

AGUSTIN ATIENZA, PETITIONER, VS. HON. N. ALMEDA LOPEZ, IN HER CAPACITY AS PRESIDING JUDGE OF THE JUVENILE AND DOMESTIC RELATIONS COURT AND LUCENA ARENA, RESPONDENTS.*G.R. No. 18327. August 24, 1962*

Ponente: CONCEPCION, J.

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This is an original action for certiorari and/or mandamus. Soon after its commencement, we issued a writ of preliminary injunction restraining the Court of Juvenile and Domestic Relations from enforcing its orders of February 17 and March 29, 1961, in Civil Case No. 1270 thereof, upon the filing by petitioner Agustin Atienza of the requisite bond.

Said petitioner and respondent Lucena Arena, hereafter referred to as Mrs. Atienza, were married in 1919, but have been living separately from each other since 1937. They have seven (7) children, all of whom are at age. On June 24, 1943, Mrs. Atienza filed with said court a complaint—docketed as Civil Case No. 1270—against petitioner, for support and attorney's fees. After the issues had been joined, both parties submitted a compromise agreement, to the effect that Mrs. Atienza would get P20.00 every fifteen (15) days or every pay day, beginning from February 1, 1959, by way of support; that the cashier of the Manila Railroad Co., in which petitioner was then employed, would make the payment directly to Mrs. Atienza, by deducting said sum from petitioner's salary as employee of said company; that Mrs. Atienza renounced her claim for attorney's fees, and undertook to surrender to petitioner the possession and management of a piece of land described in the agreement; and that petitioner, in turn, agreed to "give/pay" to her "a portion of his retirement pay". A decision was, on February 10, 1958 rendered in conformity with this agreement.

Almost a year and a half later, or on July 28, 1960, Mrs. Atienza filed, in said case, a motion alleging that petitioner was about to retire as employee of the Manila Railroad Co., that he was scheduled to receive therefrom a substantial amount as retirement benefits; and that, "in fairness and justice" to her and their children, "the former is entitled to a reasonable share of said amount", and praying that she be authorized to receive one-half thereof. There being no opposition to said petition, the court granted the same in an order dated August 13, 1960. On February 1, 1961, Mrs. Atienza filed an urgent motion stating that petitioner had received from the Manila Railroad Co., as retirement benefits, the aggregate sum of P12,000, one-half of which should have been given to her, and that he had refused to turn it over to her, in violation of said order of August 13, 1960. She prayed, therefore, that petitioner be required to show cause why he should not be punished for contempt of court and that he be ordered to forthwith deliver to her the sum of P6,000.00.

Petitioner objected to this motion, and, in turn, moved to nullify the order of August 13, 1960. In an order dated February 17, 1961, Hon. N. Almeda Lopez, as Judge of said court, denied the relief prayed for by petitioner and required him, under penalty of contempt of court, to deposit in court, within five (5) days, the sum of P6,109.40, said to represent one-half of his retirement insurance in order that it could be turned over to Mrs. Atienza.

Petitioner sought a reconsideration of this order, which was denied on March 29, 1961, with a reiteration of said warning, should he fail to make the required deposit within three (3) days. Thereupon, he instituted the present action for the purpose of annulling said orders of February 17 and March 29, 1961, and the stipulation in the compromise agreement relative to the share of Mrs. Atienza in the retirement benefits in question, as well as of restraining the enforcement of said orders and to recover damages.

Petitioner maintains that the orders complained of, requiring him to turn over to Mrs. Atienza one-half of his retirement benefits, are null and void, upon the ground that said orders had, in effect, amended the decision rendered on February 10, 1958, which, he claims, is already final and executory; that said judgment for support may be modified only upon proof—none of which has been introduced in the case at bar of an increase in the needs of Mrs. Atienza, as required in Articles 296 and 297 of the Civil Code of the Philippines; that said retirement benefits were not involved in the petition with which Mrs. Atienza had initiated the case in the lower court; that Mrs. Atienza is not entitled to the amount awarded to her in said orders; that petitioner had not been notified of the petition of Mrs. Atienza of July 28, 1960, copy of said petition, as well as of other pleadings and notices of subsequent proceedings, having been served upon his former counsel, who had ceased to be such since 1959, and had not transmitted to him said copies and notices, or advised him about the same; that the stipulation to give her a portion of his retirement benefits is ambiguous and impossible of performance, aside from having been inserted, without his knowledge and consent, in the aforementioned compromise agreement after the execution thereof; that the benefits in question are exempt from execution, under section 26 of Commonwealth Act No. 186; and that the orders aforementioned amount to a declaration of separation of property, without authority therefor.

At the outset, it should be noted that petitioner concedes the authority of courts, under Articles 296 and 297 of our Civil Code, to modify awards in proceedings for support, like the one before us. Moreover, the alleged exemption from execution of the retirement benefits in question, even if hypothetically admitted, might, at best, establish that the orders complained of are, not void, but, merely erroneous. Petitioner does not and cannot assail the jurisdiction of the lower court to entertain the motion of Mrs. Atienza of July 28, 1960, praying that she be given a portion of said benefits, not only because petitioner had agreed, in their compromise agreement, to share those benefits with Mrs. Atienza, but, also, because said motion sought merely the performance of an obligation assumed by him in said agreement and the execution of the decision based thereon. What is more, the failure of the compromise agreement to specify the precise amount of her share in the aforementioned benefits does not render said agreement and decision null and void, for alleged impossibility of performance. The general nature of the stipulation in question indicates clearly that the parties thereto and the court contemplated subsequent proceedings to fix the share of Mrs. Atienza, in the absence of another agreement between the parties. The order of August 13, 1960, fixing the amount of said share, was, therefore, issued by the lower court in the exercise of its jurisdiction. Even if it were erroneous, from the viewpoint of substantive law, said order would not necessarily be, therefore, null and void.

Upon the other hand, insofar as it had split the retirement benefits in question between the Atienza spouses, without any proof or allegation as to their needs, said order in effect, had either established a separation of property among said spouses or liquidated their conjugal partnership, neither of which is authorized either by the facts on record or by pleadings therein. Indeed, Mrs. Atienza has never played for a separation of property or a liquidation of the conjugal partnership, or even made the allegations essential therefor. What is more, as head of the family—even tho actually separated from his wife—petitioner is legally entitled the possession of the full amount of said benefits and to administer the same, Mrs. Atienza being merely entitled, by way of support, to share in the fruits or profits resulting from the investment of the proceeds of his retirement insurance. In this respect, respondent Judge has so abused, therefore, her discretion as to exceed the jurisdiction of the lower court and warrant the issuance of the writ of certiorari prayed for.

Without prejudice to the authority of the lower court to fix the amount to which Mrs. Atienza shall be entitled to participate, by way of support, in said retirement benefits, after due notice and hearing, including the presentation of evidence relevant thereto, the orders complained of are hereby set aside, therefore, and the writ of preliminary injunction issued by this Court made permanent, without costs. It is so ordered.

Bengzon, C. J., Padilla, Bautista Angelo, Labrador, Barrera, Paredes, Dizon, Regala, and Makalintal, JJ., concur.

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