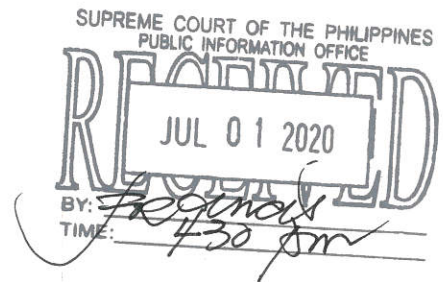




Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION



NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated **March 9, 2020** which reads as follows:

“G.R. No. 250849 - PEDRO V. ALAG, JR., vs. GENEVIE V. VILLAMOR, ET AL.

The Case

This petition for review¹ (Rule 45) assails the Court of Appeals Decision² dated October 17, 2019 in CA-G.R. CV No. 05113-MIN entitled *“In the Matter of Custody of Children Jecielle Rose V. Alag and Jeah V. Alag – Pedro V. Alag, Jr., v. Genevie B. Villamor, Lyn Villamor, and Gonzalo Villamor,”* which affirmed the Regional Trial Court’s decision denying the petition for sole custody filed by petitioner Pedro V. Alag, Jr.

Antecedents

Petitioner Pedro V. Alag, Jr. and respondent Genevie B. Villamor lived together as common law spouses, even though petitioner was already married to a certain Josephine Campos. They had two (2) daughters, namely, Jecielle Rose Villamor Alag and Jeah Villamor Alag. Pedro expressly recognized the two children as his own, as evidenced by their Records of Birth in the Civil Registry.³

The relationship of Pedro and Genevie eventually turned sour, and they decided to part ways. Genevie left to work abroad and the two children lived with her parents, respondents Lyn and Gonzalo Villamor.

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¹ *Rollo*, pp. 3-21.

² Penned by Associate Justice Florencio M. Mamauag, Jr., and concurred in by Associate Justices Edgardo T. Lloren and Oscar V. Badelles; *id.* at 19-29.

³ *Id.* at 35-36.

On April 1, 2016, Pedro filed a Petition for Custody of Children⁴ against Genevie and her parents, praying that he be awarded the sole custody of their two children.

In this petition, Pedro alleged:

- 1) Pedro, Genevie, and their two children were living together in the house of Genevie's parents. Sometime in 2012, Genevie suddenly left, abandoned them, and eloped with another man;
- 2) Pedro brought the two children with him and they returned to his hometown in Baligya, Jabonga, Butuan City. In 2014, they rented a house in Brgy. Limaha and Pedro started working as a *triskad* driver;
- 3) Sometime in 2014, Genevie suddenly made contact with Pedro and asked him if she could spend time with their children. Pedro, believing that Genevie has nothing but good intentions, allowed her to spend time with the children while he was out working. To his surprise, he returned home and found Genevie and their children were no longer there; and
- 4) Pedro later found out the Genevie brought the children to her parents' house in Poblacion, Magallanes, Agusan del Norte where they had been living since then. Genevie eventually left their children with her parents and lived elsewhere with her other man, depriving the children of the love, affection, and upbringing only a parent can give.

Genevie, Lyn, and Gonzalo failed to file their answer despite being served with summons. In an Order⁵ dated June 29, 2016, the RTC set the case for Pre-Trial Conference and ordered the minor children to be presented during the scheduled hearing. The court also directed the Social Worker of the Municipal Social Welfare Development Office (MSWDO) to make a case study and submit a report and recommendation.

Initial presentation of evidence thereafter proceeded.

On October 24, 2016, the RTC issued an Order⁶ granting the request of respondents' counsel to file Answer. Subsequently, on October 28, 2016, respondents filed their Answer with Counterclaims,⁷ alleging that the care and custody of the children

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⁴ *Id.* at 30-33.

⁵ Record, p. 13.

⁶ *Id.* at 20.

⁷ *Rollo*, pp. 37-41.

should be under the maternal grandparents since Pedro is not fit to have custody of these children. Pedro has never been a good father to the children and that their welfare and upbringing would surely be compromised if he be awarded custody over them.

Thereafter, presentation of evidence continued.

Ruling of the Trial Court

By Decision⁸ dated February 22, 2018, the RTC ruled in favor of Genevie Villamor and denied the petition. It held that Pedro failed to convince the trial court that respondents were unfit to take custody of the children and that Pedro's allegation of abandonment was unfounded and unsubstantiated. The trial court decreed:

WHEREFORE, premises considered, the instant petition is DENIED.

Sole custody and exclusive parental authority over the children Jecielle Rose Villamor Alag born on 13 April 2009 and Jeah Villamor Alag born on June 16, 2011 is hereby remained to the mother, herein respondent Genevie B. Villamor. As such, she has the right to determine where the minors shall live or take them from the country she is presently working.

Let a copy of this decision be recorded in the Office of the Local Civil Registrar of Butuan City where this Court sits.

SO ORDERED.⁹

Pedro's motion for reconsideration was denied under Order¹⁰ dated June 4, 2018.

Proceedings Before the Court of Appeals

Pedro sought affirmative relief from the Court of Appeals, contending that the trial court erred in not granting sole custody of the children to him.

In its assailed Decision dated October 17, 2019, the Court of Appeals affirmed. It held that since Jecielle Rose and Jeah were illegitimate children, parental authority over them solely resides with the mother, Genevie, notwithstanding Pedro's recognition of these children. Further, there was no showing that Genevie was, in any way,

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⁸ Penned by Judge Eduardo S. Casals, *id.* at 42-50.

⁹ *Id.* at 50.

¹⁰ Penned by Judge Eduardo S. Casals, *id.* at 55.

unfit to have custody of her children. Her absence because of work is not one of the compelling reasons to deny her custody. After all, the sole reason why she opted to be far from her children is to be able to provide for all their needs and to give them a comfortable life. Lastly, even assuming that Genevie would be declared unfit to have custody of the children, substitute parental authority would rightfully belong to the maternal grandparents, Lyn and Gonzalo.

Present Case

Petitioner Pedro V. Alag, Jr., now invokes this Court's discretionary appellate jurisdiction *via* a petition for review on certiorari. He essentially alleges that the Court of Appeals erred in ruling that he had no right to have sole custody of the two children - Jecielle Rose and Jeah Villamor Alag.

Ruling

The petition shows that it was filed out of time and the docket and legal fees were belatedly paid. Petitioner received copy of the assailed Decision on November 8, 2019. The petition, however, was filed only on January 8, 2020 or 60 days from November 8, 2019 and way beyond the 15-day reglementary period.

Verily, a party who fails to question an adverse decision by not filing the proper remedy within the period prescribed by law loses the right to do so as the decision, as to them, becomes final and binding.¹¹ The Court has repeatedly held that the failure to perfect an appeal in the manner and within the period fixed by law renders the decision sought to be appealed final, with the result that no court can exercise appellate jurisdiction to review the decision.¹² Consequently, the Court dismisses the petition outright.

On the merits, the Court finds that the Court of Appeals did not commit reversible error as to warrant the exercise of its discretionary appellate jurisdiction.

As a general rule, the father and the mother shall jointly exercise parental authority over the persons of their common

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¹¹ *Building Care Corporation/Leopard Security & Investigation Agency v. Macaraeg*, 700 Phil. 749, 758 (2012).

¹² *Rivelisa Realty, Inc. v. First Sta. Clara Builders Corporation*, 724 Phil. 508, 517 (2014).

children.¹³ Insofar as illegitimate children are concerned, however, Article 176¹⁴ of the Family Code states that illegitimate children shall be under the parental authority of their mother. Accordingly, mothers (such as Genevie) are entitled to the sole parental authority of their illegitimate children (such as Jecielle Rose and Yeah), notwithstanding the father's recognition. 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.¹⁵

Indeed, in custody cases, the foremost consideration is always the welfare and best interest of the child. In fact, no less than an international instrument, the Convention on the Rights of the Child provides: "In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration."¹⁶ Only the most compelling of reasons, such as the mother's unfitness to exercise sole parental authority, shall justify her deprivation of parental authority and the award of custody to someone else. In the past, the following grounds have been considered ample justification to deprive a mother of custody and parental authority: neglect or abandonment, unemployment, immorality, habitual drunkenness, drug addiction, maltreatment of the child, insanity, and affliction with a communicable disease.¹⁷

Here, as found by the RTC and correctly affirmed by the Court of Appeals, Pedro failed to show any reason why Genevie is unfit to have custody of her children. Her absence because of work is not one of the compelling reasons to deny custody. It was justified by the fact that she had to work overseas to be able to provide the needs of her children.

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¹³ **Article 211, Family Code.** The father and the mother shall jointly exercise parental authority over the persons of their common children. In case of disagreement, the father's decision shall prevail, unless there is a judicial order to the contrary.

¹⁴ **Article 176, Family Code.** 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.

¹⁵ *Renalyn A. Masbate and Spouses Renato Masbate and Marlyn Masbate v. Ricky James Relucio*, G.R. No. 235498, July 30, 2018.

¹⁶ *Perez v. Court of Appeals (Ninth Division) and Ray C. Perez*, 325 Phil. 1014, 1024 (1996).

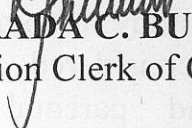
¹⁷ *Joey D. Briones v. Maricel P. Miguel, Francisca P. Miguel, and Loreta P. Miguel*, 483 Phil. 483, 493 (2004).

Too, Pedro's claim that Genevie abandoned them and eloped with another man does not warrant any consideration. Pedro failed to present any clear and convincing evidence to substantiate his bare allegations, nay, refute the fact that the children are now in the custody of their mother's parents because their mother has to work abroad to support them. Suffice it to state that Pedro himself further failed to adduce evidence that the children will be better off if they lived with him, let alone, that he is a better parent to them than their own mother.

WHEREFORE, the petition is **DISMISSED** for having been filed out of time and for utter lack of merit.

SO ORDERED."

Very truly yours,


LIBRADA C. BUENA
Division Clerk of Court
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