

**BENJAMIN ASTUDILLO AND MARIO ASTUDILLO, MINORS,
REPRESENTED BY FLORA CUEJILO, AS THEIR GUARDINA,
PLAINTIFFS AND APPELLANTS, VS. ANTONIO ASTUDILLO,
OTHERWISE KNOWN AS TONY ARNALD...**

G.R. No. L-4669. September 22, 1953

Ponente: MONTEMAYOR, J.

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MONTEMAYOR, J.:

On August 3, 1930, defendant-appellee Antonio Astudillo and Flora Cuejilo were married in Manila and to them were born two boys named Benjamin Astudillo and Mario Astudillo, plaintiffs herein. On December 20, 1932, defendant Antonio left the conjugal home never to return, deserting his wife and abandoning his two minor children. Because of this desertion, his wife Flora filed an action for divorced which was granted. The decision of the Court of First Instance of Manila dated July 4, 1944 not only dissolved the marriage but also ordered Antonio "to support the children in an amount equal to one-fourth ($\frac{1}{4}$) of his monthly salary or income, which he is now receiving or which he may receive in the future." No appeal was taken from that decision.

In July 1946, Antonio married Susana C. de Guzman, a writer of local movie stories and scripts, who later on became a movie directress. Antonio entered and was employed in the production of movie pictures and later became an actor under the screen name of Tony Arnaldo, and according to him, it was only then in 1947, that he began to have an income. According to the joint income tax returns of Antonio and his wife Susana, for the year 1947 they had a net income of P15,856; for 1948, P9,646; and for 1949, P26,681.50.

Because defendant Antonio failed to give the support to his children as ordered in the decree of divorce, his two children Benjamin and Mario brought this action through their mother acting as their guardian, to enforce the order for support. Acting upon an urgent application for support pendente lite, the trial court on January 30, 1950, found said application to be well founded, and ordered Antonio to pay P450 to his two children as support for the months of November and December 1949 and January 1950, and the amount of P200 monthly beginning February 1950. In their complaint plaintiffs alleged and during the trial they adduced evidence tending to prove that because of the failure if the defendant to give them support, they had contracted a debt amounting to P5,000 which sum was used for their support and education. Plaintiffs also claim that the amount which their father Antonio should pay for their support should be P15,000 a year or P1,250 a month, considering the amount of defendant's income. In their prayer they asked that this amount of P1,250 be paid to them monthly from the date of the filing of the complaint on November 3, 1949; that in addition, the sum of P5,000 be given to them with which to pay the debt they had incurred, and that P1,000 be also paid them for attorney's fees. After trial, judgment was rendered ordering the defendant to pay to the plaintiffs Two Hundred Pesos (P200.00) a month as support plus the amount in arrears, including costs. Plaintiffs are appealing from that decision.

For the years 1944, 1945, and 1946, there is no evidence to show that defendant-appellee had any income at all. On the contrary, defendant says that during those years he was destitute and lived on the charity of his friends

because his family did not give him any aid at all. His obligation to give support to his children under the decree of divorce should therefore begin from the year 1947 when he began to have an income. The amount of P15,000 claimed by the plaintiffs for their yearly support or P1,250 monthly is presumably based on the joint income tax return of the defendant and his wife Susana for the year 1949. But that was an exceptional year for Antonio and Susana, and what is more, although the said return (Exhibit D) gave a gross income of P59,540 or P60,000 in round numbers, it also listed the expenses incurred by him and his wife in earning that gross income which after making the necessary deductions resulted in the net amount of P26,681; and those deductions did not include living or home expenses but only those necessarily incurred in order to earn the income such as the amounts they paid as salaries to their Assistant Director, their script writer and typist, expenses for costumes and other apparel in connection with the filming of a movie pictures in which they appeared, etc. Furthermore, the amount represented in said tax return as net income was conjugal property belonging to Antonio and Susana. It cannot be the basis of the $\frac{1}{4}$ portion of the income contemplated by the decree of divorce, because the latter referred to the individual income of Antonio. Granting that the conjugal property of Antonio and his present wife is chargeable with the support of his own children, the plaintiffs, nevertheless, we must bear in mind that Antonio has other children by his present wife and the latter also has a claim on and right to the conjugal property to the extent of one-half of it. So that in order to arrive at a just and equitable ascertainment of the individual income of Antonio for purposes of fixing the $\frac{1}{4}$ portion to be given to his children for support, we should divide the joint net incomes of Antonio and Susana for the years 1947, 1948 and 1949 into two. Inasmuch as the decision appealed from was rendered in 1950, naturally, there is, for the purposes of the present appeal, no evidence as to the net income of Antonio for that year and thereafter. But on the basis of his income for the previous years, there is every reason to believe that the amount fixed by the lower court as the monthly support of the plaintiffs, namely, P200 a month, is justified.

Adding the net incomes of Antonio and Susana for the years 1947, 1948 and 1949 and dividing the total by two and then getting $\frac{1}{4}$ of that, we shall have the amount of P6,522.93 which defendant should have paid for the support of his children for those years. From this plaintiffs could well pay off the alleged debt of P5,000 they claim to have incurred. For the year 1950 and thereafter, defendant-appellee should pay the sum of P200 a month as ordered in the decision appealed from. But defendant-appellee should be credited with any amount or amounts he may have already given to plaintiffs. For instance, the evidence shows that he had given P300 for the months of January, February and March, 1948. From April 1948 to October 1949 he had given P150 a month or a total of P2,850. Also, we should consider the amounts he may have paid pendente lite as ordered by the trial court.

As regards attorney's fees, we agree with appellants that it should be paid but not in the amount of P1,000. It should be stated that this was practically a default case in the trial court and if defendant was later allowed to file his answer and to take part in the trial, it was with the understanding and his promise that he would not seriously contest the claim of his children, which promise he practically fulfilled, thereby greatly simplifying the proceedings. We hereby fix the amount of attorney's fees in the sum of P500. With these modifications, the decision appealed from is hereby affirmed, with costs.

Paras, C.J., Pablo, Bengzon, Padilla, Tuason, Reyes, Jugo, Bautista Angelo and Labrador, JJ., concur.

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