

**YREL ALCALA TORRES JESENA (YREL TORRES JESENA)
REPRESENTED BY HIS GUARDIAN-MOTHER ERLINDA TORRES,
PETITIONER, VS. HON. LUIS HERVAS, JUDGE OF THE JUVENILE AND
DOMESTIC RELATIONS ...**

G.R. No. L-47315. June 29, 1978

Ponente: SANTOS, J.

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SANTOS, J.:

In this petition for "Certiorari with Prayer for Preliminary Injunction" filed November 17, 1977, petitioner seeks the review and nullification of the Order of respondent Judge which was issued on October 12, 1977 on the ground that respondent Judge, in dismissing his "Motion to appeal as pauper", the "Motion for Approval of Record on Appeal and the Notice of Appeal," and in declaring the Order of October 12, 1977 as final and executory"... acted in a capricious and arbitrary manner in the exercise of his judgment and abuse of discretion (sic) unlawfully and whimsically neglected the performance of an act which is enjoined by law, equivalent to lack of jurisdiction..." (Pet., Roll., p. 13).

On November 23, 1977, We resolved, without giving due course to the petition, to require respondent to comment, not to file a motion to dismiss, and to issue a temporary restraining order effective as of said date and continuing until otherwise ordered by the Court (Roll., p. 186).

On December 20, 1977, private respondents filed their comment, prayed, on the grounds alleged, that the Petition be dismissed for lack of merit with costs against petitioner (Roll., pp. 188-195). And on April 19, 1978, petitioner filed his Reply to the said comment (Roll., pp. 211-215).

It appears, as correctly summarized in respondent's Comment, that -

"1. In Civil Case No. 72-11-068 (Juvenile and Domestic Relations Court, Iloilo City) a decision was rendered by the trial court on July 26, 1977, adjudging that the plaintiff (petitioner herein) is not an illegitimate child of Orlando Jesena, Sr., deceased, and, therefore, denied the action for compulsory recognition instituted by herein petitioner against private respondents who are the widow and children of the late Orlando Jesena, Sr....

"2. Petitioner received said decision on August 9, 1977; he filed a motion for reconsideration on August 18, 1977, requesting hearing on September 15, 1977....

"3. On the scheduled hearing on September 15, 1977, petitioner and his counsel did not appear, while private respondents' counsel appeared and opposed it, claiming, among other things, that the motion for reconsideration was merely pro-forma....

"4. The court, in its order dated September 22, 1977, denied the motion for reconsideration, which order was received by the petitioner on September 27, 1977;

"5. On September 29, 1977, petitioner filed an urgent motion to appeal as pauper, requesting hearing thereon on the following day, September 30, 1977. Private respondents learned of said urgent motion to appeal as

pauper only after September 30, 1977. On October 5, 1977, private respondents filed a motion to declare the decision final and executory and opposition to the motion of petitioner to appeal as pauper...."

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"6. On October 5, 1977, petitioner filed a notice of appeal and also a record on appeal, requesting hearing thereon on October 7, 1977. On October 7, 1977, when the motion for approval of the record on appeal was to be heard, petitioner and counsel were absent while counsel for private respondents appeared and moved to reset the hearing on October 11, 1977, calling the attention of the Court to the fact that private respondents have filed also on October 5, 1977, a motion to declare decision final and executory and opposition to petitioner's motion to appeal as pauper, requesting hearing thereon on October 11, 1977. The court in open court set the hearing on all pending incidents (petitioner's motion to appeal as pauper, private respondents motion to declare decision final and executory with opposition to petitioner's motion to appeal as pauper, and motion of petitioner for approval of the record on appeal) on October 11, 1977.

"7. On October 11, 1977, despite due notice to petitioner of the hearing of the aforementioned incidents, petitioner and his counsel did not appear. Counsel for private respondents appeared and argued against the petitioner's motion to appeal as pauper and against the approval of the record on appeal on the ground that they were filed outside the reglementary period within which to appeal.

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"8. (7) The trial court in its order dated October 12, 1977, dismissed the petitioner's motion to appeal as pauper filed on September 29, 1977, his notice of appeal and record on appeal, both filed on October 5, 1977, and declared that the judgment of the court has become final and executory." (See Comment, Roll., pp. 189-192; emphasis supplied).

Petitioner, plaintiff below, in his "Motion for Reconsideration" of the decision filed August 18, 1977, alleged as follows -

"xxx xxx xxx

"2. That a decision of the Honorable is contrary to law and the evidence presented by the defendants is insufficient to warrant or justify the decision (sic);

"3. That the Honorable Court deny the claim of the plaintiff as the illegitimate child of Orlando Jesena, Sr., and failed to give credence to the evidence of the plaintiff by not declaring the latter as the child of Orlando Jesena, Sr. with plaintiff's evidence on this score is clear and convincing that the plaintiff is the son of Orlando Jesena, Sr. (sic);

"4. That the decision of this Honorable Court is contrary to the evidence of the plaintiff which clearly and convincingly shows that the latter is the son of Orlando Jesena, Sr. this is made clear thru their witnesses who has personal knowledge of the elicited relationship of plaintiff's mother and Orlando Jesena, Sr. (sic);

"5. That this Motion for Reconsideration is not intended for delay to plaintiff, being pauper is exerting all avenues to enable him to appeal in the event that this Motion for Reconsideration is denied." (sic). (See Pet., Annex "D", Roll., p. 42; also Comment, Annex "1", Roll., pp. 196-197).

xxx xxx xxx."

Respondent Judge's finding that the "Motion for Reconsideration" is pro-forma is well-taken, since the same, in the language of the Order-

"xxx xxx xxx

" ... merely alleges in general terms that the decision 'is contrary to law and the evidence,' that the court 'deny the claim of Orlando Jesena, Sr., and failed to give credence of the plaintiff,' that plaintiff's evidence is 'clear thru their witnesses who has personal knowledge,' and prays also in general terms that the 'evidence of plaintiff be taken into account in setting aside the decision.' It does not point out specifically the findings or conclusions of the decision of this court 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. It does not, therefore, satisfy the requirements of Sec. 2, last paragraph, of Rule 37 of the Rules of Court. Said motion is, therefore, only a motion pro-forma. A pro-forma motion for reconsideration does not suspend the running of the period for appeal.

"The plaintiff's motion for reconsideration filed on August 18, 1977, being merely pro-forma, did not suspend the running of the period for perfecting her appeal. The 30-day period for perfecting the appeal started on August 10, 1977 and ended on September 8, 1977. The failure of the plaintiff to comply with the requirements regarding the perfection of an appeal within the reglementary period has the effect of rendering final and executory the judgment rendered by this Court in the above-entitled case." (Order, October 12, 1977, Roll., pp. 265-266).

Respondent Judge's above-quoted ruling - as respondent's Comment correctly pointed out and thus showed the lack of merit of this petition - is in accord with the prevailing doctrine on pro-forma motions enunciated in a string of cases decided by this Court. In *Villarica vs. CA, et al.* (L-28363 (May 15, 1974) 57 SCRA, p. 28), We, through then Justice, now Chief Justice, Fred Ruiz Castro said:

"The petitioner's motion for reconsideration of the order of February 17, 1964 which merely and barely alleged: '1. That the Order is contrary to law; 2. That the Order is contrary to the facts of the case, did not suspend the running of the period for appeal, being a mere pro-forma motion. For, while it states that the order complained of is contrary to law and to the facts of the case, it utterly fails to give even an inkling as to what findings or conclusions in the said order are not supported by evidence or are contrary to law, in violation of the aforementioned section 3, Rule 41, in relation to Rule 37 of the Rules of Court."

The Court, in view of the foregoing, resolved to DISMISS this petition for lack of merit. The temporary restraining order issued on November 23, 1977 (Rollo, p. 135) is hereby LIFTED and SET ASIDE.

Fernando, Acting C.J., (Chairman), Barredo, Antonio, and Aquino, JJ., concur.

Concepcion, Jr., J., on official leave.

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