MARGARITO R. JAMERO, PETITIONER, VS. THE HONORABLE ACHILLES L. MELICOR, IN HIS CAPACITY AS PRESIDING JUDGE OF THE REGIONAL TRIAL COURT OF TAGBILARAN CITY, BRANCH 4, ATTY. ALBERT...

G.R. NO. 140929. May 26, 2005

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

This refers to the petition for review on certiorari seeking that the Resolution[1] of the Court of Appeals (CA) promulgated on June 14, 1999 dismissing the petition for certiorari filed with it by petitioner Margarito R. Jamero and the Resolution promulgated on November 24, 1999 denying petitioner's motion for reconsideration be set aside and declared null and void on the ground that said Resolutions were issued in a way not in accord with law and jurisprudence.

The antecedent facts of the case are as follows:

Petitioner filed Special Proceedings No. 1618 for the Administration and Settlement of the Estate of his deceased mother Consuelo Jamero with the Regional Trial Court (RTC), Branch 4, Tagbilaran City. Private respondent Ernesto R. Jamero, a brother of petitioner, opposed the latter's petition for appointment as regular administrator of the estate.

Upon motion of private respondent Ernesto and over the objections of petitioner, the respondent court, in its Order dated December 4, 1998,[2] appointed Atty. Alberto Bautista as special administrator pending the appointment of a regular administrator. Petitioner received said Order on December 11, 1998 and filed a motion for reconsideration on December 28, 1998, the last day of the 15-day reglementary period, that is, December 26, 1998, falling on a Saturday during which, according to petitioner, the Bureau of Post Office held no office. The court a quo denied petitioner's motion for reconsideration in its Order dated February 26, 1999 which petitioner received on March 4, 1999.[3]

On April 21, 1999, petitioner filed a petition for certiorari with the CA, docketed as CA-G.R. SP No. 53020, entitled Margarito R. Jamero, Petitioner vs. Hon. Achilles L. Melicor, as Judge RTC of Tagbilaran City, Branch 4, and Alberto Bautista.

On June 14, 1999, the CA issued the herein assailed Resolution, to wit:

> A perusal of the petition indicates no statement as to the date when the petitioner filed a Motion for Reconsideration of the public respondent's decision, in violation of Section 3, paragraph 2, Rule 46 of the 1997 Rules of Civil Procedure as amended by Circular No. 39-98 dated August 18, 1998 of the Supreme Court, to wit:
> In actions filed under Rule 65, the petition shall further indicate the material dates showing when notice of the judgment or final order or resolution subject hereof was received when a motion for new trial or

> reconsideration, if any, was filed and when notice of the denial thereof was received.

The attention of the petitioner is likewise called to the amended Section 4, Rule 65 (Ibid.).

> SEC. 4. Where and when petition to be filed. – The petition may be filed not later than sixty (60) days from notice of the judgment, order or resolution sought to be assailed in the Supreme Court or, if it relates to the acts or omissions of a lower court or of a corporation, board, officer or person, in the Regional Trial Court exercising jurisdiction over the territorial area as defined by the Supreme Court. It may also be filed in the Court of Appeals whether or not the same is in aid of its appellate jurisdiction, or in the Sandiganbayan if it is in aid of its jurisdiction. If it involves the acts or omissions of a quasi-judicial agency, and unless otherwise provided by law or these Rules, the petition shall be filed in and cognizable only by the Court of Appeals.
>
> If the petitioner had filed a motion for new trial or reconsideration in due time after notice of said judgment, order or resolution the period herein fixed shall be interrupted. If the motion is denied, the aggrieved party may file the petition within the remaining period, but which shall not be less than five (5) days in any event, reckoned from notice of such denial. No extension of time to file the petition shall be granted except for the most compelling reason and in no case to exceed fifteen (15) days.

Hence, pursuant to the last paragraph of Section 3, Rule 46, the petition may be dismissed outright. In any case, even if we consider the date of the Motion for Reconsideration (December 26, 1998) as the date of its filing, the petition would be late by three (3) days.

WHEREFORE, the petition is denied due course and accordingly DISMISSED.

SO ORDERED.[4]

Petitioner filed a Motion for Reconsideration which the appellate court denied in its Resolution, promulgated on November 24, 1999, to wit:

> The petitioner filed a Motion for Reconsideration of our Resolution of dismissal dated June 14, 1999, imploring us to use merciful discretion by relaxing the rules on technicality to effect substantial justice, and citing the importance of the legal issues involved herein.
>
> We find the motion devoid of merit. This Court has no authority to extend the definitive period fixed in Sec. 4, Rule 65 of the 1997 Rules of Civil Procedure, as amended.
>
> In any case, the appointment of a special administrator is discretionary to the appointing court. Being an interlocutory order, the same is not appealable nor subject to certiorari.
>
> WHEREORE, the Motion for Reconsideration is DENIED for lack of merit.
>
> SO ORDERED.[5]

Hence, the present petition for review on certiorari filed by petitioner against Judge Achilles L. Melicor, Atty. Bautista and, this time, including oppositor Ernesto R. Jamero, based on the following grounds:

> I
>
> THE COURT OF APPEALS HAD DECIDED IN A WAY NOT IN ACCORD WITH LAW AND ESTABLISHED JURISPRUDENCE WHEN IT ALLOWED TECHNICALITY TO OVERRIDE, AND TAKE PRECEDENCE OVER, THE DEMONSTRATED SUBSTANTIVE MERITS OF THE PETITION.
>
> II
>
> THE COURT OF APPEALS HAS DECIDED IN A WAY NOT IN ACCORD WITH LAW AND ESTABLISHED JURISPRUDENCE WHEN IT RULED THAT THE APPOINTMENT OF SPECIAL

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ADMINISTRATOR IS DISCRETIONARY TO THE APPOINTING COURT, AND THAT BEING AN INTERLOCUTORY ORDER THE SAME IS NOT APPEALABLE NOR SUBJECT TO CERTIORARI.

III

THE COURT OF APPEALS HAD DECIDED IN A WAY NOT IN ACCORD WITH LAW AND ESTABLISHED JURISPRUDENCE WHEN IT SUSTAINED THE ORDER OF THE TRIAL COURT APPOINTING ATTY. ALBERTO Y. BAUTISTA AS SPECIAL ADMINISTRATOR OF THE ESTATE OF THE LATE CONSUELO R. JAMERO, IN THAT:

(A)

THE LATE CONSUELO R. JAMERO DIED INTESTATE, LEAVING NO DEBTS. HENCE, THE APPOINTMENT OF A SPECIAL ADMINISTRATOR IS NOT NECESSARY AS IT WOULD ONLY UNDULY BURDEN OR OTHERWISE EXPOSE THE ESTATE TO BEING WASTED OR SQUANDERED.

(B)

ASSUMING ARGUENDO THAT A SPECIAL ADMINISTRATOR IS NECESSARY, THE ORDER OF PREFERANCE PRESCRIBED BY THE RULES IN THE APPOINTMENT OF REGULAR ADMINISTRATOR SHOULD HAVE BEEN OBSERVED. THUS, THE TRIAL COURT SHOULD HAVE DESIGNATED THE PETITIONER WHO POSSESSES BENEFICIAL INTERESTS AS A CO-OWNER OF THE ESTATE, RATHER THAN ATTY. ALBERTO Y. BAUTISTA WHO IS ONLY A THIRD PARTY.

(C)

ASSUMING, FURTHER, THAT THE DESIGNATION OF ATTY. ALBERTO BAUTISTA WHO IS A THIRD PARTY IS PROPER, THE AUTHORITY OF A SPECIAL ADMINISTRATOR CANNOT BE EXERCISED IN DEROGATION OF THE RIGHTS OF PETITIONER AS A CO-OWNER OF THE PROPERTIES FORMING PART OF THE ESTATE. [6]

Private respondent Ernesto Jamero who was not a party in CA-G.R. SP No. 53020 filed his Comment contending that in the absence of clear, convincing and satisfactory proof that the decision is outrageously wrong, conspicuously mistaken and whimsically arrived at, the judgment of the CA must be regarded as final, citing Macapagal vs. CA, et al.[7] and Bustamante, Jr. vs. NLRC.[8]

In his Reply, petitioner pointed out that the issue on the timeliness of the filing of the petition for certiorari with the CA has now become moot and academic in view of A.M. Circular No. 00-2-03-SC which took effect on September 1, 2000, amending Section 4, Rule 65 of the Rules of Court, to wit:

SEC. 4. When and where petition filed. – The petition shall be filed not later than sixty (60) days from notice of the judgment, order or resolution. In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the sixty (60) day period shall be counted from notice of the denial of said motion.

. . .

Both petitioner and private respondent Ernesto filed their respective memoranda. Private respondent Bautista, the special administrator designated by the RTC, failed to submit his memorandum despite due notice of the Resolutions requiring him to do so. Consequently, on October 20, 2004, the Court issued a Resolution directing

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the Director of the National Bureau of Investigation (NBI) to arrest and detain him until he shall have paid the total amount of P4,000.00 fine and shall have filed his explanation and memorandum.[9] The NBI has not submitted its return.

The Court is dispensing with the filing of the memorandum by private respondent Bautista in view of the Comments he filed on October 12, 2000 stating that he has no personal interest in the subject matter of the petition and the subject matter of Special Proceedings No. 1618, RTC, Bohol; and that he will abide by whatever judgment/order/resolution that the Court may issue in this case.[10] However, Atty. Bautista is not relieved from paying the amount of the P4,000.00 fine for his failure to comply with the Resolutions of the Court.

The issues in this case are: (1) whether or not the CA erred in dismissing CA-G.R. SP No. 53020 for having been filed out of time; (2) whether or not the CA erred in ruling that the appointment of special administrator is discretionary to the appointing court and that being an interlocutory order, the same is not appealable nor subject to certiorari; and (3) whether or not the appointment of a special administrator is in accordance with law and jurisprudence.

As to the first issue, the Court finds merit to the claim of petitioner that A.M. Circular No. 00-2-03-SC as herein quoted earlier, further amending Section 4, Rule 65 of the Rules of Court, should be given retroactive effect. The Court held in Republic vs. Court of Appeals:[11]

> The amendment under A.M. No. 00-2-03-SC quoted above is procedural or remedial in character. It does not create new or remove vested rights but only operates in furtherance of the remedy or confirmation of rights already existing. It is settled that procedural laws do not come within the legal conception of a retroactive law, or the general rule against retroactive operation of statutes. They may be given retroactive effect to actions pending and undetermined at the time of their passage and this will not violate any right of a person who may feel that he is adversely affected, insomuch as there is no vested rights in rules of procedure.[12]

Thus, applying the same to CA-G.R. SP No. 53020, the petition for certiorari filed by petitioner with the CA should now be considered as having been filed within the reglementary period provided under said circular. Petitioner would have had sixty days from March 4, 1999 or until May 3, 1999 within which to file his petition in the CA. The petition for certiorari was filed on April 21, 1999.

However, far from rendering the petition in CA-G.R. SP No. 53020 moot and academic, as claimed by petitioner, the third issue will have to be passed upon by the CA in the petition for certiorari filed with it.

As to the second issue, suffice it to be stated that indeed, the appointment of a special administrator is interlocutory, discretionary on the part of the RTC and non-appealable. However, it may be subject of certiorari if it can be shown that the RTC committed grave abuse of discretion or lack of or in excess of jurisdiction. As the Court held in Pefianco vs. Moral,[13] even as the trial court's order may merely be interlocutory and non-appealable, certiorari is the proper remedy to annul the same when it is rendered with grave abuse of discretion.[14]

It is for this reason that the third issue, as already stated, will have to be considered and passed upon by the CA.

WHEREFORE, the petition is PARTIALLY GRANTED. The assailed Resolutions dated June 14, 1999 and November 24, 1999 are SET ASIDE and the case is remanded to the Court of Appeals for further proceedings. No pronouncement as to costs.

The Resolution of this Court dated October 20, 2004 is amended to the effect that the NBI is directed to arrest and detain the person of Atty. Alberto Bautista until full payment of the fine of Four Thousand Pesos (P4,000.00); and to submit its return within thirty (30) days from notice hereof.

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SO ORDERED.

Puno, (Chairman), Callejo, Sr., and Chico-Nazario, JJ., concur.
Tinga, J., out of the country.

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[1] Penned by Justice Delilah Vidallon-Magtolis, concurred in by Presiding Justice Jesus M. Elbiñas (retired) and Justice Presbitero J. Velasco, Jr. (now Court Administrator).

[2] CA Rollo, Annex "A," p. 27.

[3] Rollo, Petition, p. 15.

[4] Rollo, pp. 39-40.

[5] Rollo, pp. 41-42.

[6] Rollo, pp. 11-12.

[7] G.R. No. 110610, April 18, 1997, 271 SCRA 491.

[8] G.R. No. 73647, April 8, 1991, 195 SCRA 710.

[9] Rollo, p. 190.

[10] Rollo, p. 77.

[11] G.R. No. 141530, March 18, 2003, 399 SCRA 277.

[12] Id., pp. 283-284.

[13] G.R. No. 132248, January 19, 2000, 322 SCRA 439, 451.

[14] Id., p. 451.

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