

EDGARDO A. TIJING AND BIENVENIDA R. TIJING, PETITIONERS, VS. COURT OF APPEALS (SEVENTH DIVISION) AND ANGELITA DIAMANTE, RESPONDENTS.

G.R. No. 125901. March 08, 2001

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

For review is the decision of the Court of Appeals dated March 6, 1996, in CA-G.R. SP No. 39056, reversing the decision of the Regional Trial Court in a petition for habeas corpus of Edgardo Tijing, Jr., allegedly the child of petitioners.

Petitioners are husband and wife. They have six children. The youngest is Edgardo Tijing, Jr., who was born on April 27, 1989, at the clinic of midwife and registered nurse Lourdes Vasquez in Sta. Ana, Manila. Petitioner Bienvenida served as the laundrywoman of private respondent Angelita Diamante, then a resident of Tondo, Manila.

According to Bienvenida in August 1989, Angelita went to her house to fetch her for an urgent laundry job. Since Bienvenida was on her way to do some marketing, she asked Angelita to wait until she returned. She also left her four-month old son, Edgardo, Jr., under the care of Angelita as she usually let Angelita take care of the child while Bienvenida was doing laundry.

When Bienvenida returned from the market, Angelita and Edgardo, Jr., were gone. Bienvenida forthwith proceeded to Angelita's house in Tondo, Manila, but did not find them there. Angelita's maid told Bienvenida that her employer went out for a stroll and told Bienvenida to come back later. She returned to Angelita's house after three days, only to discover that Angelita had moved to another place. Bienvenida then complained to her barangay chairman and also to the police who seemed unmoved by her pleas for assistance.

Although estranged from her husband, Bienvenida could not imagine how her spouse would react to the disappearance of their youngest child and this made her problem even more serious. As fate would have it, Bienvenida and her husband reconciled and together, this time, they looked for their missing son in other places. Notwithstanding their serious efforts, they saw no traces of his whereabouts.

Four years later or in October 1993, Bienvenida read in a tabloid about the death of Tomas Lopez, allegedly the common-law husband of Angelita, and whose remains were lying in state in Hagonoy, Bulacan. Bienvenida lost no time in going to Hagonoy, Bulacan, where she allegedly saw her son Edgardo, Jr., for the first time after four years. She claims that the boy, who was pointed out to her by Benjamin Lopez, a brother of the late Tomas Lopez, was already named John Thomas Lopez.[1] She avers that Angelita refused to return to her the boy despite her demand to do so.

Bienvenida and Edgardo filed their petition for habeas corpus with the trial court in order to recover their son. To substantiate their petition, petitioners presented two witnesses, namely, Lourdes Vasquez and Benjamin Lopez.

The first witness, Vasquez, testified that she assisted in the delivery of one Edgardo Tijing, Jr. on April 27, 1989 at her clinic in Sta. Ana, Manila. She supported her testimony with her clinical records.[2] The second witness, Benjamin Lopez, declared that his brother, the late Tomas Lopez, could not have possibly fathered John Thomas Lopez as the latter was sterile. He recalled that Tomas met an accident and bumped his private part against the edge of a banca causing him excruciating pain and eventual loss of his child-bearing capacity. Benjamin further declared that Tomas admitted to him that John Thomas Lopez was only an adopted son and that he and Angelita were not blessed with children.[3]

For her part, Angelita claimed that she is the natural mother of the child. She asserts that at age 42, she gave birth to John Thomas Lopez on April 27, 1989, at the clinic of midwife Zosima Panganiban in Singalong, Manila. She added, though, that she has two other children with her real husband, Angel Sanchez.[4] She said the birth of John Thomas was registered by her common-law husband, Tomas Lopez, with the local civil registrar of Manila on August 4, 1989.

On March 10, 1995, the trial court concluded that since Angelita and her common-law husband could not have children, the alleged birth of John Thomas Lopez is an impossibility.[5] The trial court also held that the minor and Bienvenida showed strong facial similarity. Accordingly, it ruled that Edgardo Tijing, Jr., and John Thomas Lopez are one and the same person who is the natural child of petitioners. The trial court decreed:

WHEREFORE, PREMISES CONSIDERED, judgment is hereby rendered GRANTING the petition for Habeas Corpus, as such, respondent Angelita Diamante is ordered to immediately release from her personal custody minor John Thomas D. Lopez, and turn him over and/or surrender his person to petitioners, Spouses Edgardo A. Tijing and Bienvenida R. Tijing, immediately upon receipt hereof.

Branch Sheriff of this Court, Carlos Bajar, is hereby commanded to implement the decision of this Court by assisting herein petitioners in the recovery of the person of their minor son, Edgardo Tijing Jr., the same person as John Thomas D. Lopez.

SO ORDERED.[6]

Angelita seasonably filed her notice of appeal.[7] Nonetheless, on August 3, 1994, the sheriff implemented the order of the trial court by taking custody of the minor. In his report, the sheriff stated that Angelita peacefully surrendered the minor and he turned over the custody of said child to petitioner Edgardo Tijing.[8]

On appeal, the Court of Appeals reversed and set aside the decision rendered by the trial court. The appellate court expressed its doubts on the propriety of the habeas corpus. In its view, the evidence adduced by Bienvenida was not sufficient to establish that she was the mother of the minor. It ruled that the lower court erred in declaring that Edgardo Tijing, Jr., and John Thomas Lopez are one and the same person,[9] and disposed of the case, thus:

IN VIEW OF THE FOREGOING, the decision of the lower court dated March 10, 1995 is hereby REVERSED, and a new one entered dismissing the petition in Spec. Proc. No. 94-71606, and directing the custody of the minor John Thomas Lopez to be returned to respondent Angelita Diamante, said minor having been under the care of said respondent at the time of the filing of the petition herein.

SO ORDERED.[10]

Petitioners sought reconsideration of the abovequoted decision which was denied. Hence, the instant petition alleging:

I

THAT THE RESPONDENT COURT OF APPEALS COMMITTED A GRAVE ERROR WHEN IT DECLARED THAT THE PETITIONERS' ACTION FOR HABEAS CORPUS IS MERELY SECONDARY TO THE QUESTION OF FILIATION THAT THE PETITIONERS HAD LIKEWISE PROVEN.

II

THAT THE RESPONDENT COURT OF APPEALS ERRED IN REVERSING THE DECISION OF THE REGIONAL TRIAL COURT DISMISSING THE PETITION FOR "HABEAS CORPUS" AND DIRECTING THAT THE CUSTODY OF THE MINOR JOHN THOMAS LOPEZ WHO WAS PROVEN TO BE THE SAME MINOR AS EDGARDO R. TIJING, JR., BE RETURNED TO THE PRIVATE RESPONDENT.[11]

In our view, the crucial issues for resolution are the following:

(1) Whether or not habeas corpus is the proper remedy?

(2)

Whether or not Edgardo Tijing, Jr., and John Thomas Lopez are one and the same person and is the son of petitioners?

We shall discuss the two issues together since they are closely related.

The writ of habeas corpus extends 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.[12] Thus, it is the proper legal remedy to enable parents to regain the custody of a minor child even if the latter be in the custody of a third person of his own free will. It may even be said that in custody cases involving minors, the question of illegal and involuntary restraint of liberty is not the underlying rationale for the availability of the writ as a remedy. Rather, it is prosecuted for the purpose of determining the right of custody over a child.[13] It must be stressed too that in habeas corpus proceedings, the question of identity is relevant and material, subject to the usual presumptions including those as to identity of the person.

In this case, the minor's identity is crucial in determining the propriety of the writ sought. Thus, it must be resolved first whether the Edgardo Tijing, Jr., claimed by Bienvenida to be her son, is the same minor named John Thomas Lopez, whom Angelita insists to be her offspring. We must first determine who between Bienvenida and Angelita is the minor's biological mother. Evidence must necessarily be adduced to prove that two persons, initially thought of to be distinct and separate from each other, are indeed one and the same.[14] Petitioners must convincingly establish that the minor in whose behalf the application for the writ is made is the person upon whom they have rightful custody. If there is doubt on the identity of the minor in whose behalf the application for the writ is made, petitioners cannot invoke with certainty their right of custody over the said minor.

True, it is not the function of this Court to examine and evaluate the probative value of all evidence presented to the concerned tribunal which formed the basis of its impugned decision, resolution or order.[15] But since the conclusions of the Court of Appeals contradict those of the trial court, this Court may scrutinize the evidence on the record to determine which findings should be preferred as more conformable to the evidentiary facts.

A close scrutiny of the records of this case reveals that the evidence presented by Bienvenida is sufficient to establish that John Thomas Lopez is actually her missing son, Edgardo Tijing, Jr.

First, there is evidence that Angelita could no longer bear children. From her very lips, she admitted that after the birth of her second child, she underwent ligation at the Martinez Hospital in 1970, before she lived with Tomas Lopez without the benefit of marriage in 1974. Assuming she had that ligation removed in 1978, as she claimed,

she offered no evidence she gave birth to a child between 1978 to 1988 or for a period of ten years. The midwife who allegedly delivered the child was not presented in court. No clinical records, log book or discharge order from the clinic were ever submitted.

Second, there is strong evidence which directly proves that Tomas Lopez is no longer capable of siring a son. Benjamin Lopez declared in court that his brother, Tomas, was sterile because of the accident and that Tomas admitted to him that John Thomas Lopez was only an adopted son. Moreover, Tomas Lopez and his legal wife, Maria Rapatan Lopez, had no children after almost fifteen years together. Though Tomas Lopez had lived with private respondent for fourteen years, they also bore no offspring.

Third, we find unusual the fact that the birth certificate of John Thomas Lopez was filed by Tomas Lopez instead of the midwife and on August 4, 1989, four months after the alleged birth of the child. Under the law, the attending physician or midwife in attendance at birth should cause the registration of such birth. Only in default of the physician or midwife, can the parent register the birth of his child. The certificate must be filed with the local civil registrar within thirty days after the birth.[16] Significantly, the birth certificate of the child stated Tomas Lopez and private respondent were legally married on October 31, 1974, in Hagonoy, Bulacan, which is false because even private respondent had admitted she is a "common-law wife".[17] This false entry puts to doubt the other data in said birth certificate.

Fourth, the trial court observed several times that when the child and Bienvenida were both in court, the two had strong similarities in their faces, eyes, eyebrows and head shapes. Resemblance between a minor and his alleged parent is competent and material evidence to establish parentage.[18] Needless to stress, the trial court's conclusion should be given high respect, it having had the opportunity to observe the physical appearances of the minor and petitioner concerned.

Fifth, Lourdes Vasquez testified that she assisted in Bienvenida's giving birth to Edgardo Tijing, Jr., at her clinic. Unlike private respondent, she presented clinical records consisting of a log book, discharge order and the signatures of petitioners.

All these considered, we are constrained to rule that subject minor is indeed the son of petitioners. The writ of habeas corpus is proper to regain custody of said child.

A final note. Parentage will still be resolved using conventional methods unless we adopt the modern and scientific ways available. Fortunately, we have now the facility and expertise in using DNA test[19] for identification and parentage testing. The University of the Philippines Natural Science Research Institute (UP-NSRI) DNA Analysis Laboratory has now the capability to conduct DNA typing using short tandem repeat (STR) analysis. The analysis is based on the fact that the DNA of a child/person has two (2) copies, one copy from the mother and the other from the father. The DNA from the mother, the alleged father and child are analyzed to establish parentage.[20] Of course, being a novel scientific technique, the use of DNA test as evidence is still open to challenge.[21] Eventually, as the appropriate case comes, courts should not hesitate to rule on the admissibility of DNA evidence. For it was said, that courts should apply the results of science when competently obtained in aid of situations presented, since to reject said result is to deny progress.[22] Though it is not necessary in this case to resort to DNA testing, in future it would be useful to all concerned in the prompt resolution of parentage and identity issues.

WHEREFORE, the instant petition is GRANTED. The assailed DECISION of the Court of Appeals is REVERSED and decision of the Regional Trial Court is REINSTATED. Costs against the private respondent.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Buena, and De Leon, Jr., JJ., concur.

[1] TSN, September 26, 1994, p. 6 and October 4, 1994, p. 19.

[2] TSN, September 28, 1994, p. 3 and October 4, 1994, p. 3.

[3] TSN, October 4, 1994, pp. 19-20.

[4] TSN, November 22, 1994, p. 15.

[5] Rollo, p. 44.

[6] Id. at 46.

[7] RTC Records, p. 118.

[8] Id. at 119-120.

[9] Rollo, pp. 27-28.

[10] Id. at 31.

[11] Id. at 10.

[12] Section 1, Rule 102, Rules of Court.

[13] Sombong vs. CA, 322 Phil 737, 750 (1996).

[14] Id. at 752.

[15] Acebedo Optical Inc. vs. CA, 320 Phil 506, 511-512 (1995).

[16] Section 4, Act No. 3753 or Civil Register Law.

[17] RTC Records, p. 40

[18] R. J. Francisco. Basic Evidence (1991) pp. 95-96 citing Chua Yeng vs. Collector of Customs, 28 Phil 591, 595 (1914).

[19] DNA (deoxyribonucleic acid) refers to the chain of molecules found in every cell of the body, except in red blood cells, which transmit hereditary characteristics among individuals. DNA testing is synonymous to DNA typing, DNA fingerprinting, DNA profiling, genetic testing or genetic fingerprinting.

[20] A Primer On DNA-Based Paternity Testing, and Guidelines For DNA Analysis, UP-NSRI-DNA Analysis Laboratory, University of the Philippines, Diliman, Quezon City.

[21] See S.C. Halos, Current Trends in DNA Typing and Applications in the Judicial System, a paper presented at the Third Convention and Seminar of Philippine Judges Association held on June 11, 1999, 4 Court Systems Journal 47, 55 (1999).

[22] Jao vs. CA, 152 SCRA 359, 366 (1987).

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