

ALBERTO LOPEZ A.K.A. CESAR A. LOPEZ, PETITIONER, VS. HON. COURT OF APPEALS, HON. BENJAMIN ANTONIO, PRESIDING JUDGE OF RTC, BRANCH 170, MALABON, METRO MANILA AND CHERRY PIE LOPEZ...

G.R. No. 148510. July 21, 2004

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

Sought to be nullified via petition for certiorari under Rule 65 of the 1997 Rules of Civil Procedure are the March 19, 2001, April 26, 2001, and June 8, 2001 Resolutions of the Court of Appeals in CA-G.R. CV No. 6014-UDK, “Cherry Pie Lopez v. Alberto Lopez a.k.a. Cesar Lopez”.

The antecedents of the case are as follows:

The Regional Trial Court (RTC) of Malabon rendered on June 15, 2000 a decision in Civil Case No. 3023-MN declaring the nullity of marriage between Cherry Pie Lopez and Alberto Lopez a.k.a Cesar Lopez (petitioner). The decision became final and executory based on a certification[1] dated January 5, 2001.

Petitioner moved to reconsider[2] the support aspect of the decision but was denied by Order of January 26, 2001.[3]

On February 8, 2001, the RTC, acting on petitioner’s Notice of Appeal[4] filed on February 7, 2001, gave it due course and directed the transmittal of the records of the case to the Court of Appeals “as soon as possible.”

On February 12, 2001, petitioner paid before the RTC a total of Sixty (P60.00) Pesos as docket fees as shown by Official Receipt Nos. 12968987 and 13536702.[5]

For petitioner’s failure to pay the full amount of P520.00 docket fees, the Court of Appeals, by Resolution of March 19, 2001,[6] dismissed his appeal.

Petitioner filed a Motion for Reconsideration[7] of the appellate court’s March 19, 2001 Resolution, but it was denied by Resolution of April 26, 2001[8] on the grounds that the motion did not contain an affidavit or proof of service and that it did not state on its face the material dates determinative of its timeliness.

Petitioner filed a Motion for Reconsideration of the April 26, 2001 Resolution which was denied by Resolution[9] of June 8, 2001 on the ground that no second motion by the same party can be entertained.

Since petitioner assails final resolutions of the Court of Appeals, he should have filed a petition for review on certiorari under Rule 45, instead of a petition for certiorari under Rule 65. On this score alone, the petition should be dismissed.

Remedial faux pas aside, even if a petition for certiorari under Rule 65 were to be, in the greater interest of justice, allowed, the petition just the same is dismissable for having been filed out of time.

As petitioner's motion for reconsideration of the questioned March 19, 2001 Resolution of the appellate court did not contain an affidavit or proof of service as required by Section 6, Rule 15 of the Rules of Civil Procedure nor did it state the material dates in order to determine its timeliness, it is considered a mere scrap of paper, and did not thus toll the running of the period to file the motion.[10] In fact, petitioner did not even state when he received the said resolution, hence, it can not even be determined when the reglementary period expired.

Assuming that petitioner received the March 19, 2001 Resolution on the same date it was promulgated, petitioner had 60 days or until May 18, 2001 to file the present petition.[11] He filed it, however, only on July 4, 2001.

En passant, the dismissal of the petition notwithstanding, petitioner is not without remedy. For as what he seeks to assail is the amount of support he was adjudged to provide, he can file a motion with the trial court for its modification since a judgment granting support never becomes final.[12]

WHEREFORE, the instant petition is DISMISSED.

SO ORDERED.

Panganiban, (Chairman), and Sandoval-Gutierrez, JJ., concur.
Corona, J., on leave.

[1] Rollo at 24.

[2] Id. at 25-28.

[3] Id. at 29-30.

[4] Id. at 31.

[5] Id. at 32.

[6] Id. at 17.

[7] Id. at 34-35.

[8] Id. at 15-16.

[9] Id. at 19-20.

[10] Cruz v. Court of Appeals, 388 SCRA 72, 80-81 (2002).

[11] Section 4, Rule 65 of the 1997 Rules of Civil Procedure reads:

SECTION 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.

The petition shall be filed 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 the aid of its appellate jurisdiction, or in the Sandiganbayan if it is in aid of its appellate jurisdiction. If it involves the acts or omissions of a quasi-judicial agency, unless otherwise provided by law or these rules, the petition shall be filed in and cognizable only by the Court of Appeals.

No extension of time to file the petition shall be granted except for compelling reason and in no case exceeding 15

days. (4a) (As amended by A.M. No. 00-2-03 SC effective September 1, 2000)

[12] A. TOLENTINO, I CIVIL CODE OF THE PHILIPPINES: COMMENTARIES AND JURISPRUDENCE 586 (1999 Ed.) (citations omitted); A. SEMPIO-DY, HANDBOOK ON THE FAMILY CODE OF THE PHILIPPINES 327 (1997 Ed.).

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