

REYMOND B. LAXAMANA, PETITIONER, VS. MA. LOURDES D. LAXAMANA, RESPONDENT.*G.R. No. 144763. September 03, 2002*

Ponente: YNARES-SANTIAGO, J.

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This is another sad tale of an estranged couple's tug-of-war over the custody of their minor children. Petitioner Reymond B. Laxamana and respondent Ma. Lourdes D. Laxamana met sometime in 1983. Petitioner, who came from a well-to-do family, was a graduate of Bachelor of Laws, while respondent, a holder of a degree in banking and finance, worked in a bank. After a whirlwind courtship, petitioner, 31 years old and respondent, 33, got married on June 6, 1984.[1] Respondent quit her job and became a full-time housewife. Petitioner, on the other hand, operated buy and sell, fishpond, and restaurant businesses for a living. The union was blessed with three children – twin brothers Joseph and Vincent, born on March 15, 1985, and Michael, born on June 19, 1986.[2]

All went well until petitioner became a drug dependent. In October 1991, he was confined at the Estrellas Home Care Clinic in Quezon City. He underwent psychotherapy and psychopharmacological treatment and was discharged on November 16, 1991.[3] Upon petition of respondent, the Regional Trial Court of Quezon City, Branch 101, ordered petitioner's confinement at the NARCOM-DRC for treatment and rehabilitation.[4] Again, on October 30, 1996, the trial court granted petitioner's voluntary confinement for treatment and rehabilitation at the National Bureau of Investigation-TRC.[5]

On April 25, 1997, the court issued an order declaring petitioner "already drug-free" and directing him to report to a certain Dr. Casimiro "for out-patient counseling for 6 months to one (1) year." [6]

Despite several confinements, respondent claimed petitioner was not fully rehabilitated. His drug dependence worsened and it became difficult for respondent and her children to live with him. Petitioner allegedly became violent and irritable. On some occasions, he even physically assaulted respondent. Thus, on June 17, 1999, respondent and her 3 children abandoned petitioner and transferred to the house of her relatives.

On August 31, 1999, petitioner filed with the Regional Trial Court of Quezon City, Branch 107, the instant petition for habeas corpus praying for custody of his three children.[7] Respondent opposed the petition, citing the drug dependence of petitioner.[8]

Meanwhile, on September 24, 1999, respondent filed a petition for annulment of marriage with Branch 102 of the Regional Trial Court of Quezon City.[9]

On September 27, 1999, petitioner filed in the habeas corpus case, a motion seeking visitation rights over his children.[10] On December 7, 1999, after the parties reached an agreement, the court issued an order granting visitation rights to petitioner and directing the parties to undergo psychiatric and psychological examination by a psychiatrist of their common choice. The parties further agreed to submit the case for resolution after the trial court's receipt of the results of their psychiatric examination. The full text of said order reads:

The parties appeared with their respective lawyers. A conference was held in open Court and the parties agreed on the following:

Effective this Saturday and every Saturday thereafter until further order the petitioner shall fetch the children every Saturday and Sunday at 9:00 o'clock in the morning from the house of the sister of respondent, Mrs. Corazon Soriano and to be returned at 5:00 o'clock in the afternoon of the same days.

That the parties agreed to submit themselves to Dr. Teresito Ocampo for psychiatric/psychological examination. Dr. Ocampo is hereby advised to go over the records of this case to enable him to have a thorough background of the problem. He is hereby ordered to submit his findings directly to this Court without furnishing the parties copies of his report. And after the receipt of that report, thereafter, the case shall be deemed submitted for decision.[11]

On January 6, 2000, Dr. Ocampo submitted the results of his psychiatric evaluation on the parties and their children. Pertinent portions thereof state:

SINGLY and COLLECTIVELY, the following information was obtained in the interview of the 3 children:

(1) THEY were affected psychologically by the drug-related behavior of their father:

- a. they have a difficult time concentrating on their studies.
- b. they are envious of their classmates whose families live in peace and harmony.
- c. once, MICHAEL had to quit school temporarily.

(2) THEY witnessed their father when he was under the influence of "shabu".

(3) THEY think their father had been angry at their paternal grandmother and this anger was displaced to their mother.

(4) THEY hope their father will completely and permanently recover from his drug habit; and their criteria of his full recovery include:

- a. he will regain his "easy-going" attitude.
- b. he won't be hot-headed anymore and would not drive their van recklessly.
- c. he would not tell unverifiable stories anymore.
- d. he would not poke a gun on his own head and ask the children who they love better, mom or dad.

(5) At one point one of the sons, became very emotional while he was narrating his story and he cried. I had to stop the interview.

(6) THEIR mother was fearful and terrified when their father quarreled with her.

(7) THEY hope their visits to their father will not interfere with their school and academic schedules.

x x x x x x x x

(3) MARILOU is one of 4 siblings. She graduated from college with a degree in banking and finance. SHE was a career (sic) woman; worked for a bank for ten years; subsequently quit her job to devote more time to her family.

(4) REYMOND is one of 5 siblings in a well-to-do family. His father was a physician. During his developmental years, he recalled how his mother complained incessantly about how bad the father was; only to find later that the truth was opposite to the complaints of his mother; that his father was nice, logical and

understanding. He recalled how he unselfishly served his father --- he opened the door when he arrived home; he got his portfolio; he brought the day's newspaper; he removed his shoes; he brought his glass of beer or his shot of whisky. In short, he served him like a servant. His father died of stroke in 1990.

REYMOND graduated from college with a degree in LAW in 1984; he did not pass the bar.

His work history is as follows:

- a. 1985 to 1989 – he operated fishponds.
- b. 1976 to 1991 – simultaneously, he operated restaurant.
- c. 1991 he engaged in the trading of vegetable, cooking oil, and mangos.
- d. HE handled the leasing of a family property to a fast food company.

The findings on the examination of the MENTAL STATUS and MENTAL PROCESSES OF MARILOU showed a woman who showed the psychological effects of the trauma she had in the past. She is slightly edgy and fidgety with any external noise. SHE answered all my questions coherently. Her emotional state was stable throughout the interview. She is of average intelligence. She was oriented to person, place and date. Her memory for recent and remote events was intact. She could process sets of figures and sets of similarities and differences. Her content of thought was negative for delusions, hallucinations, paranoia, suicidal and homicidal ideation. She could process abstract ideas and general information. Her attention span was adequate. There was no evidence of impaired judgment.

The Rorschach ink blot test gave responses such as “man touching a woman..., 2 people on a hi-five ..., 2 women chatting,... beast..., stuffed animal..., etc”. Her past reflected on her psyche. There is no creative process. There were no bizarre ideas.

The ZUNG anxiety/depression test highlighted “I get tired for no reason”; “I feel that I am useful and needed” (re, son). There is moderate depression. However, she could still make competent decisions.

The Social Adaptation Scale scored well in her capacity to adapt to her situation. There is no evidence of losing control.

The findings on the examination of the MENTAL STATUS and MENTAL PROCESSES of REYMOND showed an individual who presented himself in the best situation he could possibly be. He is cool, calm and collected. He answered all my questions coherently. He is of average intelligence. He was oriented to person, place and date. His memory for recent and remote events was intact (sic). His content of thought was negative for delusions, hallucinations, paranoia, suicidal and homicidal ideation. His attention span was adequate. He could process abstract ideas, sets of figures, and general information.

The Rorschach ink blot test gave responses such as “distorted chest ..., butterfly with scattered color..., cat ran over by a car..., nothing... 2 people..., monster etc”. There is no central theme in his responses. There were no bizarre ideas.

The Zung anxiety/depression test: “My mind is as clear as it used to be” (most of the time). There was no evidence of brain damage. There is no significant affective response that would affect his rationality.

The Social Adaptive Scale scored well in his capacity to adapt to his situation. He reached out well to others. He is in very good control of his emotions.

BASED ON MY FINDINGS I MADE THE FOLLOWING COMMENTS AND CONCLUSIONS:

I. The CRITERIA for cure in drug addiction consist of:

1. 5-years and 10-years intervals of drug-free periods.

2. change for the better of the maladaptive behaviors of the addict consisting of telling lies, manipulative behavior, melodramatic and hysterical actions.
3. constructive and reproductive outlets for the mental and physical energies of the addict.
4. behavior oriented towards spiritual values and other things.

II BASED on such scientific and observable criteria, I do not yet consider REYMOND LAXAMANA completely cured even though his drug urine test at Medical City for “shabu” was negative. (Emphasis supplied)

III I DO NOT DETECT any evidence that the paternal visits of the sons would be harmful or they would be in any danger. The academic schedules of the sons has be taken into account in determining the length and frequency of their visits.

x x x x x x x x.[12]

On January 14, 2000, the trial court rendered the assailed decision awarding the custody of the three children to respondent and giving visitation rights to petitioner. The dispositive portion thereof states:

WHEREFORE, in view of the foregoing, judgment is hereby rendered:

1. The children, Joseph, Michael and Vincent all surnamed Laxamana are hereby ordered to remain under the custody of the respondent.
2. The visitation arrangement as per Order of December 7, 1999 is hereby incorporated and forms part of this Decision. The parties are enjoined to comply with the terms stated therein.
3. The petitioner is hereby ordered to undergo “urine drug screen” for “shabu” for three times (3x) per month every ten (10) days, with the Dangerous Drugs Board. The said Board is hereby ordered to submit the results of all tests immediately as directed to this Court.
4. The petitioner is hereby referred to undergo regular counseling at the Free-Clinic at the East Avenue Medical Center, Department of Health Out Patient Psychiatry Department until further order. For this purpose, it is suggested that he should see Dr. Teresito P. Ocampo to make arrangements for said counseling.

Let copies of this Decision be furnished the Dangerous Drugs Board and the Free-Clinic, Out Patient Psychiatry Department, East Avenue Medical Center, Department of Health for their information and guidance.

SO ORDERED.[13]

Aggrieved, petitioner filed the instant petition for review on certiorari under Rule 45 of the Rules of Court, based on the following:

I

THE COURT A QUO HAS DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS WHEN IT RESOLVED THE ISSUE OF CUSTODY WITHOUT CONDUCTING A TRIAL TO DETERMINE FACTUAL ISSUES.

II

THE COURT A QUO HAS RESOLVED THE ISSUE OF CUSTODY IN A MANNER NOT IN ACCORD WITH LAW AND WITH THE APPLICABLE DECISIONS OF THIS HONORABLE SUPREME COURT

WHEN IT RESOLVED THE ISSUE OF CUSTODY WITHOUT CONSIDERING THE PARAMOUNT INTEREST AND WELFARE OF HEREIN PARTIES' THREE (3) MINOR CHILDREN.

III

THE ASSAILED DECISION IS NULL AND VOID AS IT DOES NOT COMPLY WITH SECTION 14 ARTICLE VIII OF THE CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES.[14]

The core issue for resolution in the instant petition is whether or not the trial court considered the paramount interest and welfare of the children in awarding their custody to respondent.

In controversies involving the care, custody and control of their minor children, the contending parents stand on equal footing before the court who shall make the selection according to the best interest of the child. The child if over seven years of age may be permitted to choose which parent he/she prefers to live with, but the court is not bound by such choice if the parent so chosen is unfit. In all cases, the sole and foremost consideration is the physical, educational, social and moral welfare of the child concerned, taking into account the respective resources as well as social and moral situations of the opposing parents.[15]

In *Medina v. Makabali*,[16] we stressed that this is as it should be, for in the continual evolution of legal institutions, the patria potestas has been transformed from the jus vitae ac necis (right of life and death) of the Roman law, under which the offspring was virtually a chattel of his parents, into a radically different institution, due to the influence of Christian faith and doctrines. The obligational aspect is now supreme. There is no power, but a task; no complex rights of parents but a sum of duties; no sovereignty, but a sacred trust for the welfare of the minor.

Mindful of the nature of the case at bar, the court a quo should have conducted a trial notwithstanding the agreement of the parties to submit the case for resolution on the basis, inter alia, of the psychiatric report of Dr. Teresito. Thus, petitioner is not estopped from questioning the absence of a trial considering that said psychiatric report, which was the court's primary basis in awarding custody to respondent, is insufficient to justify the decision. The fundamental policy of the State to promote and protect the welfare of children shall not be disregarded by mere technicality in resolving disputes which involve the family and the youth.[17] While petitioner may have a history of drug dependence, the records are inadequate as to his moral, financial and social well-being. The results of the psychiatric evaluation showing that he is not yet "completely cured" may render him unfit to take custody of the children, but there is no evidence to show that respondent is unfit to provide the children with adequate support, education, as well as moral and intellectual training and development. Moreover, the children in this case were 14 and 15 years old at the time of the promulgation of the decision, yet the court did not ascertain their choice as to which parent they want to live with. In its September 8, 1999 order, the trial court merely stated that: "The children were asked as to whether they would like to be with petitioner but there are indications that they entertain fears in their hearts and want to be sure that their father is no longer a drug dependent." [18] There is no showing that the court ascertained the categorical choice of the children. These inadequacies could have been remedied by an exhaustive trial probing into the accuracy of Dr. Ocampo's report and the capacity of both parties to raise their children. The trial court was remiss in the fulfillment of its duties when it approved the agreement of the parties to submit the case for decision on the basis of sketchy findings of facts.

In *Lacson v. Lacson*,[19] the case was remanded to the trial court with respect to the issue of custody. In the said case, the court a quo resolved the question of the children's custody based on the amicable settlement of the spouses. Stressing the need for presentation of evidence and a thorough proceedings, we explained—

It is clear that ... every child [has] rights which are not and should not be dependent solely on the wishes, much less the whims and caprices, of his parents. His welfare should not be subject to the parents' say-so or mutual agreement alone. Where, as in this case, the parents are already separated in fact, the courts must step in to determine in whose custody the child can better be assured the rights granted to him by law. The need, therefore, to present evidence regarding this matter, becomes imperative. A careful scrutiny of the records reveals that no such evidence was introduced in the CFI. This latter court relied merely on the mutual agreement of the spouses-parents. To be sure, this was not sufficient basis to determine the fitness of each parent to be the custodian of the children.

Besides, at least one of the children — Enrique, the eldest — is now eleven years of age and should be given the choice of the parent he wishes to live with. x x x.

In the instant case, the proceedings before the trial court leave much to be desired. While a remand of this case would mean further delay, the children's paramount interest demand that further proceedings be conducted to determine the fitness of both petitioner and respondent to assume custody of their minor children.

WHEREFORE, in view of all the foregoing, the instant case is REMANDED to the Regional Trial Court of Quezon City, Branch 107, for the purpose of receiving evidence to determine the fitness of petitioner and respondent to take custody of their children. Pending the final disposition of this case, custody shall remain with respondent but subject to petitioner's visitation rights in accordance with the December 7, 1999 order of the trial court.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Vitug, and Carpio, JJ., concur.

[*] Also referred to as "Marilou" in the records.

[1] Records, p. 68.

[2] Records, pp. 69-71.

[3] Records, p. 72.

[4] Records, p. 73.

[5] Records, p. 75.

[6] Records, p. 160.

[7]] Rollo, p. 74.

[8] Rollo, p. 83.

[9] Rollo, p. 31; Records, p. 61.

[10] Records, p. 49.

[11] Rollo, p. 113.

[12] Rollo, pp. 157-161.

[13] Rollo, pp. 38-39.

[14] Rollo, p. 20.

[15] Unson III v. Navarro, et al., 101 SCRA 183, 189 [1980] .

[16] 27 SCRA 503, 504 [1969] , citing Puig Peña, Derecho Civil, Vol. 2, part II, p. 153.

[17] Suarez, supra.

[18] Rollo, p. 82.

[19] 24 SCRA 837, 849-850 [1968] .

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