

CONSUELO VELAYO, PLAINTIFF-APPELLANT, VS. RODOLFO VELAYO, DEFENDANT-APPELLEE.

G.R. No. L-23538. July 21, 1967

Ponente: BENGZON, J.P., J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/022c44aff5dc/>

BENGZON, J.P., J.:

Plaintiff Consuelo Velayo filed on July 11, 1950 in the Court of First Instance of Manila, a suit against her husband Rodolfo Velayo, for separation of conjugal properties and support for herself and their three minor children. On February 17, 1953, finding that defendant had abandoned his wife for at least a year, the court allowed the petition for separation of properties and ordered the parties to submit an agreement to that effect.

The parties then submitted a compromise agreement covering separation of properties, support and custody of the children. And on May 30, 1953, the Court of First Instance rendered judgment, approving it. Substantially, its terms were as follows: (1) Defendant shall pay his wife as her share of the conjugal properties a total of P20,000.00, i.e., P5,000.00 payable upon approval of the agreement and P15,000.00 payable within two years from said date or up to May 30, 1955; (2) until said balance of P15,000.00 is fully paid, defendant shall give to plaintiff P200.00 monthly for her support and P300.00 monthly for the support of the children; (3) after said balance is paid in full, defendant shall give to his wife P150.00 monthly as his share for the support of the children, plaintiff agreeing to provide the other half of P150.00 for a total of P300.00; and (4) plaintiff shall remain in custody of the children but defendant may visit and/or take them out at reasonable hours of any day of the week.

Subsequently, pursuant to Republic Act 1401, the case was transferred to the Juvenile and Domestic Relations Court. Acting upon plaintiff's motion, said Court, on January 8, 1958, ordered defendant to pay all the sums due the plaintiff by virtue of the decision of May 30, 1953, estimated at about P28,000.00. Defendant however on February 7, 1958 appealed from said order to the Court of Appeals, staying execution in the meanwhile by filing a supersedeas bond in the amount of P25,000.00.

During the pendency of said appeal, on July 2, 1958, plaintiff and defendant signed another agreement, providing, thus:

“1. CONSUELO VELAYO has condoned and pardoned, as she hereby condones and pardons all acts of concubinage committed and being committed by RODOLFO VELAYO;

“2. CONSUELO VELAYO hereby waives any and all claims for support she has or may have against RODOLFO VELAYO covered by the case between the two of them which originated in the Court of Domestic Relations and now pending appeal in the Court of Appeals;

“3. CONSUELO VELAYO states that she is not going to claim any further support now and in the future from RODOLFO VELAYO;

“4. RODOLFO VELAYO has and will continue to have the custody of their children ROBERTO,

RODOLFO and ERLINDA, all surnamed VE-LAYO. For the protection of these children, the business enterprises of RODOLFO VELAYO will be incorporated and these three children will be given one-third (1/3) share in said business enterprise. RODOLFO VELAYO will also see to it that one-third (1/3) of all his properties will be given to the children afore-said; and

"5. The parties hereto hereby promise to execute such other document and documents as are necessary to fully effectuate the conditions of this agreement."

And on the strength of this new agreement, the Court of Appeals issued a resolution on August 29, 1958, dismissing the case, without costs.

Plaintiff appealed from said resolution of dismissal to this Court, in L-14541, *Consuelo Velayo v. Court of Appeals*. And deciding said case on March 30, 1960, this Court held that the agreement of the parties, dated July 2, 1958, was valid and effective, except as to the portions regarding the pardon and condonation of all acts of concubinage of defendant and the waiver of future support, which portions were held null and void. Construing the new agreement in relation to the judgment of the trial court dated May 30, 1953, We ruled that said agreement did not cover plaintiff's share in the conjugal properties. And under the judgment P15,000.00 remained payable as such by defendant to plaintiff. Accordingly, finding that plaintiff can still ask for execution in so far as her right to share in the conjugal properties is concerned, this Court modified the resolution of dismissal of the Court of Appeals, in the sense that defendant's appeal to that Court, not the case itself, is considered dismissed.

The records of the case were then remanded to the Juvenile and Domestic Relations Court, which received them on September 9, 1960.

On November 28, 1960, defendant moved to cancel the supersedeas bond posted to stay execution pending appeal. Plaintiff opposed it on January 7, 1961. Said motion was denied by the court a quo on March 2, 1962.

Subsequently, on November 20, 1962, defendant again filed a motion for cancellation of the supersedeas bond. On December 8, 1962, plaintiff again opposed the same. Acting thereon only on June 22, 1964, because there were pending disputes between the spouses before the Manila City Fiscal's office, the court a quo ordered defendant's supersedeas bond cancelled, on the ground that by then the judgment in the case could no longer be executed by motion, stating that the five-year period for execution had lapsed. Said the lower court:

"The Court counts the 5-year period within which the judgment can be enforced by motion as beginning May 30, 1955, by which date defendant was obligated to make full payment of the P20,000.00 to plaintiff. The running of the period was suspended on January 8, 1958, or about 2 years and 7 months thereafter, because of defendant's appeal from the 'order of execution' of that date. The period began to run again from September 9, 1960 when this Court received official advice as to the final outcome of defendant's appeal. Since then, plaintiff has not taken any steps for the enforcement of the judgment in her favor despite the lapse of some 3 years and 9 months. It will thus be seen that on computations most favorable to plaintiff (2 Moran, *Rules of Court*, 1963 Ed., p. 250-251), the 5-year period for the enforcement of a judgment can no longer be enforced in this case, it should stand to reason that the supersedeas bond can no longer be moved against in this case."

From this order, plaintiff has appealed directly to us. The purely legal question raised is whether or not the supersedeas bond still remains answerable for anything under the judgment in the case.

As stated, by the terms of the CFI judgment dated May 30, 1953, defendant was obliged to pay to plaintiff the amount of P200.00 monthly for her support and P300.00 monthly for the support of their children, until such time as defendant shall have fully paid the P15,000.00 balance corresponding to plaintiff's share in the conjugal properties. It is not disputed that, until now, the P15,000.00 has not been paid.

Now by virtue of the agreement of the parties dated July 2, 1958, submitted to the Court of Appeals, all items of support due and recoverable under the said judgment, were waived. As of that date, therefore, i.e., July 2, 1958, plaintiff was not entitled to execution upon the judgment as far as support that was already due for pay-ment was concerned. Said new compromise agreement, how-ever, could not possibly affect future support or the right thereto under the same judgment, since future support or the right thereto cannot be waived nor compro-mised (Arts. 301, 2035, Civil Code). Such was this Court's ruling in *Consuelo Velayo v. Court of Appeals* (L-14541), *supra*. And altho We there pointed out that the portion of the judgment regarding which plaintiff could at that time ask for execution was that providing for her P15,000.00 share in the conjugal properties, We were speaking as of the time that the parties entered into the new agreement, dated July 2, 1958. All items for support prior to that date were validly waived; all items for support after that date - i.e., future support altho not waived, were not yet due, so that execution could not then be had thereon.

As far as the period subsequent to the new agree-ment, or after July 2, 1958, is concerned, therefore, the judgment for support remained, with respect to the P200.00 payable monthly for the support of the wife. As regards the support of the children, pursuant to the new agreement, defendant ceded one-third of his business and of all his properties to them, for their protection.* It is moreover provided therein that "Rodolfo Velayo has and will continue to have the custody of their children Roberto, Rodolfo and Erlinda" thereby undertaking their support.**

Clearly therefore defendant still remained liable, under the judgment, for support of his wife at P200.00 monthly, as far as months subsequent to the new agreement of July 2, 1958 are concerned. For being then future support, the same could not be waived thereunder.

Now a judgment for support does not become dormant; the five-year period for execution (Sec. 6, Rule 39, Rules of Court) does not apply thereto; rather, the sup-port under the judgment becomes due from time to time, as provided, and is enforceable by simple motion at any time, except as to installments not recovered within the statute of limitations (*Florendo v. Organo*, 90 Phil. 483).

The supersedeas bond expressly undertook: "to secure the fulfillment and payment of the judgment so appealed together with the costs, in case the same should be so affirmed, in whole or in part, or in case the judgment should become effective on account of appellant's having abandoned or withdrawn the appeal, or in case it should be dismissed or declared to be improperly allowed." (As quoted by court a quo, Record on Appeal, pp. 53-54) It therefore should not be cancelled since it still is ans-werable for amounts due under the judgment, as to which, execution can still be had.

WHEREFORE, the appealed order cancelling defendant's supersedeas bond is hereby reversed and set aside, with-out costs.

SO ORDERED.

Reyes, J.B.L., Makalintal, Zaldivar, Sanchez, Ruiz Castro, Angeles, and Fernando, JJ., concur.
Concepcion, C.J., and Dizon, J., on official leave.

* L-145410, *supra*.

** See also Article 299, NCC.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.