Republic of the Philippines
SUPREME COURT
REGIONAL TRIAL COURT
Eighth Judicial Region
Branch 11
Calubian, Leyte
email address: rtc2cub011@judiciary.gov.ph
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MAUREEN MULVANEY,
Petitioner
- versus –
SPS. DAVID CHARLES OLESEN and ILYN OCANG OLESEN,
Respondents.
x----------/

Civil Case No. SP-CN-179-SP
For: **Petition for Recognition of Foreign Judgment**

DECISION

"No sovereign is bound to give effect within its dominion to a judgment rendered by a tribunal of another country.[1]" This is exactly the reason why cases such as the instant petition are filed in our courts.

Sought to be recognized by the petitioner in this petition are 2 issuances of a foreign court, both pertaining to the visitation rights of a grandmother over her 2 grandchildren. As the children are already here in the Philippines, the grandmother – petitioner herein – seeks to have the order granting her such rights recognized by this court so that the same may be enforced here. The petition faced opposition, both from the children's blood father and their adoptive mother.

On February 8, 2024, petitioner MAUREEN G. MULVANEY (PETITIONER), through her attorney-in-fact[2] Atty. CHARMAINE JOY V. LUMBRE, filed the instant PETITION FOR RECOGNITION OF FOREIN JUDGMENT/ORDER which prayed as follows:

> **"WHEREFORE**, Petitioner most respectfully prays that this Honorable Court issues an order:
>
> 1. Recognizing the Agreement and Order RE Visitation issued by the Superior Court of Arizona, Maricopa County under Case No. FC2019-098271;
>
> 2. Recognizing the Order Joining Third Party Respondent: ILYN OCANG OLESEN for Case No. FC2019-098271 issued by the Superior Court of Arizona, Maricopa County;

[1] Republic v Cuevas, G.R. No. 249238, February 27, 2024.
[2] See Special Power of Attorney found on pages 11 to 13, requested to be marked by petitioner as Exh. "A-1".

3. Enforcing and giving full effect to all the terms and provisions set forth under the Agreement and Order RE Visitation for minor children MIKAYLA GENEVIEVE OLESEN and MATTHEW LIAM OLESEN .
4. Award payment of costs of litigation and attorney's fees to Petitioner on account of the bad faith of the Respondents which compelled the filing of this case.

All such other reliefs as may be just under the premises."

The petition was filed against the spouses DAVID OLESEN (DAVID) and ILYN OCANG OLESEN (ILYN) (collectively, RESPONDENTS), both now allegedly residing in Sitio Punod Gamay, Brgy. Tinago, San Isidro, Leyte.

After the RESPONDENTS filed their COMMENT to the petition on July 16, 2024, pre-trial was conducted and eventually concluded on August 18, 2024 whereupon the PETITIONER presented her sole witness – herself – on February 26 and May 21, 2025. PETITIONER, through counsel, then offered the following documentary exhibits, all of which were ordered admitted via the court's June 16, 2025 order:

1. Exhibit "A" – Verified Petition
    a. Exhibit "A-1" – Special Power of Attorney dated December 5, 2023
2. Exhibit "B" – Agreement and Final Order RE Visitation issued by the Superior Court of Arizona, Maricopa County on May 17, 2021
    a. Exhibit "B-1" – Signature of David Olesen on page 8
    b. Minute Entry Resolution issued on June 26, 2024
    c. Minute Entry Resolution issued on August 20, 2024
3. Exhibit "C" – Motion for Joinder of Third Party Respondent: Ilyn Olesen
4. Exhibit "D" – Apostilled copy of the Order Joining Third Party Respondent: Ilyn Ocang Olesen
5. Exhibit "E" – Apostilled copy of the Order Allowing Alternative Services
    a. Exhibit "E-1" – Affidavit of Chris Torrenzano dated April 3, 2024
    b. Exhibit "E-2" – Email of Chris Torrenzano to Ilyn Ocang Olesen dated June 28, 2023
    c. Exhibit "E-3" – Email reply of Ilyn Ocang Olesen to Chris Torenzano dated July 5, 2023
6. Exhibit "F" – Apostilled copy of the Relevant Provisions of Arizona Revised Statutes, attested by the Executive Director of Arizona Legislative Council on December 3, 2023;
    a. Exhibit "F-1" – Arizona Revised Statutes, 25-314, Joinder of parties; 25-409, Third Party Rights
7. Exhibit "G" – Affidavit of Chris Torrenzano on the Relevant Rules of Family Law procedure on April 12, 2024
8. Exhibit "H" – Court order for initial hearing issued on April 26, 2024

9. Exhibit "I" – Notice of Appearance of the Office of the Solicitor General
    a. Exhibit "I-1" – Letter of Authority deputizing the Assistant Provincial Prosecutor
10. Exhibit "J" – Affidavit of Publication dated June 4, 2024
11. Exhibit "K" – Publication with EV Mail dated May 27 to June 2, 2024
12. Exhibit "L" – Publication with EV Mail dated June 3-9, 2024
13. Exhibit "M" – Apostilled Judicial Affidavit of Maureen Mulvaney

On the other hand, the court, via order dated October 13, 2025, admitted the following documentary exhibits of the RESPONDENTS after presenting themselves as their own witnesses:

1. Exhibit "1" - Agreement and Final Order RE Visitation issued by the Superior Court of Arizona, Maricopa County on May 17, 2021
2. Exhibit "2" – Order of Adoption dated September 9, 2021

In the same order, the parties were given 30 days to simultaneously serve and submit their respective memorandum and were informed that the petition will be submitted for decision after the expiration of the said period. The petition was considered submitted for decision on November 14, 2025.

The Facts

After considering all the evidence presented by the protagonists, both testimonial and documentary, the Court found the following facts:

PETITIONER is the maternal grandmother of minors MIKAYLA GENEVIEVE OLESEN (MIKAYLA), who was born on March 14, 2013, and MATTHEW LIAM OLESEN (MATTHEW), who was born on March 15, 2015. The minors were begotten by the previous marital union of MAYRE GIE OLESEN, PETITIONER's daughter who is now deceased[3], and DAVID, who got divorced on December 2017. Almost 2 years after that divorce, DAVID married ILYN on June 8, 2019.

Soon after, PETITIONER filed a case with the Superior Court of Arizona (THE COURT) in the county of Maricopa docketed as Case No. FC2019-098271 where she and DAVID eventually entered into a Visitation Agreement (THE AGREEMENT) with respect to MIKAYLA and MATTHEW. THE COURT, on May 17, 2021, eventually approved the said agreement by issuing the AGREEMENT AND FINAL ORDER RE VISITATION[4] (THE ORDER).

On April 17, 2021, ILYN filed a Petition for Adoption with the Juvenile Division of THE COURT. The petition was eventually granted on September 9,

[3] As claimed by PETITIONER in her judicial affidavit.
[4] Exhibit "B".

2021[5], making her the legal mother of MIKAYLA and MATTHEW.

With the consent of DAVID and in violation of THE AGREEMENT and THE ORDER for failing to give the 7-day notice required under both, ILYN took the children to the Philippines – a fact discovered by the PETITIONER on February 3, 2023. It was for this violation that the PETITIONER, on February 14, 2023, filed a petition for contempt against DAVID as well as a MOTION FOR JOINDER OF THIRD PARTY RESPONDENT: ILYN OCANG OLESEN in order to make THE AGREEMENT binding on ILYN. THE COURT eventually granted the motion on May 11, 2023 via ORDER JOINING THIRD PARTY RESPONDENT: ILYN OCANG OLESEN.[6]

PETITIONER then filed the instant petition on February 8, 2024 in order to make THE AGREEMENT and THE ORDER enforceable in the Philippines since the children are now here. During its pendency, the period stated in THE AGREEMENT ended on May 1, 2024 but THE COURT, in a MINUTE ENTRY dated June 27, 2024 and in eventually ruling on the petition for contempt, issued a MINUTE ENTRY[7] which directed the RESPONDENTS to make up for the missed visitation and calls under THE ORDER and gave PETITIONER 30 minutes of telephone or video call with the children every month for 6 months.

The Issue

The sole issue needing resolution here is: should the Agreement and Order RE Visitation issued by the Superior Court of Arizona, Maricopa County under Case No. FC2019-098271 be recognized by the court?

The Ruling

In **Fujiki v Marinay**[8], the Supreme Court had the occasion to rule that –

> "[I]n the recognition of foreign judgments, Philippine courts are incompetent to substitute their judgment on how a case was decided under foreign law. They cannot decide on the "family rights and duties, or on the status, condition and legal capacity" of the foreign citizen who is a party to the foreign judgment. Thus, Philippine courts are limited to the question of whether to extend the effect of a foreign judgment in the Philippines.
>
> "For this purpose, Philippine courts will only determine (1) whether the foreign judgment is inconsistent with an overriding public policy in the Philippines; and (2) whether any alleging party is able to prove an extrinsic ground to repel the foreign judgment, i.e. want of

[5] See Exhibit "2", pages 226 to 231.
[6] Exhibit "D".
[7] Exhibit "B-2".
[8] G.R. No. 196049, June 26, 2013.

jurisdiction, want of notice to the party, collusion, fraud, or clear mistake of law or fact. If there is neither inconsistency with public policy nor adequate proof to repel the judgment, Philippine courts should, by default, recognize the foreign judgment as part of the comity of nations. Section 48(b), Rule 39 of the Rules of Court states that the foreign judgment is already "presumptive evidence of a right between the parties."

There is, to be sure, no specific Philippine law particularly tackling on a grandparent's right to visit her grandchildren. That notwithstanding, the court cannot think of any overriding public policy which will be violated if THE ORDER which grants visitation rights to THE PETITIONER as the children's grandmother will be recognized here. *Au contraire,* there are several hints strewn throughout the Family Code to support the theory that visits by the grandmother ought to be encouraged. For one, there is Article 214 which grants substitute parental authority to the surviving grandparent in case of death, absence or unsuitability of the parents. For another, there is Article 216 which places on top of the list the surviving grandparent as among those who can be given substitute parental authority over the child in default of both parents in the event that the child has other relatives.

But as things stand now, with the terms of THE AGREEMENT from which is premised the issuance by THE COURT of THE ORDER having expired on May 1, 2024, can the court still recognize it?

Section 48(b) of Rule 39 of the Rules of Court states the effect of a judgment or final order against a person of a tribunal of a foreign country having jurisdiction to render it, *i.e.,* the judgment or final order is *presumptive* evidence of a right as between the parties and their successors in interest by a subsequent title. From the nature of the foreign judgment or final order being merely presumptive evidence of the rights of the parties, it has to be recognized here first before it can be enforced and executed. Since the purpose of having the judgment or final order recognized is to have its terms enforced here, it stands to reason that the rights that spring from the said judgment or final order must still exist since there is nothing to recognize when that right has already disappeared. When that right no longer exists, the corresponding obligation rooted from that right is also extinguished. As it was held, "[F]or every right enjoyed by any person, there is a corresponding obligation on the part of another person to respect such right.[9]" When there is no longer any right to enjoy, the corresponding obligation of another to respect that right also disappears.

As the court found, the terms of THE AGREEMENT which became the basis for THE ORDER expired on May 1, 2024. This could not be any clearer in that portion of THE ORDER:

"xxx.

E. <u>Duration.</u> This agreement, and the terms set forth herein, shall be effective for three (3) years, beginning May 1, 2021. In order to

[9] Makati Stock Exchange, Inc. v Campos, G.R. No. 138814, April 16, 2009.

minimize future litigation, the parties agree to review the visitation and communication schedule between Grandmother and Children no later than January 31, 2024. The parties shall memorialize in writing any future agreements."

THE ORDER is based on THE AGREEMENT entered into between the PETITIONER and the RESPONDENTS whereby the latter obligated themselves to allow the children to go with the former on her allowed unsupervised visits and to talk with her either through phone or video calls. That obligation obviously contained a resolutory period which the parties pegged at three (3) years beginning May 1, 2021 or until May 1, 2024[10]. When that period came, RESPONDENTS' obligations under THE AGREEMENT were extinguished. This finds basis in Article 1193 of the Civil Code which provides that "[O]bligations with a resolutory period take effect at once, **but terminate upon arrival of the day certain."**

The last day for the RESPONDENTS to comply with their obligation under THE AGREEMENT was on May 1, 2024 or the last day of the three (3) years counted from May 1, 2021. After that, they had no more obligation to honor the agreement. If the court, by the recognition being prayed by the PETITIONER, recognizes THE ORDER, it will tantamount to compelling the RESPONDENTS to perform an obligation that no longer exists, in contravention of the legal provision that "[O]bligations with a resolutory period xxx terminate upon arrival of the day certain[11]."

It is true that based on the rules and jurisprudence, there are only 2 instances when the court asked to recognize a foreign judgment can repel the same: (1) when the foreign judgment is inconsistent with an overriding public policy in the Philippines and (2) when an extrinsic ground to repel the foreign judgment has been proven, *i.e.,* want of jurisdiction, want of notice to the party, collusion, fraud, or clear mistake of law or fact. The court failed to see any ground to repel under the second instance. But while, as discussed previously, there is no underlying public policy that will be violated in enforcing a judgment that grants a grandmother visitation rights over her grandchildren, Philippine law will be violated if such a judgment is enforced based on an agreement the terms of which have already expired.

It has been argued by the PETITIONER that the issuance by THE COURT of the Minute Entry dated June 26, 2024 has extended the period for the effectivity of THE AGREEMENT, in effect extending the period within which the RESPONDENTS must honor their agreement, since it ordered that the PETITIONER shall have one 30-minute telephone or video call with the children every month for 6 months.

[10] See provision 9(E) of Exhibit "B".
[11] See Article 1193 of the Civil Code.

Even if the court assumes that it did, it has no business recognizing it because it is not among the orders, resolutions or judgments that she prayed to be recognized in her petition. The court quotes again the prayer of the PETITIONER:

> **"WHEREFORE**, Petitioner most respectfully prays that this Honorable Court issues an order:
>
> 5. Recognizing the Agreement and Order RE Visitation issued by the Superior Court of Arizona, Maricopa County under Case No. FC2019-098271;
>
> 6. Recognizing the Order Joining Third Party Respondent: ILYN OCANG OLESEN for Case No. FC2019-098271 issued by the Superior Court of Arizona, Maricopa County;
>
> 7. Enforcing and giving full effect to all the terms and provisions set forth under the Agreement and Order RE Visitation for minor children MIKAYLA GENEVIEVE OLESEN and MATTHEW LIAM OLESEN .
>
> 8. Award payment of costs of litigation and attorney's fees to Petitioner on account of the bad faith of the Respondents which compelled the filing of this case.
>
> All such other reliefs as may be just under the premises."

It is an established principle that "courts cannot grant a relief not prayed for in the pleadings or in excess of what is being sought by the party.[12]" In explaining the rationale for this rule, the Supreme Court, in **Development Bank of the Philippines v Teston**[13], held:

> "It is elementary that a judgment must conform to, and be supported by, both the pleadings and the evidence, and must be in accordance with the theory of the action on which the pleadings are framed and the case was tried. The judgment must be *secudum allegata et probata.*
>
> "Due process considerations justify this requirement. It is improper to enter an order which exceeds the scope of relief sought by the pleadings, absent notice which affords the opposing party an opportunity to be heard with respect to the proposed relief. The fundamental purpose of the requirement that allegations of a complaint must provide the measure of recovery is to prevent surprise to the defendant."

It can very well be argued by the PETITIONER that she could not have known that the June 26, 2024 Minute Entry will be issued at the time she filed the petition on February 8, 2024. True, yet she had all the opportunity to amend the

[12] Chinatrust Commercial Bank v Turner, G.R. No. 191458, July 3, 2017.
[13] G.R. No. 174966, February 14, 2008.

petition in order to include therein the prayer to also order the recognition of the said minute entry.

It did not escape the court's notice that when the minute entry was issued on June 26, 2024, the RESPONDENTS have yet to submit their answer to the petition which they only did when they submitted their comments on July 16, 2024. After the issuance of the minute entry on June 26, 2024 and prior to the submission by the RESPONDENTS of their comments on July 16, 2024, amendments to the petition was still a matter of right, requiring no leave from the court before it can be made. Thus, Section 2 of Rule 10 of the Rules of Court provides that "[A] party may amend his pleading once as a matter of right at any time before a responsive pleading is served xxx."

Yet even after the RESPONDENTS submitted their comments on July 16, 2024, PETITIONER did not do anything to have her petition amended to include therein the prayer to recognize the June 26, 2024 Minute Entry even if she can still do so albeit this time with the permission from the court. This possibility of the petition still being amended despite the developments in circumstances is clear from Section 3 of the same Rule 10 which states that "xxx substantial amendments may be made only upon leave of court. xxx"

To end, the court is not deaf to the pleas of the PETITIONER that she be allowed to talk to her grandchildren through the recognition of THE ORDER as this could be the last that she will hear from them after being diagnosed with cancer.[14] But the court, like any other, is, as it should be, swayed not by sentiments and emotions but by the law and the rules.

Dispositive Portion

WHEREFORE, premises considered, the instant petition is hereby **DENIED** for lack of merit.

SO DECIDED.

January 30, 2026. Calubian, Leyte, Philippines.

FRANZ RAYMOND P. ASPA
Presiding Judge

[14] Based on PETITIONER'S testimony found on page 13 of the TSN for the February 26, 2025 setting.