

MRS. CARTOAD DE LA CRUZ DE BERONILLA, PETITIONER, VS. THE HONORABLE SEGUNDO M. MARTINEZ, JUDGE OF THE COURT OF FIRST INSTANCE OF PANGASINAN AND MELCHOR BERONILLA, RESPONDENTS.

G.R. No. L-8753. July 24, 1956

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

This is a petition for certiorari and mandamus praying that respondent Melchor Beronilla be enjoined to pay petitioner the pension pendente lite in arrears from March to December 1953 and from July, 1954 to the present both inclusive, in the total amount of P1,800 and that, should he fail to do so, his arrest and confinement be ordered until he complies with the orders of the court relative to the payment of said pension pendente lite.

On March 9, 1953, petitioner filed a complaint for legal separation and support against Melchor Beronilla in the Court of First Instance of Pangasinan (civil case No. 12495), and on March 11, 1953, she filed an application for support pendente lite praying that her husband be ordered to pass her a pension of F250 a month during the pendency of the main case. Her husband, to be hereafter mentioned as respondent, failed to file a responsive pleading as to the main case and so was declared in default, and not having appeared on the date of hearing of the motion for support pendente lite, the court proceeded to receive the evidence of petitioner through its clerk of court, after which the court rendered judgment ordering respondent to pay petitioner a monthly pension of P100 pendente lite from March 9, 1953.

Inasmuch as respondent has failed to pay petitioner the pension pendente lite as ordered by the court, the latter on January 20, 1954 moved that respondent be cited to show cause why he should not be punished for contempt for such failure, and on February 23, 1954, respondent filed a written manifestation wherein he stated that, while he was employed as a bookkeeper by the Magdalena Estate, Inc., with a salary of F350 a month, the same was inadequate and insufficient to maintain him and the three minor children that were under his custody for which reason he prayed that the pension in arrears be condoned and he be allowed to start paying the pension beginning April 1, 1954. The court, after due hearing, issued an order on March 26, 1954 condoning the pension in arrears and ordering respondent to pay the pension beginning January 1, 1954. This concession notwithstanding, respondent again failed to pay any pension to petitioner and so sometime in June, 1954 his arrest was ordered and it was only then that he paid the pension due corresponding to the period of January to June, 1954. Months passed by and respondent failed once more to pay the required' pension, and so on September 4, 1954 petitioner was prompted to file another motion for contempt, but respondent in turn moved for the reduction of the amount of support alleging financial inability to pay in view of the meager salary he was receiving and, notwithstanding the opposition of petitioner, the court reduced the pension from P100 to P75 a month effective January 1, 1955 provided that respondent pay first the pension in arrears from July to December, 1954. Petitioner now comes before this court disputing the condonation made by the respondent court of the pension in arrears from March to December, 1953 and the reduction of the monthly pension of P100 to P75 on the ground that the same were made

contrary to law and praying that respondent be ordered to pay the pensions due as originally ordered by respondent court.

It appears that when respondent failed to comply with the order of respondent court entered on November 17, 1953 ordering him to pay to plaintiff a pension of P100 a month, he was cited for contempt to explain the reason of his failure and, in answer, he filed a written manifestation praying that the pension in arrears be condoned alleging as reason the inadequacy of his salary as an employee of the Magdalena Estate, Inc. and that, considering the claim meritorious, the respondent court granted the condonation and ordered that the pension be paid beginning January 1, 1954 (Annex F). This was on March 26, 1954. No opposition to, nor motion for reconsideration of this order was filed by petitioner. Instead she moved for the arrest of respondent sometime in June, 1954 so that he may be proceeded with for contempt in view, of his failure to comply with the aforesaid order of March 26, 1954. And it was only after his arrest and confinement that respondent came across and paid the pension corresponding to the period of January to June, 1954.

While it is true that the order of the court providing for the payment of pension in arrears which has become final can no longer be modified and the pension condoned without the consent of the pensioner even if there are circumstances that may justify such condonation, however, said pension in arrears may be waived or renounced by the pensioner if he deems it wise and proper to do so. This is the situation obtaining in this particular case. Respondent pleaded for the condonation of the pension in arrears and, after proper hearing, the court deemed it wise to accede to the condonation considering the financial situation of respondent and petitioner did not object on time to such condonation and instead prayed for an immediate compliance with order of the court modifying the previous order. This is a substantial compliance with Article 301 of the new Civil Code which provides that "support in arrears may be compensated and renounced, and the right to demand the same may be transmitted by onerous or gratuitous title." In the circumstances, we hold that petitioner cannot now be heard to complain after having acquiesced with her silence and subsequent behavior in the condonation made by the respondent court.

Neither is there merit to the contention that the respondent court committed an error in reducing the monthly pension from P100 to P75 after giving the parties an opportunity to be heard relative to the financial situation of respondent, for such action is authorized by Article 297 of the same Code which provides that support may "be reduced or increased proportionately, according to the reduction or increase of the needs of the recipient and the resources of the pensioner obliged to furnish the same", provided that the reduction be not made retroactive as to affect a vested interest of the recipient or pensioner. The respondent court strictly adhered to this provision as shown in its order of February 18, 1955 (Annex 6 of Answer).

With regard to the petition that respondent be punished for contempt for his obstinate refusal to obey the order of the court relative to the pension *pendente lite*, we find that this matter has already been the subject of a compromise as shown in the order of Judge Jesus P. Morfe entered on July 12, 1955, copy of which was submitted to this court in connection with the supplemental answer filed by respondent after this case was set for hearing on August 10, 1955. This petition has therefore become moot.

Wherefore, petition is denied, without pronouncement as to costs.

Paras, C. J., Bengzon, Padilla, Montemayor, Reyes, A., Labrador, Concepcion, Reyes, J. B. L., and Endenda, JJ., concur.

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