

## THIRD DIVISION

[ G.R. No. 193707, December 10, 2014 ]

**NORMA A. DEL SOCORRO, FOR AND IN BEHALF OF HER MINOR CHILD RODERIGO NORJO VAN WILSEM, PETITIONER, VS. ERNST JOHAN BRINKMAN VAN WILSEM, RESPONDENT.**

### D E C I S I O N

**PERALTA, J.:**

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court seeking to reverse and set aside the Orders<sup>[1]</sup> dated February 19, 2010 and September 1, 2010, respectively, of the Regional Trial Court of Cebu City (*RTC-Cebu*), which dismissed the criminal case entitled *People of the Philippines v. Ernst Johan Brinkman Van Wilsem*, docketed as Criminal Case No. CBU-85503, for violation of Republic Act (R.A.) No. 9262, otherwise known as the Anti-Violence Against Women and Their Children Act of 2004.

The following facts are culled from the records:

Petitioner Norma A. Del Socorro and respondent Ernst Johan Brinkman Van Wilsem contracted marriage in Holland on September 25, 1990.<sup>[2]</sup> On January 19, 1994, they were blessed with a son named Roderigo Norjo Van Wilsem, who at the time of the filing of the instant petition was sixteen (16) years of age.<sup>[3]</sup>

Unfortunately, their marriage bond ended on July 19, 1995 by virtue of a Divorce Decree issued by the appropriate Court of Holland.<sup>[4]</sup> At that time, their son was only eighteen (18) months old.<sup>[5]</sup> Thereafter, petitioner and her son came home to the Philippines.<sup>[6]</sup>

According to petitioner, respondent made a promise to provide monthly support to their son in the amount of Two Hundred Fifty (250) Guildene (which is equivalent to Php17,500.00 more or less).<sup>[7]</sup> However, since the arrival of petitioner and her son in the Philippines, respondent never gave support to the son, Roderigo.<sup>[8]</sup>

Not long thereafter, respondent came to the Philippines and remarried in Pinamungahan, Cebu, and since then, have been residing thereat.<sup>[9]</sup> Respondent and his new wife established a business known as Paree Catering, located at Barangay Tajao, Municipality of Pinamungahan, Cebu City.<sup>[10]</sup> To date, all the parties, including their son, Roderigo, are presently living in Cebu City.<sup>[11]</sup>

On August 28, 2009, petitioner, through her counsel, sent a letter demanding for support from respondent. However, respondent refused to receive the letter.<sup>[12]</sup>

Because of the foregoing circumstances, petitioner filed a complaint-affidavit with the Provincial Prosecutor of Cebu City against respondent for violation of Section 5, paragraph E(2) of R.A. No. 9262 for the latter's unjust refusal to support his minor child with petitioner.<sup>[13]</sup> Respondent submitted his counter-affidavit thereto, to which petitioner also submitted her reply-affidavit.<sup>[14]</sup> Thereafter, the Provincial Prosecutor of Cebu City issued a Resolution recommending the filing of an information for the crime charged against herein respondent.

The information, which was filed with the RTC-Cebu and raffled to Branch 20 thereof, states that:

That sometime in the year 1995 and up to the present, more or less, in the Municipality of Minglanilla, Province of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there wilfully, unlawfully and deliberately deprive, refuse and still continue to deprive his son RODERIGO NORJO VAN WILSEM, a fourteen (14) year old minor, of financial support legally due him, resulting in economic abuse to the victim.

CONTRARY TO LAW.<sup>[15]</sup>

Upon motion and after notice and hearing, the RTC-Cebu issued a Hold Departure Order against respondent.<sup>[16]</sup> Consequently, respondent was arrested and, subsequently, posted bail.<sup>[17]</sup>

Petitioner also filed a Motion/Application of Permanent Protection Order to which respondent filed his Opposition.<sup>[18]</sup> Pending the resolution thereof, respondent was arraigned.<sup>[19]</sup>

Subsequently, without the RTC-Cebu having resolved the application of the protection order, respondent filed a Motion to Dismiss on the ground of: (1) lack of jurisdiction over the offense charged; and (2) prescription of the crime charged.<sup>[20]</sup>

On February 19, 2010, the RTC-Cebu issued the herein assailed Order,<sup>[21]</sup> dismissing the instant criminal case against respondent on the ground that the facts charged in the information do not constitute an offense with respect to the respondent who is an alien, the dispositive part of which states:

WHEREFORE, the Court finds that the facts charged in the information do not constitute an offense with respect to the accused, he being an alien, and accordingly, orders this case DISMISSED.

The bail bond posted by accused Ernst Johan Brinkman Van Wilsem for his provisional liberty is hereby cancelled (sic) and ordered released.

SO ORDERED.

Cebu City, Philippines, February 19, 2010.<sup>[22]</sup>

Thereafter, petitioner filed her Motion for Reconsideration thereto reiterating respondent's obligation to support their child under Article 195<sup>[23]</sup> of the Family Code, thus, failure to do so makes him liable under R.A. No. 9262 which "equally applies to all persons in the Philippines who are obliged to support their minor children regardless of the obligor's nationality."<sup>[24]</sup>

On September 1, 2010, the lower court issued an Order<sup>[25]</sup> denying petitioner's Motion for Reconsideration and reiterating its previous ruling. Thus:

x x x The arguments therein presented are basically a rehash of those advanced earlier in the memorandum of the prosecution. Thus, the court hereby reiterates its ruling that since the accused is a foreign national he is not subject to our national law (The Family Code) in regard to a parent's duty and obligation to give support to his child. Consequently, he cannot be charged of violating R.A. 9262 for his alleged failure to support his child. Unless it is conclusively established that R.A. 9262 applies to a foreigner who fails to give support to his child, notwithstanding that he is not bound by our domestic law which mandates a parent to give such support, it is the considered opinion of the court that no *prima facie* case exists against the accused herein, hence, the case should be dismissed.

WHEREFORE, the motion for reconsideration is hereby DENIED for lack of merit.

SO ORDERED.

Cebu City, Philippines, September 1, 2010.<sup>[26]</sup>

Hence, the present Petition for Review on *Certiorari* raising the following issues:

1. Whether or not a foreign national has an obligation to support his minor child under Philippine law; and
2. Whether or not a foreign national can be held criminally liable under R.A. No. 9262 for his unjustified failure to support his minor child.  
<sup>[27]</sup>

At the outset, let it be emphasized that We are taking cognizance of the instant petition despite the fact that the same was directly lodged with the Supreme Court, consistent with the ruling in *Republic v. Sunvar Realty Development Corporation*,<sup>[28]</sup> which lays down the instances when a ruling of the trial court may be brought on appeal directly to the Supreme Court without violating the doctrine of hierarchy of courts, to wit:

x x x Nevertheless, the Rules do not prohibit any of the parties from filing a Rule 45 Petition with this Court, **in case only questions of law are raised or involved**. This latter situation was one that petitioners found themselves in when they filed the instant Petition to raise only questions of law.

In *Republic v. Malabanan*, the Court clarified the three modes of appeal from decisions of the RTC, to wit: (1) by ordinary appeal or appeal by writ of error under Rule 41, whereby judgment was rendered in a civil or criminal action by the RTC in the exercise of its original jurisdiction; (2) by a petition for review under Rule 42, whereby judgment was rendered by the RTC in the exercise of its appellate jurisdiction; and (3) by a petition for review on *certiorari* before the Supreme Court under Rule 45. "The first mode of appeal is taken to the [Court of Appeals] on questions of fact or mixed questions of fact and law. The second mode of appeal is brought to the CA on questions of fact, of law, or mixed questions of fact and law. **The third mode of appeal is elevated to the Supreme Court only on questions of law.**" (Emphasis supplied)

There is a question of law when the issue does not call for an examination of the probative value of the evidence presented or of the truth or falsehood of the facts being admitted, and the doubt concerns the correct application of law and jurisprudence on the matter. The resolution of the issue must rest solely on what the law provides on the given set of circumstances.<sup>[29]</sup>

Indeed, the issues submitted to us for resolution involve questions of law – the response thereto concerns the correct application of law and jurisprudence on a given set of facts, i.e., whether or not a foreign national has an obligation to support his minor child under Philippine law; and whether or not he can be held criminally liable under R.A. No. 9262 for his unjustified failure to do so.

It cannot be negated, moreover, that the instant petition highlights a novel question of law concerning the liability of a foreign national who allegedly commits acts and omissions punishable under special criminal laws, specifically in relation to family rights and duties. The inimitability of the factual milieu of the present case, therefore, deserves a definitive ruling by this Court, which will eventually serve as a guidepost for future cases. Furthermore, dismissing the instant petition and remanding the same to the CA would only waste the time, effort and resources of the courts. Thus, in the present case, considerations of efficiency and economy in the administration of justice should prevail over the observance of the hierarchy of courts.

Now, on the matter of the substantive issues, We find the petition meritorious. Nonetheless, we do not fully agree with petitioner's contentions.

To determine whether or not a person is criminally liable under R.A. No. 9262, it is imperative that the legal obligation to support exists.

Petitioner invokes Article 195<sup>[30]</sup> of the Family Code, which provides the parent's obligation to support his child. Petitioner contends that notwithstanding the

existence of a divorce decree issued in relation to Article 26 of the Family Code,<sup>[31]</sup> respondent is not excused from complying with his obligation to support his minor child with petitioner.

On the other hand, respondent contends that there is no sufficient and clear basis presented by petitioner that she, as well as her minor son, are entitled to financial support.<sup>[32]</sup> Respondent also added that by reason of the Divorce Decree, he is not obligated to petitioner for any financial support.<sup>[33]</sup>

On this point, we agree with respondent that petitioner cannot rely on Article 195<sup>[34]</sup> of the New Civil Code in demanding support from respondent, who is a foreign citizen, since Article 15<sup>[35]</sup> of the New Civil Code stresses the principle of nationality. In other words, insofar as Philippine laws are concerned, specifically the provisions of the Family Code on support, the same only applies to Filipino citizens. By analogy, the same principle applies to foreigners such that they are governed by their national law with respect to family rights and duties.<sup>[36]</sup>

The obligation to give support to a child is a matter that falls under family rights and duties. Since the respondent is a citizen of Holland or the Netherlands, we agree with the RTC-Cebu that he is subject to the laws of his country, not to Philippine law, as to whether he is obliged to give support to his child, as well as the consequences of his failure to do so.<sup>[37]</sup>

In the case of *Vivo v. Cloribel*,<sup>[38]</sup> the Court held that –

Furthermore, ***being still aliens, they are not in position to invoke the provisions of the Civil Code of the Philippines, for that Code cleaves to the principle that family rights and duties are governed by their personal law, i.e., the laws of the nation to which they belong even when staying in a foreign country (cf. Civil Code, Article 15).***<sup>[39]</sup>

It cannot be gainsaid, therefore, that the respondent is not obliged to support petitioner's son under Article 195 of the Family Code as a consequence of the Divorce Covenant obtained in Holland. **This does not, however, mean that respondent is not obliged to support petitioner's son altogether.**

In international law, the party who wants to have a foreign law applied to a dispute or case has the burden of proving the foreign law.<sup>[40]</sup> In the present case, respondent hastily concludes that being a national of the Netherlands, he is governed by such laws on the matter of provision of and capacity to support.<sup>[41]</sup> While respondent pleaded the laws of the Netherlands in advancing his position that he is not obliged to support his son, he never proved the same.

It is incumbent upon respondent to plead and prove that the national law of the Netherlands does not impose upon the parents the obligation to support their child (either before, during or after the issuance of a divorce decree), because *Llorente v. Court of Appeals*,<sup>[42]</sup> has already enunciated that: