

NIEVES DURAN EMBATE, PLAINTIFF AND APPELLEE, VS. RAFAEL F. PENOLIO, DEFENDANT AND APPELLANT.*G.R. No. L-4942. September 23, 1953*

Ponente: LABRADOR, J.

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This is an appeal against an order of the Court of First Instance of Rizal, ordering defendant-appellant to pay plaintiff-appellee or deposit with its clerk of court P712.62 within the period of forty-eight hours, otherwise he will be placed under arrest until he complies with the order.

Plaintiff brought this suit to secure support for a minor six years of age, a natural child of plaintiff and defendant, who had lived together as common-law husband and wife from January, 1943 to January, 1949. In 1949 defendant abandoned plaintiff and the child, married another woman, and since then failed to give support to the child. The record discloses that defendant had to be summoned by publication, as his whereabouts could not be located. It does not appear from the record of the case that the summons was published, or that the defendant ever filed any answer, but on September 28, 1949 judgment was rendered by the court a quo ordering the defendant to give the child a monthly support of P75 beginning January 10, 1949. The defendant received copy of this decision on January 23, 1950, and appears to have given to plaintiff for the maintenance of the child the sum of P290 up to January 16, 1951. On this date, plaintiff presented a "motion for contempt" to require defendant to pay her P560, which she had contracted as an indebtedness to support the child. The motion was called for hearing on January 27, 1951, but its consideration was postponed in the court's order "until further assignment or petition of either of the parties," "who are on the way to a possible amicable settlement of their differences."

On February 6, 1951, plaintiff's attorney petitioned the court that the "motion for contempt" be set for hearing on February 24, 1951, and pursuant thereto the court, on February 22, 1951, set the case for hearing on February 24, 1951 and ordered the defendant to answer the motion on the same date. The defendant filed his answer on the day fixed, alleging that he was in no position to give support to the child because he was out of work for some time, that he was earning only P150 a month, and that plaintiff had received some war damage compensation. The court did not then resolve the motion, but granted a postponement "until further petition of either of the parties or until further assignment", upon agreement of the parties, "who need more time within which to consider a possible amicable settlement of their differences."

On April 20, 1951 plaintiff's attorney petitioned the clerk of court to set the motion for contempt for hearing on April 25, 1951, giving notice thereof by registered mail to defendant's counsel. At the same time, she caused the Manager of the San Miguel Brewery, under whom defendant was working, to be summoned as a witness. On April 25, 1951, the court entered the order now appealed from, requiring the defendant to pay P712.62 within 48 hours, or be placed under arrest. Motion to set aside this order was filed by defendant's counsel on April 26, 1951. It is stated in this motion that counsel did not believe that the motion was going to be heard as the clerk of court had informed him that, in all probability, the motion was not to be called for hearing because of the absence of the presiding judge, who was on vacation. The motion also claims that the judgment granting support had been

suspended temporarily by the court pending the amicable settlement, and that the defendant should have been afforded opportunity to be present, the notice to set the motion for hearing not being sufficient to give this opportunity, but that a court order setting the case for hearing should previously have been issued. This motion was heard, and on April 28, 1951 the court denied it. The defendant has appealed against the order of April 25, 1951 to raise only questions of law.

One contention of the appellant is that the order of the trial court of April 25, 1951 was issued without due process of law, for the reason that the respondent was not given an opportunity to be heard, and the order was issued without any lawful hearing. It is argued that the request of counsel for plaintiff that his motion be heard did not per se authorize the court to hear the case as prayed for. We find no merit in this argument. First, the appellant was given an opportunity to answer, and he did file one. Then the motion to declare him in contempt was set for hearing by the appellee, notice of the same being made in accordance with Sections 4, 5 and 6 of Rule 26 of the Rules of Court. It is not necessary that the court itself order the motion to be set for hearing, as a prerequisite therefor, because the notice given by the party was sufficient. As the motion was heard after this notice, and strictly in compliance with the above provisions of the Rules of Court, it can not be said that the hearing was held without due process of law. What the law prohibits is not the absence of previous notice, but the absolute absence thereof and lack of opportunity to be heard. Besides, the adverse party was heard on his motion for reconsideration; this constitutes sufficient opportunity to be heard (*Borja, et al. vs. Tan, etc. et al.*, G. R. No. L-6108, promulgated on May 25, 1953.)

It is also contended that, inasmuch as there were attempts to effect an amicable settlement, the judgment of the court awarding P712.62 to the plaintiff should be considered suspended until the court declares that such settlement can not be arrived at. In support of this contention, it is argued that a judgment for support may be modified any time and, therefore, may be reduced or increased, and that it becomes necessary for the court, before enforcing any judgment for support, to give the respondent full opportunity to be heard. It is true that a judgment awarding support may be modified. But any attempt at amicable settlement thereon, after a final judgment of support can not per se suspend said final judgment. It is superfluous for us to consider the objection as to lack of opportunity, because, as above shown, such opportunity was given in accordance with the rules.

As far as respondent is concerned, the purpose that he sought by the amicable settlement seems to be a reduction of the amount fixed as support for the minor, on the ground that his salary was insufficient. But the trial judge heard the respondent's employer and was not impressed by respondent's excuse, and found that the amicable settlement was part of delaying tactics employed by respondent. But whatever purpose any of the parties may have had the judgment, which had already become final and executory and was actually sought to be enforced, even if it was a support judgment, could not be considered suspended by the attempt at amicable settlement. The fact that it was suggested by the judge did not mean that the judgment should be modified. His evident intention in making the suggestion was to prevent friction between the parties and delay, and encourage expeditious payment of the support. Judgments are formal and solemn pronouncements made after trial and deliberation, and the rights and obligations fixed therein may not be modified except in the same form and manner in which they are arrived at; and while they stand unmodified they must be enforced and respected by the parties.

It should be noted that by the proceedings in this appeal, the respondent has secured what he had wanted, a delay in the enforcement of the order to grant immediate support. More than two years have now elapsed, since he was ordered to pay the support within forty-eight hours. Further delay would cause an injustice.

The appeal is hereby dismissed and the order affirmed, with costs against respondent. So ordered.

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

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