

SABRINA ARTADI BONDAGJY, PETITIONER, VS. FOUZI ALI BONDAGJY, JUDGE BENSAUDI I. ARABANI, SR., IN HIS CAPACITY AS PRESIDING JUDGE OF THE 3RD SHARI'A DISTRICT COURT, SHARI'A JUDICI...

G.R. No. 140817. December 07, 2001

Ponente: PARDO, J.

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PARDO, J.:

Is a wife, a Christian who converted to Islam before her marriage to a Muslim and converted back to Catholicism upon their separation, still bound by the moral laws of Islam in the determination of her fitness to be the custodian of her children?

We apply civil law in the best interest of the children.

The Facts

Respondent Fouzi (then 31 years of age) and Sabrina (then 20 years of age) were married on February 3, 1988, at the Manila Hotel, Ermita, Manila under Islamic rites.[1] On October 21, 1987, or four (4) months before her marriage, Sabrina became a Muslim by conversion. However, the conversion was not registered with the Code of Muslim Personal Laws of the Philippines.

Out of their union, they begot two (2) children, namely, Abdulaziz, born on June 13, 1989,[2] and Amouaje, born on September 29, 1990.[3] The children were born in Jeddah, Saudi Arabia.

At the time of their marriage, unknown to petitioner, respondent was still married to a Saudi Arabian woman whom he later divorced.

After their marriage, the couple moved in with respondent's family in Makati City. In 1990, the parties migrated and settled in Jeddah, Saudi Arabia where they lived for more than two years.

Sometime in December 1995, the children lived in the house of Sabrina's mother in 145 Tanguile Street, Ayala Alabang. Fouzi alleged that he could not see his children until he got an order from the court. Even with a court order, he could only see his children in school at De La Salle-Zobel, Alabang, Muntinlupa City.

On December 15, 1996, Sabrina had the children baptized as Christians[4] and their names changed from Abdulaziz Bondagjy to Azziz Santiago Artadi and from Amouaje Bondagjy to Amouage Selina Artadi.

Respondent alleged that on various occasions Sabrina was seen with different men at odd hours in Manila,[5] and that she would wear short skirts, sleeveless blouses, and bathing suits.[6] Such clothing are detestable under Islamic law on customs.

Fouzi claimed that Sabrina let their children sweep their neighbor's house for a fee of P40.00 after the children come home from school. Whenever Fouzi sees them in school,[7] the children would be happy to see him but they

were afraid to ride in his car. Instead, they would ride the jeepney in going home from school.

The Case

On March 11, 1996, respondent Fouzy Ali Bondagjy filed with the Shari'a District Court, Marawi City, an action[8] to obtain custody of his two minor children, Abdulaziz, 10 and Amouaje, 9.

On June 6, 1996, petitioner filed her answer with motion to dismiss on the ground of lack of jurisdiction over the persons of the parties since both parties were residents of Manila and for lack of cause of action. Petitioner likewise moved to transfer the venue to Zamboanga, which was more accessible by plane.

On June 18, 1996, the Shari'a District Court granted petitioner's motion to transfer the venue to Zamboanga.[9]

On June 27, 1996, respondent filed a reply[10] and motion for a temporary restraining order against petitioner.[11] He moved that petitioner desist from preventing him from exercising parental authority over his minor children.

On July 12, 1996, the court granted the motion and issued a writ of preliminary injunction.[12]

On August 12, 1996, the court ordered the parties to submit their memoranda on the issue of jurisdiction.

On October 30, 1996, the court granted petitioner's motion to withdraw motion to dismiss on the issue of jurisdiction and set the proceedings for pre-trial conference on November 14, 1996.

On November 14, 1996, respondent filed a motion to drop Joyce Artadi as defendant in the case and the trial court issued an order:

"During the pre-trial conference held this morning, the parties made their respective offer and counter proposals for amicable settlement. The plaintiff proposed (1) solidarity of the family, and (2) alternate custody. The defendant advanced the proposal of reasonable visitation of the father at their residence, for which the court will possibly fix the period or time and schedule of visitations.

"With these proposals, both parties agreed to continue the pre-trial conference on December 9, 1996.

"WHEREFORE, let the pre-trial conference be again held on December 9, 1996, at 9:00 o'clock in the morning." [13]

Meantime, petitioner filed with the Regional Trial Court, Branch 256, Muntinlupa City[14] an action for nullity of marriage, custody and support, ordered the parties to maintain status quo until further orders from said court.[15]

On March 2, 1999, petitioner filed another motion to dismiss[16] on the ground of lack of jurisdiction over the subject matter of the case since P.D. No. 1083 is applicable only to Muslims. On March 3, 1999, Fouzi filed an opposition to the motion to dismiss and argued that at the inception of the case, both parties were Muslims, Fouzi by birth and Sabrina by conversion.

On March 29, 1999, the court denied the motion to dismiss since P.D. No. 1083 had jurisdiction over all cases of Muslims involving custody.[17]

On April 23, 1999, Sabrina filed a motion to reconsider the order of March 29, 1999 denying the motion to dismiss.[18]

On June 22, 1999, the court denied petitioner's motion for reconsideration. Thus-

"WHEREFORE, in view of the foregoing reasons, the motion for reconsideration of the defendant-movant is hereby ordered DENIED; Defendant is further ordered to comply with the order of this Court dated July 12,

1996, to allow plaintiff to exercise his right of parental authority over their minor children with that of the defendant in accordance with article 71, of P.D. 1083, the Code of Muslim Personal Laws.

"Let the continuation of this case be set on July 15, 1999 at 8:30 in the morning." [19]

On July 15, 1999, the trial court decided to move forward to the next stage of the case and allowed respondent Fouzi to present evidence ex-parte.

On August 18, 1999, the court issued an order [20] giving respondent fifteen (15) days to submit his formal offer of evidence and fifteen (15) days from receipt of transcript of stenographic notes to submit memorandum.

The Shari'a District Court's Decision

On November 16, 1999, the Shari'a Court rendered a decision, the dispositive portion of which reads:

"WHEREFORE, foregoing considered, judgment is hereby rendered:

(a)

Awarding the custody of the minors Abdulaziz Artadi Bondagjy and Amouaje Artadi Bondagjy in favor of their natural father, petitioner Fouzi Ali Bondagjy; and for this purpose ordering the respondent Sabrina Artadi Bodagjy or any person having the care of said minors in her stead or behalf, to turn over, relinquish and surrender the custody of said minors to their natural father, the petitioner in this case Fouzi Ali Bondagjy;

(b)

Ordering the petitioner Fouzi Ali Bondagjy to ensure that the said minors are provided with reasonable support according to his means and in keeping with the standard of his family, and, a suitable home conducive to their physical,

(c)

mental and moral development; and, with his knowledge and under reasonable circumstances allow the respondent and natural mother of the said minors Mrs. Sabrina Artadi Bondagjy to visit her minor children Abdulaziz Artadi Bondagjy and Amouje Artadi Bondagjy." [21]

Hence, this petition. [22]

The Court's Ruling

The Shari'a District Court held that P.D. No. 1083 on Custody and Guardianship does not apply to this case because the spouses were not yet divorced.

However, the Shari'a District Court found petitioner unworthy to care for her children. Thus -

"A married woman, and a mother to growing children, should live a life that the community in which she lives considers morally upright, and in a manner that her growing minor children will not be socially and morally affected and prejudiced. It is sad to note that respondent has failed to observe that which is expected of a married woman and a mother by the society in which she lives. xxx The evidence of this case shows the extent of the moral depravity of the respondent, and the kind of concern for the welfare of her minor children which on the basis thereof this Court finds respondent unfit with the custody of her minor children.

"xxx Under the general principles of Muslim law, the Muslim mother may be legally disentitled to the custody of her minor children by reason of 'wickedness' when such wickedness is injurious to the mind of the child, such as when she engages in 'zina' (illicit sexual relation); or when she is unworthy as a mother; and, a woman is not worthy to be trusted with the custody of the child who is continually going out and leaving the child

hungry. (A. Baillie, Muhammadan Law, p. 435; citing Dar-ul-Muktar, p. 280)."[23]

On the other hand, the Shari'a Court found that respondent Fouzi was capable both personally and financially to look after the best interest of his minor children.[24]

"When he was asked during the direct examination the question that, 'if ever this Honorable Court will grant you custody of your children will you be able to house and give support to your children?' He answered, "Of course, even up to now I am giving support to my children; And my comment is that the father should give everything the needs of the family and now whatever the children needs even in school, considering the past, I have to love them, I have to care for my children. In school, even when they see something they love and like, I buy it for them. Or sometime (sic) I send my staff and bring something for them in their house. It is very hard, in school in front of other parents my son would still climb on my shoulder. I want to see them happy. I have pictures of my children with me, taken only last week."[25]

As a rule, factual findings of the lower courts are final and binding upon the parties.[26] The Court is not expected or required to examine or contrast the oral and documentary evidence submitted by the parties.[27] However, although this Court is not a trier of facts, it has the authority to review or reverse the factual findings of the lower courts if we find that these do not conform to the evidence on record.[28]

In *Reyes vs. Court of Appeals*,[29] the Court held that the exceptions to the rule that factual findings of the trial court are final and conclusive and may not be reviewed on appeal are the following: (1) when the inference made is manifestly mistaken, absurd or impossible; (2) when there is a grave abuse of discretion; (3) when the finding is grounded entirely on speculations, surmises or conjectures; (4) when the judgment of the Court of Appeals is based on misapprehension of facts; (5) when the findings of fact are conflicting; (6) when the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) when the findings of the Court of Appeals are contrary to those of the trial court; (8) when the findings of fact are conclusions without citation of specific evidence on which they are based; (9) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties and which, if properly considered, would justify a different conclusion, and (10) when the findings of fact of the Court of Appeals are premised on the absence of evidence and are contradicted by the evidence on record.

Fitness as a Mother

The burden is upon respondent to prove that petitioner is not worthy to have custody of her children. We find that the evidence presented by the respondent was not sufficient to establish her unfitness according to Muslim law or the Family Code.

In *Pilipinas Shell Corp. vs. Court of Appeals* (April 20, 2001, G.R. No. 114923), we said that in the hierarchy of evidentiary values, proof beyond reasonable doubt is at the highest level, followed by clear and convincing evidence, preponderance of evidence and substantial evidence, in that order.[30]

The standard in the determination of sufficiency of proof, however, is not restricted to Muslim laws. The Family Code shall be taken into consideration in deciding whether a non-Muslim woman is incompetent. What determines her capacity is the standard laid down by the Family Code now that she is not a Muslim.

Indeed, what determines the fitness of any parent is the ability to see to the physical, educational, social and moral welfare of the children,[31] and the ability to give them a healthy environment as well as physical and financial support taking into consideration the respective resources and social and moral situations of the parents.

The record shows that petitioner is equally financially capable of providing for all the needs of her children. The children went to school at De La Salle Zobel School, Muntinlupa City with their tuition paid by petitioner

according to the school's certification.[32]

Parental Authority and Custody

The welfare of the minors is the controlling consideration on the issue.[33]

In ascertaining the welfare and best interest of the children, courts are mandated by the Family Code to take into account all relevant considerations.[34]

Article 211 of the Family Code provides that the father and mother shall jointly exercise parental authority over the persons of their common children.

Similarly, P.D. No. 1083 is clear that where the parents are not divorced or legally separated, the father and mother shall jointly exercise just and reasonable parental authority and fulfill their responsibility over their legitimate children.

In *Sagala-Eslao v. Court of Appeals*,[35] we stated:

"xxx [Parental authority] 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.[36] 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.'[37]

"xxx

"The father and mother, being the natural guardians of unemancipated children, are dutybound and entitled to keep them in their custody and company."[38]

We do not doubt the capacity and love of both parties for their children, such that they both want to have them in their custody.

Either parent may lose parental authority over the child only for a valid reason. In cases where both parties cannot have custody because of their voluntary separation, we take into consideration the circumstances that would lead us to believe which parent can better take care of the children. Although we see the need for the children to have both a mother and a father, we believe that petitioner has more capacity and time to see to the children's needs. Respondent is a businessman whose work requires that he go abroad or be in different places most of the time. Under P.D. No. 603, the custody of the minor children, absent a compelling reason to the contrary, is given to the mother.[39]

However, the award of custody to the wife does not deprive the husband of parental authority. In the case of *Silva v. Court of Appeals*,[40] we said that:

"Parents have the natural right, as well as the moral and legal duty, to care for their children, see to their upbringing and safeguard their best interest and welfare. This authority and responsibility may not be unduly denied the parents; neither may it be renounced by them. Even when the parents are estranged and their affection for each other is lost, the attachment and feeling for their offsprings invariably remain unchanged. Neither the law nor the courts allow this affinity to suffer absent, of course, any real, grave and imminent threat to the well-being of the child."

Thus, we grant visitorial rights to respondent as his Constitutionally protected natural and primary right.[41]

The Fallo

WHEREFORE, the petition is hereby GRANTED. The decision in Spl. Proc. No. 13-96 is hereby SET ASIDE.

Petitioner SABRINA ARTADI BONDAGJY shall have custody over minors Abdulaziz, and Amouaje Bondagjy, until the children reach majority age. Both spouses shall have joint responsibility over all expenses of rearing the children.

The father, FOUZI ALI BONDAGJY, shall have visitorial rights at least once a week and may take the children out only with the written consent of the mother.

No costs.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Puno, Kapunan, and Ynares-Santiago, JJ., concur.

- [1] Marriage Contract, Records, p. 484.
- [2] Foreign Service of the Philippines, Report of Birth, Records, p. 490.
- [3] Ibid., Records, p. 491.
- [4] Baptismal Certificates issued by St. James the Great Parish, Ayala Alabang Village, Muntinlupa, M.M., Rollo, pp. 303-304.
- [5] Exhibit "T", Affidavit of Mr. Carlos A. Batalla, Records, p. 507-508.
- [6] Exhibits "E"-"L", Pictures of Petitioner, Records, 492-499.
- [7] Fouzi would sometimes offer to take them home in his car.
- [8] Spec. Proc. No. 13-96.
- [9] Records, p. 43.
- [10] Records, 47-50.
- [11] Records, pp. 45-46.
- [12] Records, pp. 51-52.
- [13] Records, p. 140.
- [14] Entitled Sabrina Artadi-Bondagjy vs. Fouzi Ali Bondagjy, Civil Case No. 98-070.
- [15] Dated May 8, 1998, Records, p. 309.
- [16] Records, pp. 338-362.
- [17] Records, pp. 370-371.
- [18] Records, pp. 387-393.
- [19] Records, pp. 409-411.
- [20] Records, p. 446.
- [21] Rollo, pp. 36-61.
- [22] Filed on January 7, 2000. On April 5, 2000, we gave due course to the petition (Rollo, pp. 220-221).

[23] Rollo, p. 59.

[24] Rollo, p. 60.

[25] Ibid.

[26] Cang v. Court of Appeals, 367 Phil 129 [1998], citing Del Mundo v. Court of Appeals, 322 Phil. 463, 471 [1996].

[27] Cang v. Court of Appeals, supra.; Imperial v. Court of Appeals, 328 Phil. 366 [1996].

[28] Philippine National Bank v. Court of Appeals, 187 SCRA 735, 739 [1990] citing Ongsiako v. Intermediate Appellate Court, 152 SCRA 627 [1987].

[29] 328 Phil. 171 [1996].

[30] Citing Manalo v. Roldan-Confesor, 215 SCRA 808 [1992].

[31] Unson III v. Navarro, 101 SCRA 182 [1980].

[32] Rollo, pp. 301-302.

[33] Perkins v. Perkins, 57 Phil. 217 [1932].

[34] Espiritu v. Court of Appeals, 312 Phil. 431 [1995].

[35] 334 Phil. 286 [1997], citing Santos, Sr. v. Court of Appeals, 312 Phil 482 [1995].

[36] Reyes v. Alvarez, 8 Phil. 732 [1907]; 2 Manresa 21; cited in IA. Tolentino, Civil Code of the Phils., Commentaries and Jurisprudence 604 (1990 ed.).

[37] Puig Pena cited in Reyes and Puno, An Outline of the Philippine Civil Law, 295 (4th ed., 1964).

[38] Family Code, Art. 209 and 211.

[39] Hontiveros v. IAC, 217 Phil 714 [1984].

[40] Supra.

[41] Art. II, Sec. 12, Constitution.

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