

FLOR VILLASOR, REPRESENTED BY HER MOTHER AUREA MACAPAGAL, PLAINTIFF AND APPELLEE, VS. AGAPITO VILLASOR, DEFENDANT AND APPELLANT.

G. R. No. L-4647. April 20, 1953

Ponente: TUASON, J.

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TUASON, J.:

A complaint having been filed on June 21, 1950, against Agapito Villasor by Flor Villasor, defendant's acknowledged natural daughter, through her mother and guardian ad litem, the parties submitted a "Stipulation of facts and agreement" whereby the father promised to support the child, beginning with the month of August, 1950, by depositing with the clerk of court the sum of P45 on the 26th of that month and like sum "on the end of each succeeding month thereafter;" and on July 25, the court rendered judgment "making the agreement above quoted binding upon the herein parties without special pronouncement as to costs."

But on September 25, the defendant, through a new attorney, filed a motion offering "to fulfill his obligation set-forth in the decision by receiving and maintaining in his house the minor plaintiff" and alleging, among other things, that the plaintiff's mother, Aurea Macapagal, had no means of livelihood and was very fond of gambling and "an addict to intoxicating drinks."

The option granted by article 149 of the Spanish Civil Code, article 299 of the present Code, may be waived. Thus, in *Estrella vs. Court of First Instance of Manila and Batu* (62 Phil., 429), it was held that after the obligor had expressly agreed that the mother should have the custody and care of the minor, voluntarily binding himself to pay the child a monthly allowance, could not, afterwards claim the right to support said child in his own home.

Irrespective of any waiver, in the case of *Pascual vs. Martinez* (37 Off. Gaz., No. 118, p. 2418), it was declared that the optional right provided by article 149 "may be restricted when it is in conflict with another preferential right or when there is any justified reason for so doing." Citing *U. S. vs. Alvir* (9 Phil., 576), it was there said that "the marriage of the father with his present wife, who is not the mother of the minor for whose guardianship this case was instituted; the intention of the father to make illusory the support judicially granted to the minor; the determination of the former to have the latter at his side, only when pressed to pay the allowances overdue; and, above all, the treatment the father had accorded child, aside from the existence of a moral cause that would prevent the mother of the minor to visit her child in the house of his father," were factors that "would become the cause of disturbance in the said home," and an obstacle to the "satisfaction and enjoyment springing from love and affection so necessary for his unhampered development and for the assurance of his future." The same circumstances being present in the case at bar, the defendant may not insist upon bringing up the minor in his and his wife's home against the plaintiff's and her mother's justified objections.

For the foregoing reasons, the order of the Court of First Instance of Manila denying the appellant's move to have the plaintiff live in his home instead of paying her a monthly allowance is affirmed, with costs against the defendant and appellant.

Paras, C. J., Feria, Pablo, Bengzon, Montemayor, Reyes, Jugo and Bautista Angelo, JJ., concur.

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