

TERESA FANLO DE PEYER ET AL., PLAINTIFFS AND APPELLEES, VS. R. C. PEYER, DEFENDANT AND APPELLANT.

G.R. No. L-145. September 07, 1946

Ponente: PERFECTO, J.

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PERFECTO, J.:

On May 10, 1945, plaintiff and her three daughters filed a complaint for alimony against her husband, praying for P500 monthly allowance from February, 1945, for counsel's fees, for confirmation of her custody of the children, for the delivery of a Buick automobile and reasonable rental for the use of said car, and for damages in the sum of P10,000, plus costs.

On September 28, 1945, the lower court rendered judgment the dispositive part of which reads as follows:

"In view of all the foregoing, judgment is hereby rendered as follows:

"On the first cause of action, the defendant is hereby sentenced to pay the plaintiffs as monthly support, and until further orders from this court, the sum of three hundred fifty pesos (P350) commencing from March 1, 1945, the same to be payable within the first five days of each and every month. Whatever amounts have been paid by the defendant to the plaintiffs heretofore as support pendente lite pursuant to their agreement of June 22, 1945, attached to the record shall be deducted accordingly.

"The defendant is further sentenced to pay plaintiffs' counsel, as professional fees due for their services in connection with this case, the sum of P1,500.

"The custody given to Mrs. Peyer to her co-plaintiffs is hereby confirmed.

"On the third cause of action, the defendant is hereby ordered to return to his wife, the plaintiff Teresa Fanlo de Peyer, the Buick Sedan mentioned heretofore, in good and undamaged condition, otherwise to pay for the cost of whatever repair may be required to put it in running condition.

"The cross-claims of the defendant are hereby dismissed.

"No special pronouncement as to costs."

Defendant appealed from said judgment assigning in his brief eight errors alleged to have been committed by the lower court.

Defendant admits his obligation to support his daughters, plaintiffs Elizabeth and Ruth, but disclaims any obligation to support his wife and his eldest daughter, Alice Peyer. In this appeal, we need not decide the question concerning the support of Alice, the parties having agreed that the case be dismissed with respect to her, as she married in March, 1946. As a consequence, appellant's second assignment of error need not be considered.

The main question in this case is whether, upon the evidence, plaintiff Teresa Fanlo had attempted against her husband's life on June 19, 1942, and lastly on June 1, 1945.

Appellant alleges that, for said attempts, he is relieved from the obligation to support his wife under paragraph 4 of article 152 and paragraph 4 of article, 855 of the Civil Code, which read as follows:

"ART. 152. The obligation to give support shall cease:

* * * * *

"4. When the recipient, whether a forced heir or not, commits any of the offenses which constitutes sufficient grounds for disinheritance.

"ART. 855. In addition to those mentioned in paragraphs 2, 3, and 6 of article 756, the following shall also be sufficient causes for disinheriting a spouse:

* * * * *

"4. An attempt against the life of the spouse making the will, should there not have been a reconciliation."

Regarding the alleged attempt on June 19, 1942, defendant testified that "at that time she had a knife in her hand while we were having a quarrel and I had to run around the table to avoid serious consequence and the others intervened taking the knife away from her." Plaintiff pursued me "but she could not catch me; she followed me around the table with the knife * * * but what she did was that she hit the knife on the table, the knife cut the table." After the attempt, no reconciliation took place between wife and husband.

Concerning, the same incident, plaintiff testified: "I remember I was also sick at that time and I overheard his conversation with someone, and I went out and told him, 'If you do not stop insulting me or my family, I shall hit you with this.' The only thing I did was to hit the table with the knife. I did not strike him." Asked whether she pursued him around the table, she answered: "I do not remember, may be I did, may be I did not, but I did not hit him; it was such along time already."

Regarding: the alleged attempt on June 1, 1945, Jesus Santiago, Jesus P. Sans, and Zoilo Tasio testified.

Jesus Santiago testified that "Mrs. Peyer went away and when she came back I saw her making a movement to stab Mr. Peyer on the back with a knife. I then parried the stab and got hold of her hand."

Jesus P. Sans testified that "I saw Jesus Santiago trying to disarm Mrs. Peyer who was holding a knife in her hand. Then I held her at the back and said: 'for God's sake, leave that knife,' and I tried to disarm her and I was wounded in the chin; I was able to get the knife from her hand."

Zoilo Tasio testified that "I saw her (Mrs. Peyer) raise her hand, but the timekeeper who was between her and Mr. Peyer, held the hand of Mrs. Peyer who was holding the knife. The timekeeper is the same Jesus Santiago. If Mrs. Peyer had not been held by our foreman, she could have stabbed Mr. Peyer. Mr. Peyer was stooping and were it not for the intervention of our foremen Mrs. Peyer could have stabbed Mr. Peyer on the back."

Exhibit 1 was identified as the knife which Sans took from Mrs. Peyer.

Plaintiff Teresa Fanlo, after relating the struggle she had with defendant, testified: "The only answer I received was with closed fist, he gave me a big blow on my right breast, so strong that my ribs started to ache, and I almost fainted. When I saw I was defenseless and very weak, I ran upstairs to the kitchen and took a kitchen knife. It was really not a kitchen knife because our kitchen knife was taken by his men when Mr. Peyer left the house to work for the company in April. So when I came down, I was met by Jesus Santiago, who caught my hand and tried to snatch the knife away from me. When I saw that the blade was hurting my right hand, I let it go." When Jesus Santiago succeeded in taking the knife from her hand, she was about three meters from Mr. Payer. Plaintiff denies having actually stabbed Mr. Peyer. "The only thing I did when I took the knife was to try, in case Mr. Peyer

would hit me again, to repel him."

Concerning the incident which occurred on June 19, 1942, plaintiff and defendant gave contradicting testimonies. Under the circumstances, the court is not in a position to give credence to either of the spouses, and is more inclined to believe that in said incident plaintiff had not in fact attempted against defendant's life. At any rate, the court is of opinion that after said incident a sort of reconciliation, which defendant denies, took place between the spouses, they having continued to live under the same roof, and defendant having continued giving support to plaintiff, although there were frequent disagreements on this regard.

Concerning the second incident, the writer of this decision is of opinion that the preponderance of evidence militates in favor of defendant, but the majority, constituting all the other members of the division, agree with the lower court's pronouncement to the effect that the evidence adduced by the defendant does not establish the fact that his wife intended to kill him, but only armed herself with the knife to prevent defendant and his laborers from taking away the foodstuff and goods stored in the basement of the conjugal house, and that plaintiff acted, in a sort of self-protection, by trying to secure the retention of said foodstuff and other goods to satisfy her and her daughters' necessities, an understandable attitude, considering the differences between them regarding plaintiffs' support, differences which more than three weeks before had culminated in the filing of the complaint in this case.

Appellant complains because the lower court confirmed the custody that plaintiff Teresa Fanlo had of her daughters Elizabeth and Ruth, defendant's ground being that his wife is not a fit person to have said custody in view of her two alleged attempts against his life, and that Elizabeth has not attended any school since December, 1941, and practically every night she stays up as late as 1 o'clock in the morning and Ruth is not taken to bed until 10 or 11 o'clock at night.

It is not necessary to repeat what we have said relative to the alleged attempts against defendant's life. As regards the other grounds, we believe them not enough to make the mother unfit to have the custody of the two minors. Elizabeth's not going to school may be explained by the difficulties obtaining during enemy occupation, when plaintiffs, according to their complaint, were not sufficiently provided for by defendant for their support. Besides, if defendant had serious doubts as to his wife's fitness to have the custody of their daughters, no explanation has been given by defendant of his inaction to deprive his wife of said custody before he was sued in this case.

The sum of P1,500 awarded by the lower court for attorney's fees of plaintiffs is impugned by defendant because (a) the complaint was filed by Atty. Vicente J. Francisco, who withdrew from the case, and there is a total lack of evidence that Teresa Fanlo entered into an agreement with her attorneys regarding their fees; (b) plaintiff Teresa Fanlo's testimony to the effect that she agreed with Mr. Gonzales, who prepared the complaint in attorney Francisco's office, to pay the sum of P2,000 as attorney's fees, and that Mr. Francisco fixed everything with Judge Camus of the firm, is not admissible in evidence under paragraph 6 of article 1280 of the Civil Code; and (c) the amount is exorbitant.

Appellant's liability to pay attorney's fees is not based on any contractual relation. It is part of his legal obligation to support his wife and children. It is an incidental expense, similar to judicial costs, in the enforcement of the legal right of the wife and children to be supported. (Mercado vs. Ostrand, and Ruiz, 37 Phil., 179; Arroyo vs. Vasquez, and Arroyo, 42 Phil. 54.) And even if it were considered contractual, it is still obligatory no matter what the form of its execution may be, according to article 1278 of the Civil Code.

No written agreement is necessary to prove plaintiffs' obligation to pay their attorney's fees, even if the amount involved be higher than three hundred pesos. Said article 1280 is not applicable, because it refers to cases wherein the existence of a contract is in issue, and being of procedural nature must be considered superseded by the present rules on evidence. Plaintiffs do not need to prove the existence of any contract on attorney's fees. It is

enough that the legal services, as well as their nature, extent, and such other facts and circumstances be shown so as to enable the court to determine the reasonable amount that must be awarded. The lower court which conducted the trial of this case was in a good position to appraise the reasonable attorney's fees that must be awarded, and there is no showing that the amount awarded should be disturbed.

With respect to the Buick automobile, appellant maintains that the lower court erred in not holding that he is the owner thereof,

Plaintiff Teresa Fanlo testified that the car was given to her as a Christmas present in 1930 and, as she was denied the use of the car by all kinds of excuses, a stipulation regarding it was included in the agreement of April 27, 1944. Defendant points out that he acquired the car only in 1934, as shown by the certificate of registration (Exhibit 2).

Upon the evidence, we are convinced that, because defendant had two automobiles, one a De Sotto and the other the Buick in question, defendant in fact bought the Buick for the use of his family and the De Sotto for his business, and it is only reasonable that the possession of the Buick car be given to plaintiffs. We do not believe it reasonable for defendant to acquire two automobiles for his sole personal use to the exclusion of his wife and children. The lower court's pronouncement that plaintiff Teresa Fanlo is entitled to the ownership of the Buick car is, therefore, not correct, because the car belongs to the conjugal partnership and consequently to both spouses. There must be distinction between ownership and use and possession.

Defendant's claim in the amount of P2,830 for the use of sundry goods and merchandise belonging to the Philippine Manufacturing Company, taken by plaintiff Teresa Faqnllo from the basement of the conjugal house and for which defendant was responsible, is groundless. Neither the quantity of goods taken nor their value was proved. The goods were purchased by defendant himself, which might make them as part of the conjugal assets. Plaintiffs were dependent upon those goods for their subsistence. Defendant is not certain how much the Philippine Manufacturing Company would claim for said goods, and the company has not as yet attempted to collect their value. At any rate, if the Philippine Manufacturing Company is entitled to claim the amount in question, it is the company, not the defendant, which has the personality to sue for the amount.

Modified with the exclusion of plaintiff Alice Peyer, the judgment of the lower court is affirmed, with costs against appellant.

Paras, Pablo, Hilado, and Padilla, JJ., concur.

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