

INFANT JULIAN YUSAY CARAM, REPRESENTED BY HIS MOTHER, MA. CHRISTINA YUSAY CARAM, PETITIONER, VS. ATTY. MARIJOY D. SEGUI, ATTY. SALLY D. ESCUTIN, VILMA B. CABRERA, CELIA C. YANGC...

G.R. No. 193652. August 05, 2014

Ponente: VILLARAMA, JR., J.

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VILLARAMA, JR., J.:

Before us is a petition for review on certiorari under Rule 45 of the 1997 Rules of Civil Procedure, as amended, and Section 19[1] of the Rule on the Writ of Amparo[2] seeking to set aside the August 17, 2010[3] and September 6, 2010[4] Orders of the Regional Trial Court (RTC), Branch 106 of Quezon City, in Sp. Proc. Case No. Q-10-67604. The RTC had dismissed petitioner's petition for the issuance of a writ of amparo which petitioner filed in order for her to regain parental authority and custody of Julian Yusay Caram (Baby Julian), her biological child, from the respondent officers of the Department of Social Welfare and Development (DSWD).

The factual antecedents as gleaned from the records follow:

Petitioner Ma. Christina Yusay Caram (Christina) had an amorous relationship with Marcelino Gicano Constantino III (Marcelino) and eventually became pregnant with the latter's child without the benefit of marriage. After getting pregnant, Christina mislead Marcelino into believing that she had an abortion when in fact she proceeded to complete the term of her pregnancy. During this time, she intended to have the child adopted through Sun and Moon Home for Children (Sun and Moon) in Parañaque City to avoid placing her family in a potentially embarrassing situation for having a second illegitimate son.[5]

On July 26, 2009, Christina gave birth to Baby Julian at Amang Rodriguez Memorial Medical Center, Marikina City.[6] Sun and Moon shouldered all the hospital and medical expenses. On August 13, 2009, Christina voluntarily surrendered Baby Julian by way of a Deed of Voluntary Commitment[7] to the DSWD.

On November 26, 2009, Marcelino suffered a heart attack and died[8] without knowing about the birth of his son. Thereafter, during the wake, Christina disclosed to Marcelino's family that she and the deceased had a son that she gave up for adoption due to financial distress and initial embarrassment. Marcelino's family was taken aback by the revelation and sympathized with Christina. After the emotional revelation, they vowed to help her recover and raise the baby.[9]

On November 27, 2009, the DSWD, through Secretary Esperanza I. Cabral issued a certificate[10] declaring Baby Julian as "Legally Available for Adoption." A local matching conference was held on January 27, 2010 and on February 5, 2010, Baby Julian was "matched" with the spouses Vergel and Filomina Medina (Medina Spouses) of the Kaisahang Bahay Foundation. Supervised trial custody then commenced.[11]

On May 5, 2010, Christina who had changed her mind about the adoption, wrote a letter to the DSWD asking for the suspension of Baby Julian's adoption proceedings. She also said she wanted her family back together.[12]

On May 28, 2010, the DSWD, through respondent Atty. Marijoy D. Segui, sent a Memorandum[13] to DSWD Assistant Secretary Vilma B. Cabrera informing her that the certificate declaring Baby Julian legally available for adoption had attained finality on November 13, 2009, or three months after Christina signed the Deed of Voluntary Commitment which terminated her parental authority and effectively made Baby Julian a ward of the State. The said Memorandum was noted by respondent Atty. Sally D. Escutin, Director IV of the Legal Service, DSWD.

On July 12, 2010, Noel Gicano Constantino, Marcelino's brother, sent a letter to Atty. Escutin informing her that a DNA testing was scheduled on July 16, 2010 at the DNA Analysis Laboratory at the University of the Philippines.[14]

On July 16, 2010, Assistant Secretary Cabrera sent a letter[15] to Noel Constantino stating that it would not allow Baby Julian to undergo DNA testing. Assistant Secretary Cabrera informed Noel Constantino that the procedures followed relative to the certification on the availability of the child for adoption and the child's subsequent placement to prospective adoptive parents were proper, and that the DSWD was no longer in the position to stop the adoption process. Assistant Secretary Cabrera further stated that should Christina wish to reacquire her parental authority over Baby Julian or halt the adoption process, she may bring the matter to the regular courts as the reglementary period for her to regain her parental rights had already lapsed under Section 7 of Republic Act (R.A.) No. 9523.[16]

On July 27, 2010, Christina filed a petition[17] for the issuance of a writ of amparo before the RTC of Quezon City seeking to obtain custody of Baby Julian from Atty. Segui, Atty. Escutin, Assistant Secretary Cabrera and Acting Secretary Celia C. Yangco, all of the DSWD.

In her petition, Christina accused respondents of "blackmailing" her into surrendering custody of her child to the DSWD utilizing what she claims to be an invalid certificate of availability for adoption which respondents allegedly used as basis to misrepresent that all legal requisites for adoption of the minor child had been complied with.

Christina argued that by making these misrepresentations, the respondents had acted beyond the scope of their legal authority thereby causing the enforced disappearance of the said child and depriving her of her custodial rights and parental authority over him.

On the basis of the said petition, the RTC, Branch 106 of Quezon City, through its Presiding Judge, the Honorable Angelene Mary W. Quimpo-Sale, issued a Writ of Amparo[18] on July 28, 2010 commanding the four respondents to produce the body of Baby Julian at a hearing scheduled on August 4, 2010. Respondents were also required to file their verified written return to the writ pursuant to Section 9[19] of the Amparo Rule, within five working days from the service of the writ.

The respondents complied with the writ and filed their Return[20] on August 2, 2010 praying that the petition be denied for being the improper remedy to avail of in a case relating to a biological parent's custodial rights over her child.

On August 4, 2010, respondents appeared before the RTC but respondents did not bring the child, stating that threats of kidnapping were made on the child and his caregivers. To give respondents another chance, the RTC reset the hearing to August 5, 2010.

At the August 5, 2010 hearing, the Office of the Solicitor General (OSG) entered its appearance as representative of the State and prayed that its lawyers be given time to file their memorandum or position paper in this case. In turn, the RTC acknowledged the appearance of the OSG and allowed its representatives to actively participate in

the arguments raised during the said hearing.

Relative to the matter of the parties submitting additional pleadings, Judge Sale narrowed the issues to be discussed by providing for the following guidelines, thus:

To abbreviate the proceedings, in view of all the manifestations and counter-manifestations made by the counsels, the court enjoined the parties to file their respective position papers on the following issues:

- Whether or not this court has jurisdiction over the instant case;
- Whether or not this petition is the proper remedy based on the facts of the case and prayer in the petition; and
- Whether or not the prayer in the petition should be granted and custody of the child be given to his biological mother.

The parties were given five (5) days from today to file their respective position papers based on these three main issues. They may include other related issues they deem essential for the resolution of this case. Set this case for further hearing, if necessary, on August 18, 2010 at 9:00 a.m.[21]

In the same order, Judge Sale also acknowledged that the child subject of the case was brought before the court and the petitioner was allowed to see him and take photographs of him.

On August 17, 2010, the RTC dismissed the petition for issuance of a writ of amparo without prejudice to the filing of the appropriate action in court. The RTC held that Christina availed of the wrong remedy to regain custody of her child Baby Julian.[22] The RTC further stated that Christina should have filed a civil case for custody of her child as laid down in the Family Code and the Rule on Custody of Minors and Writ of Habeas Corpus in Relation to Custody of Minors. If there is extreme urgency to secure custody of a minor who has been illegally detained by another, a petition for the issuance of a writ of habeas corpus may be availed of, either as a principal or ancillary remedy, pursuant to the Rule on Custody of Minors and Writ of Habeas Corpus in Relation to Custody of Minors.[23]

On August 20, 2010, Christina filed a motion for reconsideration[24] arguing that since the RTC assumed jurisdiction of the petition for the issuance of a writ of amparo, the latter is duty-bound to dispose the case on the merits.[25] The RTC, however, denied Christina's motion for reconsideration on September 6, 2010 maintaining that the latter availed of the wrong remedy and that the Supreme Court intended the writ of amparo to address the problem of extrajudicial killings and enforced disappearances.[26]

On September 28, 2010, Christina directly elevated the case before this Court, via a petition for review on certiorari under Rule 45 of the 1997 Rules of Civil Procedure, as amended, in relation to Section 19 of the Rule on the Writ of Amparo. In her petition, Christina prayed that the Court (1) set aside the August 17, 2010 and September 6, 2010 Orders of the RTC, (2) declare R.A. No. 9523 unconstitutional for being contrary to A.M. No. 02-6-02-SC,[27] which was promulgated by the Supreme Court, and for violating the doctrine of separation of powers, (3) declare the "enforced separation" between her and Baby Julian as violative of her rights to life, liberty and security, and (4) grant her the privilege of availing the benefits of a writ of amparo so she could be reunited with her son.[28]

The only relevant issue presented before the Court worthy of attention is whether a petition for a writ of amparo is the proper recourse for obtaining parental authority and custody of a minor child. This Court will not belabor to discuss Christina's arguments relating to the supposed unconstitutionality of R.A. No. 9523 as Congress has the plenary power to repeal, alter and modify existing laws[29] and A.M. No. 02-6-02-SC functions only as a means to enforce the provisions of all adoption and adoption-related statutes before the courts.

Now, in her petition, Christina argues that the life, liberty and security of Baby Julian is being violated or threatened by the respondent DSWD officers' enforcement of an illegal Deed of Voluntary Commitment between her and Sun and Moon. She claims that she had been "blackmailed" through the said Deed by the DSWD officers and Sun and Moon's representatives into surrendering her child thereby causing the "forced separation" of the said infant from his mother. Furthermore, she also reiterates that the respondent DSWD officers acted beyond the scope of their authority when they deprived her of Baby Julian's custody.[30]

The Court rejects petitioner's contentions and denies the petition.

Section 1 of the Rule on the Writ of Amparo provides as follows:

SECTION 1. Petition. – The petition for a writ of amparo is a remedy available to any person whose right to life, liberty and security is violated or threatened with violation by an unlawful act or omission of a public official or employee, or of a private individual or entity.

The writ shall cover extralegal killings and enforced disappearances or threats thereof.

In the landmark case of *Secretary of National Defense, et al. v. Manalo, et al.*,[31] this Court held:

[T]he Amparo Rule was intended to address the intractable problem of "extralegal killings" and "enforced disappearances," its coverage, in its present form, is confined to these two instances or to threats thereof. "Extralegal killings" are "killings committed without due process of law, i.e., without legal safeguards or judicial proceedings." On the other hand, "enforced disappearances" are "attended by the following characteristics: an arrest, detention or abduction of a person by a government official or organized groups or private individuals acting with the direct or indirect acquiescence of the government; the refusal of the State to disclose the fate or whereabouts of the person concerned or a refusal to acknowledge the deprivation of liberty which places such persons outside the protection of law.

This pronouncement on the coverage of the writ was further cemented in the latter case of *Lozada, Jr. v. Macapagal-Arroyo*[32] where this Court explicitly declared that as it stands, the writ of amparo is confined only to cases of extrajudicial killings and enforced disappearances, or to threats thereof. As to what constitutes "enforced disappearance," the Court in *Navia v. Pardico*[33] enumerated the elements constituting "enforced disappearances" as the term is statutorily defined in Section 3(g) of R.A. No. 9851[34] to wit:

(a)

that there be an arrest, detention, abduction or any form of deprivation of liberty;

(b)

that it be carried out by, or with the authorization, support or acquiescence of, the State or a political organization;

(c)

that it be followed by the State or political organization's refusal to acknowledge or give information on the fate or whereabouts of the person subject of the amparo petition; and,

(d)

that the intention for such refusal is to remove subject person from the protection of the law for a prolonged period of time.

In this case, Christina alleged that the respondent DSWD officers caused her "enforced separation" from Baby Julian and that their action amounted to an "enforced disappearance" within the context of the Amparo rule.

Contrary to her position, however, the respondent DSWD officers never concealed Baby Julian's whereabouts. In fact, Christina obtained a copy of the DSWD's May 28, 2010 Memorandum[35] explicitly stating that Baby Julian was in the custody of the Medina Spouses when she filed her petition before the RTC. Besides, she even admitted in her petition for review on certiorari that the respondent DSWD officers presented Baby Julian before the RTC during the hearing held in the afternoon of August 5, 2010.[36] There is therefore, no "enforced disappearance" as used in the context of the Amparo rule as the third and fourth elements are missing.

Christina's directly accusing the respondents of forcibly separating her from her child and placing the latter up for adoption, supposedly without complying with the necessary legal requisites to qualify the child for adoption, clearly indicates that she is not searching for a lost child but asserting her parental authority over the child and contesting custody over him.[37]

Since it is extant from the pleadings filed that what is involved is the issue of child custody and the exercise of parental rights over a child, who, for all intents and purposes, has been legally considered a ward of the State, the Amparo rule cannot be properly applied.

To reiterate, the privilege of the writ of amparo is a remedy available to victims of extra-judicial killings and enforced disappearances or threats of a similar nature, regardless of whether the perpetrator of the unlawful act or omission is a public official or employee or a private individual. It is envisioned basically to protect and guarantee the right to life, liberty and security of persons, free from fears and threats that vitiate the quality of life.

WHEREFORE, the petition is DENIED. The August 17, 2010 and September 6, 2010 Orders of the Regional Trial Court, Branch 106, Quezon City in Sp. Proc. Case No. Q-10-67604 are AFFIRMED without prejudice to petitioner's right to avail of proper legal remedies afforded to her by law and related rules.

No costs.

SO ORDERED.

C.J., Carpio, (Acting C.J.) Velasco, Jr., Leonardo-De Castro, Brion, Peralta, Bersamin, Del Castillo, Perez, Mendoza, Reyes, Perlas-Bernabe, and Leonen, JJ., concur.
Serenio, C.J., on leave.

[1] SEC. 19. Appeal. – Any party may appeal from the final judgment or order to the Supreme Court under Rule 45. The appeal may raise questions of fact or law or both.

The period of appeal shall be five (5) working days from the date of notice of the adverse judgment.

The appeal shall be given the same priority as in habeas corpus cases.

[2] A.M. No. 07-9-12-SC effective October 24, 2007.

[3] Rollo, pp. 25-35. Penned by Presiding Judge Angelene Mary W. Quimpo Sale.

[4] Id. at 41-44.

[5] Records, pp. 2-3.

[6] Id. at 23-24.

[7] Id. at 55.

[8] Rollo, p. 66.

[9] Records, p. 3; id. at 26.

[10] Id. at 170.

[11] Id. at 68.

[12] Id. at 10.

[13] Id. at 68-69.

[14] Id. at 28-29.

[15] Id. at 30-31.

[16] AN ACT REQUIRING THE CERTIFICATION OF THE DEPARTMENT OF SOCIAL WELFARE AND DEVELOPMENT (DSWD) TO DECLARE A “CHILD LEGALLY AVAILABLE FOR ADOPTION” AS A PREREQUISITE FOR ADOPTION PROCEEDINGS, AMENDING FOR THIS PURPOSE CERTAIN PROVISIONS OF REPUBLIC ACT NO. 8552, OTHERWISE KNOWN AS THE DOMESTIC ADOPTION ACT OF 1998, REPUBLIC ACT NO. 8043, OTHERWISE KNOWN AS THE INTER-COUNTRY ADOPTION ACT OF 1995, PRESIDENTIAL DECREE NO. 603, OTHERWISE KNOWN AS THE CHILD AND YOUTH WELFARE CODE, AND FOR OTHER PURPOSES.

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SEC. 7. Declaration of Availability for Adoption of Involuntarily Committed Child and Voluntarily Committed Child. – The certificate declaring a child legally available for adoption in case of an involuntarily committed child under Article 141, paragraph 4(a) and Article 142 of Presidential Decree No. 603 shall be issued by the DSWD within three (3) months following such involuntary commitment.

In case of voluntary commitment as contemplated in Article 154 of Presidential Decree No. 603, the certification declaring the child legally available for adoption shall be issued by the Secretary within three (3) months following the filing of the Deed of Voluntary Commitment, as signed by the parent(s) with the DSWD.

Upon petition filed with the DSWD, the parent(s) or legal guardian who voluntarily committed a child may recover legal custody and parental authority over him/her from the agency or institution to which such child was voluntarily committed when it is shown to the satisfaction of the DSWD that the parent(s) or legal guardian is in a position to adequately provide for the needs of the child: Provided, That, the petition for restoration is filed within (3) months after the signing of the Deed of Voluntary Commitment. (Emphasis supplied.)

[17] Records, pp. 1-9.

[18] Id. at 33.

[19] SEC. 9. Return; Contents. – Within seventy-two (72) hours after service of the writ, the respondent shall file a verified written return together with supporting affidavits which shall, among other things, contain the following:

(a) The lawful defenses to show that the respondent did not violate or threaten with violation the right to life, liberty and security of the aggrieved party, through any act or omission;

(b) The steps or actions taken by the respondent to determine the fate or whereabouts of the aggrieved party and the person or persons responsible for the threat, act or omission;

(c) All relevant information in the possession of the respondent pertaining to the threat, act or omission against the

aggrieved party; and

(d) If the respondent is a public official or employee, the return shall further state the actions that have been or will still be taken:

(i) to verify the identity of the aggrieved party;

(ii) to recover and preserve evidence related to the death or disappearance of the person identified in the petition which may aid in the prosecution of the person or persons responsible;

(iii) to identify witnesses and obtain statements from them concerning the death or disappearance;

(iv) to determine the cause, manner, location and time of death or disappearance as well as any pattern or practice that may have brought about the death or disappearance;

(v) to identify and apprehend the person or persons involved in the death or disappearance; and

(iv) to bring the suspected offenders before a competent court.

The return shall also state other matters relevant to the investigation, its resolution and the prosecution of the case.

[20] Records, pp. 37-54.

[21] Id. at 92.

[22] Supra note 3.

[23] Id. at 34.

[24] Id. at 36-40.

[25] Id. at 37.

[26] Supra note 4.

[27] Rule on Adoption, which took effect on August 22, 2002.

[28] Rollo, p. 22.

[29] See *Duarte v. Dade*, 32 Phil. 36, 49 (1915).

[30] Rollo, p. 9.

[31] 589 Phil. 1, 37-38 (2008).

[32] G.R. Nos. 184379-80, April 24, 2012, 670 SCRA 545, 558.

[33] G.R. No. 184467, June 19, 2012, 673 SCRA 618, 634.

[34] PHILIPPINE ACT ON CRIMES AGAINST INTERNATIONAL HUMANITARIAN LAW, GENOCIDE, AND OTHER CRIMES AGAINST HUMANITY, approved on December 11, 2009.

[35] Supra note 13.

[36] Rollo, p. 9.

[37] Id. at 346.

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