

BUENAVENTURA SAN JUAN, PETITIONER, VS. HON. MANUEL E. VALENZUELA, JUDGE OF THE COURT OF FIRST INSTANCE OF RIZAL AND DOROTEA MEJIA, RESPONDENTS.

G.R. No. 59906. October 23, 1982

Ponente: ESCOLIN, J.

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ESCOLIN, J.:

Petition for certiorari to annul and set aside the order of respondent Judge Manuel E. Valenzuela in Civil Case No. 8874-P of the Court of First Instance of Rizal, Branch XXIX, dated December 24, 1981, ordering petitioner Buenaventura San Juan to give support pendente lite to respondent Dorotea Mejia and her minor children.

It appears that on September 16, 1981, the marriage between respondent Mejia and petitioner San Juan, solemnized on October 2, 1973, was declared null and void by the Court of First Instance of Rizal on the ground of a prior and subsisting marriage between petitioner and one Isabel Bandin. On February 25, 1981, respondent Mejia instituted the instant action against petitioner, docketed as Civil Case No. 8874-P, seeking support for herself and her two minor children.

After issues were joined, the respondent judge, on motion of Mejia, entered the challenged order granting support pendente lite as follows:

"IN VIEW OF THE FOREGOING, pursuant to Section 5, Rule 61 of the New Rules of Court and after giving due regard to the necessities of the plaintiff Dorotea Mejia and her children, Rachel San Juan and Jeffrey San Juan, the application for support pendente lite is hereby granted, and the same is fixed at P2,500.00 a month commencing from January 1, 1982 to be paid to the plaintiff on or the 5th day of each month until this case is finally adjudicated. This is without prejudice to any judgment for support in arrears due the plaintiff if the evidence will so warrant after trial."

"SO ORDERED."

Petitioner's motion for reconsideration of the above order on the grounds that (1) the amount is grossly disproportionate to petitioner's means; (2) petitioner is not obliged to support respondent Mejia as their marriage is null and void; and (3) no evidence was presented as to petitioner's present resources, was denied.

Hence, on March 16, 1982, petitioner instituted this petition.

It appears that pending resolution of this petition, petitioner filed with the trial court a manifestation, dated June 17, 1982, proposing to settle his obligation of P15,000.00, representing the amount of support which accrued from January to June, 1982, and to pay the same in three equal installments, the first to be paid upon approval by the court of his scheme of payment, and the balance within a period of two (2) months thereafter. This proposal was approved by the court. In the same manifestation, petitioner sought the reduction of the amount of support pendente lite to P1,000.00 a month on the ground that the sum of P2,500.00 previously fixed by respondent judge is now beyond his means to pay. According to private respondent, the court had not yet acted on petitioner's

request for reduction of the monthly support because the respondent judge left for abroad.[1]

Unquestionably, the petitioner's willingness to pay the amount of support pendente lite in the manner indicated in his manifestation, and the approval thereof by the respondent judge have rendered this petition moot and academic.

As to the factual issue of whether the amount of P2,500.00 previously fixed by respondent judge is now beyond the means of petitioner, the same should be resolved by the lower court on the basis of the evidence to be presented at the proper hearing. The order of December 24 fixing the amount of support pendente lite is not final in character in the sense that it can be the subject of modification, depending on the changing conditions affecting the ability of the obligor to pay the amount fixed for support.[2]

WHEREFORE, the instant petition is hereby dismissed for being moot and academic. No costs.

SO ORDERED.

Makasiar, (Chairman), Aquino, Concepcion, Jr., Guerrero, Abad Santos, and De Castro, JJ., concur.

[1] p. 4, Comment of respondent Mejia.

[2] Article 297, Civil Code, Gurayet vs. Hashim, 47 Phil. 84.

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