

BONIFACIA P. VANCIL, PETITIONER, VS. HELEN G. BELMES, RESPONDENT.

G.R. No. 132223. June 19, 2001

Ponente: SANDOVAL-GUTIERREZ, J.

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SANDOVAL-GUTIERREZ, J.:

Petition for review on certiorari of the Decision of the Court of Appeals in CA-G.R. CV No. 45650, "In the Matter of Guardianship of Minors Valerie Vancil and Vincent Vancil - Bonifacia P. Vancil, Petitioner-Appellee, vs. Helen G. Belmes, Oppositor-Appellant," promulgated on July 29, 1997, and its Resolution dated December 18, 1997 denying the motion for reconsideration of the said Decision.

The facts of the case as summarized by the Court of Appeals in its Decision are:

"Petitioner, Bonifacia Vancil, is the mother of Reeder C. Vancil, a Navy serviceman of the United States of America who died in the said country on December 22, 1986. During his lifetime, Reeder had two (2) children named Valerie and Vincent by his common-law wife, Helen G. Belmes.

"Sometime in May of 1987, Bonifacia Vancil commenced before the Regional Trial Court of Cebu City a guardianship proceedings over the persons and properties of minors Valerie and Vincent docketed as Special Proceedings No. 1618-CEB. At the time, Valerie was only 6 years old while Vincent was a 2-year old child. It is claimed in the petition that the minors are residents of Cebu City, Philippines and have an estate consisting of proceeds from their father's death pension benefits with a probable value of P100,000.00.

"Finding sufficiency in form and in substance, the case was set for hearing after a 3-consecutive-weekly publications with the Sunstar Daily.

"On July 15, 1987, petitioner, Bonifacia Vancil was appointed legal and judicial guardian over the persons and estate of Valerie Vancil and Vincent Vancil Jr.

"On August 13, 1987, the natural mother of the minors, Helen Belmes, submitted an opposition to the subject guardianship proceedings asseverating that she had already filed a similar petition for guardianship under Special Proceedings No. 2819 before the Regional Trial Court of Pagadian City.

"Thereafter, on June 27, 1988, Helen Belmes followed her opposition with a motion for the Removal of Guardian and Appointment of a New One, asserting that she is the natural mother in actual custody of and exercising parental authority over the subject minors at Maralag, Dumingag, Zamboanga del Sur where they are permanently residing; that the petition was filed under an improper venue; and that at the time the petition was filed Bonifacia Vancil was a resident of 140 Hurliman Court, Canon City, Colorado, U.S.A. being a naturalized American citizen.

"On October 12, 1988, after due proceedings, the trial court rejected and denied Belmes' motion to remove and/or to disqualify Bonifacia as guardian of Valerie and Vincent Jr. and instead ordered petitioner Bonifacia Vancil to enter the office and perform her duties as such guardian upon the posting of a bond of P50,000.00. The subsequent attempt for a reconsideration was likewise dismissed in an Order dated November 24,

1988."[1]

On appeal, the Court of Appeals rendered its assailed Decision reversing the RTC order of October 12, 1988 and dismissing Special Proceedings No. 1618-CEB.

The Court of Appeals held:

"Stress should likewise be made that our Civil Code considers parents, the father, or in the absence, the mother, as natural guardian of her minor children. The law on parental authority under the Civil Code or P.D. 603 and now the New Family Code, (Article 225 of the Family Code) ascribe to the same legal pronouncements. Section 7 of Rule 93 of the Revised Rules of Court confirms the designation of the parents as ipso facto guardian of their minor children without need of a court appointment and only for good reason may another person be named. Ironically, for the petitioner, there is nothing on record of any reason at all why Helen Belmes, the biological mother, should be deprived of her legal rights as natural guardian of her minor children. To give away such privilege from Helen would be an abdication and grave violation of the very basic fundamental tenets in civil law and the constitution on family solidarity."[2]

On March 10, 1998, Bonifacia Vancil filed with this Court the present petition, raising the following "legal points":

"1. The Court of Appeals gravely erred in ruling that the preferential right of a parent to be appointed guardian over the persons and estate of the minors is absolute, contrary to existing jurisprudence.

"2. The Court of Appeals gravely erred in ruling that Oppositor Helen G. Belmes, the biological mother, should be appointed the guardian of the minors despite the undisputed proof that under her custody, her daughter minor Valerie Vancil was raped seven times by Oppositor's live-in partner.

"3. The respondent (sic) Court of Appeals gravely erred when it disqualified petitioner Bonifacia P. Vancil to be appointed as judicial guardian over the persons and estate of subject minors despite the fact that she has all the qualifications and none of the disqualifications as judicial guardian, merely on the basis of her U.S. citizenship which is clearly not a statutory requirement to become guardian."

At the outset, let it be stressed that in her "Manifestation/Motion," dated September 15, 1998, respondent Helen Belmes stated that her daughter Valerie turned eighteen on September 2, 1998 as shown by her Birth Certificate.[3] Respondent thus prayed that this case be dismissed with respect to Valerie, she being no longer a proper subject of guardianship proceedings. The said "Manifestation/Motion" was noted by this Court in its Resolution dated November 11, 1998.

Considering that Valerie is already of major age, this petition has become moot with respect to her. Thus, only the first and third "legal points" raised by petitioner should be resolved.

The basic issue for our resolution is who between the mother and grandmother of minor Vincent should be his guardian.

We agree with the ruling of the Court of Appeals that respondent, being the natural mother of the minor, has the preferential right over that of petitioner to be his guardian. This ruling finds support in Article 211 of the Family Code which provides:

"Art. 211. The father and the mother shall jointly exercise parental authority over the persons of their common children. In case of disagreement, the father's decision shall prevail, unless there is a judicial order to the contrary. xxx."

Indeed, being the natural mother of minor Vincent, respondent has the corresponding natural and legal right to his custody. In *Sagala-Eslao vs. Court of Appeals*,[4] this Court held:

"Of considerable importance is the rule long accepted by the courts that 'the right of parents to the custody of their minor children is one of the natural rights incident to parenthood,' a right supported by law and sound public policy. The right is an inherent one, which is not created by the state or decisions of the courts, but derives from the nature of the parental relationship."

Petitioner contends that she is more qualified as guardian of Vincent.

Petitioner's claim to be the guardian of said minor can only be realized by way of substitute parental authority pursuant to Article 214 of the Family Code, thus:

"Art. 214. In case of death, absence or unsuitability of the parents, substitute parental authority shall be exercised by the surviving grandparent. xxx."

In *Santos, Sr. vs. Court of Appeals*, [5]. this Court ruled:

"The law vests on the father and mother joint parental authority over the persons of their common children. In case of absence or death of either parent, the parent present shall continue exercising parental authority. Only in case of the parents' death, absence or unsuitability may substitute parental authority be exercised by the surviving grandparent."

Petitioner, as the surviving grandparent, can exercise substitute parental authority only in case of death, absence or unsuitability of respondent. Considering that respondent is very much alive and has exercised continuously parental authority over Vincent, petitioner has to prove, in asserting her right to be the minor's guardian, respondent's unsuitability. Petitioner, however, has not proffered convincing evidence showing that respondent is not suited to be the guardian of Vincent. Petitioner merely insists that respondent is morally unfit as guardian of Valerie considering that her (respondent's) live-in partner raped Valerie several times. But Valerie, being now of major age, is no longer a subject of this guardianship proceeding.

Even assuming that respondent is unfit as guardian of minor Vincent, still petitioner cannot qualify as a substitute guardian. It bears stressing that she is an American citizen and a resident of Colorado. Obviously, she will not be able to perform the responsibilities and obligations required of a guardian. In fact, in her petition, she admitted the difficulty of discharging the duties of a guardian by an expatriate, like her. To be sure, she will merely delegate those duties to someone else who may not also qualify as a guardian.

Moreover, we observe that respondent's allegation that petitioner has not set foot in the Philippines since 1987 has not been controverted by her. Besides, petitioner's old age and her conviction of libel by the Regional Trial Court, Branch 6, Cebu City in Criminal Case No. CBU-16884[6] filed by one Danilo R. Deen, will give her a second thought of staying here. Indeed, her coming back to this country just to fulfill the duties of a guardian to Vincent for only two years is not certain.

Significantly, this Court has held that courts should not appoint persons as guardians who are not within the jurisdiction of our courts for they will find it difficult to protect the wards. In *Guerrero vs. Teran*, [7]. this Court held:

"Doña Maria Muñoz y Gomez was, as above indicated, removed upon the theory that her appointment was void because she did not reside in the Philippine Islands. There is nothing in the law which requires the courts to appoint residents only as administrators or guardians. However, notwithstanding the fact that there are no statutory requirements upon this question, the courts, charged with the responsibilities of protecting the estates of deceased persons, wards of the estate, etc., will find much difficulty in complying with this duty by appointing administrators and guardians who are not personally subject to their jurisdiction. Notwithstanding that there is no statutory requirement, the courts should not consent to the appointment of persons as administrators and guardians who are not personally subject to the jurisdiction of our courts here."

WHEREFORE, the appealed Decision is hereby AFFIRMED, with modification in the sense that Valerie, who has attained the age of majority, will no longer be under the guardianship of respondent Helen Belmes.

Costs against petitioner.

SO ORDERED.

Melo, (Chairman), Panganiban, and Gonzaga-Reyes, JJ., concur.
Vitug, J., see concurring opinion.

[1] Rollo, pp. 43-44.

[2] Rollo, p. 47.

[3] Rollo, p. 127.

[4] 266 SCRA 317 (1997).

[5] 242 SCRA 407 (1995).

[6] Sentenced to suffer the penalty of imprisonment from 4 months and 1 day of prision correccional as maximum and a fine of P3,000.00 with subsidiary imprisonment in case of insolvency and to indemnify offended party in the sum of P200,000.00 as moral damages. See p. 118, Rollo.

[7] 13 Phils. 212 , 217 (1909).

CONCURRING OPINION

VITUG, ...:

I share the opinion very well expressed by Madame Justice Angelina Sandoval-Gutierrez, in her ponencia.

There is in law and jurisprudence a recognition of the deep ties that bind parent and child. Parents are thus placed first in rank in matters of parental authority. Substitute parental authority may be exercised by the grandparents only in case the parents have died or are absent or declared unfit in proper proceedings for that purpose.[1] Parental authority stands to include the right and duty to the custody of the child, excepting only, of course, what might otherwise be best for the child's welfare.

When the law speaks of family relations, it must be deemed to refer, unless the contrary is there indicated or the context of the law otherwise clearly conveys, to both legitimate and illegitimate ties. The child's illegitimacy does not in any way affect the order of priority in the exercise of parental authority. Indeed, Article 176 of the Family code states that an illegitimate child shall be under the parental authority of the mother who, consequentially, should also be entitled to the custody of the child.[2]

[1] Article 214, Family Code.

[2] David vs. Court of Appeals, 250 SCRA 82.

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