

MARIE ANTONETTE ABIGAIL C. SALIENTES, ORLANDO B. SALIENTES, AND ROSARIO C. SALIENTES, PETITIONERS, VS. LORAN S.D. ABANILLA, HONORABLE JUDGE PEDRO SABUNDAYO, JR., REGIONAL TRIAL ...

G.R. NO. 162734. August 29, 2006

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QUISUMBING, J.:

The instant petition assails the Decision[1] dated November 10, 2003 of the Court of Appeals in CA-G.R. SP No. 75680, which dismissed the petition for certiorari against the orders of the Regional Trial Court in Special Proceedings No. 03-004. Likewise assailed is the Court of Appeals' Resolution[2] dated March 19, 2004 denying reconsideration.

The facts of the case are as follows:

Private respondent Loran S.D. Abanilla and petitioner Marie Antonette Abigail C. Salientes are the parents of the minor Lorenzo Emmanuel S. Abanilla. They lived with Marie Antonette's parents, petitioners Orlando B. Salientes and Rosario C. Salientes. Due to in-laws problems, private respondent suggested to his wife that they transfer to their own house, but Marie Antonette refused. So, he alone left the house of the Salientes. Thereafter, he was prevented from seeing his son.

Later, Loran S.D. Abanilla in his personal capacity and as the representative of his son, filed a Petition for Habeas Corpus and Custody,[3] docketed as Special Proceedings No. 03-004 before the Regional Trial Court of Muntinlupa City. On January 23, 2003, the trial court issued the following order:

Upon verified Petition for a Writ of Habeas Corpus by Petitioners, the Respondents Marie Antonette Abigail C. Salientes, Orlando B. Salientes and Rosario C. Salientes are hereby directed to produce and bring before this Court the body of minor Lorenzo Emmanuel Salientes Abanilla on January 31, 2003 at 1:00 o'clock in the afternoon and to show cause why the said child should not be discharged from restraint.

Let this Writ be served by the Sheriff or any authorized representative of this Court, who is directed to immediately make a return.

SO ORDERED.[4]

Petitioners moved for reconsideration which the court denied.

Consequently, petitioners filed a petition for certiorari with the Court of Appeals, but the same was dismissed on November 10, 2003. The appellate court affirmed the February 24, 2003 Order of the trial court holding that its January 23, 2003 Order did not award the custody of the 2-year-old child to any one but was simply the standard order issued for the production of restrained persons. The appellate court held that the trial court was still about to conduct a full inquiry, in a summary proceeding, on the cause of the minor's detention and the matter of his custody. The Court of Appeals ruled thus:

WHEREFORE, the petition is hereby DISMISSED for lack of merit.

SO ORDERED.[5]

Petitioners moved for reconsideration, which was denied on March 19, 2004.

Hence, petitioners interposed this appeal by certiorari anchored on the following grounds:

- The Court of Appeals erred in not pronouncing the respondent judge gravely abused his discretion, amounting to lack or in excess of jurisdiction in issuing an order for the petitioner-mother to first show cause why her own three-year old child in her custody should not be discharged from a so-called "restraint" despite no evidence at all of restraint and no evidence of compelling reasons of maternal unfitness to deprive the petitioner-mother of her minor son of tender years. The assailed orders, resolutions and decisions of the lower court and the Court of Appeals are clearly void;
- The Court of Appeals erred in not pronouncing that the respondent judge gravely abused his discretion in issuing a writ of habeas corpus which clearly is not warranted considering that there is no unlawful restraint by the mother and considering further that the law presumes the fitness of the mother, thereby negating any notion of such mother illegally restraining or confining her very own son of tender years. The petition is not even sufficient in substance to warrant the writ. The assailed orders are clearly void.
- Contrary to the Court of Appeals decision, the "Sombong vs. CA" case supports rather than negates the position of the petitioners.
- Contrary to the Court of Appeals decision, summary proceeding does violence to the tender-years-rule
- The Court of Appeals failed to consider that the private respondent failed to present prima facie proof of any compelling reason of the unfitness of the petitioner-mother;
- The Court of Appeals failed to see that the New Rules on Custody SUFFICES AS REMEDY.[6]

Plainly put, the issue is: Did the Court of Appeals err when it dismissed the petition for certiorari against the trial court's orders dated January 23, 2003 and February 24, 2003?

Petitioners contend that the order is contrary to Article 213[7] of the Family Code, which provides that no child under seven years of age shall be separated from the mother unless the court finds compelling reasons to order otherwise. They maintain that herein respondent Loran had the burden of showing any compelling reason but failed to present even a prima facie proof thereof.

Petitioners posit that even assuming that there were compelling reasons, the proper remedy for private respondent was simply an action for custody, but not habeas corpus. Petitioners assert that habeas corpus is unavailable against the mother who, under the law, has the right of custody of the minor. They insist there was no illegal or involuntary restraint of the minor by his own mother. There was no need for the mother to show cause and explain the custody of her very own child.

Private respondent counters that petitioners' argument based on Article 213 of the Family Code applies only to the second part of his petition regarding the custody of his son. It does not address the first part, which pertains to his right as the father to see his son. He asserts that the writ of habeas corpus is available against any person who restrains the minor's right to see his father and vice versa. He avers that the instant petition is merely filed for delay, for had petitioners really intended to bring the child before the court in accordance with the new rules on custody of minors, they would have done so on the dates specified in the January 23, 2003 and the February 24, 2003 orders of the trial court.

Private respondent maintains that, under the law, he and petitioner Marie Antonette have shared custody and

parental authority over their son. He alleges that at times when petitioner Marie Antonette is out of the country as required of her job as an international flight stewardess, he, the father, should have custody of their son and not the maternal grandparents.

As correctly pointed out by the Court of Appeals, the assailed January 23, 2003 Order of the trial court did not grant custody of the minor to any of the parties but merely directed petitioners to produce the minor in court and explain why they are restraining his liberty. The assailed order was an interlocutory order precedent to the trial court's full inquiry into the issue of custody, which was still pending before it.

Under Rule 41, Section 1[8] of the Rules of Court, an interlocutory order is not appealable but the aggrieved party may file an appropriate special action under Rule 65. The aggrieved party must show that the court gravely abused its discretion in issuing the interlocutory order. In the present case, it is incumbent upon petitioners to show that the trial court gravely abused its discretion in issuing the order.

Habeas corpus may be resorted to in cases where rightful custody is withheld from a person entitled thereto.[9] Under Article 211[10] of the Family Code, respondent Loran and petitioner Marie Antonette have joint parental authority over their son and consequently joint custody. Further, although the couple is separated de facto, the issue of custody has yet to be adjudicated by the court. In the absence of a judicial grant of custody to one parent, both parents are still entitled to the custody of their child. In the present case, private respondent's cause of action is the deprivation of his right to see his child as alleged in his petition.[11] Hence, the remedy of habeas corpus is available to him.

In a petition for habeas corpus, the child's welfare is the supreme consideration. The Child and Youth Welfare Code[12] unequivocally provides that in all questions regarding the care and custody, among others, of the child, his welfare shall be the paramount consideration.[13]

Again, it bears stressing that the order did not grant custody of the minor to any of the parties but merely directed petitioners to produce the minor in court and explain why private respondent is prevented from seeing his child. This is in line with the directive in Section 9[14] of A.M. 03-04-04-SC[15] that within fifteen days after the filing of the answer or the expiration of the period to file answer, the court shall issue an order requiring the respondent (herein petitioners) to present the minor before the court. This was exactly what the court did.

Moreover, Article 213 of the Family Code deals with the judicial adjudication of custody and serves as a guideline for the proper award of custody by the court. Petitioners can raise it as a counter argument for private respondent's petition for custody. But it is not a basis for preventing the father to see his own child. Nothing in the said provision disallows a father from seeing or visiting his child under seven years of age.

In sum, the trial court did not err in issuing the orders dated January 23, 2003 and February 24, 2003. Hence, the Court of Appeals properly dismissed the petition for certiorari against the said orders of the trial court.

WHEREFORE, the petition is DENIED. The Decision dated November 10, 2003 and the Resolution dated March 19, 2004 of the Court of Appeals in CA-G.R. SP No. 75680 are AFFIRMED. Costs against petitioners.

SO ORDERED.

Carpio, Carpio Morales, Tinga and Velasco, Jr., JJ., concur.

[1] Rollo, pp. 11-15. Penned by Associate Justice Eubulo G. Verzola with Associate Justices Amelita G. Tolentino, and Edgardo F. Sundiam concurring.

[2] Id. at 8-9.

[3] Id. at 73-80.

[4] Id. at 11-12.

[5] Id. at 15.

[6] Id. at 34-35.

[7] ART. 213. In case of separation of the parents, parental authority shall be exercised by the parent designated by the Court. The Court shall take into account all relevant considerations, especially the choice of the child over seven years of age, unless the parent chosen is unfit.

No child under seven years of age shall be separated from the mother unless the court finds compelling reasons to order otherwise.

[8] SECTION 1. Subject of appeal. – . . .

No appeal may be taken from:

x x x x

(c) an interlocutory order;

x x x x

In all of the above instances where the judgment or final order is not appealable, the aggrieved party may file an appropriate special civil action under Rule 65.

[9] Rules of Court, Rule 102, 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.

[10] ART. 211. The father and the mother shall jointly exercise parental authority over the persons of their common children. In cases of disagreement, the father's decision shall prevail, unless there is a judicial order to the contrary.

[11] Rollo, pp. 75-77.

[12] Presidential Decree No. 603, as amended.

[13] Id., Article 8.

[14] SEC. 9. Notice of mandatory pre-trial. - Within fifteen days after the filing of the answer or the expiration of the period to file answer, the court shall issue an order: (1) fixing a date for the pre-trial conference; (2) directing the parties to file and serve their respective pre-trial briefs in such manner as shall ensure receipt thereof by the adverse party at least three days before the date of pre-trial; and (3) requiring the respondent to present the minor before the court. [Emphasis supplied.]

[15] Rules on Custody of Minors and Writ of Habeas Corpus in Relation to Custody of Minors.

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