

CONSORCIA ORTIZ, PETITIONER, VS. GONZALO DEL VILLAR, RESPONDENT.

G.R. No. 37785. August 01, 1932

Ponente: AVANCEÑA, C.J.

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AVANCEÑA, C.J.:

This is a petition for the writ of habeas corpus.

It is alleged that Emilia Ortiz, single, died in Manila on June 26th last, leaving three minor adulterine children, named Jesus, aged five; Norma, aged four; and Emilia, aged two, had by the respondent Gonzalo del Villar, a married man. When Emilia died she left these minors in the care of her sister, Consorcia Ortiz, the petitioner. But on July 11, when the respondent heard of Emilia Ortiz's death, he took the children from the petitioner and brought them with him to the Province of Cebu, where they now are.

A petition for habeas corpus will lie when someone is deprived of liberty, or is wrongfully prevented from exercising the legal custody to which he is entitled, over another person. Neither of these grounds appears in these proceedings. It is not alleged that the minors, in whose behalf this petition was filed, are deprived of their liberty. The petitioner, as the aunt of the minors, is not by virtue of this relationship alone, entitled to their legal custody. Furthermore, the respondent, though an adulterine father, has legal obligations to discharge towards these minors, such as supporting them and defraying the costs of their education to a certain extent, and has therefore, at least for the purpose of fulfilling these obligations, in the absence of a better right, a better title than the petitioner to the custody of these minors.

The petition is denied, with costs against the petitioner. So ordered.

Street, Malcolm, Villamor, Ostrand, Villa-Real, Abad Santos, Hull, Vickers, Imperial, and Butte, JJ., concur.

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