common children. [16] In case of absence or death of either parent, the parent present shall continue exercising parental authority. [17] Only in case of the parents' death, absence or unsuitability may substitute parental authority be exercised by the surviving grandparent. [18] The situation obtaining in the case at bench is one where the mother of the minor Santos, Jr., is working in the United States while the father, petitioner Santos, Sr., is present. Not only are they physically apart but are also emotionally separated. There has been no decree of legal separation and petitioner's

attempt to obtain an annulment of the marriage on the ground of psychological incapacity of his wife has failed. [19]

Petitioner assails the decisions of both the trial court and the appellate court to award custody of his minor son to his parents-in-law, the Bedia spouses on the ground that under Art. 214 of the Family Code, substitute parental authority of the grandparents is proper only when both parents are dead, absent or unsuitable. Petitioner's unfitness, according to him, has not been successfully shown by private respondents.

The Court of Appeals held that although there is no evidence to show that petitioner (Santos Sr.) is "depraved, a habitual drunkard or poor, he may nevertheless be considered, as he is in fact so considered, to be unsuitable to be allowed to have custody of minor Leouel Santos Jr." [20]

The respondent appellate court, in affirming the trial court's order of October 8, 1990, adopted as its own the latter's observations, to wit:

"From the evidence adduced, this Court is of the opinion that it is to be (sic) best interest of the minor Leouel Santos, Jr. that he be placed under the care, custody, and control of his maternal grandparents, the petitioners herein. The petitioners have amply demonstrated their love and devotion to their grandson while the natural father, respondent herein, has shown little interest in his welfare as reflected by his conduct in the past. Moreover, the fact that petitioners are well-off financially, should be carefully considered in awarding to them the custody of the minor herein, lest the breaking of such ties with his maternal grandparents might deprive the boy of an eventual college education and other material advantages (*Consaul vs. Consaul*, 63 N.Y.S. 688) Respondent had never given any previous financial support to his son, while, upon the other hand, the latter receives so much bounty from his maternal grandparents and his mother as well, who is now gainfully employed in the United States. Moreover, the fact that respondent, as a military personnel who has to shuttle from one assignment to another, and, in these troubled times, may have pressing and compelling military duties which may prevent him from attending to his son at times when the latter needs him most, militates strongly against said respondent. Additionally, the child is sickly and asthmatic and needs the loving and tender care of those who can provide for it." [21]

We find the aforementioned considerations insufficient to defeat petitioner's parental authority and the concomitant right to have custody over the minor Leouel Santos, Jr., particularly since he has not been shown to be an unsuitable and unfit parent. Private respondents' demonstrated love and affection for the boy, notwithstanding, the legitimate father is still preferred over the grandparents. [22] The latter's wealth is not a deciding factor, particularly because there is no proof that at the present time, petitioner is in no position to support the boy. The fact that he was unable to provide financial support for his minor son from birth up to over three years when he took the boy from his in-laws without permission, should not be sufficient reason to strip him of his permanent right to the child's custody. While petitioner's previous inattention is inexcusable and merits only the severest criticism, it cannot be construed as abandonment. His appeal of the unfavorable decision against him and his efforts to keep his only child in his custody may be regarded as serious efforts to rectify his past misdeeds. To award him custody would help enhance the bond between parent and son. It would also give the father a chance to prove his love for his son and for the son to experience the warmth and support which a father can give.

His being a soldier is likewise no bar to allowing him custody over the boy. So many men in uniform who are assigned to different parts of the country in the service of the nation, are still the natural guardians of their children. It is not just to deprive our soldiers of authority, care and custody over their children merely because of the normal consequences of their duties and assignments, such as temporary separation from their families.

Petitioner's employment of trickery in spiriting away his boy from his in-laws, though unjustifiable, is likewise not a ground to wrest custody from him.

Private respondents' attachment to the young boy whom they have reared for the past three years is understandable. Still and all, the law considers the natural love of a parent to outweigh that of the grandparents, such that only when the parent present is shown to be unfit or unsuitable may the grandparents exercise substitute parental authority, a fact which has not been proven here.

The strong bonds of love and affection possessed by private respondents as grandparents should not be seen as incompatible with petitioner's right to custody over the child as a father. Moreover, who is to say whether the petitioner's financial standing may improve in the future?

WHEREFORE, the petition is GRANTED. The decision of the respondent Court of Appeals dated April 30, 1992 as well as its Resolution dated November 13, 1992 are hereby REVERSED and SET ASIDE. Custody over the minor Leouel Santos Jr. is awarded to his legitimate father, herein petitioner Leouel Santos, Sr.

SO ORDERED.

Feliciano, (Chairman), Melo, Vitug, and Francisco, JJ., concur.

[1] CA-GR CV No. 30563, "In the matter of petition for care, custody and control of minor Leouel Santos, Jr., spouses Leopoldo and Ofelia Bedia, petitioners-appellees, v. Leouel Santos, Sr., respondent-appellant," Rollo , p. 21.

[2] Spec. Proc. No. 4588, Regional Trial Court, Iloilo City, Branch 29, Judge Ricardo P. Galvez, presiding.

[3] Rollo , p. 50.

[4] Docketed as CA-GR CV No. 30563.

[5] Penned by Justice Serafin V.C. Guingona, with Justices Vicente V. Mendoza and Jaime M. Lantin, concurring; Rollo , p. 21.

[6] Resolution dated November 16, 1993, Rollo , p. 34.

[7] Puig Peña, cited in I J. REYES AND R. PUNO, AN OUTLINE OF THE PHILIPPINE CIVIL LAW, 295 (4th ed., 1964).

[8] Reyes v. Alvarez, 8 Phil. 732; 2 Manresa 21; cited in I A. TOLENTINO, CIVIL CODE OF THE PHILS., COMMENTARIES AND JURISPRUDENCE 604 (1990 ed.).

[9] Puig Peña cited in Reyes and Puno, supra at note 7.

[10] Family Code, Arts. 210, 223 and 224.

[11] Family Code, Arts. 222-224; Act No. 3094.

[12] Celis v. Cafuir, 86 Phil. 555; De La Cruz v. Lim Chai Lay (CA) GR 14080-R, August 15, 1955; Bacayo v. Calum, (CA) O.G. 8607.

[13] Family Code, Art. 210, taken from Art. 313 of the Civil Code.

[14] Family Code, Art. 209 and 211; Aldecoa v. Hongkong and Shanghai Bank, 30 Phil. 228 cited in A. Tolentino, supra, at p. 618.

[15] Art. 8, Pres. Decree No. 603, Child and Youth Welfare Code; Cervantes v. Fajardo, G.R. No. 79955, January 27, 1989, 169 SCRA 575; Unson v. Navarro, L-52242, November 17, 1980, 101 SCRA 182.

[16] Family Code, Art. 211.

[17] Family Code, Art. 212.

[18] Family Code, Art. 214.

[19] On January 4, 1995, the Court en banc, denied Leouel Santos, Sr.'s petition for review where he sought to have his marriage to Julia Bedia-Santos annulled on the ground of psychological incapacity. *Leouel Santos v. Hon. Court of Appeals and Julia Rosario Bedia-Santos*, G.R. No. 112019.

[20] *Rollo* , p. 29.

[21] *Rollo* , pp. 31-32.

[22] *Bacayo v. Calum*, (CA) 53 O.G. 8607.

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