

ALAN JOSEPH A. SHEKER, PETITIONER, VS. ESTATE OF ALICE O. SHEKER, VICTORIA S. MEDINA-ADMINISTRATRIX, RESPONDENT.

G.R. No. 157912. December 13, 2007

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

This resolves the Petition for Review on Certiorari seeking the reversal of the Order^[1] of the Regional Trial Court of Iligan City, Branch 6 (RTC) dated January 15, 2003 and its Omnibus Order dated April 9, 2003.

The undisputed facts are as follows.

The RTC admitted to probate the holographic will of Alice O. Sheker and thereafter issued an order for all the creditors to file their respective claims against the estate. In compliance therewith, petitioner filed on October 7, 2002 a contingent claim for agent's commission due him amounting to approximately P206,250.00 in the event of the sale of certain parcels of land belonging to the estate, and the amount of P275,000.00, as reimbursement for expenses incurred and/or to be incurred by petitioner in the course of negotiating the sale of said realties.

The executrix of the Estate of Alice O. Sheker (respondent) moved for the dismissal of said money claim against the estate on the grounds that (1) the requisite docket fee, as prescribed in Section 7(a), Rule 141 of the Rules of Court, had not been paid; (2) petitioner failed to attach a certification against non-forum shopping; and (3) petitioner failed to attach a written explanation why the money claim was not filed and served personally.

On January 15, 2003, the RTC issued the assailed Order dismissing without prejudice the money claim based on the grounds advanced by respondent. Petitioner's motion for reconsideration was denied per Omnibus Order dated April 9, 2003.

Petitioner then filed the present petition for review on certiorari, raising the following questions:

- (a) must a contingent claim filed in the probate proceeding contain a certification against non-forum shopping, failing which such claim should be dismissed?
- (b) must a contingent claim filed against an estate in a probate proceeding be dismissed for failing to pay the docket fees at the time of its filing thereat?
- (c) must a contingent claim filed in a probate proceeding be dismissed because of its failure to contain a written explanation on the service and filing by registered mail?^[2]

Petitioner maintains that the RTC erred in strictly applying to a probate proceeding the rules requiring a certification of non-forum shopping, a written explanation for non-personal filing, and the payment of docket fees upon filing of the claim. He insists that Section 2, Rule 72 of the Rules of Court provides that rules in ordinary actions are applicable to special proceedings only in a suppletory manner.

The Court gave due course to the petition for review on certiorari although directly filed with this Court, pursuant to Section 2(c), Rule 41 of the Rules of Court.^[3]

The petition is imbued with merit.

However, it must be emphasized that petitioner's contention that rules in ordinary actions are only supplementary to rules in special proceedings is not entirely correct.

Section 2, Rule 72, Part II of the same Rules of Court provides:

Sec. 2. Applicability of rules of Civil Actions. - In the absence of special provisions, the rules provided for in ordinary actions shall be, as far as practicable, applicable in special proceedings.

Stated differently, special provisions under Part II of the Rules of Court govern special proceedings; but in the absence of special provisions, the rules provided for in Part I of the Rules governing ordinary civil actions shall be applicable to special proceedings, as far as practicable.

The word "practicable" is defined as: possible to practice or perform; capable of being put into practice, done or accomplished.[4] This means that in the absence of special provisions, rules in ordinary actions may be applied in special proceedings as much as possible and where doing so would not pose an obstacle to said proceedings. Nowhere in the Rules of Court does it categorically say that rules in ordinary actions are inapplicable or merely suppletory to special proceedings. Provisions of the Rules of Court requiring a certification of non-forum shopping for complaints and initiatory pleadings, a written explanation for non-personal service and filing, and the payment of filing fees for money claims against an estate would not in any way obstruct probate proceedings, thus, they are applicable to special proceedings such as the settlement of the estate of a deceased person as in the present case.

Thus, the principal question in the present case is: did the RTC err in dismissing petitioner's contingent money claim against respondent estate for failure of petitioner to attach to his motion a certification against non-forum shopping?

The Court rules in the affirmative.

The certification of non-forum shopping is required only for complaints and other initiatory pleadings. The RTC erred in ruling that a contingent money claim against the estate of a decedent is an initiatory pleading. In the present case, the whole probate proceeding was initiated upon the filing of the petition for allowance of the decedent's will. Under Sections 1 and 5, Rule 86 of the Rules of Court, after granting letters of testamentary or of administration, all persons having money claims against the decedent are mandated to file or notify the court and the estate administrator of their respective money claims; otherwise, they would be barred, subject to certain exceptions.[5]

Such being the case, a money claim against an estate is more akin to a motion for creditors' claims to be recognized and taken into consideration in the proper disposition of the properties of the estate. In *Arquiza v. Court of Appeals*,^[6] the Court explained thus:

x x x The office of a motion is not to initiate new litigation, but to bring a material but incidental matter arising in the progress of the case in which the motion is filed. A motion is not an independent right or remedy, but is confined to incidental matters in the progress of a cause. It relates to some question that is collateral to the main object of the action and is connected with and dependent upon the principal remedy.[7] (Emphasis supplied)

A money claim is only an incidental matter in the main action for the settlement of the decedent's estate; more so if the claim is contingent since the claimant cannot even institute a separate action for a mere contingent claim. Hence, herein petitioner's contingent money claim, not being an initiatory pleading, does not require a

certification against non-forum shopping.

On the issue of filing fees, the Court ruled in *Pascual v. Court of Appeals*,^[8] that the trial court has jurisdiction to act on a money claim (attorney's fees) against an estate for services rendered by a lawyer to the administratrix to assist her in fulfilling her duties to the estate even without payment of separate docket fees because the filing fees shall constitute a lien on the judgment pursuant to Section 2, Rule 141 of the Rules of Court, or the trial court may order the payment of such filing fees within a reasonable time.^[9] After all, the trial court had already assumed jurisdiction over the action for settlement of the estate. Clearly, therefore, non-payment of filing fees for a money claim against the estate is not one of the grounds for dismissing a money claim against the estate.

With regard to the requirement of a written explanation, *Maceda v. De Guzman Vda. de Macatangay*^[10] is squarely in point. Therein, the Court held thus:

In *Solar Team Entertainment, Inc. v. Ricafort*, this Court, passing upon Section 11 of Rule 13 of the Rules of Court, held that a court has the discretion to consider a pleading or paper as not filed if said rule is not complied with.

Personal service and filing are preferred for obvious reasons. Plainly, such should expedite action or resolution on a pleading, motion or other paper; and conversely, minimize, if not eliminate, delays likely to be incurred if service or filing is done by mail, considering the inefficiency of the postal service. Likewise, personal service will do away with the practice of some lawyers who, wanting to appear clever, resort to the following less than ethical practices: (1) serving or filing pleadings by mail to catch opposing counsel off-guard, thus leaving the latter with little or no time to prepare, for instance, responsive pleadings or an opposition; or (2) upon receiving notice from the post office that the registered mail containing the pleading or other paper from the adverse party may be claimed, unduly procrastinating before claiming the parcel, or, worse, not claiming it at all, thereby causing undue delay in the disposition of such pleading or other papers.

If only to underscore the mandatory nature of this innovation to our set of adjective rules requiring personal service whenever practicable, Section 11 of Rule 13 then gives the court the discretion to consider a pleading or paper as not filed if the other modes of service or filing were not resorted to and no written explanation was made as to why personal service was not done in the first place. The exercise of discretion must, necessarily consider the practicability of personal service, for Section 11 itself begins with the clause “whenever practicable”.

We thus take this opportunity to clarify that under Section 11, Rule 13 of the 1997 Rules of Civil Procedure, personal service and filing is the general rule, and resort to other modes of service and filing, the exception. Henceforth, whenever personal service or filing is practicable, in the light of the circumstances of time, place and person, personal service or filing is mandatory. Only when personal service or filing is not practicable may resort to other modes be had, which must then be accompanied by a written explanation as to why personal service or filing was not practicable to begin with. In adjudging the plausibility of an explanation, a court shall likewise consider the importance of the subject matter of the case or the issues involved therein, and the *prima facie* merit of the pleading sought to be expunged for violation of Section 11. (Emphasis and italics supplied)

In *Musa v. Amor*, this Court, on noting the impracticality of personal service, exercised its discretion and liberally applied Section 11 of Rule 13:

“As [Section 11, Rule 13 of the Rules of Court] requires, service and filing of pleadings must be done personally whenever practicable. The court notes that in the present case, personal service would not be practicable. Considering the distance between the Court of Appeals and Donsol, Sorsogon where the petition was posted, clearly, service by registered mail [sic] would have entailed considerable time, effort and expense. A written explanation why service was not done personally might have been superfluous. In any case, as the rule is so worded with the use of “may”, signifying permissiveness, a violation thereof gives the court discretion whether or not to consider the paper as not filed. While it is true that procedural rules are necessary

to secure an orderly and speedy administration of justice, rigid application of Section 11, Rule 13 may be relaxed in this case in the interest of substantial justice. (Emphasis and italics supplied)

In the case at bar, the address of respondent's counsel is Lopez, Quezon, while petitioner Sonia's counsel's is Lucena City. Lopez, Quezon is 83 kilometers away from Lucena City. Such distance makes personal service impracticable. As in *Musa v. Amor*, a written explanation why service was not done personally "might have been superfluous."

As this Court held in *Tan v. Court of Appeals*, liberal construction of a rule of procedure has been allowed where, among other cases, "the injustice to the adverse party is not commensurate with the degree of his thoughtlessness in not complying with the procedure prescribed." [11] (Emphasis supplied)

In the present case, petitioner holds office in Salcedo Village, Makati City, while counsel for respondent and the RTC which rendered the assailed orders are both in Iligan City. The lower court should have taken judicial notice of the great distance between said cities and realized that it is indeed not practicable to serve and file the money claim personally. Thus, following *Medina v. Court of Appeals*, [12] the failure of petitioner to submit a written explanation why service has not been done personally, may be considered as superfluous and the RTC should have exercised its discretion under Section 11, Rule 13, not to dismiss the money claim of petitioner, in the interest of substantial justice.

The ruling spirit of the probate law is the speedy settlement of estates of deceased persons for the benefit of creditors and those entitled to residue by way of inheritance or legacy after the debts and expenses of administration have been paid. [13] The ultimate purpose for the rule on money claims was further explained in *Union Bank of the Phil. v. Santibañez*, [14] thus:

The filing of a money claim against the decedent's estate in the probate court is mandatory. As we held in the vintage case of *Py Eng Chong v. Herrera*:

x x x This requirement is for the purpose of protecting the estate of the deceased by informing the executor or administrator of the claims against it, thus enabling him to examine each claim and to determine whether it is a proper one which should be allowed. The plain and obvious design of the rule is the speedy settlement of the affairs of the deceased and the early delivery of the property to the distributees, legatees, or heirs. The law strictly requires the prompt presentation and disposition of the claims against the decedent's estate in order to settle the affairs of the estate as soon as possible, pay off its debts and distribute the residue. [15] (Emphasis supplied)

The RTC should have relaxed and liberally construed the procedural rule on the requirement of a written explanation for non-personal service, again in the interest of substantial justice.

WHEREFORE, the petition is GRANTED. The Orders of the Regional Trial Court of Iligan City, Branch 6 dated January 15, 2003 and April 9, 2003, respectively, are REVERSED and SET ASIDE. The Regional Trial Court of Iligan City, Branch 6, is hereby DIRECTED to give due course and take appropriate action on petitioner's money claim in accordance with Rule 82 of the Rules of Court.

No pronouncement as to costs.

SO ORDERED.

Ynares-Santiago, (Chairperson), Chico-Nazario, Nachura, and Reyes, JJ., concur.

[1] Penned by Presiding Judge Valerio M. Salazar, rollo, pp. 35 and 40.

[2] Rollo, pp. 12-13

[3] RULES OF COURT, Rule 41, Sec. 2(c).

Sec. 2. Modes of appeal. –

x x x x

(c) Appeal by certiorari. – In all cases where only questions of law are raised or involved, the appeal shall be to the Supreme Court by petition for review on certiorari in accordance with Rule 45.

[4] Webster's Third New International Dictionary, p. 1780

[5] RULES OF COURT, RULE 86, Sec. 5.

Sec. 5. Claims which must be filed under the notice. If not filed, bated; exceptions. – All claims for money against the decedent, arising from contract, express or implied, whether the same be due, not due, or contingent, all claims for funeral expenses and expenses for the last sickness of the decedent, and judgment for money against the decedent, must be filed within the time limited in the notice; otherwise, they are barred forever, except that they may be set forth as counterclaims in any action that the executor or administrator may bring against the claimants. Where an executor or administrator commences an action, or prosecutes an action already commenced by the deceased in his lifetime, the debtor may set forth by answer the claims he has against the decedent, instead of presenting them independently to the court as herein provided, and mutual claims may be set off against each other in such action; and if final judgment is rendered in favor of the defendant, the amount so determined shall be considered the true balance against the estate, as though the claims had been presented directly before the court in the administration proceedings. Claims not yet due, or contingent, may be approved at the present value.

[6] G.R. No. 160479, June 8, 2005, 459 SCRA 753.

[7] Id. at 762-763.

[8] G.R. No. 120575, December 16, 1998, 300 SCRA 214.

[9] Pascual v. Court of Appeals, supra note 8, at 228-229.

[10] G.R. No. 164947, January 31, 2006, 481 SCRA 415.

[11] Maceda v. De Guzman Vda. de Macatangay, supra note 10, at 423-425.

[12] Medina v. Court of Appeals, No. L-34760, September 28, 1973, 53 SCRA 206.

[13] Medina v. Court of Appeals, supra note 12, at 215.

[14] G.R. No. 149926, February 23, 2005, 452 SCRA 228.

[15] Union Bank of the Phil. v. Santibañez, id. at 240-241.

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