

THIRD DIVISION

[G.R. No. 156343, October 18, 2004]

**JOEY D. BRIONES, PETITIONER, VS. MARICEL P. MIGUEL,
FRANCISCA P. MIGUEL AND LORETA P. MIGUEL, RESPONDENTS.**

DECISION

PANGANIBAN, J.:

An illegitimate child is under the sole parental authority of the mother. In the exercise of that authority, she is entitled to keep the child in her company. The Court will not deprive her of custody, absent any imperative cause showing her unfitness to exercise such authority and care.

The Case

The Petition for Review^[1] before the Court seeks to reverse and set aside the August 28, 2002 Decision^[2] and the December 11, 2002 Resolution^[3] of the Court of Appeals in CA-GR SP No. 69400.^[4] The dispositive portion of the assailed Decision reads as follows:

"WHEREFORE, the petition is hereby DISMISSED. Respondent Loreta P. Miguel shall have custody over the child Michael Kevin Pineda until he reaches ten (10) years of age. Once the said child is beyond ten (10) years of age, the Court allows him to choose which parent he prefers to live with pursuant to Section 6, Rule 99 of the 1997 Rules of Civil Procedure, as amended. The petitioner, Joey D. Briones, shall help support the child, shall have visitorial rights at least once a week, and may take the child out upon the written consent of the mother.

"Acting on the petitioner's '*Urgent Motion for a Hold Departure Order*', and finding it to be without merit, the same is DENIED."^[5]

The challenged Resolution denied reconsideration.

The Facts

The CA summarized the antecedents of the case in this wise:

"On March 5, 2002, petitioner Joey D. Briones filed a Petition for Habeas Corpus against respondents Maricel Pineda Miguel and Francisca Pineda Miguel, to obtain custody of his minor child Michael Kevin Pineda.

"On April 25, 2002, the petitioner filed an Amended Petition to include Loreta P. Miguel, the mother of the minor, as one of the respondents.

"A Writ of *Habeas Corpus* was issued by this Court on March 11, 2002 ordering the respondents to produce before this Court the living body of the minor Michael Kevin Pineda on March 21, 2002 at 2:00 o'clock in the afternoon.

"The petitioner alleges that the minor Michael Kevin Pineda is his illegitimate son with respondent Loreta P. Miguel. He was born in Japan on September 17, 1996 as evidenced by his Birth Certificate. The respondent Loreta P. Miguel is now married to a Japanese national and is presently residing in Japan.

"The petitioner further alleges that on November 4, 1998 he caused the minor child to be brought to the Philippines so that he could take care of him and send him to school. In the school year 2000-2001, the petitioner enrolled him at the nursery school of Blessed Angels L.A. School, Inc. in Caloocan City, where he finished the nursery course.

"According to the petitioner, his parents, who are both retired and receiving monthly pensions, assisted him in taking care of the child.

"On May 2, 2001, respondents Maricel P. Miguel and Francisca P. Miguel came to the house of the petitioner in Caloocan City on the pretext that they were visiting the minor child and requested that they be allowed to bring the said child for recreation at the SM Department store. They promised him that they will bring him back in the afternoon, to which the petitioner agreed. However, the respondents did not bring him back as promised by them.

"The petitioner went several times to respondent Maricel P. Miguel at Tanza, Tuguegarao City but he was informed that the child is with the latter's mother at Batal Heights, Santiago City. When he went there, respondent Francisca P. Miguel told him that Michael Kevin Pineda is with her daughter at Tuguegarao City.

"He sought the assistance of the police and the Department of Social Welfare to locate his son and to bring him back to him, but all his efforts were futile.

"Hence, he was constrained to file a Petition for *Habeas Corpus* with the Regional Trial Court of Caloocan City which was docketed as SPC No. 2711. However, the said case was withdrawn *ex-parte*.

"The petitioner prays that the custody of his son Michael Kevin Pineda be given to him as his biological father and [as] he has demonstrated his capability to support and educate him.

"On May 6, 2002, the respondents filed their Comment, in compliance with the May 2, 2002 Resolution of this Court.

"In their Comment, the respondent Loreta P. Miguel denies the allegation of the petitioner that he was the one who brought their child to the Philippines and stated that she was the one who brought him here

pursuant to their agreement.

"Respondent Loreta P. Miguel likewise denies petitioner's allegation that respondents Maricel P. Miguel and Francisca P. Miguel were the ones who took the child from the petitioner or the latter's parents. She averred that she was the one who took Michael Kevin Pineda from the petitioner when she returned to the Philippines and that the latter readily agreed and consented.

"Respondent Loreta P. Miguel alleges that sometime in October 2001, the petitioner was deported from Japan under the assumed name of Renato Juanzon when he was found to have violated or committed an infraction of the laws of Japan. She further stated that since the time the petitioner arrived in the Philippines, he has not been gainfully employed. The custody of the child, according to respondent Loreta P. Miguel was entrusted to petitioner's parents while they were both working in Japan. She added that even before the custody of the child was given to the petitioner's parents, she has already been living separately from the petitioner in Japan because the latter was allegedly maintaining an illicit affair with another woman until his deportation.

"She likewise stated in her Comment that her marriage to a Japanese national is for the purpose of availing of the privileges of staying temporarily in Japan to pursue her work so she could be able to send money regularly to her son in the Philippines. She further stated that she has no intention of staying permanently in Japan as she has been returning to the Philippines every six (6) months or as often as she could.

"Respondent Loreta P. Miguel prays that the custody of her minor child be given to her and invokes Article 213, Paragraph 2 of the Family Code and Article 363 of the Civil Code of the Philippines."

Ruling of the Court of Appeals

Applying Article 213 (paragraph 2) of the Family Code, the CA awarded the custody of Michael Kevin Pineda Miguel to his mother, Respondent Loreta P. Miguel. While acknowledging that petitioner truly loved and cared for his son and considering the trouble and expense he had spent in instituting the legal action for custody, it nevertheless found no compelling reason to separate the minor from his mother. Petitioner, however, was granted visitorial rights.

Hence, this Petition.^[6]

Issue

In his Memorandum, petitioner formulated the "ultimate" issue as follows: "x x x [w]hether or not [he], as the natural father, may be denied the custody and parental care of his own child in the absence of the mother who is away."^[7]

The Court's Ruling

The Petition has no merit. However, the assailed Decision should be modified in

regard to its erroneous application of Section 6 of Rule 99 of the Rules of Court.

Sole Issue
Who Should Have Custody of the Child?

Petitioner concedes that Respondent Loreta has preferential right over their minor child. He insists, however, that custody should be awarded to him whenever she leaves for Japan and during the period that she stays there. In other words, he wants joint custody over the minor, such that the mother would have custody when she is in the country. But when she is abroad, he --as the biological father -- should have custody.

According to petitioner, Loreta is not always in the country. When she is abroad, she cannot take care of their child. The undeniable fact, he adds, is that she lives most of the time in Japan, as evidenced by her Special Power of Attorney dated May 28, 2001,^[8] granting to her sister temporary custody over the minor.

At present, however, the child is already with his mother in Japan, where he is studying,^[9] thus rendering petitioner's argument moot. While the Petition for Habeas Corpus was pending before the CA, petitioner filed on July 30, 2002, an "Urgent Motion for a Hold Departure Order,"^[10] alleging therein that respondents were preparing the travel papers of the minor so the child could join his mother and her Japanese husband. The CA denied the Motion for lack of merit.^[11]

Having been born outside a valid marriage, the minor is deemed an illegitimate child of petitioner and Respondent Loreta. Article 176 of the Family Code of the Philippines^[12] explicitly provides that "illegitimate children shall use the surname and shall be under the parental authority of their mother, and shall be entitled to support in conformity with this Code." This is the rule regardless of whether the father admits paternity.^[13]

Previously, under the provisions of the Civil Code, illegitimate children were generally classified into two groups: (1) *natural*, whether actual or by legal fiction; and (2) *spurious*, whether incestuous, adulterous or illicit.^[14] A natural child is one born outside a lawful wedlock of parents who, at the time of conception of the child, were not disqualified by any impediment to marry each other.^[15] On the other hand, a spurious child is one born of parents who, at the time of conception, were disqualified to marry each other on account of certain legal impediments.^[16]

Parental authority over recognized natural children who were under the age of majority was vested in the father or the mother recognizing them.^[17] If both acknowledge the child, authority was to be exercised by the one to whom it was awarded by the courts; if it was awarded to both, the rule as to legitimate children applied. In other words, in the latter case, parental authority resided jointly in the father and the mother.^[18]

The fine distinctions among the various types of illegitimate children have been eliminated in the Family Code.^[19] Now, there are only two classes of children -- legitimate (and those who, like the legally adopted, have the rights of legitimate