MARIA SHEILA ALMIRA T. VIESCA, PETITIONER, VS. DAVID GILINSKY, RESPONDENT.

G.R. No. 171698. July 04, 2007

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

This is a Petition for Review on Certiorari of the Decision[1] of the Court of Appeals promulgated on 19 October 2005 in CA-G.R. SP No. 90285 which affirmed, with modification, the Order dated 16 June 2005 rendered by the Regional Trial Court, Branch 136, Makati City, in Civil Case SP Proc. Case No. M-5785.

The facts of the case are as follows:

Petitioner and respondent, a Canadian citizen, met sometime in January 1999 at the Makati Shangri-La Hotel where the former worked as a hotel manager. After a few months, a relationship blossomed between the two. On 22 October 2001, their son Louis Maxwell was born.[2] On 30 October 2001, respondent executed an Affidavit of Acknowledgment/Admission of Paternity[3] of the child. Subsequently, the Civil Registrar of Makati City issued a Certification granting the change of Louis Maxwell's surname from "Viesca" to "Gilinsky."[4]

Unfortunately, the relationship between petitioner and respondent soured and they parted ways during the early part of 2003.

On 6 February 2004, respondent filed a Petition praying that he be entitled to the company of Louis Maxwell at any time of any given day; he be entitled to enjoy the company of Louis Maxwell during weekends and on such occasions the child shall be allowed to spend the night with his father; and he be entitled to enjoy a yearly three-week vacation in any destination with his child.[5] The case was raffled off to public respondent's sala and was docketed as SP Proc. Case No. No 5785.

During the pendency of respondent's petition, the parties arrived at a compromise agreement. This compromise agreement was submitted before the trial court and became the basis of the Compromise Judgment issued on 12 May 2004.[6] We reproduce the Compromise Judgment below —

COMPROMISE JUDGMENT

> Acting on the joint motion to render judgment based on Compromise Agreement and finding the allegations therein to be of merit, same is hereby given due course.
>
> Judgment is therefore rendered based on the compromise agreement which is quoted hereunder.
>
> "COMPROMISE AGREEMENT
> KNOW ALL MEN BY THESE PRESENTS:
>
> This Agreement entered this 22[nd] day of April 2004 by and between:
>
> DAVID GILINSKY, of legal age, single and residing at Suite 2828, Makati Shang-rila Hotel, Ayala Avenue

corner Makati Avenue, Makati City, hereinafter referred to as the "FATHER"

-and-
SHEILA T. VIESCA, of legal age, single and a resident of Lot 2, Block 39, Phase 5, Fort Bonifacio, Taguig, Metro Manila, hereinafter referred to as the "MOTHER".

WITNESSETH:
WHEREAS, the parties are the biological parents of minor LOUIS MAXWELL (the "CHILD") born on 22 October 2001;

WHEREAS, as a result of disputes and differences, the parties are now living separately and apart;

WHEREAS, the parties desire to provide for a complete settlement of the issues pertaining to the custody, visitorial rights, support and maintenance of the child;

WHEREAS, each party acknowledges his or her personal obligations as parent of the child and, by these presents, each hereby undertakes to render the performance of these obligations to the child and comply with his or her duties as a parent;

NOW, THEREFORE, for and in consideration of the promises and dispositions made in this agreement, the parties hereto have agreed as follows:

I. CUSTODY OF THE CHILD

The mother shall continue to have custody over LOUIS MAXWELL while the father shall exercise visitorial rights as hereunder stated.

Both parties, by these presents, undertake to take every measure necessary, desirable and proper, to consider the best interest of the child at all times, whether with them or away from them. Any act, word or manipulative scheme that may cause the alienation of feelings or loss of respect or that either one or both of them, from either one of the parties, shall never be tolerated.

II. VISITATION RIGHTS

As the child will continue to be in the custody of the mother, the father, as the non-custodial parent shall be entitled to the following supervised visitation rights, to wit:

- He shall be entitled to the company of the child every Saturday and/or Sunday afternoon;

- The child shall be allowed to spend the night with the father once a week;

- Nothing herein shall prevent the father from visiting the child during reasonable hour in the afternoon of any day of the week at the mother's residence in the presence of the mother or her duly designated representative, and with prior notice to the mother.

One year after the signing of this agreement, the parties shall meet to discuss and resolve the matter pertaining to the entitlement of the father to enjoy a yearly, three-week vacation in any destination with the child.

In the exercise and/or enjoyment of the above rights, the mother shall have the right to designate any person of suitable age to accompany the child.

III. SUPPORT

- The father shall give monthly financial support of US Dollars Five Hundred (US$500.00) or its Peso equivalent within the first five days of the month effective upon the signing of this agreement. The amount shall be subject to such yearly adjustment of such rate equal to the inflation rate determined by the appropriate government agency.

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- On top of the said monthly financial support, the Father shall provide:

- full medical and dental expenses and/or insurance coverage for the child;

- full education for the child at Colegio San Agustin, Makati or any other suitable school;

- college Education Insurance for the child;

- monthly car amortization of Ten Thousand Pesos (P10,000.00) or One Fourth (1/4) of the current amortization whichever is lower;

- Monthly amortization due as of the date of this Agreement for the Rockwell-Manansala Condominium unit until its full payment and transfer of title, including its association dues and charges. The mother here affirms/confirms she is holding title to the condominium in trust for the child.

The mother shall ensure that all arrears and/or outstanding obligations prior to the execution of this agreement shall have been settled and paid. As soon as the above have been fully complied with, the father shall pay the ensuing monthly amortization.

IV. COURT APPROVAL OF AGREEMENT

This agreement shall be governed by and construed in accordance with the laws of the Republic of the Philippines. The parties hereto shall, in good faith, strictly abide by the terms hereof.

The parties agree to submit this written agreement for the court's approval.

V. JUDICIAL RELIEF

Should either one of the parties fail to comply with the terms and conditions of this Agreement, the aggrieved party may seek judicial relief against the erring party and apply with the proper court for a writ of execution against said erring party to enforce his or her obligations imposed in this Agreement. The offending party shall pay for the cost of litigation, attorney's fees, other expenses, and interest incurred in such application for a writ of execution.

IN WITNESS WHEREOF, we have hereunto affixed our respective signatures on the date and place hereinabove mentioned.

(SGD) DAVID GILINSKY (SGD) SHEILA T. VIESCA[7]
Father Mother

On 5 April 2005, respondent filed an "Urgent Motion for Issuance of Writ of Execution." It was alleged in said motion that petitioner had repeatedly refused to abide by the terms of the compromise judgment, particularly the provision allowing Louis Maxwell to spend a night with him at any day of the week. Respondent likewise stated in his motion that he had already filed a Petition to cite petitioner in contempt which was raffled off to the Regional Trial Court, Branch 59 of Makati City.[8]

Respondent's Urgent Motion for Issuance of Writ of Execution was scheduled to be heard on 8 April 2005. Notice thereof was received by petitioner's counsel on 5 April 2005.[9] On 7 April 2005, petitioner's counsel filed a Manifestation[10] requesting that the hearing on said motion be reset, as he had to be in Balanga, Bataan on the date and time of the scheduled hearing. He also prayed that he be given a period of seven days within which to file his Comment/Opposition to respondent's Urgent Motion for Issuance of Writ of Execution.

Despite petitioner's Manifestation, the trial court still proceeded to hear respondent's urgent motion on 8 April 2005 and issued the Writ of Execution prayed for by respondent.[11]

On 9 April 2005, the court sheriff together with respondent tried to serve the Writ of Execution upon petitioner at her residence in Taguig City. Petitioner's mother informed the sheriff and respondent that petitioner was then at her office. The sheriff then asked petitioner's mother to inform petitioner about the service of the Writ of Execution. After about half an hour, petitioner, her father, and her lawyer Atty. Jorge Manuel arrived. Atty. Manuel received the copy of the Writ of Execution but informed the court sheriff that they would not comply with the court's order and would challenge the writ.[12]

As expected, petitioner filed a Motion to Quash Writ of Execution[13] insisting that said writ was issued with "indecent haste" violative of her right to due process, and that the writ varied the terms of the Compromise Agreement since it failed to take into consideration the parties' understanding that in the enjoyment of respondent's visitorial rights, petitioner "shall have the right to designate any person of suitable age to accompany the child."[14]

On 15 April 2005, petitioner's Motion to Quash Writ of Execution was heard. What transpired during the hearing was summarized by the trial court in its Order given in open court as follows:

> The Court heard the arguments raised by the counsel for the [herein petitioner] and the reply/comment thereto made by the counsel for the [herein respondent]. The [herein petitioner] thru counsel imposed certain conditions if ever the visitorial rights of the [herein respondent] would be granted. Though [herein petitioners] wished that those conditions be contained in an affidavit, which to the mind of the court would only delay the resolution of the motion, the court thereupon ordered that the statement of the petitioner be made orally but under oath, thus, [herein respondent] was placed in the witness stand.
>
> Thereafter, the court ruled to deny the motion to quash the writ of execution filed by [herein petitioner] thru counsel for lack of merit and grant the prayer of the [herein respondent] that he be allowed to exercise his visitorial rights over the minor LUIS MAXWELL VIESCA today under the conditions imposed by the [herein petitioner], some of which are contained in the compromise agreement to which [herein respondent] promised under oath to obey the same (sic).
>
> WHEREFORE, let the [herein respondent] DAVID GILINSKY exercise his visitorial rights over the minor LUIS MAXWELL VIESCA on the following conditions, to wit:
>
> - [Herein respondent] shall surrender to the court his passport everytime he is with his child; and
>
> - [Herein respondent] shall not secure/apply another passport (sic) for his son LUIS MAXWELL; and
>
> - [Herein petitioner] shall exercise her right to designate any person of suitable age to accompany the child whenever [herein respondent] would exercise his visitorial right.
>
> [Herein Petitioner] is commanded to bring the minor child LUIS MAXWELL VIESCA to court not later than 3:00 o'clock this afternoon, to be pick-up (sic) by the [herein private respondent], upon the service of his order to the [herein petitioner] by the sheriff of this court.
>
> Failure of the [herein petitioner] to comply with this order shall be a ground for contempt of this court AND SHALL BE DEALTH WITH SEVERELY.[15]

In addition, petitioner alleges that in the course of argument between the parties during this hearing, Judge Rebecca Mariano was not able to contain her bias against petitioner when she reproved the latter's "stubborn refusal"[16] to comply with the Compromise Judgment. Believing that Judge Mariano had shown her partiality in favor of respondent, petitioner's counsel moved in open court for her inhibition.[17] To this, Judge Mariano remarked:

> COURT

> ALRIGHT, before I inhibit myself, the MOTION TO QUASH is DENIED and my position granting visitorial rights of the child is GRANTED.[18]

Subsequently, respondent filed a Manifestation with Motion to Withdraw Motion for Temporary Relief of Support dated 25 April 2005[19] to which petitioner filed her Comment[20] as ordered by the trial court. In their pleadings, the parties presented disparate accounts of what transpired after the hearing on 15 April 2005.

According to respondent -

> - At 3:00 o'clock p.m. of said afternoon, [herein respondent], together with undersigned counsel, promptly went to the court to await the arrival of his son, Louis Maxwell.
>
> - At or about 4:00 o'clock, This Court's sheriff informed undersigned counsel that he had just served a copy of the order upon the adverse counsel.
>
> - Undersigned counsel immediately conferred with Atty. E. Perez, [herein petitioner's] counsel, to arrange the implementation of the above-quoted Order. Atty. Perez informed undersigned of his client's inability to comply with the 3:00 o'clock mandate given that the Order was served to her only at 3:25 p.m., to which the undersigned counsel responded by saying that [herein petitioner] could still have Louis Maxwell brought to court even after the designated time.
>
> - Despite the clear and unequivocal tenor of This Court's Order, Atty. Perez informed the undersigned counsel that since [herein petitioner] was still at work, his client could only bring the child at the lobby of Shangri-la hotel, Makati, at around 8:00 o'clock p.m. of that day.
>
> Undersigned counsel immediately rejected the proposed arrangement for the same does not only run counter to the express mandate of This Court's Order but more importantly would deprive [respondent] of spending quality time with his son - the raisaon d'etre of the stipulation in the Compromise Agreement providing an overnight stay. Undersigned counsel, moreover, explained that 8:00 o'clock p.m. is unreasonable and oppressive, not for [herein respondent] but more for the child, as the proposed time is the expected bedtime of three-year olds.
>
> The adverse counsel, however, remained insistent that the child could only be brought by the [herein petitioner] at 8:00 o'clock p.m. and intimated that since the court order came as a "surprise" and was served at past 3:00 p.m., [herein respondent] should not expect [herein petitioner] to alter her schedule at such short notice.
>
> The undersigned counsel finally relented to the 8:00 o'clock arrangement as it was clear that the adverse counsel and [herein petitioner] was (sic) unaffected by [herein respondent's] earnest desire to spend quality time with his son.
>
> - Albeit the representation [herein petitioner's] counsel that his client committed to bring the child at 8:00 o'clock at Shangri-la, Makati, [herein petitioner] arrived at past 9:00 o'clock p.m. [Herein petitioner] not only brought the child but likewise brought with her the child's grandmother (herein petitioner's mother) and several of her friends. And instead of allowing only one person to act as guardian over Louis Maxwell, [herein petitioner] insisted on having both herself and her mother accompany Louis during his overnight stay with [herein respondent]. [Herein respondent] had no choice but to accede to such demand lest he be deprived once more of the enjoyment of his right.
>
> x x x x
>
> - Furthermore, [herein petitioner] arrived at past 9 o'clock p.m. despite her undertaking that she will bring the child to [herein respondent] at 8 o'clock p.m.; [herein petitioner] also imposed on two guardians: herself and her mother, instead of only one guardian, as provided in the Compromise Judgment; The child was not allowed

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> by [herein petitioner] to sleep in [herein respondent's] room and was made to sleep in her separate room with her mother; finally, on the argument that overnight stay simply means sleeping over, [herein petitioner] left with Louis and her mother at 6 o'clock in the morning of 16 April 2005.[21]

On the other hand, petitioner countered -

> "4. It is clear therefore that there was nothing in the oral argument nor in the Order given in open court that the child was supposed to be brought to Court at 3:00 p.m. that same day to accommodate [herein respondent's] request for visitorial rights. Neither is there mention of the specific time in the Compromise Judgment. It appears that it was [herein respondent] who had prior notice or advanced information as to the contents of the Order from his Manifestation that "
> "3. At 3:00 o'clock p.m. of said afternoon, [herein respondent], together with undersigned counsel, promptly went to the court to await the arrival of his son, Louis Maxwell."

"5. Undersigned counsel received a copy of the Order dated 15 April 2005 only at 4:15 p.m. of that same day, hence, it was impossible for [herein petitioner] to comply with Order commanding her to bring the child "to court not later than 3:00 o'clock this afternoon." Be that as it may, counsel immediately got in touch with [herein petitioner] to advise her to comply with the Order but [herein petitioner] stated she could not leave her office immediately because of prior commitment and instead suggested that she would bring the child to [herein respondent] Shangrila Hotel resident in the evening. Hereon counsel relayed the information/suggestion to [herein respondent's] counsel and after a series of calls, an arrangement was made for the evening. What actually happened that evening, the parties had different accounts.

- [Herein petitioner] maintains that —

- She arrived late at little past 9:00 o'clock because of heavy traffic. It was a Friday, pay day and last day for income tax payment.

- [Herein respondent] conveniently failed to mention that when [herein petitioner] arrived with the child Louis Maxwell at the hotel lobby, they were met by [herein respondent] together with three (3) Manulife insurance agents and a physician. [Herein respondent] and the insurance men tried almost to coercion to convince [herein petitioner] to agree that the child be subjected to medical examination that night so that [herein respondent] could secure a multimillion insurance policy for the child with David Gilinsky as the sole beneficiary. [Herein petitioner] naturally did not agree. [Herein petitioner] does not want to speculate but the circumstances, time and manner of taking the policy appears to be dubious. The fact remains that whatever desire of [herein respondent] to spend quality time with the child was clouded when he allowed these insurance men to get in the way when they should not be there in the first place.[22]

On 26 April 2005, petitioner filed an "Ex-Parte Reiterative Motion to Inhibit" claiming that Judge Mariano could no longer handle the case "with the cold neutrality of an impartial judge"[23] because of her statement pertaining to petitioner's failure to abide by the Compromise Judgment. Respondent filed his opposition thereto, arguing that Judge Mariano's remark was merely based on her observation of petitioner's behavior and attitude during the proceedings of this case.[24]

On 17 May 2005, respondent once more filed a Motion for the Issuance of a Writ of Execution, contending that petitioner had repeatedly failed to comply with their agreement as regards his visitorial rights over Louis Maxwell. Respondent claimed that petitioner relied on the fact that as the Compromise Judgment did not state the time when Louis Maxwell should be in his company, she had insisted on an 8:00 o'clock p.m. to 6:00 o'clock a.m. schedule. Respondent also lamented petitioner's habit of reneging, at the last minute, on their agreements over Louis Maxwell's weekend visits with him and petitioner's insistence that two guardians accompany Louis

Maxwell during his overnight stays.[25] Thus, respondent prayed for the following:

> - To command [herein petitioner] to bring the child to either This Court or to the [herein respondent's] residence not later than 3:00 p.m. of 20 May 2005 and for the child to be allowed to leave the company of the [herein respondent] at 4:00 p.m. of 21 May 2005; and
>
> - To direct the [herein petitioner] pay (sic) the amount of P295,000.00, as and by way of attorney's fees.
>
> Other relief just and equitable under the circumstances are likewise prayed for.[26]

In her Comment,[27] petitioner asserted that Judge Mariano should no longer rule on respondent's motion, since there was a pending motion for her to inhibit. She likewise took the opportunity to refute respondent's allegations with regard to her purported failure to observe the terms of the Compromise Judgment. Petitioner claimed that on 14 May 2005, Louis Maxwell fell sick and so she was unable to bring him to private respondent. In fact, petitioner's counsel even sent a letter dated 16 May 2005 to respondent's lawyer explaining her "version of the story."[28] She also posed objection to respondent's plea that Louis Maxwell be brought either to the trial court or to him since the child was still sick, and taking him out of the house would only worsen his condition. Moreover, petitioner argued that to grant respondent's prayer would contravene the provisions of the Compromise Judgment under which his entitlement to the company of his son every weekend is a separate and distinct term from his right to spend a night with the child. She also claimed that as agreed upon, respondent should be the one to pick up the child and to return him to her. Finally, petitioner assailed respondent's prayer for attorney's fees for lack of basis.

Meanwhile, Judge Mariano issued an Order dated 16 May 2005, directing the parties to attend an in-chamber conference on 20 May 2005 relative to respondent's Motion to Withdraw Support and petitioner's Ex-Parte Reiterative Motion to Inhibit.[29]

In respondent's Comment to the present Petition, it is claimed that the following terms were agreed upon by the parties during the in-chamber conference held on 20 May 2005:

- The respective counsels of each party will meet on 26 May 2005 to agree on the time frame for the sleepover provision;

- Pending the conclusion of the agreement, the child will be fetched from the Petitioner's residence at 6 o'clock p.m. and will be brought back at 9 o'clock a.m. the following day, effective May 20-21 and May 27-28.

- Private Respondent is to surrender his passport during these visits.

- Petitioner's mother will act as the designated guardian; and

- The withdrawal of the parties' respective motions, i.e., Petitioner's Reiterative Motion to Inhibit and Motion to Withdraw Support.[30]

The 20-21 May 2005 sleepover proceeded as scheduled.[31] However, discord between the parties resurfaced when respondent was unable to spend time with Louis Maxwell on 27-28 May 2005. It appears that petitioner's mother, who was the designated accompanying guardian, got sick and because of this, respondent did not enjoy the company of his son. Once more, respondent sought the trial court's intervention through his Very Urgent Motion to Enforce and Enjoy Visitorial Rights dated 30 May 2005.[32] Respondent averred therein that on 27 May 2005, he sent his driver to fetch Louis Maxwell and his maternal grandmother pursuant to the agreement forged on 20 May 2005. When his driver reached petitioner's residence, he was informed that Louis Maxwell and his grandmother could not go with him, as the grandmother was allegedly sick. Respondent claimed that Louis Maxwell's grandmother was merely feigning sickness since she refused his offer to get medical help. Besides, had petitioner really intended to abide by their agreement, respondent argued that she could have appointed one of her

brothers or her sister to accompany Louis Maxwell during his sleepover. Thus, respondent concluded that the totality of petitioner's conduct unmasked her lack of interest in observing the Compromise Judgment, particularly Clause II thereof. He therefore prayed for the following reliefs:

> a) To allow (him) to have the company of his son on Wednesday, June 1, 2005, beginning 6:00 p.m. up to 9:00 a.m. of the following day. For this purpose, for this Court to further allow (him) to fetch his son at [herein petitioner's] residence and bring him back at [herein petitioner's] abode not later than 9:00 a.m. of the following day.
>
> b) To designate the hours of 6:00 p.m. of any given Friday to 9:00 a.m. of the following day, as the regular day and hours at which the [herein respondent] can enjoy the company of his son pursuant to Clause II of the Compromise Judgment dated May 12, 2004.
>
> c) To designate the Court Sheriff and/or any other court officer to act as the accompanying guardian of Louis Maxwell Viesca Gilinsky during the implementation of the prayed for relief under paragraph (a) hereof and of the sleep-over provision mentioned in Clause II of the Compromise Judgment.
>
> d) To command [herein petitioner] to pay the amount of Thirty Thousand Pesos (P30,000.00), as and by way of cost of litigation, attorney's fees and other expenses pursuant to Clause V of the Compromise Judgment.
>
> Just and equitable reliefs prayed for under the circumstances.[33]

Respondent requested that his Very Urgent Motion to Enforce and Enjoy Visitorial Rights be heard on 1 June 2005 notwithstanding the three-day notice rule required under the Revised Rules of Civil Procedure, as he was about to go on a two-week business trip on 3 June 2005.

Petitioner posed her objection to respondent's motion, as it violated the three-day notice rule. She also denied that the 27 May 2005 incident was her fault as her mother was really not feeling well that day. She denounced respondent's fixation over the cancellation of Louis Maxwell's sleepover that night, in total disregard of the fact that the 20 May 2005 scheduled sleepover pushed through as agreed upon. She claimed that she did not have any reason to deprive respondent of his rights under the Compromise Judgment, and so there was no need for respondent to file his Very Urgent Motion to Enforce and Enjoy Visitorial Rights.[34]

On 1 June 2005, Judge Mariano rendered the following Order:

O R D E R

> Set for today's hearing is the Very Urgent Motion to Enforce and Enjoy Visitorial Rights filed by the [herein respondent] and the Comment thereto filed by the [herein petitioner]. The Court heard the arguments between the parties accusing each other of violation of the compromise agreement.
>
> The [herein respondent] wanted to present testimonial evidence to prove his allegation in the motion but which was denied by the Court for lack of material time.
>
> The Court likewise reminded the parties the fact that the [herein respondent] surrenders his passport everytime he exercises his visitorial right was voluntary on his part and not as part of the compromise agreement.
>
> WHEREFORE, the court ruled that the [herein respondent] can exercise his visitorial right today at 6:00 o'clock in the evening to be accompanied by the sheriff of this court. If the [herein petitioner] is not available nor the grandmother to accompany the minor child, the court instructed the [herein petitioner] to appoint another person who can accompany the child so as not to avoid any delay in fetching the minor child. Likewise the motion was reset to July 1, 2005, at 10:30 o'clock in the morning.
>
> Considering that the very urgent motion filed by the [herein respondent] was commented or objected to by the

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[herein petitioner's] counsel, let the [herein respondent], thru counsel file a reply within five (5) days from receipt of this Order and the [herein petitioner] is given the same period of time from receipt of the reply within which to file a rejoinder, if she so desires.

SO ORDERED.

Given in open court, this 1st day of June 2005, at Makati City.

REBECCA R. MARIANO
Judge[35]

On 16 June 2005, Judge Mariano proceeded to resolve respondent's very urgent motion in the following manner:

O R D E R

Before the Court is the Very Urgent Motion to Enforce and Enjoy Visitorial Rights filed by the [herein respondent] thru counsel, alleging among others, that [herein petitioner] had once again proven herself to be unfaithful to her promises and representations, citing the incident which happened on 27 May 2005, the scheduled meeting of the [herein respondent] and his son. On the said date, [herein petitioner's] grandmother (sic) became sick, however, the latter refused the offer of the petitioner to get medical help. Said alleged illness became more doubtful when the grandmother insisted on being well enough to push through with the visitation but at 9:00 o'clock in the evening instead of 6:00 o'clock in the evening, as previously agreed upon by the parties.

On the Comment filed by the [herein petitioner], she stated that the present motion should be denied because it violates the three-day notice rule and there is no good cause to set the hearing on shorter notice.

We shall now rule on the motion.

Under Section 4, Rule 15 of the Revised Rules of Court and following the pronouncements by the High Court in the cases of Cledera, et al. vs. Sarmiento, et al 39 SCRA 552; Estipora vs. Navarro, 69 SCRA 285, the motion under consideration should have been dismissed ourtright, however, the above-cited provision or the so-called three-day notice rule is not absolute. Like any other rule, it admits of exception, i.e. urgent motions (Remedial Law Compendium, Vol. 1, Regalado). Moreover, in the interest of substantial justice, this Court finds it imperative and necessary to brush-aside any technicality since the issue involved herein is basically the natural right of a father to enjoy the company and presence of his beloved son. To the mind of the Court, the best and most applicable law in cases of this nature is the conscience of untroubled and unprejudiced majesty. Finally, the right of custody accorded to parents' springs from the exercise of parental authority (Santos Sr. vs. Court of Appeals, 242 SCRA 407). Hence, the motion under consideration is hereby given due course.

Accordingly, [herein petitioner] is ordered to perform the following, to wit:

- Allow [herein respondent] to enjoy the company of Louis Maxwell on 24 June 2005 and on every Friday of each week starting from 6:00 pm to 9:00 am of the following day, pursuant to Clause II of the compromise Judgment dated 12 May 2004;

- The Deputy Sheriff of this court is hereby designated to act as the accompanying guardian of Louis Maxwell Viesca Gilinsky during the implementation of the prayed for relief under paragraph 1 hereof;

- Pay the [herein respondent] the amount of Thirty-Thousand Pesos (Php 30,000.00), as and by way of cost of litigation, attorney's fees and other expenses pursuant to Clause V of the Compromise Agreement.

As regards the prayer under paragraph (a) of the motion, the same is denied for being moot and academic.

SO ORDERED.

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> Given in Chambers this 16th June 2005, Makati City.
>
> REBECCA R. MARIANO
>
> Judge[36]

During the hearing on 1 July 2005, it was clarified that the Deputy Sheriff would act as accompanying guardian of Louis Maxwell only in case of the unavailability of petitioner or her failure to designate the child's overnight companion.[37]

Aggrieved, petitioner elevated the case via Petition for Certiorari and Prohibition before the Court of Appeals seeking the reversal and setting aside of the 16 June 2005 Order of the trial court as well as its Orders dated 1 June 2005 and 8 April 2005.[38]

In her petition with the Court of Appeals, petitioner contended that the assailed Order dated 16 June 2005 altered or amended the Compromise Judgment. She asserted that by approving respondent's prayer that he be given the right to enjoy Louis Maxwell's company "every Friday of each week starting from 6:00 p.m. to 9:00 a.m. of the following day," Judge Mariano altered Clause II(b) of the Compromise Judgment which states that "(t)he child shall be allowed to spend the night with the father once a week." As the Compromise Judgment did not specifically provide for the day and time of the week when Louis Maxwell should be in the company of respondent, the trial court exceeded its jurisdiction when it rendered its 16 June 2005 Order. In addition, she contends that by designating the Deputy Sheriff of the court to act as the accompanying guardian of the child during the latter's sleepovers, the trial court again disregarded the terms of the Compromise Judgment with respect to the appointment of Louis Maxwell's guardian whenever he visits with respondent. These alterations, petitioner argues, should not be permitted since a compromise agreement, once it was approved by the court, has the force of res judicata between the parties and should not be disturbed except for vices of consent or forgery.[39]The court is not allowed to impose a judgment different from the terms of the agreement.[40]

Petitioner also insisted that Judge Mariano should desist from further hearing the case below.

On 19 October 2005, the Court of Appeals partially granted the petition by deleting the award of P30,000.00 that the trial court awarded to private respondent in its Order of 16 June 2005. The dispositive portion of the Decision of the Court of Appeals states:

> WHEREFORE, the petition is PARTIALLY GRANTED in that the Order dated June 16, 2005 is MODIFIED. The award of Thirty Thousand Pesos (Php30,000.00), as and by way of litigation cost, attorney's fees and other expenses pursuant to clause V of the Compromise Judgment in favor of private respondent is DELETED.[41]

Petitioner's Motion for Reconsideration was denied in the Resolution promulgated on 24 February 2006.[42]

Hence, the present recourse raising the following issues for our consideration:

> WITH ALL DUE RESPECT, THE COURT OF APPEALS ERRED IN DECIDING A QUESTION OF LAW, NOT THERETOFORE DETERMINED BY THIS HONORABLE COURT, AND/OR DECIDING IT IN A WAY NOT IN ACCORD WITH LAW OR WITH APPLICABLE DECISIONS OF THIS HONORABLE COURT CONSIDERING THAT-
>
> - THE TRIAL COURT AMENDED OR ALTERED THE TERMS OF THE COMPROMISE JUDGMENT WITHOUT THE CONCURRENCE OF BOTH PARTIES THERETO.
>
> - RESPONDENT JUDGE ISSUED THE ASSAILED ORDER AMENDING THE COMPROMISE JUDGMENT IN HASTE AND WITHOUT EVIDENTIARY SUPPORT AS IT WAS ISSUED WITHOUT WAITING FOR THE SCHEDULED HEARING OF THE MOTION FILED BY PRIVATE RESPONDENT

AND DESPITE THE PENDING MOTION TO INHIBIT.[43]

The petition is partly meritorious.

A compromise agreement has been described as a contract whereby the parties, by making reciprocal concessions, avoid a litigation or put an end to one already commenced.[44] A compromise agreement that is intended to resolve a matter already under litigation is normally called a judicial compromise. Once it is stamped with judicial imprimatur, it becomes more than a mere contract binding upon the parties. Having the sanction of the court and entered as its determination of the controversy, it has the force and effect of any other judgment.[45] Such agreement has the force of law and is conclusive between the parties. It transcends its identity as a mere contract binding only upon the parties thereto, for it becomes a judgment that is subject to execution in accordance with the Rules.[46] Thus, a compromise agreement that has been made and duly approved by the court attains the effect and authority of res judicata, although no execution may be issued unless the agreement receives the approval of the court where the litigation is pending and compliance with the terms of the agreement is decreed.[47]

The settlement of disputes brought before the courts is encouraged. In fact, in the Civil Code and in the Revised Rules of Court, courts are directed to persuade the litigants in civil cases to agree upon some fair compromise.[48]

Unfortunately in the case before us, the compromise agreement entered into between the parties fell way short of its objective of finally putting an end to their dispute. The sheer number of incidents which cropped up shortly after the trial court's approval of the compromise agreement reveals that the compromise judgment failed to bring peace to the parties. Interestingly enough, the only points of disagreement are Clause II(b) of the Compromise Judgment which pertains to the overnight visits of Louis Maxwell with respondent and the last paragraph of the same clause regarding the appointment of the child's accompanying guardian.

Clause II(b) states that "(t)he child shall be allowed to spend the night with the father once a week." The sentence seems simple enough to be understood by a layman. Petitioner claims that the parties did not specify the day and time of the week when private respondent could enjoy the overnight company of Louis Maxwell in order to give the parties "some flexibility" and to give them the opportunity to arrange the schedule themselves.[49] But the parties have overstretched the indeterminate language of said provision. Indeed, the parties have been at odds over the interpretation and implementation of this plain provision of the Compromise Judgment and this could have caused much confusion in the mind of the young Louis Maxwell who had to be brought from one place to another at such unholy hours of the night only to be awakened from deep slumber in the early hours of the morning to be taken to another place. And yet, all of these could have been avoided had the parties opted to be more specific in their agreement. The question thus becomes: can the trial court modify, by motion of one of the parties, a Compromise Judgment? We hold in the negative.

To reiterate, a compromise judgment has the force of res judicata between the parties and should not be disturbed except for vices of consent or forgery[50] which private respondent does not allege in this case.

More importantly and as correctly pointed out by petitioner, it is settled that neither the courts nor quasi-judicial bodies can impose upon the parties a judgment different from their compromise agreement or against the very terms and conditions of their agreement[51] without contravening the universally established principle that a contract is the law between the parties.[52] The courts can only approve the agreement of parties. They can not make a contract for them.[53]

Nevertheless, we cannot totally blame the trial court for having granted respondent's Very Urgent Motion to Enforce and Enjoy Visitorial Rights. Perhaps, in its desire to finally put to rest the bothersome issue concerning

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Clause II(b) of the Compromise Judgment and to prevent future disagreements between the parties, the trial court saw the wisdom, as this Court does, in providing the specifics in the said indefinite portion of the Compromise Judgment. As we previously held in the case of Hernandez v. Colayco[54] "

> This is not the first unfortunate instance that a compromise judgment of a trial court has given rise to subsequent prolonged controversy, only because the trial judge failed to exercise the required degree of care in seeing to it that neither ambiguity nor incompleteness of details should characterize the agreement, much less the judgment rendered on the basis thereof. The expressed desire of the parties to end their judicial travails by submitting to a compromise deserves the utmost attention from the court, and no effort should be spared in helping them arrive at a definite and unequivocal termination of their problems and differences. It is high time that the matter-of-fact treatment usually accorded by trial courts to motions to approve compromises were abandoned in favor of the more positive activist attitude the situation demands. In acting in such a situation, the judge should bear in mind that the objective is to end the disagreement between the parties, not to begin a new one. Thus, if the parties and their counsel are unable to do it, the judge is expected to assist them in attaining precision and accuracy of language that would more or less make it certain that any disputes as to the matters being settled would not recur, much less give rise to a new controversy. (Emphasis supplied.)

Resultantly, a remand of this case is necessary to allow the parties themselves to resolve the matter regarding the implementation of Clause II(b) of the Compromise Judgment. In this regard, the rule on immutability for purposes of execution does not attach to a judgment that is materially equivocal or which suffers from either patent or latent ambiguity.[55] To obviate further discord between them and to preclude their recourse to the trial court every time one of them perceives a violation committed by the other of Clause II(b) of the Compromise Judgment, we direct the trial court to be on guard and ensure that the parties would lay out in concrete, specific details the terms of their agreement as to this specific matter as well of the appointment of Louis Maxwell's accompanying guardian.

Turning now to the question of whether Judge Mariano should inhibit herself from the case, we rule in favor of respondent.

The pertinent provision of Rule 137, Section 1, of the Revised Rules of Court states:

> SECTION 1. Disqualification of judges. — No judge or judicial officer shall sit in any case in which he, or his wife or child, is pecuniarily interested as heir, legatee, creditor or otherwise, or in which he is related to either party within the sixth degree of consanguinity or affinity, or to counsel within the fourth degree, computed according to the rules of the civil law, or in which he has been executor, administrator, guardian, trustee or counsel, or in which he has presided in any inferior court when his ruling or decision is the subject of review, without the written consent of all parties in interest, signed by them and entered upon the record.
>
> A judge may, in the exercise of his sound discretion disqualify himself from sitting in a case, for just or valid reasons other than those mentioned above. (Emphasis supplied).

This Court has ruled that to disqualify or not to disqualify is a matter of conscience and is addressed primarily to the sense of fairness and justice of the judge concerned.[56] Said discretion is granted to judges, since they are in the better position to determine the issue of voluntary inhibition, as they are the ones who directly deal with the parties in their courtrooms.[57] The test that must be applied in questions involving the propriety of the denial of a motion to inhibit is whether the movant was deprived of a fair and impartial trial.[58] In this case, we hold that petitioner was not deprived of her day in court, for she was able to file her comments on and/or objections to the motions filed by private respondent. She, therefore, was able to ventilate her positions on the issues brought before the trial court.

As regards Judge Mariano's remark regarding petitioner's obstinacy, we agree with private respondent that the same is not a sufficient ground for public respondent to inhibit herself. Indeed, "(o)pinions formed in the course of

judicial proceedings, as long as they are based on the evidence presented and conduct observed by the judge, even if found later on to be erroneous, do not prove personal bias or prejudice on the part of the judge."[59] Moreover, a single comment uttered by the public respondent in the course of the proceedings should not be taken to be generally illustrative of her conduct in hearing and determining the outcome of the entire case. Such isolated remark should not be taken to mean that public respondent has crossed the line separating cold impartiality from unbridled bias.

WHEREFORE, premises considered, the present Petition is PARTIALLY GRANTED. The Decision of the Court of Appeals in CA-G.R. SP No. 90285 dated 19 October 2005, is hereby REVERSED and SET ASIDE insofar as it affirmed the Order dated 16 June 2005 of the RTC, Branch 136, Makati City in SP Proc. Case No. M-5785, amending Clause II(b) of the Compromise Judgment and the last paragraph of Clause II. Petitioner's prayer, however, that Judge Rebecca Mariano of the RTC, Branch 136, Makati City, be directed to inhibit herself from hearing said case is DENIED.

Judge Mariano is ordered to hold further proceedings to allow the parties to agree SPECIFICALLY and DEFINITIVELY on how the overnight visits of Louis Maxwell with respondent and the appointment of said child's accompanying guardian would be implemented within ten (10) days from receipt hereof. No costs.

SO ORDERED.

Ynares-Santiago, (Chairperson), Austria-Martinez, and Nachura, JJ., concur.

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[*]In the Petition for Review as filed before this Court on 17 March 2006, petitioner impleaded Judge Rebecca R. Mariano of the Regional Trial Court, Branch 136, Makati City. Such should not have been the case since Section 4 of Rule 45 of the Revised Rules of Court provides:

SEC. 4. " Contents of petition. " The petition shall be filed in eighteen (18) copies, with the original copy intended for the court being indicated as such by the petitioner, and shall (a) state the full name of the appealing party as the petitioner and the adverse party as respondent, without impleading the lower courts or judges thereof either as petitioners or respondents; (b) indicate the material dates showing when notice of the judgment or final order or resolution subject thereof was received, when a motion for new trial or reconsideration, if any, was filed and when notice of the denial thereof was received; (c) set forth concisely a statement of the matters involved, and the reasons or arguments relied on for the allowance of the petition; (d) be accompanied by a clearly legible duplicate original, or a certified true copy of the judgment or final order or resolution certified by the clerk of court of the court a quo and the requisite number of plain copies thereof, and such material portions of the record as would support the petition; and (e) contain a sworn certification against forum shopping as provided in the last paragraph of section 2, Rule 42.

[1] Penned by Associate Justice Juan Q. Enriquez, Jr. with Associate Justices Conrado M. Vasquez, Jr. and Vicente Q. Roxas, concurring; rollo, pp. 32-42.

[2] Id. at 230.

[3] Id. at 231.

[4] Id. at 403.

[5] CA rollo, pp. 36-37.

[6] Rollo, pp. 132-136.

[7] Id.

[8] CA rollo, pp. 60-61.

[9] Id. at 59.

[10] Id. at 84.

[11] Rollo, pp. 260-261.

[12] Per Sheriff's Report dated 11 April 2005; id. at 262.

[13] Id. at 263-269.

[14] Id. at 265.

[15] Id. at 270-271.

[16] Id. at 8.

[17] Id.

[18] Id. at 8-9 citing TSN, 15 April 2005, p. 48.

[19] Id. at 437-445.

[20] CA rollo, pp. 104-111.

[21] Id. at 438-442.

[22] Id. at 10-11.

[23] Id. at 158-159.

[24] Id. at 415-419.

[25] Id. at 430-431.

[26] Id. at 432-433.

[27] CA rollo, pp. 108-111.

[28] Id. at 109.

[29] Rollo, p. 436.

[30]Id. at 373; In her Reply dated 10 October 2006, petitioner contends that she never agreed to the withdrawal of her Reiterative Motion to Inhibit.

[31] CA rollo, p. 126.

[32] Id. at 114-124.

[33] Id. at 121-122.

[34] Id. at 125-129.

[35] Rollo, p. 81.

[36] Id. at 79-80.

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[37] CA rollo, pp. 313-314.

[38] Id. at 1-23.

[39] Rollo, p. 265 citing Articles 2037 and 2038 of the Civil Code which respectively provide:

Art. 2037. A compromise has upon the parties the effect and authority of res judicata; but there shall be no execution except in compliance with a judicial compromise.

Art. 2038. A compromise in which there is mistake, fraud, violence, intimidation, undue influence, or falsity of documents, is subject to the provisions of article 1330 of this Code.

However, one of the parties cannot set up a mistake of fact as against the other if the latter, by virtue of the compromise, has withdrawn from a litigation already commenced.

[40] Citing Philippine Bank of Communications v. Echiverri, G.R. No. L 41795, 29 August 1980, 99 SCRA 508, 527.

[41] Rollo, p. 42.

[42] Id. at 44-45.

[43]Id. at 16.

[44]David v. Court of Appeals, G.R. No. 97240, 16 October 1992, 214 SCRA 644, 650.

[45] Armed Forces of the Philippines Mutual Benefit Association, Inc. v. Court of Appeals, 370 Phil. 150, 163 (1999).

[46] Manila International Airport Authority (MIAA) v. ALA Industries Corporation, G.R. No. 147349, 13 February 2004, 422 SCRA 603, 611.

[47] Martir v. Verano, G.R. No. 170395, 28 July 2006, 497 SCRA 120, 126-127.

[48] Art. 2029, Civil Code:

The Court shall endeavor to persuade the litigants in a civil case to agree upon some fair compromise.

Rule 18, Section 2(a) of the Revised Rules of Court:

Sec. 2. Nature and purpose. — xxx.

(a) The possibility of an amicable settlement or of a submission to alternative modes of dispute resolutions. (Emphasis supplied)

[49] Rollo, p. 20.

[50] Binamira v. Ogan-Occena, G.R. No. L-27777, 23 March 1987, 148 SCRA 677, 683.

[51] Philippine Bank of Communications v. Echiverri, supra note 40 at 527.

[52] Municipal Board of Cabanatuan City v. Samahang Magsasaka, Inc., G.R. No. L-25818, 25 February 1975, 62 SCRA 435, 438-439.

[53] De Guia v. Romillo, Jr., G.R. No. 51143, 22 March 1990, 183 SCRA 480, 484.

[54] G.R. No. L-39800, 27 June 1975, 64 SCRA 480, 487.

[55] Id. at 489.

[56] Flores v. Court of Appeals, 328 Phil. 992, 1019 (1996).

[57] People v. Ong, G.R. Nos. 162130-39, 5 May 2006, 489 SCRA 679, 687.

[58] Soriano v. Court of Appeals, 416 Phil. 226, 250 (2001).

[59] Rollo, p. 392 citing Seveses v. Court of Appeals, 375 Phil. 64, 73 (1999).

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