

BERNARDA S. CANONIZADO, PETITIONER, VS. THE HONORABLE JUDGE REGINA G. ORDONEZ BENITEZ – PRESIDING JUDGE OF THE JUVENILE AND DOMESTIC RELATIONS COURT – MANILA, AND ATTY. CESAR R....

G.R. Nos. L-49315 and 60966. February 20, 1984

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

Two petitions are before us, seeking to compel the respondent Juvenile and Domestic Relations Court to order the issuance of an alias writ of execution for the enforcement of a decision ordering the payment of past support and to order the payment of current support in favor of the petitioner.

On September 27, 1968, the Court of Appeals rendered a decision, the dispositive portion of which reads as follows:

"WHEREFORE, the appealed judgment is hereby modified by ordering defendant to give plaintiff a monthly support of P100.00 beginning with October, 1964, payable in advance within the first five (5) days of each month, the appealed judgment is hereby affirmed in all other respects, without costs."

This decision became final and executory on January 21, 1969.

On October 24, 1969, an order of execution was issued for P27,900.00 followed by the writ itself on October 28, 1969. However, the writ was recalled and set aside to enable the plaintiff, petitioner herein, to correct the amount therein stated. Earlier on October 6, 1967, Christina, daughter of petitioner and respondent, became of age but since she was still studying then, her support was formally terminated only in April, 1969. The total amount due her as of this latter date was determined at P16,150.00, for the period from October, 1964 to April, 1969. Writs of execution were again issued on February 10 and March 30, 1970 in favor of petitioner and Christina respectively. Said writs were both returned unsatisfied.

On July 11, 1973, the petitioner and the respondent entered into an agreement with the following stipulations:

"1. xxx xxx xxx

"2. The total arrears in support payable to Mrs. Bernarda Canonizado as of December, 1972 is determined at SEVENTEEN THOUSAND TWO HUNDRED PESOS (P17,200.00). A moratorium of payment will be observed on this amount.

"3. On or before July 31, 1973, Mr. Canonizado will deposit the amount of SEVEN HUNDRED PESOS (P700.00) covering support from January to July, 1973. Henceforth, current support of ONE HUNDRED PESOS (P100.00) will be deposited within the first ten (10) days of every month punctually.

"4. At any time that Mr. Canonizado will receive a sizeable income, payment on the arrears in support of P17,200.00 will be made partially or in full, depending on the income received.

"5. At any time that Mr. Canonizado should fail to remit current support for four (4) consecutive months then the total arrears in support will be immediately due and demandable.

"6. Mr. Canonizado also agrees that upon receipt of an income, he will liquidate the unpaid support due their daughter Christina, the same to be given to Bernarda Canonizado."

On February 16, 1976, the petitioner filed a motion for execution and contempt of court, praying that a writ of execution be issued for P17,200.00 in her favor and P16,150.00 in favor of Christina. On February 23, 1976, an order was issued by the lower court stating that after submission by petitioner of a verified statement of the total arrears in support and application to the Clerk of Court, a writ of execution shall be issued. On March 15, 1976, the petitioner filed the required verified statement but since the respondent on the same date was granted a period of time within which to liquidate the arrears in support, the application of the petitioner for a writ of execution was deferred until April 14, 1976. On said date, the petitioner filed a motion for the issuance of a warrant of arrest and for an alias writ of execution. These motions, however, were temporarily denied after the respondent was granted a last extension to pay the arrears in support on May 14, 1976.

On July 14, 1976, the lower court ordered the issuance of a writ of execution for the collection of the amounts of P16,150.00 and P17,200.00 and for the calling of the case on August 2, 1976 for respondent to show cause why he should not be found in contempt of court for failure to pay the arrears in support. On July 22, 1976, a writ of execution was issued. Enforcement of this writ, however, was not pressed by the petitioner because on August 3, 1976, she and the respondent entered into an agreement which provided for the following:

"Accommodating defendant's shortcomings, plaintiff agreed to accept the P200.00 to be deposited and to defer further action as long as defendant shall fulfill the following commitments which he made:

"Amount to be paid as per Order of August 3, 1976 P 2,000.00

"LESS: Deposit, September 1, 1976 200.00

Balance P 1,800.00

"PLUS: Support for September, 1976 200.00

Total P 2,000.00

"Defendant promised to pay on:

"September 17, 1976 P1,000.00

"October 4, 1976 P1,000.00

P2,000.00

On April 14, 1977, petitioner filed a motion for an alias writ of execution based on the original writ issued on July 22, 1976.

On September 14, 1977, the respondent judge denied the motion for issuance of an alias writ of execution on the ground that "the decision of the Court of Appeals dated September 27, 1968 became final and executory on January 21, 1969, or seven (7) years and five (5) months had elapsed prior to the filing of plaintiff's motion for issuance of writ of execution on July 1, 1976; that, that being the case, the judgment may no longer be executed by Motion (Sec. 6, Rule 39 of the Rules of Court); and that Christina, having attained the age of majority on

October 6, 1967 and who does not appear to be suffering from any incapacity, may take the necessary action herself to collect the indebtedness of her father to her."

On October 13, 1978, the petitioner filed a motion for reconsideration of the above ruling but the same was denied. Hence, on November 21, 1978, the petitioner filed a petition for mandamus with preliminary mandatory injunction praying that an alias writ of execution be issued based on the writ of execution issued on July 22, 1976. The petition is the case now docketed as G.R. No. L-49315.

Meanwhile, on January 12, 1982, the petitioner filed with the respondent court a motion to require the respondent to pay current support beginning February, 1978 based on the decisions of September 27, 1968 and January 21, 1969. On March 1, 1982, the respondent filed an opposition to said motion on the ground that his obligation to support has terminated. Subsequently, the respondent filed a motion to terminate support. Petitioner failed to appear at the hearings set for such motion, the last of which was on August 28, 1982, on the presumption that termination of support can be pleaded only in a separate and independent action, not by motion in the same proceeding.

On July 5, 1982, the petitioner filed another petition for mandamus with preliminary mandatory injunction praying that the respondent judge be ordered to act on petitioner's motion for current support and further, to be enjoined from hearing the motion for termination of support. This case was docketed as G.R. No. 60966.

The Court resolved to give due course to the petition and to treat the respondent's comment as answer to the petition.

The issues raised in these consolidated petitions center on whether or not the respondent judge can be compelled by mandamus - 1) to issue an alias writ of execution for the payment of arrearages in support; and 2) to act on the petitioner's motion for payment of current support.

Petitioner maintains that the issuance of an alias writ of execution based on the writ of execution dated July 22, 1976 is a purely ministerial act on the part of the respondent judge, petitioner's right to such writ being predicated on the decisions of the Court of Appeals dated September 27, 1968 and January 21, 1969. She cites the same decisions as her reasons for compelling respondent judge to issue an order for the payment of current support.

The first contention is impressed with merit.

It is essential to the issuance of the writ of mandamus that the plaintiff should have a clear right to the thing demanded and it must be the imperative duty of the defendant to perform the act required. *Province of Pangasinan v. Reparations Commission*, 80 SCRA 376; citing *Gonzales v. Board of Pharmacy*, 20 Phil. 367).

In the case at bar, although petitioner obtained the favorable judgment on January 21, 1969, she can still enforce the same by a motion for a writ of execution, notwithstanding the lapse of the five-year period provided for in Rule 39, Section 6 of the Rules of Court because a judgment for support does not become dormant and the five-year period for executing it by motion does not apply thereto. (*Gumba v. Juvenile and Domestic Relations Court*, 108 SCRA 93; citing *Velayo v. Velayo*, L-23538, July 21, 1967, 20 SCRA 734, 65 O.G. 2096). Furthermore, since the obligation is a continuing one, the court never loses jurisdiction to enforce the same.

While the records show that a series of compromise agreements were entered into by and between petitioner and respondent, the latter in spite of his solemn accord never made any effort to update his payment of arrears in support of the petitioner which have long been overdue. He only complied with the payment of current support up to June, 1977. A judicial compromise may be enforced by a writ of execution. If a party fails or refuses to abide by the compromise, the other party may either enforce the compromise or regard it as rescinded and insist upon

his original demand. (*Mabale v. Apalisok*, 88 SCRA 234; citing Arts. 2037, 2038 and 2041, Civil Code). Therefore, petitioner was just enforcing a vested right when she asked for a writ of execution and subsequently, an alias writ of execution to enforce the original judgment on her and her daughter's favor instead of enforcing the said compromise agreements. Parenthetically, the agreements were only for deferment but never for a waiver or giving up of the respondent's obligations to the petitioner.

With regard to the issue of payment of current support, Article 303 of the New Civil Code provides:

"Art. 303. The obligation to give support shall also cease:

xxx xxx xxx

xxx xxx xxx

(3) When the recipient may engage in a trade, profession, or industry, or has obtained work, or has improved his fortune in such a way that he no longer needs the allowance for his subsistence;"

xxx xxx xxx

xxx xxx xxx

When any of the above circumstances occurs, the support stops since the recipient no longer needs it for subsistence. It does not mean, however, that the obligation to give or the right to ask for support also ceases permanently because the lack of a need for it may only be temporary. In other words, the above circumstances do not affect the right to support between spouses but only the action to make it demandable, such right being born from the law and created as such by the marriage tie. It subsists throughout the period that the marriage subsists.

In the instant petition the respondent can rightfully file a motion to oppose the payment of current support or to terminate the demandability of the same for the time being, since he alleges and it appears undisputed that herein petitioner became a member of the bar sometime in 1967 and has long been in the employ of the Central Bank of the Philippines, even before she became a lawyer. It is not necessary to file a separate action for a suspension of current support. The matter of determining whether or not petitioner is entitled to support up to the present is subject to the presentation of evidence both by the petitioner and the respondent and is for the lower court to decide. The respondent judge, there-fore, cannot be compelled by mandamus to order respondent to pay current support when the latter alleges that a ground exists for the suspension of such obligation. 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.

WHEREFORE, the petition in G.R. No. L-49315 is GRANTED, and the respondent court is hereby ordered to immediately, issue the alias writ of execution prayed for by herein petitioner. Respondent Cesar Canonizado is also ordered to pay the sum of P3,000.00 as attorney's fees and costs. The petition in G.R. No. 60966 is DISMISSED for lack of merit. The respondent court is directed to set the case for hearings on whether or not there is a continuing need for current support.

SO ORDERED.

Teehankee (Chairman), Melencio-Herrera, Plana, and Relova, JJ., concur.

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