

RENE NIETO, PETITIONER, VS. HON. JUDGE WALFRIDO DE LOS ANGELES AND BALBINITA T. LACSON, RESPONDENTS.*G.R. No. L-35514. November 13, 1981*

Ponente: DE CASTRO, J.

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This a petition for certiorari, prohibition and mandamus with prayer for preliminary injunction, petitioner Rene Nieto praying, among others, that this Court set aside and annul the order dated August 30, 1972 of respondent judge Walfrido de los Angeles dismissing his appeal and order the judge to give due course to his appeal to the Court of Appeals.[1]

The facts are as follows: In the intestate estate proceedings of the estate of the late Manuel Nieto, Sr., father of petitioner herein, filed before the Court of First Instance of Rizal, Quezon City, Branch IV, presided over by respondent judge de los Angeles, and docketed as Special Proceedings No. Q-15065, petitioner was appointed as Administrator and accordingly, on August 4, 1971, Letters of Administration were issued. On October 5, 1971, respondent judge issued an order requiring notice to creditors.[2] On January 22, 1972, respondent Balbinita Lacson, as a claimant, filed her claim against the estate of the late Manuel M. Nieto, claiming the amount of \$61,300.00, representing the return of the advance payment for the two apartments located in Madrid, Spain, sold by the deceased to claimant Lacson plus interests, and attorney's fees.[3] On February 7, 1972, petitioner filed his one-paragraph Answer to the claim of respondent Lacson, stating:

"That without prejudice to filing a more extended and detailed amended answer, he denies the aforementioned claim, the same being unwarranted and frivolous and, in defense, avers that the estate of the deceased Manuel N. Nieto owes claimant absolutely nothing." [4]

On March 1, 1972, respondent Lacson filed a Motion to Re-quire Administrator to Render Accounting and/or Remove Adminis-trator,[5] which respondent set for hearing for March 4, 1972 at 9:00 A. M. On March 2, 1972, petitioner asked that the hear-ing of the aforesaid motion be reset to March 11, 1972. At the same time, respondent Lacson filed a "Manifestation",[6] praying in effect that Administrator's Answer (Annex V), be legally consi-dered as an Admission of respondent's claim, pursuant to section 10, Rule 80 in relation to section 1, Rule 9 of the Rules of Court. On March 10, 1972, petitioner's counsel filed a "Motion for Post-ponement,[7] alleging that he was ill and confined in the hospital and asking that he be given a period of at least fifteen (15) days within which to prepare and submit replies to respondent Lacson's "Manifestation" and "Motion to Require Administrator to Render Accounting, etc.," and asking that the hearing of the "Motion to Require Accounting, etc.," be postponed to March 25, 1972.

On March 11, 1972, respondent judge issued an Order[8] in open court: a). denying the Motion for postponement filed by the petitioner; b). granting the "Manifestation" of March 1, 1972, filed by respondent Lacson thereby considering the "Answer to Claim" filed by petitioner as an admission of the former's claims against the estate; and c). further allowing respondent Lacson to present her evidence ex-parte regarding her admitted claim before

the Clerk of Court delegated as such. On or about March 24, 1972, petitioner filed a "Manifestation and Submission of Inventory"[9] to which respondent Lacson filed her opposition.[10]

On April 3, 1972, respondent judge issued an "Order"[11] approving the claim of respondent Lacson and ordering petitioner Nieto to pay the same. Petitioner found out about this order on April 8, 1972.

On April 5, 1972, petitioner filed an "Omnibus Motion"[12] entitled "Motion for Reconsideration of Order of March 11, 1972 And For Admission of Amended/Supplemental Answer to Claim and Reply to Manifestation" dated April 1, 1972." Together with said "Motion" were two pleadings entitled "Reply to Manifestation" and "Amended And/Or Supplemental Answer to Claim." Respondent Lacson opposed said "Omnibus Motion" contending that the entire "Motion" is just one futile self-serving explanation by counsel for administrator of why he prayed for the postponement of the hearing scheduled for March 11, 1972; that the two pleadings filed together with said "Omnibus Motion" are now moot and academic in view of the fact that the respondent judge in its Order dated April 3, 1972 has admitted and approved her "claims against the estate" filed on January 27, 1972.

On April 12, 1972, petitioner filed another "Motion for Reconsideration of Order"[13] dated April 8, 1972 seeking the reconsideration of the lower court's order of April 3, 1972, to which respondent Lacson filed her opposition[14] dated April 18, 1972, on the ground that said "Motion for Reconsideration of Order" is pro-forma and unmeritorious for it does not comply with the requirements, of Rule 37 of the Rules of Court. After a series of reply, rejoinder and surrejoinder between the parties, respondent judge issued an Order[15] on June 5, 1972 denying petitioner's Omnibus Motion for Reconsideration of Order of March 11, 1972, the "Reply to Manifestation" and the "Amended And/Or Supplemental Answer" on the ground that: 1) no cogent legal reason has been given by petitioner why the court should admit his "Amended And/Or Supplemental Answer to Claim" or to reverse its Order granting respondent Lacson's Manifestation dated March 1, 1972 and 2) the "Amended And/Or Supplemental Answer to Claim" lacks merit for being without legal basis and contrary to the requirements of section 3, Rule 10 of the Rules of Court. The next day, June 6, 1972, another Order[16] was issued by the respondent judge denying petitioner's other "Motion for Reconsideration of Order" filed on April 12, 1972 on the ground that said motion is based solely on the reasons stated in his "Motion for Reconsideration" dated April 1, 1972 which reasons have already been found unmeritorious in the Order of June 5, 1972.

On July 7, 1972, petitioner filed a "Notice of Appeal"[17] dated July 3, 1972 appealing, in effect, to the Court of Appeals, from the Order of the lower court dated April 3, 1973 approving the claim of respondent Lacson. On the same date, he filed an "Urgent Motion for Extension of Time" to file Record on Appeal asking for fifteen (15) days from July 17, 1972 within which to file his "Record on Appeal". On July 11, 1972, respondent Lacson filed a "Motion to Dismiss Appeal"[18] on the ground that the "Motion for Reconsideration of Order" seeking the reconsideration of the lower court's order of April 3, 1972 was a mere pro-forma motion and therefore, did not interrupt the running of the period to appeal from the Order of April 3, 1972.

On August 30, 1972, respondent judge issued an Order[19] dismissing the appeal of petitioner, stating that:

"There is no question, therefore, that the administrator's motion for reconsideration, dated April 8, 1972, is a pro-forma motion, which did not suspend the running of the period for appeal. For the reason that more than thirty (30) days has elapsed between the notice by the administrator of the Order of April 3, 1972 and the filing of the Notice of Appeal, dated July 3, 1972, it is clear that said Notice of Appeal has been filed out of time and claimant's Motion to Dismiss Appeal, dated July 10, 1972, for the reasons stated thereon, is well-founded."

Without filing a motion for reconsideration of the above-quoted order, petitioner brought this instant proceeding raising the sole issue of whether his Motion for Reconsideration dated April 8, 1972, is a pro-forma motion for failing to satisfy the requirements of Rule 37 of the Rules of Court and as such did not suspend the running of the

period of appeal. Pursuant to our Resolution of September 19, 1972, this Court issued a Temporary Restraining Order restraining respondent judge from implementing and enforcing his orders dated April 3, 1972, June 5, 1972 and June 6, 1972.

This Motion for Reconsideration dated April 8, 1972, recites as follows:

"1. That when undersigned counsel was present in Court this morning and upon examination of the records of this case, he discovered that this Honor-able Court has already issued an order dated April 3, 1972 approving the claim of Balbinita T. Lacson;

"2. That there is now pending before this Honor-able Court a motion for reconsideration of its order of March 11, 1972;

"3. That in consequence, and for the same reasons alleged in the said motion for reconsideration of April 1, 1972, the said order of this Honorable Court of April 3, 1972 should also be considered.

"WHEREFORE, it is respectfully prayed that upon the grounds alleged in its motion of April 1, 1972 praying for the reconsideration of the order of the Honorable Court of March 11, 1972 and reiterating the same grounds therein alleged which are incorporated herein by reference, the order of this Honorable Court of April 3, 1970 be also reconsidered and recalled."

Upon careful examination of petitioner's Motion for Reconsideration dated April 8, 1972, this Court is of the opinion that said motion is a pro-forma motion for failure to satisfy the requirements of Section 2, Rule 37, Rules of Court, and there-fore did not suspend the running of period for appeal.

Section 2, Rule 37 of the Rules of Court clearly provides that:

"Contents of motion for new trial and notice thereof. - The motion shall be made in writing stating the ground or grounds therefor, a written notice of which shall be served by the movant on the adverse party.

"When the motion is made for the causes men-tioned in subdivisions (a) and (b) of the preceding section, it shall be proved in the manner provided for proof of motions. Affidavit or affidavits of merits shall also be attached to a motion for the cause men-tioned in subdivision (a) which may be rebutted by Counter-Affidavits.

"When the motion is made upon the cause men-tioned in subdivision (c) of the preceding section, it shall point out specifically the findings or conclusions of the judgment which are not supported by the evidence or which are contrary to law, making express reference to the testimonial or documentary evidence or to the provisions of law alleged to be contrary to such findings or conclusions."

Commenting on the above-mentioned provision, this Court as early in 1942, in the case of Valdez vs. Jugo^[20] and reiterated in subsequent cases,^[21] said: Petitioner's motion for new trial did not and could not interrupt the period for appeal, it having failed to state in detail as required by the rules, the reasons in support of the grounds alleged therein. Under Rule 37, section 2, third paragraph, it is now required to point out specifically the findings or conclusions of the judgment which are not supported by the evidence or which are contrary to law, making express reference to the testimonial or documentary evidence or to the provisions of law alleged to be contrary to such findings or conclusions. Thus required, it will be treated as a motion pro-forma intended merely to delay the proceedings, and as such, it shall be stricken out as offensive to the new rules."

Perusal of petitioner's third paragraph motion for recon-sideration in question shows that the said provisions of the Rules of Court have not been complied with, neither strictly nor sub-stantially. Said motion merely incorporates by reference the reasons and arguments he had already alleged in his previous Omnibus "Motion for Reconsideration" dated April 1, 1972, contrary to the requirement that it shall point out specifically the findings or conclusions of the judgment which are not supplied by the evidence or which are contrary to law, making express

reference to the testimonial or documentary evidence or to the provisions of law alleged to be contrary to such findings or conclusions. Neither does it cite the ground or grounds of the motion as what the first paragraph of the aforementioned section requires. Clearly, then, said motion for reconsideration is pro-forma and does not suspend the period of appeal.[22]

Petitioner, however, would maintain that the above-quoted section does not in any manner preclude or prohibit incorporation by reference to previous arguments, and that what said section disallows is a mere repetition in a subsequent pleading of arguments previously considered and ruled on by a court, in a previous pleading. This contention is without merit. Although said section does not in any manner expressly preclude incorporation by reference to previous arguments, nevertheless, in the case of *Arnaldo vs. Bernabe*, 87 Phil. 379, and reiterated in the case of *Estrada vs. Sto. Domingo*, 28 SCRA 890, it was held that "Motion for Reconsideration is pro-forma for it does not specify the findings or conclusion in the judgment which are not supported by the evidence or which are contrary to law but merely makes reference to the contents of a memorandum that had already been considered by the respondent court before rendering its judgment," thereby implying that incorporation by reference to previous arguments is not allowed by the rules. In the instant case, although it may be observed that the first motion for reconsideration dated April 1, 1972 has not been considered and decided upon by the respondent court when petitioner filed his questioned motion for reconsideration dated April 8, 1972, nevertheless, the fact remains that the latter motion, directed as it was specifically against the order of the respondent court of April 3, 1972, failed to comply with the specific mandatory requirement of the above-quoted section that the controverted findings of the court (order of April 3, 1972) be specified in the motion itself.²³ In this case, the contents of the Motion for Reconsideration dated April 1, 1972, incorporated in the Motion for Reconsideration of April 8, 1972 only by reference, could not have been an appropriate argument as against the order of April 3, 1972, as the latter order was not yet in existence on April 1, 1972. It results that the Motion for Reconsideration of April 8, 1972 could not have complied with the requirement of the above-cited section to save it from the fate of a pro-forma motion.

It is, therefore, evident that the order of the respondent court dated April 3, 1972 which petitioner sought to appeal to the Court of Appeals became final and executory on May 9, 1972, that is thirty (30) days after this receipt of the same on April 8, 1972. As he filed his Notice of Appeal dated July 3, 1972 only on July 7, 1972, their appeal was, therefore, time-barred.

WHEREFORE, the instant petition is dismissed, and the order of the respondent court dated April 3, 1972 is affirmed. The temporary restraining order issued pursuant to Our resolution of September 19, 1972 is hereby lifted and set aside. No costs.

SO ORDERED.

Fernandez, Guerrero, and Melencio-Herrera, JJ., concur.

Teehankee, J., (Chairman), in the result.

Makasiar, J., reserves his vote.

[1] p. 26, Rollo.

[2] p. 61, Rollo.

[3] p. 65, Rollo.

[4] Annex V to the Petition, p. 73, Rollo.

[5] Annex W to the Petition, p. 74, Ibid.

[6] Annex Y to the Petition, p. 77, Ibid.

[7] Annex F to the Petition, p. 79, Ibid.

[8] p. 81, Ibid.

[9] p. 82, Rollo.

[10] p. 85, Rollo.

[11] Annex FF to the Petition, pp. 88-90, Ibid.

[12] Annex CC to the Petition, p. 100, Ibid.

[13] Annex GG to the Petition, p. 102, Ibid.

[14] Annex II to the Petition, p. 110, Rollo.

[15] Annex NN to the Petition, p. 137, Ibid.

[16] Annex OO, to the Petition, p. 139, Ibid.

[17] Annex PP, to the Petition, p. 141, Ibid.

[18] Annex RR to the Petition, p. 144, Rollo.

[19] Annex A to the Petition, p. 30, Ibid.

[20] 74 Phil. 49.

[21] Reyes vs. CA, 74 Phil. 235; Alvero vs. de la Rosa, 76 Phil. 428; Villalon vs. Ysip, 98 Phil. 851; Ferrer vs. Tabora, 106 Phil. 759; Elnar vs. Santos, 106 Phil. 29; Crisostomo vs. CA, 32 SCRA 54.

[22] Alvero vs. de la Rosa, supra and cases cited therein.

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