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SECOND DIVISION

[G.R. No. L-41405. October 22, 1975]

IN THE MATTER OF THE PETITION FOR THE *HABEAS CORPUS* OF SHERYL LIM. LUISA CHUA LIM, *petitioner, vs.* **SOA PIN LIM and NONITA MACARIO,** *respondents.*

SYLLABUS

1. CIVIL LAW; FAMILY RELATIONS; PARENTAL CUSTODY OVER MINOR CHILDREN; LEGISLATION. — Article 363 of the Civil Code provides that "in all question on the care, custody, education and property of children, the latter's welfare shall be paramount" (reproduced in Article 8 of the Child and Youth Welfare Code) and that "no mother shall be separated from her child under *seven* years of age, unless the court finds compelling reasons for such measure." Article 17 of the Child and Youth Welfare Code is more explicit. It provides that "in case of separation of his parents, no child under five years of age shall be separated from his mother, unless the court finds compelling reasons to do so." (Presidential Decree No. 603 dated December 10, 1974, 70 O.G. 10774).

2. ID.; ID.; CHILD BELOW SEVEN YEARS OF AGE TO STAY WITH MOTHER; RATIONALE. — The Code Commission observed that the rule in article 363 is necessary "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 child of tender age."

3. ID.; ID.; PARTIES' ARRANGEMENT IN INSTANT CASE, APPROVED. — Where the agreement of the parties as to the custody of their minor child is in accordance with law, the same is approved.

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RESOLUTION

AQUINO, *J.*:

On September 15, 1975 Luisa Chua Lim, twenty-five years old, filed in this Court this special proceeding of *habeas corpus* against her husband, Soa Pin Lim, and her maid (*yaya* or baby-sitter), Nonita Macario, to recover custody of Sheryl, their eleven-month old child.

Mrs. Lim alleged in her petition that she has been estranged from her husband since August, 1975 (they were married on December 16, 1973); that the child was staying with her at her Quezon City residence, and that on September 8, 1975 her husband, through strategy and stealth and without her knowledge and consent, brought the child to West Bajac-Bajac, Olongapo City, where the spouses used to reside and where Soa Pin Lim has retained his residence.

Pursuant to the resolution of September 17, 1975, Acting Chief Justice Fred Ruiz Castro issued on the following day, September 18, the writ of *habeas corpus* (to be served through the Criminal Investigation Service of the Philippine Constabulary at Camp Crame), commanding respondents Soa Pin Lim and Nonita Macario to produce Sheryl Lim before the Juvenile and Domestic Relations Court of Quezon City on September 22 and to make a return of the writ not later than that date.

The hearing scheduled on September 22 was cancelled due to the alleged illness of the child and because the respondents filed a motion to quash the writ and to transfer the venue of the proceeding to Olongapo City.

Soa Pin Lim had filed on September 17 with the Court of First Instance at Olongapo City a complaint against his wife, Luisa Chua, and her father, Zun Sia Chua. In that complaint, which was apparently predicated on article 116 of the Civil Code, Soa Pin Lim prayed for the issuance of "such orders as are necessary and proper to make defendant Luisa Lim perform her duties as a wife" (Civil Case No. 1786-0).

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Because of the apparent connection between this *habeas corpus* case and Civil Case No. 1786-0 pending in the Court of First Instance at Olongapo City, this Court in its resolution of September 22, 1975 reconsidered its prior resolution and directed that the writ be made returnable to the Olongapo court.

However, in an urgent motion filed on September 23, Luisa Chua Lim insisted that the *habeas corpus* case be tried in the Quezon City Juvenile and Domestic Relations Court. She stressed that her complaint against Nonita Macario for kidnapping of a minor was investigated by the Quezon City Police.

In view of the disagreement of the parties as to the venue of the proceeding, this Court resolved to hear the case. At the hearing on October 15, after the parties and their lawyers had articulated their views, they agreed on a temporary arrangement that the mother, Luisa Chua Lim, should have the custody of the child, subject to the father's right to visit her and to the outcome of Civil Case No. 1786-0.

That agreement is justified under Article 363 of the Civil Code which provides that "in all questions on the care, custody, education and property of children, the latter's welfare shall be paramount" (reproduced in article 8 of the Child and Youth Welfare Code) and that "no mother shall be separated from her child under *seven* years of age, unless the court finds compelling reasons for such measure." Article 17 of the Child and Youth Welfare Code is more explicit. It provides that "in case of separation of his parents, no child under five years of age shall be separated from his mother, unless the court finds compelling reasons to do so" (Presidential Decree No. 603 dated December 10, 1974, 70 O.G. 10774).

The Code Commission observed that the rule in Article 363 is necessary "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."

WHEREFORE, finding the agreement of the parties as to the custody of the child to be in accordance with law, the same is approved. No costs.

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SO ORDERED.

Muñoz Palma and *Martin, JJ.*, concur.

Barredo, J., this resolution terminates this *habeas corpus* proceeding. The judicial approval of the agreement of the parties binds them to strict compliance therewith under pain of sanction from this Court.

Antonio, J., my concurrence is predicated on the clear legal right of the mother to the custody of her minor child, there being no compelling reasons to the contrary.

Fernando, J., is on leave.

Concepcion Jr., J., did not take part.

Muñoz Palma and *Martin, JJ.*, were designated to sit in the Second Division.

EN BANC

[A.M. No. 378-MJ. October 24, 1975]

FELIZARDO SORIANO, *complainant, vs.* **JUDGE ALFREDO C. MABBAYAD,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; BAIL; BAIL BONDS; CIRCULARS NOS. 47 AND 48 OF THE DEPARTMENT OF JUSTICE, EXPLAINED. — Circular No. 47 dated July 5, 1946 of the Department of Justice, reiterated in Circular No. 48 of July 18, 1963, directed prosecuting attorney's to recommended bail at the rate of ₱2,000.00 per year of imprisonment, corresponding to the medium period of the penalty prescribed for the offense charged, unless circumstances warrant the higher penalty. The reasonableness of this Circular has already received