

SUSANITA E. MENDOZA-PARKER, PETITIONER, VS. COURT OF APPEALS, RODOLFO TAN NG AND TERESITA S. RIOSA, RESPONDENTS.

G.R. No. 109219. March 11, 1994

Ponente: QUIASON, J.

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QUIASON, J.:

This is a petition for review on certiorari under Rule 45 of the Revised Rules of Court to modify the decision of the Court of Appeals in CA - G.R. No. 28140 and its resolution denying petitioner's motion for reconsideration.

We affirm the decision of the Court of Appeals and deny the petition.

I

On December 18, 1989, private respondents Tan Ng and Teresita S. Riosa, represented by Atty. Efren Barangan, filed with the Regional Trial Court, Branch 20, Quezon City, an action for collection of a sum of money with foreclosure of real estate mortgage against Demetrio G. Alcaras and Julieta Alcaras (Civil Case No. Q-89-4287).

On July 29, 1990, while the case was still at the pre-trial stage, Atty. Barangan withdrew his appearance and petitioner took over the case as substitute counsel.

On January 19, 1991, petitioner filed a motion for summary judgment, which was granted and judgment was rendered on May 23, 1991 in favor of private respondents. The trial court also awarded private respondents the amount of P10,000.00 as attorney's fees (Rollo, p. 102).

Thereafter, the defendants filed a petition for relief from judgment. While said case was still pending, petitioner filed a motion to withdraw her appearance with a prayer for the payment of her attorney's fees, stating that she demanded from private respondents the amount of P73,199.75 as her contingent fees, which was equivalent to 15 percent of the total monetary award granted by the trial court. Private respondents refused to pay the fees demanded by petitioner, offering to pay her P20,000.00 as attorney's fees and P300.00 as appearance fees or the same amount payable to their former counsel, Atty. Barangan.

The trial court, in its Order dated December 9, 1991, approved petitioner's motion (Rollo, pp. 52-54) and on December 23, 1991, directed private respondents to deposit the amount of P73,119.75 as attorney's fees (Rollo, p. 55). Private respondents filed a motion for reconsideration of the Order of the trial court dated December 9, 1991 with regard to the amount of attorney's fees awarded. The trial court denied the motion for reconsideration (Rollo, p. 57). Petitioner then filed a motion to cite private respondents in contempt of court for their failure to obey the Orders dated December 9 and 23, 1991.

Subsequently, private respondents questioned the two orders of the trial court before the Court of Appeals in CA--G.R. No. 281407, which modified the amount of attorney's fees awarded to petitioner by the trial court and fixed the same at P30,000.00 in addition to the award of P10,000.00 in the summary judgment. Petitioner's motion

for reconsideration was denied.

Hence, this appeal.

II

Petitioner assails as erroneous the giving of due course under Rule 65 of the Revised Rules of Court by the Court of Appeals to the petition of private respondents, claiming that an appeal under Rule 45 of the same Rules would have been the proper remedy (Rollo, pp. 17-29). It is the stance of petitioner that if the appeal was made under Rule 45, the entire record of the case would have been elevated "for the appreciation of evidence on the reasonableness of the attorney's fees" (Rollo, p. 21).

The petition entertained by the Court of Appeals was filed by private respondents to set aside the orders of the trial court dated December 9 and 23, 1991, which ordered them to pay petitioner the amount of P73,199.76 as attorney's fees. The said orders were issued after the summary judgment, which was secured by petitioner as counsel for private respondents had become final.

An appeal from a summary judgment is governed by Circular No. 2-90 (superseding Rule 41) while a review of an order of the trial court issued after the rendition of the summary judgment is governed by Rule 65.

Under the Judiciary Act of 1948, the jurisdiction of the Court of Appeals was limited to the issuance of the special writs under Rule 65 which are "in aid of its appellate jurisdiction." Similarly thereto, the Supreme Court held that the Court of Appeals had no jurisdiction to issue the special writs after the finality of the judgment of the trial court. The reason for this is that said jurisdiction was based on the existence of a right of appeal to the appellate court from the judgment of the trial court on the merits in the main case (*J.M. Tuason & Co., Inc. v. Jaramillo*, 9 SCRA 189 [1963]; *Vda. de Albar v. Carandang*, 6 SCRA 211 [1962]). However, under Section 9(1) of the Judiciary Reorganization Act of 1980, the jurisdiction of the Court of Appeals to issue the special writs was expanded to include special writs "whether or not in aid of its appellate jurisdiction" (*Quiason, Philippine Courts and Their Jurisdictions*, 1993 ed., p. 545).

Private respondents could not have questioned the two orders of the trial court before the Court of Appeals through a Rule 45 petition as suggested by petitioner (Rollo, p. 19). This remedy is available only in appeals from the decisions of the Court of Appeals to the Supreme Court.

Petitioner confused a final order on the merits of the main case, which is the one appealable to the Court of Appeals and a final order regarding an incident thereof, which is not appealable at all and can be reviewed only by a special civil action under Rule 65. A judgment on the merits is one rendered after a determination of which party is in the right and must prevail (*Santos v. Intermediate Appellate Court*, 145 SCRA 238 [1986]; *De Ocampo v. Republic*, 9 SCRA 440 [1963]).

Petitioner misread our ruling in *Quirino v. Gorospe*, 160 SCRA 787 (1988) to the effect that the remedy from an order of the probate court fixing the attorney's fees claimed by a lawyer against the estate is by an ordinary appeal (Rollo, p. 20). *Quirino* involved the settlement of an estate, a special proceeding where multiple appeals are allowed (B.P. Blg. 129, Chapter IV, Sec. 39; *Echaus v. Court of Appeals*, 187 SCRA 672 [1990]; *BA Finance Corporation v. Court of Appeals*, 178 SCRA 589 [1989]).

Section 19(b) of the Judiciary Reorganization Act of 1980 provides:

"In appeals in special proceedings in accordance with Rule 109 of the Rules of Court and other cases wherein multiple appeals are allowed, the period of appeal shall be thirty (30) days, a record on appeal being required."

Likewise under Section 1(e) of Rule 109 of the Revised Rules of Court, an interested party may appeal from an order of the Regional Trial Court where such order "[c]onstitutes, in proceedings relating to the settlement of the estate of a deceased person, xxx a final determination in the lower court of the rights of the party appealing, except that no appeal shall be allowed from the appointment of a special administrator."

In Quirino, the order fixing the award of attorney's fees was issued before the final settlement of the estate and should have been appealed by the heirs opposing the award under Rule 41 (the rule then applicable).

In the case at bench, the order questioned by private respondent was issued during the execution stage of the foreclosure proceedings. Clearly, the remedy of ordinary appeal under Circular No. 2-90 was no longer available.

Having disposed of the procedural aspect of the petition, we now address the question of whether the Court of Appeals can interfere with the orders of the trial court, fixing the attorney's fees awarded to a lawyer for legal services rendered to the client (Rollo, pp. 22-35).

The Court of Appeals did not sustain the finding of the trial court that there was an agreement between petitioner and her clients regarding the amount of attorney's fees to be paid for her legal services. We agree with the Court of Appeals that neither the partial payment of the attorney's fees by private respondents in the amount of P3,500.00 nor the sending by petitioner of her demand letter was sufficient to establish that the parties had arrived at an agreement as to the amount of her fees.

The Court of Appeals, in the exercise of its jurisdiction to review the decisions of lower courts fixing the attorney's fees, can and did determine whether the attorney's fees fixed by said courts are reasonable under the circumstances (*Borcena v. Intermediate Appellate Court*, 147 SCRA 111 [1987]).

After taking into consideration the various factors to guide the courts in fixing the attorney's fees, an appellate court can reduce the attorney's fees stipulated by the parties in a contract for professional services or awarded by a lower court, to levels which it deems reasonable (*Ramos v. Court of Appeals*, 63 SCRA 331 [1975]; *Verzosa v. Baytan*, 107 Phil. 1010 [1960]; *Bachrach v. Golingco*, 39 Phil. 130 [1918]).

In the absence of an agreement as to the amount of the attorney's fees, the courts are authorized to determine the amount to be paid to an attorney as reasonable compensation for his professional services (*Lorenzo v. Court of Appeals*, 189 SCRA 260 [1990]; *Lacson v. Reyes*, 182 SCRA 729 [1990]).

Even where the parties have agreed as to the amount of the fees, the courts have the power to disregard the contract if the amount fixed is unreasonable (*Bachrach v. Golingco*, 39 Phil. 138 [1918]; Canon 20, Code of Professional Responsibility).

A lawyer, being an officer of the court, is placed under judicial control with regard to the reasonableness of the amount of the attorney's fees demanded by him from his client (*Licudan v. Court of Appeals*, 193 SCRA 293 [1991]; *Ramos v. Bidin*, 161 SCRA 561 [1988]).

The determination of the attorney's fees depends on various factors like: the amount and character of the services rendered; the responsibility imposed; the amount of money or the value of the property involved in the controversy; the skill and experience called for in the performance of the services; the professional standing of the attorney; the results secured; and whether or not the payment of the fees is contingent or absolute (*Mambulao Lumber Co. v. Philippine National Bank*, 22 SCRA 359 [1968]).

In the case at bench, petitioner took over the case after the termination of the pre-trial and the pleadings she filed consisted only of a motion for summary judgment and an opposition to the motion for reconsideration filed by the defendants in Civil Case No. Q-89-4287. There was no full-blown trial held, for the defendants in said civil case

admitted their indebtedness. The only issue left to be determined was the manner of payment. Hence, there was no need to exert any unusual effort or special skill in its preparation. Under the circumstances, we find the amount granted by the trial court excessive and the award granted by the Court of Appeals reasonable.

WHEREFORE, the petition is DENIED.

SO ORDERED.

Cruz, (Chairman), Davide, Jr., Bellosillo, and Kapunan, JJ., concur.

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