PRISCILLA T. RIGOR, ENRICO T. RIGOR, JESUS ROMEO T. RIGOR AND NINO ANGELO T. RIGOR, PETITIONERS, VS. TENTH DIVISION OF THE COURT OF APPEALS AND MILAGROS RODRIGUEZ, RESPONDENTS.

G.R. NO. 167400. June 30, 2006

Ponente: GARCIA, J.

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GARCIA, J.:

In this petition for certiorari under Rule 65 of the Rules of Court, petitioners seek to set aside the Decision[1] dated September 30, 2004 of the Court of Appeals (CA) in CA-G.R. CV No. 80772, reversing that of the Regional Trial Court (RTC) of Cabanatuan City in a suit for injunction with prayer for temporary restraining order thereat commenced by them against the private respondent, and Resolution[2] dated January 21, 2005, denying petitioners' motion for reconsideration.

We RESOLVE to dismiss the petition outright for being an improper remedy.

In certiorari proceedings under Rule 65, judicial review is limited to correcting errors of jurisdiction, including grave abuse of discretion amounting to lack or excess of jurisdiction.[3] Rule 65 cannot be more explicit on this point. It reads:

> Section.1. Petition for certiorari.- When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of its or his jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.
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> xxx xxx xxx

For a writ of certiorari to issue, a petitioner must not only prove that the tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of jurisdiction. He must also show that he has no plain, speedy and adequate remedy in the ordinary course of law against what he perceives to be a legitimate grievance. A recourse affording prompt relief from the injurious effects of the judgment or acts of a lower court or tribunal is considered "plain, speedy and adequate" remedy.[4]

As culled from the underlying complaint initiated by the petitioners before the RTC, the case is all about an alleged right-of-way of the petitioners over a portion of private respondent's property, and turns on the issue of whether or not private respondent can construct a gate thereon and fence her property, thereby denying petitioners access to and egress from their own property. After securing a favorable judgment from the trial court, but experiencing a reversal of fortune from the CA, petitioners would have the Court nullify the latter's ruling on jurisdictional considerations.

To be sure, the petition has not demonstrated that the CA, in reversing the earlier decision of the trial court, acted without or in excess of jurisdiction or with grave abuse of discretion. As it were, the assailed CA decision and resolution came about on account of an appeal thereto taken by the private respondent from an adverse judgment of the trial court. The jurisdictional competence of the CA to act on said appeal has never been put in issue by the petitioners.

Reading the petition, one key point is at once clearly discernable, i.e., petitioners' assault against the CA decision is not anchored on flaws involving its jurisdiction, but on their assumption that the CA erred in its reversal disposition, or more specifically, in its appreciation of the issue/s involved and the evidence adduced. So it is that in this recourse, petitioners assert:

> - The original action filed by the petitioners is for an injunction with prayer for a temporary restraining order whereas ... the [CA] instead of resolving the issue of whether or not the private respondent has a right to close the contested right of way chose to tackle on whether or not the petitioners has a right to the use of the contested right of way;
>
> - However, none of the parties is in a position to prove with absolute certainty the real status of the petitioner's right to use the right of way since none of the parties is the owner of the right of way in question;
>
> - Thus, the [CA] gravely abused its discretion when it rely (sic) on the private respondent's allegation, by way of defense to the original action of injunction that the petitioners have no right to use the road right of way, even if the indispensable party Ligaya Rodriguez, the owner of the contested right of way was never presented to substantiate her allegation;
>
> - The [CA] chose to concentrate in the latter issue instead of the original issue raised by petitioners...[5] (Words in bracket added)

But errors of judgment not relating to jurisdiction are, as a rule, correctable only by appeal, not by the extraordinary remedy of certiorari.[6] For, as long as a court acts within its jurisdiction, any supposed error committed in the exercise thereof will amount to nothing more than an error of judgment reviewable and may be corrected by a timely appeal. To stress, the assailed CA decision came to the fore on account of private respondent's appeal thereto from the RTC decision. It is neither claimed nor pretended by the petitioners that the appellate court was without jurisdiction to entertain or act on that appeal, which appeal necessarily threw the whole case wide open for the consideration of the appellate court, not simply on the points urged by the petitioners, but on all other grounds found legal and valid by that court to warrant the grant or dismissal of the appeal. In fact, given the very nature of the complaint filed by the petitioners before the trial court, which is to permanently enjoin the private respondent from fencing her property wherein the alleged right-of-way exists, the resolution of the case inevitably calls for the determination of the question of whether, in the first place, petitioners are entitled to the claimed right-of-way.

With the view we take of this case, petitioners interposed the present special civil action of certiorari as an afterthought. They did so not because it is the speedy and adequate remedy, but to make up for the loss, through sheer negligence or oversight, of the right of ordinary appeal. It cannot be overemphasized, however, that the presence of a speedy and adequate remedy forbids recourse to certiorari under Rule 65. Stated a bit differently, certiorari is not and cannot be a substitute for an appeal, where the latter remedy is available. Here, there can be no denying the fact that the challenged decision and resolution of the CA were not mere interlocutory orders but a final disposition on the merits of the main case. Under the circumstances, petitioners' remedy was by way of a petition for review under Rule 45 of the Rules of Court, under which only questions of law may be raised.[7]

For obvious reason, the Rules precludes recourse to the special civil action of certiorari if appeal by way of a

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petition for review is available, as the remedies of appeal and certiorari are mutually exclusive and not alternative or successive.[8]

At any rate, an appeal by petition for review under Rule 45, assuming its availability, is now lost for the petitioners. An appeal is a mere statutory right to be exercised in the manner and according to procedures laid down by law, and its timely perfection within the statutory period is mandatory and jurisdictional.[9] Again, going by the records, we note that petitioners received their copy of the CA resolution denying their motion for reconsideration[10] on January 21, 2005. As appearing on the date stamped on its face, this petition was filed with this Court only on March 31, 2005, or about 67 days from notice of the denying resolution of the CA. In this connection, Section 2, Rule 45 of the Rules provides:

> Sec. 2. Time of filing; extension. – The petition shall be filed within fifteen (15) days from notice of judgment or final order or resolution appealed from, or of the denial of the petitioner's motion for new trial or reconsideration filed in due time after notice of the judgment. (Underscoring added.)

Hence, even on the most liberal view of construing the instant petition as one for review under Rule 45, the recourse must still fail.

Given the foregoing perspective, petitioners' other laments set forth in the petition need not detain the Court any further.

If at all, the present petition only demonstrates petitioners' effort to hold at bay the enforcement of the final decision of the CA. The Court will not tolerate this abhorrent practice. Litigation must end sometime and somewhere. The imperatives of fair play and an effective and efficient administration of justice demand that once a judgment has become final, the prevailing party be not, through some clever maneuvers devised by the unsporting loser, deprived of the fruits of the verdict.[11] So it must be here.

WHEREFORE, the petition is DISMISSED.

With treble cost against petitioners.

SO ORDERED.

Puno, Acting C.J., (Chairperson), Corona, and Azcuna, JJ., concur.
Sandoval-Gutierrez, J., on official leave.

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[1]Penned by Associate Justice Mariano C. Del Castillo with Associate Justices Romeo A. Brawner (Ret.) and Magdangal M. De Leon, concurring; Rollo, pp. 12-24.

[2] Id. at 28.

[3] Travelaire & Tours Corp. v. NLRC, G.R. No. 131523, August 20, 1998, 294 SCRA 505, citing cases.

[4] NIA v. Court of Appeals, G.R, No. 129169, Nov. 17, 1999, 318 SCRA 255.

[5] Rollo, pp. 3-4.

[6] Reyes v.. Camilon, G.R. No. 46198, December 21, 1990, 192 SCRA 445, citing cases; Fortich v. Corona, G. R. No. 131457, April 24, 1988, 289 SCRA 624.

[7] Sec.1. Filing of petition with Supreme Court.-A party desiring to appeal by certiorari from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever

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authorized by law, may file with the Supreme Court a verified petition for review on certiorari. The petition shall raise only questions of law which must be distinctly set forth.

[8] Federation of Free Workers v. Inciong, G.R. No. 49983, April 20, 1992, 208 SCRA 157; Ligon v. Court of Appeals, G.R. No. 127683, August 7, 1998, 294 SCRA 73.

[9] Ongpauco v. Court of Appeals, G. R. No. 134039, December 21, 2004, 447 SCRA 395, citing cases.

[10]See Note #2, supra.

[11] Rubenito v. Lagata, G.R. No. 140959, December 21, 2004, 447 SCRA 417.

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