

ANTONIO VASCO, PETITIONER, VS. COURT OF APPEALS, LEONOR INES LUCIANO, AS PRESIDING JUDGE OF THE JUVENILE & #038; DOMESTIC RELATIONS COURT, QUEZON CITY; NICANOR SALAYSAY, AS SHERIFF FO...

G.R. No. L-46763. February 28, 1978

Ponente: AQUINO, J.

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AQUINO, J.:

This case is about the trial court's jurisdiction to execute pending appeal a judgment for support.

The Juvenile and Domestic Relations Court of Quezon City in a decision dated October 5, 1976 found that Reynaldo Vasco and Lolita Vasco (born on April 8, 1952 and April 27, 1954, respectively) are the illegitimate children of Antonio Vasco and Angelina Reyes. It ordered Antonio to pay them the sum of P200 as monthly allowance for support, beginning October, 1976 plus P500 as attorney's fees (Civil Case No. QE-00888, Reyes vs. Vasco).

Antonio Vasco appealed to the Court of Appeals from that decision. He perfected his appeal on January 6, 1977. In its order dated April 21, 1977 the lower court approved Vasco's record on appeal and ordered the elevation of the record to the Court of Appeals.

On June 22, 1977, or two months after the approval of the record on appeal, Reynaldo Vasco and Lolita Vasco filed a motion for the execution of the said judgment pending appeal.

Antonio Vasco opposed that motion on the ground that the lower court had no jurisdiction to grant execution. He invoked section, 9, Rule 41 of the Rules of Court.

The lower court granted the motion in its order of July 13, 1977. Antonio Vasco assailed that order of execution in his petition for certiorari in the Court of Appeals.

The Court of Appeals in its decision of August 10, 1977 upheld that order of execution pending appeal in the "interests of substantial justice" and on the theory that the judiciary is an agency of the State acting as *parens patriae* and that if the said order is erroneous, the error is only an error of judgment and is not a grave abuse of discretion or an act in excess of jurisdiction.

On August 26, 1977 Antonio Vasco filed in this Court the instant petition for certiorari.

The petition is meritorious because the trial court had no jurisdiction (long after the perfection of the appeal) to issue an order for execution pending appeal. It had no jurisdiction because, after the perfection of the appeal, "the trial court loses its jurisdiction over the case, except to issue orders for the protection and preservation of the rights of the parties which do not involve any matter litigated by the appeal, to approve compromises offered by the parties prior to the transmittal of the record on appeal to the appellate court, and to permit the prosecution of pauper's appeals" (Sec. 9, Rule 41, Rules of Court).

An order for execution pending appeal does not fall within the said exceptions because it is a proceeding involving the very matter litigated by the appeal (*Cabilao vs. Judge of the Court of First Instance of Zamboanga*, L-18454, August 29, 1966, 17 SCRA 992, 997).

Before the rendition of the judgment, the plaintiffs could have availed themselves in the lower court of the provisional remedy of support pendente lite (Rule 61, Rules of Court). They did not do so.

On the other hand, the general rule is that an appeal stays the execution of the judgment (*Araneta vs. Gatmaitan*, 101 Phil. 328, 338; *Caragao vs. Maceren and Sebellino*, 92 Phil. 121, 124).

In granting execution pending appeal, the lower court relied upon *Garcia vs. Court of Appeals*, 114 Phil. 619 and *Hamoy vs. Batingolo*, 116 Phil. 115. The facts of the two cases are different from the situation in the instant case.

The *Garcia* case refers to support pendente lite which is immediately executory. The *Hamoy* case refers to an execution pending appeal against a person who was not a party to the case and who had a remedy in the trial court, which issued the writ of execution, even if the appeal of a party had already been perfected. That is different from the incident in this case.

The instant case is governed by the rule that a trial court, in ordering (after the approval of the bill of exceptions, now record on appeal) the execution of a judgment requiring the husband to pay support to his wife; acted without jurisdiction and, therefore the order of execution is illegal and void (*Marcelo vs. Estacio*, 69 Phil. 145; *Estacio vs. Provincial Warden of Rizal*, 69 Phil. 150).

Contrary to the impression of the Court of Appeals, the trial court's error is not merely an error of judgment. It is clear that the trial court acted without jurisdiction. Hence, certiorari lies to annul its order of execution pending appeal.

The Court of Appeals in sustaining the trial court's order of execution cited the demands of substantial justice and the role of the State as *parens patriae* in protecting the interests of minors (*Cabanas vs. Pilapil*, L-25843, July 25, 1974, 58 SCRA 94).

It is axiomatic that the courts should endeavor to do substantial justice in all cases and that as much as possible technicalities should be eschewed. As has been said, a technicality should be an aid to justice and not its great hindrance and chief enemy. And, as the saying goes, we should dispense compassionate justice which is the hallmark of the New Society. "For Moses gave us only the Law with its rigid demands and merciless justice, while Jesus Christ brought us loving forgiveness as well." (Line 17, Chapter 1, Gospel of Saint John).

However, we should not forget that procedural rules have their own wholesome rationale in the orderly administration of justice. Justice has to be administered according to the rules in order to obviate arbitrariness, caprice or whimsicality.

As to the doctrine of *parens patriae* (father of his country), its relevancy to this case is doubtful because the recipients, of the support granted by the lower court are no longer minors. The doctrine refers to the inherent power and authority of the state to provide protection of the person and property of a person *non sui juris*. Under that doctrine, the state has the sovereign power of guardianship over persons under disability. Thus, the state is considered the *parens patriae* of minors. (67 C.J.S. 624; *Government of the P.I. vs. Monte de Piedad*, 35 Phil. 728, 747; 31 Words and Phrases Judicially Defined, Per. Ed., pp. 99-100).

WHEREFORE, the decision of the Court of Appeals and the lower court's order and writ of execution are reversed and set aside. No costs.

SO ORDERED.

Barredo, (Acting Chairman), Concepcion, Jr., and Santos, JJ., concur.

Fernando, J., (Chairman), no part.

Antonio, J., concurs in a separate opinion.

SEPARATE OPINION

ANTONIO, J., concurring:

I concur in the result. I am, however, of the view that private respondent should now file with the Appellate Court a petition for support pendente lite under Rule 61 of the Rules of Court. It goes without saying that if, before the rendition of judgment, the trial court may "provisionally" grant alimony pendente lite with more reason may an Appellate Court grant such support, after the trial court has conducted a full dress trial and rendered a judgment on the basis thereof, finding that the claims of filiation and support have been adequately proven (Ramos v. Court of Appeals, 45 SCRA 604).

On the basis of the decision, there appears to be prima facie evidence of the right of Reynaldo and Lolita for support pendente lite. According to the said decision, the testimony of the mother, corroborated by the declaration of Crispina Hernandez, godmother of Reynaldo Vasco, on the filiation has remained uncontroverted. Petitioner's denials not only are corroborated, and "appear weak and pro forma," they also "sustained the oral testimony of the plaintiffs' mother regarding their intimate relationship and other circumstances attendant to plaintiffs' birth." Lolita Vasco is a nursing student, while her brother, Reynaldo, stopped schooling due to lack of funds. In its Order of July 13, 1977, the Juvenile and Domestic Relations Court found that private respondents "are totally without any source of income." Even if they are over 21 years, they are still entitled to support for education since Article 290 of the Civil Code provides that support includes the education of the person to be supported "until he completes his education, or training for some profession, trade or vocation, even beyond the age of majority." (Javier v. Lucero, 94 Phil. 634).

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