EUGENIA D. POLIDO, PETITIONER, VS. HON. COURT OF APPEALS AND MARIANO P. GASAT, RESPONDENTS.

G.R. NO. 170632. July 10, 2007

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

After the death of her husband Jacinto Polido (Polido), Eugenia Duque Polido, petitioner, tried to withdraw the joint savings deposit they maintained at the Philippine National Bank, Camiling, Tarlac Branch, but failed because one Mariano Gasat (Gasat), herein respondent who claimed to be the couple's adopted child, objected thereto.

Petitioner thus filed on January 21, 2004 a complaint before the Regional Trial Court of Tarlac, with Motion for the Issuance of a Writ of Preliminary Injunction, against Gasat.

In her complaint, petitioner prayed for the following reliefs:

- An Order granting the issuance of [a] writ of preliminary injunction enjoining and restraining the defendant and all persons acting under him from preventing the officers or employee[s] of the Philippine National Bank, Camiling, Tarlac Branch from releasing in favor of the plaintiff the money deposited with the said bank upon posting of a bond by the plaintiff in an amount to be fixed by the Court;

- After trial, to declare the defendant not the adopted child of the plaintiff and her husband Jacinto Polido;

- Directing the defendant to pay plaintiff attorney's fees and litigation expenses in the amount of P100,000.00 and moral damages in the amount of P50,000.00.

Other reliefs which are just and equitable under the premises are likewise prayed for.[1] (Underscoring supplied)

In his Answer with Compulsory Counterclaim,[2] Gasat alleged that petitioner and her late husband had adopted him as their child, annexing as proof thereof a photocopy of an Order dated September 23, 1970 of the Municipal Trial Court (MTC) of Camiling in Civil Case No. 2497, "In the Matter of the Adoption of the Minors, Lea D. Tomas and Mariano Gasat, JACINTO POLIDO AND EUGENIA POLIDO, Petitioners,"[3] and a copy of a Certification[4] from the MTC Clerk of Court that a "[c]opy of the decree of adoption dated September 23, 1970 was furnished to the Office of the Local Civil Registrar" and said decree had become final and executory; and that petitioner cannot withdraw any amount from the bank account because she should follow legal procedures governing settlement of the estate of a deceased, unless a competent court issues an order allowing her to withdraw from said account.[5]

In his Opposition to the Issuance of Preliminary Injunction and Motion to Set the Affirmative Defenses for Preliminary Hearing,[6] Gasat argued that:

x x x x

> - Even assuming but without admitting that the defendant's adoption paper is ineffective, still he cannot be deprived of his inheritance from the Estate of Jacinto Polido because said deceased and the plaintiff are childless and all the properties subject of inheritance are exclusive properties of the late Jacinto Polido, the same being inherited from his late father, NARCISO POLIDO[,] who died in Hawaii, USA.
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> - The Estate of Narciso Polido was inherited by his two children, namely, said JACINTO POLIDO and PETRA P. GASAT, also deceased and the latter was survived by her husband and SEVEN (7) children of which the defendant (MARIANO D. POLIDO) is one . . .;
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> - Thus, by virtue of the provision of Art. 1001 of the Civil Code of the Philippines, which reads as follows:12345
>
> "ART. 1001. Should brothers and sisters or their children survive with the widow or widower, the latter shall be entitled to one-half of the inheritance and the brothers and sisters or their children to the other half."

[T]he heirs of the late Jacinto Polido are his WIFE (plaintiff) [who is entitled to] one- half (1/2) and Petra P. Gasat's SEVEN (7) CHILDREN which would include the defendant[, who are entitled to] one-half (1/2).

HENCE, THERE IS NO WAY WHATSOEVER TO JUSTIFY THE ISSUANCE OF PRELIMINARY INJUNCTION AGAINST THE DEFENDANT EVEN IF HIS ADOPTION WOULD BE NULLIFIED OR OF NO EFFECT WHATSOEVER.[7] (Emphasis in the original; underscoring supplied)

Gasat subsequently filed an Omnibus Motion[8] withdrawing 1) the allegation he had made in various pleadings that he is an adopted son of the couple and 2) his Motion to Set the Affirmative Defenses for Preliminary Hearing. And he moved to convert the case to an action for partition, at his instance, of the estate of his grandfather Narciso Polido,[9] father of petitioner's husband and Gasat's mother, and to require petitioner to file income tax returns and pay the estate tax due.

To Gasat's prayer to convert the action to one for partition and to require her to file Estate Tax Returns, petitioner filed an Opposition.[10] And she moved for Judgment on the Pleadings.[11]

To justify her motion for judgment on the pleadings, petitioner argued that Gasat, in withdrawing his claim and allegation that he is an adopted child, "practically admitted [her] material allegations [in the Complaint] that [he] is not an adopted child."[12]

By Order[13] dated December 7, 2004, the trial court denied Gasat's motion to convert the case to an action for partition and granted petitioner's motion for judgment on the pleadings in this wise:

> On November 30, 2004, the plaintiff filed a Motion for Judgment on the ground that by withdrawing all his allegations that he is [an] adopted child of the plaintiff, defendant practically admitted all the material allegations in the complaint and prayed that judgment be rendered as the complaint may warrant.
>
> This Court resolves to grant the motion for judgment on the ground that the defense that he is an adopted child of the plaintiff is withdrawn by the defendant himself. By withdrawing his defense, he is deemed to have admitted the main allegation of the plaintiff that he is not an adopted child. On the motion of the defendant that the instant action be converted into a partition and that the plaintiff be ordered to file her real estate tax return, the same is denied for lack of merit.[14] (Underscoring supplied)

Accordingly, the trial court disposed as follows:

> WHEREFORE, judgment is hereby rendered:
>
> - Declaring the defendant not the adopted child of the plaintiff,

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> - Ordering the Manager of the Philippine National Bank, Camiling Branch or any other branch to release to plaintiff upon her request the money she deposited or her deceased husband Jacinto Polido;
>
> - Directing the defendant to pay the plaintiff moral damages in the amount of P25,000.00 and attorney's feel[s] in the amount of P25,000.00.
>
> SO ORDERED.[15] (Underscoring supplied)

Gasat filed a Notice of Appeal.[16] On May 26, 2005, before the Court of Appeals, he filed an Ex-Parte Motion to Admit Payment of Docket Fee,[17] explaining that being jobless, it took some time for him to raise the docket fee. He added that he had to borrow at an exorbitant interest rate. Finally, he explained that when he went to the trial court to pay the docket fee, he was advised to pay the same at the Court of Appeals, the records having already been forwarded to it.

The Court of Appeals denied his motion and dismissed his appeal.[18] On Motion for Reconsideration, however, the Court of Appeals, by Resolution dated July 19, 2005, admitted Gasat's docket fee.[19] Petitioner filed a Motion for Reconsideration, which the Court of Appeals denied in this wise:[20]

> It is settled that "delay in the payment of the docket fees confers a discretionary, and not mandatory, power to dismiss the proposed appeal." While the payment of the prescribed docket fee is a jurisdictional requirement, its non-payment at the time of filing does not automatically cause the dismissal of the case, as long as the fee is paid within the applicable prescriptive or reglementary period, more so, when the party involved demonstrates a willingness to abide by the rules prescribing such payment. On this score is the case of Spouses Gregorio Go and Juan Tan Go v. Johnson Y. Tong, et. al., where the Supreme Court ruled that:
> While the cause of action of the private respondent was supposed to prescribe in four (4) years, he was allowed to pay; and he in fact paid the docket fee in a year's time. We do not see how this period can be deemed unreasonable. Moreover, on his part there is no showing of any pattern or intent to defraud the government of the required docket fee.

In the instant case, the period between the filing of the notice of appeal on February 28, 2005 and the payment of docket fee on May 26, 2005 is deemed reasonable. Moreover, justice will be better served with the admission of such belated payment.[21] (Underscoring supplied)

Hence, the present Petition for Certiorari and Prohibition with Urgent Motion for Injunction and Temporary Restraining Order,[22] petitioner faulting the Court of Appeals for committing grave abuse of discretion in relaxing the rule on the payment of docket fees on the ground of substantial justice.[23]

The petition fails.

Indeed, jurisprudence allows the relaxation of the Rule on non-payment of appellate docket fees.

> Notwithstanding the mandatory nature of the requirement of payment of appellate docket fees, we also recognize that its strict application is qualified by the following: first, failure to pay those fees within the reglementary period allows only discretionary, not automatic, dismissal; second, such power should be used by the court in conjunction with its exercise of sound discretion in accordance with the tenets of justice and fair play, as well as with a great deal of circumspection in consideration of all attendant circumstances.[24]

The relaxation by the appellate court of the rule on non-payment of the appellate docket fee appears justified as a perusal of the records of the case shows persuasive and weighty reasons to give due course to the appeal.[25]

Instead of remanding the case to the appellate court, however, this Court, in the interest of speedy dispensation of justice,[26] especially given that the main issue is a question of law, now passes on the merits of the appeal of Gasat.

Section 1 of Rule 34 of the Rules of Court provides:

> SECTION 1. Judgment on the Pleadings. - Where an answer fails to tender an issue, or otherwise admits the material allegations of the adverse party's pleading, the court may, on motion of that party, direct judgment on such pleading. However, in actions for declaration of nullity or annulment of marriage or for legal separation, the material facts alleged in the complaint shall always be proved. (Emphasis and underscoring supplied)

Passing on this rule, the Court declared:

> x x x The answer would fail to tender an issue x x x if it does not comply with the requirements for a specific denial set out in Section 10 (or Section 8) of Rule 8; and it would admit the material allegations of the adverse party's pleadings not only where it expressly confesses the truthfulness thereof but also if it omits to deal with them at all.
>
> Now, if an answer does in fact specifically deny the material averments of the complaint in the manner indicated by said Section 10 of Rule 8, and/or asserts affirmative defenses (allegations of new matter which, while admitting the material allegations of the complaint expressly or impliedly, would nevertheless bar recovery by the plaintiff) x x x, a judgment on the pleadings would naturally not be proper.[27]

In the case at bar, the trial court granted petitioner's motion for judgment on the pleadings on petitioner's argument that in withdrawing Gasat's allegation of her having adopted him, he "practically admitted her material allegations [in her Complaint] that [he] is not an adopted child."

Gasat's Answer with Compulsory Counterclaim raised other issues, however, which are independent of his claim of adoptive filiation and which would defeat petitioner's main cause of action - for the court to enjoin Gasat "and all persons acting under him from preventing the officers or employees of the [PNB] from releasing" the deposit to her.

> 11. . .Further, defendant has all the rights to prohibit the plaintiff from personally withdrawing [from] the said bank account because, it is mandated by law that after the death of the owner of the said account, any withdrawal is prohibited except by order of the Court or upon presentation of an Extrajudicial Settlement executed by the legal heirs and after compliance with all the requirements of the law. Likewise the bank is prohibited to allow any withdrawal without submitting to it said requirements.
>
> x x x x 13. With respect to the allegations of said paragraph 14, to wit -
>
> Unless an injunction be issued against the defendant restraining him from claiming in the bank account, the plaintiff would suffer irreparable damage. The plaintiff is willing to post a bond in an amount to be fixed by the Honorable Court.

this allegation is UNFOUNDED AND BASELESS and the court cannot use [it] as a ground for the issuance of any restraining order. Even assuming that the court will issue an Order restraining defendant from claiming the bank account, the plaintiff still cannot withdraw any amount thereof, because it is a part of the ESTATE of Jacinto Polido, and as provided for by laws before the bank allows any withdrawal, the plaintiff has to follow certain procedures required by other laws governing estate settlement, that is, - (a) Payment of Estate Tax, if any; (b) BIR Tax Clearance; (c) Present a duly published Extrajudicial Partition executed by the heirs adjudicating said amount to such heir, unless a competent Court issues an Order allowing the plaintiff to withdraw [from] said account.[28] (Underscoring supplied)

It bears noting that petitioner and her deceased husband Polido were childless; hence, Gasat, who is a son of Polido's sister Petra P. Gasat, could inherit from Polido.

Parenthetically, Section 97 of the National Internal Revenue Code states:

x x x x

> If a bank has knowledge of the death of a person, who maintained a bank deposit account alone, or jointly with another, it shall not allow any withdrawal from the said deposit account unless the Commissioner had certified that the taxes imposed thereon by this Title have been paid; Provided, however, That the administrator of the estate or any one (1) of the heirs of the decedent may, upon authorization by the Commissioner, withdraw an amount not exceeding Twenty thousand pesos (P20,000) without the said certification. For this purpose, all withdrawal slips shall contain a statement to the effect that all of the joint depositors are still living at the time of withdrawal by any one of the joint depositors and such statement shall be under oath by the said depositors.

There being no ground to merit petitioner's Motion for Judgment on the Pleadings, the trial court erred in granting the same.

WHEREFORE, the assailed petition is DENIED. The Court of Appeals Resolution admitting respondent's payment of docket fee is upheld.

The Order of the Regional Trial Court of Camiling, Tarlac, Branch 68 dated December 7, 2004 granting petitioner's Motion for Judgment on the Pleadings is REVERSED and SET ASIDE.

Let the case be REMANDED to the trial court which is directed to continue with dispatch its proceedings on and/or resolve the case in light of the foregoing discussions.

Costs against petitioner.

SO ORDERED.

Carpio, (Acting Chairperson), Tinga and Velasco, Jr., JJ., concur.
Quisumbing, J., (Chairperson), on official leave.

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[1] RTC records, pp. 4-5.

[2] Id. at 14-22.

[3] Id. at 23-24.

[4] Id. at 25.

[5] Id. at 18.

[6] Id. at 28-34. Note: page numbering in the RTC records starts again from p. 26 after p. 50.

[7] Id. at 29.

[8] Id. at 151-162.

[9] Id. at 156-158.

[10] Id. at 178-183.

[11] Id.

[12] Id. at 179-180.

[13] Id. at 184-185.

[14] Ibid.

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[15] Id. at 185.

[16] Id. at 244-245.

[17] CA rollo, pp. 8-9.

[18] Id. at 18-19.

[19] Id. at 59.

[20] Id. at 75-76. Resolution of December 1, 2005, penned by Court of Appeals Associate Justice Estela M. Perlas- Bemabe, with the concurrences of Associate Justices Remedios A. Salazar-Fernando and Hakim S. Abdulwahid.

[21] Id. Citations omitted.

[22] Rollo, pp. 3-31.

[23] Id. at 22-27.

[24] La Salette College v. Pilotin, 463 Phil. 785, 794 (2003).

[25] Vide Far Corporation v. Magdaluyo, G.R. No. 148739, November 19, 2004, 443 SCRA 218, 228: "Rules of Procedure must be faithfully followed. But the rules may be relaxed, for persuasive and weighty reasons, to relieve a litigant of an injustice [un]commensurate with his failure to comply with the prescribed procedure."

[26] Vide Apuyan v. Haldeman, G.R. No. 129980, September 20, 2004, 438 SCRA 402, 420.

[27] Vergara, Sr. v. Suelto, G.R. No. L-74766, December 21, 1987, 156 SCRA 753, 761-762.

[28] RTC records, pp. 17-18. Vide Section 97. National Internal Revenue Code:

> x x x x
>
> If a bank has knowledge of the death of a person, who maintained a bank deposit account alone, or jointly with another, it shall not allow any withdrawal from the said deposit account, unless the Commissioner has certified that the taxes imposed thereon by this Title have been paid; Provided, however, That the administrator of the estate or any one (1) of the heirs of the decedent may, upon authorization by the Commissioner, withdraw an amount not exceeding Twenty thousand pesos (P20,000) without the said certification. For this purpose, all withdrawal slips shall contain a statement to the effect that all of the joint depositors are still living at the time of withdrawal by any one of the joint depositors and such statement shall be under oath by the said depositors.

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