

LAUREANO GARCIA, PETITIONER, VS. THE COURT OF APPEALS AND SIMEON GARCIA, RESPONDENTS.

G.R. No. 14758. March 30, 1962

Ponente: BENGZON, C.J.

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BENGZON, C.J.:

The instant petition for certiorari seeks a reversal of respondent court's order denying support pendente lite to petitioner.

Petitioner, a minor, assisted by his mother, filed on February 4, 1953, in the Court of First Instance of Cavite, (Civil Case No. 5309), a complaint for acknowledgment as a natural child of above respondent Simeon Garcia. On December 15, 1956, judgment was rendered in his favor; but Simeon appealed to the Court of Appeals, where the case was docketed as CA-G. R. No. 20513.

On September 4, 1957, in the same Court of First Instance of Cavite, petitioner, through his guardian, and on the basis of the decision of the said Cavite court of December 15, 1956, instituted Civil Case No. 6166 praying for support, and for support pendente lite from respondent Simeon Garcia. The said lower court, on December 10, 1957, issued an order granting petitioner's prayer of support pendente lite in the amount of P100.08 monthly from September 1957. Simeon Garcia sought to prevent the enforcement of said order with a petition for certiorari with injunction filed before the Court of Appeals, CA-G. R. No. 22428. The latter court granted Simeon Garcia's petition holding the lower court's order of December 10, 1957, to be null and void for the reason that the decision requiring acknowledgment of the minor had not yet been affirmed on appeal. A motion for reconsideration having been denied, petitioner filed before this Court, the present petition for certiorari by way of appeal.

The issue is whether or not petitioner may be given support pendente lite, i. e. while the decision of the Court of First Instance of Cavite requiring his acknowledgment as the natural child of respondent Simeon Garcia, is pending appeal before the Court of Appeals.

The appellate tribunal held that the Cavite court had no jurisdiction to issue the questioned order because the relationship of paternity between 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[1]; that even an authoritative declaration would be sufficient[2]; and that the obligation to support begins after one is compelled to acknowledge by decree of the Court.[3]

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's right to support, the Cavite. court acted within its power and discretion.

WHEREFORE, the appellate court's order is reversed, and the order granting support pendente lite is upheld. Costs against respondent Simeon Garcia.

Padilla, Bautista Angelo, Labrador, Concepcion, Barrera, Paredes, Dizon, and De Leon, JJ., concur.
Reyes, J.B.L., J., took no part.

[1] Sanchez vs. Zulueta, 68 Phil., 112.

[2] Francisco vs. Zandueta, 61 Phil., 757.

[3] Crisolo vs. Hon. Macadaeg 94 Phil., 862.

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