

ARTURO G. MACKY, PETITIONER, VS. HON. ADORACION G. ANGELES, ACTING PRESIDING JUDGE, RTC, BRANCH 125, CALOOCAN CITY, AND ANTONIO G. MACKAY, RESPONDENTS.

G.R. No. 144230. September 30, 2003

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

Before us is a petition for review on certiorari under Rule 45 of the Rules of Court. It seeks to annul the Decision[1] of the Court of Appeals dated April 14, 2000, in CA-G.R. SP No. 49219, denying petitioner Arturo G. Mackay's petition for certiorari and prohibition with preliminary injunction and/or restraining order, as well as its Resolution[2] dated July 26, 2000 denying petitioner's motion for reconsideration. The appellate court affirmed the assailed Orders[3] of the public respondent, Hon. Adoracion G. Angeles, Acting Presiding Judge of the Regional Trial Court of Caloocan City, Branch 125, in Special Proceeding No. C-1814 dated July 15, 1998[4] and September 28, 1998.[5]

In that special proceeding, petitioner was appointed as regular administrator of the intestate estate of deceased Eufrocina G. Mackay on March 20, 1996.[6] After nearly twenty-four (24) months following his appointment, however, petitioner had not submitted the requisite inventory of estate assets and liabilities, nor had he paid the taxes due on the estate. This delay prompted private respondent Antonio G. Mackay to file an urgent motion on March 10, 1998 for the removal of petitioner as regular administrator.[7]

On March 30, 1998, petitioner filed his opposition[8] to the motion, which was duly set for hearing. Despite notices sent to him, petitioner failed to attend any of the scheduled dates of hearing. Consequently, an Order[9] was issued by Judge Adoracion G. Angeles on July 15, 1998 relieving petitioner as administrator of the estate and appointing private respondent as his substitute:

WHEREFORE, premises considered, Arturo Mackay is hereby relieved as a regular administrator of the estate of the deceased Eufrocina Mackay and upon the filing of an administrator's bond in the amount of P20,000.00, let letters of administration be issued to Antonio G. Mackay.

SO ORDERED.

In an Order[10] dated August 28, 1998, the court denied petitioner's motion for reconsideration for utter lack of merit. A copy of this Order was received by petitioner on September 7, 1998. Twenty-two (22) days later, or on September 29, 1998, petitioner filed a notice of appeal and a record on appeal.[11] However, on September 24, 1998, the trial court had already issued letters of administration in favor of private respondent.[12]

To enjoin the implementation of public respondent's orders, petitioner filed on October 8, 1998, with the Court of Appeals a petition for certiorari and prohibition with preliminary injunction and/or restraining order.[13] On October 12, 1998, petitioner filed an amended petition.[14] The case was docketed as CA-G.R. SP No. 49219. On November 26, 1998,[15] the CA denied petitioner's application for issuance of a temporary restraining order on

the ground that petitioner had no clear legal right thereto.

Finding that public respondent did not commit grave abuse of discretion amounting to lack or excess of jurisdiction in removing petitioner as regular administrator of the intestate estate of Eufrocina G. Mackay for his failure to render an accounting of the assets and liabilities of said estate and in immediately issuing letters of administration to private respondent, the appellate court dismissed the petition on April 14, 2000. The dispositive portion of said decision reads—

WHEREFORE, the Petition for Certiorari and Prohibition with Preliminary Injunction and/or Restraining Order is DENIED and the assailed Orders dated July 15, 1998 and August 28, 1998 issued by Judge Adoracion Angeles are AFFIRMED.

SO ORDERED.[16]

The Court of Appeals likewise denied petitioner's motion for reconsideration on July 26, 2000 for lack of merit. Hence, this petition, in which petitioner asserts that the Court of Appeals—

...COMMITTED ERRORS OF LAW AND GRAVELY ABUSED ITS DISCRETION IN NOT HOLDING THAT LETTERS OF ADMINISTRATION DATED SEPTEMBER 24, 1998 ISSUED TO PRIVATE RESPONDENT WAS PREMATURE.

...COMMITTED ERROR OF LAW IN APPLYING PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTY DESPITE THE FACT THAT THE ISSUANCE OF THE LETTERS OF ADMINISTRATION WAS PREMATURE AND IN VIOLATION OF THE PROVISION OF THE REGLEMENTARY PERIOD ON APPEALS IN SPECIAL PROCEEDINGS.

...GRAVELY ABUSED ITS DISCRETION IN RESOLVING ISSUES WHICH ARE PROPER SUBJECT OF APPEAL (ORDINARY APPEAL) AND NOT RAISED IN THE PETITION.[17]

Essentially, the main question refers to the propriety of the issuance by public respondent of the Order of September 24, 1998 directing the issuance of letters of administration to private respondent.

Petitioner argues that the Order appointing private respondent as administrator having been appealed, the same cannot be immediately executed by granting letters of administration to private respondent. It was erroneous for the Court of Appeals, said petitioner, to affirm public respondent's orders since they were issued in violation of petitioner's right to appeal and with grave abuse of discretion. Also, according to petitioner, the appellate court is guilty of having acted in excess of jurisdiction when it resolved the question of whether private respondent is qualified for appointment as administrator and the issue of the propriety of petitioner's discharge since these issues were not raised in the petition for certiorari filed before it, petitioner added.

In *De Borja v. Tan*,^[18] we held that the trial court does not act with grave abuse of discretion in ordering the immediate assumption into office of one who has been appointed as administrator before the perfection of an appeal from the order appointing him as such, where sufficient reasons exist to order execution pending appeal. Section 2, Rule 39^[19] of the Rules of Court allow discretionary execution where special reasons or circumstances exist. Here, the Court of Appeals affirmed the order of public respondent granting discretionary execution on the ground that the estate of Eufrocina Mackay would be left without an administrator and that the prompt settlement of the estate had already been unduly delayed. As it is the duty of trial courts in which cases are pending for the settlement of estates to expedite the proceedings, and considering further that the trial court is expressly authorized by the Rules of Court to order execution pending appeal, we find no grave abuse of discretion in the trial court's actuations. Thus, we find that the Court of Appeals also did not err in affirming the order.

As to the third ground for the petition, suffice it to say that the rule is well-settled that in appeals by certiorari

under Rule 45 of the Rules of Court, only errors of law may be raised.[20] The remedies of appeal and certiorari are mutually exclusive and not alternative or successive.[21] Certiorari as a mode of appeal under Rule 45 should be distinguished from certiorari as an original action under Rule 65. In an appeal by certiorari, the petition is based on questions of law which the appellant desires the appellate court to resolve. In certiorari as an original action, the only question that may be raised is whether or not the lower court acted without or in excess of jurisdiction or with grave abuse of discretion.[22] An allegation of grave abuse of discretion like the one made by the petitioner here, being beyond the scope of appeals by certiorari, deserves scant consideration.

WHEREFORE, the instant petition for review on certiorari is DENIED. The Decision of the Court of Appeals dated April 14, 2000, in CA-G.R. SP No. 49219, which denied petitioner Arturo G. Mackay's petition for certiorari and prohibition with preliminary injunction and/or restraining order and its Resolution dated July 26, 2000 denying reconsideration of said decision, are hereby AFFIRMED.

SO ORDERED.

Bellosillo, (Chairman), Austria-Martinez, Callejo, Sr. and Tinga, JJ., concur.

[1] Rollo, pp. 79-90.

[2] Id. at 91.

[3] Id. at 103-105.

[4] Ibid.

[5] Id. at 114.

[6] CA Rollo, pp. 119-120.

[7] Id. at 8-15.

[8] Id. at 16-20.

[9] Id. at 46-48.

[10] Id. at 184.

[11] Rollo, p. 82.

[12] CA Rollo, p. 72.

[13] Id. at 2-7.

[14] Id. at 75-117.

[15] Id. at 228.

[16] Rollo, p. 89.

[17] Id. at 17.

[18] De Borja v. Tan, 93 Phil. 167, 172 (1953).

[19] SEC. 2. Discretionary execution. –

(a) Execution of a judgment or a final order pending appeal. – On motion of the prevailing party with notice to the

adverse party filed in the trial court while it has jurisdiction over the case and is in possession of either the original record or the record on appeal, as the case may be, at the time of the filing of such motion, said court may, in its discretion, order execution of a judgment or final order even before the expiration of the period to appeal.

After the trial court has lost jurisdiction, the motion for execution pending appeal may be filed in the appellate court.

Discretionary execution may only issue upon good reasons to be stated in a special order after due hearing.

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[20] *Reas v. Bonife*, G.R. Nos. 54348-49, 17 October 1990, 190 SCRA 493.

[21] *Fajardo v. Bautista*, G.R. Nos. 102193-97, 10 May 1994, 232 SCRA 291.

[22] *Supra*, note 20.

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