

## SECOND DIVISION

[ G.R. No. 139337, August 15, 2001 ]

**MA. CARMINIA C. ROXAS, PETITIONER, VS. HON. COURT OF APPEALS AND JOSE ANTONIO F. ROXAS, RESPONDENTS.**

### D E C I S I O N

**DE LEON, JR., J.:**

Before us is a petition for review on certiorari of the Decision<sup>[1]</sup> dated April 21, 1999 and Resolution<sup>[2]</sup> dated July 20, 1999 of the Court of Appeals nullifying the Orders<sup>[3]</sup> dated May 13, 1998, May 19, 1998 and September 23, 1998 of the Regional Trial Court of Parañaque City, Branch 260, which found private respondent Jose Antonio F. Roxas liable to pay support *pendente lite* and subsequently in contempt of court after failing to tender the required amount of support *pendente lite*.

The antecedent facts are as follows:

On November 4, 1997, petitioner Ma. Carminia C. Roxas filed with the Regional Trial Court of Parañaque City, Civil Case No. 97-0523, which is an action for declaration of nullity of marriage on the ground of psychological incapacity on the part of her husband, Jose Antonio F. Roxas, private respondent herein, with an application for support *pendente lite* for their four (4) minor children. The case was raffled to Branch 257 of the Regional Trial Court of Parañaque City presided by Judge Rolando C. How. But the petitioner, soon thereafter, filed in the said RTC Branch 257 a Notice of Dismissal dated November 20, 1997, to dismiss the complaint, without prejudice, pursuant to the provision of Section 1, Rule 17, of the 1997 Rules of Civil Procedure, considering that summons has not yet been served and no responsive pleading has yet been filed.

The same complaint, now docketed as Civil Case No. 97-0608, was re-filed on November 25, 1997. It was raffled in due course to Branch 260 of the Regional Trial Court of Parañaque City presided by Judge Helen Bautista-Ricafort.

On May 13, 1998, when the case was called for a pre-trial conference, the matter of plaintiff's (petitioner's) application for support *pendente lite* of their four (4) minor children was taken up. Judge Bautista-Ricafort received evidence on the application for support *pendente lite*. The private respondent and her counsel, Atty. Alberto Diaz, participated in that proceedings by conducting an extensive cross-examination of the petitioner. The trial court then issued its Order dated May 13, 1998 declaring the proceedings on the application for support *pendente lite* terminated and deemed submitted for resolution; and as prayed for by the parties, also set the case for pre-trial on June 15, 1998 at 8:30 a.m.

On May 19, 1998, Judge Bautista-Ricafort, issued an Order<sup>[4]</sup> granting the

application for support *pendente lite*, the pertinent portion of which reads:

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The plaintiff, testifying under oath, submitted Exhibit "A" itemizing the expenses incurred for the support of the children over a period of time during their stay at Ayala-Alabang; and showed that their total monthly average expense is P84,585.00, or P42,292.50 per month, per spouse. Interestingly, the defendant did not adduce any evidence to dispute the figures presented to the Court by the plaintiff, nor did he present proof of his financial incapacity to contribute more than 50% of the children's school tuition fees.

The court has painstakingly reviewed the item included in Exhibit "A", and found the same reasonable, xxx.

Under Art. 49 of the Family Code, there being no written agreement between the plaintiff and the defendant for the adequate support of their minor children xxx, this Court finds the prayer for support *pendente lite* to be in order. Accordingly, the defendant is hereby ordered to contribute to the support of the above-named minors, (aside from 50% of their school tuition fees which the defendant has agreed to defray, plus expenses for books and other supplies), the sum of P42,292.50 per month, effective May 1, 1998, as his share in the monthly support of the children until further orders from this Court. xxx. All expenses for books and other school supplies shall be shouldered by the plaintiff and the defendant, share and share alike. Finally, it is understood that any claim for support-in-arrears prior to May 1, 1998, may be taken up later in the course of the proceedings proper.

On July 22, 1998, the petitioner filed a manifestation and motion praying the trial court to cite private respondent in contempt of court in accordance with Section 5, Rule 61 of the 1997 Rules of Civil Procedure, after the latter failed to comply with the said Order dated May 19, 1998 of the trial court. Private respondent, through his counsel, Atty. Alberto Diaz, filed a counter-manifestation and motion admitting that "xxx there is really no genuine issue as to his obligation and willingness to contribute to the expenses for the support of his minor children xxx. He simply wants to make sure that whatever funds he provides for the purpose will go to the expenses for which they are intended."<sup>[5]</sup> Thus, he prayed that the manner and mode of payment of his contribution to the expenses of his minor children be modified such that he will pay directly to the entities or persons to which the payment for such expenses are intended. On September 23, 1998, Judge Bautista-Ricafort issued an Order<sup>[6]</sup> directing the private respondent "to comply fully with the Order of this Court dated May 19, 1998 by updating payment of his share in the support of the minor children, *pendente lite*, covering the period May 1998 to September 1998, within five (5) days from his receipt hereof xxx under pain of legal sanctions if he still fails to do so. xxx."

On September 28, 1998, or about four (4) months later, private respondent, through his new counsel, Atty. Francisco Ma. Guerrero, filed an Omnibus Motion (1)

applying to be authorized to discharge Atty. Alberto Diaz as his counsel and to substitute him with the new counsel; (2) to re-open hearing on the Motion for Support *Pendente Lite*; and (3) to temporarily stay execution of the Orders dated May 19, 1998 and September 23, 1998. The omnibus motion was set for hearing on October 2, 1998. Private respondent requested that before the omnibus motion is heard the May 19, 1998 Order be temporarily suspended. When the presiding judge did not grant that request of private respondent, the latter's new counsel refused to proceed with the hearing of his omnibus motion.

On October 8, 1998, Judge Bautista-Ricafort issued an Order giving private respondent ten (10) days to comply with the May 19, 1998 Order, otherwise, he would be cited for contempt of court.

On October 23, 1998, private respondent filed with the Court of Appeals a petition for certiorari questioning the Orders of the trial court dated May 19, 1998, September 23, 1998 and October 8, 1998.

Meanwhile, on November 27, 1998, Judge Bautista-Ricafort issued another Order,<sup>[7]</sup> the dispositive portion of which reads:

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Accordingly, and on the strength of the provisions of Sec. 5 Rule 61 of the 1997 Rules of Civil Procedure, the defendant (herein private respondent) is hereby pronounced guilty of Contempt of Court, and is hereby ordered arrested and confined at the City Jail of Parañaque City, Metro Manila, without bail, and as long as he has not complied with and obeyed in full the Order of this Court dated May 19, 1998 by updating his monthly contribution of P42,292.50 for the period of May 1998 to the date, giving the said amount directly to the plaintiff, or depositing it with the Clerk of Court, who shall therefor (issue) the corresponding receipts.

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Private respondent was arrested by the agents of the National Bureau of Investigation (NBI) on December 14, 1998 but he was released on the following day after the appellate court temporarily enjoined Judge Bautista-Ricafort from enforcing her November 27, 1998 Order as well as her Orders dated May 19, 1998, September 23, 1998, and October 8, 1998. When the temporary restraining order lapsed on March 11, 1998, the respondent was again arrested by virtue of a warrant of arrest issued by Judge Bautista-Ricafort. After depositing with the clerk of court of the trial court the amount of support in arrears stated in the Orders of the trial court, private respondent was released from custody.

On April 21, 1999, the Court of Appeals rendered a Decision in favor of private respondent, the dispositive portion of which states:

WHEREFORE, being meritorious, the instant petition is GRANTED. Consequently, all the proceedings/actions taken by respondent Judge on

the matter of support pendente lite in Civil Case No. 97-0608 (formerly Civil Case No. 97-0523) are hereby declared NULL and VOID, and said CASE is ordered RETURNED to Branch 257 of the Regional Trial Court of Parañaque City, for appropriate proceedings.

SO ORDERED.<sup>[8]</sup>

The appellate court nullified the Orders and the proceedings of the trial court for the reason that the certificate of non-forum shopping of the petitioner did not mention the prior filing of Civil Case No. 97-0523 before the sala of Judge How and the dismissal thereof without prejudice. The decision of the appellate court elaborated the reasons for the granting of the petition, to wit:

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While a complaint may be dismissed by the plaintiff by filing a notice of dismissal at any time before service of the answer (Sec. 1, Rule 17), there is however a need to state the fact of prior filing and dismissal thereof in the certification on non-forum shopping, in the event the complaint is refiled, as in this case. This must be so in order to prevent the plaintiff or principal party from invoking Section 1 of Rule 17 in the hope that, if and when refiled, the complaint will be raffled to a more sympathetic judge.

To the mind of the Court, private respondent availed of Section 1 of Rule 17 not for any other reason or purpose than to take the case out of the sala of Judge How and to have it assigned to another. This belief finds support from the fact that private respondent's lawyer and respondent Judge were classmates at the UP College of Law.

Not only that. While private respondent actually resides in Ayala Alabang, Muntinlupa City, it was made to appear in the complaint that she is a resident of Parañaque City, where respondent Judge is one of the RTC Judges. While the question of venue was not properly raised on time, this circumstance is being cited to support petitioner's charge of forum-shopping.

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Needless to say, forum-shopping merits such serious sanctions as those prescribed in Section 5, Rule 7 of the 1997 Rules of Civil Procedure. Considering, however, that when the complaint was withdrawn, no substantial proceedings had as yet been taken by the court to which it was first raffled, and that the dismissal thereof was then a matter or (sic) right, the Court is not inclined to impose any of the said sanctions. Instead, for the peace of mind of petitioner who entertains some doubts on the impartiality of respondent Judge, the annulment case should be returned to Branch 257 of the RTC of Parañaque City, to which it was originally raffled. And, to enable the Presiding Judge of said Branch to act on the matter of support pendente lite, which gave rise to this petition

for certiorari and disqualification, the proceedings/actions taken by respondent Judge relative thereto should be set aside, the same having been attended with grave abuse of discretion.<sup>[9]</sup>

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In the instant petition the petitioner poses the following statement of issues, to wit:

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DID THE HONORABLE COURT OF APPEALS ERR IN HOLDING THE HEREIN PETITIONER GUILTY OF FORUM SHOPPING?

II

DID THE HONORABLE COURT OF APPEALS ERR IN NULLIFYING JUDGE RICAFORT'S ORDER OF SUPPORT PENDENTE LITE AND HER RELATED IMPLEMENTING ORDERS WHICH IT WAS HER JUDICIAL DUTY TO ISSUE UNDER ART. 49 OF THE FAMILY CODE AND OTHER RELATED PROVISIONS OF LAW?

III

DID THE HONORABLE COURT OF APPEALS ERR IN NULLIFYING THE PROCEEDINGS ALREADY HELD BEFORE JUDGE RICAFORT AFFECTING HER QUESTIONED ORDERS, AT THE SAME TIME IMPLIEDLY UPHOLDING THE VALIDITY OF THE REST OF THE PROCEEDINGS INCLUDING THE TRIAL ON THE MERITS OF THE CASE FOR ANNULMENT OF MARRIAGE?

IV

DID THE HONORABLE COURT OF APPEALS ERR IN ORDERING THAT CIVIL CASE NO. 97-0523 RAFFLED TO JUDGE RICAFORT BE "RETURNED" TO JUDGE HOW OF BRANCH 257 OF THE RTC OF PARANAQUE CITY?

In other words, if a case is dismissed without prejudice upon the filing by the plaintiff of a notice of dismissal pursuant to Section 1 of Rule 17, before the service of the answer or responsive pleading, would the subsequent re-filing of the case by the same party require that the certificate of non-forum shopping state that a case involving the same issues and parties was filed and dismissed without prejudice beforehand? Would the omission of such a statement in the certificate of non-forum shopping render null and void the proceedings and orders issued by the trial court in the re-filed case?

It is our considered view and we hold that the proceedings and orders issued by Judge Bautista-Ricafort in the application for support pendente lite (and the main complaint for annulment of marriage) in the re-filed case, that is, in Civil Case No. 97-0608 were not rendered null and void by the omission of a statement in the certificate of non-forum shopping regarding the prior filing and dismissal without