

## FIFTH DIVISION

[ CA-G.R. SP. No. 125922, March 11, 2015 ]

**RICHARD PERCIVAL O. DE GUZMAN, PETITIONER-APPELLANT,  
VS. HON. MA. CELESTINA C. MANGROBANG, PRESIDING JUDGE  
OF RTC-MANILA, BRANCH 38 AND ARLENE LOURDES B. DE  
GUZMAN, RESPONDENT-APPELLEES.**

### DECISION

**TIJAM, J.:**

The contentious issue<sup>[1]</sup> involving this case is whether or not the trial court correctly ordered the transfer of permanent custody of a minor child to her mother pursuant to Article 213 of the Family Code.

Petitioner Richard Percival De Guzman and Private Respondent Arlene Lourdes De Guzman got married in a civil wedding solemnized on June 26, 1994 followed by a church wedding ceremony on December 24, 1994. Their union was blessed with 4 children namely, Richard Paolo, Ian Dominic, Marie Danielle, and Marie Gabrielle.<sup>[2]</sup>

In January 2007, Arlene left for Equatorial Guinea to work, leaving behind Richard to take care of their children. Arlene's employment, however, permits her to visit the Philippines for 2 weeks for every after 8 work week schedule in Guinea.

On July 26, 2010, Arlene filed with the RTC of Manila, Branch 38, a *Petition for Declaration of Nullity of Marriage* against Richard. Incidental thereto, she filed a *Manifestation with Urgent Motion for Permanent Custody of Minor Gabrielle and Temporary Custody of Danielle alleging that Gabrielle* was not properly taken cared of by Richard. Arlene attached in the said *Manifestation* the written observations of Gabrielle's teachers indicating that: (1) she has been going to school untidy and not properly groomed to the point that she was avoided by her female classmates; (2) she frequently hangs out with her male classmates which accounts for her unruly behavior in class; (3) Gabrielle's poor attendance affects her performance in class; and (4) she too often misses her assignments in school.

Richard, however, argued that Gabrielle's poor performance was due to Arlene's fault of frequently bringing Gabrielle to malls, shopping centers, and restaurants whenever she is on vacation in the Philippines, which hinders the child to study and prepare for school the following day.

After due proceedings, respondent Judge, in her Order<sup>[3]</sup> dated February 3, 2012 granted Arlene's *Manifestation* and ordered that the permanent custody of Gabrielle be transferred to Arlene. The dispositive portion of the Order<sup>[4]</sup> states:

"WHEREFORE, premises considered, petitioner's *Manifestation with Urgent Motion for Permanent Custody of minor Marie Gabrielle B. De*

Guzman and Temporary Custody of Minor Marie Danielle B. De Guzman is partially granted, as to the transfer of permanent custody of Minor Marie Gabrielle B. De Guzman, from his father/respondent Richard Percival O. De Guzman, to her mother/petitioner Arlene Lourdes B. De Guzman.

As to the auxiliary prayer for the temporary transfer of custody of minor Marie Danielle B. De Guzman, let the hearing thereon be conducted on February 16, 2012, at 8:30 a.m.

Accordingly, respondent and his counsel are directed to appear and bring the subject child on the said date and time.

Furthermore, respondent, through counsel, is ordered to subject the respondent and his children for interview by the Court Social Welfare Worker, Ms. Mylah De Leon within five (5) days from receipt of this Order and for the Court Social Worker to submit the pertinent report on or before the next scheduled hearing.

Finally, hearing on the main case is tentatively set on April 12 and May 17, 2012 both at 8:30 a.m.

SO ORDERED."

Richard filed a *Motion for Reconsideration* of the said Order and argued that since Arlene is always abroad, he is in a better position to take care of Gabrielle. However, his motion was denied in an Order<sup>[5]</sup> dated May 28, 2012, which ruled that permanent custody should belong to Arlene not only because Gabrielle is less than 7 years old, but more importantly, Gabrielle longs for the care and affection of her mother as validated by the Court Social Worker's case study report.

Richard thus filed this instant petition alleging that —

"RESPONDENT JUDGE COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO EXCESS OR LACK OF JURISDICTION IN GRANTING PERMANENT CUSTODY OVER GABRIELLE IN FAVOR OF PRIVATE RESPONDENT AS IT DISREGARDS THE ADMISSION THAT PRIVATE RESPONDENT IS ALWAYS ABROAD AND ITS OBVIOUS AND PATENT PREJUDICIAL IMPLICATION TO THE RIGHTS OF PETITIONER AND THE BEST INTEREST OF GABRIELLE." <sup>[6]</sup>

***The petition is devoid of merit.***

Grave abuse of discretion is committed when an act is (1) done contrary to the Constitution, the law or jurisprudence, or (2) executed whimsically or arbitrarily in a manner so patent and so gross as to amount to an evasion of a positive duty, or to a virtual refusal to perform the duty enjoined. What constitutes grave abuse of discretion is such capricious and arbitrary exercise of judgment as that which is equivalent, in the eyes of the law, to lack of jurisdiction.<sup>[7]</sup>

In this case, We hold that the respondent Judge did not commit grave abuse of discretion.