

**E MELINDA V. ABEDES, PETITIONER, VS. HON. COURT OF APPEALS,
RELIA QUIZON ARCIGA AND SHERIFF RONBERTO B. VALINO,
RESPONDENTS.**

G.R. No. 174373. October 15, 2007

Ponente: CHICO-NAZARIO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-174373/>

CHICO-NAZARIO, J.:

Before Us is a special civil action for certiorari under Rule 65 of the Rules of Court to annul and set aside the Decision[1] and Resolution[2] of the Court of Appeals in CA-G.R. CV No. 83621, dated 23 December 2005 and 19 July 2006, respectively, which reversed and set aside the Order[3] dated 9 June 2004 and Resolution[4] dated 3 August 2004 of the Regional Trial Court (RTC), Tarlac City, Branch 64 in Civil Case No. 9556.

Established are the following factual antecedents:

Sometime in 1996, respondent Relia Quizon Arciga filed an action before the RTC of Pasig City against Wilfredo P. Abedes (Wilfredo), husband of herein petitioner Emelinda V. Abedes, seeking support for her daughter, Dannielle Ann Arciga (Danielle Ann). The case was docketed as JDRC Case No. 3866.[5] On 10 October 2000, a Decision was therein rendered, declaring Wilfredo the natural father of Danielle Ann. Wilfredo was similarly ordered by the RTC of Pasig City to support Danielle Ann, with a fixed amount of P10,000.00 per month.

The dispositive portion of the Decision in JDRC Case No. 3866, reads:

WHEREFORE, premises considered, judgment is hereby rendered declaring the [therein] respondent Wilfredo P. Abedes, as the natural father of the child, Daniele Ann Arciga and entitled to support from him.

Considering that the child is already of school age, the amount of support is hereby fixed at Ten Thousand Pesos (PhP10,000.00) per month which [Wilfredo P. Abedes] is obliged to give retroactive to the date of judicial demand which corresponds to the time this case was filed, May 1996. The [respondent therein Wilfredo P. Abedes] is ordered to give the said amount of support, apart from the support in arrears, on or before the end of every month, until otherwise ordered by this court.[6]

Since no appeal was interposed by the parties, the judgment became final and executory. Respondent Relia Quizon Arciga filed a Motion for Execution. Accordingly, a writ of execution was issued on 21 February 2001 by the RTC of Pasig City. Unfortunately, the Sheriff's Return[7] dated 19 December 2001 showed that no personal property of Wilfredo could be levied upon to satisfy the judgment.[8] The Writ of Execution was returned unsatisfied.

Later, a property covered by Transfer Certificate of Title (TCT) No. 292139[9] was discovered to be allegedly registered in the name of Wilfredo. Thus, the Sheriff[10] caused the registration of a Notice of Levy on Execution[11] on TCT No. 292139, with the Office of the Registry of Deeds for the Province of Tarlac, to satisfy the judgment in JDRC Case No. 3866. Upon notice of the same, petitioner filed a Notice of Third Party Claim[12] with the RTC of Pasig. Petitioner alleged that the property covered by TCT No. 292139 belongs exclusively to

her, and Wilfredo had no present and existing right thereto. Therefore, it may not be utilized to satisfy the judgment rendered against her husband Wilfredo in the aforesaid JDRC Case No. 3866.

Notwithstanding the adverse claim, on 12 September 2003, a Notice of Sheriff's Sale was made announcing the sale to the public and to the highest bidder of all the rights, claims, and shares of Wilfredo in the property covered by TCT No. 292139. For such purpose, a public auction was scheduled to be held on 20 October 2003.

Aggrieved, petitioner, represented by her attorney-in-fact Wilfredo, filed a Complaint^[13] for Injunction with Prayer for Writ of Preliminary Injunction and Temporary Restraining Order and Damages before the RTC of Tarlac City. The case was docketed as Civil Case No. 9556. In her Complaint, petitioner alleged that unless the sale at public auction is enjoined, she will stand to suffer permanent damage for the loss of her property without valuable consideration and in violation of the process of law. She further sought the cancellation of Entries No. 42-7961 and No. 42-10782 annotated on TCT No. 292139 of the Registry of Deeds of the Province of Tarlac. Moreover, she sought to recover moral damages, attorney's fees and costs of litigation.

After due hearing, on 14 October 2003, the RTC of Tarlac City issued a Temporary Restraining Order.^[14] It was convinced that irreparable damage and injury to petitioner would result, should respondent Sheriff Ronberto B. Valino proceed with the public auction of the property covered by TCT No. 292139. Further, the RTC conducted a hearing on the prayer for the issuance of a Writ of Preliminary Injunction, and granted the same on 7 November 2003,^[15] effectively preserving the status quo.^[16]

Meanwhile, respondents Relia Quizon Arciga and Sheriff Ronberto B. Valino filed an Urgent Motion to Dismiss^[17] the Complaint in Civil Case No. 9556. On 1 December 2003, the RTC of Tarlac City rendered a Resolution^[18] dismissing the motion for want of merit.

Petitioner then filed a Motion to Declare Defendants in Default^[19] for the latter's failure to file an Answer within the period granted by the RTC of Tarlac City. The Motion was, however, denied. It appeared that the RTC of Tarlac City already received the Answer^[20] by the time the aforesaid Motion to Declare Defendants in Default was filed.

In their Answer, respondents Relia Quizon Arciga and Sheriff Ronberto B. Valino principally contended that the property subject of the levy is presumed conjugal property; and as such, liable for the judgment against Wilfredo.

In view of this development, petitioner filed a Motion for Summary Judgment,^[21] on the ground that the Answer did not raise a genuine issue as to any material fact. Respondents filed a Comment^[22] to petitioner's Motion for Summary Judgment. In their Comment, they sought the denial of the Motion, and prayed that the case be set aside for further proceedings. The Motion was then declared submitted for resolution by the RTC of Tarlac City.

On 9 June 2004, the RTC of Tarlac City issued the assailed Order ruling in petitioner's favor.

The RTC of Tarlac City opined that the property covered by TCT No. 292139 is petitioner's paraphernal property. As her exclusive property, it may not be made liable for the obligations of Wilfredo under the Decision dated 10 October 2000 in JDRC Case No. 3866, rendered by the RTC of Pasig City. Otherwise stated, the property may not be liable for the support which Wilfredo is obliged to give to Danielle Ann.

In so ruling that the property covered by TCT No. 292139 is paraphernal, the RTC of Tarlac City alluded to the declaration appearing on TCT No. 292139, which states that the property described therein is registered in accordance with the provisions of the Property Registration Decree "in the name of Emelinda V. Abedes," married to Wilfredo P. Abedes. Citing *Ruiz v. Court of Appeals*,^[23] the RTC of Tarlac City reasoned that when the title is in the name of "x married to y," the phrase "married to y" is merely descriptive of the personal status

of the owner, x. It was also of the opinion that no evidence was adduced that the property covered by TCT No. 292139 was acquired within the marriage of petitioner to Wilfredo; hence, the presumption that it belongs to the conjugal partnership does not apply.

The RTC of Tarlac City further explained that even assuming that the property covered by TCT No. 292139 is part of the conjugal partnership, it may not be held liable for the support of Danielle Ann who is an illegitimate child of Wilfredo. It declared that the property regime of petitioner and Wilfredo is governed by the Civil Code as they were married on 10 February 1966. Under Article 161(5)[24] of the Civil Code, the conjugal partnership shall only be liable, inter alia, for the maintenance of the family and education of the legitimate children. The support of illegitimate children cannot be charged to the conjugal partnership.

Hence, the RTC enjoined respondent Sheriff Ronberto B. Valino from conducting the public sale of the property covered by TCT No. 292139 of the Register of Deeds of the Province of Tarlac. It likewise ordered that Entries No. 42-7961 and No. 42-10782 annotated on TCT No. 292139 be cancelled. The exact words of the RTC of Tarlac City in its assailed judgment read:

WHEREFORE, judgment is hereby rendered in favor of the plaintiff [Emelinda V. Abedes Represented by her Atty. In-fact Wilfredo P. Abedes] and against the defendants [Relia Quizon Arciga for herself and for Danielle Ann Arciga and Sheriff Ronberto Valino]

1.) Making permanent the writ of preliminary injunction dated November 4, 2003, enjoining permanently the sheriff of RTC Branch 70, Pasig City from proceeding with public sale of the property covered by TCT No. 292139 of the Register of Deeds of Tarlac Province;

2.) Ordering the cancellation of entries [N]os. 42-7961 and 42-10782 at the back of the said title on file with the Register of Deeds;

Costs de oficio.[25]

Respondents' Motion for Reconsideration of the foregoing order was denied by the RTC of Tarlac City in another Order[26] dated 3 August 2003, prompting respondents to file an appeal with the Court of Appeals.

On 23 December 2005, the Court of Appeals issued a Decision, reversing and setting aside the appealed Order and Resolution of the RTC of Tarlac City.[27]

In its ruling, the Court of Appeals said that the Family Code provisions on conjugal partnerships govern the property relations between petitioner and Wilfredo, notwithstanding the fact that their marriage was celebrated prior to the effectivity of the Family Code. It found legal bearings on Article 105[28] of the Family Code, which mandates that its provisions on conjugal partnership of gains shall also apply to conjugal partnerships already established between spouses before the effectivity of the Family Code, without prejudice to vested rights already acquired in accordance with the Civil Code or other laws, as provided in Article 255.[29] It found that there were no vested rights that would preclude the application of Article 105 on the property regime of petitioner and Wilfredo. As the Family Code establishes the presumption that properties acquired during the marriage is conjugal, the property covered by TCT No. 292139, not having been shown otherwise is, thus, conjugal.

Following the foregoing line of ratiocination, the Court of Appeals held that the property covered by TCT No. 292139 may be levied upon in execution for the support of Danielle Ann. In so concluding, it relied on Articles 122[30] and 197[31] of the Family Code which charges the support of illegitimate children against the conjugal partnership.

Petitioner filed a Motion for Reconsideration[32] of the 23 December 2005 Decision of the Court of Appeals, raising the issue of lack of jurisdiction on the part of the appellate court over the matters raised on appeal because

the issues involved are purely questions of law. According to the petitioner, Section 2[33] of Rule 50 of the Rules of Court mandates the dismissal of appeals which involve pure questions of law erroneously brought to the Court of Appeals. It is petitioner's theory that the Court of Appeals did not have to resolve any question of fact as there was no factual issue raised.

Unimpressed, the Court of Appeals rejected this contention, and found no reason to depart from its earlier ruling. In denying petitioner's Motion for Reconsideration for lack of merit, the appellate court held:

In this case, [petitioner Emelinda V. Abedes] had participated in the appeal proceedings. Thus, the claimed lack of jurisdiction is inconsistent with her actuation before Us. An examination of her appellee's brief even reveals her recognition of Our jurisdiction. We observe that in her brief she prayed for the dismissal of the appeal and the affirmance of the appealed decision. This is certainly an acknowledgment that We have the power to hear and resolve the questions raised in the appeal.[34]

Hence, the Petition before us filed under Rule 65 of the Rules of Court.

In her Memorandum, petitioner submitted the following issues, viz:

I

WHETHER OR NOT PUBLIC RESPONDENT HAS STATUTORY JURISDICTION OVER THE SUBJECT MATTER OF THE CASE.

II

WHETHER OR NOT PETITIONER IS BARRED BY ESTOPPEL FROM QUESTIONING PUBLIC RESPONDENT'S JURISDICTION.

First, the preliminaries.

A petition for certiorari under Rule 65 is proper if a tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction and there is no appeal, or any plain, speedy and adequate remedy in the ordinary course of law.[35] However, the proper remedy of petitioner from the assailed Decision and Resolution of the Court of Appeals is an ordinary appeal[36] to this Court via a petition for review under Rule 45 and not a petition for certiorari under Rule 65.[37] To draw a distinction, an appeal by petition for review on certiorari under Rule 45 is a continuation of the judgment complained of, while that under Rule 65 is an original or independent action.[38] We have underscored that the remedy of certiorari is not a substitute for lost appeal. The remedies of appeal and certiorari are mutually exclusive and not alternative or successive.[39] Hence, the special civil action for certiorari under Rule 65 is not and cannot be a substitute for an appeal, where the latter remedy is available.[40] Such a remedy will not be a cure for failure to timely file a petition for review on certiorari under Rule 45.[41] Rule 45 is clear that decisions, final orders or resolutions of the Court of Appeals in any case, i.e., regardless of the nature of the action or proceedings involved, may be appealed to this Court by filing a petition for review, which would be but a continuation of the appellate process over the original case.[42]

Under Rule 45, the reglementary period to file an appeal is 15 days from notice of the judgment or final order or resolution appealed from, or of the denial of the petitioner's motion for reconsideration filed in due time, after notice of the judgment on said motion.

In the case at bar, the Resolution of the appellate court, dated 19 July 2006, which denied reconsideration of its Decision dated 23 December 2005, was received by petitioner on 2 August 2005.[43] She had until 17 August 2005 within which to perfect her appeal. However, none was made. Instead, she comes to this Court via a petition

for certiorari in an effort to salvage her lost appeal. Evidently, appeal was available to petitioner. It was also the speedy and adequate remedy under the circumstances. Petitioner was, therefore, unsuccessful in satisfying the rudiments for the writ of certiorari under Rule 65 to issue. Petitioner was unable to show that there is no appeal, or any plain, speedy and adequate remedy[44] in the ordinary course of law.

Parenthetically, it must be emphasized that under Rule 56, Sec. 5(f)[45] of the Rules of Court, which governs the procedure in the Supreme Court, a wrong or inappropriate mode of appeal, as in this case, merits an outright dismissal.[46]

Patently, the petition must fail.

This conclusion is made ineluctably certain for the further reason that even as petitioner files a special civil action for certiorari under Rule 65 before us, there is no allegation whatsoever that the Court of Appeals acted without or in excess of its jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction. What petitioner ascribes is merely lack of jurisdiction on the part of the Court of Appeals which, to the mind of this Court, does not satisfy the legal fundamentals for a writ of certiorari to lie.

To reiterate, for a petition for certiorari or prohibition to be granted, it must set out and demonstrate, plainly and distinctly, all the facts essential to establish a right to a writ.[47] The petitioner must allege in his petition and has the burden of establishing facts to show that any other existing remedy is not speedy or adequate and that (a) the writ is directed against a tribunal, board or officer exercising judicial or quasi-judicial functions; (b) such tribunal, board or officer has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to excess or lack of jurisdiction; and, (c) there is no appeal or any plain, speedy and adequate remedy in the ordinary course of law.[48] These matters must be threshed out and shown by petitioner.

In a petition for certiorari under Rule 65 of the Rules of Court, the petitioner is burdened to establish that the respondent tribunal acted without jurisdiction, meaning, that it does not have the legal power to determine the case; or that it acted without or in excess of jurisdiction, meaning, that having been clothed with power to determine the case, it oversteps its authority as determined by law, or that it committed grave abuse of its discretion or acted in a capricious, whimsical, arbitrary or despotic manner in the exercise of its jurisdiction as to be equivalent to lack of jurisdiction.[49]

In any event, even if we brush aside technicalities and allow the instant petition under Rule 65, the same must necessarily be dismissed.

It can be gleaned that petitioner's case is founded upon the argument that the Court of Appeals improperly took cognizance of respondents' appeal from the adverse rulings of the RTC of Tarlac City in Civil Case No. 9556. Petitioner's argument revolves on the core rationalization that as respondents' appeal to the Court of Appeals raised only questions of law, the appellate court should have dismissed the same as the appellate court had no jurisdiction over pure questions of law, citing Rule 50, Section 2 of the Rules of Court. Simply, petitioner asserts that respondents' appeal from the RTC should not have been taken to the Court of Appeals.

In *Suarez v. Villarama, Jr.*,[50] we distinguish the three modes of appeal from decisions of the RTC, viz:

- (1) Ordinary appeal or appeal by writ of error, where judgment was rendered in a civil or criminal action by the RTC in the exercise of original jurisdiction; (2) petition for review, where judgment was rendered by the RTC in the exercise of appellate jurisdiction; and (3) petition for review to the Supreme Court.[51]

Section 2, Rule 41 of the Rules of Court elaborates on the modes of appeal:

SEC. 2. Modes of appeal. —

(a) Ordinary appeal. — The appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its original jurisdiction shall be taken by filing a notice of appeal with the court which rendered the judgment or final order appealed from and serving a copy thereof upon the adverse party. No record on appeal shall be required except in special proceedings and other cases of multiple or separate appeals where the law or these Rules so require. In such cases, the record on appeal shall be filed and served in like manner.

(b) Petition for review. — The appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its appellate jurisdiction shall be by petition for review in accordance with Rule 42.

(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.

The first mode of appeal, governed by Rule 41,[52] is taken to the Court of Appeals on questions of fact or mixed questions of fact and law. The second mode of appeal, covered by Rule 42,[53] is brought to the Court of Appeals on questions of fact, of law, or mixed questions of fact and law. The third mode of appeal, provided for by Rule 45,[54] is elevated to the Supreme Court only on questions of law.[55]

In the case at bar, respondents utilized the first mode of appeal. Respondents filed a Notice of Appeal with the RTC of Tarlac City on 18 August 2004, giving notice that they were appealing its Order and Resolution, dated 9 June 2004 and 3 August 2004, respectively, to the Court of Appeals. Indeed, Section 3[56] of Rule 41 of the Rules of Court states that an appeal to the Court of Appeals shall be taken by filing a notice of appeal[57] with the court which rendered the judgment and serving a copy thereof upon the adverse party.

The question now arises whether respondents raised questions of fact or mixed questions of fact and law before the Court of Appeals.

It is axiomatic that a question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts.[58] A review of the records reveals that respondents, in their appeal with the Court of Appeals, raised mixed questions of fact and law.

Anent the question of fact, it cannot be gainsaid that respondents assailed the finding of the RTC of Tarlac City that the property covered by TCT No. 292139 is petitioner's paraphernal property. Indeed, the determination of whether such property pertains exclusively to petitioner is factual. It involves the truth or falsity of petitioner's allegation in her Complaint filed with the RTC of Tarlac City that the property was purchased with her exclusive money and during her marriage to Wilfredo. A necessity arose on the part of the Court of Appeals to make a determination of whether sufficient evidence was adduced to substantiate the same.

Anent the question of law, it was material for the appellate court to determine the applicable provisions of law. For instance, given the factual background that the marriage of petitioner to Wilfredo was celebrated prior to the effectivity of the Family Code vis-à-vis the date of acquisition of the property covered by TCT No. 292139 during the effectivity of the Family Code, the Court of Appeals was tasked to resolve whether the case is governed by the provisions of the Civil Code or the Family Code. After such a determination, the appellate court must ascertain the charges which may be made against the property regime governing the marriage of petitioner and Wilfredo; and the propriety of the levy in execution of the property covered by TCT No. 292139 to satisfy the judgment in JDRC Case No. 3866.

Further, we reiterate in substance the finding of the Court of Appeals in its Resolution dated 19 July 2006 that petitioner may not belatedly be allowed to question its jurisdiction after it has actively participated in the proceedings before it. While we find that the case herein is not one of estoppel by jurisdiction, for the Court of Appeals clearly had jurisdiction over respondents' appeal, we are of the opinion that petitioner's allegation of

lack of jurisdiction for the first time in her Motion for Reconsideration constitutes a last ditch effort to assail the judgment of the Court of Appeals.

Finally, this Court finds no reason to delve into the merits of the Decision of the Court of Appeals with regard to the propriety of the levy in execution of the property covered by TCT No. 292139 for the support of Danielle Ann. Petitioner does not raise the issue in her pleadings. That matter has been laid to rest, and is outside the scope of the instant Petition. Issues not raised in the pleadings, as opposed to ordinary appeal of criminal cases where the whole case is opened for review,[59] are deemed waived or abandoned.[60]

WHEREFORE, the Petition is DISMISSED. Costs against petitioner.

SO ORDERED.

Ynares-Santiago, (Chairperson), Carpio, Austria-Martinez, and Nachura, JJ., concur.

[1] Penned by former Presiding Justice of the Court of Appeals Ruben T. Reyes (now a member of the Supreme Court) with Associate Justices Juan Q. Enriquez, Jr. and Vicente Q. Roxas, concurring; rollo, pp. 87-102.

[2] Penned by former Presiding Justice of the Court of Appeals Ruben T. Reyes (now a member of the Supreme Court) with Associate Justices Juan Q. Enriquez, Jr. and Monina Arevalo-Zenarosa, concurring, id. at 111-113.

[3] Penned by Pairing Judge Arsenio P. Adriano; Records, pp. 105-107.

[4] Penned by Judge Martonino R. Marcos; id. at 118-119.

[5] Entitled, Relia Quizon Arciga, for herself and for Danielle Ann Arciga v. Wilfredo P. Abedes.

[6] Records, p. 12.

[7] Id. at 14.

[8] The Sheriff's Return stated, viz:

There were no [p]ersonal property/ies of said [Wilfredo P. Abedes] to be levied that would satisfy the judgment claim, instead [Wilfredo P. Abedes] promised that he will pay the amount of Fifty Thousand by (sic) the month of May but he failed to do so and he made another promise that he will pay that amount this December but he did not.; id.

[9] Described as follows:

A parcel of land (Lot 6, Block 3 of the consolidation subdivision plan (LRC) Pcs-18063, being a portion of Lot 3-A-3-0 (LRC) Psd-200873, LRC Rec. No. 2793), situated in the Barrio of Binauganan, Mun. of Tarlac, Province of Tarlac, Island of Luzon. Bounded on the N., points 5 to 1 by Lot 7, on the E., points 1 to 2 by Lot 5 both of Block 3, on the SE., and SW., points 2 to 4 by street Lot 58, and on the W., points 4 to 5 by Street Lot 44 all of the consolidation-subd. Plan. Beginning at a point marked "1" on plan being S. 31 deg. 20'E., 2496.82 m. from BLLM No. 1 Tarlac cadastre, thence S. 2 45'E., 12.29 m. to point 2; thence, S. 59 deg. 22'W., 18.75 m. to point 3; id. at 10. [10] Sheriff IV Ronberto B. Valino.

[11] The annotations read

42-7964 Kind: Writ of Execution in favor of Relia Quizon Arciga for herself and for Danielle Ann Arciga Cond: Judgment is hereby rendered declaring the respondent Wilfredo P. Abedes as the natural father of the child Danielle Ann Arciga and entitled to support from him. Considering that the child is already of school age, the

amount of support is hereby fixed at Ten thousand pesos per month which the defendant is obliged to give retroactive to the date of judicial demand which corresponds to the time this case was filed, May 1996. Wilfredo P. Abedes is ordered to give the said amount of support, apart from the support in arrears on or before the end of every month until otherwise ordered by this court.

[D]ate of instrument: Feb 21,2001

[D]ate of inscription: April 25, 2001 3:00 p,

GUERRERO L. CAMPOS Reg of Deeds

42-10782 Kind: Notice of Levy in favor of Relia Quizon Arciga for herself and for Danielle Ann Arciga Cond: Notice is hereby given that the property described in this title is hereby levied upon under JDRC Case No. 3866 entitled Relia Quizon Arciga for herself and for Danielle Ann Arciga versus Wilfredo Abedes at the RTC of Pasig Branch 70 duly supported by a writ of execution under E-42-10788

[D]ate of ; Records, p. 11. [12] Id. at 15.

[13] Id. at 1-6.

[14] Issued by Judge Martonino R. Marcos; Records, p. 34.

[15] The date of preliminary injunction as it appears in the Order of 9 June 2004 of the RTC of Tarlac City in Civil Case No. 9556 is, however, written as November 4, 2003. The records show that on 4 November 2003, the RTC of Tarlac City issued an Order granting the issuance of the writ of preliminary injunction upon the filing and approval of the bond in the amount of P20,000.00. More accurately, on 7 November 2003, after a finding that the bond was filed in accordance with the Order of 4 November 2003, the RTC issued the writ of preliminary injunction.

[16] Issued by Judge Martonino R. Marcos; id. at 66, 71.

[17] Id. at 45-47.

[18] Id. at 78-79.

[19] Id. at 83-85.

[20] Id. at 80-82.

[21] Id. at 96-97.

[22] Id. at 108-109.

[23] 449 Phil. 419, 431 (2003).

[24] ART. 161. The conjugal partnership shall be liable for:

x x x x

(5) The maintenance of the family and the education of the children of both husband and wife, and of legitimate children of one of the spouses;

x x x x

[25] Records, p. 107.

[26] Id. at 118-119.

[27] The dispositive portion of the Decision dated 23 December 2005, reads:

WHEREFORE, the appealed order is REVERSED and SET ASIDE. The complaint filed with the RTC-Tarlac is hereby ordered DISMISSED. [28] ART. 105 – In case the future spouses agree in the marriage settlements that the regime of conjugal partnerships of gains shall govern their property relations during marriage, the provisions in this Chapter shall be of supplementary application.

The provisions of this Chapter shall also apply to conjugal partnerships of gains already established between spouses before the effectivity of this Code, without prejudice to vested rights already acquired in accordance with the Civil Code or other laws, as provided in Article 255.

[29] ART. 255. – If any provision of this Code is held invalid, all the other provisions not affected thereby shall remain valid.

[30] ART 122. The payment of personal debts contracted by the husband or the wife before or during the marriage shall not be charged to the conjugal partnership except insofar as they redounded to the benefit of the family.

Neither shall the fines and pecuniary indemnities imposed them be charged to the partnership.

However, the payment of personal debts contracted by either spouse before the marriage, that of fines and indemnities imposed upon them, as well as the support of illegitimate children of either spouse, may be enforced against the partnership assets after the responsibilities enumerated in the preceding Article have been covered, if the spouse who is bound should have no exclusive property or if it should be insufficient; but at the time of the liquidation of the partnership, such spouse shall be charged for what has been paid for the purposes abovementioned.

[31] ART. 197. In case of legitimate ascendants; descendants, whether legitimate or illegitimate, and brothers and sisters, whether legitimately or illegitimately related, only the separate property of the person obliged to give support shall be answerable provided that in case the obligor has no separate property, the absolute community or the conjugal partnership, if financially capable, shall advance the support, which shall be deducted from the share of the spouse obliged upon the liquidation of the absolute community or the conjugal partnership.

[32] CA rollo, pp. 101-104.

[33] SEC. 2. Dismissal of improper appeal to the Court of Appeals. – An appeal under Rule 41 taken from the Regional Trial Court to the Court of Appeals raising only questions of law shall be dismissed, issues purely of law not being reviewable by said court. Similarly, an appeal by notice of appeal instead of by petition for review from the appellate judgment of a Regional Trial Court shall be dismissed.

An appeal erroneously taken to the Court of Appeals shall not be transferred to the appropriate court but shall be dismissed outright.

[34] Rollo, p. 113.

[35] Section 1, Rule 65, 1997 Rules of Civil Procedure.

[36] Section 1, Rule 45 of the 1997 Rules of Civil Procedure provides that, “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 Courts or other courts whenever 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.

[37] *Banco Filipino Savings and Mortgage Bank v. Court of Appeals*, 389 Phil. 644, 654 (2000).

[38] Id.

[39] Obando v. Court of Appeals, 419 Phil. 124, 130 (2001).

[40] Land Bank of the Philippines v. Court of Appeals, 456 Phil. 755, 785 (2003).

[41] Id.

[42] Id., citing Heirs of Marcelino Pagobo v. Court of Appeals, G.R. No. 121687, 16 October 1997, 280 SCRA 870, 883.

[43] Rollo, p. 7.

[44] Jurisprudence states that a remedy is considered "plain, speedy and adequate" if it will promptly relieve the petitioners from the injurious effects of the judgment and the acts of the lower court or agency.

[45] SEC. 5. Grounds for dismissal of appeal. – The appeal may be dismissed motu proprio or on motion of the respondent on the following grounds:

x x x x

(f) Error in the choice or mode of appeal. [46] Chua v. Santos, G.R. No. 132467, 18 October 2004, 440 SCRA 365, 372.

[47] Lee v. People of the Philippines, G.R. No. 159288, 19 October 2004, 440 SCRA 662, 677.

[48] Id.

[49] Rivera v. Palattao, G.R. No. 157824, 17 January 2005, 448 SCRA 623, 634.

[50] G.R. No. 124512, 27 June 2006, 493 SCRA 74, 80, citing Murillo v. Consul, Resolution of the Court En Banc in UDK-9748, 1 March 1990.

[51] Id.

[52] Section 1 of Rule 41 of the Rules of Court provides that an appeal may be taken from a judgment or final order that completely disposes of the case, or of a particular matter therein when declared by these Rules to be appealable.

[53] Under Section 1 of Rule 42 of the Rules of Court, a party desiring to appeal from a decision of the Regional Trial Court rendered in the exercise of its appellate jurisdiction may file a verified petition for review with the Court of Appeals.

[54] Rule 45 covers appeal by certiorari to the Supreme Court.

[55] Suarez v. Villarama, supra note 50.

[56] SEC. 3. – Period of ordinary appeal. – The appeal shall be taken within fifteen (15) days from notice of the judgment or final order appealed from. Where a record on appeal is required, the appellants shall file a notice of appeal and a record on appeal within thirty (30) days from notice of the judgment or final order. However, on appeal in habeas corpus cases shall be taken within forty-eight (48) hours from notice of the judgment or final order appealed from. (A.M. No. 01-1-03-SC, 19 June 2001.)

[57] SEC. 5. – Notice of appeal. - The notice of appeal shall indicate the parties to the appeal, specify the judgment or final order or part thereof appealed from, specify the court to which the appeal is being taken, and state the material dates showing the timeliness of the appeal.

[58] Suarez v. Villarama, supra note 50.

[59] City of Cebu v. Heirs of Candido Rubi, 366 Phil. 70 (1999).

[60] Manalili v. Court of Appeals, 345 Phil. 632 (1997); Ledesma v. Court of Appeals, G.R. No. 113216, 5 September 1997, 278 SCRA 656.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.