

PROCESO VINLUAN, PETITIONER, VS. THE HON. JUSTICES OF THE COURT OF APPEALS – EDMUNDO S. PICCIO, ANTONIO CAÑIZARES AND HERMOGENES CONCEPCION, JR. AND JOSE-FINA RAMOS, RESPONDENTS.

G.R. No. L-25029. August 28, 1968

Ponente: CONCEPCION, C.J.

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CONCEPCION, C.J.:

Petition for review on certiorari of a decision of the Court of Appeals.

This case stemmed from Civil Case No. 14304-I of the Court of First Instance of Pangasinan, a civil action filed by Josefina Ramos against her husband, Proceso Vinluan - hereinafter re-ferred to as defendant - for legal separation and separation of property. Pending final determination of said case, or on September 14, 1964, plaintiff filed a petition for alimony pendente lite, alleging that the defendant and she were separated since 1960; that she had under her custody and care their five (5) children, three (3) of them minors; and that they needed money for their support. This motion was, on October 3, 1964, denied by said court, presided over by Hon. Eloy B. Bello, Judge, upon the ground that, since the legal separation and separation of pro-perties sought by the plaintiff had not, as yet, been decreed and the aforementioned children were not parties in the case, it was premature to order the payment of alimony pendente lite.

A reconsideration of this order having been denied, plaintiff instituted, against her husband and Judge Bello, Case CA-G.R. No. L-34891-R of the Court of Appeals, an original action for certiorari to annul said order of October 3, 1964, and secure a decree of alimony pendente lite. After appropriate proceedings, on June 30, 1965, the Court of Appeals rendered its decision, granting the writ prayed for and requiring the defendant to pass to the plaintiff and their children a monthly alimony of P1,000, with costs against said defendant. Hence, this petition for review on certiorari.

Defendant maintains that the Court of Appeals erred in holding that plaintiff is entitled to alimony pendente lite under Article 292 of the Civil Code of the Philippines, in awarding her and her children a monthly alimony of P1,000, and in granting a writ of certiorari, although plaintiff allegedly had another plain, speedy and adequate remedy in the ordinary course of law.

It is true that plaintiff could have sought a review by appeal of Judge Bello's order of October 3, 1964, but since the same is interlocutory, plaintiff would have had to wait, for its review by appeal, until the rendition of judgment on the merits, which may not be forthcoming until months or years later. Meanwhile, plaintiff and her children needed alimony, to live somehow. Hence, an appeal would not have been a speedy and adequate remedy.

As regards the amount of the monthly alimony we note that the aggregate annual income of the conjugal properties was only P3,000, according to the pleadings of the plaintiff, who, accordingly prayed for no more than a monthly allowance of P200. Hence, the amount awarded by the Court of Appeals is clearly excessive.

At any rate, defendant died on May 19, 1968, and this has mooted not only the present case, but, also, the main case for legal separation and separation of properties.

WHEREFORE, this case is hereby dismissed, without special pronouncement as to costs.

Reyes, Dizon, Makalintal, Zaldivar, Sanchez, Castro, Angeles, and Fernando, JJ., concur.

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