



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **02 March 2022** which reads as follows:*

“G.R. No. 245520 (Jonathan Pancracius D. Paguirigan v. Danilo L. David and the Honorable First Division of the Court of Appeals.) - This Petition for *Certiorari*¹ (with application for a Temporary Restraining Order and/or issuance of a Writ of Preliminary Injunction, under Section 7, Rule 65 of the 1997 Rules of Civil Procedure) assails the Resolution² dated 18 August 2017 and Resolution³ promulgated on 15 January 2019 by the Court of Appeals (CA) in CA-G.R. SP No. 146853, which granted respondent Danilo L. David's Motion for Reconsideration and treated his petition for review as an original action for *certiorari* under Rule 65 and denied petitioner Jonathan Pancracius D. Paguirigan's Motion for Reconsideration, respectively.

Antecedents

The instant case stemmed from the intestate proceeding pending before the Regional Trial Court (RTC) of Caloocan City, Branch 130 involving the settlement of the estate of the late Jesus T. David, Sr. (Jesus, Sr.) docketed as Special Proceedings (SP) No. C-1920.⁴

On 09 January 1996, Corazon David Roura (Corazon) filed a petition for the settlement of the estate of Jesus, Sr. before the RTC, praying that she be appointed as a special administrator of her father's estate, pending the appointment of a regular administrator. She alleged that decedent Jesus, Sr., her father, died intestate on 17 January 1978, survived by his widow Rosario Lopez David and six (6) children: Ligaya David Manangkil (Ligaya), petitioner's mother Violeta David Paguirigan (Violeta), Nimfa David Blas, Jesus L. David, Jr., respondent, and herself.⁵

¹ *Rollo*, pp. 3-25.

² *Id.* at 32-33. Penned by Associate Justice Romeo F. Barza and concurred in by Associate Justices Sesinando E. Villon and Normandie B. Pizarro of the Court of Appeals, Manila.

³ *Id.* at 34-38. Penned by Presiding Justice Romeo F. Barza and concurred in by Associate Justices Franchito N. Diamante and Josep Y. Lopez (now a Member of this Court) of the Court of Appeals, Manila.

⁴ *Id.* at 4-5.

⁵ *Id.* at 99.

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The petition was set for hearing. During the course of the proceedings, Violeta and respondent opposed Corazon's move to be appointed as administrator. Later, Corazon waived her right to be appointed as administrator in favor of her siblings. On 02 April 1996, the RTC appointed three (3) special administrators (SA) of the estate of Jesus, Sr., namely: respondent, Violeta and Ligaya (vice Corazon). Accordingly, the three SAs were issued letters of administration after they posted their respective bonds, and took their oath.⁶

A hearing was thereafter conducted for the appointment of a regular administrator. By Order dated 28 July 2000,⁷ respondent was appointed as regular administrator of the estate of Jesus, Sr. and was directed to post a bond in the amount of ₱50,000.00.⁸

Instead of posting a bond, respondent filed a motion⁹ for the withdrawal of his appointment as regular administrator of his father's estate. He claimed that there is a conflict of interest as he has a claim against the estate. Without acting on respondent's motion, the RTC, in its Order¹⁰ dated 29 August 2002, sent the case to the archives, without prejudice to its revival.¹¹

On 17 February 2010, Violeta filed a motion¹² to revive the case, which the RTC granted through an Order on 12 May 2010. On 30 June 2010, Violeta passed away. In view of her demise, respondent and his siblings moved for the dismissal of the Order reviving the case.¹³ Corazon likewise filed a motion praying for the dismissal of the case, attaching thereto her affidavit¹⁴ of withdrawal of the petition.¹⁵

On 07 March 2011, petitioner filed a motion¹⁶ to appoint him as administrator over the estate of his grandfather Jesus, Sr. over Corazon and Ligaya's opposition and objection.¹⁷

On 04 April 2013, respondent and the rest of his siblings submitted in court an Amended extrajudicial partition with waiver of rights.¹⁸ Notably,

⁶ Id. at 99-100.

⁷ Id. at 99-103. Penned by Judge Jaime T. Hamoy.

⁸ Id. at 102-103.

⁹ Id. at 104-105.

¹⁰ Id. at 112.

¹¹ Id. at 53.

¹² Id. at 131-134.

¹³ Id. at 147 to 151.

¹⁴ Id. at 152-154.

¹⁵ Id. at 56-57.

¹⁶ Id. at 186-189.

¹⁷ Id. at 58, 195-204, 213-217.

¹⁸ Id. at 163-169.

neither Violeta nor her heirs were included in the said agreement.

On 01 June 2016, the RTC issued an Order¹⁹ granting petitioner's Motion to appoint Administrator,²⁰ appointing him as the administrator of the estate of Jesus, Sr.

Feeling aggrieved, respondent filed an appeal via a petition for review²¹ with the CA. In its Resolution²² dated 13 September 2016, the CA dismissed the petition for review for being the wrong mode of appeal. Respondent then sought reconsideration.²³

Ruling of the CA

In the now assailed resolution, the CA granted respondent's Motion for Reconsideration. The dispositive portion of the resolution reads:

WHEREFORE, the Motion for Reconsideration is **GRANTED**. The Resolution dated September 13, 2016 is **SET ASIDE**. The instant petition for review is now treated as an original action for certiorari under Rule 65.

Without necessarily giving due course to the petition for certiorari, respondents Corazon David Roura and Co-Heir's Substitute Atty. Jonathan Pancracius D. Paguirigan are **DIRECTED** to file Comment (not a Motion to Dismiss) on the petition. Petitioner may then file a Reply within five (5) days from receipt of the Comment.

SO ORDERED.²⁴

In granting respondent's Motion for Reconsideration, the CA held that in the interest of substantial justice and in accord with the liberal spirit pervading the Rules of Court, respondent's petition for review is now treated as an original action for *certiorari* under Rule 65.²⁵

Petitioner sought reconsideration,²⁶ which the CA denied in its Resolution dated 15 January 2019, likewise directing petitioner to file his

¹⁹ Id. at 39. Penned by Presiding Judge Raymundo G. Vallega.

²⁰ Id. at 186-189.

²¹ Id. at 50-84.

²² Id. at 235-237. Penned by Associate Justice Romeo F. Barza and concurred in by Associate Justices Andres B. Reyes, Jr. (retired Member of this Court) and Agnes Reyes-Carpio of the Court of Appeals, Manila.

²³ Id. at 238-250.

²⁴ Id. at 34.

²⁵ Id. at 33-A.

²⁶ Id. at 307-325.

comment, among others.²⁷ Hence, this petition.

Issues

The issues for consideration of the Court are whether the CA gravely abused its discretion:

(1) In treating the petition for review of respondent Danilo L. David as an original action for certiorari under Rule 65 of the Revised Rules of Court; and

(2) In denying petitioner's Motion for Reconsideration and considering the 01 June 2016 Order of the intestate court appointing the herein petitioner as the Administrator of the estate of the late Jesus T. David, Sr. as an interlocutory order.²⁸

Ruling of the Court

We grant the petition.

It is petitioner's contention that the CA gravely abused its discretion when it treated respondent's petition for review as a petition for *certiorari* under Rule 65 in the interest of substantial justice. Likewise, petitioner ascribed error on the CA in treating the RTC's order, appointing him as a regular administrator, as an interlocutory order, hence not appealable.²⁹

A final judgment or order is one that finally disposes of a case, leaving nothing more for the court to do with respect to it. It is an adjudication on the merits which, considering the evidence presented at the trial, declares categorically what the rights and obligations of the parties are; or it may be an order or judgment that dismisses an action.³⁰ On the other hand, an order which does not completely dispose of the case because it leaves something to be done by the trial court with respect to the merits of the case is an interlocutory order. It refers to something between the commencement and end of the suit which decides some point or matter but it is not the final decision on the whole controversy.³¹

The Court in *Zayco v. Hinlo, Jr.*,³² held that an order appointing an administrator of a deceased person's estate is a final determination of the rights of the parties in connection with the administration, management and

²⁷ Id. at 34-38.

²⁸ Id. at 10.

²⁹ Id. at 11.

³⁰ *Spouse Mendiola v. Court of Appeals*, 691 Phil. 244 (2012).

³¹ *Metropolitan Bank & Trust Company v. Court of Appeals*, 408 Phil. 686 (2001), citing *Bilong v. CA*.

³² 574 Phil. 736 (2008), citing *Testate Estate of Vda. de Biascan v. Biascan*, 401 Phil. 49 (2000).

settlement of the decedent's estate. It declared that it is a final order and, hence, appealable. This is in contrast with an order appointing a special administrator who is appointed only for a limited time and for a specific purpose. Because of the temporary character and special character of this appointment, the Rules deem it not advisable for any party to appeal from said temporary appointment.³³ Thus, as a final order, the RTC's order granting petitioner's motion to be appointed as administrator is appealable.

Section 2, Rule 41 of the *Rules of Court* provides the modes of appeal, to wit:

Section 2. *Modes of appeal.* —

(a) *Ordinary appeal.* — The appeal to the Court of Appeals in cases decided by the Regional Trial Court *in the exercise of its original jurisdiction* shall be taken by filing a notice of appeal with the court which rendered the judgment or final order appealed from and serving a copy thereof upon the adverse party. No record on appeal shall be required except in special proceedings and other cases of multiple or separate appeals where the law or these Rules so require. In such cases, the record on appeal shall be filed and served in like manner.

(b) *Petition for review.* — The appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its appellate jurisdiction shall be by petition for review in accordance with Rule 42.

(c) *Appeal by certiorari.* — In all cases where only questions of law are raised or involved, the appeal shall be to the Supreme Court by petition for review on *certiorari* in accordance with Rule 45.

Respondent filed a petition for review³⁴ under Rule 42, appealing the appointment of petitioner as regular administrator. In its Resolution³⁵ dated 13 September 2013, the CA correctly dismissed respondent's petition, noting that it was a wrong mode of appeal. The decision appealed by respondent was issued by the RTC in the exercise of its original jurisdiction. The proper remedy, therefore, is an ordinary appeal under Section 2(a) Rule 41 of the Rules of Court. A record on appeal is likewise required being a special proceedings case. Moreover, pursuant to Section 3³⁶ of Rule 41, where a record on appeal is required, the appellant shall file a notice of appeal and a record on appeal within 30 days from notice of judgment or final order.

³³ *Testate Estate of Vda. de Biascan v. Biascan*, 401 Phil. 49 (2000).

³⁴ *Rollo*, pp. 50-84.

³⁵ *Id.* at 235-237.

³⁶ SECTION 3. Period of ordinary appeal; appeal in habeas corpus cases. — The appeal shall be taken within fifteen (15) days from notice of the judgment or final order appealed from. Where a record on appeal is required, the appellants shall file a notice of appeal and a record on appeal within thirty (30) days from notice of the judgment or final order. However, an appeal in habeas corpus cases shall be taken within forty-eight (48) hours from notice of the judgment or final order appealed from. x x x.

Despite the wrong mode of appeal taken, respondent, in his motion for reconsideration³⁷ insisted that his appeal does not fall under any of the prohibited actions under Section 1,³⁸ Rule 41, being an original case and is covered by the jurisdiction of the CA.³⁹ He also claimed that the assailed order of the RTC dated 01 June 2016 is not a temporary or provisional order.⁴⁰ Respondent further ascribes error on the RTC for issuing the letters of authority to petitioner, contending that the RTC already lost jurisdiction upon the perfection of his appeal.⁴¹ Also, respondent failed to recognize that his petition contained a defective verification.⁴²

Applying liberality and substantial justice, the CA in the assailed resolution⁴³ dated 18 August 2017, treated respondent's petition as a petition for *certiorari* under Rule 65, despite its procedural defects and lapses.

However, settled is the rule that a special civil action under Rule 65 is a limited form of review and is a remedy of last recourse. It is an independent action that lies only where there is no appeal nor plain, speedy, and adequate remedy in the ordinary course of law. *Certiorari* will issue only to correct errors of jurisdiction, not errors of procedure or mistakes in the findings or conclusions of the lower court.⁴⁴

Clearly, appeal was available to respondent. It bears stressing that the right to appeal is not a natural right or a part of due process but a mere statutory privilege. Thus, the perfection of an appeal in a manner and within the period prescribed by law is not only mandatory but also jurisdictional.⁴⁵ Respondent however failed to perfect the same by availing a wrong mode of

³⁷ *Rollo*, pp. 238-250.

³⁸ RULE 41 Appeal from the Regional Trial Courts

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;
- (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.

³⁹ *Rollo*, p. 241.

⁴⁰ *Id.* at 245.

⁴¹ *Id.* at 243.

⁴² *Id.* at 272.

⁴³ *Id.* at 32-33-A.

⁴⁴ *Mariño v. Spouses Antolin*, G.R. No. 252393, 13 January 2021.

⁴⁵ *Id.*

appeal. Consequently, respondent's failure to conform with the rules on appeal renders the RTC's assailed order final and executory.

Upon the other hand, it is elementary that a party cannot substitute the special civil action of *certiorari* under Rule 65 of the Rules of Court for the remedy of appeal. The existence and availability of the right of appeal are antithetical to the availability of the special civil action of *certiorari*. Remedies of appeal (including petitions for review) and *certiorari* are mutually exclusive, not alternative or successive. Hence, *certiorari* is not and cannot be a substitute for an appeal, especially if one's own negligence or error in one's choice of remedy occasioned such loss or lapse,⁴⁶ as in this case.

Moreover, the petition for review filed by respondent with the CA failed to allege grave abuse of discretion. The CA in its resolution dated 13 September 2016, already took note of the said deficiency,⁴⁷ yet considered respondent's petition for review as one for *certiorari* under Rule 65. It bears stressing that a special civil action for *certiorari* under Rule 65 will exist only if grave abuse of discretion is alleged and proved to exist.⁴⁸ In the same manner, as a general rule, a motion for reconsideration is a prerequisite for the availment of a petition for *certiorari* under Rule 65.⁴⁹ Respondent did not file any motion for reconsideration of the order of the RTC, but directly filed its petition for review with the CA.

Indeed, the Court has exercised its power to suspend or relax the rules of procedure upon finding that its rigid application will result in obstruction rather than promotion of the interests of justice. However, this power of the Court can only be resorted to in exceptional cases such as when the decision rendered was legally erroneous, patently unjust, or potentially capable of causing unwarranted and irremediable injury or damage to the parties.⁵⁰ Likewise, in a number of instances, the Court granted *certiorari* despite the availability of appeal, to wit: 1) when public welfare and the advancement of public policy dictate; 2) when the broader interest of justice so requires; 3) when the writs issued are null and void; 4) when the questioned order amounts to an oppressive exercise of judicial authority; 5) when, for persuasive reasons, the rules may be relaxed to relieve a litigant of an injustice not commensurate with his failure to comply with the prescribed procedure; or 6) in other meritorious cases.⁵¹ None of these circumstances are attendant in the instant case, however, nor were there compelling

⁴⁶ *Butuan Dev't. Corp. v. Court of Appeals, et al.*, 808 Phil. 443.

⁴⁷ *Rollo*, p. 237.

⁴⁸ *Denila v. Republic*, G.R. No. 206077, 15 July 2020 [Per J. Gesmundo].

⁴⁹ *Malayang Manggagawa ng Stayfast Phils., Inc. v. National Labor Relations Commission*, 716 Phil. 500, 513-514 (2013).|

⁵⁰ *Toledo v. Office of the Ombudsman*, G.R. No. 249834, 19 January 2021 [Per J. Carandang].

⁵¹ *Santos v. Orda, Jr.*, 634 Phil. 452 (2010)

reasons adduced by respondent to warrant the liberal application of the procedural rules.

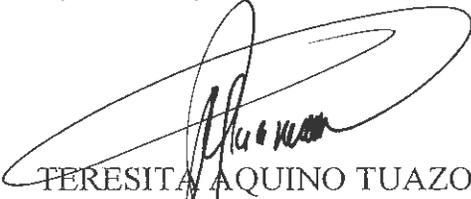
We thus find that the CA acted with grave abuse of discretion, amounting to lack or excess of jurisdiction, in treating respondent's appeal as a petition for *certiorari* in the assailed resolution. To be sure, rules of procedure exist for a noble purpose, and to disregard such rules in the guise of liberal construction would be to defeat such purpose. Procedural rules are not to be disdained as mere technicalities to suit the convenience of a party. Rather, they must be conscientiously observed to ensure the effective enforcement of substantive rights through the orderly and speedy administration of justice.⁵²

Finally, Our finding of grave abuse of discretion results to the reinstatement of the CA's earlier Resolution dismissing the petition for review filed by respondent for being filed under the wrong mode of appeal. Moreover, resort to the wrong mode did not toll the reglementary period for filing an appeal under Rule 41 of the Rules of Court. Necessarily, the assailed issuance of the RTC is now deemed final and executory.

WHEREFORE, the petition is hereby **GRANTED**. The assailed Resolutions dated 18 August 2017 and 15 January 2019 of the Court of Appeals in CA-G.R. SP No. 146853 are **ANNULLED and SET ASIDE**. Accordingly, the Court of Appeals Resolution dated 13 September 2016 dismissing the petition for review is **REINSTATED**. The Order dated 01 June 2016 issued by Regional Trial Court, Caloocan City, Branch 130, granting petitioner's motion to be appointed as administrator of the estate of the late Jesus T. David, Sr., is hereby declared final and executory.

SO ORDERED."

By authority of the Court:


TERESITA AQUINO TUAZON
Division Clerk of Court *9/2*
02 SEP 2022

⁵² *AMA Computer College-Santiago City, Inc. v. Nacino*, 568 Phil. 465 (2008).

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