

SECOND DIVISION

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

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 BY COL. VIRGILIO O. DOMINGO, IN HIS CAPACITY AS THE COMMANDING OFFICER OF THE PENSION AND GRATUITY MANAGEMENT CENTER (PGMC) OF THE ARMED FORCES OF THE PHILIPPINES, RESPONDENT.

DECISION

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 Marshall 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 26th 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 26th 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 PGMC'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 PGMC 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 PGMC on September 9, 2008.^[32]

The AFP PGMC 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]