

DINAH B. TONOG, PETITIONER, VS. COURT OF APPEALS AND EDGAR V. DAGUIMOL, RESPONDENTS.*G.R. No. 122906. February 07, 2002*

Ponente: DE LEON, JR., J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-122906/>**DE LEON, JR., J.:**

Before us is a petition for review on certiorari seeking the reversal of two (2) Resolutions dated August 29, 1995 and November 29, 1995 issued by the former Second Division[1] of the Court of Appeals in CA-G.R. SP No. 35971. The first resolution modified the appellate court's decision promulgated in the said case, and granted custody of the minor, Gardin Faith Belarde Tonog, to private respondent. The second resolution denied petitioner's motion for reconsideration.

The pertinent facts are:

On September 23, 1989, petitioner Dinah B. Tonog gave birth[2] to Gardin Faith Belarde Tonog, her illegitimate daughter with private respondent Edgar V. Dagumol. Petitioner was then a nursing student while private respondent was a licensed physician. They cohabited for a time and lived with private respondent's parents and sister in the latter's house in Quezon City where the infant, Gardin Faith, was a welcome addition to the family.

A year after the birth of Gardin Faith, petitioner left for the United States of America where she found work as a registered nurse. Gardin Faith was left in the care of her father (private respondent herein) and paternal grandparents.

On January 10, 1992, private respondent filed a petition for guardianship over Gardin Faith, docketed as Sp. Proc. No. Q-92-11053, in the Regional Trial Court of Quezon City. On March 9, 1992, the trial court rendered judgment appointing private respondent as legal guardian of the minor, Gardin Faith.

Petitioner avers that she learned of the judgment of the trial court rendered in Sp. Proc. No. Q-92-11053 only on April 1, 1992. Accordingly, on May 27, 1992, she filed a petition for relief from judgment. In a resolution dated September 15, 1992, the trial court set aside its original judgment and allowed petitioner to file her opposition to private respondent's petition. The latter, in turn, filed a motion for reconsideration. In a related incident, petitioner filed on October 4, 1993, a motion to remand custody of Gardin Faith to her.

On November 18, 1994, the trial court issued a resolution denying private respondent's motion for reconsideration and granting petitioner's motion for custody of their child, Gardin. Petitioner moved for immediate execution of the said resolution.

Due to the adverse turn of events, private respondent filed a petition for certiorari before the Court of Appeals, docketed as CA-G.R. SP No. 35971, questioning the actuations of the trial court. On March 21, 1995, the appellate court dismissed the petition on the ground of lack of merit. However, after private respondent filed a motion for reconsideration, the appellate court issued a Resolution[3] dated August 29, 1995 modifying its decision, as follows:

Although We do find the Petition dismissible, insofar as it assails the September 15, 1993 Resolution of the respondent Court, giving due course to private respondent's Petition for Relief from Judgment, and the November 18, 1995 Resolution denying his Motion for Reconsideration, We discern a good ground to let physical custody of subject child, Gardin Faith Belarde Tonog, continue under the petitioner, with whom the said child had been living, since birth.

While it is understandable for private respondent, as mother, to assert and seek enforcement of her legal and natural rights as the natural guardian of her child, the emotional and psychological effects upon the latter of a change in custody should be considered. To be sure, transfer of custody of the child from petitioner to private respondent will be painful for the child who, all her life, has been in the company of petitioner and her paternal grandparents.

Now, inasmuch as the issue of guardianship and custody over the same child is still pending determination before the respondent Court, the possibility of petitioner's appointment as the guardian cannot be discounted. It would certainly wreak havoc on the child's psychological make-up to give her to the custody of private respondent, only to return her to petitioner should the latter prevail in the main case. Subjecting the child to emotional seesaw should be avoided. It is thus more prudent to let physical custody of the child in question be with petitioner until the matter of her custody shall have been determined by final judgment.

WHEREFORE, the Decision, promulgated here on March 21, 1995 is accordingly MODIFIED, and status quo with respect to the physical custody of the child, Gardin Faith Belarde Tonog, is ordered. It is understood that the latter shall remain with petitioner until otherwise adjudged.

Petitioner thus interposed the instant appeal after the appellate court denied her motion for reconsideration in its Resolution[4] dated November 29, 1995.

Petitioner contends that she is entitled to the custody of the minor, Gardin Faith, as a matter of law. First, as the mother of Gardin Faith, the law confers parental authority upon her as the mother of the illegitimate minor. Second, Gardin Faith cannot be separated from her since she had not, as of then, attained the age of seven. Employing simple arithmetic however, it appears that Gardin Faith is now twelve years old.

In custody disputes, it is axiomatic that the paramount criterion is the welfare and well-being of the child.[5] In arriving at its decision as to whom custody of the minor should be given, the court must take into account the respective resources and social and moral situations of the contending parents.[6]

In turn, the parents' right to custody over their children is enshrined in law. Article 220 of the Family Code thus provides that parents and individuals exercising parental authority over their unemancipated children are entitled, among other rights, "to keep them in their company." In legal contemplation, the true nature of the parent-child relationship encompasses much more than the implication of ascendancy of one and obedience by the other. We explained this in *Santos, Sr. v. Court of Appeals*: [7]

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. 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. 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."

Parental authority and responsibility are inalienable and may not be transferred or renounced except in cases authorized by law. 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. 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. Even if a definite renunciation is manifest, the law still disallows the same.

Statute sets certain rules to assist the court in making an informed decision. Insofar as illegitimate children are concerned, Article 176 of the Family Code provides that illegitimate children shall be under the parental authority of their mother. Likewise, 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.” It will be observed that in both provisions, a strong bias is created in favor of the mother. This is specially evident in Article 213 where it may be said that the law presumes that the mother is the best custodian. As explained by the Code Commission:

The general rule is recommended in order to avoid many a tragedy where a mother has seen her baby torn away from her. No man can sound the deep sorrows of a mother who is deprived of her child of tender age. The exception allowed by the rule has to be for “compelling reasons” for the good of the child; those cases must indeed be rare, if the mother’s heart is not to be unduly hurt. If she has erred, as in cases of adultery, the penalty of imprisonment and the divorce decree (relative divorce) will ordinarily be sufficient punishment for her. Moreover, moral dereliction will not have any effect upon the baby who is as yet unable to understand her situation.[8]

This is not intended, however, to denigrate the important role fathers play in the upbringing of their children. Indeed, we have recognized that both parents “complement each other in giving nurture and providing that holistic care which takes into account the physical, emotional, psychological, mental, social and spiritual needs of the child.”[9] Neither does the law nor jurisprudence intend to downplay a father’s sense of loss when he is separated from his child:

While the bonds between a mother and her small child are special in nature, either parent, whether father or mother, is bound to suffer agony and pain if deprived of custody. One cannot say that his or her suffering is greater than that of the other parent. It is not so much the suffering, pride, and other feelings of either parent but the welfare of the child which is the paramount consideration.[10]

For these reasons, even a mother may be deprived of the custody of her child who is below seven years of age for “compelling reasons.” Instances of unsuitability are neglect, abandonment, unemployment and immorality, habitual drunkenness, drug addiction, maltreatment of the child, insanity, and affliction with a communicable illness.[11] If older than seven years of age, a child is allowed to state his preference, but the court is not bound by that choice. The court may exercise its discretion by disregarding the child’s preference should the parent chosen be found to be unfit, in which instance, custody may be given to the other parent, or even to a third person. [12]

In the case at bar, we are being asked to rule on the temporary custody of the minor, Gardin Faith, since it appears that the proceedings for guardianship before the trial court have not been terminated, and no pronouncement has been made as to who should have final custody of the minor. Bearing in mind that the welfare of the said minor as the controlling factor, we find that the appellate court did not err in allowing her father (private respondent herein) to retain in the meantime parental custody over her. Meanwhile, the child should not be wrenched from her familiar surroundings, and thrust into a strange environment away from the people and places to which she had apparently formed an attachment.

Moreover, whether a mother is a fit parent for her child is a question of fact to be properly entertained in the special proceedings before the trial court.[13] It should be recalled that in a petition for review on certiorari, we rule only on questions of law. We are not in the best position to assess the parties’ respective merits vis-à-vis their opposing claims for custody. Yet another sound reason is that inasmuch as the age of the minor, Gardin

Faith, has now exceeded the statutory bar of seven years, a fortiori, her preference and opinion must first be sought in the choice of which parent should have the custody over her person.

A word of caution: our pronouncement here should not be interpreted to imply a preference toward the father (herein private respondent) relative to the final custody of the minor, Gardin Faith. Nor should it be taken to mean as a statement against petitioner's fitness to have final custody of her said minor daughter. It shall be only understood that, for the present and until finally adjudged, temporary custody of the subject minor should remain with her father, the private respondent herein pending final judgment of the trial court in Sp. Proc. No. Q-92-11053.

WHEREFORE, the instant petition is hereby DENIED. The trial court is directed to immediately proceed with hearing Sp. Proc. No. Q-92-11053 upon notice of this decision. No pronouncement as to costs.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, and Buena, JJ., concur.
Quisumbing, J., abroad, on official leave.

[1] Justice Fidel P. Purisima, ponente; Justice Salome A. Montoya and Justice Godardo A. Jacinto, concurring.

[2] Birth Certificate, Annex "9", Private Respondent's Comment; Rollo, p. 73.

[3] Rollo, pp. 30-32.

[4] Rollo, pp. 34-35.

[5] *Silva v. Court of Appeals*, 275 SCRA 604, 609 (1997); *Cervantes v. Fajardo*, 169 SCRA 575, 578 (1989).

[6] *Unson III v. Navarro*, 101 SCRA 183, 189 (1980).

[7] 242 SCRA 407, 411 (1995).

[8] Report of the Code Commission, p. 12, as cited in A. SEMPIO-DIY, HANDBOOK ON THE FAMILY CODE OF THE PHILIPPINES 297 (1988).

[9] *Perez v. Court of Appeals*, 255 SCRA 661, 665 (1996).

[10] *Espiritu v. Court of Appeals*, 242 SCRA 362, 368 (1995).

[11] *Perez v. Court of Appeals*, supra, at 668.

[12] *Espiritu v. Court of Appeals*, supra, at 368.

[13] Cf. *Hontiveros, Jr. v. Intermediate Appellate Court*, 132 SCRA 745, 754 (1984).

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.