

## SECOND DIVISION

[ G.R. NO. 174485, July 11, 2007 ]

**AGNES GAMBOA-HIRSCH PETITIONER, VS. HON. COURT OF APPEALS AND FRANKLIN HARVEY HIRSCH, RESPONDENTS.**

### R E S O L U T I O N

**VELASCO, JR., J.:**

This is a petition for certiorari<sup>[1]</sup> under Rule 65 which seeks to set aside the June 8, 2006 Decision<sup>[2]</sup> of the Court of Appeals (CA) in CA-G.R. SP No. 94329, which granted private respondent Franklin Harvey Hirsch (Franklin) joint custody with petitioner Agnes Gamboa-Hirsch (Agnes) of their minor daughter Simone Noelle Hirsch (Simone); and the August 3, 2006 CA Resolution<sup>[3]</sup> denying petitioner's Motion for Reconsideration for lack of merit. Petitioner also prays for the issuance of a temporary restraining order/injunction preventing the execution and implementation of the assailed June 8, 2006 CA Decision.

Franklin and Agnes were married on December 23, 2000 in the City of Bacolod, and established their conjugal dwelling in Diniwid, Boracay Island, Malay, Aklan. On December 21, 2002, a child was born to them and was named Simone. In 2005, the couple started to have marital problems as Agnes wanted to stay in Makati City, while Franklin insisted that they stay in Boracay Island. On March 23, 2006, Agnes came to their conjugal home in Boracay, and asked for money and for Franklin's permission for her to bring their daughter to Makati City for a brief vacation. Franklin readily agreed, but soon thereafter discovered that neither Agnes nor their daughter Simone would be coming back to Boracay.

Franklin then filed a petition for habeas corpus before the CA for Agnes to produce Simone in court. On May 19, 2006, the CA issued a Resolution which ordered that a writ of habeas corpus be issued ordering that Simone be brought before said court on May 26, 2006. After a series of hearings and presentation of evidence, the CA, on June 8, 2006, promulgated the assailed Decision granting Franklin joint custody with Agnes of their minor child. Agnes filed a Motion for Reconsideration of this Decision, which was denied in the CA's August 3, 2006 Resolution for lack of merit.

Petitioner now comes before this Court praying that we set aside the June 8, 2006 Decision and August 3, 2006 Resolution of the CA, and that we issue a temporary restraining order/injunction on the execution and implementation of the assailed rulings of the CA based on the following grounds:

(A)

The Court of Appeals seriously erred and acted with grave abuse of discretion amounting to lack or excess of jurisdiction when it ruled upon, granted, and decided the matter of custody x x x during the May 26,