

SYBIL SAMSON, REPRESENTED BY HIS MOTHER CONSUELO ENRIQUEZ-SAMSON AND CONSUELO ENRIQUEZ-SAMSON, PETITIONERS, VS. HON. NICASIO YATCO, JUDGE OF THE COURT OF FIRST INSTANCE OF RIZAL...

G.R. No. 15952. April 28, 1961

Ponente: PADILLA, J.

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PADILLA, J.:

This is a petition for a writ of certiorari under Rule 67 of the Rules of Court to set aside an order entered on 3 February 1958 by the Court of First Instance of Rizal, Quezon City Branch, that dismissed with prejudice a petition for support (civil case No. Q-2620). As prayed for, petitioner Consuelo Enriquez-Samson is appointed guardian ad litem of the other petitioner, her minor child.

The petition for support alleges that Sybil Samson, a minor, is a legitimate child of Consuelo Enriquez and Arsenio Samson who after being married on 18 April 1953 lived together in the house of the latter's mother Dorotea Angeles Vda. de Samson, at barrio Calumpang, Marikina, Rizal; that in February 1954 Consuelo and Sybil left the said house because her a mother-in-law used to maltreat them; that Arsenio Samson, a professor at the National Teachers College, refused or failed to heed her request to rent a separate dwelling where they could live together; that since February 1954 up to the filing of the petition Arsenio who already had taken a concubine had not given any support to her and their son Sybil; and that in answer to her extrajudicial demands for monthly support in the sum of P200 made on 21 June 1957, Arsenio had offered only P30 a month, which she refused. The petitioners pray that Consuelo Enriquez-Samson be appointed guardian ad litem of her minor child, the other petitioner; that Arsenio Samson be compelled to give a monthly support of P100 each for her as his spouse and for Sybil as his legitimate son; that should Arsenio be unable to pay in full the monthly sum of P100 corresponding to Sybil, the deficiency be paid by Dorotea Angeles Vda. de Samson, Sybil's grandmother, being next in the order of ascendants; that the respondents Arsenio Samson and Dorotea Angeles Vda. de Samson be ordered to pay petitioners' counsel P3,000 for attorney's fees; and that the petitioners be granted such other just and equitable relief (Annex A.) On 3 October 1957 the respondents Arsenio Samson and Dorotea Angeles Vda. de Samson filed their answer. On 11 January 1958 the petitioners filed a motion for support pendente lite, which was granted in an order entered on 28 January 1958 but in the sum of P120 only (Annex F). At the hearing set for 3 February 1958, Consuelo Enriquez and Sybil Samson failed to appear despite notice, whereupon the Court entered an order as follows:

When this case was called for hearing today, counsel for plaintiff moved for the postponement of the hearing of this case on the ground that his client Sybil Samson is pick and could not appear in court, as shown by the medical certificate of Dr. Celso de los Angeles. In view of the said certificate of Dr. de los Angeles, the court instructed the Municipal Health Officer of Marikina, Rizal, to proceed to the place of Sybil Samson and to examine his physical condition and to accordingly make the corresponding report to this court as to findings thereof. From the findings of the said Municipal Health Officer of Marikina, Rizal, however, the court finds

that said plaintiff, Sybil Samson, is only suffering from slight fever and is a walking patient, which is different from the findings of Dr. de los Angeles.

In view thereof, Dr. Celso de los Angeles is cited to appear before this court on February 14, 1958, to explain his reasons, if any, why he should not be dealt with accordingly for issuing such medical certificate in favor of the plaintiff herein.

When the party went to the place of the plaintiff, as instructed by this court, it was found that plaintiff Consuelo Enriquez-Samson, mother of the plaintiff Sybil Samson, was not in the house, notwithstanding the fact that in her letter to her lawyer, she stated that she was attending to her son who is sick. In effect, the court was misled into believing this fact which was found out later to be not true.

In view thereof, and upon failure to appear in court on the part of the plaintiff, let the above entitled case be, therefore, DISMISSED, with prejudice, and without special pronouncement as to costs. * * * (Annex B).

On 11 February 1958 the petitioners filed a motion for reconsideration of the order of dismissal entered on 3 February 1958 (Annex G). On 15 February 1958 Dr. Celso de los Angeles sent to the Court a written explanation which reads as follows:

The Honorable Judge
Court of First Instance
Quezon City

EXPLANATION

This is an explanation regarding the certificate I issued to Sybil Samson. I was called to attend to him on the night of January 30, 1958 at about 11:00 p.m. He had high fever, 40.5 C, and was delirious, with twitching of eye-balls and tendency to convulsion. Antipyretics and antibiotics were prescribed for the illness whose etiology was not yet determined. The following day, the mother consulted me and told me that he had still fever with vomiting at times, so I told her to continue with the medicines. The third day, that was February 1st, I again saw the patient still feverish, 39.5 C. So, I made another prescription in addition to the first one. It was at this instance that I made the certificate.

Later on I understand that on February 3rd, he was examined by the Marikina Health Officer on destruction of this Honorable Court, and the findings on that day was that his fever was only slight. This does not contradict my findings; it simply shows that the fever had gone probably as an effect of the treatment I had prescribed to the patient. It was also stated that the patient was walking which can be explained by the fact that children, once their fever has gone down, stay out of bed, and it is almost impossible to keep them in bed.

I hope this explanation is satisfactory to his Honorable Court, inasmuch as the examination of the Marikina Health Officer was not made at the date that I issued my medical certificate; hence the discrepancy in our findings.

Respectfully yours,

CELSO DE LOS ANGELES, M.D. (Annex E).

On 22 February 1958 counsel for the petitioners verbally withdrew the motion for reconsideration filed on 11 February 1958. On 25 February the same counsel withdrew his appearance as attorney for the petitioners and was substituted by a new attorney who, on the same date, filed an amended motion for reconsideration of the order of dismissal entered on 3 February 1958 substantially upon the same grounds of the first motion for reconsideration. On 1 March the Court approved the withdrawal of the motion for reconsideration. The Court denied the amended motion for reconsideration in an order entered on 4 September, a copy of which was received by the petitioners on 25 September 1958. On 14 October the petitioners moved for reconsideration of the order entered on 4 September

(Annex I). In an order dated 31 October the Court denied the last motion for reconsideration (Annex J). On 13 November 1958 the petitioners perfected their appeal but the Court disallowed it for having been filed beyond the reglementary period in an order entered on 18 December (Annex K). The present petition is the aftermath of the proceedings just recounted.

The respondents contend that the petition filed by the petitioners does not comply with the requirements of section 1 of Rule 67 of the Rules of Court in that it fails to state that the Court had acted without or in excess of jurisdiction or with grave abuse of discretion. Such omission is not fatal. In *Velez vs. Varela*, 93 Phil., 282, this Court ruled that—

Though generally found in petitions of this kind, the missing allegations are in reality mere conclusions of law which may be deduced from averred facts even when not specifically pleaded. The petition is, therefore, sufficient if it gives enough facts from which those conclusions can be drawn. And such, we think is the case here.

The same conclusion may be drawn from the ultimate facts pleaded in the petition filed in this case.

It was a grievous and crass error to dismiss with prejudice a petition for support upon the flimsy ground that the municipal health officer, directed by the respondent Court to ascertain whether the minor petitioner was really sick, as represented to the respondent Court and verified by the attending physician's certificate, found out that he was suffering only from slight fever, especially because the presence of the minor was not necessary, other witnesses were present and counsel for the petitioners was ready to present them to substantiate their allegations in their petition, the only point to be determined by the respondent Court being the amount of support, the marriage of the petitioner mother and the respondent husband, the legitimacy and filiation of the child petitioner as one born of lawful wedlock having been admitted. The condition of the child petitioner on the 3rd day of February 1958 when the municipal health officer went to see him could not be presumed to be the condition of the child on 30, 31 January when his condition was serious with 40-degrees fever as certified under oath by the attending physician and his condition on the later date may have been brought about by the treatment or prescription ministered to the child by the physician.

The respondent Court disallowed the appeal taken by the petitioners from its order dismissing with prejudice the petition for support, for the reason that it was taken beyond the reglementary period. Although the computation or counting made by the respondent Court of the period that had elapsed from the date when the period started to run to the date when appeal was perfected appears mistaken, yet there is no need to pass upon this point, because the petition is not for a writ of mandamus to compel the respondent Court to allow the appeal or to approve the record on appeal but for a writ of certiorari for dismissing with prejudice a petition for support without any lawful ground or reason for so doing which amounted to an excess of jurisdiction and grave abuse of discretion on the part of the respondent Court.

Furthermore, the petitioners' right to support from the respondent husband, which under article 301 of the Civil Code cannot be renounced, already had been recognized when on 28 January 1958 the respondent Court ordered the respondent Arsenio Samson to give the petitioners a monthly support of P120 *pendente lite*. If the order of dismissal with prejudice of the petition for support were to stand, the petitioners would be deprived of their right to present and future support.

The writ of certiorari prayed for is granted. The orders of 3 February, 4 September, 31 October and 18 December 1958 dismissing with prejudice the petition for support, denying motions for reconsideration and disallowing the appeal from the first order are annulled, with costs against the respondent Arsenio Samson.

Bengzon, C.J., Labrador, Concepcion, Reyes, J.B.L., Barrera, Paredes, and Dizon, JJ., concur.

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