

Legal issues and family matters



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Can a mother be deprived of custody of her child? What determines the fitness of a parent in custody battles over children?

Article 213 of the Family Code of the Philippines states the general rule and the exception as to a mother's custody of a child below seven years of age:

In case of separation of the parents, parental authority shall be exercised by the parent designated by the Court. The Court shall take into account all relevant considerations, especially the choice of the child over seven years of age, unless the parent chosen is unfit.

No child under seven years of age shall be separated from the mother, unless the court finds compelling reasons to order otherwise.

Compelling reasons by which a mother can be deprived of custody

The general rule is that custody of a child below seven years of age belongs to the mother. The exception however is that if there are compelling reasons, such custody may be denied and granted to another party, as provided for by Article 214. The Supreme Court in the case of *Tonog vs. CA* (G.R. No. 122906, February 7, 2002) enumerated some of these compelling reasons as "neglect, abandonment, unemployment

and immorality, habitual drunkenness, drug addiction, maltreatment of the child, insanity, and affliction with a communicable illness."

A child above seven years of age can choose which parent to live with

If older than seven years of age, a child is allowed to state his preference, but the court is not bound by that choice. The court may exercise its discretion by disregarding the child's preference should the parent chosen be found to be unfit, in which instance, custody may be given to the other parent, or even to a third person.

The welfare and well-being of the child is the controlling consideration

The Supreme Court explained that in custody disputes, "it is axiomatic that the paramount criterion is the welfare and well-being of the child. In arriving at its decision as to whom custody of the minor should be given, the court must take into account the respective resources and social and moral situations of the contending parents."

Article 220 of the Family Code thus provides that parents and individuals exercising parental authority over their unemancipated children are entitled, among other rights, "to keep them in their company." The Supreme Court ruled in *Santos, Sr. v. Court of Appeals*:

"The right of custody accorded to parents springs from the exercise of parental authority. Parental authority or patria po-

1 / 3

testas 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. As regards parental authority, "there is no power, but a task; no complex of rights, but a sum of duties; no sovereignty but a sacred trust for the welfare of the minor."

Parental authority cannot be renounced

Parental authority and responsibility are inalienable and may not be transferred or renounced except in cases authorized by law. The right attached to parental authority, being purely personal, the law allows a waiver of parental authority only in cases of adoption, guardianship and surrender to a children's home or an orphan institution.

When a parent entrusts the custody of a minor to another, such as a friend or godfather, even in a document, what is given is merely temporary custody and it does not constitute a renunciation of parental authority. Even if a definite renunciation is manifest, the law still disallows the same.

Illegitimate children are under the sole parental authority of the mother; The law presumes that the mother is the best custodian

Article 176 of the Family Code provides that illegitimate children shall be under the parental authority of their mother. Likewise, Article 213 of the Family Code provides that *"no child under seven years of age shall be separated from the mother, unless the court finds compelling reasons to order otherwise."*

It will be observed that in both provisions, a strong bias is created in favor of the mother. This is specially evident in Article 213 where it may be said that the

law presumes that the mother is the best custodian. As explained by the Code Commission:

The general rule is recommended in order to avoid many a tragedy where a mother has seen her baby torn away from her. No man can sound the deep sorrows of a mother who is deprived of her child of tender age.

The exception allowed by the rule has to be for "compelling reasons" for the good of the child; those cases must indeed be rare, if the mother's heart is not to be unduly hurt.

If she has erred, as in cases of adultery, the penalty of imprisonment and the divorce decree (relative divorce) will ordinarily be sufficient punishment for her. Moreover, moral dereliction will not have any effect upon the baby who is as yet unable to understand her situation.

Important role of fathers; either parent, whether father or mother, is bound to suffer agony and pain if deprived of custody

This is not intended, however, to denigrate the important role fathers play in the upbringing of their children. Indeed, we have recognized that *"both parents complement each other in giving nurture and providing that holistic care which takes into account the physical, emotional, psychological, mental, social and spiritual needs of the child."*

Neither does the law nor jurisprudence intend to downplay a father's sense of loss when he is separated from his child. While the bonds between a mother and her small child are special in nature, either parent, whether father or mother, is bound to suffer agony and pain if deprived of custody.

One cannot say that his or her suffering is greater than that of the other parent. It is not so much the suffering, pride, and other feelings of either parent but the welfare of the child which is the paramount consideration.

Custody battles over children: what determines fitness of a parent over another?

Nothing can be more traumatic than a husband and a wife's battle for custody of their children, except probably for a child to know that his or her parents are in a bitter, legal tug-of-war for his or her custody.

The Supreme Court in the case of Bondagjy vs. Bondagjy (G.R. No. 140817. December 7, 2001) stated that the welfare of the minors is the controlling consideration on the issue.

The Court also said that what determines the fitness of any parent is [1] the ability to see to the physical, educational, social and moral welfare of the children, and [2] the ability to give them a healthy environment as well as physical and financial support taking into consideration the respective resources and social and moral situations of the parents.

Posted below are excerpts of the Bondagjy decision (emphasis by boldfacing supplied).

The record shows that petitioner is equally financially capable of providing for all the needs of her children. The children went to school at De La Salle Zobel School, Muntinlupa City with their tuition paid by petitioner according to the school's certification.

The welfare of the minors is the controlling consideration on the issue. In ascertaining the welfare and best interest of the children, courts are mandated by the Family Code to take into account all relevant considerations.

Article 211 of the Family Code provides that the father and mother shall jointly exercise parental authority over the persons of their common children.

Similarly, P.D. No. 1083 is clear that where the parents are not divorced or legally separated, the father and mother shall jointly exercise just and reasonable parental authority and fulfill their responsibility over their legitimate children.

Either parent may lose parental authority over the child only for a valid reason. In cases where both parties cannot have custody because of their voluntary separation, we take into consideration the circumstances that would lead us to believe which parent can better take care of the children.

Although we see the need for the children to have both a mother and a father, we believe that petitioner has more capacity and time to see to the children's needs. Respondent is a business-man whose work requires that he go abroad or be in different places most of the time. Under P.D. No. 603, the custody of the minor children, absent a compelling reason to the contrary, is given to the mother.

However, the award of custody to the wife does not deprive the husband of parental authority. In the case of Silva v. Court of Appeals, we said that: *Even when the parents are estranged and their affection for each other is lost, the attachment and feeling for their offsprings invariably remain unchanged. Neither the law nor the courts allow this affinity to suffer absent, of course, any real, grave and imminent threat to the well-being of the child.*"

How to be saved and go to heaven

Accept that you are a sinner and that your good works, ethical conduct or religion cannot save you. Romans 3:10, Romans 3:23

Believe on the Lord Jesus Christ that He alone can save you. Romans 6:23, Romans 10:13, Acts 16:31

Confess and repent of your sins. Luke 13:3, Isaiah 1:18

Delay not in receiving Jesus Christ into your heart. 2 Corinthians 6:2, Proverbs 27:1

Pray and ask the Lord to save you now: "Dear Lord, I believe that Christ died and shed His precious blood to save my soul. Be merciful to me a sinner, forgive my sins and save me in Jesus' name. Lord Jesus, I now accept you as my Savior. Amen."

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