

ARTHUR A. ALIMAGNO, PETITIONER, V. MARY ANN CONCEPCION-ALIMAGNO AND THE HONORABLE FLORIAN GREGORY D. ABALAJON AS PRESIDING JUDGE OF REGIONAL TRIAL COURT OF PASIG CITY, BRANCH 26...

Ponente: DE GUIA-SALVADOR, R., J.

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DE GUIA-SALVADOR, R., J.:

Filed pursuant to Rule 47 of the 1997 Rules of Civil Procedure (Rules), the petition at bench seeks the annulment, on the ground of extrinsic fraud, of the November 3, 2011 Decision[1] rendered by the Honorable Leli Cruz Suarez, in her capacity as Acting Presiding Judge of the Regional Trial Court of Pasig City, Branch 261, in JDRC Case No. 9056, the decretal portion of which states:

“WHEREFORE, finding the foregoing compromise agreement not to be contrary to law, public policy, morals, customs and public order, the same is hereby APPROVED. Parties are hereby enjoined to strictly comply with the terms and conditions thereof.

SO ORDERED.”

The petition alleged that petitioner Arthur A. Alimagno and private respondent Mary Ann Concepcion-Alimagno were married on November 16, 2005 in a civil ceremony officiated by the Honorable Abraham B. Boreta, Presiding Judge of the Regional Trial Court of Pasig City (RTC).[2] After sometime, their union turned shaky and turbulent. It was further eroded by petitioner's infidelity, which led to the spouses' separation in fact in 2009. For allegedly causing physical, psychological and emotional harm and providing insufficient financial support to their only child, Kirsten Natalie, on February 8, 2011, private respondent filed a Complaint-Affidavit[3] against petitioner for violation of R.A. No. 9262, otherwise known as the Anti-Violence Against Women and Their Children Act of 2004 before the Pasig City Prosecutor's Office. After finding probable cause, the prosecution filed an Information[4] docketed as Criminal Case No. 145448-PSG[5] for violation of Section 5(e)(2) of R.A. 9262 before the RTC. On June 8, 2011, the RTC issued a warrant of arrest against petitioner.

Meanwhile, on March 24, 2011, the parties entered into a Compromise Agreement[6] in JDRC Case No 9056 pursuant to which petitioner undertook to provide financial support in the amount of P20,000.00 monthly to Kirsten Natalie, his minor daughter and only child with private respondent. The compromise agreement further granted custody over the child to private respondent and visitation rights at any given time upon prior notice to petitioner. Following the execution of the compromise agreement, the criminal case against petitioner was provisionally dismissed by the RTC in an Order[7] dated August 31, 2011. Petitioner later filed a Motion for Permanent Dismissal thereof, which the RTC granted in its September 13, 2013 Order.[8] On the other hand, private respondent, thru counsel, filed a petition for judicial approval of the Compromise Agreement on April 20, 2011 which the RTC approved in the now assailed November 3, 2011 Decision.

Petitioner urges the grant of this petition for annulment of judgment on the ground of extrinsic fraud, alleging that: (1) Atty. Ramil L. Esguerra, his counsel in JDRC Case No. 9056, committed acts constituting conflict of

interest by likewise representing private respondent in Criminal Case No. 145448, and (2) his consent to the compromise agreement was obtained under duress in exchange for the dismissal of the criminal case for violation of Section 5(e)(2) of R.A. 9262 against him.

After a circumspect perusal of the record, We find the petition bereft of merit.

In addition to a petition for relief therefrom,[9] a final and executory judgment can only be annulled by a petition to annul the same on the ground of extrinsic fraud and lack of jurisdiction or due process.[10] For this latter remedy, which has for its purpose the setting aside of a final and executory judgment so that there will be a renewal of litigation,[11] Section 2, Rule 47 of the Rules specifically provides:

“Section 2. Grounds for annulment.— The annulment may be based only on the grounds of extrinsic fraud and lack of jurisdiction.

Extrinsic fraud shall not be a valid ground if it was availed of, or could have been availed of in a motion for new trial or petition for relief.”

Under the foregoing provision, extrinsic fraud refers to a situation where a litigant commits acts outside of the trial of the case, the effect of which prevents a party from having a trial, a real contest, or from presenting all of his case to the court, or where it operates upon matters pertaining, not to the judgment itself, but to the manner in which it was procured so that there is not a fair submission of the controversy.[12] Fraud is extrinsic where the unsuccessful party has been prevented from exhibiting fully his case, by fraud or deception practiced on him by his opponent, as by keeping him away from court, a false promise of a compromise; or where the defendant never had knowledge of the suit, being kept in ignorance by the acts of the plaintiff.[13]

In this case, the allegations of petitioner do not amount to extrinsic fraud. In gist, he claims to have signed the compromise agreement in JDRC Case No. 9056 under threat and intimidation by private respondent that the criminal case for violation of R.A. 9262 against him would be pursued if he would not sign. Such scheme, petitioner adds, was facilitated by his own lawyer in the civil case who likewise acted as counsel for private respondent in the criminal case.

In Our view, the above factual averments of petitioner fail to make out a case of fraud as would fit the extrinsic kind referred to in Section 2, Rule 47 and contemplated in relevant jurisprudence. The Court notes that no fraud, trick or deceit was properly alleged nor proved against private respondent. Moreover, the Court finds no valid reason for petitioner to protest the execution of the compromise agreement which, ostensibly, was meant for the well-being and best interest of his only child with private respondent. In cases involving adoption, guardianship, support, personal status, and child custody, it has long been recognized that the welfare and best interest of the child should always be the primary and paramount consideration.[14] Courts are mandated to take into account all relevant circumstances that would have a bearing on such child's well-being and development.

Petitioner further claims that having been overcome with fear, he had not had the chance to even read or comprehend the contents of the compromise agreement, let alone object to the unjust stipulations therein. Petitioner, however, failed to point out the stipulations in the compromise agreement that he found to be unjust.

On petitioner's protestation that it is impossible for him to comply with the monthly support stipulated in the compromise agreement as the amount thereof is way beyond his means, the same deserves scant consideration as the amount of support is variable and, for this reason, no final judgment on the amount thereof may be made as the amount shall be in proportion to the resources or means of the giver and the necessities of the recipient. It may be reduced or increased proportionately according to the reduction or increase of the necessities of the recipient and the resources or means of the person obliged to support.[15] As held in *Bernarda S. Canonizado vs. The Hon.*

Judge Regina G. Ordonez Benitez, et al.[16], “[a] judgment for support is never final in the sense that not only can its amount be subject to increase or decrease but its demandability may also be suspended or re-enforced when appropriate circumstances exist.” On the ground of his alleged limited financial resources, therefore, petitioner can rightfully file the appropriate motion before the RTC to reduce proportionally the amount of support he is obliged to give to his child under the compromise agreement.

WHEREFORE, premises considered, the petition is DENIED for lack of merit and is, accordingly, DISMISSED.

SO ORDERED.

Garcia and Bueser, JJ., concur.

[1] Rollo, pp. 40-44. Entitled “In Re: Petition for Judicial Approval of Agreement on Support and Custody of Minor, Mary Ann Concepcion-Alimagno and Arthur A. Alimagno, Petitioners.”

[2] Ibid., p. 11.

[3] Ibid., pp. 13-17.

[4] Ibid., pp. 21-22.

[5] Ibid., p. 24.

[6] Ibid., pp. 36-38.

[7] Ibid., p. 45.

[8] Ibid., p. 65.

[9] Estate of Salud Jimenez vs. Philippine Export Processing Zone, 349 SCRA 240.

[10] Salonga vs. Court of Appeals, 269 SCRA 534.

[11] Pinlac vs. Court of Appeals, 349 SCRA 635.

[12] Rexlon Realty Group, Inc. vs. Court of Appeals, 379 SCRA 306; Stilianopulus vs. City of Legazpi, 316 SCRA 532.

[13] Cosmic Lumber Corp. vs. Court of Appeals, G.R. No. 114311, November 29, 1996.

[14] Joycelyn Pablo-Gualberto vs. Crisanto Rafaelito Gualberto, G.R. No. 154994 & 156254, June 28, 2005; Tonog v. CA, 427 Phil. 1, 7, February 7, 2002.

[15] Montefalcon vs. Vasquez, G.R. No. 165016, June 17, 2008; Gotardo vs. Buling, G.R. No. 165166, August 15, 2012.

[16] G.R. Nos. L-49315 & 60966, February 20, 1984.

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