

**OSCAR E. GUERRERO, PLAINTIFF AND APPELLEE, VS. ISIDORO DE SANTOS, DEFENDANT AND APPELLANT.***G.R. No. 44427. March 31, 1938*

Ponente: AVANCEÑA, C.J.

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In two cases for the collection of mortgage debts instituted against Dr. Isidoro de Santos by El Hogar Filipino and John Gordon, respectively, the parties, with the concurrence of the Bank of the Philippine Islands, another judgment creditor of Dr. De Santos, agreed to have judgments rendered but not executed, for the amounts claimed; and, in the meantime, to have Gordon, as receiver, take charge and possession of all the properties subject of the execution, and apply the rents thereof to the payment of the mortgage debts, after first deducting the receiver's compensation, expenses of administration, taxes, fire insurance policies and a monthly allowance of P1,000 to Dr. Isidoro de Santos for his support.

Judgment, which has become final, was rendered in the present case against Isidoro de Santos for the payment of the sum of P2,156.26 to the plaintiff Oscar Guerrero. The defendant having failed to pay the amount adjudged, on motion of the plaintiff and in accordance with section 482 of the Code of Civil Procedure, the court ordered John Gordon, on March 28, 1935, to deliver to the sheriff of Manila or to the clerk of court, until the judgment for P2,156.26 is satisfied, the amounts that he had or might have in his possession coming from the allowance of P1,000 assigned monthly to Dr. Isidoro de Santos, as per agreement between him and his creditors. This is the order from which Dr. Isidoro de Santos now appeals.

The trial court entered the appealed resolution on the ground that the sum of P1,000 assigned to Dr. Isidoro de Santos every month is not an allowance for support and, even if it were, it is not exempt from execution.

We are of the opinion that the appealed resolution should be affirmed.

Although it appears from the agreement between Dr. Isidoro de Santos and his creditors that this monthly allowance of P1,000 is for his support, in reality, it is not. Said allowance being part of the rents derived from the properties of Dr. Isidoro de Santos, it belongs to him and he receives it, not as given by his creditors, but as coming from his own property. In reality, the agreement from which this allowance originated means nothing more than that the creditors have consented to set aside a portion of the rents of the properties of Dr. Isidoro de Santos before they are applied to pay his obligations. On the other hand, this so-called allowance is not justified since it does not appear that Dr. De Santos needs it for his support notwithstanding he is a practicing physician and has a clinic in Manila.

At any rate, even if it were an allowance for support, it is not exempt from execution, according to section 452 of the Code of Civil Procedure, since it is not included among the properties enumerated in this section. The appellant invokes article 151 of the Civil Code, which provides that the right to support cannot be set off against any indebtedness of the recipient in favor of the person required to furnish such support. But the prohibition contained in this article does not preclude the execution of the allowance, as it is not included among the

properties exempted by law. (Decisions of the Supreme Court of Spain dated July 7, 1902 and February 27, 1903.) Act No. 3862, which exempts from execution all moneys, benefits, privileges or annuities accruing or in any manner growing out of any life insurance, is neither applicable to the allowance in question as it does not originate from life insurance. The condition requiring that an allowance, in order to be exempted, must come from life insurance, excludes all other allowances coming from other sources.

The appealed judgment is affirmed with costs against the appellant. So ordered.

Abad Santos, Imperial, Diaz, Laurel, and Concepcion, JJ., concur.

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## DISSENTING

### VILLA-REAL, J.:

I regret to dissent from the majority opinion for which I have the greatest respect.

The order of the Court of First Instance of Manila of May 16, 1935, entered in the instant case, states:

"The parties verbally agreed that, in resolving this incident, there be taken into account the agreement signed by John Gordon, the plaintiff in case No. 43373 of this court, Isidoro de Santos, the defendant in the said case, and El Hogar Filipino, plaintiff in case No. 41033 of this same court wherein said Isidoro de Santos is likewise defendant. In this agreement the parties, among other things, stipulated that judgment be rendered in case No. 43373 against the defendant Isidoro de Santos and in favor of the plaintiff John Gordon, for the sum of P125,439.51, with interest at ten per cent per annum upon the amount of P102,632.54 from August 1, 1933 until fully paid, the appointment of John Gordon as receiver of the properties referred to in the said agreement. And that said receiver be entitled to a monthly compensation equivalent to three (3%) per cent of the collections made by him reserving, after deducting the said compensation and other expenses of good administration, a reasonable amount for the payment when due of the taxes and fire insurance policies; from the balance, he shall pay to the defendant debtor Dr. Isidoro de Santos, within the first ten (10) days of every month, from September 1, 1933, an amount equivalent to 16 per cent of the collections made during the next preceding month, by way of allowance for his support and that of his family, provided that this allowance does not, under any circumstance, exceed one thousand (P1,000) pesos a month, or be less than twelve thousand (P12,000) pesos annually, if the collections for the entire year are sufficient for the purpose after making the deductions provided in this paragraph, and he shall distribute the remainder of his monthly collections as follows: \* \* \*."

Section 482 of the Code of Civil Procedure, as amended by section 25 of Act No. 1627, provides, among other things that "the earnings of the debtor for his personal services at any time within one month preceding the order can not be applied when it is made to appear by the affidavit of the debtor, or otherwise, that such earnings are necessary for the support of his family."

Three requisites are established by the aforequoted provision in order that the earnings of a debtor may be exempt from execution of a judgment, namely: (1) That the earnings be for personal services; (2) that they be obtained within one month preceding the order; and (3) that they be necessary for the support of the family and that such need is made to appear by affidavit of the debtor or otherwise.

Now, then, are the P1,000 assigned to the defendant-appellant Dr. Isidoro de Santos by his creditors as allowance for support in the above-quoted agreement, personal earnings?

Upon motion of his creditors, the extensive real properties of the said Dr. Isidoro de Santos were, by judicial order, placed in the hands of a receiver, thereby depriving him of the use and enjoyment of said properties and the products thereof. He was compelled to make this sacrifice for the benefit of his said creditors who, undoubtedly cognizant of his precarious situation and that of his family without the possession of said properties and the enjoyment of the fruits thereof, agreed to give him, as they in fact did, an allowance for support. The deprivation of the use and enjoyment of his properties which the defendant-appellant had to bear in the interest of his creditors, constitutes, without doubt, a personal service to said creditors because it redounded to their benefit. The dictionary of the Spanish language of the Spanish Academy defines the word "servicio" as "utilidad o provecho que resulta a uno de lo que otro ejecute en atencion suya." The law does not specify the kind of personal service to be rendered that will bring it within the exemption established by law, and the rule of statutory construction is that where the law does not distinguish, no distinction should be made.

Consequently the P1,000 assigned to Dr. Isidoro de Santos by his creditors partake of the nature of earnings for personal services.

Were the said earnings obtained within the month preceding the order of execution?

On March 28, 1935, the Court of First Instance of Manila issued an order the dispositive part of which reads:

"Wherefore, John Gordon, the receiver appointed in the said civil case No. 43373, is ordered to turn over to the sheriff of Manila or to the clerk of this court funds which he had or might have constituting the share of the defendant Isidoro de Santos under the agreement had between El Hogar Filipino, the Bank of the Philippine Islands and John Gordon, referred to in the latter's aforementioned answer, until full payment of the amount of P2,156.26 owing from Isidoro de Santos in the present case."

Pursuant to the aforementioned order, the receiver was to deliver either to the sheriff of Manila or to the clerk of said court a certain amount of the P1,000 corresponding to Dr. Isidoro de Santos by way of monthly allowance until full payment of the sum of P2,156.26. The amount to be deducted monthly from the allowance for support was not fixed. There is no doubt that the amount to be taken from the allowance corresponding to the month of March when the judgment was rendered, was needed by him and his family for their support during said month, and the subsequent amounts in the following months were likewise needed for his support and that of his family during the said months. All the said deductions, therefore, were made from personal earnings for the months when the debtor and his family need their allowance for support.

Is the aforesaid amount of P1,000 necessary for the support of the family of the defendant-appellant, and has such need been established?

That such need exists is shown by the defendant-appellant in his opposition and must have been understood by the said creditors as indicated by their humanitarian act in granting him the said allowance. The said creditors were interested in the payment of the debtor's indebtedness as soon as possible. Had they believed that such allowance was not necessary for the support of the defendant-appellant and his family, they would have withheld the amount thereof to help pay his indebtedness. This evidence of the need for said allowance for the support of the family of Dr. Isidoro de Santos is sufficient, inasmuch as section 482 above-quoted of the Code of Civil Procedure, as amended, allows proof of such need either by the debtor's affidavit or otherwise.

It will be argued that the plaintiff and appellee, Oscar E. Guerrero, did not have any part in said agreement entered into between Dr. Isidoro de Santos and his creditors. According to the appealed decision, said plaintiff-appellee verbally agreed that the said agreement be taken into account in resolving the incident relative to the execution of the said allowance.

Moreover, the legislator, in establishing the exemption referred to, undoubtedly intended to protect the debtor's family by not depriving it of its daily bread due to a contractual or judicial obligation for money. If this has been the legislator's intention, to withdraw the allowance for support here in question from the benefits of the exemption established in section 482 of the Code of Civil Procedure would be not only to go against such intention but, as above stated, to make a distinction where none was made by law. Certainly the legislator could not have intended to protect some debtor's families against hunger and permit those of others found in the same situation to die thereof. But even if the allowance for support in question were not within the letter of the law, nevertheless we can consider it as within its spirit to promote the legislator's intention. Article 6 of the Civil Code makes responsible any "court which shall refuse to render judgment upon the pretext of silence, obscurity, or insufficiency of the law", ordaining it in such cases to apply the general principles of law which authorize that the deficiencies of the law be supplied by giving effect to its spirit.

In view of the foregoing considerations, I am humbly of the opinion that the appealed decision should be reversed and the defendant-appellant absolved from the complaint.

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