

SECOND DIVISION

[G.R. No. 166682, November 17, 2009]

**NOEL B. BAGTAS, PETITIONER, VS. HON. RUTH C. SANTOS,
PRESIDING JUDGE OF REGIONAL TRIAL COURT, BRANCH 72,
ANTIPOLO CITY, AND ANTONIO AND ROSITA GALLARDO,
RESPONDENTS.**

DECISION

CARPIO, J.:

The Case

This is a petition^[1] for review on certiorari under Rule 45 of the Rules of Court. The petition challenges the 11 June 2004 Decision^[2] and 5 January 2005 Resolution^[3] of the Court of Appeals in CA-G.R. SP No. 77751. The Court of Appeals affirmed the 9 December 2002^[4] and 21 April 2003 Orders of the Regional Trial Court (RTC), Judicial Region 4, Branch 72, Antipolo City, in Special Proceeding Case No. 02-1128.

The Facts

Antonio and Rosita S. Gallardo (Spouses Gallardo) are the parents of Maricel S. Gallardo (Maricel). Two weeks after graduating from high school in April 2000, Maricel ran away to live with her boyfriend. Maricel became pregnant and gave birth to Maryl Joy S. Gallardo (Maryl Joy). Maricel's boyfriend left her.

In February 2002, Maricel returned to her parents. On the same day, Maricel ran away again and lived with Noel B. Bagtas (Bagtas) and Lydia B. Sioson (Sioson) at Ma. Corazon, Unirock, Barangay Sta. Cruz, Antipolo City. Maricel went to Negros Occidental and left Maryl Joy in the custody of Bagtas and Sioson. In a letter^[5] dated 5 February 2001, Maricel relinquished her rights over Maryl Joy to Bagtas and his wife. She stated:

Ako po si Maricel S. Gallardo 18 taong gulang ay kusang ipinagkaloob ang aking anak sa pagkadalaga sa mag-asawang Noel B. Bagtas at Neneth A. Bagtas sa kadahilanan pong itinakwil ako ng sarili kong mga magulang at hindi ko po kayang buhayin at dahil po sa tinakbuhan ako ng aking boyfriend kaya wala na pong ibang paraan para ako makabangon o makapagsimula ng panibagong buhay kaya para mabigyan ng magandang buhay ang aking anak inisip ko po na ito na ang pinaka madaling paraan para po sa pagbabago ng aking buhay.

Kaya mula sa araw na ito ay wala na akong karapatan sa aking anak. Sila ang tatayo bilang magulang ng aking anak.

In April 2002, the Spouses Gallardo tried to obtain the custody of Maryl Joy from Bagtas and Sioson. Bagtas and Sioson refused. Unable to settle the matter, the Spouses Gallardo filed with the RTC a petition^[6] for habeas corpus.

In its Order^[7] dated 10 July 2002, the RTC issued a writ of habeas^[8] corpus directing the deputy sheriff to produce Maryl Joy before it and to summon Bagtas and Sioson to explain why they were withholding the custody of Maryl Joy.

The Spouses Gallardo, Bagtas and Sioson entered into a compromise agreement. In its Order^[9] dated 13 September 2002, the RTC stated:

In today's hearing, both parties appeared with their respective counsels and have agreed on the following:

1. that the child should be placed in custody of the petitioners on Friday, Saturday and Sunday;
2. that the child should be returned to the respondents by the petitioners on Sunday at 8:00 o'clock in the evening subject to visitatorial rights of the petitioners anytime of the day; and
3. that the child can be brought by the respondents to Valenzuela but should be returned to the petitioners on Friday morning.

The above agreement shall take effect today and parties are ordered to comply strictly with the said agreement under pain of contempt in case of violation thereof.

On 29 September 2002, Bagtas and Sioson learned that Rosita S. Gallardo brought Maryl Joy to Samar. In their motion^[10] dated 30 September 2002, Bagtas and Sioson prayed that the Spouses Gallardo be directed to produce Maryl Joy before the RTC, that they be directed to explain why they violated the RTC's 13 September 2002 Order, and that they be cited in contempt. In their motion^[11] to dismiss dated 11 October 2002, Bagtas and Sioson prayed that the Spouses Gallardo's action be dismissed pursuant to Section 3, Rule 17, of the Rules of Court. Section 3 states that "If, for no justifiable cause, the plaintiff fails x x x to comply with x x x any order of the court, the complaint may be dismissed upon motion of the defendant or upon the court's own motion." Bagtas and Sioson claimed that the Spouses Gallardo failed to comply with the RTC's 13 September 2002 Order.

In its Order^[12] dated 15 October 2002, the RTC cited the Spouses Gallardo in contempt, fined them P500, and ordered them to produce Maryl Joy before the trial court.

The RTC's Ruling

In its Order^[13] dated 9 December 2002, the RTC dismissed the action for having become moot. The RTC stated:

In this petition, the prayer of the petitioners is to produce the person of Meryl [sic] Joy S. Gallardo before this court to be turned over to herein

petitioners who are the maternal [grandparents] of said minor.

Since the person subject of the petition has already produced [sic] to this court and has been turned over to the petitioners, the issue on the petition for habeas corpus is now moot and academic without prejudice to the filing of the proper action to determine as to the rightful custody over the minor child.

In view thereof, x x x the Motion to Dismiss is hereby granted but without prejudice on the petitioners to file proper action for custody of the minor. (Emphasis supplied)

In their motion^[14] for reconsideration dated 27 December 2002, Bagtas and Sioson alleged that the ground for the dismissal of the action was erroneous. The action should have been dismissed pursuant to Section 3, Rule 17, of the Rules of Court. They prayed that Maryl Joy be returned to them to preserve the status quo ante. Bagtas and Sioson stated:

5. Thus, the Honorable Court very clearly issued a conflicting Order because It has cited the [Spouses Gallardo] in contempt of court for violating the previous September 13, 2002 Order that the child should be returned to the respondents in the evening of September 29, 2002 (Sunday), and yet the Honorable Court has dismissed the petition for being moot and academic. This is in effect giving premium to the act of the petitioners of not turning over the child to respondents on September 29, 2002. Likewise, this is tantamount to rewarding them for not producing the child in court in violation of the aforesaid September 13, 2002 Order;

6. Moreover, the Honorable Court has issued an unreasonable Order by stating that the dismissal of the instant case is without prejudice to the filing of the proper action for custody of the minor by the petitioners. Why would the petitioners still file the proper action for custody if they now have the custody of the minor?

P R A Y E R

WHEREFORE, premises considered, it is most respectfully prayed that the December 9, 2002 Order of the Honorable Court be partially reconsidered so that the dismissal of the case will not be based on the ground of being moot and academic but based on failure to comply with the September 13, 2002 pursuant [sic] to Section 3, Rule 17 of the 1997 Rules of Civil Procedure and that petitioners be consequently directed to return the person subject of the petition to the respondents to preserve the status quo ante.

In its Order^[15] dated 21 April 2003, the RTC denied the motion for reconsideration. The RTC held that the sole purpose of the petition for habeas corpus was the production of Maryl Joy and that the Spouses Gallardo exercised substitute parental authority over Maryl Joy. The RTC stated that:

The allegations in the Petition show that the sole purpose for the filing of the Petition is to cause the production before the Court of

the person of minor Meryl [sic] Joy S. Gallardo, not a determination of the legality or illegality of respondents' custody of the child, petitioners being aware of the fact that the child was left by their (petitioners') daughter to [sic] the custody of the respondents, as stated in par. no. 10 of the Petition.

The instant Petition is therefore, essentially not a petition for Habeas Corpus as contemplated in Rule 102, Revised Rules of Court which is resorted to in all cases of illegal confinement by which any person is deprived of his liberty (Cruz vs. CA, 322 SCRA 518), but is resorted to also where the rightful custody of any person is withheld from the person entitled thereto as contemplated in Rule 102, Revised Rules of Court. In order that the special remedy of Habeas Corpus maybe [sic] invoked, it is necessary that there should be an actual and effective restraint or deprivation of liberty. A nominal or moral restraint is not sufficient (Gonzales vs. Viola, et al., 61 Phil 824).

Since therefore, the purpose of the instant Petition has already been served, as the child has been produced and delivered to the petitioners, the instant Petition logically has become moot and academic. Petitioners are, under the law (Art. 214, Family Code), authorized to exercise substitute parental authority over the child in case of death, absence or unsuitability of the parents, the entitlement to the legal custody of the child being necessarily included therein to make possible and/or enable the petitioners to discharge their duties as substitute parents.

There is no inconsistency between the Order dated December 9, 2002 sought to be reconsidered, and the Order dated October 15, 2002, as the latter was issued pursuant to an incident, an interlocutory matter, that is, the failure of the petitioners to comply with the agreement reached between the parties in open court on September 13, 2002. The said Order dated October 15, 2002 is not a resolution of the case in the main, as it did not terminate the case. The Order dated December 9, 2002, on the other hand, terminated the case, and considering that the dismissal of the case was unqualified, the same amounted to an adjudication on the merits pursuant to Sec. 3, Rule 17 of the Revised Rules of Court Procedure, therefore, the agreement earlier entered by and between the herein parties is deemed terminated. (Emphasis supplied)

Bagtas filed with the Court of Appeals a petition^[16] for certiorari under Rule 65 of the Rules of Court. Bagtas alleged that (1) the RTC erred when it ruled that the sole purpose of the 1 August 2002 petition was the production of Maryl Joy before the trial court, (2) the RTC erred when it ruled that the petition was "essentially not a petition for Habeas Corpus as contemplated in Rule 102," (3) the RTC erred when it ruled that there must be actual and effective deprivation of liberty, (4) the RTC erred when it ruled that the action had become moot, (5) the RTC erred when it ruled that the Spouses Gallardo had substitute parental authority over Maryl Joy, and (6) the RTC erred when it ruled that there was no inconsistency between the 15 October and 9 December 2002 Orders.

The Court of Appeals' Ruling