

## NINTH DIVISION

[ CA–G.R. SP No. 137494, March 25, 2015 ]

**MARIA LEONORA DAVID-FUJI, PETITIONER, VS. HON. MA. ANGELICA T. PARAS-QUIAMBAO, IN HER CAPACITY AS PRESIDING JUDGE OF THE REGIONAL TRIAL COURT, BRANCH 59, ANGELES CITY, PAMPANGA AND RAMON Q. BUAN, RESPONDENTS.**

### DECISION

**DICDICAN, J.:**

The sole objective of a writ of preliminary injunction is to preserve the status *quo* until the merits of the case could be heard fully. A writ of preliminary injunction is generally based solely on initial and incomplete evidence<sup>[1]</sup>. The issuance of a preliminary injunction rests entirely on the discretion of the court and is generally not interfered with except in cases of manifest abuse<sup>[2]</sup>.

Before us is a Petition for *Certiorari*<sup>[3]</sup> filed by the petitioner Maria Leonora David-Fuji (“petitioner”) pursuant to Rule 65 of the 1997 Revised Rules of Court seeking to annul and set aside the Order<sup>[4]</sup> that was issued by Judge Bernardita Gabitan-Erum of Branch 61 of the Regional Trial Court of the Third Judicial Region in Angeles City, Pampanga (“trial court”) on March 24, 2014 in Civil Case No. 14875 which granted the prayer for issuance of a writ of a preliminary mandatory injunction against the petitioner. Likewise assailed in the instant petition is the Resolution<sup>[5]</sup> of the public respondent Judge Ma. Angelica Paras-Quiambao dated August 26, 2014 which denied the petitioner's motion for reconsideration of the assailed March 24, 2014 order.

The material and relevant facts of the case, as culled from the record, are as follows:

The instant case arose from a Petition for reduction of donation with prayer for preliminary mandatory injunction *pendente lite* and damages<sup>[6]</sup> that was filed by Ramon Q. Buan, (hereinafter referred to as the private respondent) which was docketed as Civil Case No. 14875 in the lower court. The private respondent alleged, among others, that he was previously married to the petitioner Maria Leonora David-Fuji and that they have two (2) children, namely, Nikkolai D. Buan (“Nikkolai”) and Jasmin D. Buan (“Jasmin”). Their marriage was however declared as null and void later on the ground of psychological incapacity on the part of the respondent by Branch 67 of the RTC of the Third Judicial Region in its Decision<sup>[7]</sup> rendered on January 16, 2009 in Civil Case No. 297-08. The court that declared their marriage as void *ab initio* awarded the custody of their children to the petitioner and declared that there were no properties to be liquidated and distributed between them. The private respondent, however, stated in his petition in

Civil Case No. 14875 that they actually have properties acquired during the marriage but he no longer raised any protest on the said pronouncement of the court in Civil Case No. 297-08.

The private respondent further averred in his petition that, sometime in the year 2010, the petitioner convinced him to transfer their conjugal properties to their children. Consequently, on December 27, 2010, the private respondent and the petitioner executed a deed of donation of their properties in favor of their two children. In the said deed of donation, Nikkolai received the parcels of land covered by TCT Nos. 139648 and 139649, where their family home was situated. The land also included other improvements, such as a small apartment unit, a boarding house and Generation 2000 Gym ("Gym"). On the other hand, their daughter Jasmin was given a parcel of land covered by TCT No. 197907.

The private respondent claimed that he had been managing the Gym since the year 2006 and that, it was agreed upon that he would continue to manage the same even after the property had been transferred to their son, Nikkolai. The private respondent stated that his primary source of income came from the proceeds of the Gym operation. The said proceeds were also used to sustain the needs of his minor children.

On August 22, 2011, the management by the private respondent of the Gym was disrupted by the petitioner when she padlocked the Gym and barred the private respondent from entering the premises thereof. The siblings of the petitioner had also removed some equipment and other facilities in the Gym. The private respondent consequently decried that such action of the petitioner deprived him of his source of income and incapacitated him to sustain his and his children's needs. Thus, in his petition for reduction of donation, the private respondent prayed for the issuance of a writ of preliminary mandatory injunction in order to compel the petitioner to reopen the Gym and allow him to continue operating the same.

On March 15, 2012, the petitioner filed her Answer with Counter-Claim<sup>[8]</sup> in Civil Case No. 14875 wherein she contended that the private respondent had no cause of action against her. The petitioner asseverated that the private respondent was already estopped from claiming his share in their conjugal property, as he had already waived the same in favor of their children<sup>[9]</sup>. It was also the petitioner's contention that, since the family court awarded the custody of their minor children to her, she had the right to exercise parental authority over them and this includes the right to administer their properties. Lastly, the petitioner accused the private respondent of mismanaging the Gym which purportedly caused the closure of the same.

A hearing was conducted by the lower court on the private respondent's prayer for issuance of a writ of preliminary mandatory injunction. On March 24, 2014, the trial court issued the writ of preliminary mandatory injunction prayed for, pending the final resolution of Civil Case No. 14875. The decretal portion of the said Order reads:

"THEREFORE, as the closure of the gym deprives the children of their daily school expenses and allowances, the prayer for the issuance of preliminary mandatory injunction is **granted**.

"The respondents are ordered to reopen the Generation 200 Gym and allow the petitioner, Ramon Q. Buan, to operate the same without any intervention from the respondents and in the operation of the same, Ramon Q. Buan shall collect and receive the income derived from such operation and the appurtenant medicines and other goods sold therein to its customers.

"Considering that the parties have not reached a Compromise Agreement in his petition during the judicial dispute resolution proceedings, let the records of this case be forwarded to the Office of the RTC Clerk of Court for transfer to the other Family Court, RTC Branch 59, Angeles City for pre-trial and trial proper.

"SO ORDERED<sup>[10]</sup>."

Aggrieved by the foregoing disposition of the trial court, the petitioner moved for the reconsideration of the Order of the trial court. However, said motion was denied by the trial court for lack of merit as per its Resolution dated August 26, 2014. The dispositive portion of the said assailed resolution states:

**"WHEREFORE,** premises considered, the prayer in the Motion for Reconsideration dated May 17, 2014 filed by Maria Leonora Fuji-David is hereby DENIED. The assailed Order dated March 24, 2014 is hereby AFFIRMED.

"Furnish the parties' counsels with copies hereof.

"SO ORDERED<sup>[11]</sup>."

Undaunted by the foregoing disquisition of the public respondent judge, the petitioner filed the instant petition with this Court. She contends that the public respondent judge had acted without or in excess of her jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the disputed Order dated March 24, 2014 and Resolution dated August 26, 2014 and that there is no appeal or any plain, speedy and adequate remedy in the ordinary course of law relative thereto.

Apparently, the core issue to be resolved by us in this case is whether or not the public respondent judge committed grave abuse of discretion amounting to lack or excess of jurisdiction when she issued the writ of preliminary mandatory injunction enjoining the petitioner herein to reopen the Gym and allowing the private respondent to operate the same.

After a careful and judicious scrutiny of the whole matter, together with the applicable laws and jurisprudence in the premises, we find the instant petition to be bereft of merit.

Prefatorily, it bears stressing that a petition for certiorari will prosper only if grave abuse of discretion is alleged and proved to exist<sup>[12]</sup>. By grave abuse of discretion is meant such capricious and whimsical exercise of judgment which is equivalent to an excess or lack of jurisdiction<sup>[13]</sup>.