



Republic of the Philippines
Supreme Court

Manila
FIRST DIVISION

MA. CARMINIA C. CALDERON
represented by her Attorney-In-
Fact, **Marycris V. Baldevia,**
Petitioner,

G.R. No. 185595

Present:

SERENO C.J.,
Chairperson,
LEONARDO-DE CASTRO,
BERSAMIN,
VILLARAMA, JR., and
REYES, JJ.

- versus -

JOSE ANTONIO F. ROXAS and
COURT OF APPEALS,
Respondents.

Promulgated:

JAN 09 2013

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DECISION

VILLARAMA, JR., J.:

Before us is a petition for review on certiorari under Rule 45 assailing the Decision¹ dated September 9, 2008 and Resolution² dated December 15, 2008 of the Court of Appeals (CA) in CA-G.R. CV No. 85384. The CA affirmed the Orders dated March 7, 2005 and May 4, 2005 of the Regional Trial Court (RTC) of Parañaque City, Branch 260 in Civil Case No. 97-0608.

Petitioner Ma. Carminia C. Calderon and private respondent Jose Antonio F. Roxas, were married on December 4, 1985 and their union produced four children. On January 16, 1998, petitioner filed an Amended

¹ Rollo, pp. 40-47. Penned by Associate Justice Marlene Gonzales-Sison and concurred in by Associate Justices Juan Q. Enriquez, Jr. and Isaias P. Dicedican.

² Id. at 49-50. Penned by Associate Justice Marlene Gonzales-Sison and concurred in by Associate Justices Juan Q. Enriquez, Jr. and Isaias P. Dicedican.

Complaint³ for the declaration of nullity of their marriage on the ground of psychological incapacity under Art. 36 of the Family Code of the Philippines.

On May 19, 1998, the trial court issued an Order⁴ granting petitioner's application for support *pendente lite*. Said order states in part:

...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 school 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. The first monthly contribution, i.e., for the month of May 1998, shall be given by the defendant to the plaintiff within five (5) days from receipt of a copy of this Order. The succeeding monthly contributions of P42,292.50 shall be directly given by the defendant to the plaintiff without need of any demand, within the first five (5) days of each month beginning June 1998. 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.

x x x x

SO ORDERED.⁵

The aforesaid order and subsequent orders for support *pendente lite* were the subject of G.R. No. 139337 entitled "*Ma. Carminia C. Roxas v. Court of Appeals and Jose Antonio F. Roxas*" decided by this Court on August 15, 2001.⁶ The Decision in said case declared that "the proceedings and orders issued by the trial court 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 prejudice of Civil Case No. 97-0523 which involves the same parties." The assailed orders for support *pendente lite* were thus reinstated and the trial court resumed hearing the main case.

³ Records, pp. 30-38.

⁴ *Rollo*, pp. 85-87. Penned by Judge Helen Bautista-Ricafort.

⁵ *Id.* at 87.

⁶ *Roxas v. Court of Appeals*, G.R. No. 139337, August 15, 2001, 363 SCRA 207, 211.

On motion of petitioner's counsel, the trial court issued an Order dated October 11, 2002 directing private respondent to give support in the amount of ₱42,292.50 per month starting April 1, 1999 pursuant to the May 19, 1998 Order.⁷

On February 11, 2003, private respondent filed a Motion to Reduce Support citing, among other grounds, that the ₱42,292.50 monthly support for the children as fixed by the court was even higher than his then ₱20,800.00 monthly salary as city councilor.⁸

After hearing, the trial court issued an Order⁹ dated March 7, 2005 granting the motion to reduce support and denying petitioner's motion for spousal support, increase of the children's monthly support *pendente lite* and support-in-arrears. The trial court considered the following circumstances well-supported by documentary and testimonial evidence: (1) the spouses' eldest child, Jose Antonio, Jr. is a *Sangguniang Kabataan* Chairman and is already earning a monthly salary; (2) all the children stay with private respondent on weekends in their house in Pasay City; (3) private respondent has no source of income except his salary and benefits as City Councilor; (4) the voluminous documents consisting of official receipts in payment of various billings including school tuition fees, private tutorials and purchases of children's school supplies, personal checks issued by private respondent, as well as his own testimony in court, all of which substantiated his claim that he is fulfilling his obligation of supporting his minor children during the pendency of the action; (5) there is no proof presented by petitioner that she is not gainfully employed, the spouses being both medical doctors; (6) the un rebutted allegation of private respondent that petitioner is already in the United States; and (7) the alleged arrearages of private respondent was not substantiated by petitioner with any evidence while private respondent had duly complied with his obligation as ordered by the court through his

⁷ Records, p. 10058.

⁸ Id. at 10075-10084.

⁹ Id. at 1582-1586.

overpayments in other aspects such as the children's school tuition fees, real estate taxes and other necessities.

Petitioner's motion for partial reconsideration of the March 7, 2005 Order was denied on May 4, 2005.¹⁰

On May 16, 2005, the trial court rendered its Decision¹¹ in Civil Case No. 97-0608 decreeing thus:

WHEREFORE, judgment is hereby rendered declaring (sic):

1. Declaring null and void the marriage between plaintiff [Ma.] Carmina C. Roxas and defendant Jose Antonio Roxas solemnized on December 4, 1985 at San Agustin Convent, in Manila. The Local Civil Registrar of Manila is hereby ordered to cancel the marriage contract of the parties as appearing in the Registry of Marriage as the same is void;

2. Awarding the custody of the parties' minor children Maria Antoinette Roxas, Julian Roxas and Richard Roxas to their mother herein petitioner, with the respondent hereby given his visitorial and or custodial rights at [sic] the express conformity of petitioner.

3. Ordering the respondent Jose Antonio Roxas to provide support to the children in the amount of P30,000.00 a month, which support shall be given directly to petitioner whenever the children are in her custody, otherwise, if the children are in the provisional custody of respondent, said amount of support shall be recorded properly as the amounts are being spent. For that purpose the respondent shall then render a periodic report to petitioner and to the Court to show compliance and for monitoring. In addition, the respondent is ordered to support the proper schooling of the children providing for the payment of the tuition fees and other school fees and charges including transportation expenses and allowances needed by the children for their studies.

4. Dissolving the community property or conjugal partnership property of the parties as the case may be, in accordance with law.

Let copies of this decision be furnished the Office of the Solicitor General, the Office of the City Prosecutor, Paranaque City, and the City Civil Registrar of Paranaque City and Manila.

SO ORDERED.¹²

On June 14, 2005, petitioner through counsel filed a Notice of Appeal from the Orders dated March 7, 2005 and May 4, 2005.

¹⁰ Id. at 1593-1639. See RTC Order dated June 23, 2005 noting the typographical error in the Order dated "May 4, 2004", and correcting the year as 2005. Id. at 1664.

¹¹ *Rollo*, pp. 89-100. Penned by Judge Fortunito L. Madrona.

¹² Id. at 99-100.

In her appeal brief, petitioner emphasized that she is not appealing the Decision dated May 16, 2005 which had become final as no appeal therefrom had been brought by the parties or the City Prosecutor or the Solicitor General. Petitioner pointed out that her appeal is “from the RTC Order dated March 7, 2005, issued *prior* to the rendition of the decision in the main case”, as well as the May 4, 2005 Order denying her motion for partial reconsideration.¹³

By Decision dated September 9, 2008, the CA dismissed the appeal on the ground that granting the appeal would disturb the RTC Decision of May 16, 2005 which had long become final and executory. The CA further noted that petitioner failed to avail of the proper remedy to question an interlocutory order.

Petitioner’s motion for reconsideration was likewise denied by the CA.

Hence, this petition raising the following issues:

A. DID THE CA COMMIT A GRAVE ABUSE OF DISCRETION and/or REVERSIBLE ERROR WHEN IT RULED THAT THE RTC ORDERS DATED MARCH 7, 2005 AND MAY 4, 2005 ARE MERELY INTERLOCUTORY?

B. DID THE CA COMMIT A GRAVE ABUSE OF DISCRETION and/or REVERSIBLE ERROR WHEN IT DISMISSED OUTRIGHT THE APPEAL FROM SAID RTC ORDERS, WHEN IT SHOULD HAVE DECIDED THE APPEAL ON THE MERITS?¹⁴

The core issue presented is whether the March 7, 2005 and May 4, 2005 Orders on the matter of support *pendente lite* are interlocutory or final.

This Court has laid down the distinction between interlocutory and final orders, as follows:

x x x A “final” judgment or order is one that finally disposes of a case, leaving nothing more to be done by the Court in respect

¹³ CA *rollo*, pp. 126-127.

¹⁴ *Rollo*, p. 572.

thereto, e.g., an adjudication on the merits which, on the basis of the evidence presented at the trial, declares categorically what the rights and obligations of the parties are and which party is in the right; or a judgment or order that dismisses an action on the ground, for instance, of *res judicata* or prescription. Once rendered, the task of the Court is ended, as far as deciding the controversy or determining the rights and liabilities of the litigants is concerned. Nothing more remains to be done by the Court except to await the parties' next move (which among others, may consist of the filing of a motion for new trial or reconsideration, or the taking of an appeal) and ultimately, of course, to cause the execution of the judgment once it becomes "final" or, to use the established and more distinctive term, "final and executory."

X X X X

Conversely, an order that does not finally dispose of the case, and does not end the Court's task of adjudicating the parties' contentions and determining their rights and liabilities as regards each other, but obviously indicates that other things remain to be done by the Court, is "interlocutory" e.g., an order denying a motion to dismiss under Rule 16 of the Rules, or granting a motion for extension of time to file a pleading, or authorizing amendment thereof, or granting or denying applications for postponement, or production or inspection of documents or things, *etc.* **Unlike a "final" judgment or order, which is appealable, as above pointed out, an "interlocutory" order may not be questioned on appeal except only as part of an appeal that may eventually be taken from the final judgment rendered in the case.**¹⁵
[Emphasis supplied]

The assailed orders relative to the incident of support *pendente lite* and support in arrears, as the term suggests, were issued pending the rendition of the decision on the main action for declaration of nullity of marriage, and are therefore interlocutory. They did not finally dispose of the case nor did they consist of a final adjudication of the merits of petitioner's claims as to the ground of psychological incapacity and other incidents as child custody, support and conjugal assets.

The Rules of Court provide for the provisional remedy of support *pendente lite* which may be availed of at the commencement of the proper action or proceeding, or at any time prior to the judgment or final order.¹⁶ On March 4, 2003, this Court promulgated the Rule on Provisional Orders¹⁷ which shall govern the issuance of provisional orders during the pendency of cases for the declaration of nullity of marriage, annulment of voidable

¹⁵ *Investments, Inc. v. Court of Appeals*, G.R. No. L-60036, January 27, 1987, 147 SCRA 334, 339-341.

¹⁶ Rule 61, 1997 Rules of Civil Procedure, as amended.

¹⁷ A.M. No. 02-11-12-SC which took effect on March 15, 2003.

marriage and legal separation. These include orders for spousal support, child support, child custody, visitation rights, hold departure, protection and administration of common property.

Petitioner contends that the CA failed to recognize that the interlocutory aspect of the assailed orders pertains only to private respondent's motion to reduce support which was granted, and to her own motion to increase support, which was denied. Petitioner points out that the ruling on support in arrears which have remained unpaid, as well as her prayer for reimbursement/payment under the May 19, 1998 Order and related orders were in the nature of final orders assailable by ordinary appeal considering that the orders referred to under Sections 1 and 4 of Rule 61 of the Rules of Court can apply only prospectively. Thus, from the moment the accrued amounts became due and demandable, the orders under which the amounts were made payable by private respondent have ceased to be provisional and have become final.

We disagree.

The word interlocutory refers to something intervening between the commencement and the end of the suit which decides some point or matter but is not a final decision of the whole controversy.¹⁸ An interlocutory order merely resolves incidental matters and leaves something more to be done to resolve the merits of the case. In contrast, a judgment or order is considered final if the order disposes of the action or proceeding completely, or terminates a particular stage of the same action.¹⁹ Clearly, whether an order or resolution is final or interlocutory is not dependent on compliance or non-compliance by a party to its directive, as what petitioner suggests. It is also important to emphasize the temporary or provisional nature of the assailed orders.

¹⁸ *United Overseas Bank (formerly Westmont Bank) v. Ros*, G.R. No. 171532, August 7, 2007, 529 SCRA 334, 343-344, citing *Ramiscal, Jr. v. Sandiganbayan*, G.R. Nos. 140576-99, December 13, 2004, 446 SCRA 166, 177.

¹⁹ *Republic v. Sandiganbayan, (Fourth Division)*, G.R. No. 152375, December 13, 2011, 662 SCRA 152, 177.

Provisional remedies are writs and processes available during the pendency of the action which may be resorted to by a litigant to preserve and protect certain rights and interests therein pending rendition, and for purposes of the ultimate effects, of a final judgment in the case. They are provisional because they constitute temporary measures availed of during the pendency of the action, and they are ancillary because they are mere incidents in and are dependent upon the result of the main action.²⁰ The subject orders on the matter of support *pendente lite* are but an incident to the main action for declaration of nullity of marriage.

Moreover, private respondent's obligation to give monthly support in the amount fixed by the RTC in the assailed orders may be enforced by the court itself, as what transpired in the early stage of the proceedings when the court cited the private respondent in contempt of court and ordered him arrested for his refusal/failure to comply with the order granting support *pendente lite*.²¹ A few years later, private respondent filed a motion to reduce support while petitioner filed her own motion to increase the same, and in addition sought spousal support and support in arrears. This fact underscores the provisional character of the order granting support *pendente lite*. Petitioner's theory that the assailed orders have ceased to be provisional due to the arrearages incurred by private respondent is therefore untenable.

Under Section 1, Rule 41 of the 1997 Revised Rules of Civil Procedure, as amended, appeal from interlocutory orders is not allowed. Said provision reads:

SECTION 1. Subject of appeal. - An appeal may be taken from a judgment or final order that completely disposes of the case, or of a particular matter therein when declared by these Rules to be appealable.

No appeal may be taken from:

- (a) An order denying a motion for new trial or reconsideration;
- (b) An order denying a petition for relief or any similar motion seeking relief from judgment;

²⁰ Florenz D. Regalado, REMEDIAL LAW COMPENDIUM, Vol. I, 2005 Ed. p. 671.

²¹ Records, pp. 439-440.

(c) An interlocutory order;

(d) An order disallowing or dismissing an appeal;

(e) An order denying a motion to set aside a judgment by consent, confession or compromise on the ground of fraud, mistake or duress, or any other ground vitiating consent;

(f) An order of execution;

(g) A judgment or final order for or against one or more of several parties or in separate claims, counterclaims, cross-claims and third-party complaints, while the main case is pending, unless the court allows an appeal therefrom; and

(h) An order dismissing an action without prejudice;

In all the above instances where the judgment or final order is not appealable, the aggrieved party may file an appropriate special civil action under Rule 65. (Emphasis supplied.)

The remedy against an interlocutory order not subject of an appeal is an appropriate special civil action under Rule 65 provided that the interlocutory order is rendered without or in excess of jurisdiction or with grave abuse of discretion. Having chosen the wrong remedy in questioning the subject interlocutory orders of the RTC, petitioner's appeal was correctly dismissed by the CA.

WHEREFORE, the petition for review on certiorari is **DENIED**, for lack of merit. The Decision dated September 9, 2008 and Resolution dated December 15, 2008 of the Court of Appeals in CA-G.R. CV No. 85384 are **AFFIRMED**.

With costs against the petitioner.

SO ORDERED.


MARTIN S. VILLARAMA, JR.
Associate Justice

WE CONCUR:



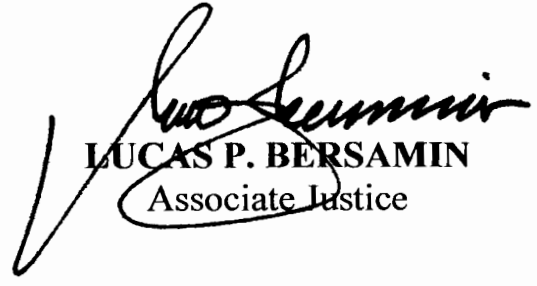
MARIA LOURDES P. A. SERENO

Chief Justice

Chairperson



TERESITA J. LEONARDO-DE CASTRO
Associate Justice



LUCAS P. BERSAMIN
Associate Justice



BIENVENIDO L. REYES
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARIA LOURDES P. A. SERENO
Chief Justice