

**CYNTHIA V. NITTSCHER, PETITIONER, VS. DR. WERNER KARL JOHANN NITTSCHER (DECEASED), ATTY. ROGELIO P. NOGALES AND THE REGIONAL TRIAL COURT OF MAKATI (BRANCH 59), RESPONDENTS.**

*G.R. NO. 160530. November 20, 2007*

Ponente: QUISUMBING, J.

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**QUISUMBING, J.:**

For review on certiorari are the Decision[1] dated July 31, 2003 and Resolution[2] dated October 21, 2003 of the Court of Appeals in CA-G.R. CV No. 55330, which affirmed the Order[3] dated September 29, 1995 of the Regional Trial Court (RTC), Branch 59, Makati City, in SP Proc. No. M-2330 for the probate of a will.

The facts are as follows.

On January 31, 1990, Dr. Werner Karl Johann Nittscher filed with the RTC of Makati City a petition for the probate of his holographic will and for the issuance of letters testamentary to herein respondent Atty. Rogelio P. Nogales.

On September 19, 1991, after hearing and with due notice to the compulsory heirs, the probate court issued an order allowing the said holographic will, thus:

WHEREFORE, premises considered, the Holographic Will of the petitioner-testator Dr. Werner J. Nittscher executed pursuant to the provision of the second paragraph of Article 838 of the Civil Code of the Philippines on January 25, 1990 in Manila, Philippines, and proved in accordance with the provision of Rule 76 of the Revised Rules of Court is hereby allowed.

SO ORDERED.[4]

On September 26, 1994, Dr. Nittscher died. Hence, Atty. Nogales filed a petition for letters testamentary for the administration of the estate of the deceased. Dr. Nittscher's surviving spouse, herein petitioner Cynthia V. Nittscher, moved for the dismissal of the said petition. However, the court in its September 29, 1995 Order denied petitioner's motion to dismiss, and granted respondent's petition for the issuance of letters testamentary, to wit:

In view of all the foregoing, the motion to dismiss is DENIED. The petition for the issuance of Letters Testamentary, being in order, is GRANTED.

Section 4, Rule 78 of the Revised Rules of Court, provides "when a will has been proved and allowed, the court shall issue letters testamentary thereon to the person named as executor therein, if he is competent, accepts the trust and gives a bond as required by these rules." In the case at bar, petitioner Atty. Rogelio P. Nogales of the R.P. Nogales Law Offices has been named executor under the Holographic Will of Dr. Werner J. Nittscher. As prayed for, let Letters Testamentary be issued to Atty. Rogelio P. Nogales, the executor named in the Will, without a bond.

SO ORDERED.[5]

Petitioner moved for reconsideration, but her motion was denied for lack of merit. On May 9, 1996, Atty. Nogales was issued letters testamentary and was sworn in as executor.

Petitioner appealed to the Court of Appeals alleging that respondent's petition for the issuance of letters testamentary should have been dismissed outright as the RTC had no jurisdiction over the subject matter and that she was denied due process.

The appellate court dismissed the appeal, thus:

WHEREFORE, the foregoing considered, the appeal is hereby DISMISSED and the assailed Order is AFFIRMED in toto. The court a quo is ordered to proceed with dispatch in the proceedings below.

SO ORDERED.[6]

Petitioner's motion for reconsideration of the aforequoted decision was denied for lack of merit. Hence, the present petition anchored on the following grounds:

I.

BOTH THE CA AND THE LOWER COURT ERRED IN NOT DISMISSING OUTRIGHT THE PETITION FOR LETTERS ... TESTAMENTARY FILED BY ATTY. NOGALES WHEN, OBVIOUSLY, IT WAS FILED IN VIOLATION OF REVISED CIRCULAR NO. 28-91 AND ADMINISTRATIVE CIRCULAR NO. 04-94 OF THIS HONORABLE COURT.

II.

THE CA ERRED IN NOT DECLARING THAT THE LOWER COURT [HAS] NO JURISDICTION OVER THE SUBJECT MATTER OF THE PRESENT SUIT.

III.

THE CA ERRED IN CONCLUDING THAT SUMMONS WERE PROPERLY ISSUED TO THE PARTIES AND ALL PERSONS INTERESTED IN THE PROBATE OF THE HOLOGRAPHIC WILL OF DR. NITTSCHER.

IV.

THE CA ERRED IN CONCLUDING THAT THE PETITIONER WAS NOT DEPRIVED OF DUE PROCESS OF LAW BY THE LOWER COURT.[7]

Petitioner contends that respondent's petition for the issuance of letters testamentary lacked a certification against forum-shopping. She adds that the RTC has no jurisdiction over the subject matter of this case because Dr. Nittscher was allegedly not a resident of the Philippines; neither did he leave real properties in the country. Petitioner claims that the properties listed for disposition in her husband's will actually belong to her. She insists she was denied due process of law because she did not receive by personal service the notices of the proceedings.

Respondent Atty. Nogales, however, counters that Dr. Nittscher did reside and own real properties in Las Piñas, Metro Manila. He stresses that petitioner was duly notified of the probate proceedings. Respondent points out that petitioner even appeared in court to oppose the petition for the issuance of letters testamentary and that she also filed a motion to dismiss the said petition. Respondent maintains that the petition for the issuance of letters testamentary need not contain a certification against forum-shopping as it is merely a continuation of the original proceeding for the probate of the will.

We resolve to deny the petition.

As to the first issue, Revised Circular No. 28-91[8] and Administrative Circular No. 04-94[9] of the Court require a certification against forum-shopping for all initiatory pleadings filed in court. However, in this case, the petition for the issuance of letters testamentary is not an initiatory pleading, but a mere continuation of the original petition for the probate of Dr. Nittscher's will. Hence, respondent's failure to include a certification against forum-shopping in his petition for the issuance of letters testamentary is not a ground for outright dismissal of the said petition.

Anent the second issue, Section 1, Rule 73 of the Rules of Court provides:

SECTION 1. Where estate of deceased persons settled. – If the decedent is an inhabitant of the Philippines at the time of his death, whether a citizen or an alien, his will shall be proved, or letters of administration granted, and his estate settled, in the Court of First Instance (now Regional Trial Court) in the province in which he resides at the time of his death, and if he is an inhabitant of a foreign country, the Court of First Instance (now Regional Trial Court) of any province in which he had estate. ... (Emphasis supplied.)

In this case, the RTC and the Court of Appeals are one in their finding that Dr. Nittscher was a resident of Las Piñas, Metro Manila at the time of his death. Such factual finding, which we find supported by evidence on record, should no longer be disturbed. Time and again we have said that reviews on certiorari are limited to errors of law. Unless there is a showing that the findings of the lower court are totally devoid of support or are glaringly erroneous, this Court will not analyze or weigh evidence all over again.[10]

Hence, applying the aforequoted rule, Dr. Nittscher correctly filed in the RTC of Makati City, which then covered Las Piñas, Metro Manila, the petition for the probate of his will and for the issuance of letters testamentary to respondent.

Regarding the third and fourth issues, we note that Dr. Nittscher asked for the allowance of his own will. In this connection, Section 4, Rule 76 of the Rules of Court states:

SEC. 4. Heirs, devisees, legatees, and executors to be notified by mail or personally. – ...

If the testator asks for the allowance of his own will, notice shall be sent only to his compulsory heirs.

In this case, records show that petitioner, with whom Dr. Nittscher had no child, and Dr. Nittscher's children from his previous marriage were all duly notified, by registered mail, of the probate proceedings. Petitioner even appeared in court to oppose respondent's petition for the issuance of letters testamentary and she also filed a motion to dismiss the said petition. She likewise filed a motion for reconsideration of the issuance of the letters testamentary and of the denial of her motion to dismiss. We are convinced petitioner was accorded every opportunity to defend her cause. Therefore, petitioner's allegation that she was denied due process in the probate proceedings is without basis.

As a final word, petitioner should realize that the allowance of her husband's will is conclusive only as to its due execution.[11] The authority of the probate court is limited to ascertaining whether the testator, being of sound mind, freely executed the will in accordance with the formalities prescribed by law.[12] Thus, petitioner's claim of title to the properties forming part of her husband's estate should be settled in an ordinary action before the regular courts.

WHEREFORE, the petition is DENIED for lack of merit. The assailed Decision dated July 31, 2003 and Resolution dated October 21, 2003 of the Court of Appeals in CA-G.R. CV No. 55330, which affirmed the Order dated September 29, 1995 of the Regional Trial Court, Branch 59, Makati City, in SP Proc. No. M-2330 are

AFFIRMED.

No pronouncement as to costs.

**SO ORDERED.**

Carpio, Carpio-Morales, Tinga, and Velasco, Jr., JJ., concur.

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[1] Rollo, pp. 79-93. Penned by Associate Justice Josefina Guevara-Salonga, with Associate Justices Roberto A. Barrios and Arturo D. Brion concurring.

[2] Id. at 95.

[3] CA rollo, pp. 81-85. Penned by Judge Lucia Violago Isnani.

[4] Rollo, p. 167.

[5] Id. at 79-80.

[6] Id. at 93.

[7] Id. at 459-460.

[8] Additional Requisites for Petitions Filed with the Supreme Court and the Court of Appeals to Prevent Forum Shopping or Multiple Filing of Petitions and Complaints. Effective April 1, 1994.

[9] Additional Requisites for Civil Complaints, Petitions and Other Initiatory Pleadings Filed in All Courts and Agencies, Other Than the Supreme Court and the Court of Appeals, to Prevent Forum Shopping or Multiple Filing of Such Pleadings. Effective April 1, 1994.

[10] Quezon City Government v. Dacara, G.R. No. 150304, June 15, 2005, 460 SCRA 243, 245.

[11] CIVIL CODE, Article 838.

Art. 838. No will shall pass either real or personal property unless it is proved and allowed in accordance with the Rules of Court.

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Subject to the right of appeal, the allowance of the will, either during the lifetime of the testator or after his death, shall be conclusive as to its due execution.

[12] Maloles II v. Phillips, G.R. Nos. 129505 & 133359, January 31, 2000, 324 SCRA 172, 180.

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