

**NOEL B. BAGTAS, PETITIONER, VS. HON. RUTH C. SANTOS,
PRESIDING JUDGE OF REGIONAL TRIAL COURT, BRANCH 72,
ANTIPOLO CITY, AND ANTONIO AND ROSITA GALLARDO,
RESPONDENTS.**

G.R. No. 166682. November 27, 2009

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

This is a petition[1] for review on certiorari under Rule 45 of the Rules of Court. The petition challenges the 11 June 2004 Decision[2] and 5 January 2005 Resolution[3] of the Court of Appeals in CA-G.R. SP No. 77751. The Court of Appeals affirmed the 9 December 2002[4] and 21 April 2003 Orders of the Regional Trial Court (RTC), Judicial Region 4, Branch 72, Antipolo City, in Special Proceeding Case No. 02-1128.

The Facts

Antonio and Rosita S. Gallardo (Spouses Gallardo) are the parents of Maricel S. Gallardo (Maricel). Two weeks after graduating from high school in April 2000, Maricel ran away to live with her boyfriend. Maricel became pregnant and gave birth to Maryl Joy S. Gallardo (Maryl Joy). Maricel's boyfriend left her.

In February 2002, Maricel returned to her parents. On the same day, Maricel ran away again and lived with Noel B. Bagtas (Bagtas) and Lydia B. Sioson (Sioson) at Ma. Corazon, Unirock, Barangay Sta. Cruz, Antipolo City. Maricel went to Negros Occidental and left Maryl Joy in the custody of Bagtas and Sioson. In a letter[5] dated 5 February 2001, Maricel relinquished her rights over Maryl Joy to Bagtas and his wife. She stated:

Ako po si Maricel S. Gallardo 18 taong gulang ay kusang ipinagkaloob ang aking anak sa pagkadalaga sa mag-asawang Noel B. Bagtas at Neneth A. Bagtas sa kadahilanan pong itinakwil ako ng sarili kong mga magulang at hindi ko po kayang buhayin at dahil po sa tinakbuhan ako ng aking boyfriend kaya wala na pong ibang paraan para ako makabangon o makapagsimula ng panibagong buhay kaya para mabigyan ng magandang buhay ang aking anak inisip ko po na ito na ang pinaka madaling paraan para po sa pagbabago ng aking buhay.

Kaya mula sa araw na ito ay wala na akong karapatan sa aking anak. Sila ang tatayo bilang magulang ng aking anak.

In April 2002, the Spouses Gallardo tried to obtain the custody of Maryl Joy from Bagtas and Sioson. Bagtas and Sioson refused. Unable to settle the matter, the Spouses Gallardo filed with the RTC a petition[6] for habeas corpus.

In its Order[7] dated 10 July 2002, the RTC issued a writ of habeas[8] corpus directing the deputy sheriff to produce Maryl Joy before it and to summon Bagtas and Sioson to explain why they were withholding the custody

of Maryl Joy.

The Spouses Gallardo, Bagtas and Sioson entered into a compromise agreement. In its Order[9] dated 13 September 2002, the RTC stated:

In today's hearing, both parties appeared with their respective counsels and have agreed on the following:

- that the child should be placed in custody of the petitioners on Friday, Saturday and Sunday;
- that the child should be returned to the respondents by the petitioners on Sunday at 8:00 o'clock in the evening subject to visitatorial rights of the petitioners anytime of the day; and
- that the child can be brought by the respondents to Valenzuela but should be returned to the petitioners on Friday morning.

The above agreement shall take effect today and parties are ordered to comply strictly with the said agreement under pain of contempt in case of violation thereof.

On 29 September 2002, Bagtas and Sioson learned that Rosita S. Gallardo brought Maryl Joy to Samar. In their motion[10] dated 30 September 2002, Bagtas and Sioson prayed that the Spouses Gallardo be directed to produce Maryl Joy before the RTC, that they be directed to explain why they violated the RTC's 13 September 2002 Order, and that they be cited in contempt. In their motion[11] to dismiss dated 11 October 2002, Bagtas and Sioson prayed that the Spouses Gallardo's action be dismissed pursuant to Section 3, Rule 17, of the Rules of Court. Section 3 states that "If, for no justifiable cause, the plaintiff fails x x x to comply with x x x any order of the court, the complaint may be dismissed upon motion of the defendant or upon the court's own motion." Bagtas and Sioson claimed that the Spouses Gallardo failed to comply with the RTC's 13 September 2002 Order.

In its Order[12] dated 15 October 2002, the RTC cited the Spouses Gallardo in contempt, fined them P500, and ordered them to produce Maryl Joy before the trial court.

The RTC's Ruling

In its Order[13] dated 9 December 2002, the RTC dismissed the action for having become moot. The RTC stated:

In this petition, the prayer of the petitioners is to produce the person of Meryl [sic] Joy S. Gallardo before this court to be turned over to herein petitioners who are the maternal [grandparents] of said minor.

Since the person subject of the petition has already produced [sic] to this court and has been turned over to the petitioners, the issue on the petition for habeas corpus is now moot and academic without prejudice to the filing of the proper action to determine as to the rightful custody over the minor child.

In view thereof, x x x the Motion to Dismiss is hereby granted but without prejudice on the petitioners to file proper action for custody of the minor. (Emphasis supplied)

In their motion[14] for reconsideration dated 27 December 2002, Bagtas and Sioson alleged that the ground for the dismissal of the action was erroneous. The action should have been dismissed pursuant to Section 3, Rule 17, of the Rules of Court. They prayed that Maryl Joy be returned to them to preserve the status quo ante. Bagtas and Sioson stated:

5. Thus, the Honorable Court very clearly issued a conflicting Order because It has cited the [Spouses Gallardo] in contempt of court for violating the previous September 13, 2002 Order that the child should be returned to the respondents in the evening of September 29, 2002 (Sunday), and yet the Honorable Court has dismissed the petition for being moot and academic. This is in effect giving premium to the act of the petitioners of not turning over the child to respondents on September 29, 2002. Likewise, this is tantamount to

rewarding them for not producing the child in court in violation of the aforesaid September 13, 2002 Order;

6. Moreover, the Honorable Court has issued an unreasonable Order by stating that the dismissal of the instant case is without prejudice to the filing of the proper action for custody of the minor by the petitioners. Why would the petitioners still file the proper action for custody if they now have the custody of the minor?

P R A Y E R

WHEREFORE, premises considered, it is most respectfully prayed that the December 9, 2002 Order of the Honorable Court be partially reconsidered so that the dismissal of the case will not be based on the ground of being moot and academic but based on failure to comply with the September 13, 2002 pursuant [sic] to Section 3, Rule 17 of the 1997 Rules of Civil Procedure and that petitioners be consequently directed to return the person subject of the petition to the respondents to preserve the status quo ante.

In its Order[15] dated 21 April 2003, the RTC denied the motion for reconsideration. The RTC held that the sole purpose of the petition for habeas corpus was the production of Maryl Joy and that the Spouses Gallardo exercised substitute parental authority over Maryl Joy. The RTC stated that:

The allegations in the Petition show that the sole purpose for the filing of the Petition is to cause the production before the Court of the person of minor Meryl [sic] Joy S. Gallardo, not a determination of the legality or illegality of respondents' custody of the child, petitioners being aware of the fact that the child was left by their (petitioners') daughter to [sic] the custody of the respondents, as stated in par. no. 10 of the Petition.

The instant Petition is therefore, essentially not a petition for Habeas Corpus as contemplated in Rule 102, Revised Rules of Court which is resorted to in all cases of illegal confinement by which any person is deprived of his liberty (Cruz vs. CA, 322 SCRA 518), but is resorted to also where the rightful custody of any person is withheld from the person entitled thereto as contemplated in Rule 102, Revised Rules of Court. In order that the special remedy of Habeas Corpus maybe [sic] invoked, it is necessary that there should be an actual and effective restraint or deprivation of liberty. A nominal or moral restraint is not sufficient (Gonzales vs. Viola, et al., 61 Phil 824).

Since therefore, the purpose of the instant Petition has already been served, as the child has been produced and delivered to the petitioners, the instant Petition logically has become moot and academic. Petitioners are, under the law (Art. 214, Family Code), authorized to exercise substitute parental authority over the child in case of death, absence or unsuitability of the parents, the entitlement to the legal custody of the child being necessarily included therein to make possible and/or enable the petitioners to discharge their duties as substitute parents.

There is no inconsistency between the Order dated December 9, 2002 sought to be reconsidered, and the Order dated October 15, 2002, as the latter was issued pursuant to an incident, an interlocutory matter, that is, the failure of the petitioners to comply with the agreement reached between the parties in open court on September 13, 2002. The said Order dated October 15, 2002 is not a resolution of the case in the main, as it did not terminate the case. The Order dated December 9, 2002, on the other hand, terminated the case, and considering that the dismissal of the case was unqualified, the same amounted to an adjudication on the merits pursuant to Sec. 3, Rule 17 of the Revised Rules of Court Procedure, therefore, the agreement earlier entered by and between the herein parties is deemed terminated. (Emphasis supplied)

Bagtas filed with the Court of Appeals a petition[16] for certiorari under Rule 65 of the Rules of Court. Bagtas alleged that (1) the RTC erred when it ruled that the sole purpose of the 1 August 2002 petition was the production of Maryl Joy before the trial court, (2) the RTC erred when it ruled that the petition was "essentially not a petition for Habeas Corpus as contemplated in Rule 102," (3) the RTC erred when it ruled that there must be actual and effective deprivation of liberty, (4) the RTC erred when it ruled that the action had become moot, (5) the RTC erred when it ruled that the Spouses Gallardo had substitute parental authority over Maryl Joy, and (6)

the RTC erred when it ruled that there was no inconsistency between the 15 October and 9 December 2002 Orders.

The Court of Appeals' Ruling

In its Decision dated 11 June 2004, the Court of Appeals dismissed the petition and affirmed the 9 December 2002 and 23 April 2003 Orders of the RTC. The Court of Appeals held that:

In the second part of [Section 1, Rule 102, of the Rules of Court], x x x habeas corpus may be resorted to in cases where the rightful custody of any person is withheld from the person entitled thereto. Accordingly, the writ of habeas corpus is the proper remedy to enable herein private respondents to regain the custody of their minor grand daughter Maryl Joy who was admittedly left by her natural mother in the care of petitioner and Lydia Sioson.

Significantly, in custody cases involving minors, the question of illegal or involuntary restraint is not the underlying rationale for the availability of the writ of habeas corpus as a remedy; rather, the writ is prosecuted for the purpose of determining the right of custody of a child. By dismissing the petition a quo, the trial court in effect upheld private respondents' right of custody over the minor involved as against that of petitioner.

While it cannot be gainsaid that private respondents obtained initial custody of the minor in violation of a valid court order, we nonetheless sustain the judgment a quo dismissing the petition and validating such rightful custody over Maryl Joy. This is because private respondents are the grandparents of Maryl Joy, hence, lawfully authorized to exercise substitute parental authority over her in the absence of her parents. What is more, in awarding custody to private respondents, the best welfare of the child was taken into consideration inasmuch as, per report of the Court Social Worker, the implementation of the parties' agreement would cause more psychological damage and traumatic experience to Maryl Joy. To our mind, therefore, the violation of a court order pales in significance when considered alongside the best interest of the minor whose welfare requires that she be in the custody of her grandparents rather than petitioner's. x x x

Under the factual and legal milieu of the case, there is no question that as grandparents of the minor, Maryl Joy, private respondents have a far superior right of custody over her than petitioner.[17]

The Issues

In his petition dated 1 February 2005, Bagtas raised as issues that:

THE COURT OF APPEALS ERRED AND GRAVELY ABUSED ITS DISCRETION IN NOT FINDING THAT TRIAL COURT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION IN FINDING THAT THE ALLEGATION IN THE PETITION FOR HABEAS CORPUS SHOW THAT THE SOLE PURPOSE FOR THE FILING THEREOF IS TO CAUSE THE PRODUCTION BEFORE THE COURT OF THE PERSON IN WHOSE FAVOR IT WAS FILED.

THE COURT OF APPEALS GRAVELY ERRED AND ABUSED ITS DISCRETION IN NOT FINDING THAT THE TRIAL COURT GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OF JURISDICTION IN RULING THAT WITH THE DELIVERY OF THE CHILD FOR WHOM THE PETITION WAS FILED, THE PETITION FOR HABEAS CORPUS HAS BECOME MOOT AND ACADEMIC.

The Court's Ruling

The Court of Appeals erred when it affirmed the RTC's 9 December 2002 and 21 April 2003 Orders. In its Orders, the RTC ruled that, since the sole purpose of the petition for habeas corpus was the production of Maryl Joy

before the trial court, the action became moot when Maryl Joy was produced. The Court disagrees.

Section 1, Rule 102, of the Rules of Court states that the writ of habeas corpus shall extend to all cases where the rightful custody of any person is withheld from the persons entitled thereto. In cases involving minors, the purpose of a petition for habeas corpus is not limited to the production of the child before the court. The main purpose of the petition for habeas corpus is to determine who has the rightful custody over the child. In *Tijing v. Court of Appeals*,^[18] the Court held that:

The writ of habeas corpus extends 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. Thus, it is the proper legal remedy to enable parents to regain the custody of a minor child even if the latter be in the custody of a third person of his own free will. It may even be said that in custody cases involving minors, the question of illegal and involuntary restraint of liberty is not the underlying rationale for the availability of the writ as a remedy. Rather, it is prosecuted for the purpose of determining the right of custody over a child. (Emphasis supplied)

The RTC erred when it hastily dismissed the action for having become moot after Maryl Joy was produced before the trial court. It should have conducted a trial to determine who had the rightful custody over Maryl Joy. In dismissing the action, the RTC, in effect, granted the petition for habeas corpus and awarded the custody of Maryl Joy to the Spouses Gallardo without sufficient basis. In *Laxamana v. Laxamana*,^[19] the Court held that:

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. (Emphasis supplied)

Article 214 of the Civil Code states that in case of absence or unsuitability of the parents, substitute parental authority shall be exercised by the surviving grandparent. Article 216 states that in default of parents or a judicially appointed guardian, the surviving grandparent shall exercise substitute parental authority over the child. Accordingly, in its 21 April 2003 Order, the RTC held that:

Petitioners are, under the law (Art. 214, Family Code), authorized to exercise substitute parental authority over the child in case of death, absence or unsuitability of the parents, the entitlement to the legal custody of the child being necessarily included therein to make possible and/or enable the petitioners to discharge their duties as substitute parents.^[20]

In its 11 June 2004 Decision, the Court of Appeals held that:

While it cannot be gainsaid that private respondents obtained initial custody of the minor in violation of a valid court order, we nonetheless sustain the judgment a quo dismissing the petition and validating such rightful custody over Maryl Joy. This is because private respondents are the grandparents of Maryl Joy, hence, lawfully authorized to exercise substitute parental authority over her in the absence of her parents.^[21]

In determining who has the rightful custody over a child, the child's welfare is the most important consideration. The court is not bound by any legal right of a person over the child. In *Sombong v. Court of Appeals*,^[22] the Court held that:

The controversy does not involve the question of personal freedom, because an infant is presumed to be in the custody of someone until he attains majority age. In passing on the writ in a child custody case, the court deals

with a matter of an equitable nature. Not bound by any mere legal right of parent or guardian, the court gives his or her claim to the custody of the child due weight as a claim founded on human nature and considered generally equitable and just. Therefore, these cases are decided, not on the legal right of the petitioner to be relieved from unlawful imprisonment or detention, as in the case of adults, but on the court's view of the best interests of those whose welfare requires that they be in custody of one person or another. Hence, the court is not bound to deliver a child into the custody of any claimant or of any person, but should, in the consideration of the facts, leave it in such custody as its welfare at the time appears to require. In short, the child's welfare is the supreme consideration.

Considering that the child's welfare is an all-important factor in custody cases, the Child and Youth Welfare Code unequivocally provides that in all questions regarding the care and custody, among others, of the child, his welfare shall be the paramount consideration. In the same vein, the Family Code authorizes the courts to, if the welfare of the child so demands, deprive the parents concerned of parental authority over the child or adopt such measures as may be proper under the circumstances. (Emphasis supplied)

In Sombong,[23] the Court laid down three requisites in petitions for habeas corpus involving minors: (1) the petitioner has a right of custody over the minor, (2) the respondent is withholding the rightful custody over the minor, and (3) the best interest of the minor demands that he or she be in the custody of the petitioner. In the present case, these requisites are not clearly established because the RTC hastily dismissed the action and awarded the custody of Maryl Joy to the Spouses Gallardo without conducting any trial.

The proceedings before the RTC leave so much to be desired. While a remand of the case would mean further delay, Maryl Joy's best interest demands that proper proceedings be conducted to determine the fitness of the Spouses Gallardo to take care of her.

WHEREFORE, the Court REMANDS the case to the Regional Trial Court, Judicial Region 4, Branch 72, Antipolo City, for the purpose of receiving evidence to determine the fitness of the Spouses Antonio and Rosita S. Gallardo to have custody of Maryl Joy Gallardo.

SO ORDERED.

Leonardo-De Castro[*], Brion, Del Castillo, and Abad., JJ., concur.

[*] Designated additional member per Special Order No. 776.

[1] Rollo, pp. 3-15.

[2] Id. at 19-27. Penned by Associate Justice Rebecca De Guia-Salvador, with Associate Justices Salvador J. Valdez, Jr. and Aurora Santiago-Lagman, concurring.

[3] Id. at 29.

[4] Id. at 85-86. Penned by Judge Ruth Cruz-Santos.

[5] Id. at 39.

[6] Id. at 42-44.

[7] Id. at 45.

[8] Id. at 46.

[9] Id. at 60.

[10] Id. at 63-65.

[11] Id. at 67-71.

[12] Id. at 74-76.

[13] Id. at 85-86.

[14] Id. at 87-90.

[15] Id. at 98-99.

[16] CA rollo, pp. 2-55.

[17] Rollo, pp. 25-26.

[18] 406 Phil. 449, 458 (2001).

[19] 437 Phil. 104, 114-115 (2002).

[20] Rollo, p. 99.

[21] Id. at 25.

[22] 322 Phil. 737, 750-751 (1996).

[23] Id. at 751.

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