

NINTH DIVISION

[CA-G.R. SP NO. 91896, August 18, 2006]

**RODRIGO DE GUZMAN, JR. AND FLOCERFIDA DE GUZMAN,
PETITIONERS, VS. HON. WILLIAM B. VOLANTE, PRESIDING
JUDGE, BRANCH 16, REGIONAL TRIAL COURT, TABACO CITY,
ALBAY, AND EDEN BASCO-DE GUZMAN, RESPONDENTS.**

D E C I S I O N

DACUDAO, J.:

Impugned in this petition for certiorari, as tainted with grave abuse of discretion, are the Order dated July 20, 2005 of the Regional Trial Court, Branch 16 (Family Court), Tabaco City, Albay denying the petitioners' Motion for the Production and Examination of Documents/Writings in Special Proceedings No. T-327 for "Custody of Minor," and the Order issued by the same court on August 25, 2005, holding that the resolution of said Motion for the Production and Examination of Documents/Writings had become moot and academic.

The factual antecedents:

On February 9, 2004, Eden Basco De Guzman^[1] filed a petition before the Regional Trial Court of Tabaco City, Branch 16, for the custody of her 5-year old son, Andre Joseph De Guzman. Named respondents in the petition were Rodrigo L. De Guzman, Jr., the therein petitioner's husband, and Floцерfida De Guzman, the grandmother of Andre Joseph De Guzman. The case was docketed thereat as Special Proceeding No. T-327.^[2]

To the petition, the therein defendants-respondents Rodrigo L. De Guzman, Jr. and Floцерfida De Guzman tendered their answer, setting up affirmative defenses, amongst which was that the action was barred by res judicata, or by prior judgment, or by estoppel and waiver; that therein petitioner was guilty of forum shopping; that therein petitioner was morally and financially incapable and incompetent to rear and take custody of the minor; that the court had no jurisdiction over the case; that therein defendant-respondent husband should retain custody of the boy Andre Joseph considering that there are "compelling reasons" to separate the child from therein petitioner, who has abandoned him to her own parents, and who, has besides cohabited with other men, resulting in the birth of another child, a girl, thereby "setting a bad example" for the boy Andre Joseph.^[3]

On February 11, 2005, the respondent court issued a pre-trial order.^[4]

On February 28, 2005, therein defendants-respondents filed a Motion for Production and Examination of Documents, Etcetera, thereunder praying that an order be issued requiring therein petitioner Eden Basco and/or Ronn Carmel Hospital, at Caloocan City, to produce in court the medical, hospital and nurses records,

including the clinical history of birth of therein petitioner's alleged other child, a baby girl, who was reportedly born in said hospital in September, 2003; as well as the records or documents regarding therein petitioner Eden Basco's caesarian operation in the same hospital, and to allow therein defendants-respondents to inspect or examine said documents.^[5]

On April 8, 2005, therein petitioner filed her comment on, or opposition to,^[6] the Motion for Production and Examination of Documents/Writings.

But in the interregnum, the presentation of herein defendants-respondent's evidence was completed on May 20, 2005.^[7]

On July 20, 2005, the respondent court issued the first questioned Order^[8] denying, for lack of merit, the therein defendants-respondents' Motion for Production and Examination of Document/ Writings.

On August 9, 2005 therein defendants-respondents moved for reconsideration^[9] thereon.

In between, or on August 16, 2005, pending resolution of the said defendants-respondents' motion for reconsideration, the latter were declared to have waived their right to present their evidence, for failure of said defendants-respondents and their counsel to appear in court, despite notice. Thus:

"When this case was called for presentation of evidence for the defendants, the defendants Rodrigo de Guzman, Jr. and Flocerfida de Guzman failed to appear in court despite due notice. Their counsels on record, Attys. Romeo B. Gonzaga and Orlando Lambino, likewise failed to appear despite due notice. As a result, the defendants were not able to present their evidence.

"Upon motion of the plaintiff, said defendants are deemed to have waived their right to present evidence and this case is now considered submitted for decision.

"SO ORDERED.

"GIVEN IN OPEN COURT this 16th day of August, 2005 at Tabaco City.

"(SGD.) WILLIAM B. VOLANTE

"Judge"^[10]

Some nine (9) days later, or on August 25, 2005, the respondent court issued the second impugned Order, thus:

"Pending before the Court is a Motion for Reconsideration filed by respondents Rodrigo L. De Guzman, Jr. and Flocerfida De Guzman, thru collaborating counsel, Atty. Orlando Lambino, seeking to set aside the Order dated July 20, 2005.

"A perusal of the records will show that during the scheduled hearing for