

FIRST DIVISION

[G.R. No. 150611, June 10, 2003]

**JACINTO SAGUID, PETITIONER, VS. HON. COURT OF APPEALS,
THE REGIONAL TRIAL COURT, BRANCH 94, BOAC, MARINDUQUE
AND GINA S. REY, RESPONDENTS.**

D E C I S I O N

YNARES-SANTIAGO, J.:

The regime of limited co-ownership of property governing the union of parties who are not legally capacitated to marry each other, but who nonetheless live together as husband and wife, applies to properties acquired during said cohabitation in proportion to their respective contributions. Co-ownership will only be up to the extent of the proven actual contribution of money, property or industry. Absent proof of the extent thereof, their contributions and corresponding shares shall be presumed to be equal.^[1]

Seventeen-year old Gina S. Rey was married,^[2] but separated *de facto* from her husband, when she met petitioner Jacinto Saguid in Marinduque, sometime in July 1987.^[3] After a brief courtship, the two decided to cohabit as husband and wife in a house built on a lot owned by Jacinto's father.^[4] Their cohabitation was not blessed with any children. Jacinto made a living as the patron of their fishing vessel "Saguid Brothers."^[5] Gina, on the other hand, worked as a fish dealer, but decided to work as an entertainer in Japan from 1992 to 1994 when her relationship with Jacinto's relatives turned sour. Her periodic absence, however, did not ebb away the conflict with petitioner's relatives. In 1996, the couple decided to separate and end up their 9-year cohabitation.^[6]

On January 9, 1997, private respondent filed a complaint for Partition and Recovery of Personal Property with Receivership against the petitioner with the Regional Trial Court of Boac, Marinduque. She alleged that from her salary of \$1,500.00 a month as entertainer in Japan, she was able to contribute P70,000.00 in the completion of their unfinished house. Also, from her own earnings as an entertainer and fish dealer, she was able to acquire and accumulate appliances, pieces of furniture and household effects, with a total value of P111,375.00. She prayed that she be declared the sole owner of these personal properties and that the amount of P70,000.00, representing her contribution to the construction of their house, be reimbursed to her.

Private respondent testified that she deposited part of her earnings in her savings account with First Allied Development Bank.^[7] Her Pass Book shows that as of May 23, 1995, she had a balance of P21,046.08.^[8] She further stated that she had a total of P35,465.00^[9] share in the joint account deposit which she and the

petitioner maintained with the same bank.^[10] Gina declared that said deposits were spent for the purchase of construction materials, appliances and other personal properties.^[11]

In his answer^[12] to the complaint, petitioner claimed that the expenses for the construction of their house were defrayed solely from his income as a captain of their fishing vessel. He averred that private respondent's meager income as fish dealer rendered her unable to contribute in the construction of said house. Besides, selling fish was a mere pastime to her; as such, she was contented with the small quantity of fish allotted to her from his fishing trips. Petitioner further contended that Gina did not work continuously in Japan from 1992 to 1994, but only for a 6-month duration each year. When their house was repaired and improved sometime in 1995-1996, private respondent did not share in the expenses because her earnings as entertainer were spent on the daily needs and business of her parents. From his income in the fishing business, he claimed to have saved a total of P130,000.00, P75,000.00 of which was placed in a joint account deposit with private respondent. This savings, according to petitioner was spent in purchasing the disputed personal properties.

On May 21, 1997, the trial court declared the petitioner as in default for failure to file a pre-trial brief as required by Supreme Court Circular No. 1-89.^[13]

On May 26, 1997, petitioner filed a motion for reconsideration^[14] of the May 21, 1997 order, which was denied on June 2, 1997, and private respondent was allowed to present evidence *ex parte*.^[15] Petitioner filed another motion for reconsideration but the same was also denied on October 8, 1997.

On July 15, 1998, a decision^[16] was rendered in favor of private respondent, the dispositive portion of which reads:

WHEREFORE, in view of all the foregoing, judgment is hereby rendered in favor of the plaintiff Gina S. Rey against defendant Jacinto Saguid:

- a) Ordering the partition of the house identified as plaintiff's Exhibit C and D and directing the defendant to return and/or reimburse to the plaintiff the amount of seventy thousand pesos (P70,000.00) which the latter actually contributed to its construction and completion;
- b) Declaring the plaintiff as the exclusive owner of the personal properties listed on Exhibit M;
- c) Ordering the defendant, and/or anyone in possession of the aforesaid personal properties, to return and/or deliver the same to the plaintiff; and
- d) Ordering the defendant to pay the plaintiff moral damages in the sum of fifty thousand pesos (P50,000.00) plus the costs of suit.

SO ORDERED.^[17]

On appeal, said decision was affirmed by the Court of Appeals; however, the award of P50,000.00 as moral damages was deleted for lack of basis.^[18] The appellate court ruled that the propriety of the order which declared the petitioner as in default became moot and academic in view of the effectivity of the 1997 Rules of Civil Procedure. It explained that the new rules now require the filing of a pre-trial brief and the defendant's non-compliance therewith entitles the plaintiff to present evidence *ex parte*.

Both parties filed motions for reconsideration which were denied; hence, petitioner filed the instant petition based on the following assigned errors:

A.

THE HONORABLE COURT OF APPEALS COMMIT[TED] A REVERSIBLE ERROR IN APPLYING RETROACTIVELY THE 1997 RULES OF CIVIL PROCEDURE IN THE PRESENT CASE AND HOLDING THE FIRST ASSIGNED ERROR THEREIN MOOT AND ACADEMIC THUS, FAILED TO RULE ON THE PROPRIETY OF THE TRIAL COURT'S REFUSAL TO SET ASIDE THE ORDER OF DEFAULT DUE TO MISTAKE AND/OR EXCUSABLE NEGLIGENCE COMMITTED BY PETITIONER.

B.

THE HONORABLE COURT OF APPEALS COMMIT[TED] A REVERSIBLE ERROR IN RELYING ON THE FACTUAL FINDINGS OF THE TRIAL COURT WHICH RECEIVED THE EVIDENCE OF HEREIN RESPONDENT ONLY EX PARTE.^[19]

The issues for resolution are: (1) whether or not the trial court erred in allowing private respondent to present evidence *ex parte*; and (2) whether or not the trial court's decision is supported by evidence.

Under Section 6, Rule 18 of the 1997 Rules of Civil Procedure, the failure of the defendant to file a pre-trial brief shall have the same effect as failure to appear at the pre-trial, *i.e.*, the plaintiff may present his evidence *ex parte* and the court shall render judgment on the basis thereof.^[20] The remedy of the defendant is to file a motion for reconsideration^[21] showing that his failure to file a pre-trial brief was due to fraud, accident, mistake or excusable neglect.^[22] The motion need not really stress the fact that the defendant has a valid and meritorious defense because his answer which contains his defenses is already on record.^[23]

In the case at bar, petitioner insists that his failure to file a pre-trial brief is justified because he was not represented by counsel. This justification is not, however, sufficient to set aside the order directing private respondent to present evidence *ex parte*, inasmuch as the petitioner chose at his own risk not to be represented by counsel. Even without the assistance of a lawyer, petitioner was able to file a motion for extension to file answer,^[24] the required answer stating therein the special and affirmative defenses,^[25] and several other motions.^[26] If it were true that petitioner did not understand the import of the April 23, 1997 order directing him to file a pre-trial brief, he could have inquired from the court or filed a motion for extension of time to file the brief. Instead, he waited until May 26, 1997, or 14

days from his alleged receipt of the April 23, 1997 order before he filed a motion asking the court to excuse his failure to file a brief. Pre-trial rules are not to be belittled or dismissed because their non-observance may result in prejudice to a party's substantive rights. Like all rules, they should be followed except only for the most persuasive of reasons when they may be relaxed to relieve a litigant of an injustice not commensurate with the degree of his thoughtlessness in not complying with the procedure prescribed.^[27]

In the instant case, the fact that petitioner was not assisted by a lawyer is not a persuasive reason to relax the application of the rules. There is nothing in the Constitution which mandates that a party in a non-criminal proceeding be represented by counsel and that the absence of such representation amounts to a denial of due process. The assistance of lawyers, while desirable, is not indispensable. The legal profession is not engrafted in the due process clause such that without the participation of its members the safeguard is deemed ignored or violated.^[28]

However, the Court of Appeals erred in ruling that the effectivity of the 1997 Rules of Civil Procedure, specifically, Section 6, Rule 18 thereof, rendered moot and academic the issue of whether or not the plaintiff may be allowed to present evidence *ex parte* for failure of the defendant to file a pre-trial brief. While the rules may indeed be applied retroactively, the same is not called for in the case at bar. Even before the 1997 Rules of Civil Procedure took effect on July 1, 1997, the filing of a pre-trial brief was required under Circular No. 1-89 which became effective on February 1, 1989. Pursuant to the said circular, "[f]ailure to file pre-trial briefs may be given the same effect as the failure to appear at the pre-trial," that is, the party may be declared non-suited or considered as in default.^[29]

Coming now to the substantive issue, it is not disputed that Gina and Jacinto were not capacitated to marry each other because the former was validly married to another man at the time of her cohabitation with the latter. Their property regime therefore is governed by Article 148^[30] of the Family Code, which applies to bigamous marriages, adulterous relationships, relationships in a state of concubinage, relationships where both man and woman are married to other persons, and multiple alliances of the same married man. Under this regime, "...only the properties acquired by both of the parties through their actual joint contribution of money, property, or industry shall be owned by them in common in proportion to their respective contributions ..."^[31] Proof of actual contribution is required.^[32]

In the case at bar, although the adulterous cohabitation of the parties commenced in 1987, which is before the date of the effectivity of the Family Code on August 3, 1998, Article 148 thereof applies because this provision was intended precisely to fill up the hiatus in Article 144 of the Civil Code.^[33] Before Article 148 of the Family Code was enacted, there was no provision governing property relations of couples living in a state of adultery or concubinage. Hence, even if the cohabitation or the acquisition of the property occurred before the Family Code took effect, Article 148 governs.^[34]

In the cases of *Agapay v. Palang*,^[35] and *Tumlos v. Fernandez*,^[36] which involved