

**FRANCISCO SALVAÑA AND MODESTA SALIENDRA, PETITIONERS
AND APPELLANTS, VS. LEOPOLDO GAELA, IN HIS PRIVATE
CAPACITY AND AS JUSTICE OF THE PEACE OF LUCBAN, TAYABAS,
RESPONDENT AND A...**

G. R. No. 34115. February 21, 1931

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

The instant appeal has been taken by the petitioners, Francisco Salvaña and Modesta Saliendra, from the judgment of the Court of First Instance of Tayabas, the dispositive part of which reads as follows :

"Let judgment be rendered dismissing the petition and denying the petitioners the custody of the minor Felicisima Salvaña. A guardian shall be appointed as soon as possible, or upon the filing of the petition announced at the hearing.

"Let this case be placed on file as terminated. So ordered."

In support of their appeal the appellants assign the following alleged errors as committed by the trial court, to wit:

- The lower court erred in assuming the exclusive control of the trial when the return alleged private authority.
- The lower court erred in questioning and consulting the wishes of the child.
- The lower court erred in pronouncing the petitioners who are legitimate parents of the minor as unworthy of their trust as her natural guardians, without any hearing at all.
- The lower court erred in the application of sections 551 and 553 of Act No. 190 to exercise the judicial discretion in the matter of appointing a legal guardian in favor of the minor.
- The trial court also erred in dismissing the application for the writ."

This appeal originated with a petition filed by the spouses Francisco Salvaña and Modesta Saliendra in the Court of First Instance of Tayabas to recover the custody of their daughter Felicisima Salvaña, a 15-year old single girl who is in the custody of the respondent and appellee, Leopoldo Gaela, justice of the peace of Lucban, Tayabas.

Having been summoned upon the petition, the respondent filed an answer containing a general denial and a special defense, the ninth paragraph of which reads as follows:

"IX. That the herein respondent has never had the slightest intention of detaining said Felicisima Salvaña and depriving her of her liberty, her stay in the undersigned's home being due not only to the request of the petitioners herein, but also to that of Felicisima Salvaña, herself, who does not want to live in her parents' home, because they maltreated her and wished her to marry a certain individual named Andres Laguador, whom she does not care for."

At the hearing of the case before Judge Anastacio Teodoro of the Court of First Instance of Tayabas, an informal

investigation was made—of which no notes were taken by the official stenographer of said court—questioning the girl and her parents, with a view to obtaining their consent to her marriage to Ambrosio Daza, with whom she had eloped, inasmuch as she was already six months pregnant by said young man.

As his Honor failed of his object, he denied the petition and ordered the appointment of a guardian as soon as possible, or upon the filing of the petition announced at the hearing based upon the following considerations:

"Whereas it has been shown that Felicisima Salvaña has chosen the home of respondent Leopoldo Gaeta, of her own free will because the latter had only daughters, and the minor Felicisima Salvaña therefore found it convenient for her own interests to remain in said home; and whereas the court is convinced that the petitioners seek by their acts to interfere with the personal liberty of their own daughter by inducing her to make a cruel sacrifice, namely, to marry a man she does not care for, and against her will;

"Let judgment be rendered dismissing the petition and denying the petitioners the custody of the minor Felicisima Salvaña. A guardian shall be appointed as soon as possible, or upon the filing of the petition announced at the hearing."

The first question to decide in this appeal is whether habeas corpus will lie for the recovery of the custody of an un-emancipated minor daughter who is under the custody of a third person of her own free will.

Section 525 of the Code of Civil Procedure provides that 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, except in cases expressly excepted.

Article 154 of the Civil Code provides that the father or, in his default, the mother may exercise parental power over their unemancipated legitimate children; and article 155 imposes upon them the duty of keeping such children in their company, educating and instructing them. Section 553 of the Code of Civil Procedure recognizes this parental power in providing that the parents are the natural guardians of their minor children entitled to their custody and care for their education. (*Ibanez de Aldecoa vs. Hongkong & Shanghai Banking Corporation*, 30 Phil, 228; 246 U. S., 621.)

Since the petitioners-appellants are entitled to the custody of their minor daughter Felicisima Salvaña, they are also entitled to recover her by habeas corpus, in accordance with the provision of section 525 of the Code of Civil Procedure cited above.'

Now then, is the fact that the respondent-appellee neither actually detains nor has any intention of detaining the minor, but that she insists upon remaining in his power of her own free will, a hindrance to the issuance of the writ?

In the case of *Reyes vs. Alvarez* (8 Phil., 723), the parents of a girl whom they had confided to the care of the Beaterio de to Compañía de Jesus from the age of 2 1/2 years, and who had lived there for thirteen years, wanted to take her from there in order to have her in their company. The mother superior of that institution stated that if the girl wished to leave and return to her parents, she would not prevent her. The girl said she was there of her own free will and did not want to leave the college. This court granted the writ of habeas corpus to enable the girl's parents to regain her custody.

In the case of *In re Swall* (Ann. Cas. 1915B, pp. 1015, 1016), decided on July 15, 1913, by the Supreme Court of Nevada, the court said:

"If the contention of counsel for petitioners is correct, that they are entitled to the custody of their minor child by virtue of the mere fact that they are his natural parents and are not shown otherwise to be improper persons to be intrusted with the custody of such minor, petitioners should prevail unless there is something in the

contention of respondents that they are not holding said minor under any physical restraint. In this, as in probably most cases where a minor is abiding with persons who as to him are in loco parentis, no physical restraint is necessary, for the natural inclination of the child does away with any necessity of force. But where, as in this case, a right to the possession of the minor is claimed, the right to retain such possession by such force as may be necessary may be assumed and that, if necessary, it would be exercised. Proceedings in habeas corpus have so frequently been resorted to to determine the right to the possession of a minor that the question of physical restraint need be given little or no consideration where a lawful right is asserted to retain possession of the child."

The fact, then, that a minor daughter is in the custody of a third person of her own free will, and without said person's having the slightest intention of detaining her, is no hindrance to the issuance of a writ of habeas corpus to enable her parents to regain custody of her person.

The second question to decide is whether the mere fact that the parents of a minor daughter have sought to compel her to marry a young man of their choice, whom she does not care for, and the mere fact that they have refused to consent to her marriage to another young man whom she favors, and with whom she has eloped and by whom she is pregnant, are sufficient reasons for depriving said parents of their parental power and custody of said minor daughter.

Section 553 of the Code of Civil Procedure, while recognizing, as stated heretofore, the parental authority of the parents over their unemancipated minor children, with the right to their custody and education, empowers courts to appoint some suitable person as guardian of said minors, as the best interests of the latter may require.

Now then, to what extent and within what limits may courts exercise this discretionary power to deprive parents of patria potestas and the custody of their unemancipated minor children?

In regulating the relations between parents and children in regard to the custody and education of unemancipated children, the Civil Code, as well as the Code of Civil Procedure, has had in view the interests and welfare of said children; for this is the basis of article 171 of the Civil Code, which authorizes courts to deprive parents of patria potestas or to suspend its exercise, if they treat their children with excessive cruelty or, by orders or advices given them or example set them, tend to corrupt them; and section 770 of the Code of Civil Procedure grants the courts the same authority, "when the parent or parents of any minor child shall be unable through vagrancy, negligence, or misconduct to support such child, or if able, shall neglect or refuse to support such child, or when such parent or parents shall unlawfully beat or otherwise habit daily maltreat such child, or cause or allow it to engage in common begging. * * *"

Taking the provisions of the Civil Code and of the Code of Civil Procedure together, it appears that the discretionary power conferred upon courts by section 553 of the procedural law above cited is limited or conditioned by the provisions of article 171 of said Civil Code and section 770 of the Code of Civil Procedure, enumerating the cases when parents may be deprived of patria potestas and, consequently, of the custody of their unemancipated minor children.

The Supreme Court of Porto Rico, construing like provisions in the Porto Rican Civil Code in the case of *Le Hardy vs. Acosta* (18 P. R. R., 438), said:

"It is true that the well-being of the children should be carefully guarded by the courts; but they should remember that the law has been enacted also with this end in view. (21 Cyc, 331, 332 and 333; *In re Gates*, 95 Cal., 461.) And, while the courts are in the line of duty in exercising the utmost vigilance in protecting children in all their rights and from suffering any injury whatever, yet this care should be exerted here in the manner pointed out by our Code; and it is the duty of the courts, in this as in all other cases, to track the law. As the trial court, with the

very best intentions no doubt, has failed to observe the requirements of the statutes in rendering the judgment appealed from, we must not allow the decision thus made to stand. The father should have the absolute control and custody of his minor children, unless some excellent legal reason to the contrary is alleged and proved."

(See also *Arbona vs. Torres*, 24 P. R. R., 423; and *Rojas vs. Colon*, 27 P. R. R., 805.)

Let us now see if the facts in the present case justify the deprivation of the herein petitioners-appellants of the patria potestas and the custody of their minor daughter.

The concrete facts upon which the trial court relies to deprive the petitioners-appellants of the custody of their minor daughter, denying their petition for habeas corpus are: That they have sought to compel their aforesaid daughter to marry a young man against her will, and refuse to consent to her marriage with another young man with whom she eloped and by whom she is today six months pregnant

Neither the act of compelling their unemancipated minor daughter to marry against her will, nor the act of refusing to give their consent to her marriage, is included in the causes established by the laws we have cited for depriving parents of patria potestas and the custody of their unemancipated minor children.

Although in the majority of cases when parents oblige their unemancipated minor children to marry against their will they have at heart the welfare of those children, we disapprove of such a practice, for while in time and through fond and tender treatment, affection may follow and with it the happiness of the family, above all should there be children, since marriage should be based upon mutual love and sympathy, there are not a few cases where marriages not preluded by such sentiments have been unfortunate; and' when the means employed by parents to make their unemancipated minor children marry against their will is such as bring about moral or physical sufferings, the intervention of the courts to deprive such parents of patria potestas and the custody of said children will be justified.

In the present case, however, it does not appear that the parents of the minor Felicisima Salvaña insist upon her marrying against her will, nor do we believe they will insist upon it on account of her present physiological condition; the cruelty having ceased" thereby, which would otherwise have justified depriving them of parental authority, and if they now desire to keep her in their company, notwithstanding such condition, it is because they love her.

It may be that by marrying the man by whom she is now pregnant, she would be happier than by living with her own parents, but since the law does not authorize the deprivation of parental authority on the ground that parents refuse to consent to the marriage of their unemancipated minor children, it would be a direct violation of that law, depriving said parents of their parental authority. Unemancipated minor children, due to the incomplete development of their mind and intellectual faculties, and to their lack of experience in the world, need the counsel, care, and guidance of their progenitors in order to prevent the impulse of passion, excited by worldly illusions which their undeveloped intellectual faculties are not strong enough to overcome, from leading them to serious consequences.

In view of the foregoing considerations, we are of opinion and so hold: (1) That the writ of habeas corpus is the proper legal remedy to enable parents to regain the custody of a minor daughter, even though the latter be in the custody of a third person of her own free will; and (2) that neither the fact that the parents of a minor daughter sought to compel her to marry against her will, where it does not appear such a purpose has continued, nor their refusal to consent to her marriage to another young man, by whom she is pregnant, is a legal ground for depriving said parents of their parental authority and the custody of said daughter.

By virtue whereof, the judgment appealed from is reversed, and the writ of habeas corpus granted, and since it

does not appear from the record that any guardian has qualified or taken over the minor Felicisima Salvaña, the respondent is hereby ordered to deliver the person of said minor to her father, Francisco Salvaña, without special pronouncement of costs. So ordered.

Johnson, Malcolm, Johns, and Romualdez, JJ., concur.

DISSENTING

VILLAMOR, J.:

I regret to dissent from the majority opinion.

In the habeas corpus petition the following grounds are set forth:

- "(a) That the petitioners have a legitimate daughter named Felicisima Salvaña, only 14 years old, in whose behalf this petition is filed;
- (b) That said minor daughter of the petitioners is at present unlawfully detained by the respondent herein, Leopoldo Gaeta, in his own behalf and as justice of the peace of the municipality of Lucban, Province of Tayabas, at his residence in said municipality;
- "(c) That by such detention said respondent maliciously and unlawfully suspends and nullifies the petitioners' right to the custody of the person of said minor, where, as legitimate parents and natural guardians of said girl, have a right and duty to her person."

The respondent in his answer alleges: "That the respondent has never had the slightest intention of detaining said Felicisima Salvaña and depriving her of her liberty, her stay in the undersigned's home being due not only to the request of the petitioners herein, but also to that of Felicisima Salvaña, herself, who does not want to live in her parents' home, because they maltreated her and wished her to marry a certain individual named Andres Laguador, whom she does not care for."

After trial the court denied the relief sought, saying: "Whereas it has been shown that Felicisima Salvaña has chosen the home of respondent Leopoldo Gaeta of her own free will because the latter had only daughters, and the minor Felicisima Salvaña therefore found it convenient for her own interests to remain in said home; and whereas the court is convinced that the petitioners seek by their acts to interfere with the personal liberty of their own daughter by inducing her to make a cruel sacrifice, namely, to marry a man she does not care for, and against her will;

"Let judgment be rendered dismissing the petition and denying the petitioners the custody of the minor Felicisima Salvaña. A guardian shall be appointed as soon as possible, or upon the filing of the petition announced at the hearing."

At the hearing on the petition it was announced by the court that one Filomena Dator, proposed by Attorney Sena with the consent of Attorney Palileo, would be appointed guardian of said minor. And in reaching this conclusion, the court said: "In view of the circumstances of the case, I cannot decide that the daughter should return to her parents' home, for they have been compelling her to do something against her will, and this is not just. I think the proper thing to do would be to institute guardianship proceedings."

When the petition was filed with the court below, the judge of the Court of First Instance of Tayabas issued an order to the provincial sheriff to produce before the court the person of Felicisima Salvaña. The deputy provincial sheriff certifies, in a document signed by him, that he has received from the respondent justice of the peace the person of Felicisima Salvaña. The record does not show that said girl has been returned to the respondent judge. But it does show that the attorney for the petitioners vigorously opposed the return of the girl to the respondent's

house, and for this reason, the parties agreed to have Filomena Dator appointed guardian. In view of this I deem it reasonable to suppose that said minor is at present in the custody of said Filomena Dator, who is not a party to this case.

Now the majority decision, in reversing the judgment appealed from, orders the respondent to make delivery of the person of said minor to her father, Francisco Salvaña. It appearing from the record that the respondent does not unlawfully detain said minor, nor has her in his house, having turned her over to the deputy sheriff by order of the court below, I fail to see how he can be compelled to make delivery of the person of said minor to her parents, the petitioners.

I do not believe there is any similarity between the facts established in these proceedings and those in the cases cited in the majority opinion, and I am therefore of opinion that the doctrines therein laid down are not applicable to the case at bar. Here we are dealing with parents who obstinately attempt to compel their minor daughter to marry a man whom she does not care for; that this daughter has preferred another young man to whom she has given her heart; that in consequence of these relations she carried in her bosom (on the day of the hearing, August 4, 1930) the unfailing sign of the fruit of her love, a pregnancy of six months; that notwithstanding her condition, her parents are bent upon having her under their own care, thereby preventing her from consummating her marriage to her fiance, to legitimate the little one to whom she shall soon give birth.

The Honorable Judge who took cognizance of the case says that it is agreed the petitioners by their acts seek to interfere with the personal liberty of their own daughter, by inducing her to make a cruel sacrifice, insisting that she marry a man whom she does not care for, and even against her will. But the majority opinion says that "it does not appear that the parents of the minor Felicisima Salvaña insist upon her marrying against her will, nor do we believe they will insist upon it on account of her present physiological condition; the cruelty having ceased thereby, which would otherwise have justified depriving them of parental authority, and if they now desire to keep her in their company, notwithstanding such condition, it is because they love her."

In my opinion, however, the truth is that the petitioners want to keep their daughter under their care notwithstanding her pregnancy, to prevent her from marrying the man responsible for her condition, Could a greater cruelty be imagined for a daughter in the condition of Felicisima Salvaña than that which her parents seek to inflict upon her by preventing her from being able to call "husband" the master of her heart? Could there be greater suffering for her than that of weeping in silence, being obliged by the demands of her parents to suffer the absence of her loved one?

I agree with the legal principles enunciated in the majority opinion: That parents, by virtue of the patria potestas, should have their unemancipated legitimate children under their care, maintaining them, educating them, and instructing them in proportion to their means, and representing them in all actions which may redound to their benefit. (Arts. 154 and 155 of the Civil Code.) But the Civil Code itself authorizes the courts to deprive parents of their parental authority, or to suspend its exercise if they treat their children with excessive cruelty, or if they give them orders and advices or set them examples tending to corrupt them. (Art. 171 of the Civil Code.) And I believe that within the meaning of excessively cruel treatment is included that which the petitioners have meted out to their daughter, interfering with her personal liberty, to use the language of the trial judge, by inducing her to make a cruel sacrifice, insisting that she marry a man whom she does not care for, and even against her will; to which might be added, inflicting upon her by their attempts a moral pain far more cruel than a physical pain. The majority opinion itself says that, "when the means employed by parents to make their unemancipated minor children marry against their will is such as bring about moral or physical sufferings, the intervention of the courts to deprive such parents of patria potestas and the custody of said children will be justified." Well, this is precisely the case before us. The parents not only refused to give their consent to the marriage of their daughter Felicisima

to her fiancé, Ambrosio Daza, but induced her to apply for permission to the justice of the peace to marry a man she does not care for, Exhibit D; and not only that, the parents denounced the daughter in the justice of the peace court of Lucban for disobedience, under article 588 of the Penal Code, and also denounced Ambrosio Daza for the alleged crime of abduction with consent, because he had eloped with Felicísima to marry her. It is argued that there is no proof that if the parents have in the past treated their daughter with some harshness, they will continue to do so; but it seems plain to me that their very insistence upon holding their daughter under their custody, notwithstanding her present circumstances, strongly supports the conclusion of the trial judge.

I also agree with the majority that parents are the natural guardians of their unemancipated minor children according to section 553 of the Code of Civil Procedure; but this same section authorizes the court to disregard the order of preference established in the Code and to appoint another competent person as guardian of the person or property of the minor, or both, as the interests of the minor may require. That is to say, when the court deems it proper to appoint as guardian of the minor a person other than the minor's parents, the minor's interests should be considered. In the present case, and from my point of view, it is to the interest of Felicísima, for obvious reasons, that the proposed Filomena Dator should be appointed her guardian, with the consent of counsel for the petitioners.

By virtue of the foregoing, I am of opinion that the respondent justice of the peace, Leopoldo Gaeta, is not unlawfully detaining Felicísima Salvaña to deprive her of liberty, nor has he prevented the petitioners from exercising, their legal custody of their daughter (sec. 525, Code of Civil Procedure), and therefore, the judgment appealed from should be affirmed.

AVANCEÑA, C. J., STREET, and OSTRAND, JJ.:

We concur in this opinion.

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