

**RUFINA FAJARDO, VIRGILIO FAJARDO, MARIA AUREA FAJARDO,
ISABELO FAJARDO AND CARMINA GENOVEVA FAJARDO-SULLIVAN,
REPRESENTED BY THEIR ATTORNEY-IN-FACT, PIA CECILIA B.
CASTILLO, PET...**

G.R. No. 185396. November 24, 2009

Ponente: ABAD, J.

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ABAD, J.:

This case is about a collateral attack of a final order of dismissal of the trial court after the party against whom it was rendered failed to file a motion for its reconsideration or a notice of appeal from it.

The Facts and the Case

On March 8, 2004 petitioner Rufina Fajardo and her husband, Victor Fajardo (the Fajardos), filed a complaint^[1] against respondent Alberto Comandante (Alberto) and the Register of Deeds of Iba, Zambales, before the Regional Trial Court (RTC) of Olongapo City.^[2] The Fajardos asked the court to annul the deed of sale that they supposedly executed in Alberto's favor on February 7, 1977, covering 43,750 square meters of land in Barangay Calapacuan, Subic, Zambales, their signatures on the document having been forged. They also asked the court to cancel Transfer Certificate of Title 57763 that the register of deeds issued in Alberto's name based on that deed of sale. In his answer,^[3] Alberto denied the Fajardos' allegations and claimed that the deed of sale had been regularly executed and the subject property validly transferred to him.

On November 29, 2005 Alberto moved for the dismissal of the complaint on two grounds: first, the Fajardos failed to set the case for pre-trial^[4] six months after the last pleading had been served and, second, they did not prosecute the case for an unreasonable length of time.^[5] But the RTC denied the motion.^[6] It held that the amended rules^[7] imposed on the branch clerk of court the duty to issue a notice of pre-trial in cases where the plaintiff failed to do so. The trial court thus directed its officer-in-charge to set the case for pre-trial with notice to the parties as soon as possible.

Alberto moved for reconsideration,^[8] however, pointing out that while the branch clerk of court should set the case for pre-trial, the RTC should still dismiss the action for failure of the Fajardos to prosecute it for an unreasonable length of time. The RTC found merit in this, noting that the Fajardos had not even bothered to oppose Alberto's motion to dismiss. And, although it required the Fajardos to comment on Alberto's motion for reconsideration, they did not do so. Thus, the RTC issued an Order^[9] dated February 27, 2006, setting aside its previous Order of February 7, 2006 and dismissing the Fajardos' complaint without prejudice.

Unsatisfied, Alberto filed a manifestation/motion,^[10] substantially asking the RTC to reconsider its February 27, 2006 Order and dismiss the complaint with prejudice. For their part, the Fajardos filed a motion for reconsideration of the same Order and asked that the case be set for pre-trial.^[11] The trial court denied both motions in its Omnibus Order^[12] dated April 4, 2006. It explained that it could not dismiss the complaint "with

prejudice" since it was more of counsel's fault rather than of the Fajardos that the case had not moved. The trial court could not, on the other hand, grant the Fajardos' motion because their counsel did not bother to inform it that he could not appear at the hearing due to some illness and because the motion did not conform to the notice requirements of Rule 15 of the Rules of Civil Procedure.

On April 24, 2006 Alberto again moved for reconsideration, insisting that the trial court's dismissal of the complaint should be with prejudice.[13] Now, finding that neither the Fajardos nor their counsel had shown real interest in pressing their action even up to that time, the trial court reconsidered its earlier order and dismissed the complaint "with" prejudice in its Order[14] dated May 11, 2006.

On September 11, 2006 the Fajardos filed a motion[15] for the trial court to treat Alberto's April 24, 2006 motion for reconsideration, which had already been granted and resulted in the dismissal of the case with prejudice, as a mere scrap of paper for its non-compliance with the three-day notice rule.[16] Alberto's motion, according to them, did not produce any legal effect such as the court's Order of May 11, 2006 that dismissed their complaint with prejudice.[17]

On October 4, 2006 the trial court issued an order, denying the Fajardos' motion.[18] It chided them for not even bothering to file any motion for reconsideration of its Orders of February 27 and May 11, 2006 although they were in receipt of these. The spouses moved for reconsideration.[19] Subsequently, they submitted in support of it a certification[20] that the post office delivered Alberto's April 24, 2006 motion for reconsideration to the Fajardos' counsel only on April 28, 2006, the day after the hearing of such motion. But, on finding that the Fajardos did not bother to appeal from its order dismissing the case with prejudice, rendering the same final and executory, the RTC issued an Order[21] on May 28, 2007, denying their motion for reconsideration.

Undeterred, the Fajardos filed a petition for certiorari with the Court of Appeals,[22] imputing grave abuse of discretion on the RTC for issuing its May 11, 2006, October 4, 2006, and May 28, 2007 Orders. They reiterated their earlier position that the RTC should not have taken cognizance of Alberto's April 24, 2006 motion, which prompted the dismissal of the case with prejudice, for failing to abide by the notice requirements for motions. The motion being defective, the Fajardos conclude that the RTC order it elicited is void.

On April 30, 2008 the Court of Appeals rendered a decision,[23] dismissing the petition for failure of the Fajardos[24] to clearly demonstrate the RTC's grave abuse of discretion and jurisdictional errors.[25] Their motion for reconsideration having been denied on November 17, 2008,[26] they filed the present petition.

Question Presented

The only question the petition presents is whether or not the RTC gravely abused its discretion a) in not treating Alberto's April 24, 2006 motion for reconsideration as a mere scrap of paper for non-compliance with the three-day notice rule and b) in not setting aside, as a consequence, the order that dismissed their case "with" prejudice.

The Court's Ruling

From the start, the Fajardos have shown a cavalier attitude in moving their case forward. Although the issues in the case had been long joined by the pleadings of the parties, they, being the plaintiffs, did not ask the RTC to set it for pre-trial hearing. This omission prompted Alberto, after six months, to file a motion to dismiss the Fajardos' action for failure to prosecute. And when the court required the Fajardos to oppose the motion or file a comment on it, they did not. Still, on February 7, 2006 the court denied Alberto's motion to dismiss. When Alberto filed his February 9, 2006 motion for reconsideration of the denial of his motion, the court again directed the Fajardos to

oppose the motion or file a comment on it but, like before, they did not, eventually persuading the court on February 27, 2006 to dismiss their action "without" prejudice.

At any rate, the Fajardos point out that since Alberto failed to give them proper notice with respect to his April 24, 2006 motion for reconsideration that sought dismissal of the case "with" prejudice, the RTC should have treated that motion as a mere scrap of paper and not act on it. This claim is correct as far as it goes. Alberto set his motion for hearing on April 27, 2006 but served a copy of it on the Fajardos' counsel by registered mail, which the latter received only on April 28, 2006, one day after the scheduled hearing.[27] Mistaken in its belief that proper notice had been given to the Fajardos, however, the RTC considered Alberto's motion submitted for resolution.

But what did the Fajardos do with Alberto's motion that they received on April 28, 2006, which motion asked the RTC to change its order of dismissal of their case from "without" prejudice to one "with" prejudice? Nothing! It apparently did not alarm them or their counsel at all. They did not oppose it or bother to check with the court the outcome of the motion that had been set for hearing on April 27, 2006. Yet they had ample time to do this since the RTC incurred delay in acting on Alberto's motion. Only on May 11, 2006 or about two weeks later did the court grant the same and dismissed the case, now "with" prejudice.

Since the RTC's May 11, 2006 Order of dismissal "with" prejudice was a final order, the Fajardos' remedy was to file either a motion for its reconsideration or a notice of appeal to have the RTC's error in entertaining Alberto's defective motion rectified.[28] But the Fajardos allowed the period for filing such motion or notice of appeal to lapse. Only on September 11, 2006, four months later, did they file their motion to treat Alberto's motion of April 24, 2006 as a mere scrap of paper for failing to comply with the three-day notice requirement for motions. Actually, this was in the nature of a motion for reconsideration of the May 11, 2006 Order, crudely masked to hide the fact that they filed it out of time. And, when the RTC denied this belated motion, the Fajardos resorted to the remedy of a special civil action of certiorari under Rule 65 filed with the Court of Appeals to get that May 11, 2006 Order reviewed and set aside. That remedy is not available to them.[29]

Since the Fajardos did not appeal from the May 11, 2006 Order of the RTC, the same became final and executory as a matter of course. It can no longer be modified in any respect, even if the modification is meant to correct erroneous conclusions of fact and law, and whether it is made by the court that rendered it or by an appellate court.[30] As a final and valid order, it could not be collaterally attacked through the Fajardos' artful motion to treat Alberto's April 24, 2006 motion as a scrap of paper, where the sole object, in truth, is the nullification of the May 11, 2006 Order.[31]

WHEREFORE, the Court DENIES the petition and AFFIRMS the Court of Appeals' decision of April 30, 2008 and resolution of November 17, 2008. No costs.

SO ORDERED.

Carpio, Leonardo-De Castro, Brion, and Del Castillo, JJ., concur.

[1] Rollo, p. 10; the complaint was subsequently amended on April 6, 2004.

[2] Branch 24; in Civil Case 111-0-2004.

[3] Rollo, pp. 54-55.

[4] Pursuant to Section 1, Rule 18 of the Revised Rules of Civil Procedure.

[5] Under Section 3, Rule 17 of the same Rule.

[6] Rollo , p. 56.

[7] Section 1 of Rule 18, as amended by A.M. No. 03-1-09-SC, Proposed Rule on Guidelines to be Observed by Trial Court Judges and Clerks of Court in the Conduct of Pre-Trial and Use of Deposition-Discovery Measures, that took effect on August 16, 2004.

[8] Rollo, pp. 57-58.

[9] Id. at 60.

[10] Id. at 61-62.

[11] Id. at 63-65.

[12] Id. at 66.

[13] Id. at 67-68.

[14] Id. at 70.

[15] The motion was denominated as Motion to Treat Defendants' "Motion to Reconsider Order of 4[th] April 2006 Denying Defendants' Motion/Plea for an Order of Dismissal with Prejudice" Dated 24 April 2006 as a Mere Scrap of Paper.

[16] Section 4 of Rule 15 of the Revised Rules of Civil Procedure.

[17] Rollo, pp. 71-74.

[18] Id. at 75.

[19] Id. at 76-77.

[20] Id. at 80.

[21] Id. at 81-82.

[22] In CA-G.R. SP No. 99471.

[23] Rollo, pp. 23-36. Penned by Associate Justice Jose L. Sabio, Jr., with Associate Justices Jose C. Reyes, Jr. and Ramon M. Bato, Jr. concurring.

[24] Victor Fajardo died in the meantime; his children, petitioners Virgilio Fajardo, Maria Aurea Fajardo, Isabelo Fajardo, and Carmina Genoveva Fajardo-Sullivan, substituted for him. Id. at 13. Alberto likewise died and was substituted by respondents Marialita M. Comandante, Arthur M. Comandante, Marites C. Ayoso, Angelita C. Handy, and Eriberto Comandante.

[25] Rollo, p. 32.

[26] Id. at 38-39.

[27] Id. at 80.

[28] RULES OF COURT, Rule 41, Section 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.

[29] See: *Vios v. Pantangco, Jr.*, G.R. No. 163103, February 6, 2009, 578 SCRA 129, 144; *Heirs of Placido Miranda v. Court of Appeals*, 325 Phil. 674, 685 (1996).

[30] *Temic Semiconductors, Inc. Employees Union v. Federation of Free Workers*, G.R. No. 160993, May 20, 2008, 554 SCRA 122, 134; *Bearneza v. National Labor Relations Commission*, G.R. No. 146930, September 11, 2006, 501 SCRA 372, 375; *Gallardo-Corro v. Gallardo*, 403 Phil. 498, 511 (2001).

[31] See: *Filinvest Credit Corporation v. Intermediate Appellate Court*, G.R. No. 66641, March 6, 1992, 207 SCRA 59, 65.

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