

IN THE MATTER OF THE PETITION FOR HABEAS CORPUS OF SUSANA MACAZO AND PACITA NUÑEZ. GUILLERMO MACAZO, PETITIONER AND APPELLANT, VS. BENILDO NUÑEZ, EFIGENIA NUÑEZ, RESPONDENT AND ...

G. R. No. 12772. January 24, 1959

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

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

Appeal from the decision of the Court of First Instance of Isabela, in its Special Proceedings No. 329, denying the petition for a writ of habeas corpus, filed by Guillermo Macazo on August 20, 1957 with the said court, to secure the release of Susana Macazo and her child, Pacita Nuñez, from the custody of the respondents, Benildo Nuñez and Efigenia Nuñez.

From the stipulation of facts of the parties, as well as the evidence adduced during the trial, the following appears: Susana Macazo was about 18 years of age at the time the petition was filed and was still so at the rendition of the decision appealed from, dated August 20, 1957; she is single, without parents, and a deaf-mute. Sometime during the year 1954, Teofilo Macazo, her oldest brother, requested the respondent Benildo Nuñez to take her in his employ as a laundry-woman; that since then up to the present, she has been staying with the respondents in Mallig, Isabela, in the latter's conjugal home; that for her services to the couple, she is receiving an average wage P1.00 daily and is given free quarters and food; that the couple are not related by consanguinity to the petitioner; that Susana, during the time that she was already living with the respondents, gave birth to Pacita Nunez, the paternity of the child having been admitted in open court by Benildo Nuñez himself to be his; and that petitioner is the second oldest brother of Susana.

The court below denied the petition for a writ of habeas corpus on the ground that it will only lie on two grounds: (1) when someone is deprived of liberty; or (2) is wrongfully prevented from exercising the legal custody to which he is entitled, over another person (*Conсорcia Ortiz vs. Gonzalo del Villar*, 57 Phil. 19-20).

"Sec. 1. To what habeas corpus extends. — Except as otherwise expressly provided by law, 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." (Rule 102, Rules of Court)

The lower court pointed out that in the present case it does not appear that Susana and her child are being deprived or unduly restrained of their liberty; on the contrary, it was sufficiently shown that they were allowed to move around, in and outside the house premises at will. Susana herself intimated to the court, in sign language, her desire to stay with the respondents rather than live with her brother, the petitioner herein.

As to the second ground for the issuance of the writ, the court argued that article 349 of the Civil Code of the Philippines explicitly enumerates the persons who could exercise "substitute parental authority" (which carries the right of custody over the persons subject thereto), and the petitioner is not one among those mentioned. Inclusio

unius est exclusio alterius.

"Art. 349. The following persons shall exercise substitute parental authority:

- (1) Guardians;
- (2) Teachers and professors;
- (3). Heads of children's homes, orphanages, and similar institutions;
- (4) Directors of trade establishments, with regard to apprentices;
- (5) Grandparents;
- (6) The oldest brother or sister." (New Civil Code; see also articles 354 and 355)

All these circumstances notwithstanding, we believe that the case should not have been dismissed. The court below should not have overlooked that by dismissing the petition, it was virtually sanctioning the continuance of an adulterous and scandalous relation between the minor and her married employer, respondent Benildo Nuñez, against all principles of law and morality. It is no excuse that the minor has expressed preference for remaining with said respondent, because the minor may not choose to continue an illicit relation that morals and law repudiate.

That Teofilo Macazo, wielding substitute parental power, originally placed his minor sister in the employ of the respondents is no evidence that he would agree to continue such employment after the same has degenerated into adulterous connection. Should it so appear, then the court has ample power to take steps to protect the minor; since, upon petition filed by some reputable resident" the court may order the one misusing his parental power to show cause why the child's custody should not be taken from him and to entrust her to a more suitable person as the facts may warrant (Rule 100, sec. 7; Civil Code, Art. 332).

The minor's welfare being the paramount consideration, the court below should not allow the technicality, that Teofilo Macazo was not originally made a party, to stand in the way of its giving the child full protection. Even in a habeas corpus proceeding the court had power to award temporary custody to the petitioner herein, or some other suitable person, after summoning and hearing all parties concerned. What matters is that the immoral situation disclosed by the records be not allowed to continue.

"While it may be requisite that matters pertaining to the guardianship of an infant be determined by proceedings in courts established expressly to exercise jurisdiction in such matters, this does not preclude the rendition of an order awarding temporary custody of a child in a habeas corpus proceeding, and such order continue in force until a court with jurisdiction of a proceeding in the guardianship of such child appoints a guardian of his person." (25 Am. Jur. 250)

In view of the foregoing, the decision appealed from is set aside and the records are ordered remanded to the court of origin for further proceedings in consonance with this opinion. Costs against appellees. So Ordered.

Paras, C.J., Bengzon, Padilla, Montemayor, Bautista Angelo, Labrador, Concepcion, and Endencia, JJ., concur.

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