



Republic of the Philippines  
Supreme Court  
Manila

SECOND DIVISION

SPOUSES MAGDALINO  
GABUN AND CAROL GABUN,  
NORA A. LOPEZ, AND  
MARCELINO ALFONSO,

Petitioners,

- versus -

WINSTON CLARK STOLK,  
SR.,

Respondent.

G.R. No. 234660

Present:

LEONEN,\* *Acting Chief Justice*,  
LAZARO-JAVIER,\*\*  
*Working Chairperson*

LOPEZ, M.

LOPEZ, J., and

KHO, JR., JJ.

Promulgated:

JUN 26 2023

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DECISION

KHO, JR., J.:

Before the Court is a Petition for Review on *Certiorari*<sup>1</sup> under Rule 45 of the Rules of Court filed by petitioners Spouses Magdalino Gabun and Carol Gabun (Sps. Gabun), Nora A. Lopez (Nora), and Marcelino Alfonso (Marcelino; collectively, petitioners), assailing the Resolutions dated August 23, 2017<sup>2</sup> and October 9, 2017<sup>3</sup> of the Court of Appeals (CA) in CA-G.R. SP

\* Acting Chief Justice per Special Order No. 2989 dated June 24, 2023.

\*\* Working Chairperson per Special Order No. 2993 dated June 26, 2023.

<sup>1</sup> Dated October 26, 2017, *rollo* pp. 3-52.

<sup>2</sup> *Id.* at 54-63. Penned by Associate Justice Celia C. Librea-Leagogo and concurred in by Associate Justices Maria Elisa Sempio Diy and Pablito A. Perez of the Special Seventh Division, CA, Manila.

<sup>3</sup> *Id.* at 103-104. Penned by Associate Justice Celia C. Librea-Leagogo and concurred in by Associate Justices Maria Elisa Sempio Diy and Pablito A. Perez of the Former Special Seventh Division, CA, Manila.

No. 151807, which dismissed the Petition for *Certiorari*<sup>4</sup> of the Decision<sup>5</sup> dated April 22, 2014 and the Orders dated November 4, 2014,<sup>6</sup> December 7 and 11, 2014,<sup>7</sup> August 26, 2016,<sup>8</sup> and May 19, 2017<sup>9</sup> of the Regional Trial Court of Olongapo City, Branch 73 (RTC) in SP Proc. Case No. 123-0-2007—*a habeas corpus* case involving a minor—for being time-barred.

### The Facts

Respondent Winston Clark Stolk, Sr. (respondent) filed a Verified Petition for *Habeas Corpus*<sup>10</sup> against petitioners, praying for absolute and permanent custody over his minor son, Winston Clark Daen Stolk, Jr. (Winston). Respondent claimed that he and Winston's mother, Catherine Alfonso Daen (Catherine), lived together as husband and wife for more than four years in Florida, United States of America (USA) but without the benefit of marriage. In the early part of 2007, Catherine returned to the Philippines to give birth. However, Catherine died a few hours after giving birth to Winston on July 22, 2007, leaving the latter in the care of petitioners, particularly Nora and Marcelino, who appear to be Winston's actual custodians and collateral grandparents, being the sibling of Winston's biological grandparents. Respondent asserted that petitioners knew that he would be coming to the Philippines to take care of everything, including the custody of Winston, but when he arrived, petitioners prohibited him from seeing his child. Further, respondent claimed that Winston's birth certificate indicated him (respondent) as the latter's father.<sup>11</sup>

During the proceedings, the trial court issued an order allowing the conduct of DNA<sup>12</sup> testing of Winston at the sole expense of respondent. The result of the DNA test, conducted at St. Luke's Medical Center, showed a 99.9997% probability of paternity of respondent. This was confirmed by the testimony of the specialist, Dr. Raymundo W. Lo, who conducted the test and prepared the parentage report. Thereafter, the case was submitted for decision after respondent formally offered his evidence and petitioners' comment thereto was noted.<sup>13</sup>

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<sup>4</sup> Dated July 26, 2017; *id.* at 105–145.

<sup>5</sup> *Id.* at 262–266. Penned by Presiding Judge Norman V. Pamintuan of Branch 73, Regional Trial Court, Olongapo City.

<sup>6</sup> *Id.* at 212–216.

<sup>7</sup> *Id.* at 204–205 and 206–208, respectively.

<sup>8</sup> *Id.* at 169–170. Penned by Assisting Judge Jose Marie A. Quimboy.

<sup>9</sup> *Id.* at 146–147. Penned by Acting Presiding Judge Ma. Cristina J. Mendoza-Pizarro.

<sup>10</sup> Not attached to the *rollo*, *see id.* at 262.

<sup>11</sup> *Id.* at 262–263.

<sup>12</sup> Referred to as “Deoxyribonucleic Acid.”

<sup>13</sup> *Rollo*, p. 264.

Atto

### The RTC Ruling

In a Decision<sup>14</sup> dated April 22, 2014, the RTC granted the petition and consequently, awarded the custody over Winston to respondent.<sup>15</sup> The RTC held that based on the records of the case, particularly the DNA test result, parentage report, and the birth certificate issued by the Office of the Civil Registrar of Olongapo City, respondent sufficiently established his right of custody and parental authority over his minor son, Winston. In this regard, the RTC did not ascribe any significance that respondent is a divorcee and was deported from the USA for his dismissed case, opining that under Articles 212 and 213<sup>16</sup> of the Family Code,<sup>17</sup> parental authority and custody over his son, Winston, belongs to respondent.<sup>18</sup>

Petitioners thereafter filed a Motion for Reconsideration<sup>19</sup> and later, a Motion for Leave of Court to File and Admission of Supplemental Motion for Reconsideration<sup>20</sup> arguing, among others, that: (a) Articles 214 and 216,<sup>21</sup> not Articles 212 and 213 of the Family Code apply in this case, since respondent and Catherine were not married; (b) respondent is not fit to assume parental authority because he is a convicted felon and based on news information, he has serious issues with the authorities in his home country, Suriname; (c) Winston's choice to remain with them (petitioners) must be respected; and (d) a case study should be conducted by the Department of Social Welfare and Development (DSWD) to determine who can best provide the most suitable physical, emotional, spiritual, psychological, and educational environment for the holistic development of Winston, as provided under A.M. No. 03-04-04-

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<sup>14</sup> *Id.* at 262–266.

<sup>15</sup> *Id.* at 265–266.

<sup>16</sup> These provisions read:

Art. 212. In case of absence or death of either parent, the parent present shall continue exercising parental authority. The remarriage of the surviving parent shall not affect the parental authority over the children, unless the court appoints another person to be the guardian of the person or property of the children.

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.

<sup>17</sup> Executive Order No. 209, s. 1987 (July 6, 1987).

<sup>18</sup> *Rollo*, pp. 264–265.

<sup>19</sup> *Id.* at 217–220.

<sup>20</sup> *Id.* at 221–222.

<sup>21</sup> These provisions provide:

Art. 214. In case of death, absence or unsuitability of the parents, substitute parental authority shall be exercised by the surviving grandparent. In case several survive, the one designated by the court, taking into account the same consideration mentioned in the preceding article, shall exercise the authority.

Art. 216. In default of parents or a judicially appointed guardian, the following person shall exercise substitute parental authority over the child in the order indicated:

- (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.

Whenever the appointment or a judicial guardian over the property of the child becomes necessary, the same order of preference shall be observed. (349a, 351a, 354a)

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SC<sup>22</sup> or the “Rule on Custody of Minors and Writ of Habeas Corpus in Relation to Custody of Minors” (Rule on Custody of Minors).<sup>23</sup> The RTC denied the foregoing motions in an Order dated November 4, 2014.

Determined, petitioners filed a Notice of Appeal<sup>24</sup> by registered mail on November 24, 2014, but was dismissed in an Order dated December 7, 2014 for nonpayment of docket and other lawful fees within the reglementary period, as provided under Rule 41, Section 13<sup>25</sup> of the Rules of Court.<sup>26</sup>

Subsequently, in an Order dated December 11, 2014, the RTC declared that the Decision dated April 22, 2014 had already attained finality on November 28, 2014 after the dismissal of petitioners’ appeal.<sup>27</sup>

Undeterred, petitioners filed a Motion for Reconsideration<sup>28</sup> to the Order dated December 7, 2014, praying for the approval of their Notice of Appeal. Thereafter, petitioners filed a Manifestation<sup>29</sup> dated October 27, 2015, reiterating their arguments, and praying for the following: (i) lift the bench warrant of arrest issued on November 27, 2014; (ii) order a case study by the DSWD of Winston and the parties; and (iii) in the alternative, set aside the Orders dated December 7 and 11, 2014. Additionally, petitioners pointed out that, contrary to what is required by the Rules of Court, copy of the November 4, 2014 Order was served by the sheriff on November 14, 2014 to Nora, and not to their counsel, who officially received copy of said order only on December 3, 2014.<sup>30</sup> As such, petitioners actually had until December 5, 2014 to file the Notice of Appeal, or 48 hours from their counsel’s receipt of the copy of the November 4, 2014 Order. Consequently, their appeal and payment of docket and other lawful fees were made within the reglementary period.<sup>31</sup>

In an Order dated August 26, 2016, the RTC declared that the dismissal of petitioners’ Notice of Appeal has become immutable or unalterable as no legal remedy was availed of before the trial court or the Supreme Court.<sup>32</sup> Petitioners thereafter moved for reconsideration,<sup>33</sup> but was denied in an

<sup>22</sup> Which took effect on May 15, 2003 following its publication in a newspaper of general circulation not later than April 30, 2003.

<sup>23</sup> See petitioners’ Supplemental Motion for Reconsideration; *rollo*, pp. 224–243.

<sup>24</sup> *Id.* at 209–211.

<sup>25</sup> Section 13. *Dismissal of appeal.* — Prior to the transmittal of the original record or the record on appeal to the appellate court, the trial court may *motu proprio* or on motion dismiss the appeal for having been taken out of time. (14a)

<sup>26</sup> *Rollo*, p. 205.

<sup>27</sup> *Id.* at 207.

<sup>28</sup> Not attached to the *rollo*.

<sup>29</sup> *Rollo*, pp. 179–202.

<sup>30</sup> *Id.* at 180–181.

<sup>31</sup> *Id.* at 200.

<sup>32</sup> *Id.* at 170.

<sup>33</sup> *Id.* at 148–167.

Order<sup>34</sup> dated May 19, 2017 for lack of merit, it being a second motion for reconsideration, which can no longer be entertained.<sup>35</sup>

Dissatisfied with the foregoing rulings, petitioners filed a Petition for *Certiorari* under Rule 65 of the Rules of Court before the CA, praying for, among others: (a) to grant their prayer for issuance of a temporary restraining order; (b) to declare as null and void the April 22, 2014 Decision and set aside the Orders dated May 19, 2017 and December 7 and 11, 2014; (c) to recall the Writ of *Habeas Corpus*<sup>36</sup> dated April 22, 2014; in the interim, (d) to issue an order directing the conduct of a case study by the DSWD over Winston and the parties; (e) to issue a hold departure order for Winston and serve a copy thereof to the Bureau of Immigration; (f) to lift and recall the warrants of arrest issued against them; and (g) to grant them custody over Winston.<sup>37</sup>

### The CA Ruling

In a Resolution<sup>38</sup> dated August 23, 2017, the CA dismissed the Petition for *Certiorari* before it for being time-barred.<sup>39</sup> It held that under Rule 41, Section 1 of the Rules of Court, an order disallowing or dismissing an appeal may be assailed only via a *certiorari* petition under Rule 65 filed not later than 60 days from notice of the judgment, order, or resolution. Here, the CA observed that petitioners received the copy of the RTC's August 26, 2016 Order on March 9, 2017. Since petitioners' *certiorari* petition was filed only on July 28, 2017, the 60-day reglementary period had clearly already expired. In this regard, the CA highlighted that the "60-day period shall be reckoned from the trial court's denial of (the) first motion for reconsideration . . ." <sup>40</sup> and not from the denial of their second motion for reconsideration—in the May 19, 2017 Order—which did not toll the running of the reglementary period. As such, the outright dismissal of their *certiorari* petition is warranted under the circumstances.<sup>41</sup>

Further, the CA found that the RTC's April 22, 2014 Decision has long become final and executory, considering that petitioners paid the docket and other lawful fees only on November 27, 2014 despite filing their Notice of Appeal on November 24, 2014. According to the CA, case law holds that the appellant shall pay the full amount of the appellate court's docket and other lawful fees within the period for taking an appeal, failing in which the trial court may, *motu proprio* or on motion, dismiss the appeal, as the RTC had correctly done so in this case. In this respect, the CA noted that under Section 3, Rule 41 of the Rules of Court, appeals in *habeas corpus* cases shall be made

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<sup>34</sup> *Id.* at 146–147.

<sup>35</sup> *Id.* at 147.

<sup>36</sup> *Id.* at 267. Issued by OIC-Court Interpreter III Evelyn A. Tec.

<sup>37</sup> *Id.* at 139.

<sup>38</sup> *Id.* at 54–63.

<sup>39</sup> *Id.* at 62.

<sup>40</sup> *Id.* at 58.

<sup>41</sup> *Id.* at 56–58.

within 48 hours from notice of the decision. Since petitioners received a copy of the November 4, 2014 Order on November 14, 2014, petitioners' appeal was clearly filed out of time. In any event, the CA ruled that petitioners' failure to immediately assail the dismissal of their Notice of Appeal before it (CA) rendered such dismissal immutable.<sup>42</sup>

Undeterred, petitioners moved for reconsideration,<sup>43</sup> but was denied in a Resolution dated October 9, 2017. Hence, this petition.<sup>44</sup>

### **The Issue Before the Court**

The issue before the Court is whether the CA committed reversible error in dismissing petitioners' Petition for *Certiorari* on technicalities.

Petitioners argue that the CA gravely erred in upholding the RTC's dismissal of their appeal, and altogether, dismissing their *certiorari* petition on procedural grounds. In this regard, they highlight the grave abuse of discretion committed by the RTC when it considered valid the service of the November 4, 2014 Order to petitioner Nora on November 14, 2019, instead of serving the same to their counsel of record as required under the Rules of Court. Since their counsel of record received a copy of the November 4, 2014 Order only on December 3, 2014,<sup>45</sup> they submit that they actually had until December 5, 2014 to file the Notice of Appeal. Consequently, the filing of their Notice of Appeal on November 24, 2014 and the payment of the docket and other lawful fees on November 27, 2014 were clearly both made within the reglementary period. Given the substantive issues raised in this case, they pray that any procedural lapses which they may have committed, if there be any, be excused in the interest of justice.<sup>46</sup>

On the merits, petitioners maintain that the RTC manifestly disregarded the evidence, which clearly show that respondent had legal issues with both the American and Surinamese authorities and was in fact a convicted felon when he pleaded guilty for the charge of unlawful transport of firearms. They insist that these facts should have constrained the RTC to order the conduct of a case study by the DSWD, pursuant to Sections 8 and 14 of the Rule on Custody of Minors and Article 213 of the Family Code, which commands that the best interest of the child shall be given paramount consideration. For these reasons, petitioners contend that a hold departure order should be issued.<sup>47</sup>

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<sup>42</sup> *Id.* at 58–60.

<sup>43</sup> *Id.* at 64–78.

<sup>44</sup> *Id.* at 3–52.

<sup>45</sup> See Certification issued by the Philippine Postal Corporation, Quezon City Central Post Office, stating that “per available record of this Office, Registered Letter No. 2179 recorded as 2779 which was mailed on November 27, 2014 at Olongapo City Post Office and addressed to [petitioners' counsel] . . . was delivered on December 03, 2014 . . .” *Id.* at 178.

<sup>46</sup> *Id.* at 20–28.

<sup>47</sup> *Id.* at 28–34.

Additionally, petitioners contend that Articles 211 and 212 of the Family Code do not apply in this case, since respondent and Catherine were never married. Assuming that Article 212 applies to unwed parents, they posit that it nevertheless presupposes a situation wherein both parents are actually exercising parental authority over the minor. Here, respondent never exercised parental authority over Winston since the former was out of the country from the latter's birth. Besides, Article 176 of the Family Code states that illegitimate children shall be under the parental authority of the mother and, in case of her death, substitute parental authority shall be exercised by the surviving grandparents, petitioners in this case, pursuant to Article 214 thereof.<sup>48</sup>

Finally, petitioners highlight that Winston categorically stated his preference in his letter<sup>49</sup> to the RTC to remain with them and his refusal to be with respondent whom he (Winston) barely knows and who lives in a foreign country. Since Winston is already seven years of age, they assert that his preference should be respected; otherwise, Winston's emotional and psychological well-being can be adversely affected.<sup>50</sup>

In his Comment,<sup>51</sup> respondent mainly argues that the issues raised by petitioners have been clearly and intelligently resolved by the CA. Petitioners were given full opportunity to be heard and the decision of the RTC had long become final and executory. In any event, the findings of fact by the RTC awarding custody of Winston to respondent was made in the best discretion of the trial court.<sup>52</sup>

In their Reply,<sup>53</sup> petitioners essentially reiterate their arguments, additionally arguing that the life and future of Winston and the merits of the case justify the relaxation of the rule on the immutability of final judgments. They also highlight the core issue in this case, which is the future and well-being of Winston.<sup>54</sup>

Meanwhile, in a Resolution<sup>55</sup> dated November 22, 2017, the Court granted petitioners' prayer for issuance of temporary restraining order and hold departure order preventing Winston from leaving the country.<sup>56</sup>

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<sup>48</sup> *Id.* at 34–38.

<sup>49</sup> *Id.* at 249–250.

<sup>50</sup> *Id.* at 38–43.

<sup>51</sup> *Id.* at 325–342.

<sup>52</sup> *Id.* at 331–334.

<sup>53</sup> *Id.* at 358–388.

<sup>54</sup> *Id.*

<sup>55</sup> *Id.* at 282–283. Signed by Division Clerk of Court Edgar O. Aricheta.

<sup>56</sup> *Id.* at 282.

### The Court's Ruling

The petition is meritorious.

Prefatorily, it must be stressed that only questions of law may be raised in a Petition for Review on *Certiorari*. This Court is not a trier of facts and as such, the lower courts' factual findings are generally binding upon it.<sup>57</sup> Nevertheless, the rule admits of several exceptions, such as:

(1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (2) **When the inference made is manifestly mistaken, absurd or impossible;** (3) **Where there is a grave abuse of discretion;** (4) **When the judgment is based on a misapprehension of facts;** (5) When the findings of fact are conflicting; (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) The findings of the Court of Appeals are contrary to those of the trial court; (8) **When the findings of fact are conclusions without citation of specific evidence on which they are based;** (9) When the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and (10) The finding of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record.<sup>58</sup> (Emphasis supplied)

Here, petitioners essentially posit that the CA gravely erred in dismissing their Petition for *Certiorari* on technicalities despite the obvious, grievous legal and factual errors committed by the RTC—an issue that raises both questions of fact and law that are generally not proper in a Rule 45 petition. However, when, as in this case, the inference made is manifestly mistaken, absurd or impossible; the judgment is based on misapprehension of facts; the findings of fact are conclusions without citation of specific evidence on which they are based; or where there is a grave abuse of discretion, the Court will not hesitate to review the facts to have a proper determination of the case.

On this score, the Court emphasizes that what is ultimately at stake here is the custody over Winston and as such, the paramount consideration must be his best interest. Notably, even prior to the adoption of the Family Code, Article 363 of the Civil Code<sup>59</sup> expressly mandated that in all questions relating to the care, custody, education, and property of the children, the latter's welfare is paramount. The Rule on Custody of Minors reiterated this mandate as it explicitly states that “[i]n awarding custody, the court shall consider the best interests of the minor and shall give paramount consideration to [their] material and moral welfare. **The best interests of the minor refer**

<sup>57</sup> *CJH Development Corporation v. Aniceto*, 876 Phil. 193, 213 (2020) [Per J. Leonen, Third Division].

<sup>58</sup> *Id.* at 213–214, citation omitted. See also *Republic v. Kikuchi*, G.R. No. 243646, June 22, 2022 [Per J. Hernando, First Division] <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/68394>>.

<sup>59</sup> Republic Act No. 386, entitled “AN ACT TO ORDAIN AND INSTITUTE THE CIVIL CODE OF THE PHILIPPINES,” approved on June 18, 1949.



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 [their] physical, psychological and emotional development. It also means the least detrimental available alternative for safeguarding the growth and development of the minor.”<sup>60</sup>

For these reasons, and under the attendant circumstances of this case, it behooves the Court to set aside technicalities to achieve substantial justice. To recall, the RTC dismissed petitioners’ Notice of Appeal for nonpayment of the docket and other lawful fees within the reglementary period.<sup>61</sup> The CA, on the other hand, dismissed petitioners’ *certiorari* petition for being filed out of time. It also essentially upheld the RTC’s dismissal of petitioners’ appeal on the ground that the RTC’s April 22, 2014 Decision has long become final and executory and thus, immutable for their failure to timely pay the docket and other lawful fees.<sup>62</sup>

Under the doctrine of *parens patriae*, the State, as the sovereign, has the inherent right and duty to minimize the risk of harm to those who, because of their minority, are yet unable to take care of themselves fully.<sup>63</sup> As the subsequent discussions will show, the Court finds that the RTC committed grave abuse of discretion in dismissing petitioners’ Notice of Appeal. Also, the CA committed reversible error in failing to relax the application of procedural rules in the interest of justice. Verily, the fundamental policy of the State, as embodied in the Constitution, in promoting and protecting the welfare of children, as well as the gravity of the issues involved in this case, calls for the Court’s exercise of its equity jurisdiction.

## I.

### **The Rules of Court provide for a 15-day period of appeal in custody and *habeas corpus* cases involving minors, not 48 hours**

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At the outset, the Court notes that in dismissing petitioners’ Notice of Appeal for failure to pay the docket and other lawful fees within the reglementary period, the RTC ostensibly relied on Rule 41, Section 3 of the Rules of Court that provides for a 48-hour period from notice of the decision within which to file an appeal in *habeas corpus* cases. Similarly, the CA

<sup>60</sup> See Section 14 of the Rule on Custody of Minors. See also *Mashate v. Relucio*, 837 Phil. 515, 533–534 (2018) [Per J. Perlas-Bernabe, Second Division] (Emphasis supplied, citation omitted).

<sup>61</sup> *Rollo*, p. 205.

<sup>62</sup> *Id.* at 56–58.

<sup>63</sup> See *Brozoto v. People*, G.R. No. 233420, April 28, 2021 [Per J. J. Lopez, Third Division] <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/6738> and *Samahan ng mga Progresibong Kabataan (SPARK) v. Quezon City*, 815 Phil. 1067, 1101 (2017) [Per J. Perlas-Bernabe, *En Banc*].

evidently relied on the same provision as it concluded that petitioners' appeal was clearly filed out of time. Rule 41, Section 3, as amended by A.M. No. 19-10-20-SC,<sup>64</sup> reads:

Section 3. *Period of ordinary appeal; appeal in habeas corpus cases.* — The appeal shall be taken within fifteen (15) days from notice of the judgment or final order appealed from. Where a record on appeal is required, the appellant shall file a notice of appeal and a record on appeal within thirty (30) days from notice of the judgment or final order. However, **[an] appeal in habeas corpus cases shall be taken within forty-eight (48) hours from notice of the judgment or final order appealed from.**  
... (Emphasis supplied)

### The Court disagrees.

It must be underscored that the petition for issuance of a writ of *habeas corpus* filed by respondent ultimately prayed for absolute and permanent custody over his minor son, Winston. Case law provides that in custody cases involving minors, a petition for writ of *habeas corpus* is prosecuted essentially for the purpose of determining the right of custody over a child.<sup>65</sup> In *Reyes v. Elquero*,<sup>66</sup> the Court, through Associate Justice Samuel H. Gaerlan, clarified that a petition for issuance of a writ of *habeas corpus* that seeks the rightful custody over minors is a special form of *habeas corpus* proceedings, which is governed by the provisions of the Rule on Custody of Minors. Under Section 19 thereof, an aggrieved party may appeal the decision within 15 days from notice of the denial of the motion for reconsideration or new trial, *viz*:

Section 19. *Appeal.* — No appeal from the decision shall be allowed unless the appellant has filed a motion for reconsideration or new trial within fifteen days from notice of judgment.

**An aggrieved party may appeal from the decision by filing a Notice of Appeal within fifteen days from notice of the denial of the motion for reconsideration or new trial and serving a copy thereof on the adverse parties.** (Emphasis supplied)

Following Section 19 of the Rule on Custody of Minors, petitioners in this case had 15 days from notice of the denial of their motion for reconsideration from the RTC's April 22, 2014 Decision within which to file an appeal.

Moreover, it bears noting that the 48-hour appeal period in *habeas corpus* cases under Rule 41, Section 3 of the Rules of Court was introduced by A.M. No. 01-1-03-SC,<sup>67</sup> which took effect on July 15, 2001. In contrast,

<sup>64</sup> Entitled "2019 AMENDMENTS TO THE 1997 RULES OF CIVIL PROCEDURE" (May 1, 2020).

<sup>65</sup> *Reyes v. Elquero*, 881 Phil. 66, 79 (2020) [Per J. Gaerlan, Third Division].

<sup>66</sup> *Id.*

<sup>67</sup> Entitled "RE: AMENDMENT TO SECTION 3, RULE 41 OF THE 1997 RULES OF CIVIL PROCEDURE."

the Rule on Custody of Minors took effect on May 15, 2003. As the later enactment, the Rule on Custody of Minors should be deemed to have effectively amended A.M. No. 01-1-03-SC with respect to the period of appeal in *habeas corpus* cases involving minors in view of their evident inconsistency.

Thus, the 15-day appeal period provided under Section 19 of the Rule on Custody of Minors should be deemed to have effectively amended the 48-hour appeal period provided under Rule 41, Section 3 of the Rules of Court such that when the subject of a petition for habeas corpus are minors, the Rule on Custody of Minors shall primarily apply, while the Rules of Court shall have suppletory application.

**Service of the RTC's November 4, 2014 Order on one of the petitioners is invalid**

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In relation to the foregoing, it bears highlighting that under Rule 13, Section 2<sup>68</sup> of the Rules of Court, if any party has appeared by counsel, service upon them shall be made upon their counsel unless service upon the party themselves is ordered by the court. Case law settles that notice or service made upon a party who is represented by counsel is not notice in law and is thus, a nullity.<sup>69</sup> While this rule admits of exceptions, such as when the court or tribunal orders service upon the party or when the technical defect is waived,<sup>70</sup>

<sup>68</sup> **Section 2. Filing and service, Defined.** — Filing is the act of presenting the pleading or other paper to the clerk of court.

Service is the act of providing a party with a copy of the pleading or paper concerned. **If any party has appeared by counsel, service upon him shall be made upon his counsel or one of them, unless service upon the party himself is ordered by the court.** Where one counsel appears for several parties, he shall only be entitled to one copy of any paper served upon him by the opposite side. (Emphasis supplied)

Note that following the 2019 Amendments to the 1997 Rules of Civil Procedure, Rule 13, Section 2 now reads:

Section 2. Filing and [s]ervice, defined. — Filing is the act of submitting the pleading or other paper to the court.

Service is the act of providing a party with a copy of the pleading or any other court submission. **If a party has appeared by counsel, service upon such party shall be made upon his or her counsel, unless service upon the party and the party's counsel is ordered by the court.** Where one counsel appears for several parties, such counsel shall only be entitled to one copy of any paper served by the opposite side.

Where several counsels appear for one party, such party shall be entitled to only one copy of any pleading or paper to be served upon the lead counsel if one is designated, or upon any one of them if there is no designation of a lead counsel. (2a) (Emphasis supplied)

<sup>69</sup> *Heirs of Benjamin Mendoza v. CA*, 587 Phil. 280, 287 (2008) [Per J. Tinga, Second Division]; *PNB v. CA*, 316 Phil. 371 (1995) [Per J. Davide, Jr., *En Banc*]; and *Tam Wing Tak v. Makasiar*, 403 Phil. 391 (2001) [Per J. Quisumbing, Second Division].

<sup>70</sup> *Heirs of Benjamin Mendoza v. CA*, *id.*; *PNB v. CA*, 316 Phil. 371, *id.*; and *Tam Wing Tak v. Makasiar*, *id.*

none of these exceptions are shown to have existed in this case.

To recall, the November 4, 2014 Order of the RTC was served on one of the petitioners, and not on petitioners' counsel of record. Significantly, petitioners have consistently argued that their counsel of record officially received copy of the said Order only on December 3, 2014. Thus, following Rule 13, Section 2 of the Rules of Court, in relation to Section 19 of the Rule on Custody of Minors, petitioners in fact had until December 18, 2014 within which to file their Notice of Appeal and pay the full amount of the docket and other lawful fees. As shown herein, petitioners duly complied with both the filing of the Notice of Appeal on November 24, 2014 and payment of the appellate docket and other lawful fees on November 27, 2014, and thus petitioners' appeal was made well within the reglementary period.

Even if we consider that the copy of the RTC's Order denying the motion for reconsideration from the April 22, 2014 Decision was validly served on one of the petitioners on November 14, 2014, they had until November 29, 2014 within which to appeal. Since petitioners filed their Notice of Appeal on November 24, 2014, the same was clearly filed well within the reglementary period.

## II.

**Petitioners timely paid the appellate court docket and other lawful fees; hence, the RTC committed a jurisdictional error in dismissing their Notice of Appeal**

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In addition to providing to the 15-day reglementary period within which to appeal under Section 19 of the Rule on Custody of Minors, Rule 41, Section 4 of the Rules of Court supplementarily provides that the full amount of the appellate court docket and other lawful fees shall be paid within the period for taking an appeal, *viz*:

SECTION 4. *Appellate court docket and other lawful fees.* — **Within the period for taking an appeal, the appellant shall pay to the clerk of the court which rendered the judgment or final order appealed from, the full amount of the appellate court docket and other lawful fees.** Proof of payment of said fees shall be transmitted to the appellate court together with the original record or the record on appeal. (Emphasis and underscoring supplied)

Accordingly, pursuant to the foregoing procedural mandates, the Notice of Appeal and the full payment of the amount of the docket and other lawful

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fees must be made within the 15-day appeal period, failing in which may warrant the dismissal of the appeal under Section 13 of Rule 41:

SECTION 13. *Dismissal of appeal.* — Prior to the transmittal of the original record or the record on appeal to the appellate court, the **trial court may *motu proprio* or on motion dismiss the appeal for having been taken out of time *or* for nonpayment of the docket and other lawful fees within the reglementary period.** (Emphasis and underscoring supplied)

Case law explains that a party's appeal by Notice of Appeal is perfected as to them upon the filing of the same in due time, together with the payment of docket and other lawful fees, which should likewise be paid within the prescribed period.<sup>71</sup> Both requirements are mandatory and jurisdictional and a party's failure to perfect the appeal in the manner and within the period fixed by law render the judgment final and executory.<sup>72</sup>

This notwithstanding, it must be recognized that there is nothing in the Rules that require the payment of the docket and other lawful fees at the same time of the filing of the notice of appeal. In fact, the filing of the notice of appeal and the payment of the docket and other lawful fees are covered by separate provisions, each of which only require compliance thereof within the appeal period.

Moreover, the Court finds it relevant to highlight the use of the conjunctive word “*or*” in Rule 41, Section 13 of the Rules of Court. To the Court's mind, this use of the word “*or*” not only demonstrates the intent to provide for alternative grounds for dismissing an appeal. More pertinently, it reveals the intent to treat the filing of the appeal and payment of docket fees as separate and distinct requirements for perfecting an appeal, which must be complied with within the appeal period. Accordingly, regardless of whether the filing and payment occurred concurrently or successively, the appeal is perfected so long as both requirements are duly complied with within the appeal period.

In this case, as earlier noted, copy of the RTC's November 4, 2014 Order (which denied petitioners' motion for reconsideration from the April 22, 2014 Decision) was served on one of the petitioners on November 14, 2014. Assuming such service was valid, petitioners had until November 29, 2014 within which to file the Notice of Appeal and pay the full amount of the docket and other lawful fees pursuant to Section 19 of the Rule on Custody of Minors and Rule 41, Section 3 of the Rules of Court.

<sup>71</sup> *Villamor v. CA*, 478 Phil. 728 (2004) [Per J. Callejo, Sr., Second Division] and *Spouses Lee and Huang v. Land Bank of the Philippines*, 781 Phil. 243-251 (2016) [Per J. Perlas-Bernabe, First Division].

<sup>72</sup> See *Villamor v. CA*, *id.*

Since petitioners **filed their Notice of Appeal on November 24, 2014 and paid the full amount of the appellate court docket and other lawful fees on November 27, 2014**, or well within the 15-day reglementary period, petitioners clearly perfected their appeal in the manner and within the period fixed by the foregoing Rules. Accordingly, the RTC committed grave jurisdictional error when it dismissed petitioners' appeal for failure to pay the required fees within the appeal period. To emphasize, there is nothing in the Rules that require the simultaneous payment of the appellate court fees and filing of the Notice of Appeal to perfect an appeal. So long as both the filing and payment requirements are duly complied with within the appeal period, the appeal must be deemed perfected even if the docket and other lawful fees were paid days after the notice of appeal was filed, as in this case.

### III.

Under Rule 41, Section 1<sup>73</sup> of the Rules of Court, an order disallowing or dismissing an appeal may be assailed via a petition for *certiorari* which, under Rule 65, Section 4<sup>74</sup> of the same Rules, shall be filed within 60 days from notice of the judgment, order, or resolution. In this case, petitioners received a copy of the RTC's August 26, 2016 Order, which denied their motion for reconsideration from the RTC's Order dismissing their Notice of Appeal **on March 9, 2017**. Since petitioners filed their *certiorari* petition only **on July 28, 2017**, the 60-day reglementary period under Rule 65, Section 4 had manifestly expired resulting in the dismissal of said petition for being filed out of time and rendering the assailed Order final and executory.

While the CA may have correctly determined that the Petition for *Certiorari* was filed out of time, its grave legal error arises from the fact that it failed to recognize the grave jurisdictional errors that attended the RTC's dismissal of petitioner's Notice of Appeal for failure to timely pay the appellate court docket and other lawful fees. If only to underscore this relevant point, there is nothing in the Rules that require the simultaneous payment of

<sup>73</sup> It pertinently provides:

SECTION 1. *Subject of appeal.* — An appeal may be taken from a judgment or final order that completely disposes of the case, or of a particular matter therein when declared by these Rules to be appealable.

No appeal may be taken from:

....

(d) **An order disallowing or dismissing an appeal:**

....

In all the above instances where the judgment or final order is not appealable, **the aggrieved party may file an appropriate special civil action under Rule 65.** (n) (Emphasis supplied)

<sup>74</sup> It pertinently reads:

SECTION 4. *When and where petition filed.* — **The petition shall be filed not later than sixty (60) days from notice of the judgment, order or resolution.** In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the sixty (60) day period shall be counted from notice of the denial of said motion. (Emphasis supplied)

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the appellate court fees and filing of the notice of appeal in order that the appeal is perfected. So long as both the filing and payment requirements are duly complied with within the appeal period, the appeal must be deemed perfected even if the docket and other lawful fees were paid days after the notice of appeal was filed. Thus, whether counted from November 14, 2014, i.e., the service of the November 4, 2014 Order on one of the petitioners, or from December 3, 2014, i.e., receipt by petitioners' counsel of the November 4, 2014 Order, petitioners' appeal was duly perfected within the 15-day reglementary period for appeal.

On this score, it bears stressing that in all questions relating to the care, custody, education, and property of the children, the latter's welfare is paramount. Considering the weight of the issues and interests involved in this case, it behooved the CA to relax procedural rules especially in situations where, as in this case, grave jurisdictional errors attended the assailed rulings of the RTC. Grave abuse of discretion has been defined as a "capricious or whimsical exercise of judgment that is patent and gross as to amount to an evasion of positive duty or a virtual refusal to perform a duty enjoined by law."<sup>75</sup> Case law provides that grave abuse of discretion exists when an act is: (1) done contrary to the Constitution, the law, or jurisprudence; or (2) executed whimsically, capriciously or arbitrarily, out of malice, ill will, or personal bias.<sup>76</sup> The RTC's actions manifestly violated legal and procedural edicts in such arbitrary and capricious disregard of Winston's best interest.

It is settled that rules of procedure should be so construed as to give effect rather than defeat their essence.<sup>77</sup> Clearly, the best interest of the minor Winston in this case justified liberality in the interpretation of the Rules to achieve substantial justice, which the CA equally erroneously ignored.

**Special circumstances exist that warranted exception from the Rule on immutability of judgments**

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Moreover, while it is settled that once a judgment attains finality, it becomes immutable and unalterable, and thus, may no longer be modified in any respect, even by the highest Court of the land,<sup>78</sup> this Rule admits of exceptions. Certainly, the Court recognizes the significance of this doctrine, grounded as it is on the fundamental principle of public policy and sound practice that, at the risk of occasional error, the judgment of courts and the

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<sup>75</sup> *Cruz v. People*, 812 Phil. 166, 173 (2017) [Per J. Leonen, Second Division]; citations omitted. *See also Global Medical Center of Laguna, Inc. v. Ross Systems International, Inc.*, G.R. No. 230112, May 11, 2021 [Per J. Caguioa, *En Banc*] <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/67423>> and *Non v. Office of the Ombudsman*, 884 Phil. 188, 250 (2020) [Per J. J. Reyes, Jr., *En Banc*]

<sup>76</sup> *Ocampo v. Enriquez*, 798 Phil. 227, 294 (2016) [Per J. Peralta, *En Banc*].

<sup>77</sup> *Spouses Buenaflor v. CA*, 400 Phil. 395 (2000) [Per J. Kapunan, First Division].

<sup>78</sup> *Davao ACF Bus Lines v. Ang*, 850 Phil. 778, 786 (2019) [Per J. Caguioa, Second Division] and *Heirs of Maura So v. Oblisca*, 566 Phil. 397, 407 (2008) [Per J. Nachura, Third Division].

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award of quasi-judicial agencies must become final on some definite date fixed by law.<sup>79</sup>

Nonetheless, substantial justice may warrant relaxation of this rigid rule in matters involving: (i) matters of life, liberty, honor, or property; (ii) **the existence of special or compelling circumstances**; (iii) **the merits of the case**; (iv) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules; (v) **a lack of any showing that the review sought is merely frivolous and dilatory**; or (vi) **the other party will not be unjustly prejudiced thereby**.<sup>80</sup> Case law has also relaxed the application of the doctrine in situations involving: correction of clerical errors, or the so-called *nunc pro tunc* entries which cause no prejudice to any party; void judgments; and whenever circumstances transpire after the finality of the decision which render its execution unjust and inequitable.<sup>81</sup> Verily, **when extraordinary circumstances exist**, the Court has the inherent power and discretion to set aside technicalities in the exercise of its equity jurisdiction and amend, modify, or reconsider a final judgment when necessary to fully serve the demands of substantial justice.<sup>82</sup>

Applying the foregoing principles, the Court finds that the **existence of special or compelling circumstances, such as the grave jurisdictional error committed by the RTC, the merits of this case, and a lack of showing that the review sought is merely frivolous and dilatory, including the lack of showing that respondent will be prejudiced thereby, merited a relaxation of the rule on immutability of judgments**. These reasons should have compelled the CA to relax procedural niceties. Lest it be forgotten, 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.<sup>83</sup>

#### IV.

#### **Article 176, 214, and 216 of the Family Code apply in this case**

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In addition to the foregoing, the Court likewise finds that the RTC committed such grave and arbitrary legal error in relying on the provisions of

<sup>79</sup> *Heirs of Maura So v. Obliosa*, *id.* at 408 and *Davao ACF Bus Lines v. Ang*, *id.* at 786.

<sup>80</sup> *Crisol, Jr. v. COA*, G.R. No. 235764, September 14, 2021 [Per J. Rosario, *En Banc*].

<sup>81</sup> *Heirs of Maura So v. Obliosa*, 566 Phil. 397, 408 (2008) [Per J. Nachura, Third Division] and *Securities and Exchange Commission v. College Assurance Plan Philippines, Inc.*, 883 Phil. 134, 165 (2020) [Per J. Leonen, Third Division].

<sup>82</sup> *Crisol, Jr. v. COA*, G.R. No. 235764, September 14, 2021 [Per J. Rosario, *En Banc*] and *Heirs of Maura So v. Obliosa*, *id.*

<sup>83</sup> *Masbate v. Relucio*, 837 Phil. 515, 525 (2018) [Per J. Perlas-Bernabe, Second Division].

*Alto*



Articles 212 and 213 of the Family Code in awarding respondent custody over Winston.

The right of custody accorded to parents spring 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.<sup>84</sup>

As a rule, the father and the mother shall jointly exercise parental authority over the persons of their common children. However, **with respect to illegitimate children, Article 176<sup>85</sup> of the Family Code explicitly grants the sole parental authority to the mother, notwithstanding the father's recognition of the child.**<sup>86</sup> 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.<sup>87</sup>

**In case of the death, absence, or unsuitability of the parents or the mother in the case of illegitimate children, substitute parental authority shall be exercised by the surviving grandparent** pursuant to Article 214 of the Family Code, or to the specified persons in the order provided under Article 216 thereof. These provisions read:

Article 214. **In case of death, absence or unsuitability of the parents, substitute parental authority shall be exercised by the surviving grandparent.** In case several survive, the one designated by the court, taking into account the same consideration mentioned in the preceding article, shall exercise the authority.

Article 216. **In default of parents or a judicially appointed guardian, the following person shall exercise substitute parental authority over the child** in the order indicated:

- (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

<sup>84</sup> *Santos, Sr. v. Spouses Bedia*, 312 Phil. 482 (1995) [Per J. Romero, Third Division].

<sup>85</sup> Art. 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. The legitime of each illegitimate child shall consist of one-half of the legitime of a legitimate child. Except for this modification, all other provisions in the Civil Code governing successional rights shall remain in force. (287a)

<sup>86</sup> *Mashate v. Relucio*, 837 Phil. 515, 527 (2018) [Per J. Perlas-Bernabe, Second Division]; *Recto v. Trocino*, 820 Phil. 430, 444 (2017) [Per Curiam, *En Banc*]. See also *Maningding v. Bersamina*, G.R. No. 252476, March 18, 2021 [First Division].

<sup>87</sup> *Mashate v. Relucio*, *id.*

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(3) The **child's actual custodian, over twenty-one years of age,** unless unfit or disqualified.

Whenever the appointment of a judicial guardian over the property of the child becomes necessary, the same order of preference shall be observed. (Emphasis supplied)

Notably, as the foregoing provisions read, it would appear that substitute parental authority is granted to the grandparents or the specified persons only in case of death, absence, or unsuitability of *both* parents. Thus, in situations where only one parent dies, is absent, or found unsuitable, Articles 214 and 216 would find no application.

It must be clarified, however, that the foregoing interpretation finds application only in situations where the father and mother jointly exercise parental authority over the persons of their common children as provided under Article 211 of the Family Code. Where, however, the parental authority is granted solely to the mother as in the case of illegitimate children, the substitute parental authority shall be exercised by the grandparents or the specified persons as provided under Article 214 and 216 of the Family Code, in case of the mother's death, absence, or unsuitability. Indeed, to read otherwise would effectively permit circumvention of the legislative intent to grant sole parental authority to the mother with respect to their illegitimate children.

Nonetheless, the foregoing clarification should not be understood to disqualify the father of illegitimate children automatically and absolutely from exercising substitute parental authority in case of the death, absence, or unsuitability of the mother. Indeed, case law<sup>88</sup> in fact recognized that the father of an illegitimate child may exercise substitute parental authority and be given custody in situations where he is the "child's actual custodian," as provided under Article 216 of the Family Code.

Ultimately, in all questions involving the care and custody of minors, it is axiomatic that their welfare and well-being is always the paramount consideration.<sup>89</sup> For this reason, Section 14 of the Rule on Custody of Minors enumerated factors that must be considered in determining the issues of custody. These include: **the child's material and moral welfare, health, and safety; the nature and frequency of contact with both parents; habitual use of alcohol, dangerous drugs, or regulated substances; the most suitable physical, emotional, spiritual, psychological, and educational environment for the holistic development and growth of the minor; and the preference of the minor over seven years of age and of sufficient discernment,** unless the parent chosen is unfit. Section 14 reads in full:

<sup>88</sup> *Santos, Sr. v. Spouses Bedia*, 312 Phil. 482 (1995) [Per J. Romero, Third Division] and *Tonog v. Dagumol*, 427 Phil. 1 (2002) [Per J. De Leon, Jr., Second Division].

<sup>89</sup> *Mashate v. Relucio*, 837 Phil. 515-535 (2018) [Per J. Perlas-Bernabe, Second Division].

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;
- (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.** (Emphasis supplied)

Additionally, to effectively and thoroughly facilitate the Court's determination of circumstances and conditions that may affect the best interest of the minor, Section 8 of the Rule on Custody of Minors authorize courts to order the conduct of a case study, *viz*:

Section 8. *Case study; duty of social worker.* - Upon the filing of the verified answer or the expiration of the period to file it, the court may order a social worker to make a case study of the minor and the parties and to submit a report and recommendation to the court at least three days before the scheduled pre-trial. (Underscoring supplied)

In this regard, it bears pointing out that while Section 8 of Rule on Custody of Minors uses the word “may” with respect to the conduct of a case study, and thus, subject to the discretion of the trial courts, the same must be exercised with the best interest of the minor always in mind. Thus, courts do not have unbridled discretion to dispense with the conduct of a case study especially when facts and circumstances are presented that may prove detrimental for the safeguarding of the minor’s growth and development. To the Court’s mind, Sections 8 and 14 of the Rule on Custody of Minors were incorporated to additionally arm the courts with the appropriate guidelines and tools to ascertain, with more or less sufficient definiteness, the most congenial situation for the survival, protection, and feelings of security of minors encouraging to their physical, psychological, and emotional development.

In this case, it is undisputed that Catherine was not married to respondent. Thus, the sole parental authority, including custody, over her illegitimate son, Winston, resided with her pursuant to Article 176 of the Family Code. Upon Catherine’s death, the collateral grandparents of Winston took actual custody of the latter and exercised parental authority over him pursuant to Articles 214 and 216 of the same Code.

To be sure, the grant of substitute parental authority that includes custody to petitioners under Articles 214 and 216 of the Family Code is not final and absolute. As with support, the determination of who will exercise substitute parental authority and custody over a minor is not final and irrevocable.<sup>90</sup> It may be subject to the proper determination of a court of competent jurisdiction, taking into consideration, among others, the parameters enumerated in 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 RTC 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.

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<sup>90</sup> See *Manningding v. Bersamina*, G.R. No. 252476, March 18, 2021 [First Division].

In the Court's view, the RTC'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 its 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.

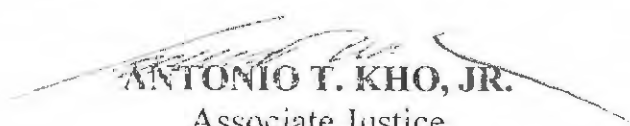
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All told, the Court finds that the RTC committed grave abuse of discretion in awarding respondent custody over Winston based solely on parentage. Consequently, the CA committed reversible error in dismissing outright the Petition for *Certiorari* filed by petitioners from the said RTC ruling on procedural grounds. **For these reasons, the Court deems it proper to remand the case to the court *a quo* for the resolution of the case with dispatch, taking into consideration, among others, the factors and measures provided under the Rule on Custody of Minors.**

A word of caution. The foregoing pronouncement should not be interpreted to imply a preference toward petitioners relative to the custody of the minor, Winston, nor should it be taken to mean as a statement *against* respondent's fitness to have custody over his son. It shall be only understood that, for the present and until appropriately and finally adjudged, the custody over Winston *pendente lite* may not be properly awarded to respondent.

**FOR THESE REASONS**, the Court resolves to **PARTIALLY GRANT** the instant Petition. The assailed Resolutions dated August 23, 2017 and October 9, 2017 of the Court of Appeals in CA-G.R. SP No. 151807 are hereby **REVERSED and SET ASIDE**. The case is hereby **REMANDED** to the court of origin for the proper determination of the party with the rightful custody, considering the best interests of the minor, **with DISPATCH**.

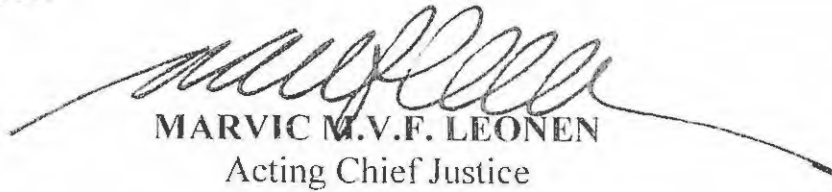
**SO ORDERED.**


  
ANTONIO T. KHO, JR.

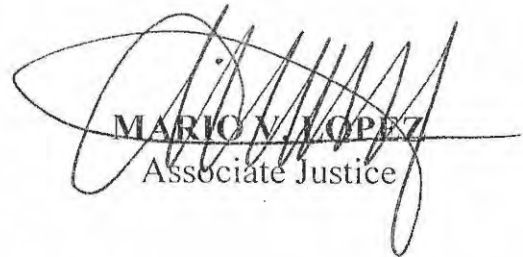
Associate Justice

FILE

**WE CONCUR:**

  
**MARVIC M.V.F. LEONEN**  
Acting Chief Justice

  
**AMY C. LAZARO-JAVIER**  
Associate Justice  
Working Chairperson

  
**MARIO N. LOPEZ**  
Associate Justice

  
**JHOSEP V. LOPEZ**  
Associate Justice

**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 assigned to the writer of the opinion of the Court's Division.

  
**MARVIC M.V.F. LEONEN**  
Acting Chief Justice

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