

DOMINGO REYES ET AL., PETITIONERS AND APPELLANTS, VS. THE MOTHER SUPERIOR OF THE BEATERIO DE LA COMPAÑIA DE JESUS, SOR EFIGENIA ALVAREZ, RESPONDENT AND APPELLEE.

G.R. No. 3957. October 03, 1907

Ponente: TORRES, J.

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TORRES, J.:

On the 20th of March, 1907, the married couple Domingo Reyes and Nicolasa Gagalangan petitioned for a writ of habeas corpus to be served by the sheriff of Manila on Sor Efigenia Alvarez, the mother superior of the Beaterio de la Compañia de Jesus, on the ground that she had deprived Valentina Reyes, aged 15, daughter of the applicants, of her liberty by refusing to deliver her to her parents, and threatening to sue them for damages if they insisted in claiming the said girl.

The corresponding writ having been issued to the sheriff with orders to summon the respondent, the mother superior of the Beaterio de la Compañia de Jesus, it appears from the evidence adduced at the trial that the girl Valentina Reyes had been living in said convent for thirteen years, ever since she was two and a half years old, and there received subsistence and education, although each month, or every two months, she used to leave the convent and spend the day at her parents' house; and on a certain occasion she remained about fifteen days with her mother, who at the time was lying ill.

The mother superior, Efigenia Alvarez, stated that, as a matter of fact, the girl had been in said establishment ever since she was two and a half years old because the nuns were very fond of her when she was a little one, and that from that time she had been nourished and educated with the consent of her parents. She denied ever having told the mother of the girl that the latter would never again be permitted to leave the convent to go to her home, but that if the girl wished to leave and return to the side of her parents, she would not prevent her doing so. The girl Valentina Reyes stated that she was staying voluntarily in said convent; that she sometimes called at her parents' house; that it appeared that her parents wished to take her out of the convent but that she did not wish to leave it; that nobody detained her and that the mother superior had not told her that she should remain therein. Section 525 of the Code of Civil Procedure reads:

"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."

In their application for the writ of habeas corpus the petitioners affirm that their young daughter is deprived of liberty in the Beaterio de la Compañia, and that the mother superior, the defendant herein, refused to deliver the girl to the petitioners. It may be gathered from this statement that, as parents, they were prevented from exercising the legal right of custody of their daughter which pertained to them, there being no exception in law against the enforcement of their claim. Article 155 of the Civil Code provides as follows:

"The father, and, in his absence, the mother, has, with regard to their children not emancipated:

"1. The duty of supporting them, to keep them in their company, educate and instruct them in proportion to their means, and represent them in the exercise of all actions that may redound to their benefit.

"2. The right to correct and punish them moderately."

The guardianship which parents exercise over their children by virtue of the paternal authority granted them by law has for its purpose their physical development, the cultivation of their intelligence, and the development of their intellectual and sensitive faculties. For such purposes they are entitled to control their children and to keep them in their company in order to properly comply with their paternal obligations, but it is also their duty to furnish them with a dwelling or a place where they may live together.

Although the right of the parents may be expressly or tacitly waived, under no consideration can there be a waiver of their duty without violating the provisions of the law, as may be seen from the simple reading thereof. It is, therefore, not possible to prove that the parents of Valentina Reyes had waived, nor could they waive, the duty to support, instruct, educate, and to keep her with them, from the moment when they have expressed their will to take her out of the convent where she has resided for thirteen years. They can not be denied the right to recover their daughter, and with the greater reason, when it appears that the mother superior of the said convent has not shown her intention to retain the girl therein.

The duties which the law imposes on parents are contained in article 588 (5) of the Penal Code which reads:

"Fathers of families who shall forsake their children by not giving them the education corresponding to their condition in life, and such as their means will permit," are punishable in accordance with paragraph 1 of said article, with a penalty of from five to fifteen days of arrest and censure, in addition to the provisions of article 487 with reference to the abandonment of a child under 7 years, the penalty for which is arrest and a fine.

For the foregoing reasons, and taking into consideration the provisions of Act No. 654, the judgment appealed from, dated March 22 of this year, should be reversed, and it is ordered that the mother superior of the Beaterio de la Compañia de Jesus deliver the person of Valentina Reyes to her parents, Domingo Reyes and Nicolasa Galangan, a corresponding writ therefor being issued. No special ruling is made as to costs. So ordered.

Arellano, C. J., Johnson and Tracey, JJ., concur.

Willard, J., concurs in the results.

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