

FIRST DIVISION

[G.R. NO. 125041, June 30, 2006]

MA. BELEN B. MANGONON, FOR AND IN BEHALF OF HER MINOR CHILDREN REBECCA ANGELA DELGADO AND REGINA ISABEL DELGADO. PETITIONER, VS. HON. COURT OF APPEALS, HON. JUDGE JOSEFINA GUEVARA-SALONGA, PRESIDING JUDGE, RTC-MAKATI, BRANCH 149, FEDERICO C. DELGADO AND FRANCISCO C. DELGADO, RESPONDENTS.

DECISION

CHICO-NAZARIO, J.:

Before Us is a Petition for Review on *Certiorari* assailing the Decision^[1] of the Court of Appeals dated 20 March 1996, affirming the Order, dated 12 September 1995^[2] of the Regional Trial Court (RTC), Branch 149, Makati, granting support *pendente lite* to Rebecca Angela (Rica) and Regina Isabel (Rina), both surnamed Delgado.

The generative facts leading to the filing of the present petition are as follows:

On 17 March 1994, petitioner Ma. Belen B. Mangonon filed, in behalf of her then minor children Rica and Rina, a Petition for Declaration of Legitimacy and Support, with application for support *pendente lite* with the RTC Makati.^[3] In said petition, it was alleged that on 16 February 1975, petitioner and respondent Federico Delgado were civilly married by then City Court Judge Eleuterio Agudo in Legaspi City, Albay. At that time, petitioner was only 21 years old while respondent Federico was only 19 years old. As the marriage was solemnized without the required consent per Article 85 of the New Civil Code,^[4] it was annulled on 11 August 1975 by the Quezon City Juvenile and Domestic Relations Court.^[5]

On 25 March 1976, or within seven months after the annulment of their marriage, petitioner gave birth to twins Rica and Rina. According to petitioner, she, with the assistance of her second husband Danny Mangonon, raised her twin daughters as private respondents had totally abandoned them. At the time of the institution of the petition, Rica and Rina were about to enter college in the United States of America (USA) where petitioner, together with her daughters and second husband, had moved to and finally settled in. Rica was admitted to the University of Massachusetts (Amherst) while Rina was accepted by the Long Island University and Western New England College. Despite their admissions to said universities, Rica and Rina were, however, financially incapable of pursuing collegiate education because of the following:

- i) The average annual cost for college education in the US is about US\$22,000/year, broken down as follows:

Tuition Fees	US\$13,000.00
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Room & Board	5,000.00
Books	1,000.00
Yearly	
Transportation &	
Meal Allowance	<u>3,000.00</u>

Total US\$	2,000.00
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or a total of US\$44,000.00, more or less, for both Rica and Rina

ii) Additionally, Rica and Rina need general maintenance support each in the amount of US\$3,000.00 per year or a total of US\$6,000 per year.

iii) Unfortunately, petitioner's monthly income from her 2 jobs is merely US\$1,200 after taxes which she can hardly give general support to Rica and Rina, much less their required college educational support.

iv) Neither can petitioner's present husband be compelled to share in the general support and college education of Rica and Rina since he has his own son with petitioner and own daughter (also in college) to attend to.

v) Worse, Rica and Rina's petitions for Federal Student Aid have been rejected by the U.S. Department of Education.^[6]

Petitioner likewise averred that demands^[7] were made upon Federico and the latter's father, Francisco,^[8] for general support and for the payment of the required college education of Rica and Rina. The twin sisters even exerted efforts to work out a settlement concerning these matters with respondent Federico and respondent Francisco, the latter being generally known to be financially well-off.^[9] These demands, however, remained unheeded. Considering the impending deadline for admission to college and the opening of classes, petitioner and her then minor children had no choice but to file the petition before the trial court.

Petitioner also alleged that Rica and Rina are her legitimate daughters by respondent Federico since the twin sisters were born within seven months from the date of the annulment of her marriage to respondent Federico. However, as respondent Federico failed to sign the birth certificates of Rica and Rina, it was imperative that their status as legitimate children of respondent Federico, and as granddaughters of respondent Francisco, be judicially declared pursuant to Article 173 of the Family Code.^[10]

As legitimate children and grandchildren, Rica and Rina are entitled to general and educational support under Articles 174^[11] and 195(b)^[12] in relation to Articles 194(1 and 2)^[13] and 199(c)^[14] of the Family Code. Petitioner alleged that under these provisions, in case of default on the part of the parents, the obligation to provide support falls upon the grandparents of the children; thus, respondent Federico, or in his default, respondent Francisco should be ordered to provide general and educational support for Rica and Rina in the amount of US\$50,000.00, more or less, per year.

Petitioner also claimed that she was constrained to seek support *pendente lite* from private respondents - who are millionaires with extensive assets both here and abroad - in view of the imminent opening of classes, the possibility of a protracted litigation, and Rica and Rina's lack of financial means to pursue their college education in the USA.

In his Answer,^[15] respondent Francisco stated that as the birth certificates of Rica and Rina do not bear the signature of respondent Federico, it is essential that their legitimacy be first established as "there is no basis to claim support until a final and executory judicial declaration has been made as to the civil status of the children."

^[16] Whatever good deeds he may have done to Rica and Rina, according to respondent Francisco, was founded on pure acts of Christian charity. He, likewise, averred that the order of liability for support under Article 199 of the Family Code is not concurrent such that the obligation must be borne by those more closely related to the recipient. In this case, he maintained that responsibility should rest on the shoulders of petitioner and her second husband, the latter having voluntarily assumed the duties and responsibilities of a natural father. Even assuming that he is responsible for support, respondent Francisco contends that he could not be made to answer beyond what petitioner and the father could afford.

On 24 May 1994, petitioner filed a Motion to Declare Defendant (respondent herein) Federico in Default.^[17] This was favorably acted upon by the trial court in the Order dated 16 June 1994.^[18]

On 5 August 1994, respondent Federico filed a Motion to Lift Order of Default alleging that the summons and a copy of the petition were not served in his correct address.^[19] Attached thereto was his Answer^[20] where he claimed that petitioner had no cause of action against him. According to him, he left for abroad and stayed there for a long time "[w]ithin the first one hundred twenty (120) days of the three hundred days immediately preceding March 25, 1976" and that he only came to know about the birth of Rica and Rina when the twins introduced themselves to him seventeen years later. In order not to antagonize the two, respondent Federico claimed he did not tell them that he could not be their father. Even assuming that Rica and Rina are, indeed, his daughters, he alleged that he could not give them the support they were demanding as he was only making P40,000.00 a month.

Finding sufficient ground in the motion filed by respondent Federico, the trial court lifted its Order dated 16 June 1994 and admitted his Answer.^[21]

In the meantime, on 25 April 1994, petitioner filed an Urgent Motion to Set Application for Support *Pendente Lite* for Hearing because Rica and Rina both badly needed immediate financial resources for their education.^[22] This Motion was opposed by respondent Francisco.^[23] After both parties submitted supplemental pleadings to bolster their respective positions, the trial court resolved the motion in an Order dated 12 September 1995 in this wise:

WHEREFORE, in the light of the foregoing considerations, respondents are hereby directed to provide a monthly support (*pendente lite*) of P5,000.00 each or a total of P10,000.00 for the education of Rebecca

Angela and Regina Isabel Delgado to be delivered within the first five days of each month without need of demand.^[24]

Unsatisfied with the Order of the trial court, petitioner brought the case to the Court of Appeals *via* Petition for *Certiorari*. The Court of Appeals affirmed the holding of the trial court and disposed the petition in the following manner:

WHEREFORE, the petition for *certiorari* is hereby DISMISSED and the Order of the lower court dated September 12, 1995 is hereby AFFIRMED.^[25]

Petitioner's Motion for Reconsideration was denied through the Resolution of the Court of Appeals dated 16 May 1996.^[26]

Petitioner is now before this Court claiming that the Decision of the Court of Appeals was tainted with the following errors:

RESPONDENT COURT OF APPEALS ERRED IN CONCLUDING THAT RESPONDENT JUDGE DID NOT COMMIT GRAVE ABUSE OF DISCRETION IN FIXING THE AMOUNT OF MONTHLY SUPPORT PENDENTE LITE GRANTED TO PETITIONER'S CHILDREN AT A MEASLEY P5,000.00 PER CHILD.

I.

RESPONDENT COURT IGNORED EVIDENCE ON RECORD OF THE FINANCIAL INCAPACITY OF RICA AND RINA'S PARENTS IN DEFAULT OF WHOM THE OBLIGATION TO GIVE SUPPORT DEVOLVES ON THE GRANDFATHER.

II.

IT BEING ESTABLISHED THAT THE PERSON OBLIGED TO GIVE SUPPORT – GRANDFATHER DON PACO – IS UNDOUBTEDLY CAPABLE OF GIVING THE AMOUNT DEMANDED, RESPONDENT COURT ERRED IN NOT HOLDING THAT RESPONDENT JUDGE ACTED WITH GRAVE ABUSE OF DISCRETION IN FIXING AN AMOUNT OF SUPPORT PENDENTE LITE THAT IS OBVIOUSLY INADEQUATE TO SUPPORT THE EDUCATIONAL REQUIREMENTS OF THE RECIPIENTS.^[27]

At the time of the filing of the present Petition, it is alleged that Rica had already entered Rutgers University in New Jersey with a budget of US\$12,500.00 for academic year 1994-1995. She was able to obtain a tuition fee grant of US\$1,190.00 and a Federal Stafford loan from the US government in the amount of US\$2,615.00.^[28] In order to defray the remaining balance of Rica's education for said school year, petitioner claims that she had to secure a loan under the Federal Direct Student Loan Program.

Meanwhile, Rina entered CW Post, Long Island University, where she was expected to spend US\$20,000.00 for the school year 1994-1995. She was given a financial grant of US\$6,000.00, federal work study assistance of US\$2,000.00, and a Federal Stafford loan of US\$2,625.00.^[29] Again, petitioner obtained a loan to cover the

remainder of Rina's school budget for the year.

Petitioner concedes that under the law, the obligation to furnish support to Rica and Rina should be first imposed upon their parents. She contends, however, that the records of this case demonstrate her as well as respondent Federico's inability to give the support needed for Rica and Rina's college education. Consequently, the obligation to provide support devolves upon respondent Francisco being the grandfather of Rica and Rina.

Petitioner also maintains that as respondent Francisco has the financial resources to help defray the cost of Rica and Rina's schooling, the Court of Appeals then erred in sustaining the trial court's Order directing respondent Federico to pay Rica and Rina the amount of award P5,000.00 each as monthly support *pendente lite*.

On the other hand, respondent Francisco argues that the trial court correctly declared that petitioner and respondent Federico should be the ones to provide the support needed by their twin daughters pursuant to Article 199 of the Family Code. He also maintains that aside from the financial package availed of by Rica and Rina in the form of state tuition aid grant, work study program and federal student loan program, petitioner herself was eligible for, and had availed herself of, the federal parent loan program based on her income and properties in the USA. He, likewise, insists that assuming he could be held liable for support, he has the option to fulfill the obligation either by paying the support or receiving and maintaining in the dwelling here in the Philippines the person claiming support.^[30] As an additional point to be considered by this Court, he posits the argument that because petitioner and her twin daughters are now US citizens, they cannot invoke the Family Code provisions on support as "[l]aws relating to family rights and duties, or to the status, condition and legal capacity of persons are binding upon citizens of the Philippines, even though living abroad."^[31]

Respondent Federico, for his part, continues to deny having sired Rica and Rina by reiterating the grounds he had previously raised before the trial court. Like his father, respondent Federico argues that assuming he is indeed the father of the twin sisters, he has the option under the law as to how he would provide support. Lastly, he assents with the declaration of the trial court and the Court of Appeals that the parents of a child should primarily bear the burden of providing support to their offspring.

The petition is meritorious.

As a preliminary matter, we deem it necessary to briefly discuss the essence of support *pendente lite*. The pertinent portion of the Rules of Court on the matter provides:

Rule 61
SUPPORT 'PENDENTE LITE'

SECTION 1. *Application.*- At the commencement of the proper action or proceeding, or at any time prior to the judgment or final order, a verified application for support *pendente lite* may be filed by any party stating the grounds for the claim and the financial conditions of both parties, and accompanied by affidavits, depositions or other authentic documents in