

## FIRST DIVISION

**[ G.R. No. 140817, December 07, 2001 ]**

**SABRINA ARTADI BONDAGJY, PETITIONER, VS. FOUZI ALI BONDAGJY, JUDGE BENSAUDI I. ARABANI, SR., IN HIS CAPACITY AS PRESIDING JUDGE OF THE 3<sup>RD</sup> SHARI'A DISTRICT COURT, SHARI'A JUDICIAL DISTRICT, ZAMBOANGA CITY, RESPONDENTS.**

### DECISION

**PARDO, J.:**

Is a wife, a Christian who converted to Islam before her marriage to a Muslim and converted back to Catholicism upon their separation, still bound by the moral laws of Islam in the determination of her fitness to be the custodian of her children?

We apply civil law in the best interest of the children.

#### The Facts

Respondent Fouzi (then 31 years of age) and Sabrina (then 20 years of age) were married on February 3, 1988, at the Manila Hotel, Ermita, Manila under Islamic rites.<sup>[1]</sup> On October 21, 1987, or four (4) months before her marriage, Sabrina became a Muslim by conversion. However, the conversion was not registered with the Code of Muslim Personal Laws of the Philippines.

Out of their union, they begot two (2) children, namely, Abdulaziz, born on June 13, 1989,<sup>[2]</sup> and Amouaje, born on September 29, 1990.<sup>[3]</sup> The children were born in Jeddah, Saudi Arabia.

At the time of their marriage, unknown to petitioner, respondent was still married to a Saudi Arabian woman whom he later divorced.

After their marriage, the couple moved in with respondent's family in Makati City. In 1990, the parties migrated and settled in Jeddah, Saudi Arabia where they lived for more than two years.

Sometime in December 1995, the children lived in the house of Sabrina's mother in 145 Tanguile Street, Ayala Alabang. Fouzi alleged that he could not see his children until he got an order from the court. Even with a court order, he could only see his children in school at De La Salle-Zobel, Alabang, Muntinlupa City.

On December 15, 1996, Sabrina had the children baptized as Christians<sup>[4]</sup> and their names changed from Abdulaziz Bondagjy to Azziz Santiago Artadi and from Amouaje Bondagjy to Amouage Selina Artadi.

Respondent alleged that on various occasions Sabrina was seen with different men at odd hours in Manila,<sup>[5]</sup> and that she would wear short skirts, sleeveless blouses, and bathing suits.<sup>[6]</sup> Such clothing are detestable under Islamic law on customs.

Fouzi claimed that Sabrina let their children sweep their neighbor's house for a fee of P40.00 after the children come home from school. Whenever Fouzi sees them in school,<sup>[7]</sup> the children would be happy to see him but they were afraid to ride in his car. Instead, they would ride the jeepney in going home from school.

### The Case

On March 11, 1996, respondent Fouzy Ali Bondagjy filed with the Shari'a District Court, Marawi City, an action<sup>[8]</sup> to obtain custody of his two minor children, Abdulaziz, 10 and Amouaje, 9.

On June 6, 1996, petitioner filed her answer with motion to dismiss on the ground of lack of jurisdiction over the persons of the parties since both parties were residents of Manila and for lack of cause of action. Petitioner likewise moved to transfer the venue to Zamboanga, which was more accessible by plane.

On June 18, 1996, the Shari'a District Court granted petitioner's motion to transfer the venue to Zamboanga.<sup>[9]</sup>

On June 27, 1996, respondent filed a reply<sup>[10]</sup> and motion for a temporary restraining order against petitioner.<sup>[11]</sup> He moved that petitioner desist from preventing him from exercising parental authority over his minor children.

On July 12, 1996, the court granted the motion and issued a writ of preliminary injunction.<sup>[12]</sup>

On August 12, 1996, the court ordered the parties to submit their memoranda on the issue of jurisdiction.

On October 30, 1996, the court granted petitioner's motion to withdraw motion to dismiss on the issue of jurisdiction and set the proceedings for pre-trial conference on November 14, 1996.

On November 14, 1996, respondent filed a motion to drop Joyce Artadi as defendant in the case and the trial court issued an order:

"During the pre-trial conference held this morning, the parties made their respective offer and counter proposals for amicable settlement. The plaintiff proposed (1) solidarity of the family, and (2) alternate custody. The defendant advanced the proposal of reasonable visitation of the father at their residence, for which the court will possibly fix the period or time and schedule of visitations.

"With these proposals, both parties agreed to continue the pre-trial conference on December 9, 1996.

"WHEREFORE, let the pre-trial conference be again held on December 9, 1996, at 9:00 o'clock in the morning."<sup>[13]</sup>

Meantime, petitioner filed with the Regional Trial Court, Branch 256, Muntinlupa City<sup>[14]</sup> an action for nullity of marriage, custody and support, ordered the parties to maintain *status quo* until further orders from said court.<sup>[15]</sup>

On March 2, 1999, petitioner filed another motion to dismiss<sup>[16]</sup> on the ground of lack of jurisdiction over the subject matter of the case since P.D. No. 1083 is applicable only to Muslims. On March 3, 1999, Fouzi filed an opposition to the motion to dismiss and argued that at the inception of the case, both parties were Muslims, Fouzi by birth and Sabrina by conversion.

On March 29, 1999, the court denied the motion to dismiss since P.D. No. 1083 had jurisdiction over all cases of Muslims involving custody.<sup>[17]</sup>

On April 23, 1999, Sabrina filed a motion to reconsider the order of March 29, 1999 denying the motion to dismiss.<sup>[18]</sup>

On June 22, 1999, the court denied petitioner's motion for reconsideration. Thus-

"WHEREFORE, in view of the foregoing reasons, the motion for reconsideration of the defendant-movant is hereby ordered DENIED; Defendant is further ordered to comply with the order of this Court dated July 12, 1996, to allow plaintiff to exercise his right of parental authority over their minor children with that of the defendant in accordance with article 71, of P.D. 1083, the Code of Muslim Personal Laws.

"Let the continuation of this case be set on July 15, 1999 at 8:30 in the morning."<sup>[19]</sup>

On July 15, 1999, the trial court decided to move forward to the next stage of the case and allowed respondent Fouzi to present evidence *ex-parte*.

On August 18, 1999, the court issued an order<sup>[20]</sup> giving respondent fifteen (15) days to submit his formal offer of evidence and fifteen (15) days from receipt of transcript of stenographic notes to submit memorandum.

#### The Shari'a District Court's Decision

On November 16, 1999, the Shari'a Court rendered a decision, the dispositive portion of which reads:

"WHEREFORE, foregoing considered, judgment is hereby rendered:

- (a) Awarding the custody of the minors Abdulaziz Artadi Bondagjy and Amouaje Artadi Bondagjy in favor of their natural father, petitioner Fouzi Ali Bondagjy; and for this purpose ordering the respondent Sabrina Artadi Bodagjy or any person having the care of said minors in her stead or behalf, to turn over, relinquish and surrender the custody of said minors to their

natural father, the petitioner in this case Fouzi Ali Bondagjy;

- (b) Ordering the petitioner Fouzi Ali Bondagjy to ensure that the said minors are provided with reasonable support according to his means and in keeping with the standard of his family, and, a suitable home conducive to their physical,
- (c) mental and moral development; and, with his knowledge and under reasonable circumstances allow the respondent and natural mother of the said minors Mrs. Sabrina Artadi Bondagjy to visit her minor children Abdulaziz Artadi Bondagjy and Amouje Artadi Bondagjy."<sup>[21]</sup>

Hence, this petition.<sup>[22]</sup>

#### The Court's Ruling

The Shari'a District Court held that P.D. No. 1083 on Custody and Guardianship does not apply to this case because the spouses were not yet divorced.

However, the Shari'a District Court found petitioner unworthy to care for her children. Thus -

"A married woman, and a mother to growing children, should live a life that the community in which she lives considers morally upright, and in a manner that her growing minor children will not be socially and morally affected and prejudiced. It is sad to note that respondent has failed to observe that which is expected of a married woman and a mother by the society in which she lives. xxx The evidence of this case shows the extent of the moral depravity of the respondent, and the kind of concern for the welfare of her minor children which on the basis thereof this Court finds respondent unfit with the custody of her minor children.

"xxx Under the general principles of Muslim law, the Muslim mother may be legally disentitled to the custody of her minor children by reason of 'wickedness' when such wickedness is injurious to the mind of the child, such as when she engages in 'zina' (illicit sexual relation); or when she is unworthy as a mother; and, a woman is not worthy to be trusted with the custody of the child who is continually going out and leaving the child hungry. (A. Baillie, Muhammadan Law, p. 435; citing Dar-ul-Mukhtar, p. 280)."<sup>[23]</sup>

On the other hand, the Shari'a Court found that respondent Fouzi was capable both personally and financially to look after the best interest of his minor children.<sup>[24]</sup>

"When he was asked during the direct examination the question that, 'if ever this Honorable Court will grant you custody of your children will you be able to house and give support to your children?' He answered, "Of course, even up to now I am giving support to my children; And my comment is that the father should give everything the needs of the family and now whatever the children needs even in school, considering the past, I have to love them, I have to care for my children. In school, even when they see something they love and like, I buy it for them. Or