



Republic of the Philippines  
**Supreme Court**  
Manila

**FIRST DIVISION**

**SUSAN LIM-LUA,**  
Petitioner,

**G.R. Nos. 175279-80**

Present:

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

- versus -

**DANILO Y. LUA,**  
Respondent.

Promulgated:

**JUN 05 2013**

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**DECISION**

**VILLARAMA, JR., J.:**

In this petition for review on certiorari under Rule 45, petitioner seeks to set aside the Decision<sup>1</sup> dated April 20, 2006 and Resolution<sup>2</sup> dated October 26, 2006 of the Court of Appeals (CA) dismissing her petition for contempt (CA-G.R. SP No. 01154) and granting respondent's petition for certiorari (CA-G.R. SP No. 01315).

The factual background is as follows:

On September 3, 2003,<sup>3</sup> petitioner Susan Lim-Lua filed an action for the declaration of nullity of her marriage with respondent Danilo Y. Lua, docketed as Civil Case No. CEB-29346 of the Regional Trial Court (RTC) of Cebu City, Branch 14.

In her prayer for support *pendente lite* for herself and her two children, petitioner sought the amount of ₱500,000.00 as monthly support,

<sup>1</sup> *Rollo*, pp. 39-48. Penned by Associate Justice Enrico A. Lanzas with Associate Justices Pampio A. Abarintos and Apolinario D. Bruselas, Jr. concurring.

<sup>2</sup> *Id.* at 50-51. Penned by Associate Justice Pampio A. Abarintos with Associate Justices Agustin S. Dizon and Priscilla Baltazar-Padilla concurring.

<sup>3</sup> Records, p. 1.

citing respondent's huge earnings from salaries and dividends in several companies and businesses here and abroad.<sup>4</sup>

After due hearing, Judge Raphael B. Yrastorza, Sr. issued an Order<sup>5</sup> dated March 31, 2004 granting support *pendente lite*, as follows:

From the evidence already adduced by the parties, the amount of Two Hundred Fifty (P250,000.00) Thousand Pesos would be sufficient to take care of the needs of the plaintiff. This amount *excludes the One hundred thirty-five (P135,000.00) Thousand Pesos for medical attendance expenses* needed by plaintiff for the operation of both her eye[s] which is demandable upon the conduct of such operation. The amounts already extended to the two (2) children, being a commendable act of defendant, should be continued by him considering the vast financial resources at his disposal.

According to Art. 203 of the Family Code, support is demandable from the time plaintiff needed the said support but is payable only from the date of judicial demand. Since the instant complaint was filed on 03 September 2003, the amount of Two Hundred Fifty (P250,000.00) Thousand should be paid by defendant to plaintiff retroactively to such date until the hearing of the support *pendente lite*. P250,000.00 x 7 corresponding to the seven (7) months that lapsed from September, 2003 to March 2004 would tantamount to a total of One Million Seven Hundred Fifty (P1,750,000.00) Thousand Pesos. Thereafter, starting the month of April 2004, until otherwise ordered by this Court, defendant is ordered to pay a monthly support of *Two Hundred Fifty Thousand (P250,000.00) Pesos payable within the first five (5) days of each corresponding month* pursuant to the third paragraph of Art. 203 of the Family Code of the Philippines. The monthly support of P250,000.00 is without prejudice to any increase or decrease thereof that this Court may grant plaintiff as the circumstances may warrant i.e. depending on the proof submitted by the parties during the proceedings for the main action for support.<sup>6</sup>

Respondent filed a motion for reconsideration,<sup>7</sup> asserting that petitioner is not entitled to spousal support considering that she does not maintain for herself a separate dwelling from their children and respondent has continued to support the family for their sustenance and well-being in accordance with family's social and financial standing. As to the ₱250,000.00 granted by the trial court as monthly support *pendente lite*, as well as the ₱1,750,000.00 retroactive support, respondent found it unconscionable and beyond the intendment of the law for not having considered the needs of the respondent.

In its May 13, 2004 Order, the trial court stated that the March 31, 2004 Order had become final and executory since respondent's motion for reconsideration is treated as a mere scrap of paper for violation of the three-day notice period under Section 4, Rule 15 of the 1997 Rules of Civil Procedure, as amended, and therefore did not interrupt the running of the

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<sup>4</sup> Id. at 16.

<sup>5</sup> Id. at 46-B to 50.

<sup>6</sup> Id. at 49.

<sup>7</sup> Id. at 55-59.

period to appeal. Respondent was given ten (10) days to show cause why he should not be held in contempt of the court for disregarding the March 31, 2004 order granting support *pendente lite*.<sup>8</sup>

His second motion for reconsideration having been denied, respondent filed a petition for certiorari in the CA.

On April 12, 2005, the CA rendered its Decision,<sup>9</sup> finding merit in respondent's contention that the trial court gravely abused its discretion in granting ₱250,000.00 monthly support to petitioner without evidence to prove his actual income. The said court thus decreed:

WHEREFORE, foregoing premises considered, this petition is given due course. The assailed Orders dated March 31, 2004, May 13, 2004, June 4, 2004 and June 18, 2004 of the Regional Trial Court, Branch 14, Cebu City issued in Civil Case No. CEB No. 29346 entitled "Susan Lim Lua versus Danilo Y. Lua" are hereby nullified and set aside and instead a new one is entered ordering herein petitioner:

- a) to pay private respondent a monthly support *pendente lite* of P115,000.00 beginning the month of April 2005 and every month thereafter within the first five (5) days thereof;
- b) to pay the private respondent the amount of P115,000.00 a month multiplied by the number of months starting from September 2003 until March 2005 less than the amount supposedly given by petitioner to the private respondent as her and their two (2) children monthly support; and
- c) to pay the costs.

SO ORDERED.<sup>10</sup>

Neither of the parties appealed this decision of the CA. In a Compliance<sup>11</sup> dated June 28, 2005, respondent attached a copy of a check he issued in the amount of ₱162,651.90 payable to petitioner. Respondent explained that, as decreed in the CA decision, he deducted from the amount of support in arrears (September 3, 2003 to March 2005) ordered by the CA -- ₱2,185,000.00 -- plus ₱460,000.00 (April, May, June and July 2005), totalling ₱2,645,000.00, the advances given by him to his children and petitioner in the sum of ₱2,482,348.16 (with attached photocopies of receipts/billings).

In her Comment to Compliance with Motion for Issuance of a Writ of Execution,<sup>12</sup> petitioner asserted that none of the expenses deducted by

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<sup>8</sup> Id. at 71.

<sup>9</sup> *Rollo*, pp. 61-69. Penned by Associate Justice Mercedes Gozo-Dadole with Associate Justices Pampio A. Abarintos and Ramon M. Bato, Jr. concurring.

<sup>10</sup> Id. at 68-69.

<sup>11</sup> Id. at 70-72.

<sup>12</sup> Id. at 186-189.

respondent may be chargeable as part of the monthly support contemplated by the CA in CA-G.R. SP No. 84740.

On September 27, 2005, the trial court issued an Order<sup>13</sup> granting petitioner's motion for issuance of a writ of execution as it rejected respondent's interpretation of the CA decision. Respondent filed a motion for reconsideration and subsequently also filed a motion for inhibition of Judge Raphael B. Yrastorza, Sr. On November 25, 2005, Judge Yrastorza, Sr. issued an Order<sup>14</sup> denying both motions.

WHEREFORE, in view of the foregoing premises, both motions are DENIED. Since a second motion for reconsideration is prohibited under the Rules, this denial has attained finality; let, therefore, a writ of execution be issued in favor of plaintiff as against defendant for the *accumulated support in arrears pendente lite*.

Notify both parties of this Order.

SO ORDERED.<sup>15</sup>

Since respondent still failed and refused to pay the support in arrears *pendente lite*, petitioner filed in the CA a Petition for Contempt of Court with Damages, docketed as CA-G.R. SP No. 01154 (“*Susan Lim Lua versus Danilo Y. Lua*”). Respondent, on the other hand, filed CA-G.R. SP No. 01315, a Petition for Certiorari under Rule 65 of the Rules of Court (“*Danilo Y. Lua versus Hon. Raphael B. Yrastorza, Sr., in his capacity as Presiding Judge of Regional Trial Court of Cebu, Branch 14, and Susan Lim Lua*”). The two cases were consolidated.

By Decision dated April 20, 2006, the CA set aside the assailed orders of the trial court, as follows:

**WHEREFORE**, judgment is hereby rendered:

- a) DISMISSING, for lack of merit, the case of Petition for Contempt of Court with Damages filed by Susan Lim Lua against Danilo Y. Lua with docket no. SP. CA-GR No. 01154;
- b) GRANTING Danilo Y. Lua's Petition for Certiorari docketed as SP. CA-GR No. 01315. Consequently, the assailed Orders dated 27 September 2005 and 25 November 2005 of the Regional Trial Court, Branch 14, Cebu City issued in Civil Case No. CEB-29346 entitled “*Susan Lim Lua versus Danilo Y. Lua*, are hereby NULLIFIED and SET ASIDE, and instead a new one is entered:
  - i. ORDERING the deduction of the amount of PhP2,482,348.16 plus 946,465.64, or a total of PhP3,428,813.80 from the current total support in arrears of

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<sup>13</sup> Records, pp. 265-266.

<sup>14</sup> *Rollo*, pp. 193-196.

<sup>15</sup> *Id.* at 196.

Danilo Y. Lua to his wife, Susan Lim Lua and their two (2) children;

- ii. ORDERING Danilo Y. Lua to resume payment of his monthly support of PhP115,000.00 pesos starting from the time payment of this amount was deferred by him subject to the deductions aforementioned.
- iii. DIRECTING the issuance of a permanent writ of preliminary injunction.

**SO ORDERED.**<sup>16</sup>

The appellate court said that the trial court should not have completely disregarded the expenses incurred by respondent consisting of the purchase and maintenance of the two cars, payment of tuition fees, travel expenses, and the credit card purchases involving groceries, dry goods and books, which certainly inured to the benefit not only of the two children, but their mother (petitioner) as well. It held that respondent's act of deferring the monthly support adjudged in CA-G.R. SP No. 84740 was not contumacious as it was anchored on valid and justifiable reasons. Respondent said he just wanted the issue of whether to deduct his advances be settled first in view of the different interpretation by the trial court of the appellate court's decision in CA-G.R. SP No. 84740. It also noted the lack of contribution from the petitioner in the joint obligation of spouses to support their children.

Petitioner filed a motion for reconsideration but it was denied by the CA.

Hence, this petition raising the following errors allegedly committed by the CA:

I.

THE HONORABLE COURT ERRED IN NOT FINDING RESPONDENT GUILTY OF INDIRECT CONTEMPT.

II.

THE HONORABLE COURT ERRED IN ORDERING THE DEDUCTION OF THE AMOUNT OF PHP2,482,348.16 PLUS 946,465.64, OR A TOTAL OF PHP3,428,813.80 FROM THE CURRENT TOTAL SUPPORT IN ARREARS OF THE RESPONDENT TO THE PETITIONER AND THEIR CHILDREN.<sup>17</sup>

The main issue is whether certain expenses already incurred by the respondent may be deducted from the total support in arrears owing to petitioner and her children pursuant to the Decision dated April 12, 2005 in CA-G.R. SP No. 84740.

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<sup>16</sup> Id. at 47.

<sup>17</sup> Id. at 18.

The pertinent provision of the Family Code of the Philippines provides:

Article 194. Support comprises everything **indispensable** for sustenance, dwelling, clothing, medical attendance, education and transportation, in keeping with the financial capacity of the family.

The education of the person entitled to be supported referred to in the preceding paragraph shall include his schooling or training for some profession, trade or vocation, even beyond the age of majority. Transportation shall include expenses in going to and from school, or to and from place of work. (Emphasis supplied.)

Petitioner argues that it was patently erroneous for the CA to have allowed the deduction of the value of the two cars and their maintenance costs from the support in arrears, as these items are not indispensable to the sustenance of the family or in keeping them alive. She points out that in the Decision in CA-G.R. SP No. 84740, the CA already considered the said items which it deemed chargeable to respondent, while the monthly support *pendente lite* (₱115,000.00) was fixed on the basis of the documentary evidence of respondent's alleged income from various businesses and petitioner's testimony that she needed ₱113,000.00 for the maintenance of the household and other miscellaneous expenses *excluding* the ₱135,000.00 medical attendance expenses of petitioner.

Respondent, on the other hand, contends that disallowing the subject deductions would result in unjust enrichment, thus making him pay for the same obligation twice. Since petitioner and the children resided in one residence, the groceries and dry goods purchased by the children using respondent's credit card, totalling ₱594,151.58 for the period September 2003 to June 2005 were not consumed by the children alone but shared with their mother. As to the Volkswagen Beetle and BMW 316i respondent bought for his daughter Angelli Suzanne Lua and Daniel Ryan Lua, respectively, these, too, are to be considered advances for support, in keeping with the financial capacity of the family. Respondent stressed that being children of parents belonging to the upper-class society, Angelli and Daniel Ryan had never in their entire life commuted from one place to another, nor do they eat their meals at "carinderias". Hence, the cars and their maintenance are indispensable to the children's day-to-day living, the value of which were properly deducted from the arrearages in support *pendente lite* ordered by the trial and appellate courts.

As a matter of law, the amount of support which those related by marriage and family relationship is generally obliged to give each other shall be in proportion to the resources or means of the giver and to the needs of the recipient.<sup>18</sup> Such support comprises everything indispensable for sustenance, dwelling, clothing, medical attendance, education and transportation, in keeping with the financial capacity of the family.

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<sup>18</sup> FAMILY CODE, Art. 201; *Lacson v. Lacson*, 531 Phil. 277, 287 (2006), citing *Baltazar v. Serfino*, No. L-17315, July 31, 1965, 14 SCRA 820, 821.

Upon receipt of a verified petition for declaration of absolute nullity of void marriage or for annulment of voidable marriage, or for legal separation, and at any time during the proceeding, the court, *motu proprio* or upon verified application of any of the parties, guardian or designated custodian, may temporarily grant support *pendente lite* prior to the rendition of judgment or final order.<sup>19</sup> Because of its provisional nature, a court does not need to delve fully into the merits of the case before it can settle an application for this relief. All that a court is tasked to do is determine the kind and amount of evidence which may suffice to enable it to justly resolve the application. It is enough that the facts be established by affidavits or other documentary evidence appearing in the record.<sup>20</sup>

In this case, the amount of monthly support *pendente lite* for petitioner and her two children was determined after due hearing and submission of documentary evidence by the parties. Although the amount fixed by the trial court was reduced on appeal, it is clear that the monthly support *pendente lite* of ₱115,000.00 ordered by the CA was intended primarily for the sustenance of petitioner and her children, e.g., food, clothing, salaries of drivers and house helpers, and other household expenses. Petitioner's testimony also mentioned the cost of regular therapy for her scoliosis and vitamins/medicines.

ATTY. ZOSA:

x x x x

Q How much do you spend for your food and your two (2) children every month?

A Presently, Sir?

ATTY. ZOSA:

Yes.

A For the food alone, I spend not over P40,000.00 to P50,000.00 a month for the food alone.

x x x x

ATTY. ZOSA:

Q What other expenses do you incur in living in that place?

A The normal household and the normal expenses for a family to have a decent living, Sir.

Q How much other expenses do you incur?

WITNESS:

A For other expenses, is around over a P100,000.00, Sir.

<sup>19</sup> Sec. 1, RULE ON PROVISIONAL ORDERS (A.M. No. 02-11-12-SC) which took effect on March 15, 2003); REVISED RULES OF COURT, Rule 61, Secs. 1 & 4.

<sup>20</sup> *Mangonon v. Court of Appeals*, 526 Phil. 505, 517 (2006), citing *Ramos v. Court of Appeals*, 150-A Phil. 996, 1001 (1972).

Q Why do you incur that much amount?

A For the clothing for the three (3) of us, for the vitamins and medicines. And also I am having a special therapy to straighten my back because I am scoliotic. I am advised by the Doctor to hire a driver, but I cannot still afford it now. Because my eyesight is not reliable for driving. And I still need another househelp to accompany me whenever I go marketing because for my age, I cannot carry anymore heavy loads.

x x x x

ATTY. FLORES:

x x x x

Q On the issue of the food for you and the two (2) children, you mentioned P40,000.00 to P50,000.00?

A Yes, for the food alone.

Q Okay, what other possible expenses that you would like to include in those two (2) items? You mentioned of a driver, am I correct?

A Yes, I might need two (2) drivers, Sir for me and my children.

Q Okay. How much would you like possibly to pay for those two (2) drivers?

A I think P10,000.00 a month for one (1) driver. So I need two (2) drivers. And I need another househelp.

Q You need another househelp. The househelp nowadays would charge you something between P3,000.00 to P4,000.00. That's quite...

A Right now, my househelp is receiving P8,000.00. I need another which I will give a compensation of P5,000.00.

x x x x

Q Other than that, do you still have other expenses?

A My clothing.

COURT:

How about the schooling for your children?

WITNESS:

A The schooling is shouldered by my husband, Your Honor.

COURT:

Everything?

A Yes, Your Honor.

x x x x

ATTY. FLORES:

Q Madam witness, let us talk of the present needs. x x x. What else, what specific need that you would like to add so I can tell my client, the defendant.

WITNESS:

A I need to have an operation both of my eyes. I also need a special therapy for my back because I am scoliotic, three (3) times a week.

Q That is very reasonable. [W]ould you care to please repeat that?

A Therapy for my scoliotic back and then also for the operation both of my eyes. And I am also taking some vitamins from excel that will cost P20,000.00 a month.

Q Okay. Let's have piece by piece. Have you asked the Doctor how much would it cost you for the operation of that scoliotic?

A Yes before because I was already due last year. Before, this eye will cost P60,000.00 and the other eyes P75,000.00.

Q So for both eyes, you are talking of P60,000.00 plus P75,000.00 is P135,000.00?

A Yes.

x x x x

Q You talk of therapy?

A Yes.

Q So how much is that?

A Around P5,000.00 a week.<sup>21</sup>

As to the financial capacity of the respondent, it is beyond doubt that he can solely provide for the subsistence, education, transportation, health/medical needs and recreational activities of his children, as well as those of petitioner who was then unemployed and a full-time housewife. Despite this, respondent's counsel manifested during the same hearing that respondent was willing to grant the amount of only ₱75,000.00 as monthly support *pendente lite* both for the children and petitioner as spousal support. Though the receipts of expenses submitted in court unmistakably show how much respondent lavished on his children, it appears that the matter of spousal support was a different matter altogether. Rejecting petitioner's prayer for ₱500,000.00 monthly support and finding the ₱75,000.00 monthly support offered by respondent as insufficient, the trial court fixed the monthly support *pendente lite* at ₱250,000.00. However, since the supposed income in millions of respondent was based merely on the allegations of petitioner in her complaint and registration documents of various corporations which respondent insisted are owned not by him but his parents and siblings, the CA reduced the amount of support *pendente lite* to ₱115,000.00, which ruling was no longer questioned by both parties.

Controversy between the parties resurfaced when respondent's compliance with the final CA decision indicated that he deducted from the total amount in arrears (₱2,645,000.00) the sum of ₱2,482,348.16,

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<sup>21</sup> TSN, March 31, 2004, pp. 6-11.

representing the value of the two cars for the children, their cost of maintenance and advances given to petitioner and his children. Respondent explained that the deductions were made consistent with the *fallo* of the CA Decision in CA-G.R. SP No. 84740 ordering him to pay support *pendente lite* in arrears less the amount supposedly given by him to petitioner as her and their two children's monthly support.

The following is a summary of the subject deductions under Compliance dated June 28, 2005, duly supported by receipts<sup>22</sup>:

Car purchases for Angelli Suzanne and Daniel Ryan	-	Php1,350,000.00
Car Maintenance fees of Angelli Suzanne	-	613,472.86
Credit card statements of Daniel Ryan	-	51,232.50
Car Maintenance fees of Daniel Ryan	-	348,682.28
	-	<u>118,960.52</u>
<b>TOTAL</b>	-	<b>Php2,482,348.16</b>

After the trial court disallowed the foregoing deductions, respondent filed a motion for reconsideration further asserting that the following amounts, likewise with supporting receipts, be considered as additional advances given to petitioner and the children<sup>23</sup>:

Medical expenses of Susan Lim-Lua	Php	42,450.71
Dental Expenses of Daniel Ryan		11,500.00
Travel expenses of Susan Lim-Lua		14,611.15
Credit card purchases of Angelli Suzanne		408,891.08
Salon and travel expenses of Angelli Suzanne		87,112.70
School expenses of Daniel Ryan Lua		260,900.00
Cash given to Daniel and Angelli		<u>121,000.00</u>
<b>TOTAL</b>	-	<b>Php 946,465.64</b>

**GRAND TOTAL - Php 3,428,813.80**

The CA, in ruling for the respondent said that all the foregoing expenses already incurred by the respondent should, in equity, be considered advances which may be properly deducted from the support in arrears due to the petitioner and the two children. Said court also noted the absence of petitioner's contribution to the joint obligation of support for their children.

We reverse in part the decision of the CA.

<sup>22</sup> *Rollo*, pp. 74-185.

<sup>23</sup> Records, pp. 278-329; CA Decision dated April 20, 2006, *rollo* p. 44.

Judicial determination of support *pendente lite* in cases of legal separation and petitions for declaration of nullity or annulment of marriage are guided by the following provisions of the Rule on Provisional Orders<sup>24</sup>

Sec. 2. *Spousal Support*.—In determining support for the spouses, the court may be guided by the following rules:

(a) In the absence of adequate provisions in a written agreement between the spouses, the spouses may be supported from the properties of the absolute community or the conjugal partnership.

(b) The court may award support to either spouse in such amount and for such period of time as the court may deem just and reasonable based on their standard of living during the marriage.

(c) The court may likewise consider the following factors: (1) whether the spouse seeking support is the custodian of a child whose circumstances make it appropriate for that spouse not to seek outside employment; (2) the time necessary to acquire sufficient education and training to enable the spouse seeking support to find appropriate employment, and that spouse's future earning capacity; (3) the duration of the marriage; (4) the comparative financial resources of the spouses, including their comparative earning abilities in the labor market; (5) the needs and obligations of each spouse; (6) the contribution of each spouse to the marriage, including services rendered in home-making, child care, education, and career building of the other spouse; (7) the age and health of the spouses; (8) the physical and emotional conditions of the spouses; (9) the ability of the supporting spouse to give support, taking into account that spouse's earning capacity, earned and unearned income, assets, and standard of living; and (10) any other factor the court may deem just and equitable.

(d) The Family Court may direct the deduction of the provisional support from the salary of the spouse.

Sec. 3. *Child Support*.—The common children of the spouses shall be supported from the properties of the absolute community or the conjugal partnership.

Subject to the sound discretion of the court, either parent or both may be ordered to give an amount necessary for the support, maintenance, and education of the child. It shall be in proportion to the resources or means of the giver and to the necessities of the recipient.

In determining the amount of provisional support, the court may likewise consider the following factors: (1) the financial resources of the custodial and non-custodial parent and those of the child; (2) the physical and emotional health of the child and his or her special needs and aptitudes; (3) the standard of living the child has been accustomed to; (4) the non-monetary contributions that the parents will make toward the care and well-being of the child.

The Family Court may direct the deduction of the provisional support from the salary of the parent.

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<sup>24</sup> A.M. No. 02-11-12-SC.

Since the amount of monthly support *pendente lite* as fixed by the CA was not appealed by either party, there is no controversy as to its sufficiency and reasonableness. The dispute concerns the deductions made by respondent in settling the support in arrears.

On the issue of crediting of money payments or expenses against accrued support, we find as relevant the following rulings by US courts.

In *Bradford v. Futrell*,<sup>25</sup> appellant sought review of the decision of the Circuit Court which found him in arrears with his child support payments and entered a decree in favor of appellee wife. He complained that in determining the arrearage figure, he should have been allowed full credit for all money and items of personal property given by him to the children themselves, even though he referred to them as gifts. The Court of Appeals of Maryland ruled that in the suit to determine amount of arrears due the divorced wife under decree for support of minor children, the husband (appellant) was not entitled to credit for checks which he had clearly designated as gifts, nor was he entitled to credit for an automobile given to the oldest son or a television set given to the children. Thus, if the children remain in the custody of the mother, the father is not entitled to credit for money paid directly to the children if such was paid without any relation to the decree.

In the absence of some finding of consent by the mother, most courts refuse to allow a husband to dictate how he will meet the requirements for support payments when the mode of payment is fixed by a decree of court. Thus he will not be credited for payments made when he unnecessarily interposed himself as a volunteer and made payments direct to the children of his own accord. *Wills v. Baker*, 214 S. W. 2d 748 (Mo. 1948); *Openshaw v. Openshaw*, 42 P. 2d 191 (Utah 1935). In the latter case the court said in part: "The payments to the children themselves do not appear to have been made as payments upon alimony, but were rather the result of his fatherly interest in the welfare of those children. We do not believe he should be permitted to charge them to plaintiff. By so doing he would be determining for Mrs. Openshaw the manner in which she should expend her allowances. It is a very easy thing for children to say their mother will not give them money, especially as they may realize that such a plea is effective in attaining their ends. If she is not treating them right the courts are open to the father for redress."<sup>26</sup>

In *Martin, Jr. v. Martin*,<sup>27</sup> the Supreme Court of Washington held that a father, who is required by a divorce decree to make child support payments directly to the mother, cannot claim credit for payments voluntarily made directly to the children. However, special considerations of an equitable nature may justify a court in crediting such payments on his indebtedness to the mother, when such can be done without injustice to her.

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<sup>25</sup> 225 Md. 512; 171 A.2d 493; 1961 Md. LEXIS 686.

<sup>26</sup> Id. at 519; id. at 496-497.

<sup>27</sup> 59 Wn.2d 468; 368 P.2d 170; 1962 Wash. LEXIS 419.

The general rule is to the effect that when a father is required by a divorce decree to pay to the mother money for the support of their dependent children and the unpaid and accrued installments become judgments in her favor, he cannot, as a matter of law, claim credit on account of payments voluntarily made directly to the children. *Koon v. Koon, supra; Briggs v. Briggs, supra*. However, **special considerations of an equitable nature may justify a court in crediting such payments on his indebtedness to the mother, when that can be done without injustice to her.** *Briggs v. Briggs, supra*. The courts are justifiably reluctant to lay down any general rules as to when such credits may be allowed.<sup>28</sup> (Emphasis supplied.)

Here, the CA should not have allowed *all* the expenses incurred by respondent to be credited against the accrued support *pendente lite*. As earlier mentioned, the monthly support *pendente lite* granted by the trial court was intended primarily for food, household expenses such as salaries of drivers and house helpers, and also petitioner's scoliosis therapy sessions. Hence, the value of two expensive cars bought by respondent for his children plus their maintenance cost, travel expenses of petitioner and Angelli, purchases through credit card of items other than groceries and dry goods (clothing) should have been disallowed, as these bear no relation to the judgment awarding support *pendente lite*. While it is true that the dispositive portion of the executory decision in CA-G.R. SP No. 84740 ordered herein respondent to pay the support in arrears "less than the amount supposedly given by petitioner to the private respondent as her and their two (2) children monthly support," the deductions should be limited to those basic needs and expenses considered by the trial and appellate courts. The assailed ruling of the CA allowing huge deductions from the accrued monthly support of petitioner and her children, while correct insofar as it commends the generosity of the respondent to his children, is clearly inconsistent with the executory decision in CA-G.R. SP No. 84740. More important, it completely ignores the unfair consequences to petitioner whose sustenance and well-being, was given due regard by the trial and appellate courts. This is evident from the March 31, 2004 Order granting support *pendente lite* to petitioner and her children, when the trial court observed:

While there is evidence to the effect that defendant is giving some forms of financial assistance to his two (2) children via their credit cards and paying for their school expenses, the same is, however, devoid of any form of spousal support to the plaintiff, for, at this point in time, while the action for nullity of marriage is still to be heard, it is incumbent upon the defendant, considering the physical and financial condition of the plaintiff and the overwhelming capacity of defendant, to extend support unto the latter. x x x<sup>29</sup>

On appeal, while the Decision in CA-G.R. SP No. 84740 reduced the amount of monthly support fixed by the trial court, it nevertheless held that considering respondent's financial resources, it is but fair and just that he give a monthly support for the sustenance and basic necessities of petitioner

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<sup>28</sup> Id. at 473; id. at 172-173.

<sup>29</sup> Records, p. 48.

and his children. This would imply that any amount respondent seeks to be credited as monthly support should only cover those incurred for sustenance and household expenses.

In the case at bar, records clearly show and in fact has been admitted by petitioner that aside from paying the expenses of their two (2) children's schooling, he gave his two (2) children two (2) cars and credit cards of which the expenses for various items namely: clothes, grocery items and repairs of their cars were **chargeable to him** which totaled an amount of more than One Hundred Thousand (P100,000.00) for each of them and considering that as testified by the private respondent that she needs the total amount of P113,000.00 for the maintenance of the household and other miscellaneous expenses and considering further that petitioner can afford to buy cars for his two (2) children, and to pay the expenses incurred by them which are chargeable to him through the credit cards he provided them in the amount of P100,000.00 each, it is but fair and just that the monthly support *pendente lite* for his wife, herein private respondent, be fixed as of the present in the amount of **P115,000.00 which would be sufficient enough to take care of the household and other needs**. This monthly support *pendente lite* to private respondent in the amount of P115,000.00 **excludes the amount of One Hundred Thirty-Five (P135,000.00) Thousand Pesos for medical attendance expenses needed by private respondent for the operation of both her eye[s]** which is demandable upon the conduct of such operation. Likewise, this monthly support of P115,000.00 is without prejudice to any increase or decrease thereof that the trial court may grant private respondent as the circumstances may warrant i.e. depending on the proof submitted by the parties during the proceedings for the main action for support.

The amounts already extended to the two (2) children, being a commendable act of petitioner, should be continued by him considering the vast financial resources at his disposal.<sup>30</sup> (Emphasis supplied.)

Accordingly, only the following expenses of respondent may be allowed as deductions from the accrued support *pendente lite* for petitioner and her children:

Medical expenses of Susan Lim-Lua	Php 42,450.71
Dental Expenses of Daniel Ryan	11,500.00
Credit card purchases of Angelli (Groceries and Dry Goods)	365,282.20
Credit Card purchases of Daniel Ryan	
	<u>228,869.38</u>
<b>TOTAL</b>	<b>Php 648,102.29</b>

As to the contempt charge, we sustain the CA in holding that respondent is not guilty of indirect contempt.

Contempt of court is defined as a disobedience to the court by acting in opposition to its authority, justice, and dignity. It signifies not only a willful disregard or disobedience of the court's order, but such conduct

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<sup>30</sup> *Rollo*, p. 68.

which tends to bring the authority of the court and the administration of law into disrepute or, in some manner, to impede the due administration of justice.<sup>31</sup> To constitute contempt, the act must be done willfully and for an illegitimate or improper purpose.<sup>32</sup> The good faith, or lack of it, of the alleged contemnor should be considered.<sup>33</sup>

Respondent admittedly ceased or suspended the giving of monthly support *pendente lite* granted by the trial court, which is immediately executory. However, we agree with the CA that respondent's act was not contumacious considering that he had not been remiss in actually providing for the needs of his children. It is a matter of record that respondent continued shouldering the full cost of their education and even beyond their basic necessities in keeping with the family's social status. Moreover, respondent believed in good faith that the trial and appellate courts, upon equitable grounds, would allow him to offset the substantial amounts he had spent or paid directly to his children.

Respondent complains that petitioner is very much capacitated to generate income on her own because she presently maintains a boutique at the Ayala Center Mall in Cebu City and at the same time engages in the business of lending money. He also claims that the two children have finished their education and are now employed in the family business earning their own salaries.

Suffice it to state that the matter of increase or reduction of support should be submitted to the trial court in which the action for declaration for nullity of marriage was filed, as this Court is not a trier of facts. The amount of support may be reduced or increased proportionately according to the reduction or increase of the necessities of the recipient and the resources or means of the person obliged to support.<sup>34</sup> As we held in *Advincula v. Advincula*<sup>35</sup>

...Judgment for support does not become final. The right to support is of such nature that its allowance is essentially provisional; for during the entire period that a needy party is entitled to support, his or her alimony may be modified or altered, in accordance with his increased or decreased needs, and with the means of the giver. It cannot be regarded as subject to final determination.<sup>36</sup>

**WHEREFORE**, the petition is **PARTLY GRANTED**. The Decision dated April 20, 2006 of the Court of Appeals in CA-G.R. SP Nos. 01154 and 01315 is hereby **MODIFIED** to read as follows:

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<sup>31</sup> *Bank of the Philippine Islands v. Calanza*, G.R. No. 180699, October 13, 2010, 633 SCRA 186, 192-193, citing *Lu Ym v. Mahinay*, G.R. No. 169476, June 16, 2006, 491 SCRA 253, 261-262; *Lee v. Regional Trial Court of Quezon City, Br. 85*, 496 Phil. 421, 433 (2005).

<sup>32</sup> *Lorenzo Shipping Corporation v. Distribution Management Association of the Philippines*, G.R. No. 155849, August 31, 2011, 656 SCRA 331, 350.

<sup>33</sup> *Id.* at 349.

<sup>34</sup> *Montefalcon v. Vasquez*, G.R. No. 165016, June 17, 2008, 554 SCRA 513, 528; FAMILY CODE, Art. 202.

<sup>35</sup> No. L-19065, January 31, 1964, 10 SCRA 189, 191.

<sup>36</sup> As cited in *Lam v. Chua*, 469 Phil. 852, 860-861 (2004).

“WHEREFORE, judgment is hereby rendered:

- a) DISMISSING, for lack of merit, the case of Petition for Contempt of Court with Damages filed by Susan Lim Lua against Danilo Y. Lua with docket no. SP. CA-G.R. No. 01154;
- b) **GRANTING IN PART** Danilo Y. Lua’s Petition for Certiorari docketed as SP. CA-G.R. No. 01315. Consequently, the assailed Orders dated 27 September 2005 and 25 November 2005 of the Regional Trial Court, Branch 14, Cebu City issued in Civil Case No. CEB-29346 entitled “Susan Lim Lua versus Danilo Y. Lua, are hereby NULLIFIED and SET ASIDE, and instead a new one is entered:
  - i. ORDERING the deduction of the amount of **Php 648,102.29** from the support *pendente lite* in arrears of Danilo Y. Lua to his wife, Susan Lim Lua and their two (2) children;
  - ii. ORDERING Danilo Y. Lua to resume payment of his monthly support of **Php115,000.00** pesos starting from the time payment of this amount was deferred by him subject to the deduction aforementioned.
  - iii. DIRECTING the **immediate execution of this judgment.**

SO ORDERED.”

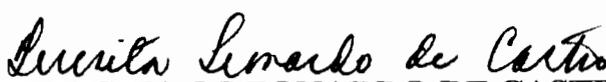
No pronouncement as to costs.

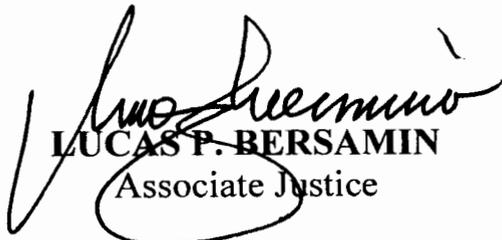
**SO ORDERED.**

  
**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 1987 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