

MAURICIA MAJARABAS ET AL., PLAINTIFFS AND APPELLEES, VS. INOCENCIO LEONARDO, DEFENDANT AND APPELLANT.

G.R. No. 4348. September 12, 1908

Ponente: MAPA, J.

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MAPA, J.:

The defendant arid appellant in this case set up a question by means of a demurrer relative to the legal nature of the contract upon which the complaint was based; It is alleged therein that the plaintiff had rendered services as wet nurse and governess to an infant daughter of the defendant by virtue of a verbal agreement entered into with the now deceased parents of the defendant, who, to use the language of the complaint, "promised to liberally compensate the services of the plaintiff, providing for the maintenance of herself, her husband, and their child, during all the time that the services of the plaintiff were required as such wet nurse and governess."

It is maintained in the demurrer that the obligation contracted by the parents of the defendant was to support the plaintiff and her family, and that by reason of the death of the former, as stated in the complaint, under the provisions of article 150 of the Civil Code, the said obligation has been extinguished in fact and in law, and the plaintiff can not, therefore, bring suit for compliance therewith. The demurrer was overruled by the court below on the ground that aforesaid agreement constituted a contract for services, although the price was to be measured by the cost of the maintenance of the plaintiff. This ruling has been assigned as error by the appellant in his brief.

The objection made by the latter to the holding of the court below on the contract set out in the complaint, is that the fixed price for the services required of the plaintiff is not stipulated therein, and that without a specified price no lease of services can exist, said requirement being essential to such a contract. Article 1544 of the Civil Code provides as follows:

"In a lease of works or services, one of the parties binds himself to execute a work or to render a service to the other for a specified price."

According to this definition, a fixed price is a requisite in a contract for services, and, as is justly maintained by the appellant, is therefore an essential part thereof. The question is reduced to determining what, in a legal sense, is understood by a fixed price.

In the matter of contracts of purchase and sale wherein the said requisite is also a necessary and indispensable condition, article 1447 of the .said code provides:

"In order that the price may be considered fixed, it shall be sufficient that it be fixed with regard to another determinate thing also specific, or that the determination of the same be left to the judgment of a specified person."

According to this it is not necessary that the certainty Of the price be actual or determined at the time of executing the contract, but that it is a sufficient compliance with the law if the same can be determined by the stipulations of the contract made by the parties thereto. In the present case the contracting parties fixed the maintenance of the

plaintiff and her family as the price for the services required of her. Said maintenance is the specific and determinate thing that in its turn fixes the price, inasmuch as its cost determines the price according to the agreement of the parties to the contract. There might be a question as to the actual cost of the plaintiff's maintenance, but this is a matter of fact which in such a case would have to be proven. Be it as it may, whatever might be the cost of said subsistence, it would constitute the price for the services rendered by the plaintiff; said price is unquestionably the specified one since it refers to a specified thing designated by the parties as the rate regulating the amount thereof. Therefore, the appellant's allegation is unfounded, and the order of the court below overruling the demurrer must be affirmed.

The second error assigned by the appellant refers to the fact, duly considered by the court below, that the defendant and his father had entered with the plaintiff into the agreement alleged in the complaint. The finding of the court below is supported by the testimony of several witnesses, who attest that the said agreement was made in their presence, and that it was made on the morning of the 8th of January, 1901, at the house of the plaintiff, in the barrio of Santo Angel, municipality of Santa Cruz, Province of La Laguna. The appellant endeavored to show that as vice-president of the municipality of Santa Cruz, during the insurrection, a town already occupied by the American forces, it was absolutely impossible for him at that time to reach the aforesaid barrio of Santo Angel, because, as were all revolutionists, he was the subject of active pursuit on the part of said forces. It appears, however, from the testimony of a witness, that in those days the defendant used to visit his family, who resided in the barrio of Calios, also within the jurisdiction of Santa Cruz; that he paid his visits in the afternoons and also very early in the mornings. According to the testimony of the appellant on folio 18 of the record, the barrio of Calios is the nearest to the town of Santa Cruz. If he was able to enter Calios, it is difficult to understand why it was impossible for him to reach the barrio of Santo Angel, which is farther away from the town of Santa Cruz where the American forces were encamped. This being the case, and as the impossibility alleged by the appellant did not exist, the finding of the court below, supported as has been stated by the testimony of the witnesses of the plaintiff, does not in any manner appear to be contrary to the weight of the evidence.

Neither does the other finding in the judgment, that the daughter of the defendant was nursed by the plaintiff from January, 1901, to the end of June, 1903, that is, during a period of two years and a half; the pretension of the appellant so far as it sustains the contrary is therefore unfounded. It is true that the testimony of the witnesses of the plaintiff and those of the defendant conflict on this point, but the judge below, taking into consideration all the circumstances of the case, gave more credit to the former than to the latter, and we can hardly say that in so doing he acted against the weight of the evidence.

Finally, the appellant assigns as error the declaration made by the judge below to the effect that the defendant is obliged to refund the plaintiffs for the expense they have been put to in caring for the defendant's daughter, at the rate of P15 per month, or P0.50 a day. The appellant states that the record contains no data whereby the amount of the expenditure incurred by the plaintiff in nursing the child may be reckoned, and that in any case the rate of P0.50 per day is manifestly excessive. According to the statement of the defendant, the remuneration agreed upon for the services of the plaintiff was the cost of her maintenance and that of her family, and it was alleged in the complaint that she spent P0.50 a day for this purpose. This was the point disputed in the matter of the amount that the defendant should pay for the care of his child, and the one that should in consequence have been proven by the plaintiff. And, as a matter of fact, the latter testified that she spent the said sum every day as living expenses for herself and her family; her testimony was confirmed by another witness, and the testimony of both has not been weakened or contradicted by any proof to the contrary. Inasmuch as the defendant bound himself to bear the cost of the plaintiff's maintenance, in exchange for the care of his child, and since such maintenance cost P0.50 per day, it may well be said that the expense occasioned by the care of the child amounted to the aforesaid sum. In our opinion, the judgment appealed from should thus be understood in so far as it refers to this point. At all events, the

diversity of expression or the more or less precision thereof does not affect, nor can it affect in any manner the existence of the facts discussed and proven, nor the essential rights of the contending parties.

The judgment appealed from is hereby affirmed with the costs of this instance against the appellant. So ordered.

Arellano, C. J., Torres, Carson, Willard, and Tracey, JJ., concur.

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