

EDNA MABUGAY-OTAMIAS, JEFFREN M. OTAMIAS AND MINOR JEMWEL M. OTAMIAS, REPRESENTED BY THEIR MOTHER EDNA MABUGAY-OTAMIAS, PETITIONERS, VS. REPUBLIC OF THE PHILIPPINES, REPRESENTED...

G.R. No. 189516. June 08, 2016

Ponente: LEONEN, J.

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LEONEN, J.:

A writ of execution lies against the pension benefits of a retired officer of the Armed Forces of the Philippines, which is the subject of a deed of assignment drawn by him granting support to his wife and five (5) children. The benefit of exemption from execution of pension benefits is a statutory right that may be waived, especially in order to comply with a husband's duty to provide support under Article XV of the 1987 Constitution and the Family Code.

Petitioner Edna Mabugay-Otamias (Edna) and retired Colonel Francisco B. Otamias (Colonel Otamias) were married on June 16, 1978 and had five (5) children.[1]

On September 2000, Edna and Colonel Otamias separated due to his alleged infidelity.[2] Their children remained with Edna.[3]

On August 2002, Edna filed a Complaint-Affidavit against Colonel Otamias before the Provost Marshal Division of the Armed Forces of the Philippines.[4] Edna demanded monthly support equivalent to 75% of Colonel Otamias' retirement benefits.[5] Colonel Otamias executed an Affidavit, stating:

That sometime in August or September 2002, I was summoned at the Office of the Provost Marshal, Philippine Army, in connection with a complaint affidavit submitted to said Office by my wife Mrs. Edna M. Otamias signifying her intention 75% of my retirement benefits from the AFP;

That at this point, I can only commit 50% of my retirement benefits to be pro-rated among my wife and five (5) children;

That in order to implement this compromise, I am willing to enter into Agreement with my wife covering the same;

That I am executing this affidavit to attest to the truth of the foregoing facts and whatever legal purpose it may serve.[6]

On February 26, 2003, Colonel Otamias executed a Deed of Assignment where he waived 50% of his salary and pension benefits in favor of Edna and their children.[7] The Deed of Assignment was considered by the parties as a compromise agreement.[8] It stated:

This Assignment, made and executed unto this 26[th] day of February 2003 at Fort Bonifacio, Makati City, by the undersigned LTC Francisco B. Otamias, 0-0-111045 (INP) PA, of legal age, married and presently residing

at Dama De Noche St., Pembo, Makati City.

WITNESSETH

WHEREAS, the undersigned affiant is the legal husband of EDNA M. OTAMIAS and the father of Julie Ann, Jonathan, Jennifer, Jeffren and Jemwel all residing at Patag, Cagayan de Oro City;

WHEREAS, the undersigned will be retiring from the military service and expects to receive retirement benefits from the Armed Forces of the Philippines;

WHEREAS, the undersigned had expressed his willingness to give a share in his retirement benefits to my wife and five (5) abovenamed children,

NOW, THEREFORE, for and in consideration of the foregoing premises, the undersigned hereby stipulated the following:

1. That the undersigned will give to my legal wife and five (5) children FIFTY PERCENT (50%) of my retirement benefits to be pro-rated among them.
2. That a separate check(s) be issued and to be drawn and encash [sic] in the name of the legal wife and five (5) children pro-rating the fifty (50%) percent of my retirement benefits.

IN WITNESS WHEREOF, I have hereunto set my hand this 26[th] day of February 2003 at Fort Bonifacio, Makati City.[9]

Colonel Otamias retired on April 1, 2003.[10]

The agreement was honored until January 6, 2006.[11] Edna alleged that "the A[rmed] F[orces] [of the Philippines] suddenly decided not to honor the agreement"[12] between Colonel Otamias and his legitimate family.

In a letter[13] dated April 3, 2006, the Armed Forces of the Philippines Pension and Gratuity Management Center (AFP PGMC) informed Edna that a court order was required for the AFP PGMC to recognize the Deed of Assignment.[14]

In another letter[15] dated April 17, 2006, the AFP PGMC reiterated that it could not act on Edna's request to receive a portion of Colonel Otamias' pension "unless ordered by [the] appropriate court." [16]

Heeding the advice of the AFP PGMC, Edna, on behalf of herself and Jeffren M. Otamias and Jemwel M. Otamias (Edna, et al.), filed before the Regional Trial Court of Cagayan de Oro, Misamis Oriental an action for support, docketed as F.C. Civil Case No. 2006-039.[17]

The trial court's Sheriff tried to serve summons on Colonel Otamias several times, to no avail.[18] Substituted service was resorted to.[19] Colonel Otamias was subsequently declared in default for failure to file a responsive pleading despite order of the trial court.[20]

The trial court ruled in favor of Edna, et al. and ordered the automatic deduction of the amount of support from the monthly pension of Colonel Otamias.[21]

The dispositive portion of the trial court's Decision stated:

ALL THE FOREGOING CONSIDERED, and in consonance with the legal obligation of the defendant to the plaintiffs, the Armed Forces of the Philippines, through its Finance Center and/or appropriate Finance Officer thereof, is thereby ordered to release to Edna Mabugay Otamias and minor Jemwel M. Otamias, herein represented by his mother Edna, their fifty (50%) per cent share of each of the monthly pension due to Colonel

Francisco B. Otamias, AFP PA (Retired).

Defendant Francisco Otamias is also ordered to pay plaintiff Edna M. Otamias, fifty (50%) per cent of whatever retirement benefits he has already received from the Armed Forces of the Philippines AND the arrears in support, effective January 2006 up to the time plaintiff receives her share direct from the Finance Center of the Armed Forces of the Philippines.

IT IS SO ORDERED.[22]

The Armed Forces of the Philippines, through the Office of the Judge Advocate General, filed a Manifestation/Opposition[23] to the Decision of the trial court, but it was not given due course due to its late filing.[24]

Edna, et al., through counsel, filed a Motion for Issuance of Writ of Execution[25] dated February 22, 2008. The trial court granted the Motion, and a writ of execution was issued by the trial court on April 10, 2008.[26]

The Armed Forces of the Philippines Finance Center (AFP Finance Center), through the Office of the Judge Advocate General, filed a Motion to Quash[27] the writ of execution and argued that the AFP Finance Center's duty to disburse benefits is ministerial. It releases benefits only upon the AFP PGM's approval.[28]

The trial court denied the Motion to Quash and held that:

Under the law and existing jurisprudence, the "right to support" is practically equivalent to the "right to life." The "right to life" always takes precedence over "property rights." The "right to support/life" is also a substantive right which always takes precedence over technicalities/procedural rules. It being so, technical rules must yield to substantive justice. Besides, this Court's Decision dated February 27, 2007 has long acquired finality, and as such, is ripe for enforcement/execution.

THE FOREGOING CONSIDERED, the instant Motion is hereby DENIED.[29]

The AFP PGM moved for reconsideration of the order denying the Motion to Quash,[30] but the Motion was also denied by the trial court in the Order[31] dated August 6, 2008.

A Notice of Garnishment was issued by the trial court on July 15, 2008 and was received by the AFP PGM on September 9, 2008.[32]

The AFP PGM filed before the Court of Appeals a Petition for Certiorari and Prohibition.[33]

The Court of Appeals granted[34] the Petition for Certiorari and Prohibition and partially nullified the trial court's Decision insofar as it directed the automatic deduction of support from the pension benefits of Colonel Otamias.

The Court of Appeals discussed that Section 31[35] of Presidential Decree No. 1638, otherwise known as the AFP Military Personnel Retirement and Separation Decree of 1979, "provides for the exemption of the monthly pension of retired military personnel from execution and attachment[.]"[36] while Rule 39, Section 13 of the Rules of Court provides:

SEC. 13. Property exempt from execution. Except as otherwise expressly provided by law, the following property, and no other, shall be exempt from execution:

....

(1) The right to receive legal support, or money or property obtained as such support, or any pension or gratuity from the Government[.]

The Court of Appeals also cited *Pacific Products, Inc. vs. Ong*:[37]

[M]oneys sought to be garnished, as long as they remain in the hands of the disbursing officer of the Government, belong to the latter, although the defendant in garnishment may be entitled to a specific portion thereof. And still another reason which covers both of the foregoing is that every consideration of public policy forbids it.[38]

In addition, the AFP PGMC was not impleaded as a party in the action for support; thus, it is not bound by the Decision.[39]

The dispositive portion of the Court of Appeals Decision reads:

WHEREFORE, the petition is GRANTED. The assailed Decision of the Regional Trial Court, Branch 19, Cagayan de Oro City dated February 27, 2007 in Civil Case No. 2006-039 is PARTIALLY NULLIFIED in so far as it directs the Armed Forces of the Philippines Finance Center to automatically deduct the financial support in favor of private respondents, Edna Otamias and her children Jeffren and Jemwel Otamias, from the pension benefits of Francisco Otamias, a retired military officer. The Order dated June 10, 2008, Order dated August 6, 2008 and Writ of Execution dated April 10, 2008, all issued by the court a quo are likewise SET ASIDE. Perforce, let a writ of permanent injunction issue enjoining the implementation of the assailed Writ of Execution dated April 10, 2008 and the corresponding Notice of Garnishment dated July 15, 2008. No pronouncement as to costs.

SO ORDERED.[40] (Emphasis in the original)

Edna, et al. moved for reconsideration, but the Motion was denied by the Court of Appeals.[41]

Edna, et al. filed before this Court a Petition for Review on Certiorari[42] on November 11, 2009. In the Resolution[43] dated January 20, 2010, this Court required respondent to comment.

In the Resolution[44] dated August 4, 2010, this Court noted the Comment filed by the Office of the Solicitor General and required Edna, et al. to file a reply.[45]

A Reply[46] was filed on September 27, 2010.

Edna, et al. argue that the Deed of Assignment Colonel Otamias executed is valid and legal.[47]

They claim that Section 31 of Presidential Decree No. 1638[48] "does not include support";[49] hence, the retirement benefits of Colonel Otamias can be executed upon.

Edna, et al. also argue that the Court of Appeals erred in granting respondent's Petition because it effectively rendered the Deed of Assignment of no force and effect.[50] On the other hand, the trial court's Decision implements the Deed of Assignment and Edna, et al.'s right to support.[51]

Further, the AFP PGMC had already recognized the validity of the agreement and had made payments to them until it suddenly stopped payment.[52] After Edna, et al. obtained a court order, the AFP PGMC still refused to honor the Deed of Assignment.[53]

The Armed Forces of the Philippines, through the Office of the Solicitor General, argues that it was not a party to the case filed by Edna, et al.[54] Thus, "it cannot be compelled to release part of the monthly pension benefits of retired Colonel Otamias in favor of [Edna, et al.]."[55]

The Office of the Solicitor General avers that the AFP PGMC never submitted itself to the jurisdiction of the trial court.[56] It was not a party to the case as the trial court never acquired jurisdiction over the AFP PGMC.[57]

The Office of the Solicitor General also argues that Section 31 of Presidential Decree No. 1638 and Rule 39, Section 13(1) of the Rules of Court support the Court of Appeals Decision that Colonel Otamias' pension benefits

are exempt from execution.[58]

Section 31 of Presidential Decree No. 1638 "does not deprive the survivor/s of a retired or separated officer or enlisted man of their right to support." [59] Rather, "[w]hat is prohibited is for respondent [AFP PGMCM] to segregate a portion of the pension benefit in favor of the retiree's family while still in the hands of the A[rm]ed F[orces] [of the] Philippines." [60]

Thus, the AFP PGMCM "cannot be compelled to directly give or issue a check in favor of [Edna, et al.] out of the pension gratuity of Col. Otamias." [61]

In their Reply, [62] Edna, et al. argue that the Armed Forces of the Philippines should not be allowed to question the legal recourse they took because it was an officer of the Armed Forces of the Philippines who had advised them to file an action for support. [63]

They argue that the phrase "while in the active service" in Section 31 of Presidential Decree No. 1638 refers to the "time when the retired officer incurred his accountabilities in favor of a private creditor[,] "[64] who is a third person. The phrase also "serves as a timeline designed to separate the debts incurred by the retired officer after his retirement from those which he incurred prior thereto." [65]

Further, the accountabilities referred to in Section 31 of Presidential Decree No. 1638 refer to debts or loans, not to support. [66]

The issues for resolution are:

First, whether the Court of Appeals erred in ruling that the AFP Finance Center cannot be directed to automatically deduct the amount of support needed by the legitimate family of Colonel Otamias; and

Second, whether Colonel Otamias' pension benefits can be executed upon for the financial support of his legitimate family.

The Petition is granted.

I

Article 6 of the Civil Code provides:

Article 6. Rights may be waived, unless the waiver is contrary to law, public order, public policy, morals or good customs, or prejudicial to a third person with a right recognized by law.

The concept of waiver has been defined by this Court as:

a voluntary and intentional relinquishment or abandonment of a known existing legal right, advantage, benefit, claim or privilege, which except for such waiver the party would have enjoyed; the voluntary abandonment or surrender, by a capable person, of a right known by him to exist, with the intent that such right shall be surrendered and such person forever deprived of its benefit; or such conduct as warrants an inference of the relinquishment of such right; or the intentional doing of an act inconsistent with claiming it. [67]

In determining whether a statutory right can be waived, this Court is guided by the following pronouncement:

[T]he doctrine of waiver extends to rights and privileges of any character, and, since the word 'waiver' covers every conceivable right, it is the general rule that a person may waive any matter which affects his property, and any alienable right or privilege of which he is the owner or which belongs to him or to which he is legally entitled, whether secured by contract, conferred with statute, or guaranteed by constitution, provided such rights and privileges rest in the individual, are intended for his sole benefit, do not infringe on the rights of

others, and further provided the waiver of the right or privilege is not forbidden by law, and does not contravene public policy; and the principle is recognized that everyone has a right to waive, and agree to waive, the advantage of a law or rule made solely for the benefit and protection of the individual in his private capacity, if it can be dispensed with and relinquished without infringing on any public right, and without detriment to the community at large[.][68] (Emphasis in the original)

When Colonel Otamias executed the Deed of Assignment, he effectively waived his right to claim that his retirement benefits are exempt from execution. The right to receive retirement benefits belongs to Colonel Otamias. His decision to waive a portion of his retirement benefits does not infringe on the right of third persons, but even protects the right of his family to receive support.

In addition, the Deed of Assignment should be considered as the law between the parties, and its provisions should be respected in the absence of allegations that Colonel Otamias was coerced or defrauded in executing it. The general rule is that a contract is the law between parties and parties are free to stipulate terms and conditions that are not contrary to law, morals, good customs, public order, or public policy.[69]

The Deed of Assignment executed by Colonel Otamias was not contrary to law; it was in accordance with the provisions on support in the Family Code. Hence, there was no reason for the AFP PGMC not to recognize its validity.

Further, this Court notes that the AFP PGMC granted the request for support of the wives of other retired military personnel in a similar situation as that of petitioner in this case. Attached to the Petition are the affidavits of the wives of retired members of the military, who have received a portion of their husbands' pensions.[70]

One affidavit stated:

- That when I consulted and appeared before the Office of PGMC, I was instructed to submit a Special Power of Authority from my husband so they can release part of his pension to me;
- That my husband signed the Special Power of Attorney at the PGMC ceding 50% of his pension to me; the SPA form was given to us by the PGMC and the same was signed by my husband at the PGMC; . . .
-
- That the amount was deposited directly to my account by the PGMC- Finance Center AFP out of the pension of my husband;
- That only the Special Power of Attorney was required by the PGMC in order for them to segregate my share of my husband's pension and deposit the same to my account[.][71]

The other affidavit stated:

- That my husband signed the Special Power of Attorney at the PGMC ceding 50% of his pension to me; the SPA form was given to us by the PGMC and the same was signed by my husband at the PGMC[.][72]

In addition, the AFP PGMC's website informs the public of the following procedure:

Tanong: My husband-retiree cut-off my allotment. How can I have it restored?

Sagot: Pension benefits are separate properties of the retiree and can not [sic] be subject of a Court [sic] Order for execution nor can they be assigned to any third party (Sec. 31, PD 1638, as amended). However, a valid Special Power of Attorney (SPA) by the retiree himself empowering the AFP Finance Center to deduct certain amount from his lumpsum [sic] or pension pay as the case maybe, as a rule, is a valid waiver of rights which can be effectively implemented by the AFP F[inance] C[enter].[73]

Clearly, the AFP PGMC allows deductions from a retiree's pension for as long as the retiree executes a Special Power of Attorney authorizing the AFP PGMC to deduct a certain amount for the benefit of the retiree's beneficiary.

It is curious why Colonel Otamias was allowed to execute a Deed of Assignment by the administering officer when, in the first place, the AFP PGMC's recognized procedure was to execute a Special Power of Attorney, which would have been the easier remedy for Colonel Otamias' family.

Instead, Colonel Otamias' family was forced to incur litigation expenses just to be able to receive the financial support that Colonel Otamias was willing to give to Edna, et al.

II

Section 31 of Presidential Decree No. 1638 provides:

Section 31. The benefits authorized under this Decree, except as provided herein, shall not be subject to attachment, garnishment, levy, execution or any tax whatsoever; neither shall they be assigned, ceded, or conveyed to any third person: Provided, That if a retired or separated officer or enlisted man who is entitled to any benefit under this Decree has unsettled money and/or property accountabilities incurred while in the active service, not more than fifty per centum of the pension gratuity or other payment due such officer or enlisted man or his survivors under this Decree may be withheld and be applied to settle such accountabilities.

Under Section 31, Colonel Otamias' retirement benefits are exempt from execution. Retirement benefits are exempt from execution so as to ensure that the retiree has enough funds to support himself and his family.

On the other hand, the right to receive support is provided under the Family Code. Article 194 of the Family Code defines support as follows:

Art. 194. Support comprises everything indispensable for sustenance, dwelling, clothing, medical attendance, education and transportation, in keeping with the financial capacity of the family.

The education of the person entitled to be supported referred to in the preceding paragraph shall include his schooling or training for some profession, trade or vocation, even beyond the age of majority. Transportation shall include expenses in going to and from school, or to and from place of work.

The provisions of the Family Code also state who are obliged to give support, thus:

Art. 195. Subject to the provisions of the succeeding articles, the following are obliged to support each other to the whole extent set forth in the preceding article:

- (1) The spouses;
- (2) Legitimate ascendants and descendants;
- (3) Parents and their legitimate children and the legitimate and illegitimate children of the latter;
- (4) Parents and their illegitimate children and the legitimate and illegitimate children of the latter; and
- (5) Legitimate brothers and sisters, whether of the full or half- blood.

Art. 196. Brothers and sisters not legitimately related, whether of the full or half-blood, are likewise bound to support each other to the full extent set forth in Article 194 except only when the need for support of the brother or sister, being of age, is due to a cause imputable to the claimant's fault or negligence.

Art. 197. For the support of legitimate ascendants; descendants, whether legitimate or illegitimate; and brothers and sisters, whether legitimately or illegitimately related, only the separate property of the person obliged to

give support shall be answerable provided that in case the obligor has no separate property, the absolute community or the conjugal partnership, if financially capable, shall advance the support, which shall be deducted from the share of the spouses obliged upon the liquidation of the absolute community or of the conjugal partnership[.]

The provisions of Rule 39 of the Rules of Court that are applicable to this case are in apparent conflict with each other. Section 4 provides that judgments in actions for support are immediately executory. On the other hand, Section 13(1) provides that the right to receive pension from government is exempt from execution, thus:

RULE 39

EXECUTION, SATISFACTION, AND EFFECT OF JUDGMENTS

....

SEC. 4. Judgments not stayed by appeal. — Judgments in actions for injunction, receivership, accounting and support, and such other judgments as are now or may hereafter be declared to be immediately executory, shall be enforceable after their rendition and shall not, be stayed by an appeal taken therefrom, unless otherwise ordered by the trial court. On appeal therefrom, the appellate court in its discretion may make an order suspending, modifying, restoring or granting the injunction, receivership, accounting, or award of support.

The stay of execution shall be upon such terms as to bond or otherwise as may be considered proper for the security or protection of the rights of the adverse party.

....

SEC. 13. Property exempt from execution. — Except as otherwise expressly provided by law, the following property, and no other, shall be exempt from execution:

....

(1) The right to receive legal support, or money or property obtained as such support, or any pension or gratuity from the Government;

....

But no article or species of property mentioned in this section shall be exempt from execution issued upon a judgment recovered for its price or upon a judgment of foreclosure of a mortgage thereon. (Emphasis supplied)

Based on the Family Code, Colonel Otamias is obliged to give support to his family, petitioners in this case. However, he retired in 2003, and his sole source of income is his pension. Judgments in actions for support are immediately executory, yet under Section 31 of Presidential Decree No. 1638, his pension cannot be executed upon.

However, considering that Colonel Otamias has waived a portion of his retirement benefits through his Deed of Assignment, resolution on the conflict between the civil code provisions on support and Section 31 of Presidential Decree No. 1638 should be resolved in a more appropriate case.

III

Republic v. Yahon[74] is an analogous case because it involved the grant of support to the spouse of a retired member of the Armed Forces of the Philippines.

In Republic v. Yahon, Daisy R. Yahon filed a Petition for the Issuance of Protection Order under Republic Act No. 9262.[75] She alleged that she did not have any source of income because her husband made her resign from

her job.[76] The trial court issued a temporary restraining order, a portion of which stated:

To insure that petitioner [Daisy R. Yahon] can receive a fair share of respondent's retirement and other benefits, the following agencies thru their heads are directed to WITHHOLD any retirement, pension [,] and other benefits of respondent, S/SGT. CHARLES A. YAHON, a member of the Armed Forces of the Philippines assigned at 4ID, Camp Evangelista, Patag, Cagayan de Oro City until further orders from the court:

1. Commanding General/Officer of the Finance Center of the Armed Forces of the Philippines, Camp Emilio Aguinaldo, Quezon City;
2. The Management of RSBS, Camp Emilio Aguinaldo, Quezon City;
3. The Regional Manager of PAG-IBIG, Mortola St., Cagayan de Oro City.[77] (Emphasis in the original)

The trial court subsequently granted Daisy's Petition and issued a permanent protection order[78] and held:

Pursuant to the order of the court dated February 6, 2007, respondent, S/Sgt. Charles A. Yahon is directed to give it to petitioner 50% of whatever retirement benefits and other claims that may be due or released to him from the government and the said share of petitioner shall be automatically deducted from respondent's benefits and claims and be given directly to the petitioner, Daisy R. Yahon.

Let copy of this decision be sent to the Commanding General/Officer of Finance Center of the Armed Forces of the Philippines, Camp Emilio Aguinaldo, Quezon City; the Management of RSBS, Camp Emilio Aguinaldo, Quezon City and the Regional Manager of PAG-IBIG, Mortola St., Cagayan de Oro City for their guidance and strict compliance.[79]

In that case, the AFP Finance Center filed before the trial court a Manifestation and Motion stating that "it was making a limited and special appearance"[80] and argued that the trial court did not acquire jurisdiction over the Armed Forces of the Philippines. Hence, the Armed Forces of the Philippines is not bound by the trial court's ruling.[81]

The Armed Forces of the Philippines also cited *Pacific Products*, where this Court ruled that:

A rule, which has never been seriously questioned, is that money in the hands of public officers, although it may be due government employees, is not liable to the creditors of these employees in the process of garnishment. One reason is, that the State, by virtue of its sovereignty may not be sued in its own courts except by express authorization by the Legislature, and to subject its officers to garnishment would be to permit indirectly what is prohibited directly. Another reason is that moneys sought to be garnished, as long as they remain in the hands of the disbursing officer of the Government, belong to the latter, although the defendant in garnishment may be entitled to a specific portion thereof. And still another reason which covers both of the foregoing is that every consideration of public policy forbids it.[82] (Citations omitted)

This Court in *Republic v. Yahon* denied the Petition and discussed that because Republic Act No. 9262 is the later enactment, its provisions should prevail,[83] thus:

We hold that Section 8(g) of R.A. No. 9262, being a later enactment, should be construed as laying down an exception to the general rule above stated that retirement benefits are exempt from execution. The law itself declares that the court shall order the withholding of a percentage of the income or salary of the respondent by the employer, which shall be automatically remitted directly to the woman "[n]otwithstanding other laws to the contrary"[84] (Emphasis in the original)

IV

The 1987 Constitution gives much importance to the family as the basic unit of society, such that Article XV[85] is devoted to it.

The passage of the Family Code further implemented Article XV of the Constitution. This Court has recognized the importance of granting support to minor children, provided that the filiation of the child is proven. In this case, the filiation of Jeffren M. Otamias and Jemwel M. Otamias was admitted by Colonel Otamias in the Deed of Assignment.[86]

Even before the passage of the Family Code, this Court has given primary consideration to the right of a child to receive support. In *Samson v. Yatco*,[87] a petition for support was dismissed with prejudice by the trial court on the ground that the minor asking for support was not present in court during trial. An appeal was filed, but it was dismissed for having been filed out of time. This Court relaxed the rules of procedure and held that "[i]f 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 nature support." [88]

In *Gan v. Reyes*,[89] Augustus Caesar R. Gan (Gan) questioned the trial court's decision requiring him to give support and claimed that he was not the father of the minor seeking support. He also argued that he was not given his day in court. This Court held that Gan's arguments were meant to delay the execution of the judgment, and that in any case, Gan himself filed a Motion for Leave to Deposit in Court Support Pendente Lite:

In all cases involving a child, his interest and welfare are always the paramount concerns. 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 trial court attains finality while time continues to slip away. An excerpt from the early case of *De Leon v. Soriano* is relevant, thus:

The money and property adjudged for support and education should and must be given presently and without delay because if it had to wait the final judgment, the children may in the meantime have suffered because of lack of food or have missed and lost years in school because of lack of funds. One cannot delay the payment of such funds for support and education for the reason that if paid long afterwards, however much the accumulated amount, its payment cannot cure the evil and repair the damage caused. The children with such belated payment for support and education cannot act as gluttons and eat voraciously and unwisely, afterwards, to make up for the years of hunger and starvation. Neither may they enrol in several classes and schools and take up numerous subjects all at once to make up for the years they missed in school, due to non-payment of the funds when needed.[90]

V

The non-inclusion of the AFP PGMC or the AFP Finance Center in the action for support was proper, considering that both the AFP PGMC and the AFP Finance Center are not the persons obliged to give support to Edna, et al. Thus, it was not a real party-in-interest.[91] Nor was the AFP PGMC a necessary party because complete relief could be obtained even without impleading the AFP PGMC.[92]

WHEREFORE, the Petition is GRANTED. The Court of Appeals Decision dated May 22, 2009 and Resolution dated August 11, 2009 in CA-G.R. SP No. 02555-MIN are REVERSED and SET ASIDE. The Regional Trial Court Decision dated February 27, 2007 in F.C. Civil Case No. 2006-039 is REINSTATED.

SO ORDERED.

Carpio, (Chairperson), Del Castillo, and Mendoza, JJ., concur.
Brion, J., on official leave.

- [1] Rollo p. 58, Regional Trial Court Decision.
- [2] Id.
- [3] Id.
- [4] Id. at 11, Petition.
- [5] Id. at 75, Edna Mabugay-Otamias' Affidavit-Complaint filed before the AFP Provost Marshall.
- [6] Id. at 76, Col. Otamias' Affidavit dated February 20, 2002.
- [7] Id. at 11.
- [8] Id.
- [9] Id. at 77, Deed of Assignment.
- [10] Id. at 58, Regional Trial Court Decision dated February 27, 2007.
- [11] Id. at 11, Petition for Review on Certiorari.
- [12] Id.
- [13] Id. at 79.
- [14] Id. at 11.
- [15] Id. at 80.
- [16] Id.
- [17] Id. at 105-110, Complaint.
- [18] Id. at 59, Court of Appeals Decision dated February 27, 2007.
- [19] Id.
- [20] Id. at 85, Order dated September 25, 2006 issued by Judge Evelyn Gamotin Nery of Branch 19, Regional Trial Court, Cagayan de Oro City, Misamis Oriental.
- [21] Id. at 58-60. The Decision was penned by Judge Evelyn Gamotin Nery, Presiding Judge of Branch 19, Regional Trial Court, Cagayan de Oro City, Misamis Oriental.
- [22] Id. at 60.
- [23] Id. at 86-90, Copy of the Manifestation/Opposition.
- [24] Id. at 91, Order dated July 12, 2007.
- [25] Id. at 92-94, Motion for Issuance of Writ of Execution.
- [26] Id. at 12, Petition.

[27] Id. at 62-72.

[28] Id.

[29] Id. at 61, Order denying the Motion to Quash.

[30] Id. at 12.

[31] Id. at 73-74, Order dated August 6, 2008.

[32] Id. at 12. The Petition states that the Notice of Garnishment was received by the AFP PGMCM on September 9, 2009. However, it seems that the more appropriate year would be September 9, 2008, in view of the material dates in this case.

[33] Id.

[34] Id. at 131-143. The Decision was penned by Associate Justice Elihu A. Ybañez and concurred in by Associate Justices Rodrigo F. Lim, Jr. (Chair) and Ruben C. Ayson of the Twenty Third Division, Court of Appeals, Mindanao Station.

[35] Pres. Decree No. 1638 (1979), sec. 31 provides:

Section 31. The benefits authorized under this Decree, except as provided herein, shall not be subject to attachment, garnishment, levy, execution or any tax whatsoever; neither shall they be assigned, ceded, or conveyed to any third person: Provided, that if a retired or separated officer or enlisted man who is entitled to any benefit under this Decree has unsettled money and/or property accountabilities incurred while in the active service, not more than fifty per centum of the pension gratuity or other payment due such officer or enlisted or his survivors under this Decree may be withheld and be applied to settle such accountabilities.

[36] Rollo, p. 139.

[37] 260 Phil. 583 (1990) [Per J. Medialdea, First Division].

[38] Id. at 591, citing *Director of Commerce and Industry v. Concepcion*, 43 Phil. 384, 386 (1922) [Per J. Malcolm, En Banc].

[39] Rollo, p. 141.

[40] Id. at 142.

[41] Id. at 145-147, Court of Appeals Resolution dated August 11, 2009. The Resolution was penned by Associate Justice Elihu A. Ybañez and concurred in by Associate Justices Rodrigo F. Lim, Jr. (Chair) and Ruben C. Ayson of the Twenty Third Division, Court of Appeals, Mindanao Station.

[42] Id. at 9-22.

[43] Id. at 151-A.

[44] Id. at 199.

[45] Id.

[46] Id. at 205-212.

[47] Id. at 15.

[48] Establishing a New System of Retirement and Separation for Military Personnel of the Armed Forces of the

Philippines and For Other Purposes (1979).

[49] Rollo, p. 15.

[50] Id. at 15-16.

[51] Id. at 16-17.

[52] Id. at 18-19.

[53] Id.

[54] Id. at 186, Comment.

[55] Id.

[56] Id. at 187.

[57] Id.

[58] Id. at 193.

[59] Id. at 194.

[60] Id.

[61] Id. at 195.

[62] Id. at 205-212.

[63] Id. at 206.

[64] Id. at 208.

[65] Id.

[66] Id.

[67] F.F. Cruz & Co. Inc. v. HR Construction Corporation, 684 Phil. 330, 351 (2012) [Per J. Reyes, Second Division], citing People v. Donato, 275 Phil. 146, 150 (1991) [Per J. Davide, Jr., En Banc].

[68] Id.

[69] Viesca v. Gilinsky, 553 Phil. 498, 498-499 (2007) [Per J. Chico-Nazario, Third Division]; Spouses Chung v. Ulanday Contruction, Inc., 647 Phil. 1 (2010) [Per J. Brion, Third Division]; Spouses Mallari v. Prudential Bank (now Bank of the Philippine Islands), 710 Phil. 490, 500 (2013); Benson Industries Employees Union v. Benson Industries, G.R. No. 200746, August 6, 2014, 732 SCRA 318, 320 [Per J. Perlas-Bernabe, Second Division]; New World Developers & Management, Inc. v. AMA Computer Learning Center, Inc., G.R. No. 187930, February 23, 2015, 751 SCRA 331, 332 [Per C.J. Sereno, First Division]. See also CIVIL CODE, art. 1306, which provides:

Article 1306. The contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order, or public policy.

[70] Rollo pp. 98-99, Affidavit of Marina Hermosilla Vestal. See also rollo, pp. 102-103, Affidavit of Eleonor D. Lanuza.

[71] Id. at 98.

[72] Id. at 102.

[73] Frequently Asked Question, Armed Forces of the Philippines - Pension & Gratuity Management Center <<http://www.afppension.ghq-mfo.com/FAQs.pdf>> (visited May 3, 2016).

[74] G.R. No. 201043, June 16, 2014, 726 SCRA 438 [Per J. Villarama, Jr., First Division].

[75] The Anti-Violence Against Women and Their Children Act of 2004 (2004).

[76] Republic v. Yahon, G.R. No. 201043, June 16, 2014, 726 SCRA 438, 444 [Per J. Villarama, Jr., First Division].

[77] Id. at 442-443.

[78] Id. at 445.

[79] Id. at 446.

[80] Id.

[81] Id. at 447.

[82] Id. at 454, citing Pacific Products, Inc. v. Ong, 260 Phil 583, 591 (1990) [Per J. Medialdea, First Division].

[83] Id. at 453-454.

[84] Id. at 453.

[85] CONST., art. XV provides:

ARTICLE XV

The Family

SECTION 1. The State recognizes the Filipino family as the foundation of the nation. Accordingly, it shall strengthen its solidarity and actively promote its total development.

SECTION 2. Marriage, as an inviolable social institution, is the foundation of the family and shall be protected by the State.

SECTION 3. The State shall defend:

- (1) The right of spouses to found a family in accordance with their religious convictions and the demands of responsible parenthood;
- (2) The right of children to assistance, including proper care and nutrition, and special protection from all forms of neglect, abuse, cruelty, exploitation, and other conditions prejudicial to their development;
- (3) The right of the family to a family living wage and income; and
- (4) The right of families or family associations to participate in the planning and implementation of policies and programs that affect them.

SECTION 4. The family has the duty to care for its elderly members but the State may also do so through just programs of social security. (Emphasis supplied)

[86] Rollo, p. 77, Deed of Assignment. One of the preambular clauses stated: "WHEREAS, the undersigned

affiant is the legal husband of EDNA M. OTAMIAS and the father of Julie Ann, Jonathan, Jennifer, Jeffren and Jemwel all residing at Patag, Cagayan de Oro City."

[87] 111 Phil. 781 (1961) [Per J. Padilla, En Banc].

[88] Id. at 787.

[89] 432 Phil. 105 (2002) [Per J. Bellosillo, Second Division].

[90] Id. at 112-113, citing *De Leon v. Soriano*, 95 Phil. 806, 816 (1954) [Per J. Montemayor, En Banc].

[91] RULES OF COURT, Rule 3, sec. 2 provides:

SEC. 2. Parties in interest. - A real party in interest is the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit. Unless otherwise authorized by law or these Rules, every action must be prosecuted or defended in the name of the real party in interest.

[92] RULES OF COURT, Rule 3, sec. 8 provides:

SEC. 8. Necessary Party - A necessary party is one who is not indispensable but who ought to be joined as a party if complete relief is to be accorded as to those already parties, or for a complete determination or settlement of the claim subject of the action.

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