

JOSEFA MALABANA, PETITIONER, VS. QUIRICO ABETO, JUDGE OF THE COURT OF FIRST INSTANCE OF MANILA, AND ROBERTO V. GONZALEZ, RESPONDENTS.

G.R. No. 48283. October 28, 1942

Ponente: YULO. C.J.

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YULO. C.J.:

On March 14, 1940, the Court of First Instance of Manila rendered the following decision in civil case No. 56288 of that Court, wherein petitioner was plaintiff and the respondent Roberto V. Gonzalez was defendant :

"This is an action instituted by the plaintiff against the herein defendant for support or to compel the latter to give her and the child to be born a monthly allowance of fifty pesos (PBO) a month retroactive as of January 1, 1940, by virtue of his promise in writing executed by the said defendant.

"The defendant, Roberto V. Gonzalez, was personally served with summons on January 18, 1940, and on February 14, 1940, was declared in default by this Court for failure to enter his appearance within the reglamentary period or time as provided for by the Rules of Court. On the 27th day of the same month the plaintiff was ordered by this Court to present her evidence.

"At the trial, aside from the testimony of the plaintiff proving all the allegations contained in her complaint, Exhibits A and B were introduced and admitted by the Court. Exhibit A. is the affidavit signed by the plaintiff, Josefa Malabana, and Exhibit B also is an affidavit signed by the defendant herein, Roberto V. Gonzalez, establishing undisputably the paternity of the child to be born by the herein plaintiff and the unconditional promise of the herein defendant to give a monthly allowance or support to the plaintiff and her child to be born in the amount of fifty pesos (P50) a month retroactive as of January 1, 1940.

"Wherefore, defendant is hereby ordered to give the herein plaintiff and her child to be born a monthly allowance for support in the amount of fifty pesos (MO) retroactive as of January 1, 1940, and every month thereafter with costs."

Respondent Gonzalez has been paying the monthly allowances provided in the decision until August 15, 1940. The child having died on August 20, 1940, the said respondent refused to continue paying such allowance, and thereupon petitioner filed a motion in the lower court for an order compelling respondent to comply with the terms of the decision. On February 4, 1941, the lower court denied the motion, holding that respondent's obligation to pay the monthly allowance for support ceased with the death of the child. Petitioner seeks a review of this order, and alleges that the order of the lower court was in effect an amendment of the decision which had long become final, and was thus issued in excess of jurisdiction, and, further, that as the decision provided that the allowance of P50 was for the support of herself and her child, she is entitled to at least one-half of this amount upon the death of the child.

A judgment for support can never become final, in the sense that it cannot be subject to modification, because the obligation to give support has to depend not only upon varying-conditions affecting the ability of the obligor to

pay the amount fixed therefor, but also upon the ever changing needs of the beneficiary himself. (Civil Code, arts. 146, 147.) In the instant case, it is clear from the decision above transcribed that respondent's obligation to pay the pension can legally rest only on the right of the child to support. It cannot be predicated upon any promise to petitioner for her exclusive benefit, because then such promise would perforce be based upon an illicit consideration and as such it would be unenforceable in law. The death of the child removed the only valid cause for the judgment for support, and the lower court has rightly held that respondent's obligation ceased with that eventuality. (Civil Code, art. 150.)

However, as respondent Gonzalez, has not paid the entire monthly allowance corresponding to the month of August, 1940, and as allowances for support should be payable in advance, it follows that he is in arrears as to the unpaid portion thereof. (Civil Code, art. 148.) It matters not that the child died on August 20th, for under the provisions of the Civil Code just cited, the heirs of a deceased person entitled to support are under no obligation to return whatever he may have received in advance for such support. In any event, the sum corresponding to the last ten days of the month can hardly compensate the extraordinary expenses which petitioner must have incurred due to the illness and subsequent death of the child in St. Luke's Hospital, and as a matter of equity, petitioner should be allowed that amount.

The order under review is modified, and respondent Roberto V. Gonzalez is hereby ordered to pay petitioner the sum of P25, with legal interest from September 25, 1940, plus the costs. So ordered.

Ozaeta, Paras, Bocobo, and Generoso, JJ., concur.

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