

## SECOND DIVISION

**[ G.R. No. 122906, February 07, 2002 ]**

**DINAH B. TONOG, PETITIONER, VS. COURT OF APPEALS AND  
EDGAR V. DAGUIMOL, RESPONDENTS.**

### DECISION

**DE LEON, JR., J.:**

Before us is a petition for review on certiorari seeking the reversal of two (2) Resolutions dated August 29, 1995 and November 29, 1995 issued by the former Second Division<sup>[1]</sup> of the Court of Appeals in CA-G.R. SP No. 35971. The first resolution modified the appellate court's decision promulgated in the said case, and granted custody of the minor, Gardin Faith Belarde Tonog, to private respondent. The second resolution denied petitioner's motion for reconsideration.

The pertinent facts are:

On September 23, 1989, petitioner Dinah B. Tonog gave birth<sup>[2]</sup> to Gardin Faith Belarde Tonog, her illegitimate daughter with private respondent Edgar V. Dagumol. Petitioner was then a nursing student while private respondent was a licensed physician. They cohabited for a time and lived with private respondent's parents and sister in the latter's house in Quezon City where the infant, Gardin Faith, was a welcome addition to the family.

A year after the birth of Gardin Faith, petitioner left for the United States of America where she found work as a registered nurse. Gardin Faith was left in the care of her father (private respondent herein) and paternal grandparents.

On January 10, 1992, private respondent filed a petition for guardianship over Gardin Faith, docketed as Sp. Proc. No. Q-92-11053, in the Regional Trial Court of Quezon City. On March 9, 1992, the trial court rendered judgment appointing private respondent as legal guardian of the minor, Gardin Faith.

Petitioner avers that she learned of the judgment of the trial court rendered in Sp. Proc. No. Q-92-11053 only on April 1, 1992. Accordingly, on May 27, 1992, she filed a petition for relief from judgment. In a resolution dated September 15, 1992, the trial court set aside its original judgment and allowed petitioner to file her opposition to private respondent's petition. The latter, in turn, filed a motion for reconsideration. In a related incident, petitioner filed on October 4, 1993, a motion to remand custody of Gardin Faith to her.

On November 18, 1994, the trial court issued a resolution denying private respondent's motion for reconsideration and granting petitioner's motion for custody of their child, Gardin. Petitioner moved for immediate execution of the said resolution.

Due to the adverse turn of events, private respondent filed a petition for certiorari before the Court of Appeals, docketed as CA-G.R. SP No. 35971, questioning the actuations of the trial court. On March 21, 1995, the appellate court dismissed the petition on the ground of lack of merit. However, after private respondent filed a motion for reconsideration, the appellate court issued a Resolution<sup>[3]</sup> dated August 29, 1995 modifying its decision, as follows:

Although We do find the Petition dismissible, insofar as it assails the September 15, 1993 Resolution of the respondent Court, giving due course to private respondent's Petition for Relief from Judgment, and the November 18, 1995 Resolution denying his Motion for Reconsideration, We discern a good ground to let physical custody of subject child, Gardin Faith Belarde Tonog, continue under the petitioner, with whom the said child had been living, since birth.

While it is understandable for private respondent, as mother, to assert and seek enforcement of her legal and natural rights as the natural guardian of her child, the emotional and psychological effects upon the latter of a change in custody should be considered. To be sure, transfer of custody of the child from petitioner to private respondent will be painful for the child who, all her life, has been in the company of petitioner and her paternal grandparents.

Now, inasmuch as the issue of guardianship and custody over the same child is still pending determination before the respondent Court, the possibility of petitioner's appointment as the guardian cannot be discounted. It would certainly wreak havoc on the child's psychological make-up to give her to the custody of private respondent, only to return her to petitioner should the latter prevail in the main case. Subjecting the child to emotional seesaw should be avoided. It is thus more prudent to let physical custody of the child in question be with petitioner until the matter of her custody shall have been determined by final judgment.

WHEREFORE, the Decision, promulgated here on March 21, 1995 is accordingly MODIFIED, and status quo with respect to the physical custody of the child, Gardin Faith Belarde Tonog, is ordered. It is understood that the latter shall remain with petitioner until otherwise adjudged.

Petitioner thus interposed the instant appeal after the appellate court denied her motion for reconsideration in its Resolution<sup>[4]</sup> dated November 29, 1995.

Petitioner contends that she is entitled to the custody of the minor, Gardin Faith, as a matter of law. First, as the mother of Gardin Faith, the law confers parental authority upon her as the mother of the illegitimate minor. Second, Gardin Faith cannot be separated from her since she had not, as of then, attained the age of seven. Employing simple arithmetic however, it appears that Gardin Faith is now twelve years old.

In custody disputes, it is axiomatic that the paramount criterion is the welfare and well-being of the child.<sup>[5]</sup> In arriving at its decision as to whom custody of the minor