

IN THE MATTER OF THE PETITION FOR A WRIT OF HABEAS CORPUS OF MINOR ANGELIE ANNE C. CERVANTES, NELSON L. CERVANTES AND ZENAIDA CARREON CERVANTES, PETITIONERS, VS. GINA CARREON FA...

G.R. No. 79955. January 27, 1989

Ponente: PADILLA, J.

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PADILLA, J.:

This is a petition for a writ of Habeas Corpus filed with this Court over the person of the minor Angelie Anne Cervantes. In a resolution, dated 5 October 1987, the Court resolved to issue the writ returnable to the Executive Judge, Regional Trial Court of Pasig at the hearing of 12 October 1987 at 8:30 a.m. Said Judge was directed to hear the case and submit his report and recommendation to the Court.

On 3 December 1987, said Executive Judge, Regional Trial Court of Pasig submitted to the Court his report and recommendation, also dated 3 December 1987.

It appears that the minor was born on 14 February 1987 to respondents Conrado Fajardo and Gina Carreon, who are common-law husband and wife. Respondents offered the child for adoption to Gina Carreon's sister and brother-in-law, the herein petitioners Zenaida Carreon-Cervantes and Nelson Cervantes, spouses, who took care and custody of the child when she was barely two (2) weeks old. An Affidavit of Consent to the adoption of the child by herein petitioners, was also executed by respondent Gina Carreon on 29 April 1987.[1]

The appropriate petition for adoption (Sp. Proc. No. 057-B) was filed by herein petitioners over the child before the Regional Trial Court of Rizal, Fourth Judicial District, Branch 67 which, on 20 August 1987, rendered a decision[2] granting the petition. The child was then known as Angelie Anne Fajardo. The court ordered that the child be "freed from parental authority of her natural parents as well as from the legal obligation and maintenance to them and that from now on shall be, for all legal intents and purposes, known as Angelie Anne Cervantes, a child of herein petitioners and capable of inheriting their estate." [3]

Sometime in March or April 1987, the adoptive parents, herein petitioners Nelson and Zenaida Cervantes, received a letter from the respondents demanding to be paid the amount of P150,000.00, otherwise, they would get back their child. Petitioners refused to accede to the demand.

As a result, on 11 September 1987, while petitioners were out at work, the respondent Gina Carreon took the child from her "yaya" at the petitioners' residence in Angono, Rizal, on the pretext that she was instructed to do so by her mother. Respondent Gina Carreon brought the child to her house in Paranaque. Petitioners thereupon demanded the return of the child, but Gina Carreon refused, saying that she had no desire to give up her child for adoption and that the affidavit of consent to the adoption she had executed was not fully explained to her. She sent word to the petitioners that she will, however, return the child to the petitioners if she were paid the amount of P150,000.00.

Felisa Tansingco, the social worker who had conducted the case study on the adoption and submitted a report there-on to the Regional Trial Court of Rizal in the adoption case, testified on 27 October 1987 before the Executive Judge, Regional Trial Court of Pasig in connection with the present petition. She declared that she had interviewed respondent Gina Carreon on 24 June 1987 in connection with the contemplated adoption of the child. During the interview, said respondent manifested to the social worker her desire to have the child adopted by the petitioners.[4]

In all cases involving the custody, care, education and property of children, the latter's welfare is paramount. The provision that no mother shall be separated from a child under five (5) years of age, will not apply where the court finds compelling reasons to rule otherwise. [5] In all controversies regarding the custody of minors, the foremost consideration is the moral, physical and social welfare of the child concerned, taking into account the resources and moral as well as social standing of the contending parents. Never has this Court deviated from this criterion.[6]

It is undisputed that respondent Conrado Fajardo is legally married to a woman other than respondent Gina Carreon, and his relationship with the latter is a common-law husband and wife relationship. His open cohabitation with co-respondent Gina Carreon will not accord the minor that desirable atmosphere where she can grow and develop into an upright and moral-minded person. Besides, respondent Gina Carreon had previously given birth to another child by another married man with whom she lived for almost three (3) years but who eventually left her and vanished. For a minor (like Angelie Anne C. Cervantes) to grow up with a sister whose "father" is not her true father, could also affect the moral outlook and values of said minor. Upon the other hand, petitioners who are legally married appear to be morally, physically, financially, and socially capable of supporting the minor and giving her a future better than what the natural mother (herein respondent Gina Carreon), who is not only jobless but also maintains an illicit relation with a married man, can most likely give her.

Besides, the minor has been legally adopted by petitioners with the full knowledge and consent of respondents. A decree of adoption has the effect, among others, of dissolving the authority vested in natural parents over the adopted child, except where the adopting parent is the spouse of the natural parent of the adopted, in which case, parental authority over the adopted shall be exercised jointly by both spouses.[7] The adopting parents have the right to the care and custody of the adopted child[8] and exercise parental authority and responsibility over him.[9]

ACCORDINGLY, and as recommended by the Executive Judge, Regional Trial Court of Pasig, Hon. Eutropio Migrino, the Petition is GRANTED. The custody and care of the minor Angelie Anne Cervantes are hereby granted to petitioners to whom they properly belong, and respondents are ordered (if they still have not) to deliver said minor to the petitioners immediately upon notice hereof. This resolution is immediately executory.

SO ORDERED.

Melencio-Herrera, (Chairman), Paras, Sarmiento, and Regalado, JJ., concur.

[1] Rollo, p. 113

[2] Rollo, pp. 108-110

[3] Rollo, p. 110

[4] TSN, 27 October 1987, p. 11; Rollo, p. 249

[5] Art. 363 of the New Civil Code, as amended by Art. 17 of PD 603

[6] Union III v. Navarro, 101 SCRA 183, 17 November 1980

[7] Art. 39, PD 603

[8] Art. 189, par. (2) of the Family Code of the Philippines, Executive Order No. 209 as amended by Executive Order No. 227, promulgated on 6 June 1987.

[9] Art. 17, PD 603

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