



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

JEFFREY ROSACAY EMPUERTO G.R. No. 268979
and LEONIDO AND ROSALYN
EMPUERTO,

Petitioners,

Present:

-versus-

LEONEN, J., Chairperson,
LAZARO-JAVIER,
LOPEZ, M.,
LOPEZ, J., and
KHO, JR., JJ.

SHEENA OLPOC CABRILLOS,
Respondent.

Promulgated:
FEB 05 2025

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DECISION

LEONEN, J.:

Upon the return of the writ of *habeas corpus*, the trial court must determine rightful custody of the child and may issue a provisional order awarding custody of a minor in compliance with Sections 13 and 14 of the Rule on Custody of Minors and Writ of *Habeas Corpus* in Relation to Custody of Minors.

The Petition for Review on *Certiorari*¹ filed before this Court assails the Court of Appeals' September 27, 2022 Resolution,² October 18, 2022

¹ Rollo, pp. 10–33.

² *Id.* at 292–295. The Resolution in CA-G.R. SP No. 10446-MIN was penned by Associate Justice Anisah B. Amanodin-Umpa and concurred in by Associate Justices Loida S. Posadas-Kahulugan and John Z. Lee of the Twenty-Third Division, Court of Appeals, Cagayan de Oro City.

Decision,³ and July 19, 2023 Resolution,⁴ and prays for the issuance of a Temporary Restraining Order against the execution of the Regional Trial Court's May 5, 2021 Order.⁵

On February 26, 2013, Sheena Olpoc Cabrillos (Sheena) gave birth to Yuno Hanzo Cabrillos Empuerto (Yuno).⁶ Jeffrey Rosacay Empuerto (Jeffrey) acknowledged being Yuno's father. He and Sheena lived in Davao City with his parents, spouses Leonido and Rosalyn Empuerto (Spouses Empuerto). Sometime in 2017, Sheena broke up with Jeffrey and left with Yuno to live with her parents in Cotabato City, where she enrolled Yuno to a local elementary school. Despite the distance, Jeffrey constantly communicated with Yuno and regularly had Yuno stay with him in Davao City for holidays and vacations.⁷

On March 13, 2020, Jeffrey brought Yuno back to Davao City for his summer vacation. Yuno's stay was extended due to the COVID-19 lockdown. Sheena asked Jeffrey to bring Yuno back to her after the lockdown, but her plea was ignored. On July 6, 2020, Sheena went to Davao City to fetch Yuno, but Jeffrey and Spouses Empuerto (collectively, the Empuertos) refused to hand over the child.⁸

On August 6, 2020, with the assistance of police officers and a local social worker, Sheena tried to fetch Yuno again. Yuno refused to go with her.⁹ Sheena requested assistance from the Office of the Punong Barangay, where she and Jeffrey agreed to turn over custody of Yuno at the end of his classes in April 2021.¹⁰

In April 2021, Jeffrey failed to give Yuno to Sheena, prompting her to file a police blotter of Jeffrey's failure to comply with the barangay agreement and a petition for the issuance of a writ of *habeas corpus* before the trial court.¹¹

³ *Id.* at 297–305. The Decision in CA-G.R. SP No. 10446-MIN was penned by Associate Justice Anisah B. Amanodin-Umpa and concurred in by Associate Justices Loida S. Posadas-Kahulugan and John Z. Lee of the Twenty-Third Division, Court of Appeals, Cagayan de Oro City.

⁴ *Id.* at 313–315. The Resolution in CA-G.R. SP No. 10446-MIN was penned by Associate Justice Anisah B. Amanodin-Umpa and concurred in by Associate Justices Jill Rose S. Jaugan-Lo and John Z. Lee of the Special Former Twenty-Third Division, Court of Appeals, Cagayan de Oro City.

⁵ *Id.* at 51–52. The Order in Special Proceedings Case No. R-DVO-21-2373-SP was issued by Presiding Judge Dante A. Baguio of Branch 12 – Family Court, Regional Trial Court, Davao City.

⁶ *Id.* at 298.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.* at 299.

¹¹ *Id.*

On May 3, 2021, the Regional Trial Court of Davao City issued a writ of *habeas corpus* requiring the Empuertos to appear and bring Yuno to court on May 5, 2021.¹²

All the parties and their lawyers appeared during the May 5, 2021 hearing for the writ's implementation, but only Jeffrey and Sheena were called for a preliminary conference inside the judge's chamber.¹³ During the conference, Jeffrey and Sheena agreed on certain terms for Yuno's custody, which were incorporated in the May 5, 2021 Regional Trial Court Order:

1. The custody of the child as stated in the earlier Order shall be turned over to the mother after the child's class on July 2021;
2. During the custody of the child with the father and the custody of the child with the mother after July, constant communication shall be maintained by the parties and the child. After July while the child is already in the custody of the mother, constant communication shall only be for once a week for one (1) month in order for the mother to establish more her relationship with the child;
3. The mother shall always take care and protect the child from any forms of abuse including but not limited to the members of her household;
4. During long vacation, this includes Christmas time, Holy Week celebration[,] and summer season, the custody of the child shall be with the father. For Christmas vacation, after the child's Christmas break from his class up to December 30, 2021, the custody shall be with the father[,] and during New Year celebration, the custody shall be with the mother;
5. The mother[,] while the custody of the child is with her, shall see to it that all the personal belongings of the child shall be used by him and all the toys belonging to him[] shall only be played [with] by him.

Considering that the said agreement entered into by the parties is not contrary to law, morals, good customs and public policy, the same is hereby APPROVED.

Parties are directed to faithfully comply with the terms and conditions as stated and enumerated above. Failure to do so, the Court will impose the corresponding sanctions and penalties.

Mr. Orlando S. Acosta, Sheriff IV of this Court, is hereby directed to serve this Order on July 2021 or after the class of the subject child with the assistance of the social worker, and to direct the turn[]over of custody from the father to the mother, the petitioner herein. In serving this Order, said Sheriff may ask for the assistance of any law enforcement agencies to ensure what has been agreed upon by the parties and approved by this Court will be complied with, taking into consideration the best interest and welfare of the child.

¹² *Id.*

¹³ *Id.*

With the said approval of the Compromise Agreement, this case is hereby CLOSED and TERMINATED.

SO ORDERED.¹⁴

The Empuertos moved for reconsideration, demanding a full-blown trial. The Regional Trial Court denied their motion in its June 11, 2021 Order,¹⁵ stating that since the issue of custody had been determined and the parties had entered into a compromise agreement, the petition for *habeas corpus* was therefore deemed resolved and the case was terminated.¹⁶

Based on his Sheriff's Return and Report dated July 28, 2021,¹⁷ Sheriff Orlando Acosta—together with Sheena, Social Worker Jovelyn Trajano, and Social Worker Dominique Fuentes—served to Jeffrey the May 5, 2021 Order for turnover of the custody of the child. Yuno refused to go with his mother Sheena despite Jeffrey's cooperation.¹⁸

Subsequently, the Empuertos filed an Urgent Verified Motion for Preliminary Restraints¹⁹ before the Court of Appeals, which sought to (1) restrain the execution of the trial court's order pending its appeal and (2) remand the case for a full-blown trial to determine rightful custody of the child.

In its September 27, 2022 Resolution,²⁰ the Court of Appeals denied the prayer for preliminary injunction, citing the Empuertos' failure to establish their clear, unmistakable right of custody over Yuno and the material invasion of this right:²¹

WHEREFORE, the Urgent Verified Motion for Preliminary Restraints is hereby DENIED.

Further, this Court resolves to –

1. NOTE respondents-appellants' Manifestation/Compliance with attached payment of the Sheriff's Trust Fund (STF) and TRO fee in the amount of [PHP] 2,300.00 filed on December 10, 2021.

¹⁴ *Id.* at 51–52.

¹⁵ *Id.* at 75–76.

¹⁶ *Id.* at 75.

¹⁷ *Id.* at 602.

¹⁸ *Id.*

¹⁹ *Id.* at 153–163.

²⁰ *Id.* at 292–295.

²¹ *Id.* at 294.

2. NOTE the Memorandum for respondents-appellants filed on January 6, 2022.

3. DEEM petitioner-appellee to have waived the filing of – (a) Memorandum; and (b) Comment on respondents-appellants' Urgent Verified Motion for Preliminary Restraints, in view of the CMIS verification report dated June 10, 2022 that none has been filed as of date, despite receipt of the Notice to File Memorandum and this Court's November 10, 2021 Minute Resolution by petitioner-appellee both on December 22, 2021.

Accordingly, the instant case is DECLARED submitted for decision.

SO ORDERED.²²

In its October 18, 2022 Decision,²³ the Court of Appeals partly granted the Empuertos' appeal:

WHEREFORE, the appeal is PARTLY GRANTED. The Orders dated May 5, 2021 and June 11, 2021 of the Regional Trial Court, 11th Judicial Region, Branch 12 [– Family Court], Davao City in Special Proceedings Case No. R-DVO-21-02373-SP are REVERSED and SET ASIDE, in so far as it orders the closure and termination of this case. Notwithstanding, the terms of the agreement regarding the custody of the minor, as stated in the May 5, 2021 Order, is hereby deemed provisional and shall be implemented accordingly.

Further, the court a *quo* is DIRECTED to immediately proceed with the hearing of this case upon notice of this Decision.

SO ORDERED.²⁴

The Court of Appeals held that the appeal's sole issue was whether the trial court erred in "declaring the case regarding the custody of Yuno closed and terminated, despite the absence of a full-blown trial."²⁵ It found that Jeffrey and Sheena's agreement stated in the May 5, 2021 Order did not "end . . . the issue of their son's custody,"²⁶ since the Empuertos "persistently demand . . . full-blown trial and reception of evidence . . . to prove that Sheena is unfit as custodian of her son."²⁷ Further, it found that there were allegations of physical abuse and prior incidents of harm, necessitating the conduct of a proper trial to give Sheena the opportunity to clear the accusations.²⁸ Thus, the Court of Appeals deemed the May 5, 2021 Order as merely a provisional order awarding custody, which must be immediately implemented while awaiting judgement after a full-blown trial.²⁹

²² *Id.* at 294–295.

²³ *Id.* at 297–305.

²⁴ *Id.* at 304.

²⁵ *Id.* at 301.

²⁶ *Id.* at 303.

²⁷ *Id.*

²⁸ *Id.* at 304.

²⁹ *Id.*

In its July 19, 2023 Resolution,³⁰ the Court of Appeals denied the Motion for Partial Reconsideration filed by the Empuertos. It upheld the validity of the compromise agreement entered between Sheena and Jeffrey, and held that Section 13 of the Rule on Custody of Minors and Writ of *Habeas Corpus* in Relation to Custody of Minors was inapplicable to Sheena's petition for the issuance of a writ of *habeas corpus*.³¹

Thus, on August 24, 2023, the Empuertos filed the present Petition. They claim that custody does not automatically vest on Sheena just because Yuno is an illegitimate child.³² They argue that being Yuno's biological father and actual custodian, Jeffrey has a clear and unmistakable right to the child's custody.³³ Considering that Sheena previously exposed Yuno to violence, the Empuertos also pray for the issuance of a temporary restraining order pending the appeal, to prevent trauma and similar disturbing actions which may impede the development of or negatively affect Yuno.³⁴

Furthermore, the Empuertos maintain that "mere agreement between the illegitimate parents *before trial* cannot determine with finality the issue of custody of an illegitimate child, nor can the said agreement be 'implemented.'"³⁵ Finally, they pray for the issuance of immediate restraint upon Sheena and the trial court, pending determination of the issues raised in the present Petition.³⁶

In its September 7, 2023 Order,³⁷ the Regional Trial Court sought to implement the Court of Appeals Decision directing the sheriff to transfer Yuno's provisional custody to his mother and setting the case for hearing.³⁸

Pursuant to this Court's October 23, 2023 Resolution,³⁹ the Court required Sheena to file a Comment and granted the issuance of a temporary restraining order enjoining Branch 12 – Family Court, Regional Trial Court, Davao City from proceeding with Special Proceedings Case No. R-DVO-21-2373-SP pending final adjudication of the present Petition.⁴⁰

³⁰ *Id.* at 313–315.

³¹ *Id.* at 315.

³² *Id.* at 21.

³³ *Id.* at 20.

³⁴ *Id.* at 25.

³⁵ *Id.* at 27-A. (Emphasis in the original)

³⁶ *Id.* at 28.

³⁷ *Id.* at 648–649.

³⁸ *Id.* at 649.

³⁹ *Id.* at 318–319.

⁴⁰ *Id.* at 318, 344.

In her Comment,⁴¹ Sheena claims that it is not in Yuno's best interest to stay with the Empuertos, as it is only Spouses Empuerto's selfishness which insists on Yuno's custody.⁴² Sheena argues that Jeffrey has been financially dependent on his parents; that his decisions depend on his parents; and that it is his parents who call the shots or dictate how Yuno is raised and taken care of.⁴³ Sheena essentially asserts that Spouses Empuerto influence Jeffrey in depriving her of her right as the mother of her minor child, as their motive is to selfishly acquire sole custody over Yuno.⁴⁴ Sheena also claims that the judge who issued the May 5, 2021 Order was forced to inhibit not because of alleged bias or partiality but because of the Empuertos' harassment.⁴⁵ Finally, Sheena prays for the denial of the Petition and for the case to proceed to trial on the merits.⁴⁶

In their Reply⁴⁷ dated April 25, 2024, the Empuertos reiterate that the May 5, 2021 Order of the trial court was improperly issued considering its failure to direct the Empuertos to file their answer to the petition prior to implementing provisional custody of Yuno.⁴⁸ They submit that a full-blown trial is necessary for the best interest of Yuno, in order to reveal Sheena's unfitness to have custody of him.⁴⁹ The Empuertos further allege that they filed the September 29, 2023 Motion for Voluntary Inhibition⁵⁰ of Branch 12 – Family Court's presiding judge after his erroneous implementation of the Court of Appeals Decision despite pendency of an appeal before the Court.⁵¹ They deny violating Sheena's right as biological mother of Yuno,⁵² insisting that it was Yuno who refused to go with her.⁵³ Finally, the Empuertos maintain that Yuno's custody must remain with them, considering Sheena's previous violence against Yuno and Yuno's persistent refusal to go with her.⁵⁴

The primary issue for this Court's resolution is whether the Court of Appeals erred in deeming provisional and directing the implementation of the compromise agreement between Sheena and Jeffrey, while awaiting judgement after a full-blown trial.

This Court grants the Petition.

⁴¹ *Id.* at 335–342.

⁴² *Id.* at 338.

⁴³ *Id.*

⁴⁴ *Id.* at 339.

⁴⁵ *Id.*

⁴⁶ *Id.* at 340.

⁴⁷ *Id.* at 661–678.

⁴⁸ *Id.* at 665.

⁴⁹ *Id.*

⁵⁰ *Id.* at 679–688.

⁵¹ *Id.* at 667.

⁵² *Id.* at 672.

⁵³ *Id.* at 674.

⁵⁴ *Id.* at 674–675.

To regulate a party's availment of *habeas corpus* writs as a means of recovering child custody, the Court promulgated A.M. No. 03-04-04-SC or the Rule on Custody of Minors and Writ of *Habeas Corpus* in Relation to Custody of Minors on April 22, 2003.⁵⁵ *Sombong v. Court of Appeals*⁵⁶ provides for the rationale, function, and requisites for issuance of a writ of *habeas corpus* in custody cases:

In general, the purpose of the writ of [*habeas corpus*] is to determine whether or not a particular person is legally held. A prime specification of an application for a writ of [*habeas corpus*], in fact, is an actual and effective, and not merely nominal or moral, illegal restraint of liberty. "The writ of [*habeas corpus*] was devised and exists as a speedy and effectual remedy to relieve persons from unlawful restraint, and as the best and only sufficient defense of personal freedom. A prime specification of an application for a writ of [*habeas corpus*] is restraint of liberty. The essential object and purpose of the writ of [*habeas corpus*] is to inquire into all manner of involuntary restraint as distinguished from voluntary, and to relieve a person therefrom if such restraint is illegal. Any restraint which will preclude freedom of action is sufficient.

Fundamentally, in order to justify the grant of the writ of [*habeas corpus*], the restraint of liberty must be in the nature of an illegal and involuntary deprivation of freedom of action. This is the basic requisite under the first part of [Rule 102, Section 1] of the Revised Rules of Court, which provides that "except as otherwise expressly provided by law, the writ of [*habeas corpus*] shall extend to all cases of illegal confinement or detention by which any person is deprived of [their] liberty."

In the second part of the same provision, however, [*habeas corpus*] may be resorted to in cases where "the rightful custody of any person is withheld from the person entitled thereto." Thus, although the Writ of [*Habeas Corpus*] ought not to be issued if the restraint is voluntary, we have held time and again that the said writ is the proper legal remedy to enable parents to regain the custody of a minor child even if the latter be in the custody of a third person of [their] own free will.

It may even be said that in custody cases involving minors, the question of illegal and involuntary restraint of liberty is not the underlying rationale for the availability of the writ as a remedy; rather, the writ of *habeas corpus* is prosecuted for the purpose of determining the right of custody over a child.

....

The foregoing principles considered, the grant of the writ in the instant case will all depend 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 respondent; and (3) that it is to the best interest of the minor concerned to

⁵⁵ *Reyes v. Elquero*, 881 Phil. 66, 80 (2020) [Per J. Gaerlan, Third Division].

⁵⁶ 322 Phil. 737 (1996) [Per J. Hermosissima, Jr., First Division].

be in the custody of petitioner and not that of the respondent.⁵⁷ (Citations omitted)

A person having rightful custody over a minor, but allegedly being deprived thereof, may file a verified petition for a writ of *habeas corpus* before the Family Court.⁵⁸ The Family Court shall then decide the issue on custody of minors upon the return of the writ of *habeas corpus*.⁵⁹ This is because a petition for *habeas corpus* is essentially prosecuted to determine who has rightful custody over the child, and not merely to produce the child before the court.⁶⁰

The Family Court may then issue a provisional order awarding custody after an answer has been filed or after expiration of the period to file it, and can render judgment awarding custody of the minor to the proper party after trial, as provided by the relevant provisions:

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;
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- (e) The actual custodian of the minor over twenty-one years of age, unless the former is unfit or disqualified; or
- (f) Any other person or institution the court may deem suitable to provide proper care and guidance for the minor.
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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.

Here, respondent filed a petition for the issuance of a writ of *habeas corpus* before the trial court. The trial court then issued a writ of *habeas*

⁵⁷ *Id.* at 749–751.

⁵⁸ *Id.* at 749; Rule on Custody of Minors and Writ of *Habeas Corpus* in Relation to Custody of Minor, sec. 20.

⁵⁹ Rule on Custody of Minors and Writ of *Habeas Corpus* in Relation to Custody of Minor, sec. 20.

⁶⁰ *Bagtas v. Judge Santos*, 621 Phil. 94, 103 (2009) [Per J. Carpio, Second Division].

corpus requiring petitioners to appear and bring Yuno to court on May 5, 2021.⁶¹ Upon the return of the writ on May 5, 2021, the presiding judge: (1) called respondent and petitioner Jeffrey to his chamber for a preliminary conference; (2) issued the Order⁶² incorporating the compromise agreement of petitioner Jeffrey and respondent regarding Yuno's custody; and (3) declared the case closed and terminated. The Court of Appeals thereafter upheld the validity of the compromise agreement between petitioner Jeffrey and respondent; deemed the May 5, 2021 Order as a provisional order awarding custody; and directed the trial court to immediately proceed with the hearing of this case.

This Court, however, finds that the Court of Appeals acted contrary to existing rules and jurisprudence when it deemed "the terms of the agreement regarding the custody of the minor, as stated in the May 5, 2021 Order" as constituting a provisional order awarding custody of a minor and, as such, directed the agreement's immediate implementation.

The May 5, 2021 Order of the trial court failed to comply with Section 13 of the Rule on Custody of Minors and Writ of *Habeas Corpus* in Relation to Custody of Minors. Contrary to the Court of Appeals' July 19, 2023 Resolution,⁶³ respondent's petition for the issuance of a writ of *habeas corpus* was filed for the purpose of obtaining custody of Yuno, and thus the Rule on Custody of Minors and Writ of *Habeas Corpus* in Relation to Custody of Minors specifically applies.⁶⁴

Section 13 of the said Rule states that a provisional order awarding custody will only be issued after an answer has been filed or after expiration of the period for filing it. This has been reiterated in *Recto v. Judge Trocino*,⁶⁵ where the Court held that "a court is not authorized to issue a provisional order awarding custody of a minor child *until after an answer to the petition has been filed or when the period to file the same has expired and no such answer was filed in court.*"⁶⁶

Here, petitioners were not duly served with summons and were unable to file their answer to the petition filed by respondent before the trial court, contrary to Section 13 of the said Rule. It appears that upon return of the writ on May 5, 2021, respondent and petitioner Jeffrey entered into a compromise agreement and the trial court already terminated the special proceedings. As petitioners never had the chance to file their answer to respondent's petition,

⁶¹ *Rollo*, p. 299.

⁶² *Id.* at 51–52.

⁶³ *Id.* at 313–315.

⁶⁴ Rule on Custody of Minors and Writ of *Habeas Corpus* in Relation to Custody of Minor, sec. 1.

⁶⁵ 820 Phil. 430 (2017) [*Per Curiam. En Banc*].

⁶⁶ *Id.* at 445. (Emphasis supplied)

the Court of Appeals erred in deeming the compromise terms in the May 5, 2021 Order to be a full-fledged provisional order awarding custody.

Moreover, a compromise agreement between parents as to a child's custody is frowned upon by the Court. In *Lacson v. San Jose-Lacson*,⁶⁷ the Court remanded the case to the trial court to determine the issue of custody after presentation of evidence, since it found that the trial court resolved the issue based merely on the spouses' amicable settlement:

[A child's rights] are not and should not be dependent solely on the wishes, much less the whims and caprices, of [their] parents. [Their] welfare should not be subject to the parents' say-so or mutual agreement alone. Where, as in this case, the parents are already separated in fact, the courts must step in to determine in whose custody the child can better be assured the rights granted to [them] by law. The need, therefore, to present evidence regarding this matter, becomes imperative. A careful scrutiny of the records reveals that no such evidence was introduced in the [Court of First Instance]. This latter court relied merely on the mutual agreement of the spouses-parents. To be sure, this was not a sufficient basis to determine the fitness of each parent to be the custodian of the children.⁶⁸

Furthermore, without trial for reception of evidence, the court cannot properly evaluate whom the child's rightful custody belongs to, after considering the child's best interest. In *Laxamana v. Laxamana*,⁶⁹ this Court held that the trial court should have conducted trial to determine the fitness of both petitioner and respondent to assume custody of their minor children, considering the children's paramount interest:

Mindful of the nature of the case at bar, the court *a quo* should have conducted a trial notwithstanding the agreement of the parties to submit the case for resolution on the basis, *inter alia*, of the psychiatric report of Dr. Teresito. Thus, petitioner is not estopped from questioning the absence of a trial considering that said psychiatric report, which was the court's primary basis in awarding custody to respondent, is insufficient to justify the decision. The fundamental policy of the State to promote and protect the welfare of children shall not be disregarded by mere technicality in resolving disputes which involve the family and the youth. While petitioner may have a history of drug dependence, the records are inadequate as to his moral, financial[,] and social well-being. The results of the psychiatric evaluation showing that he is not yet "completely cured" may render him unfit to take custody of the children, but there is no evidence to show that respondent is unfit to provide the children with adequate support, education, as well as moral and intellectual training and development. Moreover, the children in this case were 14 and 15 years old at the time of the promulgation of the decision, yet the court did not ascertain their choice as to which parent they want to live with. In its September 8, 1999 order, the trial court merely stated that ["t]he children were asked as to whether they would like to be

⁶⁷ 133 Phil. 884 (1968) [Per J. Castro, *En Banc*].

⁶⁸ *Id.* at 896-897.

⁶⁹ 437 Phil. 104 (2002) [Per J. Ynares-Santiago, First Division].

with petitioner but there are indications that they entertain fears in their hearts and want to be sure that their father is no longer a drug dependent.” There is no showing that the court ascertained the categorical choice of the children. These inadequacies could have been remedied by an exhaustive trial probing into the accuracy of Dr. Ocampo’s report and the capacity of both parties to raise their children. The trial court was remiss in the fulfillment of its duties when it approved the agreement of the parties to submit the case for decision on the basis of sketchy findings of facts.⁷⁰ (Citations omitted)

In *Bagtas v. Judge Santos*,⁷¹ this Court faulted the trial court in hastily dismissing the petition for *habeas corpus* and awarding custody of the minor to the grandparents without conducting trial. Thus, the Court remanded the case to the trial court for reception of evidence to determine the fitness of the respondents to have custody of the child.

Similarly, the Court remands this case to the trial court to determine the rightful custody of Yuno, considering its failure to conduct trial for reception of evidence. It will likewise be the proper forum to determine the mother’s fitness to take custody of the child—an issue petitioners also raise—as it is a *question of fact* to be properly entertained in the special proceedings before the trial court.⁷² It is not within the province of a petition for review on *certiorari* under Rule 45 of the Rules of Court to weigh evidence and rule on questions of fact. Furthermore, the trial court must consider the following factors under Section 14 of the Rule on Custody of Minors and Writ of *Habeas Corpus* in Relation to Custody of Minors:

SECTION 14. *Factors to consider in determining custody.* — In awarding custody, the court shall consider the best interests of the minor and shall give paramount consideration to his 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 his physical, psychological and emotional development. It also means the least detrimental available alternative for safeguarding the growth and development of the minor.

The court shall also consider the following:

(a) Any extrajudicial agreement which the parties may have bound themselves to comply with respecting the rights of the minor to maintain direct contact with the non- custodial parent on a regular basis, except when there is an existing threat or danger of physical, mental, sexual or emotional violence which endangers the safety and best interests of the minor;

⁷⁰ *Id.* at 114–115.

⁷¹ 621 Phil. 94 (2009) [Per J. Carpio, Second Division].

⁷² *Recto v. Judge Trocino*, 820 Phil. 430, 444 (2017) [Per Curiam, *En Banc*]; *Tonog v. Court of Appeals*, 427 Phil. 1, 10 (2002) [Per J. De Leon, Jr., Second Division].

- (b) The desire and ability of one parent to foster an open and loving relationship between the minor and the other parent;
- (c) The health, safety and welfare of the minor;
- (d) Any history of child or spousal abuse by the person seeking custody or who has had any filial relationship with the minor, including anyone courting the parent;
- (e) The nature and frequency of contact with both parents;
- (f) Habitual use of alcohol, dangerous drugs or regulated substances;
- (g) Marital misconduct;
- (h) The most suitable physical, emotional, spiritual, psychological and educational environment for the holistic development and growth of the minor; and
- (i) The preference of the minor over seven years of age and of sufficient discernment, unless the parent chosen is unfit.

To emphasize, the trial court must carefully consider the totality of the circumstances and grant rightful custody over a child upon concurrence of the following requisites: (1) the petitioner has the right of custody over the minor; (2) the rightful custody of the minor is being withheld from the petitioner by the respondents; and (3) it is in the best interest of the minor concerned to be in the custody of petitioner and not that of the respondent.⁷³

Here, the trial court failed to rule upon the presence or absence of these requisites, and merely granted custody based on the compromise agreement of the parents in its May 5, 2021 Order. The Court of Appeals thereafter incorrectly directed the May 5, 2021 Order's implementation as a provisional order awarding custody.

In *Spouses Gabun v. Stolk, Sr.*,⁷⁴ this Court emphasized that the factors enumerated in Section 14 of the Rule on Custody of Minors and Writ of *Habeas Corpus* in Relation to Custody of Minors must be considered in resolving an award of custody of a child:

As with support, the determination of who will exercise substitute parental authority and custody over a minor is not final and irrevocable. It may be subject to the proper determination of a court of competent jurisdiction, taking into consideration, among others, the parameters enumerated in

⁷³ *Masbate v. Relucio*, 837 Phil. 515, 526 (2018) [Per J. Perlas-Bernabe, Second Division]; *CCC v. DDD*, G.R. No. 264846, February 5, 2024 [Per J. Dimaampao, Third Division] at 5. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court Website.

⁷⁴ G.R. No. 234660, June 26, 2023 [Per J. Kho, Jr., Second Division].

Section 14 of the Rule on Custody of Minors, and the various measures provided under existing laws and rules, such as the conduct of a case study, in order to effectively and thoroughly facilitate the determination of the most suitable environment for the wellbeing and safety of the minor.

Here, there is undeniably an apparent dearth of supporting reasons in the trial court's ruling with respect to the existence of such facts, circumstances, and conditions that is most congenial for Winston's survival, protection, and feelings of security encouraging to his physical, psychological, and emotional development. Indeed, the [Regional Trial Court] ruling failed to consider such factors enumerated in Section 14 of the Rule on Custody of Minors as the "health, safety and welfare of [Winston]," the "habitual use of alcohol, dangerous drugs or regulated substances," the "most suitable physical, emotional, spiritual, psychological[,] and educational environment for [Winston's] holistic development and growth" and "Winston's preference," including any circumstances that may be detrimental to Winston's growth and development, in resolving to award custody to respondent.

In the Court's view, the [Regional Trial Court's] overreliance on the evidence of respondent's parentage in awarding custody over Winston constituted grave jurisdictional error or such whimsical, capricious, and arbitrary exercise of discretion. Not only does this ruling violate the express legal provision granting parental authority to the mother with respect to illegitimate children and[,] in case of her death, *to the persons specifically authorized to exercise substitute parental authority*. More importantly, such error effectively amounted to an abandonment of [the trial court's] legal and moral duty to rule in the best interest of the minor. It bears reemphasizing that the law and the Rules mandate that the best interest of the minor must be the primordial consideration in the determination of who should rightfully exercise custody and parental authority.⁷⁵ (Emphasis in the original)

"Best interest" demands that a proper trial be conducted to determine who should have the rightful custody over a child. In the meantime, and until appropriately and finally adjudged, custody over Yuno *pendente lite* shall remain with his actual custodian, the petitioners.

ACCORDINGLY, the Court resolves to **GRANT** the Petition. The assailed Court of Appeals October 18, 2022 Decision and July 19, 2023 Resolution in CA-G.R. SP No. 10446-MIN are **REVERSED** and **SET ASIDE**.

The case is hereby **REMANDED** to the court of origin for proper determination of the party with rightful custody, considering the best interests of the minor, **with DISPATCH**.

⁷⁵ *Id.* at 21. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website.

In the meantime, custody over minor child Yuno Hanzo Cabrillos Empuerto shall remain with his actual custodians, petitioners Jeffrey Rosacay Empuerto and spouses Leonido and Rosalyn Empuerto.

SO ORDERED.



MARVIC M.V.F. LEONEN
Senior Associate Justice


WE CONCUR:



AMY C. LAZARO-JAVIER
Associate Justice



MARIO V. LOPEZ
Associate Justice




JHOSEP V. LOPEZ
Associate Justice



ANTONIO T. KHO, JR.
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARVIC M.V.F. LEONEN
Senior Associate Justice
Chairperson

CERTIFICATION

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


ALEXANDER G. GESMUNDO
Chief Justice