

## FIRST DIVISION

[ G.R. Nos. 175279-80, June 05, 2013 ]

**SUSAN LIM-LUA, PETITIONER, VS. DANILO Y. LUA,  
RESPONDENT.**

### D E C I S I O N

**VILLARAMA, JR., J.:**

In this petition for review on certiorari under Rule 45, petitioner seeks to set aside the Decision<sup>[1]</sup> dated April 20, 2006 and Resolution<sup>[2]</sup> dated October 26, 2006 of the Court of Appeals (CA) dismissing her petition for contempt (CA-G.R. SP No. 01154) and granting respondent's petition for certiorari (CA-G.R. SP No. 01315).

The factual background is as follows:

On September 3, 2003,<sup>[3]</sup> petitioner Susan Lim-Lua filed an action for the declaration of nullity of her marriage with respondent Danilo Y. Lua, docketed as Civil Case No. CEB-29346 of the Regional Trial Court (RTC) of Cebu City, Branch 14.

In her prayer for support *pendente lite* for herself and her two children, petitioner sought the amount of P500,000.00 as monthly support, citing respondent's huge earnings from salaries and dividends in several companies and businesses here and abroad.<sup>[4]</sup>

After due hearing, Judge Raphael B. Yrastorza, Sr. issued an Order<sup>[5]</sup> dated March 31, 2004 granting support *pendente lite*, as follows:

From the evidence already adduced by the parties, the amount of Two Hundred Fifty (P250,000.00) Thousand Pesos would be sufficient to take care of the needs of the plaintiff. This amount *excludes the One hundred thirty-five (P135,000.00) Thousand Pesos for medical attendance expenses* needed by plaintiff for the operation of both her eye[s] which is demandable upon the conduct of such operation. The amounts already extended to the two (2) children, being a commendable act of defendant, should be continued by him considering the vast financial resources at his disposal.

According to Art. 203 of the Family Code, support is demandable from the time plaintiff needed the said support but is payable only from the date of judicial demand. Since the instant complaint was filed on 03 September 2003, the amount of Two Hundred Fifty (P250,000.00) Thousand should be paid by defendant to plaintiff retroactively to such date until the hearing of the support *pendente lite*. P250,000.00 x 7 corresponding to the seven (7) months that lapsed from September, 2003 to March 2004 would tantamount to a total of One Million Seven

Hundred Fifty (P1,750,000.00) Thousand Pesos. Thereafter, starting the month of April 2004, until otherwise ordered by this Court, defendant is ordered to pay a monthly support of *Two Hundred Fifty Thousand (P250,000.00) Pesos payable within the first five (5) days of each corresponding month* pursuant to the third paragraph of Art. 203 of the Family Code of the Philippines. The monthly support of P250,000.00 is without prejudice to any increase or decrease thereof that this Court may grant plaintiff as the circumstances may warrant i.e. depending on the proof submitted by the parties during the proceedings for the main action for support. [6]

Respondent filed a motion for reconsideration, [7] asserting that petitioner is not entitled to spousal support considering that she does not maintain for herself a separate dwelling from their children and respondent has continued to support the family for their sustenance and well-being in accordance with family's social and financial standing. As to the P250,000.00 granted by the trial court as monthly support *pendente lite*, as well as the P1,750,000.00 retroactive support, respondent found it unconscionable and beyond the intendment of the law for not having considered the needs of the respondent.

In its May 13, 2004 Order, the trial court stated that the March 31, 2004 Order had become final and executory since respondent's motion for reconsideration is treated as a mere scrap of paper for violation of the three-day notice period under Section 4, Rule 15 of the 1997 Rules of Civil Procedure, as amended, and therefore did not interrupt the running of the period to appeal. Respondent was given ten (10) days to show cause why he should not be held in contempt of the court for disregarding the March 31, 2004 order granting support *pendente lite*. [8]

His second motion for reconsideration having been denied, respondent filed a petition for certiorari in the CA.

On April 12, 2005, the CA rendered its Decision, [9] finding merit in respondent's contention that the trial court gravely abused its discretion in granting P250,000.00 monthly support to petitioner without evidence to prove his actual income. The said court thus decreed:

WHEREFORE, foregoing premises considered, this petition is given due course. The assailed Orders dated March 31, 2004, May 13, 2004, June 4, 2004 and June 18, 2004 of the Regional Trial Court, Branch 14, Cebu City issued in Civil Case No. CEB No. 29346 entitled "Susan Lim Lua versus Danilo Y. Lua" are hereby nullified and set aside and instead a new one is entered ordering herein petitioner:

- a) to pay private respondent a monthly support *pendente lite* of P115,000.00 beginning the month of April 2005 and every month thereafter within the first five (5) days thereof;
- b) to pay the private respondent the amount of P115,000.00 a month multiplied by the number of months starting from September 2003 until March 2005 less than the amount supposedly given by

- petitioner to the private respondent as her and their two (2) children monthly support; and
- c) to pay the costs.

SO ORDERED.<sup>[10]</sup>

Neither of the parties appealed this decision of the CA. In a Compliance<sup>[11]</sup> dated June 28, 2005, respondent attached a copy of a check he issued in the amount of P162,651.90 payable to petitioner. Respondent explained that, as decreed in the CA decision, he deducted from the amount of support in arrears (September 3, 2003 to March 2005) ordered by the CA -- P2,185,000.00 -- plus P460,000.00 (April, May, June and July 2005), totalling P2,645,000.00, the advances given by him to his children and petitioner in the sum of P2,482,348.16 (with attached photocopies of receipts/billings).

In her Comment to Compliance with Motion for Issuance of a Writ of Execution,<sup>[12]</sup> petitioner asserted that none of the expenses deducted by respondent may be chargeable as part of the monthly support contemplated by the CA in CA-G.R. SP No. 84740.

On September 27, 2005, the trial court issued an Order<sup>[13]</sup> granting petitioner's motion for issuance of a writ of execution as it rejected respondent's interpretation of the CA decision. Respondent filed a motion for reconsideration and subsequently also filed a motion for inhibition of Judge Raphael B. Yrastorza, Sr. On November 25, 2005, Judge Yrastorza, Sr. issued an Order<sup>[14]</sup> denying both motions.

WHEREFORE, in view of the foregoing premises, both motions are DENIED. Since a second motion for reconsideration is prohibited under the Rules, this denial has attained finality; let, therefore, a writ of execution be issued in favor of plaintiff as against defendant for the *accumulated support in arrears pendente lite*.

Notify both parties of this Order.

SO ORDERED.<sup>[15]</sup>

Since respondent still failed and refused to pay the support in arrears *pendente lite*, petitioner filed in the CA a Petition for Contempt of Court with Damages, docketed as CA-G.R. SP No. 01154 ("*Susan Lim Lua versus Danilo Y. Lua*"). Respondent, on the other hand, filed CA-G.R. SP No. 01315, a Petition for Certiorari under Rule 65 of the Rules of Court ("*Danilo Y. Lua versus Hon. Raphael B. Yrastorza, Sr., in his capacity as Presiding Judge of Regional Trial Court of Cebu, Branch 14, and Susan Lim Lua*"). The two cases were consolidated.

By Decision dated April 20, 2006, the CA set aside the assailed orders of the trial court, as follows:

**WHEREFORE**, judgment is hereby rendered:

- a) DISMISSING, for lack of merit, the case of Petition for Contempt of Court with Damages filed by Susan Lim Lua against Danilo Y. Lua with docket no. SP. CA-GR No. 01154;

b) GRANTING Danilo Y. Lua's Petition for Certiorari docketed as SP. CA-GR No. 01315. Consequently, the assailed Orders dated 27 September 2005 and 25 November 2005 of the Regional Trial Court, Branch 14, Cebu City issued in Civil Case No. CEB-29346 entitled "Susan Lim Lua versus Danilo Y. Lua, are hereby NULLIFIED and SET ASIDE, and instead a new one is entered:

i. ORDERING the deduction of the amount of PhP2,482,348.16 plus 946,465.64, or a total of PhP3,428,813.80 from the current total support in arrears of Danilo Y. Lua to his wife, Susan Lim Lua and their two (2) children;

ii. ORDERING Danilo Y. Lua to resume payment of his monthly support of PhP115,000.00 pesos starting from the time payment of this amount was deferred by him subject to the deductions aforementioned.

iii. DIRECTING the issuance of a permanent writ of preliminary injunction.

**SO ORDERED.**<sup>[16]</sup>

The appellate court said that the trial court should not have completely disregarded the expenses incurred by respondent consisting of the purchase and maintenance of the two cars, payment of tuition fees, travel expenses, and the credit card purchases involving groceries, dry goods and books, which certainly inured to the benefit not only of the two children, but their mother (petitioner) as well. It held that respondent's act of deferring the monthly support adjudged in CA-G.R. SP No. 84740 was not contumacious as it was anchored on valid and justifiable reasons. Respondent said he just wanted the issue of whether to deduct his advances be settled first in view of the different interpretation by the trial court of the appellate court's decision in CA- G.R. SP No. 84740. It also noted the lack of contribution from the petitioner in the joint obligation of spouses to support their children.

Petitioner filed a motion for reconsideration but it was denied by the CA.

Hence, this petition raising the following errors allegedly committed by the CA:

I

THE HONORABLE COURT ERRED IN NOT FINDING RESPONDENT GUILTY OF INDIRECT CONTEMPT.

II

THE HONORABLE COURT ERRED IN ORDERING THE DEDUCTION OF THE AMOUNT OF PHP2,482,348.16 PLUS 946,465.64, OR A TOTAL OF PHP3,428,813.80 FROM THE CURRENT TOTAL SUPPORT IN ARREARS OF THE RESPONDENT TO THE PETITIONER AND THEIR CHILDREN.<sup>[17]</sup>

The main issue is whether certain expenses already incurred by the respondent may be deducted from the total support in arrears owing to petitioner and her children pursuant to the Decision dated April 12, 2005 in CA-G.R. SP No. 84740.

The pertinent provision of the Family Code of the Philippines provides:

Article 194. Support comprises everything **indispensable** for sustenance, dwelling, clothing, medical attendance, education and transportation, in keeping with the financial capacity of the family.

The education of the person entitled to be supported referred to in the preceding paragraph shall include his schooling or training for some profession, trade or vocation, even beyond the age of majority. Transportation shall include expenses in going to and from school, or to and from place of work. (Emphasis supplied.)

Petitioner argues that it was patently erroneous for the CA to have allowed the deduction of the value of the two cars and their maintenance costs from the support in arrears, as these items are not indispensable to the sustenance of the family or in keeping them alive. She points out that in the Decision in CA-G.R. SP No. 84740, the CA already considered the said items which it deemed chargeable to respondent, while the monthly support *pendente lite* (P115,000.00) was fixed on the basis of the documentary evidence of respondent's alleged income from various businesses and petitioner's testimony that she needed P113,000.00 for the maintenance of the household and other miscellaneous expenses *excluding* the P135,000.00 medical attendance expenses of petitioner.

Respondent, on the other hand, contends that disallowing the subject deductions would result in unjust enrichment, thus making him pay for the same obligation twice. Since petitioner and the children resided in one residence, the groceries and dry goods purchased by the children using respondent's credit card, totalling P594,151.58 for the period September 2003 to June 2005 were not consumed by the children alone but shared with their mother. As to the Volkswagen Beetle and BMW 316i respondent bought for his daughter Angelli Suzanne Lua and Daniel Ryan Lua, respectively, these, too, are to be considered advances for support, in keeping with the financial capacity of the family. Respondent stressed that being children of parents belonging to the upper-class society, Angelli and Daniel Ryan had never in their entire life commuted from one place to another, nor do they eat their meals at "carinderias". Hence, the cars and their maintenance are indispensable to the children's day-to-day living, the value of which were properly deducted from the arrearages in support *pendente lite* ordered by the trial and appellate courts.

As a matter of law, the amount of support which those related by marriage and family relationship is generally obliged to give each other shall be in proportion to the resources or means of the giver and to the needs of the recipient.<sup>[18]</sup> Such support comprises everything indispensable for sustenance, dwelling, clothing, medical attendance, education and transportation, in keeping with the financial capacity of the family.

Upon receipt of a verified petition for declaration of absolute nullity of void marriage or for annulment of voidable marriage, or for legal separation, and at any time during the proceeding, the court, *motu proprio* or upon verified application of any of