



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

**RENALYN A. MASBATE and
 SPOUSES RENATO MASBATE
 and MARLYN MASBATE,**

Petitioners,

G.R. No. 235498

Present:

- versus-

CARPIO, *J.*, Chairperson,
 PERALTA,
 PERLAS-BERNABE,
 CAGUIOA, and
 REYES, JR., *JJ.*

RICKY JAMES RELUCIO,

Respondent.

Promulgated:

30 JUL 2018

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MANUEL PERALTA X

DECISION

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*¹ are the Decision² dated January 12, 2017 and the Omnibus Resolution³ dated October 3, 2017 of the Court of Appeals (CA) in CA-G.R. SP No. 144406, which set aside the Orders dated December 4, 2015⁴ and January 7, 2016⁵ of the Regional Trial Court of Legazpi City, Albay, Branch 8 (RTC) in Special Proceeding (SP) No. FC-15-239, directed the remand of the case to the RTC for trial, and granted respondent Ricky James Relucio (Ricky James) “temporary custody” once a month for a period not exceeding twenty-four (24) hours over the minor, Queenie Angel M. Relucio (Queenie), his illegitimate

¹ *Rollo*, pp. 3-18.

² *Id.* at 21-35. Penned by Associate Justice Marlene Gonzales-Sison with Associate Justices Ramon A. Cruz and Henri Jean Paul B. Inting concurring.

³ *Id.* at 42-54.

⁴ *Id.* at 55. Penned by Pairing Judge Pedro R. Soriano.

⁵ *Id.* at 60.

daughter with petitioner Renalyn A. Masbate (Renalyn), on top of visitation rights fixed at two (2) days per week.

The Facts

Queenie was born on May 3, 2012 to Renalyn and Ricky James, who had been living together with Renalyn's parents without the benefit of marriage. Three (3) years later, or in April 2015, the relationship ended. Renalyn went to Manila, supposedly leaving Queenie behind in the care and custody of her father, Ricky James.⁶

Ricky James alleged that on November 7, 2015, Spouses Renato and Marlyn Masbate (Renalyn's parents) took Queenie from the school where he had enrolled her. When asked to give Queenie back, Renalyn's parents refused and instead showed a copy of a Special Power of Attorney⁷ (SPA) executed by Renalyn granting full parental rights, authority, and custody over Queenie to them. Consequently, Ricky James filed a **petition for habeas corpus and child custody**⁸ docketed as SP No. FC-15-239 before the RTC (petition *a quo*).⁹

A hearing was conducted on December 3, 2015, where Renalyn brought Queenie and expressed the desire for her daughter to remain in her custody.¹⁰

The RTC Ruling

In an Order¹¹ dated December 4, 2015, the RTC ruled that the custody of three (3)-year-old Queenie rightfully belongs to Renalyn, citing the second paragraph of Article 213 of the Family Code, which states that “[n]o child under seven [(7)] years of age shall be separated from the mother x x x.” The RTC likewise found that, while Renalyn went to Manila to study dentistry and left Queenie in the custody of her parents, her intention was to bring Queenie to Manila at a later time. Thus, in the *fallo* of said Order, the RTC declared that it will “NOT GIVE FURTHER DUE COURSE” to the petition *a quo*.¹²

Dissatisfied, Ricky James moved for reconsideration,¹³ lamenting the “[extraordinary] speed in the issuance of the x x x award of custody over the

⁶ See *id.* at 22.

⁷ Not attached to the *rollo*.

⁸ Not attached to the *rollo*.

⁹ See *rollo*, pp. 22-23.

¹⁰ See *id.* at 55.

¹¹ *Id.*

¹² See *id.*

¹³ See motion for reconsideration dated December 10, 2015; *id.* at 56-59.

child to [petitioners].”¹⁴ He claimed that the hearing conducted on December 3, 2015 was not the kind of hearing that was procedurally contemplated under A.M. No. 03-04-04-SC,¹⁵ otherwise known as the “Rule on Custody of Minors and Writ of *Habeas Corpus* in Relation to Custody of Minors,” because the RTC merely propounded random questions without placing the witnesses on the stand to testify under oath. Moreover, he was allegedly deprived of his right to due process when the RTC refused to give further due course to the petition *a quo*.¹⁶

The motion was denied in an Order¹⁷ dated January 7, 2016, wherein the RTC emphasized that Queenie was born out of wedlock, for which reason she shall be under the parental authority of her mother, Renalyn, pursuant to Article 176¹⁸ of the Family Code. In addition, the RTC faulted Ricky James for failing to present credible evidence in court to demonstrate that Renalyn is unfit to take custody of their daughter.¹⁹

Aggrieved, Ricky James filed an appeal²⁰ before the CA, imputing error upon the RTC: (a) in not conducting a full blown trial and not receiving evidence; (b) in granting sole custody to Renalyn without giving paramount consideration to the best interests of the child; and (c) in not granting him shared custody and/or visitation rights.²¹ Ricky James insisted that the tender-age presumption in Article 213 of the Family Code is rebuttable by evidence of the mother’s neglect, abandonment, and unemployment, among other factors, and claimed that Renalyn abandoned Queenie when she went to live in Manila and failed to seek employment to support her daughter.²²

For their part, Renalyn and her parents (petitioners) moved for the outright dismissal of the appeal on the ground that no appeal can be had against an order denying a motion for reconsideration. In addition, petitioners argued that being the illegitimate father of Queenie, Ricky James has absolutely no right of custody over her, and that Renalyn’s act of entrusting the care of Queenie to her parents was not a renunciation of parental authority but only a temporary separation necessitated by her need to adjust to her studies, which she undertook to improve her and Queenie’s life.²³

¹⁴ Id. at 56.

¹⁵ Entitled “RE: PROPOSED RULE ON CUSTODY OF MINORS AND WRIT OF *HABEAS CORPUS* IN RELATION TO CUSTODY OF MINORS,” effective on May 15, 2003.

¹⁶ See *rollo*, p. 57.

¹⁷ Id. at 60.

¹⁸ Article 176. Illegitimate children shall use the surname and shall be under the parental authority of their mother, and shall be entitled to support in conformity with this Code. x x x.

¹⁹ See *rollo*, p. 60.

²⁰ Not attached to the *rollo*.

²¹ See *rollo*, pp. 24-25.

²² Id. at 25.

²³ Id.

On September 2, 2016, the case was referred to mediation, but the parties were unable to arrive at a settlement.²⁴

The CA Ruling

In a Decision²⁵ dated January 12, 2017, the CA set aside the assailed RTC Orders and remanded the case to the lower court for determination of who should exercise custody over Queenie.²⁶ The CA found that the RTC hastily dismissed the petition *a quo* upon Queenie's production in court, when the objective of the case was to establish the allegation that Renalyn had been neglecting Queenie, which was a question of fact that must be resolved by trial.²⁷ Citing Section 18 of A.M. No. 03-04-04-SC, which states that, "[a]fter trial, the court shall render judgment awarding the custody of the minor to the proper party considering the best interests of the minor," the CA declared that the dismissal by the RTC of the petition *a quo* was not supported by the Rules.²⁸

Nonetheless, the CA affirmed the RTC Orders granting custody to Renalyn "pending the outcome of the case," stating that only Queenie's mother, Renalyn, has parental authority over her as she is an illegitimate child. Further, the CA declared that the RTC must thresh out Renalyn's capacity to raise her daughter, which shall, in turn, determine whether or not the tender-age presumption must be upheld, or whether Queenie's well-being is better served with her remaining in the custody of her maternal grandparents in the exercise of their substitute parental authority or with Ricky James, who was Queenie's actual custodian before the controversy.²⁹

Finally, the CA granted Ricky James visitation rights of two (2) days a week, with provision for additional visitation days that may be permitted by Renalyn.³⁰

Petitioners filed a motion for reconsideration,³¹ while Ricky James filed a motion for clarification³² asking that he be allowed to pick up Queenie from petitioners' residence on a Friday afternoon and to return the child on a Sunday afternoon.³³ In their Comment,³⁴ petitioners argued that the arrangement proposed by Ricky James is not within the scope of his

²⁴ See *id.* at 25-26.

²⁵ *Id.* at 21-35.

²⁶ *Id.* at 34.

²⁷ See *id.* at 28.

²⁸ See *id.* at 29-30.

²⁹ See *id.* at 31-33.

³⁰ *Id.* at 34.

³¹ Dated February 21, 2017. *Id.* at 36-40.

³² Dated February 20, 2017. *Id.* at 61-64.

³³ See *id.* at 62.

³⁴ Not attached to the *rollo*.

visitation rights, but that he may, through Renalyn's written consent, take Queenie home on certain family occasions.³⁵

In its Omnibus Resolution³⁶ dated October 3, 2017, the CA denied petitioners' motion for reconsideration for lack of merit, insisting on its application of the case of *Bagtas v. Santos*,³⁷ which held that a trial is still necessary to determine the issue of custody despite the production of the child.³⁸ On the other hand, the CA ruled in favor of Ricky James' motion for clarification, granting the latter what it calls a "limited and temporary custody" that will allow him to take Queenie out once a month, or on the first Saturday of each month, for a period not exceeding twenty-four (24) hours, but which shall not reduce his visitation days fixed at two (2) days per week.³⁹ In so holding, the appellate court cited "humane and practical considerations"⁴⁰ and argued that it is in Queenie's best interest to have an exclusive time with Ricky James.⁴¹

Undaunted, petitioners filed the instant petition for review on *certiorari*, maintaining that the RTC correctly dismissed the petition *a quo* after the hearing on December 3, 2015 on the grounds that: (a) the purported custodial right that Ricky James seeks to enforce in filing his petition has no legal basis; (b) the petition *a quo* does not comply with the requisites for *habeas corpus* petitions involving custody of minors; and (c) there are no more factual issues to be resolved as it had already been admitted by Renalyn during the hearing that she goes to Manila to study but that she comes home every week for Queenie and whenever there is a problem.⁴²

Ricky James filed a Comment/Opposition,⁴³ as well as an Urgent Omnibus Motion⁴⁴ to dismiss the petition and for immediate execution pending appeal of the Omnibus Resolution dated October 3, 2017, claiming that the instant petition was filed out of time and that it was erroneous for petitioners to state that the last day of filing fell on November 4, 2017, a Saturday, which compelled them to file their petition on November 6, 2017, a Monday. By his calculation, the fifteen (15)-day reglementary period, which commenced to run upon petitioners' receipt on October 19, 2017 of the Omnibus Resolution dated October 3, 2017, ended on November 3, 2017, a Friday, and not on November 4, 2017.⁴⁵

³⁵ *Rollo*, p. 43.

³⁶ *Id.* at 42-54.

³⁷ 621 Phil. 94 (2009).

³⁸ See *rollo*, pp. 51-53.

³⁹ *Id.* at 53.

⁴⁰ *Id.* at 46.

⁴¹ See *id.* at 47.

⁴² See *id.* at 10.

⁴³ Dated December 11, 2017. *Id.* at 66-78.

⁴⁴ *Id.* at 80-84.

⁴⁵ *Id.* at 66-67.

The Issue Before the Court

The main issue for the Court's resolution is whether or not the CA correctly remanded the case *a quo* for determination of who should exercise custody over Queenie.

The Court's Ruling

The petition is partially meritorious.

I.

At the outset, it must be stressed that while petitioners may have erroneously determined the expiration of the reglementary period for filing the instant petition, which resulted in the same being filed a day late on November 6, 2017, the Court finds it proper to overlook this procedural lapse given the compelling merit of the petition in the interest of substantial justice.

The Court has declared that rules on the perfection of appeals, particularly on the period of filing thereof, must occasionally yield to the loftier ends of substantial justice and equity. In the same manner that the CA took cognizance of respondent's appeal from the denial of his motion for reconsideration of the RTC Order dated December 4, 2015,⁴⁶ which is technically prohibited under the Rules of Court, so shall this Court hold that the ends of justice would be served better when cases are determined, not on mere technicality or some procedural nicety, but on the merits – after all the parties are given full opportunity to ventilate their causes and defenses. Lest it be forgotten, dismissal of appeals purely on technical grounds is frowned upon. The rules of procedure ought not to be applied in a very rigid, technical sense, for they have been adopted to help secure – not override – substantial justice.⁴⁷

In this relation, it may not be amiss to point out that the fundamental policy of the State, as embodied in the Constitution in promoting and protecting the welfare of children, shall not be disregarded by the courts by mere technicality in resolving disputes which involve the family and the youth.⁴⁸ The State is mandated to provide protection to those of tender years. Through its laws, it safeguards them from everyone, even their own parents, to the end that their eventual development as responsible citizens and members of society shall not be impeded, distracted or impaired by family acrimony.⁴⁹

⁴⁶ See *id.* at 26.

⁴⁷ *Remulla v. Manlongat*, 484 Phil. 832, 836 (2004).

⁴⁸ *Suarez v. CA*, 271 Phil. 188, 195 (1991).

⁴⁹ *Concepcion v. CA*, 505 Phil. 529, 546 (2005).

Accordingly, the Court shall delve into the substantive arguments propounded in this case.

II.

It is settled that *habeas corpus* may be resorted to in cases where “the **rightful custody** of any person is withheld from the person entitled thereto.”⁵⁰ In custody cases involving minors, the writ of *habeas corpus* is prosecuted for the purpose of determining the right of custody over a child. The grant of the writ depends on the concurrence of the following requisites: (1) that the petitioner has the right of custody over the minor; (2) that the rightful custody of the minor is being withheld from the petitioner by the respondents; and (3) that it is to the best interest of the minor concerned to be in the custody of petitioner and not that of the respondents.⁵¹

“The right of custody accorded to parents springs from the exercise of parental authority. Parental authority or *patria potestas* in Roman Law is the juridical institution whereby parents rightfully assume control and protection of their unemancipated children to the extent required by the latter’s needs. It is a mass of rights and obligations which the law grants to parents for the purpose of the children’s physical preservation and development, as well as the cultivation of their intellect and the education of their heart and senses. As regards parental authority, ‘there is no power, but a task; no complex of rights, but a sum of duties; no sovereignty but a sacred trust for the welfare of the minor.’”⁵²

As a general rule, the father and the mother shall jointly exercise parental authority over the persons of their common children.⁵³ However, insofar as illegitimate children are concerned, Article 176⁵⁴ of the Family Code states that **illegitimate children shall be under the parental authority of their mother.** Accordingly, mothers (such as Renalyn) are entitled to the sole parental authority of their illegitimate children (such as Queenie), notwithstanding the father’s recognition of the child. In the exercise of that authority, mothers are consequently entitled to keep their illegitimate children in their company, and the Court will not deprive them of custody, *absent any imperative cause showing the mother’s **unfitness** to exercise such authority and care.*⁵⁵

⁵⁰ *Sombong v. CA*, 322 Phil. 737, 749 (1996).

⁵¹ *Id.* at 751.

⁵² *Tonog v. CA*, 427 Phil. 1, 7-8 (2002), citing *Santos, Sr. v. CA*, 312 Phil. 482, 487-488 (1995).

⁵³ See Article 211 of the Family Code, which reads:

Article 211. The father and the mother shall jointly exercise parental authority over the persons of their common children. In case of disagreement, the father’s decision shall prevail, unless there is a judicial order to the contrary.

⁵⁴ Article 176. Illegitimate children shall use the surname and shall be under the parental authority of their mother, and shall be entitled to support in conformity with this Code. x x x The legitime of each illegitimate child shall consist of one-half of the legitime of a legitimate child.

⁵⁵ See *Briones v. Miguel*, 483 Phil. 483, 492-493 (2004).

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In addition, Article 213 of the same Code provides for the so-called *tender-age presumption*, stating that “[n]o child under seven [(7)] years of age shall be separated from the mother *unless the court finds compelling reasons to order otherwise*.” The rationale behind the rule was explained by the Code Commission in this wise:

The general rule is recommended in order to avoid many a tragedy where a mother has seen her baby torn away from her. No man can sound the deep sorrows of a mother who is deprived of her child of tender age. The exception allowed by the rule has to be for “compelling reasons” for the good of the child; those cases must indeed be rare, if the mother’s heart is not to be unduly hurt. x x x⁵⁶

According to jurisprudence, the following instances may constitute “compelling reasons” to wrest away custody from a mother over her child although under seven (7) years of age: neglect, abandonment, unemployment, immorality, habitual drunkenness, drug addiction, maltreatment of the child, insanity or affliction with a communicable disease.⁵⁷

As the records show, the CA resolved to remand the case to the RTC, ratiocinating that there is a need to establish whether or not Renalyn has been neglecting Queenie,⁵⁸ for which reason, a trial is indispensable for reception of evidence relative to the preservation or overturning of the tender-age presumption under Article 213 of the Family Code.⁵⁹ In opposition, petitioners contend that the second paragraph of Article 213 of the Family Code would not even apply in this case (so as to determine Renalyn’s unfitness as a mother) because the said provision only applies to a situation where the parents are married to each other.⁶⁰ As basis, petitioners rely on the Court’s ruling in *Pablo-Gualberto v. Gualberto V*⁶¹ (*Pablo-Gualberto*), the pertinent portion of which reads:

In like manner, the word “shall” in Article 213 of the Family Code and Section 6 of Rule 99 of the Rules of Court has been held to connote a mandatory character. **Article 213 and Rule 99 similarly contemplate a situation in which the parents of the minor are married to each other,** but are separated by virtue of either a decree of legal separation or a *de facto* separation. x x x⁶²

For easy reference, Article 213 of the Family Code and Section 6, Rule 99 of the Rules of Court, which were cited in *Pablo-Gualberto*, are quoted hereunder in full:

⁵⁶ *Tonog v. CA*, supra note 52, at 8.

⁵⁷ *Pablo-Gualberto v. Gualberto V*, 500 Phil. 226, 250 (2005).

⁵⁸ See *rollo*, p. 28.

⁵⁹ See *id.* at 33.

⁶⁰ See *id.* at 10-11.

⁶¹ Supra note 57.

⁶² *Id.* at 248-249.

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Article 213 of the Family Code

Article 213. In case of separation of the parents, parental authority shall be exercised by the parent designated by the Court. The Court shall take into account all relevant considerations, especially the choice of the child over seven years of age, unless the parent chosen is unfit.

No child under seven years of age shall be separated from the mother unless the court finds compelling reasons to order otherwise.

Section 6, Rule 99 of the Rules of Court

Section 6. *Proceedings as to child whose parents are separated. Appeal.* – When husband and wife are divorced or living separately and apart from each other, and the question to the care, custody, and control of a child or children of their marriage is brought before a Court of First Instance by petition or as an incident to any other proceeding, the court, upon hearing the testimony as may be pertinent, shall award the care, custody, and control of each such child as will be for its best interest, permitting the child to choose which parent it prefers to live with if it be over ten years of age, unless the parent so chosen be unfit to take charge of the child by reason of moral depravity, habitual drunkenness, incapacity, or poverty. If, upon such hearing, it appears that both parents are improper persons to have the care, custody, and control of the child, the court may either designate the paternal or maternal grandparent of the child, or his oldest brother or sister, or some reputable and discreet person to take charge of such child, or commit it to any suitable asylum, children's home, or benevolent society. The court may in conformity with the provisions of the Civil Code order either or both parents to support or help support said child, irrespective of who may be its custodian, and may make any order that is just and reasonable permitting the parent who is deprived of its care and custody to visit the child or have temporary custody thereof. Either parent may appeal from an order made in accordance with the provisions of this section. No child under seven years of age shall be separated from its mother, unless the court finds there are compelling reasons therefor.

Notably, after a careful reading of *Pablo-Gualberto*, it has been determined that the aforementioned pronouncement therein is based on a previous child custody case, namely, *Briones v. Miguel*⁶³ (*Briones*), wherein the Court pertinently held as follows:

However, the CA erroneously applied Section 6 of Rule 99 of the Rules of Court. This provision contemplates a situation in which the parents of the minor are married to each other but are separated either by virtue of a decree of legal separation or because they are living separately *de facto*. In the present case, it has been established that petitioner and Respondent Loreta were never married. Hence, that portion of the CA Decision allowing the child to choose which parent to live with is deleted, but without disregarding the obligation of petitioner to support the child.⁶⁴

⁶³ Supra note 55. "*Briones v. Miguel*, G.R. No. 156343, October 18, 2004, p. 13." is the citation of the stated pronouncement as per footnote 44 of *Pablo-Gualberto v. Gualberto V* (supra note 57, at 249).

⁶⁴ Id. at 494.

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For guidance, the relevant issue in *Briones* for which the stated excerpt was made is actually the application of Section 6, Rule 99 of the Rules of Court insofar as it permits the child over ten (10) years of age **to choose which parent he prefers to live with**. As the Court's ruling in *Briones* was prefaced: "[t]he Petition has no merit. However, the assailed Decision should be modified in regard to its erroneous application of Section 6 of Rule 99 of the Rules of Court."⁶⁵ Accordingly, since the statement in *Pablo-Gualberto* invoked by petitioners, *i.e.*, that "*Article 213 and Rule 99 similarly contemplate a situation in which the parents of the minor are married to each other x x x,*" was based on *Briones*, then that same statement must be understood according to its proper context – that is, the issue pertaining to the right of a child to choose which parent he prefers to live with. The reason as to why this statement should be understood in said manner is actually not difficult to discern: the choice of a child over seven (7) years of age (first paragraph of Article 213 of the Family Code) and over ten (10) years of age (Rule 99 of the Rules of Court) shall be considered in custody disputes **only between married parents** because they are, pursuant to Article 211 of the Family Code, accorded joint parental authority over the persons of their common children. On the other hand, this choice is not available to an illegitimate child, much more one of tender age such as Queenie (second paragraph of Article 213 of the Family Code), because sole parental authority is given only to the mother, unless she is shown to be unfit or unsuitable (Article 176 of the Family Code). Thus, since the issue in this case is the application of the exception to the tender-age presumption under the second paragraph of Article 213 of the Family Code, and not the option given to the child under the first paragraph to choose which parent to live with, petitioners' reliance on *Pablo-Gualberto* is grossly misplaced.

In addition, it ought to be pointed out that the second paragraph of Article 213 of the Family Code, which was the basis of the CA's directive to remand the case, does not even distinguish between legitimate and illegitimate children – and hence, does not factor in whether or not the parents are married – in declaring that "[n]o child under seven [(7)] years of age shall be separated from the mother unless the court finds compelling reasons to order otherwise." "*Ubi lex non distinguit nec nos distinguere debemos*. When the law makes no distinction, we (this Court) also ought not to recognize any distinction."⁶⁶ As such, petitioners' theory that Article 213 of the Family Code is herein inapplicable – and thus, negates the need for the ordered remand – is not only premised on an erroneous reading of jurisprudence, but is also one that is fundamentally off-tangent with the law itself.

⁶⁵ *Briones v. Miguel*, supra note 55, at 489.

⁶⁶ *Yu v. Samson-Tatad*, 657 Phil. 431, 439 (2011).

III.

The Court cannot also subscribe to petitioners' contention that even if there are compelling reasons to separate Queenie from her mother, Renalyn, pursuant to the second paragraph of Article 213 of the Family Code, Ricky James would still not acquire custody over their daughter because there is no provision of law granting custody rights to an illegitimate father.⁶⁷

In the event that Renalyn is found unfit or unsuitable to care for her daughter, Article 214 of the Family Code mandates that **substitute parental authority** shall be exercised by the **surviving grandparent**. However, the same Code further provides in Article 216 that “[i]n default of parents or judicially appointed guardian, the following persons shall exercise substitute parental authority over the child in the order indicated:”

Article 216. x x x

- (1) The surviving grandparent as provided in Art. 214;
- (2) The oldest brother or sister, over twenty-one years of age, unless unfit or disqualified; and
- (3) **The child's actual custodian, over twenty-one years of age, unless unfit or disqualified.**

The same order of preference with respect to substitute parental authority is reiterated in Section 13 of A.M. No. 03-04-04-SC, the “Rule on Custody of Minors and Writ of *Habeas Corpus* in Relation to Custody of Minors,” to wit:

Section 13. *Provisional order awarding custody.* – After an answer has been filed or after expiration of the period to file it, the court may issue a provisional order awarding custody of the minor. As far as practicable, the following order of preference shall be observed in the award of custody:

- (a) Both parents jointly;
- (b) Either parent, taking into account all relevant considerations, especially the choice of the minor over seven years of age and of sufficient discernment, unless the parent chosen is unfit;
- (c) The grandparent, or if there are several grandparents, the grandparent chosen by the minor over seven years of age and of sufficient discernment, unless the grandparent chosen is unfit or disqualified;
- (d) The eldest brother or sister over twenty-one years of age, unless he or she is unfit or disqualified;
- (e) **The actual custodian of the minor over twenty-one years of age, unless the former is unfit or disqualified; or**

⁶⁷ See *rollo*, pp. 10-11.

(f) Any other person or institution the court may deem suitable to provide proper care and guidance for the minor.

It was not disputed that Ricky James was in actual physical custody of Queenie when Renalyn left for Manila to pursue her studies until the instant controversy took place. As such, Ricky James had already assumed obligations and enjoyed privileges of a custodial character, giving him a cause of action to file a case of *habeas corpus* to regain custody of Queenie as her actual custodian.

Indeed, it may be argued that Article 176 of the Family Code has effectively disqualified the father of an illegitimate child from exercising substitute parental authority under Article 216 even if he were the actual custodian of the child under the premise that no one is allowed to do indirectly what he is prohibited to do directly. However, the Court cannot adopt a rigid view, without running afoul to the overarching consideration in custody cases, which is the **best interest of the minor**. Even way back, Article 363 of the Civil Code provides that in all questions relating to the care, custody, education and property of the children, the latter's welfare is paramount.⁶⁸ Under present rules, A.M. No. 03-04-04-SC explicitly states that "[i]n awarding custody, the court shall consider the best interests of the minor and shall give paramount consideration to [her] material and moral welfare. The best interests of the minor refer to the totality of the circumstances and conditions as are most congenial to the survival, protection, and feelings of security of the minor encouraging to [her] physical, psychological and emotional development. It also means the least detrimental available alternative for safeguarding the growth and development of the minor."⁶⁹

In light of the foregoing, the Court finds that Queenie's best interest demands that a proper trial be conducted to determine if she had, indeed, been neglected and abandoned by her mother, rendering the latter unfit to exercise parental authority over her, and in the event that Renalyn is found unsuitable, whether it is in Queenie's best interest that she be in the custody of her father rather than her grandparents upon whom the law accords a far superior right to exercise substitute parental authority. In the case of *Bagtas v. Santos*,⁷⁰ which was a tug-of-war between the maternal grandparents of the illegitimate minor child and the actual custodians of the latter, the Court faulted the trial court for hastily dismissing the petition for *habeas corpus* and awarding the custody of the minor to the grandparents without conducting any trial. The import of such decision is that the preference accorded by Article 216 of the Family Code does not automatically attach to the grandparents, and is conditioned upon the determination of their fitness to take care of their grandchild. In ruling as it did, the Court ratiocinated that the child's welfare being the most important consideration, **it is not bound**

⁶⁸ *Luna v. Intermediate Appellate Court*, 221 Phil. 400, 408 (1985).

⁶⁹ See Section 14 of A.M. No. 03-04-04-SC.

⁷⁰ *Supra* note 37.

by any legal right of a person over the child. Reiterating its pronouncement in the early case of *Sombong v. CA*,⁷¹ the Court held that:

[I]n passing on the writ in a child custody case, the court deals with a matter of an equitable nature. Not bound by any mere legal right of parent or guardian, the court gives his or her claim to the custody of the child due weight as a claim founded on human nature and considered generally equitable and just. Therefore, these cases are decided, not on the legal right of the petitioner to be relieved from unlawful imprisonment or detention, as in the case of adults, but on the court's view of the best interests of those whose welfare requires that they be in custody of one person or another. Hence, the court is not bound to deliver a child into the custody of any claimant or of any person, but should, in the consideration of the facts, leave it in such custody as its welfare at the time appears to require. In short, the child's welfare is the supreme consideration.

Considering that the child's welfare is an all-important factor in custody cases, the Child and Youth Welfare Code unequivocally provides that in all questions regarding the care and custody, among others, of the child, his welfare shall be the paramount consideration. In the same vein, the Family Code authorizes the courts to, if the welfare of the child so demands, deprive the parents concerned of parental authority over the child or adopt such measures as may be proper under the circumstances.⁷²

The Court cannot close its eyes to the sad reality that not all fathers, especially those who have sired children out of wedlock, have risen to the full height of a parent's responsibility towards his offspring. Yet, here is a father of an illegitimate child who is very much willing to take on the whole gamut of parenting. He, thus, deserves, at the very least, to be given his day in court to prove that he is entitled to regain custody of his daughter. As such, the CA's order to remand the case is proper.

IV.

While the appellate court correctly remanded the case for trial, the Court, however, holds that it erred in granting Ricky James temporary custody for a limited period of twenty-four (24) consecutive hours once every month, in addition to visitation rights, invoking "humane and practical considerations,"⁷³ which were based solely on Ricky James' allegations.

It should be stressed that Section 15 of A.M. No. 03-04-04-SC provides for temporary visitation rights, **not** temporary custody, as follows:

Section 15. *Temporary visitation rights.* – The court shall provide in its order awarding provisional custody appropriate visitation rights to the non-custodial parent or parents, unless the court finds said parent or parents unfit or disqualified.

⁷¹ Supra note 50.

⁷² Id. at 750-751.

⁷³ *Rollo*, pp. 46-48.

✓

The temporary custodian shall give the court and non-custodial parent or parents at least five days' notice of any plan to change the residence of the minor or take him out of his residence for more than three days provided it does not prejudice the visitation rights of the non-custodial parent or parents.

It is only after trial, when the court renders its judgment awarding the custody of the minor to the proper party, that the court may likewise issue "any order that is just and reasonable permitting the parent who is deprived of the care and custody of the minor to visit or have temporary custody," pursuant to Section 18 of A.M. No. 03-04-04-SC, to wit:

Section 18. *Judgment.* – After trial, the court shall render judgment awarding the custody of the minor to the proper party considering the best interests of the minor.

If it appears that both parties are unfit to have the care and custody of the minor, the court may designate either the paternal or maternal grandparent of the minor, or his oldest brother or sister, or any reputable person to take charge of such minor, or to commit him to any suitable home for children.

In its judgment, the court may order either or both parents to give an amount necessary for the support, maintenance and education of the minor, irrespective of who may be its custodian. In determining the amount of support, the court may consider the following factors: (1) the financial resources of the custodial and non-custodial parent and those of the minor; (2) the physical and emotional health, special needs, and aptitude of the minor; (3) the standard of living the minor has been accustomed to; and (4) the non-monetary contributions that the parents would make toward the care and well-being of the minor.

The court may also issue any order that is just and reasonable permitting the parent who is deprived of the care and custody of the minor to visit or have temporary custody. (Emphasis supplied)

By granting temporary *albeit* limited custody ahead of trial, the appellate court overturned the tender-age presumption with nothing but Ricky James' bare allegations, to which the Court cannot give its imprimatur. As earlier intimated, the issue surrounding Renalyn's fitness as a mother must be properly threshed out in the trial court before she can be denied custody, even for the briefest of periods, over Queenie.

In view of the disposition in *Silva* and *Briones* and the rules quoted above, the Court can only uphold Ricky James' visitation rights, which shall be limited to two (2) days per week, without prejudice to Renalyn allowing him additional days. However, consistent with the aforesaid cases, as well as the more recent case of *Grande v. Antonio*,⁷⁴ Ricky James may take Queenie out only upon the written consent of Renalyn. Contrary to the posturing⁷⁵ of

⁷⁴ 727 Phil. 448 (2014).


⁷⁵ See *rollo*, pp. 47-48.

the appellate court, the requirement for the consent of the mother is consistent with the regime of sole maternal custody under the second paragraph of Article 213 of the Family Code with respect to children under seven (7) years of age, which may be overcome only by compelling evidence of the mother's unfitness.⁷⁶ Until and unless Ricky James is able to substantiate his allegations, he can only claim visitation rights over his daughter.

WHEREFORE, the petition is **PARTLY GRANTED**. The Decision dated January 12, 2017 and the Omnibus Resolution dated October 3, 2017 of the Court of Appeals in CA-G.R. SP No. 144406 are hereby **AFFIRMED** with the **MODIFICATION** deleting the grant of limited and temporary custody for lack of legal and factual basis. The grant of visitation rights of two (2) days per week shall be maintained. Respondent Ricky James Relucio may take his daughter, Queenie Angel M. Relucio, out but only with the written consent of petitioner Renalyn A. Masbate in accordance with this Decision.

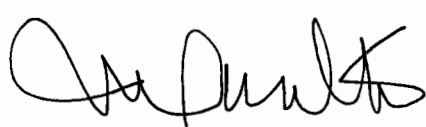
The Regional Trial Court of Legazpi City, Albay, Branch 8 is **DIRECTED** to immediately proceed with hearing Special Proceeding No. FC-15-239 upon notice of this Decision.

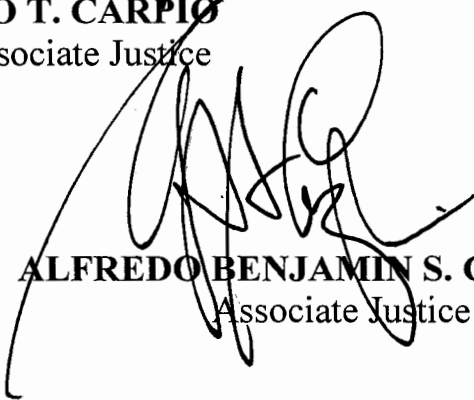
SO ORDERED.


ESTELA M. PERLAS-BERNABE
 Associate Justice

WE CONCUR:


ANTONIO T. CARPIO
 Senior Associate Justice


DIOSDADO M. PERALTA
 Associate Justice


ALFREDO BENJAMIN S. CAGUIOA
 Associate Justice

⁷⁶ See *Pablo-Gualberto v. Gualberto V*, supra note 57, at 250.

Reyes
ANDRES B. REYES, JR.
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



ANTONIO T. CARPIO

Senior Associate Justice

(Per Section 12, Republic Act No. 296,
The Judiciary Act of 1948, As Amended)