

**JUANITO MADARANG, PETITIONER, VS. HON. REYNALDO B. HONRADO IN HIS CAPACITY AS JUDGE OF THE COURT OF FIRST INSTANCE OF RIZAL, BR. XXV, JOSEPHINE MADARANG AND CARLOS MADARANG, REP...**

*G.R. NO. L-38871. July 31, 1974*

Ponente: BARREDO, J.

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**BARREDO, J.:**

Special civil action for certiorari and prohibition praying for a declaration of nullity, for being in grave abuse of discretion, the order of respondent judge of June 18, 1974 directing the issuance of a writ of execution ordering petitioner to pay certain amounts by way of support pendente lite after the order providing therefor had been annulled and set aside by a decision of the Court of Appeals which had already become final and executory.

It appears that in the court of respondent judge, petitioner is defendant in an action for support filed by his wife Esperanza Modequillo Madarang on behalf of two minors named Josephine and Carlos, both surnamed Madarang, claiming that petitioner had failed to support said minors who are his legitimate children with her. There was in that case a petition for support pendente lite. In his answer to the complaint, petitioner denied paternity of the minors, imputing that they were begotten by his wife with other men, further alleging they were born more than a year after he and his wife had begun living separately, without him having had access to or contact with her. With the issues thus joined, and after hearing the evidence of the plaintiffs, respondent judge rendered a "decision", dated May 25, 1973, reading in its pertinent parts as follows:

"From the evidence adduced during the hearing in connection with said complaint, it appears that Esperanza Modequillo Madarang and defendant Juanito Madarang per Annexes A and A-1 to the complaint were married on December 18, 1955, at the Sta. Mesa Catholic Church, Sta. Mesa, Manila, and officiated by Rev. Father Juan Larraz Goni. From the union between the plaintiff and defendant, the following children were born, namely, (1) Josephine Modequillo Aristorenas, female, born on January 4, 1958 at the Labor Hospital, Quezon City, certified true copy of Live Birth presented in evidence as Exh. "B" for the plaintiff, the mother being Mely Modequillo and the father being Juanito Aristorenas; and (2) Carlos M. Madarang, born September 13, 1959, in Borbon, Cebu, the mother being Esperanza Modequillo Madarang and the father being Juanito Madarang, per xerox copy of certification issued by the Office of the Local Civil Registrar of the Municipality of Borbon, Province of Cebu, signed by Actg. Local Civil Registrar Nelia S. Lim, and presented in evidence as Exh. "C" for the plaintiff. That the defendant abandoned the conjugal home and as admitted by the defendant in Par. 8 of the answer, it was his wife Esperanza Modequillo who "forced the defendant into living with another woman with her knowledge and consent after she herself consorted with other men." That sometime on June, 1959, while Esperanza Madarang was several months on the family way, defendant for reasons known only to him without taking into consideration the plight of the plaintiffs Josephine and Carlos Madarang who was still unborn, abandoned the said plaintiffs leaving the conjugal abode and never returning again. That the defendant has completely abandoned the herein plaintiffs and being minors, they were solely and exclusively dependent on their mother, Esperanza M. Madarang, to support them. That the father of said plaintiffs is a well

known actor under the screen name of Jun Aristorenas. That Esperanza Modequillo Madarang is without any means now to support her two children with defendant. That defendant in addition to his work as a well known actor, is an owner of a lot and house in the name of spouses Juanito Aristorenas and Virginia Aristorenas covering Lot 7, Block 20 containing an area of 601 square meters, located in Makati, Rizal covered by TCT No. 201088 of the Register of Deeds of Rizal and presented in evidence as Exh. "G" for the plaintiffs. That defendant is a Tagalog Picture Producer whose company Juver Productions has been authorized to engage in business. That the children namely, Josephine and Carlos Madarang are now enrolled in San Sebastian Catholic School in Borbon, Cebu, having transferred from Don Galo Elementary School, Paranaque, Rizal.

The defendant impliedly admits his legal obligation and responsibility to give support to the plaintiffs when in paragraph 22 of his Answer, he states:

"22. That in the remote event that plaintiffs are finally adjudged to be defendant's real offsprings, he should be allowed to support and rear them at his home instead of allowing them to remain in their mother's custody and giving financial support to them through their mother who by reason of her immoral relations with other men, should be deprived of their custody."

As held by our Supreme Court in *Sanchez vs. Zulueta*, 68 Phil., 110, IV-A Francisco, Revised Rules of Court in the Philippines p. 425,

"EVIDENCE TO SUPPORT DEFENSE — Whatever be the defense interposed to the application for support pendente lite, it is not necessary to go fully into the merits of the case, it being sufficient that the court ascertain the kind and amount of evidence which it may deem sufficient to enable it to justly resolve the application one way or the other, in view of the merely provisional character of the resolution to be entered."

Further, as stated in 3 Moran, Comments on the Rules of Court p. 129,

In deciding upon an application for support pendente lite, the court shall determine the pertinent facts in a provisional manner. The proof to be presented at the hearing of the application need not be as exhaustive as in the final trial of the case, for the court does not have to establish definite conclusions of law or of fact." (Italics supplied)

Provisional determination of pertinent facts.

The rule requires the court to determine provisionally the pertinent facts in the same manner as is provided in connection with motions. This means that to determine the pertinent facts there is no need of receiving oral testimony. It is enough that the facts be established by affidavits or other documentary evidence appearing in the record." (3 Martin, Rules of Court in the Philippines, p. 129 citing *Salazar vs. Salazar*, G.R. No. L-5823, April 29, 1953 (unreported).

Considering the necessities, plight and current situation of the plaintiffs who are children of the herein defendant, the plaintiffs Josephine Madarang and Carlos Madarang represented by Esperanza M. Madarang, by the legitimate mother and appointed guardian ad litem for said minors in this case, the means of the defendant and the probable outcome of this case, each of the said plaintiffs, children of the defendant need a monthly allowance and support of P800.00 each month for each plaintiff child to cover the necessities of each of the plaintiffs herein, and that law, justice and equity require that said support be given to plaintiffs by defendant.

WHEREFORE, without prejudice to rendering a different judgment after the principal case is tried on the merits, this Court hereby orders the defendant to give monthly allowance and support pendente lite to plaintiffs Josephine Madarang and Carlos Madarang represented by their legitimate mother Esperanza M. Madarang who is hereby appointed guardian ad litem of said minors in this case, the amount of P800.00 per month for each of the plaintiffs herein to be paid at the present residence of the plaintiffs at Borbon, Cebu, on or before the fifth day of each month, retroactive as of May 8, 1971, when this complaint was filed and the amount of P5,000.00 as arrears in support from the time of abandonment of the plaintiffs by defendant in June, 1959, and

to pay the attorney's fees in the amount of P5,000.00 and the further sum of P100.00 per court appearance of plaintiffs' counsel."

In due time, petitioner filed a motion for reconsideration of the foregoing "decision", which actually is an order granting support pendente lite, alleging that the court had denied his right to present evidence to rebut the prima facie case established by plaintiffs, His Honor holding that when the court set for hearing petitioner's "Special Affirmative Defenses" (among them his imputation of the paternity of plaintiffs to other men) on July 9, 1973, petitioner moved to cancel said hearing and, therefore, he waived his right to prove his defenses. His motion for reconsideration having been thus denied, petitioner filed with the Court of Appeals a petition for certiorari claiming denial of due process.

The appellate court sustained petitioner's contention of denial of due process and added that "what Rule 61 of the Revised Rules of Court allows is support pendente lite or support pending litigation and not other matters such as arrears in support or attorney's fees." Accordingly, it rendered judgment as follows:

"WHEREFORE, finding respondent Judge to have acted with grave abuse of discretion and in excess of jurisdiction, the writ of certiorari herein prayed for is hereby granted, declaring null and void, and setting aside the Decision, dated May 25, 1973 (Annex D) and Order dated July 11, 1973 (Annex F)."

No attempt was made to appeal this decision and the same became final and executory.

Under date of June 14, 1974, plaintiffs filed a motion for execution only with respect to the support pendente lite of P800.00 a month, and over the opposition of petitioner pointing out that the judgment of the Court of Appeals had annulled and set aside the whole decision of May 25, 1973 and not just the portion thereof regarding support in arrears, respondent judge granted the said motion without passing squarely on the contention of the opposition of invalidity as a whole of the decision being enforced. Hence, the instant special civil action in this Court.

After requiring respondents to answer the petition and issuing a restraining order, We set this case for hearing with a view, as is the innovative practice being now observed by at least the Second Division of the Court in appropriate cases, to having a further clarification of the issues and hopefully thereafter, in the light of whatever may come out of the confrontation, to suggest a more practical approach to their controversy which could save time and effort on the part of everyone concerned, instead of continuing with the litigation. On the date set for the hearing, July 22, 1974, only counsel for private respondents, Atty. Prospero A. Crescini, appeared.

At the brief hearing which went on despite the absence of petitioner's counsel who filed instead a motion for permission to present a memorandum, ignoring evidently the purpose of the hearing above-stated, it came out that instead of the parties going through a protracted litigation on such an urgent matter as support pendente lite, it might be more practical for private respondents to waive whatever they felt they are entitled to under the questioned order, which off hand appears to be questionable or at least controversial, and to renew their motion for support pendente lite with the lower court and thereby enable His Honor to issue a fresh order which would be free already from the flaws alleged in the petition. To the credit of counsel, Atty. Crescini, who lost no time in seeing the point of the Court, he readily manifested that in a few days he would proceed along the lines just mentioned. In effect, under date of July 23, 1974, counsel filed a manifestation stating that private respondents are "abandoning" the writ of execution issued pursuant to the trial court's order of June 18, 1974 and that he has filed a new motion exclusively for support pendente lite, excluding support in arrears, in view of which, petitioner's claim of denial of due process may already be duly attended to by His Honor.

In view of this development, the instant case has become moot and academic. It may not be amiss, however, in order to possibly forestall further unnecessary judicial controversies regarding the subject support pendente lite, to invite attention of petitioner and his counsel to the jurisprudence and authorities relied upon by respondent judge

in his "decision" of May 25, 1973, which are still controlling in this jurisdiction. At the same time, the Court commends Atty. Prospero A. Crescini for his intelligent appraisal of the situation that has developed in this case and for his spirit of cooperation with the Court, to the extent that, in the broader interests of justice, he has refrained from taking advantage of a court order in favor of his client, just so the correct procedure may be observed, a conduct worthy of emulation by the members of the bar.

Wherefore, the petition is dismissed, without costs. It is directed that this commendation be entered in the record of Atty. Prospero A. Crescini and that a copy of this decision be furnished the Integrated Bar of the Philippines for its information and guidance.

Zaldivar, (Chairman), Fernando, Antonio, Fernandez, and Aquino, JJ., concur.

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