

FIRST DIVISION

[G.R. NO. 172813, July 20, 2006]

IVY JOAN P. REYES-TABUJARA, PETITIONER, VS. HON. COURT OF APPEALS AND ERNESTO A. TABUJARA III, RESPONDENTS.

D E C I S I O N

CHICO-NAZARIO, J.:

Before Us is a Petition for *Certiorari* seeking the reversal of the Resolutions dated 2 June 2006 and 7 June 2006 rendered by the Court of Appeals in CA-G.R. SP No. 94699.^[1] The 2 June 2006 Resolution restrained Judge Fatima Gonzales-Asdala, Pairing Judge of Quezon City Regional Trial Court (RTC), Branch 86, from enforcing her Order dated 31 May 2006 while the Resolution of 7 June 2006 set aside and nullified the Order she issued on 1 June 2006.

In her Petition, petitioner alleges that she and private respondent were married on 26 November 2000 at the Basilica of the Immaculate Conception, Intramuros, Manila. Their union was blessed with a son, Carlos Iñigo, who was born on 5 July 2002. Apparently, the couple's marital bliss was only short-lived for immediately after their wedding, their relationship was already beset by frequent squabbles which persisted even after the birth of their son. Despite their problems, petitioner and private respondent, together with their son, stayed at their conjugal home in Capitol Homes, Quezon City.

Since 11 March 2006, however, petitioner had been staying at her sister's house in Brixton Hills, Quezon City, because they were awaiting the arrival of their mother from abroad. On 14 March 2006, private respondent picked up Carlos Iñigo, who was with petitioner at that time. The following day, petitioner notified private respondent that she would fetch the child since she and her sister decided to go to San Fernando, Pampanga. Private respondent allegedly asked her to wait for him at their conjugal abode as he had something to give her. Thinking that private respondent was going to hand over to her the documents pertaining to their separation, petitioner acceded to his request. While waiting for private respondent, petitioner decided to bring her and Carlos Iñigo's clothes to the car so they could leave as soon as private respondent arrived. Much to petitioner's surprise, however, private respondent refused to allow her to take their child. When petitioner remonstrated, private respondent purportedly berated, insulted, and told her that she could no longer see their son without his permission. Petitioner also averred that when she tried to wrest Carlos Iñigo away from private respondent, the latter hit her several times and started choking her. Finally, private respondent boarded his car and sped away with their son in tow.

Petitioner then proceeded to the East Avenue Medical Center to have her injuries treated and also to Camp Karingal, Sikatuna Village, Quezon City, to report the matter.^[2]

Since the 15 March 2006 incident, petitioner has never seen her son and has been barred by private respondent from going back to their conjugal home. Left with no recourse and prompted by her longing to see her son Carlos Iñigo, petitioner filed a Petition for *Habeas Corpus* with the RTC, Quezon City, to compel private respondent to produce their son before the court.^[3] The Petition, docketed as Spec. Proc. No. Q-06-57984, was initially raffled off to Branch 102 of RTC, Quezon City, which issued an Order dated 23 May 2006^[4] the pertinent portion of which provides:

O R D E R

Filed before this Court is a verified Petition for Habeas Corpus filed by IVY JOAN P. REYES-TABUJARA, through counsel, seeking for the production of the minor CARLOS IÑIGO R. TABUJARA, who is reportedly in the custody of the respondent Ernesto Tabujara III, residing at No. 72 Berlin Street, Capitol Homes, Quezon City.

Finding the Petition to be sufficient in form and substance, the same is hereby given due course.

ACCORDINGLY, the respondent Ernesto A. Tabujara III is hereby directed to produce the living person of the minor CARLOS IÑIGO R. TABUJARA, before the Court during the hearing of this Petition which for that purpose is hereby set on 25 May 2006 at 10:00 A.M., and to show cause why, as alleged, the subject minor has been allegedly restrained of his liberty and detained by him. Observance of the Order is a way of effecting the return of this writ, as required by law.^[5]

On the scheduled hearing, private respondent appeared before the court without Carlos Iñigo. According to him, Carlos Iñigo was then vacationing at Tagaytay Highlands and that he did not have sufficient time to fetch the child for the hearing since he was informed of the court's order only on the evening of 24 March 2006.^[6]

In the same hearing, petitioner's counsel moved for the consolidation of this case with that pending before the RTC, Quezon City, Branch 86, docketed as Civil Case No. Q-06-57760, for violation of Republic Act No. 9262 or the "Anti-Violence Against Women and Their Children Act of 2004." This motion was granted by the court.^[7]

On 25 May 2006, petitioner filed with the RTC, Quezon City, Branch 86, an Urgent Ex-Parte Motion to Hear Writ of *Habeas Corpus* on 26 May 2006 at 8:30 A.M.^[8]

Subsequently, Presiding Judge Teodoro Bay of the RTC, Quezon City, Branch 86, issued, in chambers, an Order dated 31 May 2006 resolving, among other things, the issuance of a writ of *habeas corpus* for the person of Carlos Iñigo -

After considering the records of the three (3) cases consolidated before this Court,^[9] the Court resolves as follows:

1. the child Carlos Iñigo R. Tabujara shall continue to be under the custody of the respondent Ernesto Tabujara III until the Court shall have resolved the issue of custody of said child. This is necessary to protect the child from emotional and psychological violence due to

the misunderstanding now existing between his parents.

2. the Motion to Admit Amended Petition with Prayer for Temporary Protection Order is GRANTED. The Temporary Protection Order dated 19 April 2006 is hereby extended until the prayer for Permanent Protection is resolved.
3. the respondent Ernesto Tabujara III is hereby ordered to bring the child Carlos Iñigo Tabujara to this Court during the hearing of these cases on July 14, 2006 at 8:00 in the morning.
4. the motion for support pendente lite shall be resolved after sufficient details are presented to support said motion.
5. the respondent, as previously ordered, is directed to turn over the possession of one of the family's car to the petitioner.^[10]

On 31 May 2006, petitioner filed an Urgent Ex-Parte Motion to Order Respondent to Comply with the Writ of *Habeas Corpus* with Urgent Motion for Partial Reconsideration of the Order dated 31 May 2006.^[11] The Motion for partial reconsideration pertained to that portion of Judge Bay's Order granting private respondent continued custody over Carlos Iñigo in alleged violation of Article 213 of the Family Code stating:

Art. 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.

This motion was referred by the branch clerk of court to Judge Fatima Gonzales-Asdala, Pairing Judge of Branch 86, because Judge Bay was to go on official leave effective 1 June 2006.

Acting on said Motion, Judge Gonzales-Asdala issued an Order dated 31 May 2006, to wit:

WHEREFORE, Ernesto A. Tabujara III or any person or persons acting for and in his behalf and under his direction is hereby directed to produce the person of minor Carlos Iñigo R. Tabujara before the Session Hall, Branch 87, located at 114, Hall of Justice, Quezon City on June 1, 2006 at 9:00 o'clock in the morning. Failing which, the more coercive process of a Bench Warrant will be issued against said respondent, without prejudice to a declaration of contempt which may be due under the obtaining circumstances.^[12]

As it turned out, private respondent failed to appear before Judge Gonzales-Asdala on 1 June 2006. Consequently, through the Order dated 1 June 2006, he was declared in contempt of court and a bench warrant for his arrest was issued.^[13]

Aggrieved by the Order, respondent filed a Petition for *Certiorari* before the Court of Appeals praying for the issuance of a temporary restraining order and/or writ of preliminary injunction to enjoin Judge Gonzales-Asdala from: issuing a bench warrant against private respondent; implementing her Order of 31 May 2006; requiring private respondent to turn over custody of Carlos Iñigo to petitioner; and taking further action on Civil Cases No. Q-06-57760, No. Q-06-57857,^[14] and Spec. Proc. No. Q-06-57984.^[15]

On 2 June 2006, the Court of Appeals issued a Resolution restraining the implementation of Judge Gonzales-Asdala's Order of 31 May 2006.

Later, another Resolution was issued by the Court of Appeals setting aside and nullifying the 1 June 2006 Order of Judge Gonzales-Asdala.

Hence, this Petition for *Certiorari* raising the following grounds:

JUDGE FATIMA GONZALES-GONZALES-ASDALA ACTED WITHIN BOUNDS OF JURISDICTION IN ISSUING THE ORDER DATED 31 MAY 2006, AS WELL AS THE ORDER AND BENCH WARRANTS ISSUED ON JUNE 1, 2006 IN HER CAPACITY AS PAIRING JUDGE OF BRANCH 86 IN THE ABSENCE OF ITS PRESIDING JUDGE.

THE ORDER OF MAY 31, 2006 HAS ALREADY BEEN IMPLEMENTED BEFORE THE ISSUANCE OF SUBJECT TRO ON JUNE 2, 2006, THUS, THE TRO IS ALREADY MOOT AND ACADEMIC

SIMILARLY, THE ORDER OF JUNE 1, 2006 AND BENCH WARRANT HAVE ALREADY BEEN ISSUED AND SERVED UPON PRIVATE RESPONDENT ON 1 JUNE 2006 OR EVEN BEFORE THE TRO WAS ISSUED BY RESPONDENT COURT.

THE MATTER OF THE HABEAS CORPUS HAS BEEN SQUARELY RAISED BEFORE RESPONDENT COURT IN SUBJECT PETITION, AND RESPONDENT COURT ACTED WITH GRAVE ABUSE OF DISCRETION AND MANIFEST PARTIALITY IN DENYING HEREIN PETITIONER'S MOTION TO PRODUCE THE 4-YEAR OLD MINOR BEFORE THE RESPONDENT COURT.

THE WRIT OF HABEAS CORPUS MUST BE IMMEDIATELY EFFECTED SINCE PETITIONER IS ENTITLED TO SOLE CUSTODY OF THE MINOR WHO CANNOT BE SEPARATED FROM HER UNDER ART. 213 OF THE FAMILY CODE.

Petitioner contends that the subject Petition filed before the Court of Appeals shows that Judge Gonzales-Asdala was impleaded in her capacity as Presiding Judge of Branch 87 when in fact, she issued the 31 May 2006 and 1 June 2006 Orders when she was acting as the Pairing Judge of Branch 86. Private respondent's ploy, petitioner argues, has misled the Court of Appeals into believing that Judge Gonzales-Asdala's Orders violated the rule proscribing the interference by a court with the processes of another court of co-equal jurisdiction.

Also, petitioner maintains that the temporary restraining order issued by the Court of Appeals had already been rendered moot by the incidents which occurred prior to

their issuance. For one, the hearing on 1 June 2006 took place as scheduled thereby rendering useless the 2 June 2006 Resolution of the Court of Appeals. Similarly, the 7 June 2006 Resolution of the Court of Appeals enjoining the issuance of the bench warrant became inutile as the bench warrant for arrest was not only issued by Judge Gonzales-Asdala but said warrant was actually served upon private respondent on 1 June 2006.^[16]

Petitioner also claims that private respondent violated Article 213 of the Family Code when he prevented petitioner from having access to their conjugal abode and by forcibly separating her from Carlos Iñigo beginning 15 March 2006.

In addition, petitioner takes exception to the ruling of Judge Bay giving private respondent continued custody over Carlos Iñigo. Petitioner argues that said Order not only contravenes Article 213 of the Family Code but the same is also utterly lacking in any legal and factual bases.

Lastly, in an attempt to bolster her claim that she should have custody over Carlos Iñigo, petitioner cites the Court of Appeals' Resolution dated 4 July 2003^[17] granting private respondent a mere visitorial right to their son. This Resolution was issued by the Court of Appeals in connection with CA-G.R. SP. No. 77707.^[18]

In his Comment, private respondent argues that the Court of Appeals committed no grave abuse of discretion in issuing the assailed Resolutions. He contends that Judge Gonzales-Asdala, as the Pairing Judge of Quezon City RTC, Branch 86, has the authority "to step into and take action in a case only when the presiding judge is on leave, absent, incapacitated, or otherwise unavailable."^[19] In this case, however, she exceeded such authority when she issued her 31 May 2006 Order considering that Judge Bay, the Presiding Judge was yet to go on leave on 1 June 2006. It was therefore improper for her to take over the consolidated cases involving the parties herein since Judge Bay was still performing his duty on 31 May 2006.

Private respondent also disputes petitioner's assertion that the acts sought to be restrained by the Court of Appeals' Resolutions were already *fait accompli*. According to him, the fact that Judge Gonzales-Asdala's Orders of 31 May and 1 June 2006 were served upon his counsel does not mean that these were successfully implemented. He avers that, in fact, one of the grounds of his Petition for *Certiorari* before the Court of Appeals was the undue haste with which these Orders were successively issued thereby depriving him of substantial and procedural due process.^[20] As the party aggrieved, private respondent insists that he has the right to question Judge Gonzales-Asdala's Orders before a higher court.

In addition, private respondent asserts that petitioner is guilty of forum shopping. He points out that in petitioner's original complaint in Civil Case No. Q-06-57760, she prayed that she be granted the "sole custody and charge" of Carlos Iñigo^[21] but this was denied by Judge Bay in his Order dated 19 April 2006.^[22] Later, petitioner filed a Petition for *Habeas Corpus* before the Quezon City RTC where she again raised the issue relating to the custody of Carlos Iñigo. Private respondent insists that petitioner is clearly trying to circumvent the rule against forum shopping by seeking to regain custody over Carlos Iñigo in the *habeas corpus* case " a relief that was already denied her by Judge Bay in Civil Case No. Q-06-57760.