

**LUIS T. RAMOS, PETITIONER, VS. HONORABLE COURT OF APPEALS,
FELISA LAGOS, FOR HERSELF AND IN BEHALF OF MINORS
FERNANDO LAGOS AND LORRAINE LAGOS, RESPONDENTS.**

G.R. No. L-31897. June 30, 1972

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CONCEPCION, C.J.: &nb

This is an original action for certiorari to annul an order of the Court of Appeals.

It appears that, assisted by their mother, Felisa Lagos, the minors Fernando and Lorraine Lagos filed, with the Court of First Instance of Batangas, a complaint against Luis T. Ramos, the petitioner herein, for support and damages, alleging that she bore said children, born on August 27, 1963 and June 21, 1965, respectively, in consequence of illicit relations with said Ramos, who had failed and refused to support said minors, notwithstanding repeated demands, and despite the fact that he has, as a municipal mayor, the means therefor, which she does not have. Ramos having denied the main allegations of the complaint and set up a counterclaim for damages the case proceeded to trial, after which, on December 18, 1967, said court rendered judgment for the plaintiffs, sentencing Ramos to pay each of said minors the sum of P75.00 monthly, in addition to the aggregate sum of "P2,075.00 representing the support in arrears for the elder child, that is, from July 17, 1964, when defendant stopped giving him the support, up to the filing of the complaint on September 3, 1965." and "the support in arrears in the amount of P180.00 for the younger child, or from June 21, 1965, when she was born, up to September 3, 1965, when the complaint for support was filed," apart from "the sum of P500.00 representing attorney's fees and costs of suit suffered by the plaintiffs."

Ramos having appealed to the Court of Appeals, plaintiffs-appellees moved therein for support pendente lite. In a reasoned and signed resolution dated November 21, 1969, Ramos was ordered by the Court of Appeals to deposit with its Clerk the sum of P4,727.50 — representing one-half of the amount due under the appealed decision to the aforesaid plaintiffs — "within 15 days from notice, otherwise he will be cited for contempt. Once the amount is deposited, the Clerk of this Court is directed to deliver the same to plaintiff-appellee Felisa Lagos." A reconsideration having been denied, Ramos commenced the present action, alleging that the Court of Appeals had abused its discretion in issuing the aforementioned resolution: (a) "there having been neither a recognition of paternity by the petitioner nor its establishment by final judgment"; (b) his motion for reconsideration having been denied without an oral argument, requested by him; (c) the Court of Appeals having granted the minors the sum of P4,727.50, despite the fact that their mother had merely requested "a monthly support of P75.00 for each child"; (d) said Court having denied petitioner's request for "10-day abeyance in the implementation of the resolution" granting support pendente lite; (e) the trial court having denied the motion therein filed by the plaintiff-appellees for support pendente lite; and (f) the Court of Appeals not having required Felisa Lagos to file a bond, despite the fact that she had offered to put one.

Upon the filing of the petition herein and approval the requisite bond, We issued a writ of preliminary injunction restraining the enforcement of the contested resolution of the Court of Appeals.

The first ground invoked by the petitioner is predicated upon *Yangco vs. Rohde*[1] which is not in point, alimony pendente lite having been granted in that case without any evidence on the status of the plaintiff as alleged wife of the defendant, who had denied such allegation, unlike the case at bar in which said evidence was introduced and found to be sufficient, although the trial court's decision is still pending appeal. *Francisco vs. Zandueta*[2] - on which petitioner, likewise, relies -- merely reiterated the stand taken in the *Yangco* case, on the impropriety of granting alimony pendente lite on the basis of the bare allegations of the complaint, which are disputed by the defendant. It, however, pointed out the "substantial difference between the capacity of a person after the rendition of a final judgment in which that person is declared to be in possession of the status of a son and his capacity prior to such time when nothing exists other than his suit or claim to be declared in possession of such a status." In *Sanchez vs. Zulueta*[3] in which the defendant had been compelled to pay a monthly allowance pendente lite to his wife, the plaintiff, and her child, after denying him the opportunity, requested by him to introduce evidence in support of his defense to the effect that the child had been the product of her adulterous relations with another man, after she had abandoned the conjugal dwelling this Court went farther and said:

"We are of the opinion that the Court of Appeals erred in not allowing the defendant to present his evidence for the purpose of determining whether it is sufficient prima facie to overcome the application. Adultery on the part of the wife is a valid defense against an action for support (*Quintana vs. Lerma*, 24 Phil., 285). Consequently, as to the child, it is also a defense that it is the fruit of such adulterous relations, for in that case, it would not be the child of the defendant and, hence, would not be entitled to support as such. But as this defense should be established, and not merely alleged, it would be unavailing if proof thereof is not permitted. It is not of course necessary to go fully into the merits of the case, it being sufficient that the court ascertain the kind and amount of evidence which, it may deem sufficient to enable it to justly resolve the application, one way or the other, in view of the merely provisional character of the resolution to be entered."[4]

In the subsequent case of *Garcia vs. Court of Appeals*,[5] this Court reversed an order of the Court of Appeals annulling an order of the trial court granting alimony during the pendency of an appeal from the latter's decision sentencing the defendant therein and petitioner in the Court of Appeals to acknowledge a natural child. Speaking through then Chief Justice Bengzon, the Court used the following language:

"The appellate tribunal held that the Cavite court had no jurisdiction to issue the questioned order because the relationship of paternity between the petitioner and his alleged natural father had not yet been established by final judgment. Petitioner, on the other hand, claims that support pendente lite being in the nature of a temporary relief, final judgment as to the relationship of natural father and child is not essential. Arguing his point, he cites propositions from some decisions of this Court; that only prima facie evidence indicative of such family relation is necessary; that even an authoritative declaration would be sufficient and that the obligation to support begins after one is compelled to acknowledge by decree of the Court.

"We think the petitioner's contention accords with reason and authority.

"Although the law gives the right of support to acknowledged natural children, and although Laureano Garcia has not yet been actually acknowledged because the decision has not yet become executory, still as the confirmation of the order of recognition may be said to relate back to the date of the original decision, it lies within the discretion of the trial court to direct the father to give support pending the appeal. Indeed, there may be instances where, in view of the poverty of the child, it would be a travesty of justice to refuse him support until the decision of the judge is sustained on appeal. There being at least prima facie evidence of the child right to support, the Cavite court acted within its power and discretion."[6]

As above indicated, not only had evidence on the alleged relation between the minors and Ramos been introduced in the case at bar. Judgment had, moreover, been rendered finding that said relation had been duly established, although an appeal from said judgment was and is still pending in the Court of Appeals. Indeed, the Rules of

Court clearly authorizes the granting of support pendente lite, even prior to the rendition of judgment by the trial court. Sections 1 and 5 of Rule 61 provide:

"SECTION 1. Application. — The plaintiff, at the commencement of the proper action, or at any time afterwards but prior to final judgment, may file an application for support pendente lite, stating the grounds for the claim and the financial conditions of both parties, and shall be accompanied by affidavits, depositions or other authentic documents in support thereof.

"* * * * *

"SEC. 5. Order. — The court shall determine provisionally the pertinent facts, and shall render such order as equity and justice may require, having due regard to the necessities of the applicant, the means of the adverse party, the probable outcome of the case, and such other circumstances as may aid in the proper elucidation of the question involved. If the application is granted, the court shall fix the amount of money to be provisionally paid, and the terms of payment. * * *."[7]

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 exercise a similar authority, after a full dress trial and a decision of the trial court on the merits finding that the claim of filiation and support has been adequately proven — in the case at bar, beyond doubt — even if such decision were still pending appeal taken by the party adjudged to be bound to give such support.

Needless to say, the refusal of the trial court to grant said alimony pendente lite did not and cannot deprive the appellate court of said authority, or even dent the wisdom of the action taken by the latter, considering that the former did not give any plausible reason for its aforementioned refusal and that the same may have, in fact, been due to the appeal taken by the defendant, whose record on appeal had already been approved.

Neither did the failure of the Court of Appeals to hear petitioner herein on oral argument before denying his motion for reconsideration or to grant him "a 10-day abeyance in the implementation" of said resolution constitute a grave abuse of discretion, for petitioner is not entitled as a matter of right to said oral argument, which was discretionary for said appellate court, as was its authority to grant or deny the aforementioned period of ten (10) days. Furthermore, petitioner has not shown that he could have adduced substantial reasons to warrant a reversal of the contested resolution had this period been granted or said oral argument taken place.

Again, the grant to the minors — who had merely asked "a monthly support of P75.00 for each child," or P150.00 a month for both, and, through their mother, had offered to file a bond -- of the aggregate sum of P4,727.50, without requiring a bond therefor, did not constitute a grave abuse of discretion amounting to excess of jurisdiction, in the light of the circumstances surrounding the case. Indeed, as stated in the appealed decision of the trial court:

"From the evidence presented in this case, the Court does not entertain a doubt that plaintiff and defendant had illicit relationship and that the two children, namely Fernando and Lorraine, both surnamed Lagos, are the result of this illicit relationship. It will be remembered that although defendant denied having written any letter to plaintiff, yet when the letters Exhibits 'C' to 'L', were shown to him, the defendant admitted that the writings in said letters are similar to his. Moreover, if the defendant's allegation that Exhibits 'C' to 'L' were not written by him, he could easily hire a handwriting expert to prove that those letters are not his handwriting. The fact that he did not present a handwriting expert, to prove his contention that the letters exhibited are not his, only goes to show that he is not really serious in disproving plaintiff's claims. In fact, it is not improbable that he did not take the trouble of presenting a handwriting expert because he is afraid that the handwriting expert if presented would only tell the truth, that is, that those letters are really defendant's own handwriting. Secondly, the Court cannot believe the evidence presented by the defendant to the effect that it was defendant's legal wife who recommended the employment of the plaintiff in Manila sometime in 1962 or 1963, because according to

the evidence of the plaintiff, which has not been rebutted by defendant, the latter and his legal wife were then separated. In fact, from the letters Exhibits 'F', 'H' and 'J' it appears that it was the defendant who had been promising the plaintiff a job and he visits her in Dakota (Exhibit 'L'). Thirdly, the defendant has not adduced an iota of evidence to explain why plaintiff would demand from him the support of her children. Neither has defendant presented evidence to explain why the father of the plaintiff had testified against him when according to the defendant he and the father of the plaintiff were good friends. Finally, there seems to be no valid reason why the plaintiff would choose a Mayor, who under ordinary circumstances is difficult to fight with, in his own municipality. The fact, therefore, that the defendant is named in the instant complaint as the father of plaintiff's two children only indicates that plaintiff is merely stating the truth.

"The evidence adduced by plaintiff, more particularly the letters Exhibits 'C' to 'L', corroborate the testimony of plaintiff that she was constrained to have amorous relationship with defendant after she lost herself to him. Specifically, in defendant's letter Exhibit 'F', he fixed the hour and place of their rendezvous for Manila, when said letter states 'Darling, mahal na mahal kita kaya pag ako ay iyong kalilimutan ay hindi ko malalaman ang aking gagawin.' Defendant's letter of July 30, 1962 Exhibit 'L' clearly reveals that he often saw Felisa at Dakota St., Manila, when he asked in said letter for understanding in not seeing her every day. In short, the evidence presented clearly shows that there was an amorous relationship between plaintiff and defendant, the latter being a married man, and that the two children were conceived and born at the time of this relationship. These two children possess the status of illegitimate children other than natural, who are entitled to support and other successional rights as granted in the Civil Code (Article 287, New Civil Code). As such illegitimate children, defendant has the obligation to support them." [8]

Then, too, the sum of P4,727.50, stated in the resolution complained of, represented merely one-half (1/2) of the aggregate amount due under the decision of the trial court, as of the date of the contested resolution of the Court of Appeals, and the reasons therein adduced by petitioner herein, as well as those given by him in his petition and memorandum herein are basically weak, feeble and insubstantial.

Besides, the relief which may be given to a party depends, not so much upon the prayer in his motion, as upon the allegations thereof and the pertinent facts.[9] In the present case, it is not disputed that one of the plaintiffs was born on August 27, 1963 and the other on June 21, 1965. On the date of the contested resolution,[10] they were, therefore, 6 and 4 years of age, respectively. The minors are now therefore, around 9 and 7 years old, respectively, or of school age. In addition thereto, they have been litigating since September 5, 1965, or almost seven (7) years, and the decision in their favor is still pending appeal. Paraphrasing *Garcia vs. Court of Appeals*, [11] the circumstances obtaining in the present case suggest that this is an instance where, in view of the poverty of herein private respondents, "it would be a travesty of justice" to refuse them support until the decision of the trial judge "is sustained on appeal."

All these factors considered, We do not feel that the Court of Appeals has gravely abused its discretion or exceeded its jurisdiction in acting as it did.

WHEREFORE, the petition herein should be, as it is hereby, dismissed, and the writ prayed for denied, with costs against herein petitioner, Luis T. Ramos. The writ of preliminary injunction issued on May 20, 1970 is hereby set aside.

IT IS SO ORDERED.

Reyes, J.B.L., Makalintal, Zaldivar, Ruiz Castro, Fernando, Teehankee, Barredo, Makasiar, Antonio, and Esguerra, JJ., concur.

[1] 1 Phil. 404.

[2] 62 Phil. 752, 756-757.

[3] 68 Phil. 110

[4] Italics ours.

[5] L-14758, March 30, 1962.

[6] Italic ours.

[7] Italics ours.

[8] Italics ours.

[9] Rosales vs. Reyes, 25 Phil. 495; Baguioro vs. Barrios, 77 Phil. 120; Cajefe vs. Fernandez, L-15709, Oct. 19, 1960; People vs. Matondo, L-12873, Feb. 24, 1961; Schenker vs. Gemperle, L-16449, Aug. 31, 1962; Go Lea Chu vs. Gonzales, L-23687, Feb. 26, 1968; Alejandro Ras vs. Estela Sua L-23302. Sept. 25, 1968.

[10] November 21, 1969

[11] Supra.

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