FELIZARDO S. OBANDO, JUAN S. OBANDO AND THE ESTATE OF ALEGRIA STREBEL VDA. DE FIGUERAS, PETITIONERS, VS. HON. COURT OF APPEALS, HON. PRESIDING JUDGE OF RTC-MANILA, BRANCH 17, ES...

G.R. No. 139760. October 05, 2001

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

This is a petition for certiorari and mandamus, seeking the annulment of the Decision and Resolution of the Court of Appeals in CA-G.R. SP No. 49896 dated May 7, 1999[1] and August 13, 1999,[2] and praying that respondent Judge of the Regional Trial Court of Manila, Branch 17, be ordered to give due course to petitioners' notice of appeal.

Jose Figueras died testate on January 8, 1964, leaving as heirs Alegria Strebel Vda. de Figueras, his second wife, and Francisco and Eduardo Figueras, his two legitimate children by his first wife, Rosario Francisco.

Sometime in June 1965, Francisco Figueras instituted Special Proceeding No. 61567, a petition for probate of the last will and testament of Jose Figueras.

Alegria Strebel Vda. de Figueras died on May 11, 1979. Petitioner Felizardo Obando instituted on May 25, 1979 a petition for probate of the last will and testament of Alegria which was docketed as Special Proceeding No. 123948 of the then Court of First Instance of Manila. Felizardo claimed that he and his brother, Juan, are the children of Alegria's sister, Susan Strebel, and that they have been named as heirs in Alegria's will.

The two probate proceedings were consolidated before the Regional Trial Court of Manila, Branch 17. Eduardo Figueras and Felizardo Obando were appointed as co-administrators of the consolidated estates of the deceased spouses.

On April 11, 1991, Felizardo filed with the probate court a motion for the removal of Eduardo Figueras as his co-administrator, on the ground that he was suffering from a heart ailment which prevented him from going to court; that Eduardo failed to prevent the foreclosure of the estate's property in Marikina and failed to account for rentals received on behalf of the estate; that Eduardo instituted ejectment proceedings against a lessee of the estate without naming Felizardo as co-administrator; and that Eduardo was convicted of the crime of rebellion.

Meanwhile, the National Bureau of Investigation found that the last will and testament of Alegria was a forgery. This finding was affirmed by the Philippine Constabulary Crime Laboratory. Hence, on July 26, 1990, criminal charges for falsfication were filed against petitioners Felizardo and Juan Obando who were thereafter convicted of falsification.

In turn, Eduardo Figueras and intervenor Fritz Strebel filed on June 29, 1991, a motion to remove Felizardo as co-administrator, citing as ground Felizardo's failure to account for the rentals received from the Community of

Learners, a lessee of the estate, in the amount of P313,000.00; and the conviction of Felizardo and Juan Obando for falsifying the last will and testament of Alegria Strebel Vda. de Figueras.

In an Order dated December 17, 1997,[3] the probate court denied the motion to remove Eduardo Figueras, and granted the motion to remove Felizardo Obando as administrator.

Felizardo filed a motion for reconsideration of the aforesaid Order which was denied on February 5, 1998.[4] Further, the probate court dismissed Special Proceeding No. 123948, i.e., the petition for probate of the last will and testament of Alegria Strebel Vda. de Figueras, on the ground that the same was forged.

Felizardo filed an Urgent Motion for Reconsideration, which the probate court denied for being actually a second motion for reconsideration.[5] The probate court also denied Felizardo's motion for reconsideration of the order dismissing Special Proceeding No. 123948.

Again, Felizardo filed a motion for reconsideration of his removal as administrator, as well as the order dismissing Special Proceeding No. 123948. On July 17, 1998,[6] the probate court issued an Order denying the aforesaid motions.

Thus, on August 6, 1998, Felizardo filed a Notice of Appeal against all the foregoing orders of the probate court. In an Order dated August 27, 1998,[7] the probate court denied due course thereto, finding that the second and third motions for reconsideration, being prohibited under the Rules, did not toll the reglementary period to appeal. Hence, the order removing him as administrator and dismissing Special Proceeding No. 123948 had already become final.

Petitioners filed with the Court of Appeals, on December 15, 1998, a petition for certiorari and mandamus, docketed as CA-G.R. SP No. 49896, raising the following issues:

> I) MAY THE PUBLIC RESPONDENT COURT BE ORDERED TO GIVE DUE COURSE TO PETITIONERS' APPEAL AND ELEVATE THE SAME TO THIS HONORABLE COURT?
>
> II) WERE PETITIONERS' NOTICE OF APPEAL AND RECORD ON APPEAL SEASONABLY FILED AND SUBMITTED?
>
> III) WERE PETITIONERS' MOTIONS FOR RECONSIDERATION OF THE PREVIOUS ORDERS OF DECEMBER 17, 1997, FEBRUARY 5, 1998, APRIL 6, 1998 AND LATELY THE ORDER OF AUGUST 27, 1998 PROSCRIBED BY THE RULES AS BEING IN THE CONCEPT OF PRO FORMA MOTIONS?
>
> IV) ARE PETITIONERS ENTITLED TO APPEAL AS A MATTER OF FACT?[8]

On May 7, 1999, the Court of Appeals rendered the assailed Decision dismissing the petition. Petitioners filed a Motion for Reconsideration which, however, was denied for lack of merit. Hence, this petition.

Petitioners invoke previous rulings of this Court which relate to the liberal construction of rules of procedure. There is, however, nothing in the case at bar which would warrant the application thereof, which is the exception rather than the rule.

Indeed, the Rules of Court are explicit that a second motion for reconsideration shall not be allowed.[9] In this case, petitioners filed not only a second motion for reconsideration, but a third motion for reconsideration as well. Since the period to appeal began to run from the denial of the first motion for reconsideration, consequently, petitioners' Notice of Appeal filed six months later was correctly denied by the probate court for being late.

We quote with approval the following ruling of the Court of Appeals:

> We, on the other hand, agree with the respondents that the petitioners' period to appeal already expired. They

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> filed not only one but three Motions for Reconsideration. A second Motion for Reconsideration, as a matter of fact, is not allowed (Rule 37, Section 5). Since a second Motion for Reconsideration is not allowed, then necessarily, its filing did not toll the running of the period to appeal, with more reason would a 3[rd] Motion for Reconsideration. To Us, the April 6, 1998 Order, mentioning finality of the Order of dismissal of the Petition for Probate, together with Felizardo's removal as co-administrator, was validly issued.[10]

Likewise, the remedy of certiorari was no longer available to petitioners. It is well-settled that the special civil action for certiorari cannot be used as a substitute for the lost remedy of appeal. The remedies of appeal and certiorari are mutually exclusive and not alternative or successive.[11] In a recent case, we held:

> Hence, the Court of Appeals did not err when it dismissed the petition for certiorari and mandamus, on the ground that the proper remedy was to appeal within fifteen (15) days. The lapse of the reglementary period was of no moment. A basic requisite for the special civil action of certiorari to lie is that there be no appeal nor plain, speedy and adequate remedy in the ordinary course of law. Certiorari is a remedy of last recourse and is a limited form of review. Its principal function is to keep inferior tribunals within their jurisdiction. It cannot be used as a substitute for a lost appeal. It is not intended to correct errors of procedure or mistakes in the judge's findings or conclusions.[12]

All told, therefore, the Court of Appeals committed neither reversible error nor grave abuse of discretion in dismissing the petition for certiorari and mandamus.

WHEREFORE, in view of the foregoing, the instant petition is DISMISSED. The assailed Decision of the Court of Appeals dated May 7, 1999 is AFFIRMED in toto.

SO ORDERED.
Davide, Jr., C.J., (Chairman), Puno, and Pardo, JJ., concur.
Kapunan, J., on official leave.

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[1] Rollo, pp. 51-59; penned by Associate Justice Bernardo Ll. Salas and concurred in by Associate Justices Cancio C. Garcia and Roberto A. Barrios.

[2] Ibid., p. 60.

[3] Id., pp. 61-62.

[4] Id., pp. 67-71.

[5] Id., pp. 72-75.

[6] Id., pp. 76-79.

[7] Id., pp. 83-84.

[8] Record, p. 8.

[9] 1997 Rules of Civil Procedure, Rule 37, Section 5, second paragraph.

[10] Decision, p. 7; Rollo, p. 56.

[11] Cano-Gutierrez v. Gutierrez, G.R. No. 138584, October 2, 2000.

[12] Republic v. Court of Appeals, G.R. No. 95533, November 20., 2000.

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