REPUBLIC OF THE PHILIPPINES, PETITIONER, VS. NISAIDA SUMERA NISHINA, REPRESENTED BY ZENAIDA SUMERA WATANABE, RESPONDENT.

G.R. No. 186053. November 15, 2010

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

Nisaida Sumera Nishina (respondent), represented by her mother Zenaida Sumera Watanabe (Zenaida), filed before the Regional Trial Court (RTC) of Malolos, Bulacan a verified petition for cancellation of birth record and change of surname in the civil registry of Malolos, Bulacan, docketed as Special Proceedings No. 106-M-2007.[1]

In her petition, respondent alleged the following:

She was born on October 31, 1987[2] in Malolos, Bulacan to her Filipino mother Zenaida and Japanese father Koichi Nishina who were married on February 18, 1987.[3] Her father later died.[4] On July 19, 1989, her mother married another Japanese, Kenichi Hakamada.[5]

As they could not find any record of her birth at the Malolos civil registry, respondent's mother caused the late registration of her birth in 1993 under the surname of her mother's second husband, "Hakamada."[6] Her mother and Hakamada eventually divorced.[7]

On May 29, 1996, her mother married another Japanese, Takayuki Watanabe,[8] who later adopted her by a decree[9] issued by the Tokyo Family Court of Japan on January 25, 2001. The adoption decree was filed and recorded in the civil registry of Manila in 2006.[10]

In 2007, it surfaced that her birth was in fact originally registered at the Malolos Civil Registry under the name "Nisaida Sumera Nishina,"[11] hence, her filing before the RTC of her petition praying that her second birth certificate bearing the surname "Hakamada," issued through late registration in 1993, be cancelled; and that in light of the decree of adoption, her surname "Nishina" in the original birth certificate be changed to "Watanabe."[12]

After hearing the petition, Branch 83 of the RTC, by Order[13] of October 8, 2007, granted respondent's petition and directed the Local Civil Registry of Malolos "to cancel the second birth record of Nisaida Sumera Hakamada issued in 1993 [bearing] Registry No. 93-06684 and to change it [in its stead] Registry No. 87-04983, particularly the surname of [respondent] from NISAIDA SUMERA NISHINA to NISAIDA SUMERA WATANABE."[14]

A copy of the October 8, 2007 Order was received on December 13, 2007 by the OSG which filed, on behalf of petitioner, a notice of appeal.[15]

Before the Court of Appeals, respondent filed a motion to dismiss[16] the appeal, alleging that petitioner adopted a wrong mode of appeal since it did not file a record on appeal as required under Sections 2 and 3, Rule 41 (appeal from the RTCs) of the 1997 Rules of Civil Procedure reading:

> 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.
>
> x x x x
>
> 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 appellant shall file a notice of appeal and a record on appeal within thirty (30) days from notice of the judgment or final order. However, an 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, June 19, 2001)
>
> The period of appeal shall be interrupted by a timely motion for new trial or reconsideration. No motion for extension of time to file a motion for new trial or reconsideration shall be allowed. (emphasis, underscoring and italics supplied)
>
> x x x x
>
> SEC. 9. Perfection of appeal; effect thereof. - x x x.
>
> A party's appeal by record on appeal is deemed perfected as to him with respect to the subject matter thereof upon the approval of the record on appeal filed in due time.
>
> x x x x

Opposing the motion, petitioner countered that a record on appeal is required only in proceedings where multiple appeals may arise, a situation not obtaining in the present case.[17]

By Resolution[18] of September 2, 2008, the appellate court dismissed petitioner's appeal, holding that since respondent's petition before the RTC "is classified as a special proceeding," petitioner should have filed both notice of appeal and a record on appeal within 30 days from receipt of the October 8, 2007 Order granting respondent's petition, and by not filing a record on appeal, petitioner "never perfected" its appeal.[19]

Its motion for reconsideration having been denied by Resolution[20] of December 22, 2008, petitioner filed the present petition for review on certiorari.

The petition is meritorious.

Section 1, Rule 109 of the 1997 Rules of Civil Procedure specifies the orders or judgments in special proceedings which may be the subject of an appeal, viz:

> SECTION 1. Orders or judgments from which appeals may be taken. - An interested person may appeal in special proceedings from an order or judgment rendered by a Court of First Instance or a Juvenile and Domestic Relations Court, where such order or judgment:
>
> (a) Allows or disallows a will;
>
> (b) Determines who are the lawful heirs of a deceased person, or the distributive share of the estate to which such person is entitled;
>
> (c) Allows or disallows, in whole or in part, any claim against the estate of a deceased person, or any claim presented on behalf of the estate in offset to a claim against it;

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(d) Settles the account of an executor, administrator, trustee or guardian;

(e) Constitutes, in proceedings relating to the settlement of the estate of a deceased person, or the administration of a trustee or guardian, a final determination in the lower court of the rights of the party appealing, except that no appeal shall be allowed from the appointment of a special administrator; and

(f) Is the final order or judgment rendered in the case, and affects the substantial rights of the person appealing unless it be an order granting or denying a motion for a new trial or for reconsideration.

The above-quoted rule contemplates multiple appeals during the pendency of special proceedings. A record on appeal - in addition to the notice of appeal - is thus required to be filed as the original records of the case should remain with the trial court[21] to enable the rest of the case to proceed in the event that a separate and distinct issue is resolved by said court and held to be final.[22]

In the present case, the filing of a record on appeal was not necessary since no other matter remained to be heard and determined by the trial court after it issued the appealed order granting respondent's petition for cancellation of birth record and change of surname in the civil registry.

The appellate court's reliance on Zayco v. Hinlo, Jr.[23] in denying petitioner's motion for reconsideration is misplaced. In Zayco which was a petition for letters of administration of a deceased person's estate, the decedent's children appealed the trial court's order appointing the grandson of the decedent as administrator of the estate. Their notice of appeal and record on appeal were denied due course by the trial court on the ground that the appealed order is interlocutory and not subject to appeal. But even if the appeal were proper, it was belatedly filed. On certiorari by the decedent's children, the appellate court sustained the trial court. On petition for review, this Court reversed the appellate court, holding that "[a]n order appointing an administrator of a deceased person's estate is a final determination of the rights of the parties in connection with the administration, management and settlement of the decedent's estate," hence, the order is "final" and "appealable."[24] The Court also held that the appeal was filed on time.

In Zayco, unlike in the present case, a record on appeal was obviously necessary as the proceedings before the trial court involved the administration, management and settlement of the decedent's estate- matters covered by Section 1 of Rule 109 wherein multiple appeals could, and did in that case, call for them.

WHEREFORE, the petition is GRANTED. The Court of Appeals Resolutions of September 2, 2008 and December 22, 2008 in CA G.R. CV No. 90346 are REVERSED and SET ASIDE. The appeal of petitioners before the appellate court is REINSTATED.

SO ORDERED.

Brion, Bersamin, Villarama, Jr., and Sereno, JJ., concur.

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[1] Records, pp. 4-20.

[2] Annex "A" (Certificate of Live Birth) of Petition in Sp. Proc. No. 106-M-2007, id. at 8.

[3] Annex "B" (Certificate of Marriage), id. at 9.

[4] Respondent's petition did not indicate the date Koichi Nishina died.

[5] Annex "C" (Certificate of Marriage), records, p. 10.

[6] Annex "D," id. at 11.

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[7] Annex "E" ("Family Registry" of Kenichi Hakamada), id. at 12.

[8] Annex "F," id. at 13.

[9] Annexes "G" and "H," id. at 14-20.

[10] Exhibits "N" and "O," TSN, September 26, 2007, p. 6; id. at 61.

[11] TSN, id. at 7-8; pp. 62-63 (emphasis supplied).

[12] Ibid.

[13] Records, pp. 53-55.

[14] Id. at 55.

[15] Id. at 69.

[16] CA rollo, pp. 13-19.

[17] Id. at 50-54.

[18] Penned by Associate Justice Mariflor P. Punzalan Castillo and concurred in by Associate Justices Conrado M. Vasquez, Jr. and Rosmari D. Carandang; id. at 60-63.

[19] Id. at 63.

[20] Id. at 74-76.

[21] FLORENZ D. REGALADO, REMEDIAL LAW COMPENDIUM, VOL. II, Eighth Revised Edition (2000), p. 195.

[22] Roman Catholic Archbishop of Manila v. CA, G.R. No. 111324, July 5, 1996, 327 Phil. 810, 819.

[23] G.R. No. 170243, April 16, 2008, 551 SCRA 613.

[24] Id. at 616-617.

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