

SECOND DIVISION

[G.R. No. 168785, February 05, 2010]

**HERALD BLACK DACASIN, PETITIONER, VS. SHARON DEL MUNDO
DACASIN, RESPONDENT.**

D E C I S I O N

CARPIO, J.:

The Case

For review [1] is a dismissal [2] of a suit to enforce a post-foreign divorce child custody agreement for lack of jurisdiction.

The Facts

Petitioner Herald Dacasin (petitioner), American, and respondent Sharon Del Mundo Dacasin (respondent), Filipino, were married in Manila in April 1994. They have one daughter, Stephanie, born on 21 September 1995. In June 1999, respondent sought and obtained from the Circuit Court, 19th Judicial Circuit, Lake County, Illinois (Illinois court) a divorce decree against petitioner. [3] In its ruling, the Illinois court dissolved the marriage of petitioner and respondent, awarded to respondent sole custody of Stephanie and retained jurisdiction over the case for enforcement purposes.

On 28 January 2002, petitioner and respondent executed in Manila a contract (Agreement [4]) for the joint custody of Stephanie. The parties chose Philippine courts as exclusive forum to adjudicate disputes arising from the Agreement. Respondent undertook to obtain from the Illinois court an order "relinquishing" jurisdiction to Philippine courts.

In 2004, petitioner sued respondent in the Regional Trial Court of Makati City, Branch 60 (trial court) to enforce the Agreement. Petitioner alleged that in violation of the Agreement, respondent exercised sole custody over Stephanie.

Respondent sought the dismissal of the complaint for, among others, lack of jurisdiction because of the Illinois court's retention of jurisdiction to enforce the divorce decree.

The Ruling of the Trial Court

In its Order dated 1 March 2005, the trial court sustained respondent's motion and dismissed the case for lack of jurisdiction. The trial court held that: (1) it is precluded from taking cognizance over the suit considering the Illinois court's retention of

jurisdiction to enforce its divorce decree, including its order awarding sole custody of Stephanie to respondent; (2) the divorce decree is binding on petitioner following the "nationality rule" prevailing in this jurisdiction; [5] and (3) the Agreement is void for contravening Article 2035, paragraph 5 of the Civil Code [6] prohibiting compromise agreements on jurisdiction. [7]

Petitioner sought reconsideration, raising the new argument that the divorce decree obtained by respondent is void. Thus, the divorce decree is no bar to the trial court's exercise of jurisdiction over the case.

In its Order dated 23 June 2005, the trial court denied reconsideration, holding that unlike in the case of respondent, the divorce decree is binding on petitioner under the laws of his nationality.

Hence, this petition.

Petitioner submits the following alternative theories for the validity of the Agreement to justify its enforcement by the trial court: (1) the Agreement novated the valid divorce decree, modifying the terms of child custody from sole (maternal) to joint; [8] or (2) the Agreement is independent of the divorce decree obtained by respondent.

The Issue

The question is whether the trial court has jurisdiction to take cognizance of petitioner's suit and enforce the Agreement on the joint custody of the parties' child.

The Ruling of the Court

The trial court has jurisdiction to entertain petitioner's suit but not to enforce the Agreement which is void. However, factual and equity considerations militate against the dismissal of petitioner's suit and call for the remand of the case to settle the question of Stephanie's custody.

Regional Trial Courts Vested With Jurisdiction to Enforce Contracts

Subject matter jurisdiction is conferred by law. At the time petitioner filed his suit in the trial court, statutory law vests on Regional Trial Courts exclusive original jurisdiction over civil actions incapable of pecuniary estimation. [9] An action for specific performance, such as petitioner's suit to enforce the Agreement on joint child custody, belongs to this species of actions. [10] Thus, jurisdiction-wise, petitioner went to the right court.

Indeed, the trial court's refusal to entertain petitioner's suit was grounded not on its lack of power to do so but on its thinking that the Illinois court's divorce decree stripped it of jurisdiction. This conclusion is unfounded. What the Illinois court retained was "jurisdiction x x x for the purpose of **enforcing** all and sundry **the various**

provisions of [its] Judgment for Dissolution." [11] Petitioner's suit seeks the enforcement not of the "various provisions" of the divorce decree but of the post-divorce Agreement on joint child custody. Thus, the action lies beyond the zone of the Illinois court's so-called "retained jurisdiction."

Petitioner's Suit Lacks Cause of Action

The foregoing notwithstanding, the trial court cannot enforce the Agreement which is contrary to law.

In this jurisdiction, parties to a contract are free to stipulate the terms of agreement subject to the minimum ban on stipulations contrary to law, morals, good customs, public order, or public policy. [12] Otherwise, the contract is denied legal existence, deemed "inexistent and void from the beginning." [13] For lack of relevant stipulation in the Agreement, these and other ancillary Philippine substantive law serve as default parameters to test the validity of the Agreement's joint child custody stipulations. [14]

At the time the parties executed the Agreement on 28 January 2002, two facts are undisputed: (1) Stephanie was under seven years old (having been born on 21 September 1995); and (2) petitioner and respondent were no longer married under the laws of the United States because of the divorce decree. The relevant Philippine law on child custody for spouses separated in fact or in law [15] (under the second paragraph of Article 213 of the Family Code) is also undisputed: "no child under seven years of age shall be separated from the mother x x x." [16] (This statutory awarding of sole parental custody [17] to the mother is mandatory, [18] grounded on sound policy consideration, [19] subject only to a narrow exception not alleged to obtain here. [20]) Clearly then, the Agreement's object to establish a post-divorce joint custody regime between respondent and petitioner over their child under seven years old contravenes Philippine law.

The Agreement is not only *void ab initio* for being contrary to law, it has also been repudiated by the mother when she refused to allow joint custody by the father. The Agreement would be valid if the spouses have not divorced or separated because the law provides for joint parental authority when spouses live together. [21] However, upon separation of the spouses, the mother takes sole custody under the law if the child is below seven years old and any agreement to the contrary is void. Thus, the law suspends the joint custody regime for (1) children under seven of (2) separated or divorced spouses. Simply put, for a child within this age bracket (and for commonsensical reasons), the law decides for the separated or divorced parents how best to take care of the child and that is to give custody to the separated mother. Indeed, the separated parents cannot contract away the provision in the Family Code on the maternal custody of children below seven years anymore than they can privately agree that a mother who is unemployed, immoral, habitually drunk, drug addict, insane or afflicted with a communicable disease will have sole custody of a child under seven as these are reasons deemed compelling to **preclude** the application of the exclusive maternal custody regime under the second paragraph of Article 213. [22]

It will not do to argue that the second paragraph of Article 213 of the Family Code applies only to judicial custodial agreements based on its text that "No child under seven years of age shall be separated from the mother, unless **the court** finds compelling reasons to order otherwise." To limit this provision's enforceability to court sanctioned agreements while placing private agreements beyond its reach is to sanction a double standard in custody regulation of children under seven years old of separated parents. This effectively empowers separated parents, by the simple expedient of avoiding the courts, to subvert a legislative policy vesting to the separated mother sole custody of her children under seven years of age "to avoid a tragedy where a mother has seen her baby torn away from her." [23] This ignores the legislative basis that "[n]o man can sound the deep sorrows of a mother who is deprived of her child of tender age." [24]

It could very well be that Article 213's bias favoring one separated parent (mother) over the other (father) encourages paternal neglect, presumes incapacity for joint parental custody, robs the parents of custodial options, or hijacks decision-making between the separated parents. [25] However, these are objections which question the law's wisdom not its validity or uniform enforceability. The forum to air and remedy these grievances is the legislature, not this Court. At any rate, the rule's seeming harshness or undesirability is tempered by ancillary agreements the separated parents may wish to enter such as granting the father visitation and other privileges. These arrangements are not inconsistent with the regime of sole maternal custody under the second paragraph of Article 213 which merely grants to the mother **final** authority on the care and custody of the minor under seven years of age, in case of disagreements.

Further, the imposed custodial regime under the second paragraph of Article 213 is limited in duration, lasting only until the child's seventh year. From the eighth year until the child's emancipation, the law gives the separated parents freedom, subject to the usual contractual limitations, to agree on custody regimes they see fit to adopt. Lastly, even supposing that petitioner and respondent are not barred from entering into the Agreement for the joint custody of Stephanie, respondent repudiated the Agreement by asserting sole custody over Stephanie. Respondent's act effectively brought the parties back to ambit of the default custodial regime in the second paragraph of Article 213 of the Family Code vesting on respondent sole custody of Stephanie.

Nor can petitioner rely on the divorce decree's alleged invalidity - not because the Illinois court lacked jurisdiction or that the divorce decree violated Illinois law, but because the divorce was obtained by his Filipino spouse [26] - to support the Agreement's enforceability. The argument that foreigners in this jurisdiction are not bound by foreign divorce decrees is hardly novel. *Van Dorn v. Romillo* [27] settled the matter by holding that an alien spouse of a Filipino is bound by a divorce decree obtained abroad. [28] There, we dismissed the alien divorcee's Philippine suit for accounting of alleged post-divorce conjugal property and rejected his submission that the foreign divorce (obtained by the Filipino spouse) is not valid in this jurisdiction in this wise:

There can be no question as to the validity of that Nevada divorce in any of the States of the United States. The decree is binding on private respondent as an American citizen. For instance, private respondent cannot sue petitioner, as her husband, in any State of the Union. **What he is contending in this case is that the divorce is not valid and binding in this jurisdiction, the same being contrary to local law and public policy.**

It is true that owing to the nationality principle embodied in Article 15 of the Civil Code, only Philippine nationals are covered by the policy against absolute divorces the same being considered contrary to our concept of public policy and morality. **However, aliens may obtain divorces abroad, which may be recognized in the Philippines, provided they are valid according to their national law. In this case, the divorce in Nevada released private respondent from the marriage from the standards of American law, under which divorce dissolves the marriage.**

x x x x

Thus, pursuant to his national law, private respondent is no longer the husband of petitioner. He would have no standing to sue in the case below as petitioner's husband entitled to exercise control over conjugal assets. As he is bound by the Decision of his own country's Court, which validly exercised jurisdiction over him, and whose decision he does not repudiate, he is estopped by his own representation before said Court from asserting his right over the alleged conjugal property. (Emphasis supplied)

We reiterated *Van Dorn* in *Pilapil v. Ibay-Somera* ^[29] to dismiss criminal complaints for adultery filed by the alien divorcee (who obtained the foreign divorce decree) against his former Filipino spouse because he no longer qualified as "offended spouse" entitled to file the complaints under Philippine procedural rules. Thus, it should be clear by now that a foreign divorce decree carries as much validity against the alien divorcee in this jurisdiction as it does in the jurisdiction of the alien's nationality, irrespective of who obtained the divorce.

The Facts of the Case and Nature of Proceeding

Justify Remand

Instead of ordering the dismissal of petitioner's suit, the logical end to its lack of cause of action, we remand the case for the trial court to settle the question of Stephanie's custody. Stephanie is now nearly 15 years old, thus removing the case outside of the ambit of the mandatory maternal custody regime under Article 213 and bringing it within coverage of the default standard on child custody proceedings - the best interest of the child. ^[30] As the question of custody is already before the trial court and the child's parents, by executing the Agreement, initially showed inclination to share custody, it is in the interest of swift and efficient rendition of justice to allow the parties

to take advantage of the court's jurisdiction, submit evidence on the custodial arrangement best serving Stephanie's interest, and let the trial court render judgment. This disposition is consistent with the settled doctrine that in child custody proceedings, equity may be invoked to serve the child's best interest. [31]

WHEREFORE, we **REVERSE** the Orders dated 1 March 2005 and 23 June 2005 of the Regional Trial Court of Makati City, Branch 60. The case is **REMANDED** for further proceedings consistent with this ruling.

SO ORDERED.

Brion, Del Castillo, and Perez, JJ., concur.
Abad, J., see separate opinion.

[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] In the Orders dated 1 March 2005 and 23 June 2005 issued by the Trial Court of Makati City, Branch 60.

[3] Petitioner did not contest the proceedings.

[4] Denominated "Compromise Agreement on Child Custody and Support."

[5] Under Article 15 of the Civil Code which provides: "Laws relating to family rights and duties, or to the status, condition and legal capacity of persons are binding upon citizens of the Philippines, even though living abroad."

[6] This provides: "No compromise upon the following questions shall be valid: x x x (5) The jurisdiction of courts[.]"

[7] The trial court held (Records, pp. 157-158):

[H]aving expressly recognized the validity of the Illinois Court's judgment [petitioner] is bound by its provisions including the provision that the Court would maintain sole jurisdiction to implement and enforce the provisions of the said judgment which necessarily included guidelines for the child's custody.

[Petitioner] being admittedly an American, following the nationality rule which Philippine civil laws adhere to, the Judgment of the Illinois Court would be binding upon him since the judicial disposition refers to matters of status or legal capacity of a person.

x x x x

Moreover, this Court cannot act upon [petitioner's] prayer to enforce the terms of the

said Compromise Agreement the said agreement being invalid and therefore, void, precisely because it seeks to transfer jurisdiction over the issue of child custody from the Illinois Court to this Court by agreement of the parties, when the previous Court had already effectively asserted its authority to act upon all matters relating to the said issue.

In this regard, Art. 2035 of the Civil Code expressly states that no compromise upon the questions of civil status of persons, validity of marriage, or legal separation, future support, jurisdiction of courts and future legitimate shall be valid.

[8] As a corollary claim, petitioner submits that the stipulation in the Agreement "vesting" exclusive jurisdiction to Philippine courts over conflicts arising from the Agreement, even if void for being contrary to Article 2035, paragraph 5 of the Civil Code, is severable from and does not affect the validity of the other terms of the Agreement on joint custody.

[9] Section 19, paragraph 1, Batas Pambansa Blg. 129, as amended by Republic Act No. 7691, provides: "*Jurisdiction in civil cases.*- Regional Trial Courts shall exercise exclusive original jurisdiction: (1) In all civil actions in which the subject of the litigation is incapable of pecuniary estimation; x x x x"

[10] See *Ortigas & Company, Limited Partnership v. Herrera*, 205 Phil. 61 (1983).

[11] Records, p. 17 (emphasis supplied).

[12] Article 1306 of the Civil Code provides: "The contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order, or public policy."

[13] Article 1409, paragraph 1 of the Civil Code provides: "The following contracts are inexistent and void from the beginning: (1) Those whose cause, object or purpose is contrary to law, morals, good customs, public order or public policy; x x x x"

[14] It can be inferred from the terms of the Agreement that the parties intended to be bound by Philippine law on its intrinsic validity (this is evident, for instance, from the stipulation selecting Philippine courts as exclusive forum to settle "any legal issue or dispute that may arise from the provisions of [the] Agreement **and its interpretation** x x x" (Records, p. 19; emphasis supplied). At any rate, Philippine law has the most substantial connection to the contract, considering its object (custody of a Filipino-American child), subject (Filipino-American child under seven years of age, born of a Filipino mother, both of whom reside in the country) and parties (Filipina mother and alien father).

[15] Including those marriages whose *vinculum* has been severed (see Sempio-Dy, Handbook on the Family Code of the Philippines 67-68 [1988]).

[16] The provision states: "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." (Emphasis supplied)

[17] *Gamboa-Hirsch v. Court of Appeals* (Res.), G.R. No. 174485, 11 July 2007, 527 SCRA 320 (reversing the Court of Appeals' ruling mandating joint custody and awarding sole custody to the mother).

[18] *Perez v. Court of Appeals*, 325 Phil. 1014 (1996). For children over seven, custody decisions are guided by the standard of "best interest of the child."

[19] Our discussion in *Pablo-Gualberto v. Gualberto V*, G.R. No. 154994, 28 June 2005, 461 SCRA 450, 471-472, on the statutory genealogy and policy grounding of the second paragraph of Article 213 is enlightening:

[A]rticle 213 takes its bearing from Article 363 of the Civil Code, which reads:

Art. 363. In all questions on the care, custody, education and property of children, the latter's welfare shall be paramount. No mother shall be separated from her child under seven years of age, unless the court finds compelling reasons for such measure.

The general rule that children under seven years of age shall not be separated from their mother finds its *raison d'être* in the basic need of minor children for their mother's loving care. In explaining the rationale for Article 363 of the Civil Code, the Code Commission stressed thus:

The general rule is recommended in order to avoid 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 (relative) divorce decree will ordinarily be sufficient punishment for her. Moreover, her moral dereliction will not have any effect upon the baby who is as yet unable to understand the situation. (Report of the Code Commission, p. 12)

[20] Sole maternal custody is denied only for "compelling reasons" such as "neglect,

abandonment, unemployment, immorality, habitual drunkenness, drug addiction, maltreatment of the child, insanity or affliction with a communicable disease" (Id. at 476; internal citation omitted).

[21] Civil Code, Article 211, as amended.

[22] See note 20.

[23] See note 19.

[24] Id.

[25] This line of argument can be subsumed under the rubric of "unfair state intervention" but this complaint can very well be leveled against the entire field of family law where the state injects itself on a host of areas impinging on the decision-making capacity and autonomy of individuals ranging from the intensely personal (e.g. who can marry [Article 5, Family Code], where to marry [Article 5, Family Code], who can celebrate the marriage [Article 5, Family Code], and how to relate to one's spouse [Articles 68-72]) to proprietary (e.g. Articles 74-125, Family Code, on property relations of spouses and Articles 194-208, Family Code, on support) to familial (e.g. Articles 209-233, Family Code, on parental authority).

[26] Petitioner hooks his argument on *Gonzales v. Gonzales* (58 Phil. 67 [1933]), *Arca v. Javier* (95 Phil. 579 [1954]) and *Tenchavez v. Escaño* (122 Phil. 752 [1965]). These cases, involving Filipino spouses, merely applied the "nationality rule" (now embodied in Article 15 of the Civil Code) to reject validating foreign divorce decrees obtained by Filipino spouses to circumvent the no-divorce rule in this jurisdiction. They are no authority to support petitioner's submission that as to aliens, foreign divorce decrees are void here.

[27] 223 Phil. 357 (1985).

[28] Id. at 361-363. *Van Dorn* spawned the second paragraph of Article 26 granting to Filipino spouses of aliens who obtain foreign divorce decrees the right to remarry. (*Republic v. Orbecido III*, G.R. No. 154380, 5 October 2005, 472 SCRA 114).

[29] G.R. No. 80116, 30 June 1989, 174 SCRA 653.

[30] *Bagtas v. Santos*, G.R. No. 166682, 27 November 2009.

[31] Thus, in *habeas corpus* proceedings involving child custody, judicial resolutions extend beyond the custodial right of persons exercising parental authority over the child and reach issues on custodial arrangements serving the child's best interest (see *Bagtas v. Santos*, id., remanding a *habeas corpus* petition to determine the fitness of the legal custodians notwithstanding that the question of illegal withholding of custody has been mooted by the transfer of the child's physical custody to the *habeas corpus*

petitioners).

SEPARATE OPINION

ABAD, J.:

I agree with the reasons that the majority of the Court gave in support of the decision, except one. I am uncomfortable with the proposition that an agreement between the mother and the father on a joint custody over a child below seven years of age is void for being contrary to law and public policy. True, the law provides in Article 363 of the Civil Code that "No mother shall be separated from her child under seven years of age, unless the court finds compelling reasons for such measure." The State can think up ways of protecting the child. But the 1987 Constitution acknowledges in Article II, Section 12, the natural and primary right and duty of parents to nurture their children and that the State must support them in this respect.^[1]

I submit that, in the matter of child custody, the mutual will of the child's parents takes precedence in the absence of circumstances that justify recourse to the law. The law becomes relevant, only as a default, if a separated couple cannot agree on the custody of their child. The law should not supplant parental discretion or unnecessarily infringe on parental authority.

Parents have a natural and fundamental right to autonomy in the care, custody, and upbringing of their children. The Family Code recognizes this in Article 209:

Art. 209. Pursuant to the natural right and duty of parents over the person and property of their unemancipated children, parental authority and responsibility shall include the caring for and rearing them for civic consciousness and efficiency and the development of their moral, mental and physical character and well-being. (n)

The State ought not to interfere with the right of parents to bring up their child unless its exercise causes potential harm to him. The State steps in, through the law, only if there are compelling reasons to do so. State intrusion is uncalled for where the welfare of a child is not jeopardized.

Regardless of marital circumstances, the mother and the father are presumed to be fit and competent to act in the best interest of their child. They can agree to share parental authority or, if you will, parental custody even as they decide to live under separate roofs. In a voluntary joint custody the mother might want to keep the child in her home during schooldays but allow the father to have him on weekends. And they

could agree on some device for arriving at a consensus on where the child will study and how his spiritual needs are to be attended to.

The law does not take away from a separating couple the authority and competence to determine what is best for their child. If they resolve on their own that shared parental custody is in their child's best interest, then the law and the courts have no business vetoing their decision. The parents enjoy a primary right to make such decision. I cannot concede that, where the child is below seven years of age, any agreement that diminishes the mother's absolute custody over him is void.

The second paragraph of Article 213 of the Family Code should not be read as prohibiting separated couples from agreeing to a custody arrangement, other than sole maternal custody, for their child of tender age. The statutory preference for the mother's custody comes into play only when courts are compelled to resolve custody fights between separated parents. Where the parents settle the matter out of court by mutual agreement, the statutory preference reserved to the mother should not apply.

A reading of the **entire** text of Article 213 shows that the second paragraph applies only to custody disputes that have reached the courtroom. Thus:

Article 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.*

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

It is unmistakable that the legislative policy is to vest the separated mother with physical custody of the child under seven years old, **in cases where the courts are called upon to designate a parent** for the exercise of parental authority. The second sentence of the first paragraph and the second paragraph itself merely qualify the general rule expressed in the first sentence that "parental authority shall be exercised by the parent designated by the Court," in case of parental separation.

In choosing the parent who will exercise parental authority, the court must take into account all relevant considerations. One of these is the child's age, as the court is directed to give due regard to the child's choice, if the child is more than seven years of age. If the child, however, is below seven years of age, the court cannot separate the child from the mother, except for compelling reasons. This is the import of the **entire** provision.

Thus, no legislative policy is violated if separated parents are allowed to voluntarily agree to a child custody arrangement other than sole maternal custody. It is not the policy of the state to prohibit separated parents from compromising on child custody

even if the child is of tender age. On the contrary, voluntary custody agreements are generally favored as it can only work for the best interest of the child.

It is not logical to say that the Court would be subverting the legislative policy of avoiding "a tragedy where a mother has seen her baby torn away from her" if separated parents are allowed to enter into a joint custody agreement. It can hardly be said that a child is being "torn away" from the mother, if the mother sees the wisdom and benefit of sharing custody of the child with the father. The voluntary nature of the agreement negates any "deep sorrow" or sense of deprivation that the mother may experience on account of her separation from the child.

Consequently, if separated parents mutually stipulate to uphold some form of joint authority over their children of tender age, it cannot in any way be regarded as illegal or contrary to public policy. Joint parental authority and custody is the norm and should be viewed as the more desirable custody arrangement. It encourages continuing contact with and involvement of both parents in the lives of their children. It can only redound to the minor's greater well-being and should thus be favored.

To declare that a joint custody agreement over minors of tender age contravenes Philippine laws will only discourage separating couples from sharing parental duties and responsibilities. It will render shared parenthood illegal and unduly promote paternal alienation. It also presumes that separated parents cannot cooperate and compromise for the welfare of their children. It constitutes undue interference in the parents' intrinsic right to direct their relations with their child.

A joint custody agreement can of course never be regarded as permanent and unbending. The situations of the mother or the father and even of the child can change and render performance of such agreement no longer in the latter's best interest. If the parents disagree on what they think is best for the child, recourse to the Court may be inevitable. But I suggest that the parent who wants the joint custody agreement changed or set aside bears the burden of showing to the court the new situations of the parties and how such arrangement have become unfavorable or detrimental to the child under the circumstances. This is a consequence of the presumption that contracts that are valid remain valid unless shown otherwise.

Here, the agreement between petitioner Herald and his estranged wife providing for joint custody of their then six-year-old child is a valid exercise of parental discretion and authority. It is independent of the foreign divorce decree and may be enforced or repudiated in this jurisdiction, since its object is the custody of a Filipino-American minor residing in the Philippines. Although Herald's complaint before the trial court appears to be one for specific performance, it is, at heart, an action for custody and enforcement of parental rights. Being so, the Regional Trial Courts have exclusive original jurisdiction over the action.

I concur in the decision subject to my above reservations.

[1] Article II, Sec. 12. The State recognizes the sanctity of family life and shall protect and strengthen the family as a basic autonomous social institution. It shall equally protect the life of the mother and the life of the unborn from conception. The natural and primary right and duty of parents in the rearing of the youth for civic efficiency and the development of moral character shall receive the support of the Government.



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