

THIRD DIVISION

[G.R. NO. 164915, March 10, 2006]

**ERIC JONATHAN YU, PETITIONER, VS. CAROLINE T. YU,
RESPONDENT.**

D E C I S I O N

CARPIO MORALES, J.:

On January 11, 2002, Eric Jonathan Yu (petitioner) filed a petition for **habeas corpus** before the Court of Appeals alleging that his estranged wife Caroline Tanchay-Yu (respondent) unlawfully withheld from him the custody of their minor child Bianca. The petition, which included a prayer for the award to him of the sole custody of Bianca, was docketed as CA-G.R. SP No. 68460.

Subsequently or on March 3, 2002, respondent filed a petition against petitioner before the Pasig Regional Trial Court (RTC) for **declaration of nullity of marriage** and dissolution of the absolute community of property. The petition included a prayer for the award to her of the sole custody of Bianca and for the fixing of schedule of petitioner's visiting rights "subject only to the final and executory judgment of the Court of Appeals in CA-G.R. SP No. 68460."

In the meantime, the appellate court, by Resolution of March 21, 2002, awarded petitioner full custody of Bianca during the pendency of the habeas corpus case, with full visitation rights of respondent.

Petitioner and respondent later filed on April 5, 2002 before the appellate court a Joint Motion to Approve Interim Visitation Agreement which was, by Resolution of April 24, 2002, approved.

On April 18, 2002, respondent filed before the appellate court a Motion for the Modification of her visiting rights under the Interim Visitation Agreement. To the Motion, petitioner filed an Opposition with Motion to Cite Respondent for Contempt of Court in light of her filing of the petition for declaration of nullity of marriage before the Pasig RTC which, so he contended, constituted forum shopping.

By Resolution of July 5, 2002, the appellate court ordered respondent and her counsel to make the necessary amendment in her petition for declaration of nullity of marriage before the Pasig City RTC in so far as the custody aspect is concerned, under pain of contempt.

In compliance with the appellate court's Resolution of July 5, 2002, respondent filed a Motion to Admit Amended Petition before the Pasig RTC. She, however, later filed in December 2002 a Motion to Dismiss her petition, without prejudice, on the ground that since she started residing and conducting business at her new address at Pasay City, constraints on resources and her very busy schedule rendered her

unable to devote the necessary time and attention to the petition. The Pasig RTC granted respondent's motion and accordingly dismissed the petition without prejudice, by Order of March 28, 2003.

On June 12, 2003, petitioner filed his own petition for **declaration of nullity of marriage** and dissolution of the absolute community of property before the Pasig RTC, docketed as JDRC Case No. 6190, with prayer for the award to him of the sole custody of Bianca, subject to the final resolution by the appellate court of his petition for habeas corpus.

The appellate court eventually dismissed the habeas corpus petition, by Resolution of July 3, 2003, for having become moot and academic, "the restraint on the liberty of the person alleged to be in restraint [having been] lifted."

In the meantime, respondent filed on July 24, 2003 before the Pasay RTC a petition for **habeas corpus**, which she denominated as "Amended Petition," praying for, among other things, the award of the sole custody to her of Bianca or, in the alternative, pending the hearing of the petition, the issuance of an order "replicating and reiterating the enforceability of the Interim Visiting Agreement" which was approved by the appellate court. The petition was docketed as SP Proc. No. 03-0048.

Not to be outdone, petitioner filed on July 25, 2003 before the Pasig RTC in his petition for declaration of nullity of marriage an urgent motion praying for the custody of Bianca for the duration of the case.

Acting on respondent's petition, Branch 113 of the Pasay RTC issued a Writ of Habeas Corpus, a Hold Departure Order and Summons addressed to petitioner, drawing petitioner to file a motion to dismiss the petition on the ground of lack of jurisdiction, failure to state a cause of action, forum shopping and *litis pendentia*, he citing the pending petition for declaration of nullity of marriage which he filed before the Pasig RTC.

The Pasay RTC, in the meantime, issued an Order of August 12, 2003 declaring that pending the disposition of respondent's petition, Bianca should stay with petitioner from Sunday afternoon to Saturday morning and "with the company of her mother from Saturday 1:00 in the afternoon up to Sunday 1:00 in the afternoon." To this Order, petitioner filed a Motion for Reconsideration, arguing that the Pasay RTC did not have jurisdiction to issue the same. He likewise filed a Manifestation of August 14, 2003 stating that he was constrained to submit to the said court's order but with the reservation that he was not submitting the issue of custody and himself to its jurisdiction.

Respondent soon filed her Answer with Counter-Petition on the nullity case before the Pasig RTC wherein she also prayed for the award of the sole custody to her of Bianca, subject to the final disposition of the habeas corpus petition which she filed before the Pasay RTC.

By Omnibus Order of October 30, 2003, the Pasig RTC asserted its jurisdiction over the custody aspect of the petition filed by petitioner and directed the parties to comply with the provisions of the Interim Visitation Agreement, unless they agreed to a new bilateral agreement bearing the approval of the court; and granted custody

of Bianca to petitioner for the duration of the case.

The Pasay RTC in the meantime denied, by Order of November 27, 2003, petitioner's motion to dismiss. The court, citing *Sombong v. Court of Appeals*, [1] held that in custody cases involving minors, the question of illegal and involuntary restraint of liberty is not the underlying rationale for the availability of a writ of habeas corpus as a remedy; rather, a writ of habeas corpus is prosecuted for the purpose of determining the right of custody over the child. [2] And it further held that the filing before it of the habeas corpus case by respondent, who is a resident of Pasay, is well within the ambit of the provisions of A.M. No. 03-04-04-SC. [3]

On the issue of forum shopping, the Pasay RTC held that it is petitioner, not respondent, who committed forum shopping, he having filed (on June 12, 2003) the petition for declaration of nullity of marriage before the Pasig RTC while his petition for habeas corpus before the Court of Appeals was still pending. [4]

The Pasay RTC held that assuming *arguendo* that petitioner's filing before the Pasig RTC of the declaration of nullity of marriage case did not constitute forum shopping, it (the Pasay RTC) acquired jurisdiction over the custody issue ahead of the Pasig RTC, petitioner not having amended his petition before the Pasig RTC as soon as the Court of Appeals dismissed his petition for habeas corpus [5] (on July 3, 2003).

Finally, the Pasay RTC held that there was no *litis pendentia* because two elements thereof are lacking, namely, 1) identity of the rights asserted and reliefs prayed for, the relief being founded on the same facts, and 2) identity with respect to the two preceding particulars in the two cases such that any judgment that may be rendered in the pending case, regardless of which party is successful, would amount to *res judicata* in the other case. [6]

Petitioner thereupon assailed the Pasay RTC's denial of his Motion to Dismiss via Petition for Certiorari, Prohibition and Mandamus before the appellate court wherein he raised the following issues:

- A. RESPONDENT JUDGE COMMITTED GRAVE ABUSE OF DISCRETION BY DENYING PETITIONER'S MOTION TO DISMISS DESPITE THE EVIDENT LACK OF JURISDICTION OVER THE SUBJECT MATTER OF CUSTODY, LITIS PENDENTIA, AND DELIBERATE AND WILLFUL FORUM-SHOPPING ON THE PART OF RESPONDENT CAROLINE T. YU. [7]
- B. RESPONDENT JUDGE ACTED WHIMSICALLY, CAPRICIOUSLY AND ARBITRARILY IN ISSUING THE AUGUST 12, 2003 ORDER GRANTING RESPONDENT CAROLINE T. YU OVERNIGHT VISITATION RIGHTS OVER THE MINOR CHILD BIANCA AND DENYING PETITIONER'S URGENT MOTION FOR RECONSIDERATION OF THE SAID ORDER. [8] (Underscoring supplied)

By Decision of August 10, 2004, [9] the appellate court denied petitioner's petition, it holding that the assumption of jurisdiction by the Pasay RTC over the habeas corpus case does not constitute grave abuse of discretion; the filing by respondent before the Pasay RTC of a petition for habeas corpus could not be considered forum shopping in the strictest sense of the word as before she filed it after petitioner's

petition for habeas corpus filed before the appellate court was dismissed; and it was petitioner who committed forum shopping when he filed the declaration of nullity of marriage case while his habeas corpus petition was still pending before the appellate court.

In fine, the appellate court held that since respondent filed the petition for declaration of nullity of marriage before the Pasig RTC during the pendency of the habeas corpus case he filed before the appellate court, whereas respondent filed the habeas corpus petition before the Pasay RTC on July 24, 2003 after the dismissal on July 3, 2003 by the appellate court of petitioner's habeas corpus case, jurisdiction over the issue custody of Bianca did not attach to the Pasig RTC.

As for the questioned order of the Pasay RTC which modified the Interim Visiting Agreement, the appellate court, noting that the proper remedy for the custody of Bianca was filed with the Pasay RTC, held that said court had the authority to issue the same.

Hence, the present petition filed by petitioner faulting the appellate court for

- I. DECLARING THAT PETITIONER ERIC YU COMMITTED FORUM-SHOPPING IN FILING THE PETITION FOR DECLARATION OF NULLITY OF MARRIAGE WITH PRAYER FOR CUSTODY BEFORE THE PASIG FAMILY COURT AND THAT THE LATTER COURT WAS BARRED FROM ACQUIRING JURISDICTION OVER THE CUSTODY ASPECT OF THE NULLITY CASE IN RECKLESS DISREGARD OF THE PRINCIPLE THAT THE FILING OF A PETITION FOR NULLITY OF MARRIAGE BEFORE THE FAMILY COURTS VESTS THE LATTER WITH EXCLUSIVE JURISDICTION TO DETERMINE THE NECESSARY ISSUE OF CUSTODY.
- II. APPL[YING] THE LAW OF THE CASE DOCTRINE BY RULING THAT THE PASIG FAMILY COURT HAS NO JURISDICTION OVER THE CUSTODY ASPECT OF THE NULLITY CASE ON THE BASIS OF THE JULY 5, 2002 RESOLUTION OF THE COURT OF APPEALS IN CA GR SP NO. 68460 WHEN THE SAID RESOLUTION CLEARLY APPLIES ONLY TO THE NULLITY CASE FILED BY PRIVATE RESPONDENT ON MARCH 7, 2002 DOCKETED AS JDRC CASE NO. 5745 AND NOT TO HEREIN PETITIONER'S JUNE 12, 2003 PETITION FOR NULLITY DOCKETED AS JDRC CASE NO. 6190.
- III. DECLARING THAT THE PASIG FAMILY COURT MUST YIELD TO THE JURISDICTION OF THE PASAY COURT INSOFAR AS THE ISSUE OF CUSTODY IS CONCERNED IN GRAVE VIOLATION OF THE DOCTRINE OF JUDICIAL STABILITY AND NON-INTERFERENCE.
- IV. RULING THAT PRIVATE RESPONDENT CAROLINE DID NOT COMMIT FORUM-SHOPPING IN FILING THE HABEAS CORPUS CASE WITH PRAYER FOR CUSTODY BEFORE THE RESPONDENT PASAY COURT DESPITE THE FACT THAT AN EARLIER FILED PETITION FOR DECLARATION OF NULLITY OF MARRIAGE WITH PRAYER FOR CUSTODY IS STILL PENDING BEFORE THE PASIG FAMILY COURT