

JACINTO SAGUID, PETITIONER, VS. HON. COURT OF APPEALS, THE REGIONAL TRIAL COURT, BRANCH 94, BOAC, MARINDUQUE AND GINA S. REY, RESPONDENTS.*G.R. No. 150611. June 10, 2003*

Ponente: YNARES-SANTIAGO, J.

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The regime of limited co-ownership of property governing the union of parties who are not legally capacitated to marry each other, but who nonetheless live together as husband and wife, applies to properties acquired during said cohabitation in proportion to their respective contributions. Co-ownership will only be up to the extent of the proven actual contribution of money, property or industry. Absent proof of the extent thereof, their contributions and corresponding shares shall be presumed to be equal.[1]

Seventeen-year old Gina S. Rey was married,[2] but separated de facto from her husband, when she met petitioner Jacinto Saguid in Marinduque, sometime in July 1987.[3] After a brief courtship, the two decided to cohabit as husband and wife in a house built on a lot owned by Jacinto's father.[4] Their cohabitation was not blessed with any children. Jacinto made a living as the patron of their fishing vessel "Saguid Brothers." [5] Gina, on the other hand, worked as a fish dealer, but decided to work as an entertainer in Japan from 1992 to 1994 when her relationship with Jacinto's relatives turned sour. Her periodic absence, however, did not ebb away the conflict with petitioner's relatives. In 1996, the couple decided to separate and end up their 9-year cohabitation.[6]

On January 9, 1997, private respondent filed a complaint for Partition and Recovery of Personal Property with Receivership against the petitioner with the Regional Trial Court of Boac, Marinduque. She alleged that from her salary of \$1,500.00 a month as entertainer in Japan, she was able to contribute P70,000.00 in the completion of their unfinished house. Also, from her own earnings as an entertainer and fish dealer, she was able to acquire and accumulate appliances, pieces of furniture and household effects, with a total value of P111,375.00. She prayed that she be declared the sole owner of these personal properties and that the amount of P70,000.00, representing her contribution to the construction of their house, be reimbursed to her.

Private respondent testified that she deposited part of her earnings in her savings account with First Allied Development Bank.[7] Her Pass Book shows that as of May 23, 1995, she had a balance of P21,046.08.[8] She further stated that she had a total of P35,465.00[9] share in the joint account deposit which she and the petitioner maintained with the same bank.[10] Gina declared that said deposits were spent for the purchase of construction materials, appliances and other personal properties.[11]

In his answer[12] to the complaint, petitioner claimed that the expenses for the construction of their house were defrayed solely from his income as a captain of their fishing vessel. He averred that private respondent's meager income as fish dealer rendered her unable to contribute in the construction of said house. Besides, selling fish was a mere pastime to her; as such, she was contented with the small quantity of fish allotted to her from his fishing trips. Petitioner further contended that Gina did not work continuously in Japan from 1992 to 1994, but only for a

6-month duration each year. When their house was repaired and improved sometime in 1995-1996, private respondent did not share in the expenses because her earnings as entertainer were spent on the daily needs and business of her parents. From his income in the fishing business, he claimed to have saved a total of P130,000.00, P75,000.00 of which was placed in a joint account deposit with private respondent. This savings, according to petitioner was spent in purchasing the disputed personal properties.

On May 21, 1997, the trial court declared the petitioner as in default for failure to file a pre-trial brief as required by Supreme Court Circular No. 1-89.[13]

On May 26, 1997, petitioner filed a motion for reconsideration[14] of the May 21, 1997 order, which was denied on June 2, 1997, and private respondent was allowed to present evidence ex parte.[15] Petitioner filed another motion for reconsideration but the same was also denied on October 8, 1997.

On July 15, 1998, a decision[16] was rendered in favor of private respondent, the dispositive portion of which reads:

WHEREFORE, in view of all the foregoing, judgment is hereby rendered in favor of the plaintiff Gina S. Rey against defendant Jacinto Saguid:

- a) Ordering the partition of the house identified as plaintiff's Exhibit C and D and directing the defendant to return and/or reimburse to the plaintiff the amount of seventy thousand pesos (P70,000.00) which the latter actually contributed to its construction and completion;
- b) Declaring the plaintiff as the exclusive owner of the personal properties listed on Exhibit M;
- c) Ordering the defendant, and/or anyone in possession of the aforesaid personal properties, to return and/or deliver the same to the plaintiff; and
- d) Ordering the defendant to pay the plaintiff moral damages in the sum of fifty thousand pesos (P50,000.00) plus the costs of suit.

SO ORDERED.[17]

On appeal, said decision was affirmed by the Court of Appeals; however, the award of P50,000.00 as moral damages was deleted for lack of basis.[18] The appellate court ruled that the propriety of the order which declared the petitioner as in default became moot and academic in view of the effectivity of the 1997 Rules of Civil Procedure. It explained that the new rules now require the filing of a pre-trial brief and the defendant's non-compliance therewith entitles the plaintiff to present evidence ex parte.

Both parties filed motions for reconsideration which were denied; hence, petitioner filed the instant petition based on the following assigned errors:

A.

THE HONORABLE COURT OF APPEALS COMMIT[TED] A REVERSIBLE ERROR IN APPLYING RETROACTIVELY THE 1997 RULES OF CIVIL PROCEDURE IN THE PRESENT CASE AND HOLDING THE FIRST ASSIGNED ERROR THEREIN MOOT AND ACADEMIC THUS, FAILED TO RULE ON THE PROPRIETY OF THE TRIAL COURT'S REFUSAL TO SET ASIDE THE ORDER OF DEFAULT DUE TO MISTAKE AND/OR EXCUSABLE NEGLIGENCE COMMITTED BY PETITIONER.

B.

THE HONORABLE COURT OF APPEALS COMMIT[TED] A REVERSIBLE ERROR IN RELYING ON THE FACTUAL FINDINGS OF THE TRIAL COURT WHICH RECEIVED THE EVIDENCE OF HEREIN

RESPONDENT ONLY EX PARTE.[19]

The issues for resolution are: (1) whether or not the trial court erred in allowing private respondent to present evidence ex parte; and (2) whether or not the trial court's decision is supported by evidence.

Under Section 6, Rule 18 of the 1997 Rules of Civil Procedure, the failure of the defendant to file a pre-trial brief shall have the same effect as failure to appear at the pre-trial, i.e., the plaintiff may present his evidence ex parte and the court shall render judgment on the basis thereof.[20] The remedy of the defendant is to file a motion for reconsideration[21] showing that his failure to file a pre-trial brief was due to fraud, accident, mistake or excusable neglect.[22] The motion need not really stress the fact that the defendant has a valid and meritorious defense because his answer which contains his defenses is already on record.[23]

In the case at bar, petitioner insists that his failure to file a pre-trial brief is justified because he was not represented by counsel. This justification is not, however, sufficient to set aside the order directing private respondent to present evidence ex parte, inasmuch as the petitioner chose at his own risk not to be represented by counsel. Even without the assistance of a lawyer, petitioner was able to file a motion for extension to file answer,[24] the required answer stating therein the special and affirmative defenses,[25] and several other motions.[26] If it were true that petitioner did not understand the import of the April 23, 1997 order directing him to file a pre-trial brief, he could have inquired from the court or filed a motion for extension of time to file the brief. Instead, he waited until May 26, 1997, or 14 days from his alleged receipt of the April 23, 1997 order before he filed a motion asking the court to excuse his failure to file a brief. Pre-trial rules are not to be belittled or dismissed because their non-observance may result in prejudice to a party's substantive rights. Like all rules, they should be followed except only for the most persuasive of reasons when they may be relaxed to relieve a litigant of an injustice not commensurate with the degree of his thoughtlessness in not complying with the procedure prescribed.[27]

In the instant case, the fact that petitioner was not assisted by a lawyer is not a persuasive reason to relax the application of the rules. There is nothing in the Constitution which mandates that a party in a non-criminal proceeding be represented by counsel and that the absence of such representation amounts to a denial of due process. The assistance of lawyers, while desirable, is not indispensable. The legal profession is not engrafted in the due process clause such that without the participation of its members the safeguard is deemed ignored or violated.[28]

However, the Court of Appeals erred in ruling that the effectivity of the 1997 Rules of Civil Procedure, specifically, Section 6, Rule 18 thereof, rendered moot and academic the issue of whether or not the plaintiff may be allowed to present evidence ex parte for failure of the defendant to file a pre-trial brief. While the rules may indeed be applied retroactively, the same is not called for in the case at bar. Even before the 1997 Rules of Civil Procedure took effect on July 1, 1997, the filing of a pre-trial brief was required under Circular No. 1-89 which became effective on February 1, 1989. Pursuant to the said circular, "[f]ailure to file pre-trial briefs may be given the same effect as the failure to appear at the pre-trial," that is, the party may be declared non-suited or considered as in default.[29]

Coming now to the substantive issue, it is not disputed that Gina and Jacinto were not capacitated to marry each other because the former was validly married to another man at the time of her cohabitation with the latter. Their property regime therefore is governed by Article 148[30] of the Family Code, which applies to bigamous marriages, adulterous relationships, relationships in a state of concubinage, relationships where both man and woman are married to other persons, and multiple alliances of the same married man. Under this regime, "...only the properties acquired by both of the parties through their actual joint contribution of money, property, or

industry shall be owned by them in common in proportion to their respective contributions ..."[31] Proof of actual contribution is required.[32]

In the case at bar, although the adulterous cohabitation of the parties commenced in 1987, which is before the date of the effectivity of the Family Code on August 3, 1998, Article 148 thereof applies because this provision was intended precisely to fill up the hiatus in Article 144 of the Civil Code.[33] Before Article 148 of the Family Code was enacted, there was no provision governing property relations of couples living in a state of adultery or concubinage. Hence, even if the cohabitation or the acquisition of the property occurred before the Family Code took effect, Article 148 governs.[34]

In the cases of *Agapay v. Palang*,[35] and *Tumlos v. Fernandez*,[36] which involved the issue of co-ownership of properties acquired by the parties to a bigamous marriage and an adulterous relationship, respectively, we ruled that proof of actual contribution in the acquisition of the property is essential. The claim of co-ownership of the petitioners therein who were parties to the bigamous and adulterous union is without basis because they failed to substantiate their allegation that they contributed money in the purchase of the disputed properties. Also in *Adriano v. Court of Appeals*,[37] we ruled that the fact that the controverted property was titled in the name of the parties to an adulterous relationship is not sufficient proof of co-ownership absent evidence of actual contribution in the acquisition of the property.

As in other civil cases, the burden of proof rests upon the party who, as determined by the pleadings or the nature of the case, asserts an affirmative issue. Contentions must be proved by competent evidence and reliance must be had on the strength of the party's own evidence and not upon the weakness of the opponent's defense.[38] This applies with more vigor where, as in the instant case, the plaintiff was allowed to present evidence *ex parte*. The plaintiff is not automatically entitled to the relief prayed for. The law gives the defendant some measure of protection as the plaintiff must still prove the allegations in the complaint. Favorable relief can be granted only after the court is convinced that the facts proven by the plaintiff warrant such relief.[39] Indeed, the party alleging a fact has the burden of proving it and a mere allegation is not evidence.[40]

In the case at bar, the controversy centers on the house and personal properties of the parties. Private respondent alleged in her complaint that she contributed P70,000.00 for the completion of their house. However, nowhere in her testimony did she specify the extent of her contribution. What appears in the record are receipts[41] in her name for the purchase of construction materials on November 17, 1995 and December 23, 1995, in the total amount of P11,413.00.

On the other hand, both parties claim that the money used to purchase the disputed personal properties came partly from their joint account with First Allied Development Bank. While there is no question that both parties contributed in their joint account deposit, there is, however, no sufficient proof of the exact amount of their respective shares therein. Pursuant to Article 148 of the Family Code, in the absence of proof of extent of the parties' respective contribution, their share shall be presumed to be equal. Here, the disputed personal properties were valued at P111,375.00, the existence and value of which were not questioned by the petitioner. Hence, their share therein is equivalent to one-half, i.e., P55,687.50 each.

The Court of Appeals thus erred in affirming the decision of the trial court which granted the reliefs prayed for by private respondent. On the basis of the evidence established, the extent of private respondent's co-ownership over the disputed house is only up to the amount of P11,413.00, her proven contribution in the construction thereof. Anent the personal properties, her participation therein should be limited only to the amount of P55,687.50.

As regards the trial court's award of P50,000.00 as moral damages, the Court of Appeals correctly deleted the same for lack of basis.

WHEREFORE, in view of all the foregoing, the Decision of the Court of Appeals in CA-G.R. CV No. 64166 is AFFIRMED with MODIFICATION. Private respondent Gina S. Rey is declared co-owner of petitioner Jacinto Saguid in the controverted house to the extent of P11,413.00 and personal properties to the extent of P55,687.50. Petitioner is ordered to reimburse the amount of P67,100.50 to private respondent, failing which the house shall be sold at public auction to satisfy private respondent's claim.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Vitug, Carpio, and Azcuna, JJ., concur.

[1] Family Code, Article 148; Agapay v. Palang, 342 Phil. 302, 311-312 (1997), citing Tolentino, I Civil Code Of The Philippines Commentaries and Jurisprudence, 500 (1999 edition); Tumlos v. Fernandez, G.R. No. 137650, 12 April 2000, 330 SCRA 718, 733-734, citing Agapay v. Palang, supra; Adriano v. Court of Appeals, 385 Phil. 474, 484-485 (2000).

[2] Exhibit "A", Marriage Contract showing that Gina S. Rey was married at the age of 15 to Eduardo V. Salazar on June 19, 1985.

[3] Complaint, Records, p. 7.

[4] Id., p. 8.

[5] Answer, Records, p. 21.

[6] Complaint, p. 8.

[7] TSN, 20 January 1998, pp. 5-7.

[8] Exhibit "K".

[9] TSN, 20 January 1998, pp. 16-18.

[10] Exhibit "L", First Allied Development Bank Golden Account Pass Book.

[11] TSN, 20 January 1998, pp. 5-6 and 9-10.

[12] Records, p. 19.

[13] Records, p. 41.

[14] Records, p. 46.

[15] Records, p. 53.

[16] Penned by Judge Rodolfo B. Dimaano.

[17] Records, p. 92.

[18] CA-G.R. CV No. 64166, penned by Associate Justice Perlita J. Tria Tirona and concurred in by Associate Justices Eugenio S. Labitoria and Eloy R. Bello, Jr.

[19] Rollo, p. 20.

[20] Rule 18, SEC. 5. Effect of failure to appear.—The failure of the plaintiff to appear when so required pursuant to the next preceding section shall be cause for dismissal of the action. The dismissal shall be with prejudice,

unless otherwise ordered by the court. A similar failure on the part of the defendant shall be cause to allow the plaintiff to present his evidence ex parte and the court to render judgment on the basis thereof.

[21] *Jungco v. Court of Appeals*, G.R. No. 78051, 8 November 1989, 179 SCRA 213, 217-218, citing *Lucero v. Dacayo*, 131 Phil. 99 (1968).

[22] *Circle Financial Corporation v. Court of Appeals*, G.R. No. 77315, 22 April 1991, 196 SCRA 166, 170.

[23] *Junco v. Court of Appeals*, *supra*, note 24 at 218.

[24] *Records*, p. 16.

[25] *Id.*, p. 19.

[26] *Records*, pp. 44, 46 and 54.

[27] *Victory Liner, Inc. v. Court of Appeals*, G.R. No. 125034, 30 July 1998, 293 SCRA 378, 384, citing *Pedrosa v. Hill*, 327 Phil. 153 (1996).

[28] *Nera v. Auditor General*, G.R. No. L-24957, 3 August 1988, 164 SCRA 1, 6.

[29] Section 2, Rule 20 of the old rules.

[30] Art. 148. In cases of cohabitation not falling under [Article 147], only the properties acquired by both of the parties through their actual joint contribution of money, property, or industry shall be owned by them in common in proportion to their respective contributions. In the absence of proof to the contrary, their contributions and corresponding shares are presumed to be equal. The same rule and presumption shall apply to joint deposits of money and evidences of credit.

If one of the parties is validly married to another, his or her share in the co-ownership shall accrue to the absolute community or conjugal partnership existing in such valid marriage. If the party who acted in bad faith is not validly married to another, his or her share shall be forfeited in the manner provided in the last paragraph of the preceding Article.

Art. 147. When a man and a woman who are capacitated to marry each other live exclusively with each other as husband and wife without the benefit of marriage or under a void marriage, their wages and salaries shall be owned by them in equal shares and the property acquired by both of them through their work or industry shall be governed by the rules on co-ownership.

In the absence of proof to the contrary, properties acquired while they lived together shall be presumed to have been obtained by their joint efforts, work or industry, and shall be owned by them in equal shares. For purposes of this Article, a party who did not participate in the acquisition of the other party of any property shall be deemed to have contributed jointly in the acquisition thereof if the former's efforts consisted in the care and maintenance of the family and of the household.

Neither party can encumber or dispose by acts inter vivos of his or her share in the property acquired during cohabitation and owned in common, without the consent of the other, until after the termination of the cohabitation.

When only one of the parties to a void marriage is in good faith, the share of the party in bad faith in the co-ownership shall be forfeited in favor of their common children. In case of default or of waiver by any or all of the common children or their descendants, each vacant share shall belong to the respective surviving descendants. In the absence of descendants, such share shall belong to the innocent party. In all cases, the forfeiture shall take

place upon termination of the cohabitation.

The foregoing rules on forfeiture shall likewise apply even if both parties are in bad faith.

[31] Cariño v. Cariño, G.R. No. 132529, 2 February 2001, 351 SCRA 127, 135.

[32] Agapay v. Palang, *supra*, note 1.

[33] Tumlos v. Fernandez, *supra*, note 1, at 733, citing Sempio-Dy, Handbook on the Family Code of the Philippines, 1997 ed., p. 228; Vitug, Compendium on Civil Law and Jurisprudence, 1993 ed., pp. 210-211.

[34] Tumlos v. Fernandez, *supra*, citing the Family Code, Article 256.

[35] *Supra*, note 1.

[36] *Supra*, note 1.

[37] *Supra*, note 1.

[38] Heirs of Anastacio Fabela v. Court of Appeals, G.R. No.142546, 9 August 2001, 362 SCRA 531, citing Javier v. Court of Appeals, G.R. No. 101177, 28 March 1994, 231 SCRA 498; Pornellosa v. Land Tenure Administration, 110 Phil. 986 (1961).

[39] Luxuria Homes, Inc. v. Court of Appeals, 361 Phil. 989, 1001 (1999), citing Pascua v. Florendo, 220 Phil. 588 (1985); Lim Tanhu v. Ramolete, G.R. No. L-40098, 29 August 1975, 66 SCRA 425;

[40] *Id.*, citing P.T. Cerna Corporation v. Court of Appeals, G.R. No. 91622, 6 April 1993, 221 SCRA 19.

[41] Exhibits "O", "O-1" and "O-2".

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