

THIRD DIVISION

[G.R. NO. 171698, July 04, 2007]

**MARIA SHEILA ALMIRA T. VIESCA, PETITIONER, VS. DAVID
GILINSKY, * RESPONDENT.**

DECISION

CHICO-NAZARIO, J.:

This is a Petition for Review on *Certiorari* of the Decision^[1] of the Court of Appeals promulgated on 19 October 2005 in CA-G.R. SP No. 90285 which affirmed, with modification, the Order dated 16 June 2005 rendered by the Regional Trial Court, Branch 136, Makati City, in Civil Case SP Proc. Case No. M-5785.

The facts of the case are as follows:

Petitioner and respondent, a Canadian citizen, met sometime in January 1999 at the Makati Shangri-La Hotel where the former worked as a hotel manager. After a few months, a relationship blossomed between the two. On 22 October 2001, their son Louis Maxwell was born.^[2] On 30 October 2001, respondent executed an Affidavit of Acknowledgment/Admission of Paternity^[3] of the child. Subsequently, the Civil Registrar of Makati City issued a Certification granting the change of Louis Maxwell's surname from "Viesca" to "Gilinsky."^[4]

Unfortunately, the relationship between petitioner and respondent soured and they parted ways during the early part of 2003.

On 6 February 2004, respondent filed a Petition praying that he be entitled to the company of Louis Maxwell at any time of any given day; he be entitled to enjoy the company of Louis Maxwell during weekends and on such occasions the child shall be allowed to spend the night with his father; and he be entitled to enjoy a yearly three- week vacation in any destination with his child.^[5] The case was raffled off to public respondent's sala and was docketed as SP Proc. Case No. No 5785.

During the pendency of respondent's petition, the parties arrived at a compromise agreement. This compromise agreement was submitted before the trial court and became the basis of the Compromise Judgment issued on 12 May 2004.^[6] We reproduce the Compromise Judgment below —

COMPROMISE JUDGMENT

Acting on the joint motion to render judgment based on Compromise Agreement and finding the allegations therein to be of merit, same is hereby given due course.

Judgment is therefore rendered based on the compromise agreement which is quoted hereunder.

"COMPROMISE AGREEMENT

KNOW ALL MEN BY THESE PRESENTS:

This Agreement entered this 22nd day of April 2004 by and between:

DAVID GILINSKY, of legal age, single and residing at Suite 2828, Makati Shang-rila Hotel, Ayala Avenue corner Makati Avenue, Makati City, hereinafter referred to as the "FATHER"

-and-

SHEILA T. VIESCA, of legal age, single and a resident of Lot 2, Block 39, Phase 5, Fort Bonifacio, Taguig, Metro Manila, hereinafter referred to as the "MOTHER".

WITNESSETH:

WHEREAS, the parties are the biological parents of minor LOUIS MAXWELL (the "CHILD") born on 22 October 2001;

WHEREAS, as a result of disputes and differences, the parties are now living separately and apart;

WHEREAS, the parties desire to provide for a complete settlement of the issues pertaining to the custody, visitorial rights, support and maintenance of the child;

WHEREAS, each party acknowledges his or her personal obligations as parent of the child and, by these presents, each hereby undertakes to render the performance of these obligations to the child and comply with his or her duties as a parent;

NOW, THEREFORE, for and in consideration of the promises and dispositions made in this agreement, the parties hereto have agreed as follows:

I. CUSTODY OF THE CHILD

The mother shall continue to have custody over LOUIS MAXWELL while the father shall exercise visitorial rights as hereunder stated.

Both parties, by these presents, undertake to take every measure necessary, desirable and proper, to consider the best interest of the child at all times, whether with them or away from them. Any act, word or manipulative scheme that may cause the alienation of feelings or loss of respect or that either one or both of them, from either one of the parties, shall never be tolerated.

II. VISITATION RIGHTS

As the child will continue to be in the custody of the mother, the father, as the non-custodial parent shall be entitled to the following supervised visitation rights, to wit:

- a. He shall be entitled to the company of the child every Saturday and/or Sunday afternoon;
- b. The child shall be allowed to spend the night with the father once a week;
- c. Nothing herein shall prevent the father from visiting the child during reasonable hour in the afternoon of any day of the week at the mother's residence in the presence of the mother or her duly designated representative, and with prior notice to the mother.

One year after the signing of this agreement, the parties shall meet to discuss and resolve the matter pertaining to the entitlement of the father to enjoy a yearly, three-week vacation in any destination with the child.

In the exercise and/or enjoyment of the above rights, the mother shall have the right to designate any person of suitable age to accompany the child.

III. SUPPORT

- a. The father shall give monthly financial support of US Dollars Five Hundred (US\$500.00) or its Peso equivalent within the first five days of the month effective upon the signing of this agreement. The amount shall be subject to such yearly adjustment of such rate equal to the inflation rate determined by the appropriate government agency.
- b. On top of the said monthly financial support, the Father shall provide:
 - i. full medical and dental expenses and/or insurance coverage for the child;
 - ii. full education for the child at Colegio San Agustin, Makati or any other suitable school;
 - iii. college Education Insurance for the child;
 - iv. monthly car amortization of Ten Thousand Pesos (P10,000.00) or One Fourth (1/4) of the current amortization whichever is lower;
 - v. Monthly amortization due as of the date of this Agreement for the Rockwell-Manansala Condominium unit until its full payment and transfer of title, including its association dues

and charges. The mother here affirms/confirms she is holding title to the condominium in trust for the child.

The mother shall ensure that all arrears and/or outstanding obligations prior to the execution of this agreement shall have been settled and paid. As soon as the above have been fully complied with, the father shall pay the ensuing monthly amortization.

IV. COURT APPROVAL OF AGREEMENT

This agreement shall be governed by and construed in accordance with the laws of the Republic of the Philippines. The parties hereto shall, in good faith, strictly abide by the terms hereof.

The parties agree to submit this written agreement for the court's approval.

V. JUDICIAL RELIEF

Should either one of the parties fail to comply with the terms and conditions of this Agreement, the aggrieved party may seek judicial relief against the erring party and apply with the proper court for a writ of execution against said erring party to enforce his or her obligations imposed in this Agreement. The offending party shall pay for the cost of litigation, attorney's fees, other expenses, and interest incurred in such application for a writ of execution.

IN WITNESS WHEREOF, we have hereunto affixed our respective signatures on the date and place hereinabove mentioned.

(SGD) DAVID GILINSKY (SGD) SHEILA T. VIESCA^[7]

Father Mother

On 5 April 2005, respondent filed an "Urgent Motion for Issuance of Writ of Execution." It was alleged in said motion that petitioner had repeatedly refused to abide by the terms of the compromise judgment, particularly the provision allowing Louis Maxwell to spend a night with him at any day of the week. Respondent likewise stated in his motion that he had already filed a Petition to cite petitioner in contempt which was raffled off to the Regional Trial Court, Branch 59 of Makati City.^[8]

Respondent's Urgent Motion for Issuance of Writ of Execution was scheduled to be heard on 8 April 2005. Notice thereof was received by petitioner's counsel on 5 April 2005.^[9] On 7 April 2005, petitioner's counsel filed a Manifestation^[10] requesting that the hearing on said motion be reset, as he had to be in Balanga, Bataan on the date and time of the scheduled hearing. He also prayed that he be given a period of seven days within which to file his Comment/Opposition to respondent's Urgent Motion for Issuance of Writ of Execution.

Despite petitioner's Manifestation, the trial court still proceeded to hear respondent's urgent motion on 8 April 2005 and issued the Writ of Execution prayed for by respondent.^[11]

On 9 April 2005, the court sheriff together with respondent tried to serve the Writ of Execution upon petitioner at her residence in Taguig City. Petitioner's mother informed the sheriff and respondent that petitioner was then at her office. The sheriff then asked petitioner's mother to inform petitioner about the service of the Writ of Execution. After about half an hour, petitioner, her father, and her lawyer Atty. Jorge Manuel arrived. Atty. Manuel received the copy of the Writ of Execution but informed the court sheriff that they would not comply with the court's order and would challenge the writ.^[12]

As expected, petitioner filed a Motion to Quash Writ of Execution^[13] insisting that said writ was issued with "indecent haste" violative of her right to due process, and that the writ varied the terms of the Compromise Agreement since it failed to take into consideration the parties' understanding that in the enjoyment of respondent's visitorial rights, petitioner "shall have the right to designate any person of suitable age to accompany the child."^[14]

On 15 April 2005, petitioner's Motion to Quash Writ of Execution was heard. What transpired during the hearing was summarized by the trial court in its Order given in open court as follows:

The Court heard the arguments raised by the counsel for the [herein petitioner] and the reply/comment thereto made by the counsel for the [herein respondent]. The [herein petitioner] thru counsel imposed certain conditions if ever the visitorial rights of the [herein respondent] would be granted. Though [herein petitioners] wished that those conditions be contained in an affidavit, which to the mind of the court would only delay the resolution of the motion, the court thereupon ordered that the statement of the petitioner be made orally but under oath, thus, [herein respondent] was placed in the witness stand.

Thereafter, the court ruled to deny the motion to quash the writ of execution filed by [herein petitioner] thru counsel for lack of merit and grant the prayer of the [herein respondent] that he be allowed to exercise his visitorial rights over the minor LUIS MAXWELL VIESCA today under the conditions imposed by the [herein petitioner], some of which are contained in the compromise agreement to which [herein respondent] promised under oath to obey the same (sic).

WHEREFORE, let the [herein respondent] DAVID GILINSKY exercise his visitorial rights over the minor LUIS MAXWELL VIESCA on the following conditions, to wit:

1. [Herein respondent] shall surrender to the court his passport everytime he is with his child; and
2. [Herein respondent] shall not secure/apply another passport (sic) for his son LUIS MAXWELL; and
3. [Herein petitioner] shall exercise her right to designate any person of suitable age to accompany the child whenever [herein respondent] would exercise his visitorial right.