

FIRST DIVISION

[G.R. No. 139789, May 12, 2000]

**ERLINDA K. ILUSORIO, PETITIONER, VS. ERLINDA I. BILDNER
AND SYLVIA K. ILUSORIO, JOHN DOE AND JANE DOE,
RESPONDENTS.**

[G.R. No. 139808]

**POTENCIANO ILUSORIO, MA. ERLINDA I. BILDNER, AND SYLVIA
ILUSORIO, PETITIONERS, VS. COURT OF APPEALS AND ERLINDA
K. ILUSORIO, RESPONDENTS.**

D E C I S I O N

PARDO, J.:

May a wife secure a writ of *habeas corpus* to compel her husband to live with her in conjugal bliss? The answer is no. Marital rights including coverture and living in conjugal dwelling may not be enforced by the extra-ordinary writ of *habeas corpus*.

A writ of *habeas corpus* extends to all cases of illegal confinement or detention,^[1] or by which the rightful custody of a person is withheld from the one entitled thereto.^[2]

"*Habeas corpus* is a writ directed to the person detaining another, commanding him to produce the body of the prisoner at a designated time and place, with the day and cause of his capture and detention, to do, submit to, and receive whatsoever the court or judge awarding the writ shall consider in that behalf."^[3]

It is a high prerogative, common-law writ, of ancient origin, the great object of which is the liberation of those who may be imprisoned without sufficient cause.^[4] It is issued when one is deprived of liberty or is wrongfully prevented from exercising legal custody over another person.^[5]

The petition of Erlinda K. Ilusorio^[6] is to reverse the decision^[7] of the Court of Appeals and its resolution^[8] dismissing the application for *habeas corpus* to have the custody of her husband, lawyer Potenciano Ilusorio and enforce consortium as the wife.

On the other hand, the petition of Potenciano Ilusorio^[9] is to annul that portion of the decision of the Court of Appeals giving Erlinda K. Ilusorio visitation rights to her husband and to enjoin Erlinda and the Court of Appeals from enforcing the visitation rights.

The undisputed facts are as follows:

Erlinda Kalaw Ilusorio is the wife of lawyer Potenciano Ilusorio.

Potenciano Ilusorio is about 86 years of age possessed of extensive property valued at millions of pesos. For many years, lawyer Potenciano Ilusorio was Chairman of the Board and President of Baguio Country Club.

On July 11, 1942, Erlinda Kalaw and Potenciano Ilusorio contracted matrimony and lived together for a period of thirty (30) years. In 1972, they separated from bed and board for undisclosed reasons. Potenciano lived at Urdaneta Condominium, Ayala Ave., Makati City when he was in Manila and at Ilusorio Penthouse, Baguio Country Club when he was in Baguio City. On the other hand, Erlinda lived in Antipolo City.

Out of their marriage, the spouses had six (6) children, namely: Ramon Ilusorio (age 55); Erlinda Ilusorio Bildner (age 52); Maximo (age 50); Sylvia (age 49); Marietta (age 48); and Shereen (age 39).

On December 30, 1997, upon Potenciano's arrival from the United States, he stayed with Erlinda for about five (5) months in Antipolo City. The children, Sylvia and Erlinda (Lin), alleged that during this time, their mother gave Potenciano an overdose of 200 mg instead of 100 mg Zoloft, an antidepressant drug prescribed by his doctor in New York, U.S.A. As a consequence, Potenciano's health deteriorated.

On February 25, 1998, Erlinda filed with the Regional Trial Court, Antipolo City a petition^[10] for guardianship over the person and property of Potenciano Ilusorio due to the latter's advanced age, frail health, poor eyesight and impaired judgment.

On May 31, 1998, after attending a corporate meeting in Baguio City, Potenciano Ilusorio did not return to Antipolo City and instead lived at Cleveland Condominium, Makati.

On March 11, 1999, Erlinda filed with the Court of Appeals a petition for *habeas corpus* to have the custody of lawyer Potenciano Ilusorio. She alleged that respondents^[11] refused petitioner's demands to see and visit her husband and prohibited Potenciano from returning to Antipolo City.

After due hearing, on April 5, 1999, the Court of Appeals rendered decision the dispositive portion of which reads:

"WHEREFORE, in the light of the foregoing disquisitions, judgment is hereby rendered:

"(1) Ordering, for humanitarian consideration and upon petitioner's manifestation, respondents Erlinda K. Ilusorio Bildner and Sylvia Ilusorio-Yap, the administrator of Cleveland Condominium or anywhere in its place, his guards and Potenciano Ilusorio's staff especially Ms. Aurora Montemayor to allow visitation rights to Potenciano Ilusorio's wife, Erlinda Ilusorio and all her children, notwithstanding any list limiting visitors thereof, under penalty of contempt in case of violation of refusal thereof;
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