

AUGUSTUS CAEZAR R. GAN, PETITIONER, VS. HON. ANTONIO C. REYES, IN HIS CAPACITY AS PRESIDING JUDGE OF RTC-BR. 61, BAGUIO CITY, ALBERT G. TOLENTINO, IN HIS CAPACITY AS RTC SHERIFF...

G.R. No. 145527. May 28, 2002

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

Quite apprehensive that she would not be able to send to school her three (3)-year old daughter Francheska Joy S. Pondevida, Bernadette S. Pondevida wrote petitioner Augustus Caezar R. Gan[1] demanding support for their "love child." Petitioner, in his reply, denied paternity of the child. An exasperated Bernadette thereafter instituted in behalf of her daughter a complaint against petitioner for support with prayer for support pendente lite.[2]

Petitioner moved to dismiss on the ground that the complaint failed to state a cause of action. He argued that since Francheska's certificate of birth indicated her father as "UNKNOWN," there was no legal or factual basis for the claim of support.[3] His motion, however, was denied by the trial court.[4]

Despite denial of his motion, petitioner failed to file his answer within the reglementary period. Thus, on 19 January 2000 private respondent moved that petitioner be declared in default, which motion was granted. In its Order declaring petitioner in default the trial court noted that petitioner's Motion to Admit Answer was filed more than ninety (90) days after the expiration of the reglementary period, and only after private respondent moved that petitioner be declared in default. Petitioner's motion for reconsideration was also denied. Hence, the court received the evidence of private respondent ex parte.

After finding that the claim of filiation and support was adequately proved, the trial court rendered its Decision on 12 May 2000 ordering petitioner to recognize private respondent Francheska Joy S. Pondevida as his illegitimate child and support her with P20,000.00 every month to be paid on or before the 15th of each month starting 15 April 2000. Likewise petitioner was ordered to pay Francheska Joy S. Pondevida the accumulated arrears of P20,000.00 per month from the day she was born, P50,000.00 as attorney's fees and P25,000.00 for expenses of litigation, plus P20,000.00 on or before the 15th of every month from 15 May 2000 as alimony pendente lite should he desire to pursue further remedies against private respondent.[5]

Forthwith, private respondent moved for execution of the judgment of support, which the trial court granted by issuing a writ of execution, citing as reason therefor private respondent's immediate need for schooling.[6] Pursuant to the writ, the sheriff levied upon a motor vehicle, a Honda City, with Plate No. UMT 884, registered in the name of "A.B. Leasing & Fin. Corp., Leased to: G & G Trading," and found within the premises of petitioner's warehouse in Caloocan City.[7]

Meanwhile, petitioner appealed the Judgment to the Court of Appeals.[8]

On 9 June 2000 petitioner filed a petition for certiorari and prohibition with the Court of Appeals imputing grave

abuse of discretion to the trial court for ordering the immediate execution of the judgment. Petitioner averred that the writ of execution was issued despite the absence of a good reason for immediate enforcement. Petitioner insisted that as the judgment sought to be executed did not yet attain finality there should be an exceptional reason to warrant its execution. He further alleged that the writ proceeded from an order of default and a judgment rendered by the trial court in complete disregard of his "highly meritorious defense." Finally, petitioner impugned the validity of the writ as he argued that it was issued without notice to him. Petitioner stressed the fact that he received copy of the motion for immediate execution two (2) weeks after its scheduled hearing.[9]

On 31 August 2000 the Court of Appeals dismissed the petition on the ratio cination that under Sec. 4, Rule 39 of the 1997 Rules of Civil Procedure judgments for support are immediately executory and cannot be stayed by an appeal. Thus, it did not help petitioner any to argue that there were no good reasons to support its immediate execution. The second challenge hurled against the validity of the writ concerning the lack of notice and hearing was likewise dismissed with the appeals court favoring substantial justice over technicalities. Lastly, petitioner's justification for belatedly filing his answer, i.e., miscommunication with his lawyer, was disregarded since it fell short of the statutory requirements of "fraud, accident, mistake or excusable negligence." [10]

His motion for reconsideration having been denied, petitioner came to us impugning the dismissal of his petition for certiorari. Petitioner argues that under the rules a judgment for support which is subject of an appeal cannot be executed absent any good reason for its immediate execution. Petitioner likewise attacks the validity of the writ asserting that it was issued in violation of his right to notice and hearing. Petitioner also seeks the setting aside of the default order and the judgment rendered thereafter for the reason that should he be allowed to prove his defense of adultery, the claim of support would be most likely denied.[11] Petitioner claims that in an action by a child against his putative father, adultery of the child's mother would be a valid defense to show that the child is a fruit of adulterous relations for, in such case, it would not be the child of the defendant and therefore not entitled to support. Parenthetically, how could he be allowed to prove the defense of adultery when it was not even hinted that he was married to the mother of Francheska Joy. Petitioner consents to submit to Dioxiribonucleic Acid (DNA) Testing to resolve the issue of paternity, which test he claims has a reputation for accuracy.[12]

A careful review of the facts and circumstances of this case fails to persuade this Court to brand the issuance of the writ of execution by the trial court and affirmed by the Court of Appeals with the vice of grave abuse of discretion. There is no evidence indeed to justify the setting aside of the writ on the ground that it was issued beyond the legitimate bounds of judicial discretion.

Section 4, Rule 39, of the Rules of Court clearly states that, unless ordered by the trial court, judgments in actions for support are immediately executory and cannot be stayed by an appeal. This is an exception to the general rule which provides that the taking of an appeal stays the execution of the judgment and that advance executions will only be allowed if there are urgent reasons therefor. The aforesaid provision peremptorily calls for immediate execution of all judgments for support and makes no distinction between those which are the subject of an appeal and those which are not. To consider then petitioner's argument that there should be good reasons for the advance execution of a judgment would violate the clear and explicit language of the rule mandating immediate execution.

Petitioner is reminded that to the plain words of a legal provision we should make no further explanation. *Absoluta sententia expositore non indiget*. Indeed, the interpretation which petitioner attempts to foist upon us would only lead to absurdity, its acceptance negating the plain meaning of the provision subject of the petition.

Petitioner would also have us annul the writ of execution on the ground that he was not notified of its issuance. We are unable to accept such a plea for enough has been done by petitioner to delay the execution of the writ. As the records show, in partial fulfillment of the writ of execution petitioner surrendered a sedan which apparently

was not his as it was later ordered released to a third party who laid claim over the levied vehicle.[13] Also, petitioner filed before the Court of Appeals a Motion for Leave to Deposit in Court Support Pendente Lite promising to deposit the amount due as support every 15th of the month, but to date has not deposited any amount in complete disavowal of his undertaking.[14] He was not even deterred from appealing before us and needlessly taking up our time and energy by posing legal questions that can be characterized, at best, as flimsy and trivial. We are thus not prepared to abrogate the writ of execution issued in favor of private respondent for substantial justice would be better served if petitioner be precluded from interposing another barrier to the immediate execution of the support judgment.

We are not intimating that in every case the right to notice of hearing can be disregarded. That is not so. It appears in this case that there has been too much temporizing in the execution of the writ which must not be allowed to thwart the constitutional mandate for speedy disposition of cases. As has been said, a technicality should be an aid to justice and not its great hindrance and chief enemy.[15] Truly, if the writ of execution would be voided on this ground alone, then procedural rules which were primarily drafted to protect parties in the realm of constitutional guarantees would acquire a new sanctity at the expense of equity and justice.

Lastly, we note that no useful purpose would be served if we dwell on petitioner's arguments concerning the validity of the judgment by default and his insistence that he be subjected, together with private respondent Bernadette C. Pondevida to DNA testing to settle the issue of paternity. The futility of his arguments is very apparent. It is not for us at this instance to review or revise the Decision rendered by the trial court for to do so would pre-empt the decision which may be rendered by the Court of Appeals in the main case for support.

In all cases involving a child, his interest and welfare are always the paramount concerns. 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 trial court attains finality while time continues to slip away. An excerpt from the early case of *De Leon v. Soriano*[16] is relevant, thus:

The money and property adjudged for support and education should and must be given presently and without delay because if it had to wait the final judgment, the children may in the meantime have suffered because of lack of food or have missed and lost years in school because of lack of funds. One cannot delay the payment of such funds for support and education for the reason that if paid long afterwards, however much the accumulated amount, its payment cannot cure the evil and repair the damage caused. The children with such belated payment for support and education cannot act as gluttons and eat voraciously and unwisely, afterwards, to make up for the years of hunger and starvation. Neither may they enrol in several classes and schools and take up numerous subjects all at once to make up for the years they missed in school, due to non-payment of the funds when needed.

WHEREFORE, finding no reversible error in the Decision sought to be reviewed, the instant petition is DENIED. The 31 August 2000 Decision of the Court of Appeals dismissing the Petition for Certiorari instituted by petitioner Augustus Caesar C. Gan and upholding the validity of the 2 June 2000 Writ of Execution issued by the Regional Trial Court – Br. 61, Baguio City, in Civil Case No. 4234-R, is AFFIRMED. Costs against petitioner.

SO ORDERED.

Mendoza, Quisumbing, De Leon, Jr., and Corona, JJ., concur.

[1] Also spelled "Augustus Caesar R. Gan;" Rollo, p. 39.

[2] *Id.*, pp. 58-67.

[3] Id., pp. 70-77.

[4] Id., p. 80.

[5] Decision penned by Executive Judge Antonio C. Reyes, RTC-Br. 61, Baguio City; Id., pp. 108-116.

[6] CA Rollo, p. 99.

[7] Id., pp. 96-98.

[8] Id., pp. 90-91.

[9] Id., pp. 1-27.

[10] Decision penned by Associate Justice Romeo A. Brawner and concurred in by Associate Justices Quirino D. Abad Santos, Jr. and Andres B. Reyes, Jr.

[11] Id., pp. 13-36.

[12] Id., pp. 600-608.

[13] Sheriff's Report dated 31 October 2000 reveals that the levied property was released in favor of A & B Leasing and Finance Corp.; id., p. 201.

[14] Id., pp. 182-189.

[15] *Pallada v. RTC of Kalibo, Aklan*, Br.1, 364 Phil. 81 (1999).

[16] 95 Phil. 806 (1954).

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