

SEGUNDINA M. DAMASEN, PETITIONER, VS. THE HON. HAROLD M. HERNANDO, AS JUDGE OF THE COURT OF FIRST INSTANCE OF ABRA, BRANCH I AND CECILIA QUIMANG, RESPONDENTS.

G.R. No. L-49995. April 08, 1981

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

Sought to be annulled in this Petition for Certiorari with Preliminary Injunction is the Order dated January 9, 1979 of respondent Judge Harold M. Hernando of the Court of First Instance of Abra, Branch I, in Civil Case No. 464, entitled "Segundina Damasen vs. Cecilia Quimang", for Damages. That Order allowed, with modification, the Bill of Costs submitted by Cecilia Quimang, private respondent herein, but objected to by petitioner.

The antecedental facts are summarized hereunder:

On October 10, 1961, an Information was filed in the Court of First Instance of Abra against private respondent Cecilia Quimang for the crime of Grave Oral Defamation (Criminal Case No. 170). The complainant in that Criminal Case was petitioner Segundina Damasen. Quimang was convicted of Slight Oral Defamation in a Decision rendered by that Court on September 27, 1966.[1] Quimang appealed to the Court of Appeals.

As the trial Court judgment did not award damages to petitioner as complainant, the latter filed an independent civil action for Damages (Civil Case No. 464)[2] before the same Court on November 3, 1966 (hereinafter referred to as the Damages Suit).

In the meantime, the Court of Appeals acquitted Quimang in the Criminal Case.

On August 27, 1970, decision was rendered by then Judge Juan Aquino dismissing the Damages Suit, with the dispositive portion reading thus:

"IN VIEW OF ALL THE FOREGOING, and without going deeper to the other facts and circumstances of this case, the Court finds the action for damages without merit and hereby dismisses the same; ordering the plaintiff Segundina M. Damasen to pay to the defendant Cecilla Quimang her actual damages in the amount of One Thousand (P1,000.00) Pesos, and another One Thousand (P1,000.00) Pesos for moral and exemplary damages, plus the costs of this proceedings." [3] (emphasis supplied).

No appeal was taken by either party from said Decision.

On August 8, 1974, private respondent's Motion for the execution of the judgment in the Damages Suit was granted (Judge Aquino still presiding), over petitioner's objection. A Certiorari proceeding filed before the Court of Appeals by petitioner questioning said Order of execution was dismissed by that Court on October 29, 1974 "without costs" (CA-G.R. No. SP-03530).[4] Review of the Appellate Court Resolution was similarly denied by this Tribunal on March 7, 1975 for lack of merit (G.R. No. L-39836).

On November 7, 1978, upon private respondent's instance, respondent Judge granted anew execution in the

Damages Suit,[5] and on November 21, 1978, he "noted and approved" ex-parte a Bill of Costs submitted by private respondent charging the following:

"For the answer P 20.00

For the attendance of

defendant Cecilia

Quimang and her

counsels 150.00

For the transcript 50.00

Attorney's fees 2,500.00

TOTAL P2,720.00"[6]

Reconsideration prayed for by petitioner was resolved by respondent Judge in an Order, dated January 9, 1979, in this wise:

"As regards the Bill of Costs, the objectionable portions are the attendance of the defendant in Court in the amount of P150.00, the transcript in the amount of P50.00 and attorney's fees in the amount of P2,500.00. As regards the attendance of the defendant in Court, P20.00 is allowed; the transcript in the amount of P50.00 can not be allowed; and the attorney's fees in the amount of P2,500.00 is approved because exemplary damages were awarded. (Article 2208 No. 1., New Civil Code.)"[7]

It is the approved Bill of Costs and the above Order which are challenged in this Petition for Certiorari with Preliminary Injunction, to which we gave due course. We issued a Restraining Order on April 2, 1979 enjoining respondents from enforcing the assailed Order.

It is petitioner's submission before us:

"A. That the respondent Hon. Harold M. Hernando has gravely abused his discretion amounting to lack of jurisdiction and/or in excess of jurisdiction in ordering on January 9, 1979, the taxation of attorney's fees and defendant's attendance in court as judicial costs, which is contrary to secs. 6 and 10 of rule 142 of the Rules of Court and prevailing precedent jurisprudence on the matter.

"B. That the respondent judge has erred and misconstrued the application of art. 2208, par. 1, of the Civil Code in this instant case, as an exception to secs. 6 and 10, Rule 142 of the Rules of Court, considering the decision subject of execution has already become final and executory.

"C. That the respondent judge cannot ingeniously and substantially alter and/or modify the final decision of the trial court which was affirmed by the appellate court without costs in ordering additional costs not warranted by law and the facts of the case, thereby, causing further damage and prejudice to the petitioner herein."[8]

There is merit in the foregoing contentions.

Judicial costs are the statutory allowances to a party to an action for his expenses incurred in the action, and having reference only to the parties and to the amounts paid by them.[9] Costs are allowed to the prevailing party as a matter of course, unless otherwise provided in the Rules of Court.[10] Section 10 of the same Rule 142 regulates the costs that may be recovered by a prevailing party in Courts of First Instance, as follows:

"SEC. 10. Costs in Courts of First Instance. -- In an action or proceeding pending in a Court of First Instance, the prevailing party may recover the following costs, and no other:

(a) For the complaint or answer, fifteen pesos;

(b) For his own attendance, and that of his attorney, down to and including final judgment, twenty pesos;

x x x x"

As reconsidered by respondent Judge in the challenged Order of January 9, 1979, he allowed the amount of P20.00 for the Answer (not questioned herein), P20.00 for private respondent's attendance, and the amount of P2,500.00 as attorney's fees "because exemplary damages were awarded." [11] While the taxation of P20.00 for private respondent's attendance was proper, the assessment of P20.00 for the Answer is in excess by P5.00 while that of P2,500.00 for attorney's fees, as part of taxable costs, can not be sustained for being clearly contrary to pertinent laws and prevailing jurisprudence. It is unfortunate that respondent Judge failed to acquaint himself with, or misinterpreted, those controlling provisions and doctrines. Thus, section 6 of Rule 142 clearly stipulates:

"SEC. 6. Attorney's fees as costs. - No attorney's fees shall be taxed as costs against the adverse party, except as provided by the rules of civil law. But this section shall have no relation to the fees to be charged by an attorney as against his client."

Plainly, then, attorney's fees are not normally taxable as costs. Those fees are not included within the expenses and costs of any trial or proceeding. [12]

It is true that Article 2208 of the Civil Code provides:

"ART. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

(1) When exemplary damages are awarded;

x x x ."

It was on the basis of the foregoing provision that respondent Judge included attorney's fees of P2,500.00 as part of costs. His interpretation of the aforesaid provision, however, is erroneous. Although exemplary damages were, in fact, awarded in the Damages Suit, attorney's fees were not. If those fees were justified, a specific provision therefor should have been embodied in the judgment proper, with the award being included in the decretal portion. In the absence thereof, counsel's fees cannot, subsequent to that judgment, be adjudicated as costs. The reason therefor is that the exercise of judicial discretion is required for the adjudication of attorney's fees in a judgment. On the other hand, taxation of costs is not judicial but is the exercise or performance of a ministerial duty, act or power or function although involving in some degree the use of judgment or discretion. [13] That basic principle should preclude the assessment of attorney's fees in a Bill of Costs which, in the first instance, is passed upon by the Clerk of Court although either party may appeal to the Court from the Clerk's taxation. [14]

As held in the case of Warner, Barnes & Co., Ltd., vs. Luzon Surety Co., Inc., [15] although article 2208 of the Civil Code authorizes the collection of attorney's fees in the cases contemplated therein, said provision does not dispense with the necessity of proving the amount of attorney's fees. And, as pointed out in Estate of Buan vs. Camaganacan, [16] the award of attorney's fees remains exceptional and it is up to the Court to make express findings of fact that justify the grant of counsel's fees.

In sum, in the absence of any other items claimed, the only costs recoverable are:

For the answer P 15.00

For the attendance of

defendant 20.00

TOTAL P 35.00

WHEREFORE, the approval of the Bill of Costs by, and the Order of respondent Judge, dated January 9, 1979, are hereby set aside; the amount of P2,500.00 as attorney's fees included as costs in said Order is hereby eliminated; and the items of costs recoverable are hereby limited to those enumerated above. The Restraining Order heretofore issued is hereby lifted.

SO ORDERED.

Teehankee, Acting C.J., Makasiar, Fernandez, and Guerrero, JJ., concur.

[1] p. 24, Rollo.

[2] pp. 21-23, Ibid.

[3] p. 35, Ibid.

[4] pp. 29-32, Ibid.

[5] p. 35, Ibid.

[6] p. 36, Ibid.

[7] p. 46, Ibid.

[8] p. 11, Ibid.

[9] Ballentine Law Dictionary, 1948 ed.

[10] sec. 1, Rule 142.

[11] Art. 2208 No. 1, New Civil Code.

[12] Ortiga Bros. & Co. vs. Enage, et al., 18 Phil. 345 (1911); Osorio vs. Trias, 16 Phil. 511 (1910); Somes vs. Molina, 15 Phil. 133 (1910).

[13] 20 CJS 505 cited in Martin, Rules of Court, Vol. VI, p. 315.

[14] Section 8, Rule 142.

[15] 95 Phil. 925 (1954).

[16] 16 SCRA 321 (1966).

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