

**SPOUSES ERNESTO P. PILAPIL AND SONIA A. PILAPIL,
PLAINTIFFS-APPELLEES, VS. VIRGILIO, CONSUELO, FRANCIA, JUANA
AND LOURDES, ALL SURNAMED FELIZMENIO,
DEFENDANTS-APPELLANTS.**

Ponente: GARCIA, R. R. J.

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GARCIA, R. R. J.:

Before Us is an appeal from the Decision[1] dated September 3, 2012 of the Regional Trial Court (RTC), Branch 19, Naga City in Civil Case No. 2008-0033 declaring plaintiffs-appellees spouses Ernesto P. Pilapil and Sonia A. Pilapil as lawful owners and entitled to the possession of the subject parcel of land; ordering defendants-appellants Virgilio, Consuelo, Francia, Juana and Lourdes, all surnamed Felizmenio, to surrender the possession of the subject property to appellees; and ordering appellants to pay appellees damages in the amount of P5,000.00 per month from June 2007 until the latter are restored in the possession thereof and attorney's fees in the amount of P30,000.00 plus P2,000.00 for every court appearance, the dispositive portion of which reads:

WHEREFORE, in view of the foregoing, decision is hereby rendered in favor of the plaintiff and against the defendants to:

- Declaring the plaintiffs as lawful owner and entitled to the possession of the parcel of land, subject of this case;
- Ordering defendants Virgilio, Consuelo, Francia, Juana and Lourdes all surnamed Felizmenio to surrender to the plaintiffs the possession of the subject parcel of land;
- Ordering the defendants to pay plaintiffs damages in the amount of P5,000.00 per month from June, 2007 until the plaintiffs are restored in their possession of the subject property; and
- To pay plaintiffs attorney's fees in the amount of P30,000.00 plus P2,000.00 for every appearance in Court.

SO ORDERED.[2]

THE FACTS

The instant case stemmed from a complaint[3] dated March 12, 2008 filed by appellees for Recovery of Ownership and Possession of Real Property Or In the Alternative, Warranty Against Eviction With Damages against appellants and alternative defendants spouses Solomon and Teofila De Jesus before the RTC of Naga City.

The complaint alleged that appellee Ernesto bought from alternative defendant Solomon De Jesus a parcel of agricultural land containing 1,813 square meters located at Barangay Panicuason, Naga City for P90,000.00 as evidenced by a Deed of Absolute Sale[4] dated July 27, 2003 and acknowledged before Notary Public Atty. Florencio R. Rosales. A sketch/special plan[5] of the above described parcel of land as a portion of Lot 979 Cad 290, Naga Casdastre was made by Geodetic Engineer Claro A. Recto. Prior to the sale, alternative defendants were the absolute owners and actual possessors of the agricultural land above described by virtue of intestate

succession as shown by their Extrajudicial Settlement of Estate of the Deceased Bartolome De Jesus[6] dated February 11, 2000. The property is actually registered under Tax Declaration No. 01-018-0182[7] issued by the Office of the City Assessor of Naga City in the name of the Heirs of Bartolome De Jesus covering the whole area of 50.6538 hectares, which was the same document relied upon by appellees when they bought a portion of the property from the alternative defendants.

After the sale, appellees took actual possession of the property as absolute owners and constructed thereon a perimeter fence and a house for which they spent P100,000.00. They stayed in the said house whenever they were in Naga City and designated Domingo Borromeo as the property's caretaker. In June 2007, appellants, by means of intimidation committed against the person of their caretaker, took possession of the subject property allegedly pursuant to a Writ of Execution[8] issued by the Municipal Trial Court (MTC) of Naga City in Civil Case No. 10627[9] entitled "Virgilio Felizmenio, et. al. vs. Solomon De Jesus, et. al." for Forcible Entry. Appellees, however, completely had no knowledge or information as to the pendency of Civil Case No. 10627 nor did they know or hear of any claim of ownership or possession by appellants over the subject parcel of land. On February 1, 2008, appellees, through counsel, demanded[10] from appellants that they return the peaceful possession of the parcel of land within fifteen (15) days from receipt thereof, but the same was ignored. Appellees argued that the MTC decision was conclusive only with respect to the right of possession of appellants but not with respect to their right of ownership. Appellees thus pray that they be declared the owner and entitled to the possession of the subject property.

An Answer[11] dated May 23, 2008 was filed by appellant Atty. Francia Felizmenio Apogñol who entered her appearance for herself and in behalf of her sisters appellants Consuelo and deceased Lourdes. They alleged that the Felizmenios have always been the owner of the subject land and had possessed the same until alternative defendant Solomon De Jesus committed acts of dispossession. Hence, a Forcible Entry case was filed against him by their father, Zacarias Felizmenio, and lately by their eldest sibling, Virgilio Felizmenio. Moreover, by purchasing the property in question from alternative defendants, appellees run the risk of being evicted as they merely relied on the Extrajudicial Settlement of Estate of the heirs of Bartolome De Jesus.

In a separate Answer[12] dated June 1, 2008 filed by Atty. Epifanio Ma. Terbio, Jr. for appellant Virgilio Felizmenio, he averred that the subject property is owned by them since time immemorial. The ownership and possession thereof have been upheld by the courts, hence, appellees' claim is already barred by *res judicata*. Not being the owner thereof, alternative defendants have no right to sell the property. Consequently, appellees acquired nothing when they paid the amount of P90,000.00 in their Deed of Absolute Sale with the alternative defendants.

In another Answer[13] dated July 24, 2008, alternative defendants alleged that they were the former absolute owners and actual possessors of the parcel of land subject matter of this case. When they sold it to appellees, they were merely exercising their right of dominion over the same. Moreover, the only issue resolved in Civil Case No. 10627 for Forcible Entry was the issue of possession and not ownership. Hence, when the alternative defendants sold the portion of their land to appellees, they did so within the ambit of their inherent right to dispose the same being the absolute owners thereof. In fact, appellees were able to take actual possession of the property.

Preliminary conferences were held on September 22, 2010 and October 26, 2010. In a Manifestation with Motion to Defer Proceedings[14] dated December 15, 2010, Atty. Terbio, Jr., counsel for Virgilio Felizmenio, alleged that appellant Juana Felizmenio died[15] on August 17, 2010, hence, he prayed that the proceedings of the court a quo be deferred and allow the substitution of the parties. In an Order[16] dated December 10, 2010, the court a quo suspended the proceedings and gave Atty. Terbio, Jr. fifteen (15) days from receipt thereof to effect the substitution of parties. On January 3, 2011, Atty. Terbio, Jr. again filed a Motion for Cancellation of Hearing[17]

which was granted by the court a quo in its Order dated January 7, 2011.

Despite reasonable time afforded to Atty. Terbio, Jr., he failed to effect the substitution. Consequently, in an Order[18] dated April 18, 2011, the court a quo set the pre-trial of the case on May 16, 2011. Pre-trial hearing was thereafter reset on June 21, 2011 after the May 16 setting was canceled[19] and the parties were duly notified thereof.

During the pre-trial hearing on June 21, 2011, appellee Ernesto Pilapil and his counsel Atty. Randi Carlo Gobot appeared in court. Atty. Gualberto Manlagñit entered his appearance as counsel for alternative defendants. Atty. Terbio, Jr., aside from his failure to appear despite due notice, likewise failed to submit the names of the substituted defendants despite ample time given him. Atty. Francia Apogñol also failed to appear despite notice. For failure of appellants to appear at the pre-trial, the court a quo directed appellees to present their evidence ex parte pursuant to Rule 18 Section 5 of the Rules of Court.[20]

Appellees presented their lone witness, appellee Ernesto Pilapil. Thereafter, on November 2, 2011, appellees submitted their Formal Offer of Evidence[21] which includes the following documentary evidence, namely: Tax Declaration No. 01-018-0182[22] issued by the Office of the City Assessor of Naga City in the name of the Heirs of Bartolome De Jesus over the subject property covering the whole area of 50.6538 hectares, which was the same document relied upon by appellees when they bought a portion of the property from defendant Solomon De Jesus; Tax Declaration of Real Property No. 08-02-0018-00248[23] issued on November 17, 2008 by the Office of the City Assessor of Naga City in the name of the Heirs of Bartolome De Jesus over the subject property, which canceled the previous tax declaration; the Deed of Absolute Sale dated July 27, 2003; Extrajudicial Settlement of Estate of the Deceased Bartolome De Jesus[24] dated February 11, 2000; Sketch Plan prepared for appellee Ernesto Pilapil; and Demand Letter dated February 1, 2008.

On March 2, 2012, the court a quo received a Notice of Death of Virgilio Felizmenio[25] who died on January 14, 2012.

In a Decision[26] dated September 3, 2012, the court a quo granted appellees' complaint and declared them as the lawful owners entitled to the possession of the subject property. It ruled that appellees acquired the property from alternative defendant Solomon De Jesus under a valid Deed of Absolute Sale. They relied on the duly executed extrajudicial settlement signed by all the heirs of the late Bartolome De Jesus, specifically showing the portion allocated to Solomon De Jesus and the Tax Declaration issued in the name of the heirs of Bartolome De Jesus. Appellees are also considered purchasers for value and in good faith having bought the same without notice that some other person has a right or interest in such property. The pertinent portions of the assailed Decision are quoted:

x x x

After a careful examination of the records, the Court found the Deed of Absolute Sale executed in favor of plaintiff Ernesto P. Pilapil by alternative defendant Solomon de Jesus, established his ownership over the lot covered by said document. He acquired the property under a valid deed of sale. The Deed of Absolute Sale being a public document is a prima facie evidence of the facts therein expressed x x x. Plaintiff was able to prove that alternative defendants Solomon and Teofila de Jesus together with their children were residing and in actual possession of the subject property prior to its sale in his favor. Hence, it is undisputed that plaintiff's predecessor practically lived his entire life in the area where the property in dispute is located. To ascertain the true ownership of the property, plaintiff relied on the duly executed extra-judicial settlement signed by all the heirs of the late Bartolome De Jesus, specifically showing the portion allocated to Solomon De Jesus. There were no adverse claimant when plaintiff purchased the land and he had a new Tax Declaration issued in the name of the heirs of Bartolome De Jesus, dated 17 November, 2008 cancelling the old one.

The plaintiff claimed that he was an innocent purchaser for value and that he was in possession and enjoyment of the land in the concept of owner, peacefully and publicly. The law considers a person an innocent purchaser for value if he buys the property of another without notice that some other person has a right or interest in such property and pays the full price for the same, at the time of such purchase or before he has notice of the claim or interest of some other person in the property. Hence, the Court entertain no doubt that plaintiff was a purchaser for value and in good faith.[27]

Appellants' motion for reconsideration[28] was likewise denied in an Order[29] dated July 12, 2013.

Hence, this appeal in which the appellants raised the following assignment of errors[30], to wit:

I. THE COURT A QUO COMMITTED ERROR WHEN IT RENDERED THE DECISION DATED SEPTEMBER 3, 2012 WITHOUT THE FORMAL SUBSTITUTION OF DECEASED PARTIES DESPITE NOTICE OF DEATH PRIOR TO THE RENDITION OF THE ASSAILED DECISION.

II. THE COURT A QUO COMMITTED ERROR WHEN IT DENIED THE MOTION FOR RECONSIDERATION IN ITS ORDER DATED JULY 12, 2014 AS IT UNDENIABLY VIOLATED THE RIGHT TO DUE PROCESS OF THE HEIRS OF THE DECEASED PARTIES.

THE ISSUE

The issues in the instant case are: a) whether or not appellants were denied due process for failure to effect the substitution of the deceased parties and b) whether the court a quo correctly declared appellees as the lawful owners and entitled to the possession of the subject parcel of land.

THE COURT'S RULING

The appeal is bereft of merit.

Appellants contend that the Decision dated September 3, 2012 is null and void because it was rendered without the formal substitution of deceased Juana V. Felizmenio and Virgilio Felizmenio despite notice of death.

We disagree.

The rule on substitution of parties provided in Section 16, Rule 3 of the 1997 Rules of Civil Procedure, reads:

SEC. 16. Death of party; duty of counsel. — Whenever a party to a pending action dies, and the claim is not thereby extinguished, it shall be the duty of his counsel to inform the court within thirty (30) days after such death of the fact thereof, and to give the name and address of his legal representative or representatives. Failure of counsel to comply with his duty shall be a ground for disciplinary action. (Emphasis supplied)

According to Section 16, Rule 3 of the Revised Rules of Court, a counsel, within 30 days from his client's death, is duty-bound to inform the court of such fact and to submit the names and addresses of the deceased client's legal representatives. Thereafter, the court shall order the appearance of and substitution by the deceased party's legal representative within another period of thirty (30) days from notice. The purpose behind Section 16, Rule 3 of the Revised Rules of Procedure is the protection of the right to due process of every party to a litigation who may be affected by the intervening death.[31]

In the case at bench, the court a quo properly gave appellants the opportunity to substitute the names and addresses of the legal representatives of the deceased Juana Felizmenio after Atty. Terbio, Jr. had filed a Manifestation with Motion to Defer Proceedings[32]. The court a quo even suspended the proceedings and gave Atty. Terbio, Jr. fifteen (15) days from receipt thereof to effect substitution of parties. On January 3, 2011, Atty. Terbio, Jr. again filed a Motion for Cancellation of Hearing[33] which was granted by the court in its Order dated January 7, 2011. Despite ample time given to Atty. Terbio, Jr., no names were submitted by appellants to the court. Thus, in an Order[34] dated April 18, 2011, the court a quo set the pre-trial hearing on May 16, 2011.

However, Atty. Terbio, Jr. again filed a Motion for Cancellation of Hearing[35] claiming that he could not attend the same. When the pre-trial was eventually held on June 21, 2011, appellants and their counsels, Atty. Terbio, Jr. and Atty. Apongcol were not present. Clearly, appellants' counsels were given enough time of almost (6) months to effect the substitution. However, despite several settings, no compliance was made.

We likewise agree with the court a quo's findings that with regard to appellant Virgilio Felizmenio who died on January 14, 2012, the notice of death was submitted long after appellants had been declared to have waived their right to present evidence pursuant to Rule 18 Section 5 of the Rules of Court. As such, the substituted heirs listed in the notice thereof were only entitled to notice pursuant to the Pre-trial Order dated June 21, 2011. Moreover, the notice of death was already filed after the appellees had formally offered their documentary exhibits on November 2, 2011 and were merely awaiting the decision of the court a quo.

The court a quo also correctly allowed appellees to present their evidence ex parte pursuant to Rule 18 Section 5 of the Rules of Court.[36] The said rule provides that it is the duty of the parties and their counsel to appear at the pre-trial hearing. The effect of their failure to appear is provided by Section 5 of the same rule where it states:

Sec. 5. Effect of failure to appear. — The failure of the plaintiff to appear when so required pursuant to the next preceding section shall be cause for dismissal of the action. The dismissal shall be with prejudice, unless otherwise ordered by the court. A similar failure on the part of the defendant shall be cause to allow the plaintiff to present his evidence ex parte and the court to render judgment on the basis thereof.

From the foregoing, it is clear that the failure of a party to appear at the pre-trial has adverse consequences. If it is the defendant who fails to appear, then the plaintiff is allowed to present his evidence ex parte and the court shall render judgment on the basis thereof. The plaintiff is thus given the privilege to present his evidence without objection from the defendant, the likelihood being that the court will decide in favor of the plaintiff, the defendant having forfeited the opportunity to rebut or present its own evidence.[37]

A review of the factual antecedents indicates that appellants and their counsels were informed in advance of the scheduled pre-trial hearing on June 21, 2011. However, only appellees and alternative defendants, with their respective counsels, appeared. Atty. Terbio, Jr., counsel for Virgilio Felizmenio; and Atty. Francia Felizmenio Apogñol, appearing for herself and of her sisters appellants' Consuelo and deceased Lourdes, failed to appear despite notice. Thus, appellants already waived their right to participate in the case.

We emphasize that everyone knows that a pre-trial in civil actions is mandatory. Yet to this day, its place in the scheme of things is not fully appreciated and it receives but perfunctory treatment in many courts. Some courts consider it a mere technicality, serving no useful purpose save perhaps, occasionally to furnish ground for non-suiting the plaintiff or declaring a defendant in default, or, wistfully, to bring about a compromise. The pre-trial is not thus put to full use. Hence, it has failed in the main to accomplish the chief objective for it: the simplification, abbreviation and expedition of the trial, if not indeed its dispensation. This is a great pity, because the objective is attainable, and with not much difficulty, if the device was more intelligently and extensively handled.[38]

Appellants and their counsels were given all the opportunities to be heard. They cannot now complain of alleged violation of due process when it was by their own fault that they lost the opportunity to present evidence. Well-settled is the rule that due process is not violated where a person is not heard because he has chosen, for whatever reason, not to be heard.[39] It is obvious that if he opts to be silent where he has the right to speak, he cannot later be heard to complain that he was unduly silenced.[40]

The court a quo likewise correctly declared appellees as the lawful owners and entitled to the possession of the subject property. Appellee Ernesto was considered an innocent purchaser for value having bought the subject

property under a valid Deed of Absolute Sale dated July 27, 2003 from alternative defendant Solomon De Jesus. Being an untitled property, the appellees properly relied on Tax Declaration No. 01-018-0182[41] issued by the Office of the City Assessor of Naga City in the name of the Heirs of Bartolome De Jesus over the subject property covering the whole area of 50.6538 hectares and the Extrajudicial Settlement of Estate of the Deceased Bartolome De Jesus[42] dated February 11, 2000. Appellees eventually had a new Tax Declaration No. 08-02-0018-00248[43] on November 17, 2008 issued in the name of the heirs of Bartolome De Jesus canceling the old one. Appellees were also able to prove that alternative defendants Solomon and Teofila De Jesus, together with their children, were residing and in actual possession of the subject property prior to its sale in his favor. There was no notice of an adverse claim when they purchased the land. In fact, from the time appellees bought the property on July 2003 up to the time appellants dispossessed them therefrom on June 2007, they have been living thereat and even constructed a perimeter fence and a house.

Indubitably, the foregoing circumstances prove by preponderance of evidence the validity of the sale in favor of appellees. Preponderance of evidence is the weight, credit, and value of the aggregate evidence on either side and is usually considered to be synonymous with the term "greater weight of the evidence" or "greater weight of the credible evidence".[44] Preponderance of evidence is a phrase which, in the last analysis, means probability of the truth.[45] It is evidence which is more convincing to the court as worthier of belief than that which is offered in opposition thereto.[46] Besides, factual findings of the lower courts are entitled to great weight and respect on appeal and in fact accorded finality when supported by substantial evidence on the record.[47]

It may be well to state that what appellees filed is an accion reivindicatoria or an action to recover ownership which necessarily includes a recovery of possession.[48] The MTC decision on Civil Case No. 10627[49] for Forcible Entry is an ejectment suit brought before the proper inferior court to recover physical possession only or possession de facto, not possession de jure. Unlawful detainer and forcible entry cases are not processes to determine actual title to property.[50] Any ruling by the MTC on the issue of ownership is made only to resolve the issue of possession, and is therefore inconclusive.[51] An ejectment case cannot be a substitute for a full-blown trial for the purpose of determining rights of possession or ownership.[52]

We delete, however, the award of attorney's fees of P30,000.00 since the court a quo failed to state in the body of its decision the factual or legal reasons for said award. In *S.C. Megaworld Construction Development Corp. vs. Parada*[53], the Supreme Court held that the trial court must state the factual, legal or equitable justification for its award of attorney's fees. The matter of attorney's fees cannot be stated only in the dispositive portion, but the reasons must be stated in the body of the court's decision.[54] This failure or oversight of the trial court cannot even be supplied by this Court.[55]

WHEREFORE, premises considered, the instant appeal is hereby DENIED. The Decision dated September 3, 2012 of the Regional Trial Court, Branch 19, Naga City is AFFIRMED WITH MODIFICATION in that the award of attorney's fees is DELETED.

SO ORDERED.

Dimagiba, L. R., and [*]Manahan, C. S., JJ., concur.

[*] Acting Junior Member per Office Order No. 56-15-ABR dated February 23, 2015. [1] Decision penned by Presiding Judge Zeida Aurora B. Garfin, Rollo, pp. 28-33.

[2] Rollo, p. 33.

- [3] Record, pp. 1-7.
- [4] Record, pp. 8-9.
- [5] Record, p. 14.
- [6] Record, pp. 10-13.
- [7] Record, p. 156.
- [8] Record, p. 15.
- [9] Record, pp. 17-21.
- [10] Record, pp. 22-24.
- [11] Record, pp. 43-47.
- [12] Record, pp. 52-55.
- [13] Record, pp. 69-72.
- [14] Record, pp. 132-133.
- [15] Certificate of Death, Record, p. 134.
- [16] Record, p. 139.
- [17] Record, pp. 137-138.
- [18] Record, p. 141.
- [19] Record, p. 143.
- [20] Record, pp. 144-145.
- [21] Record, pp. 149-151.
- [22] Record, p. 156.
- [23] Record, p. 157.
- [24] Record, pp. 10-13.
- [25] Record, pp. 163-165.
- [26] Supra, note 1.
- [27] Rollo, p. 32.
- [28] Record, pp. 181-182.
- [29] Rollo, p. 34.
- [30] Rollo, p. 19.
- [31] Torres v. Rodellas, G.R. No. 177836, September 4, 2009.
- [32] Record, pp. 132-133.
- [33] Record, pp. 137-138.

[34] Record, p. 141.

[35] Record, p. 142.

[36] Record, pp. 144-145.

[37] Benavidez v. Salvador, G.R. No. 173331, December 11, 2013.

[38] Durban Apartments Corporation v. Pioneer Insurance and Surety Corporation, G.R. 179419, January 12, 2011.

[39] Pepsi Cola Distributors of the Philippines vs. National Labor Relations Commission, G.R. No. 100686, August 15, 1995.

[40] Ibid.

[41] Record, p. 156.

[42] Record, pp. 10-13.

[43] Record, p. 157.

[44] Heirs of Bucton v. Spouses Go, G.R. No. 188395, November 20, 2013.

[45] Ibid.

[46] Ibid.

[47] Spouses Bernales v. Heirs of Sambaan, G.R. No. 163271, January 15, 2010.

[48] Vda. de Viray v. Spouses Usi, G.R. No. 192486, November 21, 2012.

[49] Record, pp. 17-21.

[50] Jose v. Alfuerio, G.R. No. 169380, November 26, 2012.

[51] Ibid.

[52] Ibid.

[53] G.R. No. 183804, September 11, 2013.

[54] Ibid.

[55] Ibid.

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