

EDWIN N. TRIBIANA, PETITIONER, VS. LOURDES M. TRIBIANA, RESPONDENT.

G.R. No. 137359. September 13, 2004

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

This petition for review on certiorari[1] seeks to reverse the Court of Appeals' Resolutions[2] dated 2 July 1998 and 18 January 1999 in CA-G.R. SP No. 48049. The Court of Appeals affirmed the Order[3] of the Regional Trial Court, Branch 19, Bacoor, Cavite ("RTC"), denying petitioner Edwin N. Tribiana's ("Edwin") motion to dismiss the petition for habeas corpus filed against him by respondent Lourdes Tribiana ("Lourdes").

Antecedent Facts

Edwin and Lourdes are husband and wife who have lived together since 1996 but formalized their union only on 28 October 1997. On 30 April 1998, Lourdes filed a petition for habeas corpus before the RTC claiming that Edwin left their conjugal home with their daughter, Khriza Mae Tribiana ("Khriza"). Edwin has since deprived Lourdes of lawful custody of Khriza who was then only one (1) year and four (4) months of age. Later, it turned out that Khriza was being held by Edwin's mother, Rosalina Tribiana ("Rosalina"). Edwin moved to dismiss Lourdes' petition on the ground that the petition failed to allege that earnest efforts at a compromise were made before its filing as required by Article 151 of the Family Code.

On 20 May 1998, Lourdes filed her opposition to Edwin's motion to dismiss claiming that there were prior efforts at a compromise, which failed. Lourdes attached to her opposition a copy of the Certification to File Action from their Barangay dated 1 May 1998.

On 18 May 1998, the RTC denied Edwin's motion to dismiss and reiterated a previous order requiring Edwin and his mother, Rosalina to bring Khriza before the RTC. Upon denial of his motion for reconsideration, Edwin filed with the Court of Appeals a petition for prohibition and certiorari under Rule 65 of the Rules of Civil Procedure. The appellate court denied Edwin's petition on 2 July 1998. The appellate court also denied Edwin's motion for reconsideration.

Hence, this petition.

The Rulings of the RTC and the Court of Appeals

The RTC denied Edwin's motion to dismiss on the ground that the Certification to File Action attached by Lourdes to her opposition clearly indicates that the parties attempted to reach a compromise but failed.

The Court of Appeals upheld the ruling of the RTC and added that under Section 412 (b) (2) of the Local Government Code, conciliation proceedings before the barangay are not required in petitions for habeas corpus.

The Issue

Edwin seeks a reversal and raises the following issue for resolution:

WHETHER THE TRIAL AND APPELLATE COURTS SHOULD HAVE DISMISSED THE PETITION FOR HABEAS CORPUS ON THE GROUND OF FAILURE TO COMPLY WITH THE CONDITION PRECEDENT UNDER ARTICLE 151 OF THE FAMILY CODE.

The Ruling of the Court

The petition lacks merit. Edwin argues that Lourdes' failure to indicate in her petition for habeas corpus that the parties exerted prior efforts to reach a compromise and that such efforts failed is a ground for the petition's dismissal under Section 1(j), Rule 16 of the 1997 Rules of Civil Procedure.[4] Edwin maintains that under Article 151 of the Family Code, an earnest effort to reach a compromise is an indispensable condition precedent. Article 151 provides:

No suit between members of the same family shall prosper unless it should appear from the verified complaint or petition that earnest efforts toward a compromise have been made, but that the same have failed. If it is shown that no such efforts were in fact made, the case must be dismissed.

This rule shall not apply to cases which may not be the subject of compromise under the Civil Code.

Edwin's arguments do not persuade us.

It is true that the petition for habeas corpus filed by Lourdes failed to allege that she resorted to compromise proceedings before filing the petition. However, in her opposition to Edwin's motion to dismiss, Lourdes attached a Barangay Certification to File Action dated 1 May 1998. Edwin does not dispute the authenticity of the Barangay Certification and its contents. This effectively established that the parties tried to compromise but were unsuccessful in their efforts. However, Edwin would have the petition dismissed despite the existence of the Barangay Certification, which he does not even dispute.

Evidently, Lourdes has complied with the condition precedent under Article 151 of the Family Code. A dismissal under Section 1(j) of Rule 16 is warranted only if there is a failure to comply with a condition precedent. Given that the alleged defect is a mere failure to allege compliance with a condition precedent, the proper solution is not an outright dismissal of the action, but an amendment under Section 1 of Rule 10 of the 1997 Rules of Civil Procedure.[5] It would have been a different matter if Edwin had asserted that no efforts to arrive at a compromise have been made at all.

In addition, the failure of a party to comply with a condition precedent is not a jurisdictional defect.[6] Such defect does not place the controversy beyond the court's power to resolve. If a party fails to raise such defect in a motion to dismiss, such defect is deemed waived.[7] Such defect is curable by amendment as a matter of right without leave of court, if made before the filing of a responsive pleading.[8] A motion to dismiss is not a responsive pleading.[9] More importantly, an amendment alleging compliance with a condition precedent is not a jurisdictional matter. Neither does it alter the cause of action of a petition for habeas corpus. We have held that in cases where the defect consists of the failure to state compliance with a condition precedent, the trial court should order the amendment of the complaint.[10] Courts should be liberal in allowing amendments to pleadings to avoid multiplicity of suits and to present the real controversies between the parties.[11]

Moreover, in a habeas corpus proceeding involving the welfare and custody of a child of tender age, the paramount concern is to resolve immediately the issue of who has legal custody of the child. Technicalities should not stand in the way of giving such child of tender age full protection.[12] This rule has sound statutory basis in

Article 213 of the Family Code, which states, “No child under seven years of age shall be separated from the mother unless the court finds compelling reasons to order otherwise.” In this case, the child (Khriza) was only one year and four months when taken away from the mother.

The Court of Appeals dismissed Edwin’s contentions by citing as an additional ground the exception in Section 412 (b) (2) of the Local Government Code (“LGC”) on barangay conciliation, which states:

(b) Where the parties may go directly to court. – the parties may go directly to court in the following instances:

xxx2) Where a person has otherwise been deprived of personal liberty calling for habeas corpus proceedings;

xxx.

Under Rule 102 of the 1997 Rules of Civil Procedure, a party may resort to a habeas corpus proceeding in two instances. The first is when any person is deprived of liberty either through illegal confinement or through detention. The second instance is when custody of any person is withheld from the person entitled to such custody. The most common case falling under the second instance involves children who are taken away from a parent by another parent or by a relative. The case filed by Lourdes falls under this category.

The barangay conciliation requirement in Section 412 of the LGC does not apply to habeas corpus proceedings where a person is “deprived of personal liberty.” In such a case, Section 412 expressly authorizes the parties “to go directly to court” without need of any conciliation proceedings. There is deprivation of personal liberty warranting a petition for habeas corpus where the “rightful custody of any person is withheld from the person entitled thereto.”[13] Thus, the Court of Appeals did not err when it dismissed Edwin’s contentions on the additional ground that Section 412 exempts petitions for habeas corpus from the barangay conciliation requirement.

The petition for certiorari filed by Edwin questioning the RTC’s denial of his motion to dismiss merely states a blanket allegation of “grave abuse of discretion.” An order denying a motion to dismiss is interlocutory and is not a proper subject of a petition for certiorari.[14] Even in the face of an error of judgment on the part of a judge denying the motion to dismiss, certiorari will not lie. Certiorari is not a remedy to correct errors of procedure.[15] The proper remedy against an order denying a motion to dismiss is to file an answer and interpose as affirmative defenses the objections raised in the motion to dismiss. It is only in the presence of extraordinary circumstances evincing a patent disregard of justice and fair play where resort to a petition for certiorari is proper.[16]

The litigation of substantive issues must not rest on a prolonged contest on technicalities. This is precisely what has happened in this case. The circumstances are devoid of any hint of the slightest abuse of discretion by the RTC or the Court of Appeals. A party must not be allowed to delay litigation by the sheer expediency of filing a petition for certiorari under Rule 65 based on scant allegations of grave abuse. More importantly, any matter involving the custody of a child of tender age deserves immediate resolution to protect the child’s welfare.

WHEREFORE, we DISMISS the instant petition for lack of merit. We AFFIRM the Resolutions of the Court of Appeals dated 2 July 1998 and 18 January 1999 in CA-G.R. SP No. 48049. The Regional Trial Court, Branch 19, Bacoor, Cavite is ordered to act with dispatch in resolving the petition for habeas corpus pending before it. This decision is IMMEDIATELY EXECUTORY.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Quisumbing, Ynares-Santiago, and Azcuna, JJ., concur.

[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] Penned by Associate Justice Romeo J. Callejo, Sr. with Associate Justices Angelina Sandoval-Gutierrez and Mariano M. Umali concurring.

[3] Penned by Judge Edelwina C. Pastoral.

[4] Section 1(j) of Rule 16 of the Rules of Court states:

SECTION 1. Grounds. – Within the time for but before filing the answer to the complaint or pleading asserting a claim, a motion to dismiss may be made on any of the following grounds:

xxx

(j) That a condition precedent for filing the claim has not been complied with.

[5] Section 1 of Rule 10 of the 1997 Rules of Civil Procedure states:

SECTION 1. Amendments in general. – Pleadings may be amended by adding or striking out an allegation or the name of any party, or by correcting a mistake in the name of a party or a mistaken or inadequate allegation or description in any other respect, so that the actual merits of the controversy may speedily be determined, without regard to technicalities, and in the most expeditious and inexpensive manner.

[6] Ebol, et al. v. Judge Amin, et al., 220 Phil. 114 (1985).

[7] Soto v. Jareno, 228 Phil. 117 (1986).

[8] Section 2, Rule 10 of the 1997 Rules of Civil Procedure.

[9] Breslin v. Luzon Stevedoring Co., 84 Phil. 618 (1949).

[10] Versoza, et al., v. Versoza, 135 Phil. 84 (1968)

[11] Sps. Tirona v. Hon. Alejo, 419 Phil. 285 (2001).

[12] Macazo and Nuñez v. Nuñez, 105 Phil. 55 (1959).

[13] Section 1, Rule 102 of the 1997 Rules of Civil Procedure.

[14] Santiago Land Development Company v. Court of Appeals, G.R. No. 103922, 9 July 1996, 258 SCRA 535.

[15] Ibid.

[16] Quisumbing v. Gumban, G.R. No. 85156, 5 February 1991, 193 SCRA 520.

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