



# Legal issues and family matters

No. 008 Sept. 30, 2008 [www.familymatters.org.ph](http://www.familymatters.org.ph) and [www.famli.blogspot.com](http://www.famli.blogspot.com) By Atty. Gerry T. Galacio

## Visitation rights over illegitimate children

The Supreme Court, through Justice Artemio Panganiban, in the 2004 case of *Briones vs. Miguel* stated the fundamental rule (based on Article 176 of the Family Code) on a mother's parental authority over an illegitimate child:

*“An illegitimate child is under the sole parental authority of the mother. In the exercise of that authority, she is entitled to keep the child in her company. The Court will not deprive her of custody, absent any imperative cause showing her unfitness to exercise such authority and care.”*

The question is, does the biological father have any visitation rights over his illegitimate child? The term “visitation right” refers to “the right of access of a noncustodial parent to his or her child or children”. **The Supreme Court in the 1997 case of *Silva v. Court of Appeals* sustained the visitatorial right of a father over his illegitimate children in view of the constitutionally protected inherent and natural right of parents over their children.** The Court clarified that

*“Parents have the natural right, as well as the moral and legal duty, to care for their children, see to their proper upbringing and safeguard their best interest and welfare. This authority and responsi-*

*lity may not be unduly denied the parents; neither may it be renounced by them. Even when the parents are estranged and their affection for each other is lost, their attachment to and feeling for their offspring remain unchanged. Neither the law nor the courts allow this affinity to suffer, absent any real, grave or imminent threat to the well-being of the child.”*

**The facts of the *Silva* case are:**

1. Carlitos Silva and Suzanne Gonzales had a live-in relationship and they had two children, namely, Ramon Carlos and Rica Natalia. Silva and Suzanne eventually separated.
2. Silva and Suzanne had an understanding that Silva would have the children in his company on weekends.
3. The legal conflict began when Silva claimed that Suzanne broke that understanding on visitation rights. Silva filed a petition for custodial rights over the children before the Regional Trial Court Branch 78 of Quezon City. The petition was opposed by Gonzales who claimed that Silva often engaged in “gambling and womanizing” which she feared could affect the moral and social values of the children.
4. The Quezon City RTC ruled in favor of Silva giving him visitatorial rights to his children during Saturdays and/or Sundays. The court however explicitly stated that in no case should Silva take

1 / 2

the children out without the written consent of Suzanne.

5. Suzanne filed an appeal from the RTC's decision to the Court of Appeals. In the meantime, Suzanne had gotten married to a Dutch national. She eventually immigrated to Holland with her children Ramon Carlos and Rica Natalia.

6. The Court of Appeals overturned the ruling of the Quezon City RTC. The CA, stated that as alleged by Suzanne, Silva's womanizing would have a negative influence on the children. The CA explained:

*"With Articles 3 and 8 of PD 603, in mind, We find it to the best interest of the minor children, to deny visitorial and/or temporary custodial rights to the father, even at the expense of hurting said parent. After all, if indeed his love for the children is genuine and more divine than the love for himself, a little self-sacrifice and self-denial may bring more benefit to the children. While petitioner-appellee, as father, may not intentionally prejudice the children by improper influence, what the children may witness and hear while in their father's house may not be in keeping with the atmosphere of morality and rectitude where they should be brought up.*

*"The children concerned are still in their early formative years of life. The molding of the character of the child starts at home. A home with only one parent is more normal than two separate houses - (one house where one parent lives and another house where the other parent with another woman/man lives). After all, under Article 176 of the Family Code, illegitimate children are supposed to use the surname of and shall be under the parental authority of their mother.*

*"The child is one of the most important assets of the nation. It is thus important we be careful in rearing the children especially so if they are illegitimates, as in this case.*

7. Silva then appealed to the Supreme Court. The High Court set aside the ruling of the Court of Appeals and reinstated the Quezon City RTC's decision favoring Silva's visitation rights on weekends with Suzanne's written permission. The Supreme Court explained:

*The issue before us is not really a question of child custody; instead, the case merely concerns the visitation right of a parent over his children which the trial court has adjudged in favor of petitioner by holding that he shall have "visitorial rights to his children during Saturdays and/or Sundays, but in no case (could) he take out the children without the written consent of the mother x x x." The visitation right referred to is the right of access of a non-custodial parent to his or her child or children.*

*There is, despite a dearth of specific legal provisions, enough recognition on the inherent and natural right of parents over their children. Article 150 of the Family Code expresses that "(f)amily relations include those x x x (2) (b)etween parents and children; x x x." Article 209, in relation to Article 220, of the Code states that it is the natural right and duty of parents and those exercising parental authority to, among other things, keep children in their company and to give them love and affection, advice and counsel, companionship and understanding. The Constitution itself speaks in terms of the "natural and primary rights" of parents in the rearing of the youth. There is nothing conclusive to indicate that these provisions are meant to solely address themselves to legitimate relationships. Indeed, although in varying degrees, the laws on support and successional rights, by way of examples, clearly go beyond the legitimate members of the family and so explicitly encompass illegitimate relationships as well. Then, too, and most importantly, in the declaration of nullity of marriages, a situation that presupposes a void or inexistent marriage, Article 49 of the Family Code provides for appropriate visitation rights to parents who are not given custody of their children.*

*There is no doubt that in all cases involving a child, his interest and welfare is always the paramount*

consideration. The Court shares the view of the Solicitor General, who has recommended due course to the petition, that a few hours spent by petitioner with the children, however, could not all be that detrimental to the children. Similarly, what the trial court has observed is not entirely without merit; thus:

*“The allegations of respondent against the character of petitioner, even assuming as true, cannot be taken as sufficient basis to render petitioner an unfit father. The fears expressed by respondent to the effect that petitioner shall be able to corrupt and degrade their children once allowed to even temporarily associate with petitioner is but the product of respondent’s unfounded imagination, for no man, bereft of all moral persuasions and goodness, would ever take the trouble and expense in instituting a legal action for the purpose of seeing his illegitimate children. It can just be imagined the deep sorrows of a father who is deprived of his children of tender ages.”*

*The Court appreciates the apprehensions of private respondent and their well-meant concern for the children; nevertheless, it seems unlikely that petitioner would have ulterior motives or undue designs more than a parent’s natural desire to be able to call on, even if it were only on brief visits, his own children. The trial court, in any case, has seen it fit to understandably provide this precautionary measure, i.e., “in no case (can petitioner) take out the children without the written consent of the mother.”*

## Clarifications on the Supreme Court’s ruling on visitation rights

**[1] Visitation rights and parental authority:** As pointed out above, parental authority over an illegitimate child belongs to the mother. Silva may have won with the Supreme Court’s upholding of his visitation rights, but this favorable decision did not prevent Suzanne in the exercise of her parental authority from immigrating to Holland with her two children.

**[2] No need to go to court if the mother and father can agree:** If the mother and the father of the illegitimate child can agree amicably on the terms and conditions of the father’s visitation rights, then there will be no problem. In case of disagreement however, the father has to file a petition asking the court to settle the issue of visitation rights.

**[3] Can a father be denied visitation rights?** The Supreme Court in its Silva ruling stated that Suzanne’s fears and apprehensions were unfounded as to the father’s corrupting influence over the children. If it is proven therefore that indeed the father is a negative influence (because of reasons like immorality, drunkenness, etc) on the children, the trial court, taking into consideration the best interest of the children, can deny his petition for the exercise of his visitation rights.

**[4] Is the mother’s consent always necessary before the father can take his illegitimate child out?** Does the Silva vs. CA ruling of the Supreme Court mean that in all other cases the mother’s written permission must always be obtained before the father can take his illegitimate child out? As you can read from the excerpts of the SC decision above, the Quezon City RTC imposed this precautionary measure in view of Suzanne’s apprehensions over the negative influence of Silva’s alleged womanizing.

In one case, the Court of Appeals ruled that such written consent was not mandatory if the facts are not similar to the Silva case, that is, the mother had reasonable apprehensions over the welfare of her children. If the facts are not the same, then trial court judges handling the petition for visitation rights may or may not impose the condition of the mother’s written permission. (The Supreme Court of course may in the proper case uphold or reject this position of the Court of Appeals.)

## Related issues:

**[1] The right to visitation and the duty to pay child support are distinct and separate:** The Supreme Court in the case of David v. Court of

Appeals (G.R. No. 115821, 13 October 1999, 316 SCRA 710) held that the recognition of an illegitimate child by the father could be a ground for ordering the latter to give support to, but not custody of, the child. In other terms, the right to visitation and the duty to pay child support are distinct and separate.

Even if the mother violates any voluntary agreement or a court order on visitation rights, the father cannot use this as an excuse to withhold financial support for the child. Conversely, a mother who has not been regularly receiving the child support payment from the errant parent cannot legally prevent the deadbeat dad from seeing his child by that reason alone. Child support payment is not a rental fee for the time spent with the child. Visitation is the right of the child to bond with the other parent, and it has nothing to do with child support. The appropriate remedy of the mother is to allow access to the child, but to go back to court for the violation of the support agreement.

**[2] Travel clearance for illegitimate children:** Based on the DSWD's amended rules on travel clearance, the Parental Travel Permit, which was a former requirement for a minor traveling with only one parent, is no longer needed. A minor traveling abroad with either parent or with his her solo parent or legal guardian is exempt from the travel clearance requirement.

A solo parent should show a photocopy of a solo parent identification card issued by the Municipal Social Welfare Officer. For Muslim solo parent, a Tallaq of a Fasakh certification from the Shariah court or any Muslim barangay or religious leader should also be presented. Other acceptable proofs of solo parenthood are certificate of no marriage from the local civil registrar, death certificate or certificate of legal guardianship issued by the court.

**[3] There are occasions when the mother marries a man who wishes to adopt her illegitimate child. Is the consent of the biological father necessary?**

Section 9 of RA 8552 (Domestic Adoption Act of 1998) states that the written consent of the natural parent is necessary.

If the mother can prove that she exerted earnest and diligent efforts to locate the whereabouts of the biological father but without success, then the written consent is not necessary. Social workers of the DSWD or of the Family Courts, citing the best interest doctrine, have generally given favorable recommendations in their Child and Home Study Reports for the adoption of illegitimate children. Also, the court's paramount consideration is the best interest of the child. If the adoption is beneficial to the child, then it will be approved despite the objection of the biological father.

## 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."

**If you want people to pray for you for you, please surf to this prayer room for men and women :**

<http://womentodaymagazine.com/chat/share.html>