

**SONIA MACEDA ALIAS SONIALITA MACEDA AND GEMMA
MACEDA-MACATANGAY, PETITIONERS, VS. ENCARNACION DE
GUZMAN VDA. DE MACATANGAY, RESPONDENT.**

G.R. NO. 164947. January 31, 2006

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

Petitioner Sonia Maceda (Sonia) and Bonifacio Macatangay (Macatangay) contracted marriage on July 26, 1964.[1] The union bore one child, petitioner Gemma Macatangay (Gemma), on March 27, 1965.[2]

The couple separated not long after the marriage.

In 1967, the couple executed a Kasunduan[3] whereby they agreed to live separately.

Macatangay soon lived with Carmen Jaraza (Carmen).

After the death on December 7, 1998 of Macatangay who was a member of the Social Security System (SSS) or on December 14, 1998, his common-law wife Carmen filed a death benefit application before the SSS Lucena Branch. The SSS denied[4] her application, it ruling that it is Macatangay's wife who is his primary beneficiary.

On January 9, 1999, petitioner Sonia filed before the SSS a death benefit application.

Macatangay's children with his common-law wife Carmen, namely Jay, Elena, and Joel, aged 27, 31, and 29 years old, respectively, also filed in 1999[5] separate applications for death benefits following the SSS' denial of their mother's application.

On September 10, 1999, the SSS denied Macatangay's illegitimate children's claim on the ground that under Republic Act 8282, "THE SOCIAL SECURITY ACT OF 1997," it is the dependent spouse, until he or she remarries, who is the primary beneficiary of the deceased member.[6]

Petitioner Sonia's application for death benefit was approved on December 20, 1999. She received a lump sum amount of P33,000 representing "pensions" [7] from the SSS.

On February 22, 2000, Macatangay's mother, herein respondent Encarnacion de Guzman, filed a petition before the Social Security Commission (SSC) in Makati City[8] against herein petitioners Sonia and Gemma, for the grant to her of social security benefits, she claiming that her son designated her and his three illegitimate children as his beneficiaries under the SSS;[9] she was made to sign a document regarding the distribution of benefits of Macatangay by SSS Lucena Branch Chief Atty. Corazon M. Villamayor who, however, did not furnish her a copy thereof nor inform her of its nature;[10]and after she signed the document, the three illegitimate children received notices denying their application for death benefits.[11]

The SSS office in Quezon City filed a petition-in-intervention in the petition filed by respondent before the SSC in Makati City.[12]

In her position paper, respondent contended as follows:

[I]n the present case, the agreement of the spouses to live separately four (4) months after their marriage and which agreement was finally made in writing before the Barangay will unquestionably show that Sonia or Sonialita Maceda was not dependent upon the late member for support and therefore cannot be considered as his primary beneficiary under the aforesaid law. Said agreement, though proscribed by law by reasons of public policy, was a mutual agreement short of a court decree for legal separation and will not in any way change the fact that the two lived separately. This under any circumstances will dispute the presumption of the dependency for support arising from the legitimacy of the marital union as reasoned out by the SSS in their Petition for Intervention.[13] (Emphasis and underscoring supplied)

Petitioners, on the other hand, hinged their claim on Section 8(e) and (k) of The Social Security Act of 1997. Thus they argued:

Section 8 (e) and (k) of Republic Act 8282 is crystal clear on who should be Bonifacio De Guzman Macatangay's beneficiary, thus:

(e) Dependents – The dependents shall be the following:

(1) The legal spouse entitled by law to receive support from the member;

(2) The legitimate, legitimated or legally adopted, and illegitimate child who is unmarried, not gainfully employed and has not reached twenty-one years (21) of age, or if over twenty-one (21) years of age, he is congenitally or while still a minor has been permanently incapacitated and incapable of self-support, physically or mentally, and

(3) The parent who is receiving regular support from the member.

(k) Beneficiaries – The dependent spouse until he or she remarries, the dependent legitimate, legitimated or legally adopted, and illegitimate children, who shall be the primary beneficiaries of the member; Provided, That the dependent illegitimate children shall be entitled to fifty percent (50%) of the share of the legitimate, legitimated or legally adopted children: Provided, further, That in the absence of the dependent legitimate, legitimated or legally adopted children of the member, his/her dependent illegitimate children shall be entitled to one hundred percent (100%) of the benefits. In their absence, the dependent parents who shall be the second beneficiaries of the member. In the absence of all the foregoing, any other person designated by the member as his/her secondary beneficiary. (Underscoring and emphasis in the original)[14]

As for the SSS, it argued that:

[T]o be considered dependent for support, a surviving spouse of a member must only show that she is entitle[d] for support from the member by virtue of a valid marriage. The surviving spouse is not required to show that he/she actually received support from the member during his/her lifetime. Her dependency for support is actually presumed from the legitimacy of the marital union.[15] (Emphasis and underscoring supplied)

The SSC, taking the Kasunduan[16] as proof that Sonia was no longer dependent for support on Bonifacio,[17] and declaring that the SSS Lucena Branch acted in good faith in granting the benefits to Sonia, granted respondent's petition by Resolution of November 14, 2001.[18] It accordingly disposed as follows:

IN VIEW OF ALL THE FOREGOING, the Commission hereby orders respondent Sonia (Sonialita) Macatangay to refund the monthly pensions paid to her by mistake and for the SSS to collect the same immediately upon receipt hereof.

Meanwhile, the System is ordered to grant the SS lump sum death benefits of member Bonifacio Macatangay to designated beneficiaries Encarnacion Macatangay, Elena, Joel, and Jay Macatangay, subject to existing rules and regulations.

SO ORDERED.[19] (Underscoring supplied)

Petitioners' motion for reconsideration[20] of the SSC Resolution was denied by Order of August 14, 2002.[21]

Petitioners thereupon filed a petition for review,[22] docketed as CA G.R. No. 73038, before the Court of Appeals which dismissed it outright, by the present challenged Resolution of October 21, 2002,[23] on the following procedural grounds:

A perusal of the petition however shows that there was no written explanation as to why respondents were not personally served copies of the petition as required under Section 11, Rule 13 of the 1997 Rules of Civil Procedure.

Also, the petition is not accompanied by copies of the pleadings and documents relevant and pertinent thereto (i.e., position papers filed by the parties before the SSC, motion to dismiss filed by petitioner before the SSC) as required under Section 6, Rule 43 of the 1997 Rules of Civil Procedure.

Finally, petitioner's counsel failed to comply with the requirements under Bar Matter No. 287 which requires that "all lawyers shall indicate in all pleadings, motions and papers signed and filed by them the number and date of their official receipt indicating payment of their annual membership dues to the Integrated Bar of the Philippines for the current year x x x." In the instant petition, Atty. Calayan failed to indicate the number and date of the official receipt evidencing payment of IBP dues.[24] (Italics in the original; underscoring supplied)

Via an Omnibus Motion,[25] petitioners prayed the Court of Appeals to (a) RECONSIDER its Resolution dated October 21, 2002 dismissing the Petition for Review; and (b) ADMIT the thereto attached certified true copies of the parties' Position Papers and the petitioners' Motion to Dismiss filed with the SSC,[26] the Certificate of Life Membership of their counsel Atty. Ronaldo Antonio Calayan,[27] and the Official Receipt showing said counsel's payment of lifetime membership fee to the Integrated Bar of the Philippines.[28]

The Court of Appeals, finding no substantial compliance by petitioners with the requirement in Section 11, Rule 13 of the 1997 Rules of Civil Procedure reading:

Section 11. Priorities in Modes of Service and Filing – Whenever practicable, the service and filing of pleadings and other papers shall be done personally. Except with respect to papers emanating from the court, a resort to other modes must be accompanied by a written explanation why the service or filing was not done personally. A violation of this rule may cause to consider the paper as not filed.,

denied the Omnibus Motion by Resolution of August 4, 2004.[29]

Hence, the present Petition for Review[30] faulting the appellate court as follows:

I. THE HONORABLE COURT OF APPEALS ERRED IN STRICTLY ADHERING TO TECHNICALITIES, RATHER THAN IN SUBSTANTIAL COMPLIANCE, IN THE APPLICATION OF THE PROVISIONS OF THE 1997 RULES ON CIVIL PROCEDURE.

II. THE CIRCUMSTANCES PREVAILING IN THIS PETITION FIND SUPPORT IN DECISIONS OF THIS HONORABLE COURT IN FAVOR OF THE REVERSAL OF THE COURT OF APPEALS' DECISION UNDER REVIEW.[31] (Underscoring supplied)

Petitioners posit that they complied substantially with Section 11, Rule 13 of the Rules of Court, as follows:

Sonia's affidavit of service clearly shows the impracticability of personal service of copies of the petition to the adverse parties. Manifest in the same affidavit is the intervenor Social Security System's address in Quezon City; that of the private respondent's lawyer in Lopez, Quezon, and that of Social Security Commission in Makati City. Sonia's counsel's address is Lucena City. The distance between these addresses, it is most

respectfully submitted as a matter of judicial notice, may be construed as more than competent indicia as to why Sonia resorted to service by mail.[32] (Underscoring supplied)

And they cite jurisprudence calling for a liberal interpretation of the Rules in the interest of substantial justice,[33] specifically *Barnes v. Reyes*[34] which classifies Section 11, Rule 13 of the Rules as a directory, rather than a mandatory, rule.

The petition is meritorious.

In *Solar Team Entertainment, Inc. v. Ricafort*,[35] 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 containing the pleading of 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.[36] (Emphasis and underscoring 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:[37]

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.[38] (Emphasis and underscoring supplied)

In the case at bar, the address of respondent's counsel is Lopez, Quezon, while petitioner Sonia's counsel's is Lucena City.[39] Lopez, Quezon is 83 kilometers away from Lucena City.[40] Such distance makes personal service impracticable. As in *Musa v. Amor*,[41] a written explanation why service was not done personally "might have been superfluous."

As this Court held in *Tan v. Court of Appeals*,[42] 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."

Without preempting the findings of the Court of Appeals on the merits of petitioners' petition in CA G.R. No. 73038, if petitioners' allegations of fact and of law therein are true and the outright dismissal of their petition is upheld without giving them the opportunity to prove their allegations, petitioner Sonia would be deprived of her rightful death benefits just because of the Kasunduan she forged with her husband Macatangay which contract is, in the first place, unlawful.[43] The resulting injustice would not be commensurate to petitioners' counsel's "thoughtlessness" in not explaining why respondents were not personally served copies of the petition.

WHEREFORE, the petition is GRANTED. The Resolutions of the Court of Appeals dated October 21, 2002 and August 4, 2004 in CA G.R. No. 73038 are REVERSED and SET ASIDE.

Let the records of the case be REMANDED to the Court of Appeals which is DIRECTED to take appropriate action on petitioner's petition for review in light of the foregoing discussions.

SO ORDERED.

Quisumbing, (Chairperson), Carpio, and Tinga, JJ., concur.

[1] Rollo, p. 4.

[2] Id. at 5.

[3] Id. at 55.

[4] Supra note 2. The records of the case do not contain a copy of the advice of denial.

[5] SSC records, pp. 18-20.

[6] Id. at 21-23.

[7] Id. at 30, 129, 147. Vide note 2.

[8] Id. at 1-31.

[9] Id. at 2. See also pp. 13 and 14 (copies of SSS Forms E-4 and E-1 containing the designation of beneficiaries).

[10] Id. at 4.

[11] Ibid.

[12] Id. at 37-40.

[13] Id. at 97 (citations omitted).

[14] Id. at 135-136.

[15] Id. at 39 (citation omitted).

[16] Id. at 145. See also supra note 3.

[17] Id. at 145-146.

[18] Id. at 143-148.

[19] Id. at 147.

[20] Id. at 151-155.

[21] Id. at 169-172.

[22] CA rollo, pp. 2-16.

[23] Penned by Justice Elvi John S. Asuncion, with the concurrence of Justices Portia Aliño-Hormachuelos and Juan Q. Enriquez, Jr.; id. at 75-76.

[24] Ibid.

[25] CA rollo at 79-84 [sic].

[26] Id. at 85-119 [sic].

[27] Id. at 110 [sic].

[28] Id. at 111 [sic].

[29] Id. at 115-117 [sic].

[30] Rollo, pp. 3-16.

[31] Id. at 8 and 10.

[32] Id. at 8.

[33] Id. at 10-12, citing *Fulgencio, et. al. v. NLRC, et. al.*, G.R. No. 141600, September 12, 2003, 411 SCRA 69 and *Tan v. Court of Appeals, et. al.*, 356 Phil. 1058 (1998).

[34] G.R. No. 144533, September 23, 2003, 411 SCRA 538.

[35] 355 Phil. 404 (1998).

[36] Id. at 413-414.

[37] 430 Phil. 128 (2002).

[38] Id. at 138.

[39] Supra note 32.

[40] The Municipality of Lopez, Quezon: In a Nutshell (from The Official Website of MUNICIPALITY OF LOPEZ), 13 October 2005, (visited 20 January 2006).

[41] Supra note 37 and note 38.

[42] Supra note 33.

[43] Vide *Albano v. Gapusan* (162 Phil. 884 [1976]). In this case, Judge Patrocinio Gapusan was censured for notarizing a document for personal separation of the spouses Valentina Andrews and Guillermo Maligta and for extrajudicial liquidation of their conjugal partnership. We held:

There is no question that the covenants contained in the said separation agreement are contrary to law, morals, and good customs. Those stipulations undermine the institutions of marriage and the family. "Marriage is not a mere contract but an inviolable social institution". "The family is a basic social institution which public policy cherishes and protects." "Marriage and the family are the bases of human society throughout the civilized world."

To preserve the institutions of marriage and the family, the law considers as void "any contract for personal separation between husband and wife" and "every extrajudicial agreement, during the marriage, for the dissolution of the conjugal partnership." (Id. at 888, citations omitted; underscoring supplied)

Vide also Article 68 of the Family Code: "The husband and wife are obliged to live together, observe mutual love, respect and fidelity, and render mutual help and support." (Emphasis added)

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