

**ELY CHAN SA VELASCO, PETITIONER, VS. HON. RODOLFO A. ORTIZ,
JUDGE OF THE COURT OF FIRST INSTANCE OF RIZAL, BRANCH
XXXI, QUEZON CITY AND TAN SIM TE @ GRACE VELASCO,
RESPONDENTS.**

G.R. NO. 51973. April 16, 1990

Ponente: FELICIANO, J.

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FELICIANO, J.:

In this Petition for Certiorari and Prohibition, petitioner asks us to reverse and set aside the order of respondent Judge Rodolfo A. Ortiz dated 26 July 1979, which order had granted a Motion for New Trial filed by private respondent.

The antecedent facts may be summarized in the following manner.

Private respondent Tan Sim Te was the ward of petitioner Ely Chan Sa Velasco and her husband Lorenzo Velasco. Tan Sim Te was not the daughter of Lorenzo Velasco; neither had she been formally or legally adopted by petitioner and her husband. Sometime in 1974, Lorenzo suffered paralysis of his right hand and consequently lost the use of that hand. In view thereof, he converted his then existing bank accounts standing in his own name into joint accounts under his name and that of Tan Sim Te, amounts therein being withdrawable by either or both Lorenzo Velasco and Tan Sim Te.

On 28 January 1975, Lorenzo was examined by Dr. Raul V. Idea, a neurologist, who found him suffering from "asphasia" and a "tumor on the left cerebral hemisphere, probably metastatic".[1] His condition was described in the following terms by Dr. Idea:

"x x x x x x x x x

x x x Asphasia is the inability of a person to understand or comprehend what is being spoken and the inability to express oneself; that the condition of the patient was already moderately advanced and that the patient could not even then understand and comprehend but that he also could no longer obey simple instructions. Lorenzo Velasco was also found to have malignant cancer of the prostate glands which caused the brain tumor which had metastasized. Lorenzo Velasco's illness was incurable so that the doctor's advice was for him to be brought home in order that money may not be further expended uselessly on his hospitalization. x x x

x x x x x x x x x"[2]

On 5 February 1975, or about a week after the medical examination, private respondent Tan Sim Te withdrew the entire balance standing in China Banking Corporation Savings Account No. 30-0882-7 in the amount of P99,504.83 and closed the account. Then on 14 February 1975, Tan Sim Te withdrew P37,000.00 from Lorenzo's current account with the Citizens bank and Trust Company.

As anticipated, Lorenzo Velasco died on 28 February 1975.

On 24 May 1975, petitioner in her personal capacity and in her capacity as administratrix of the intestate estate of Lorenzo Velasco, filed with the then Court of First Instance of Rizal a complaint for the recovery of property and annulment of certain documents alleging, among other things, that private respondent Tan Sim Te had misappropriated and converted to her own use the bank deposits of the deceased Lorenzo Velasco. In her Answer, Tan Sim Te countered that the withdrawals had been made by her upon the instructions of Lorenzo Velasco to whom the monies were allegedly given and who allegedly used the same to pay his creditors and to defray his hospitalization and medical expenses.

After trial on 17 March 1979, the trial court then presided over by Judge Augusto L. Valencia rendered a decision in favor of petitioner, the dispositive portion of which reads:

"WHEREFORE, in view of all the foregoing considerations, judgment is hereby rendered, ordering the defendant: (a) to deliver to plaintiff, as Administratrix of the estate of Lorenzo Velasco, the amounts of P99,504.83 and P37,000.00, or a total of P136,504.83 representing double the share of the estate of Lorenzo Velasco in the said deposits; (b) to deliver to plaintiff in her personal capacity the amounts of P49,752.41 and P18,500.00, or a total of P68,252.41 corresponding to plaintiff's conjugal share in the said bank deposits above stated; (c) to pay to plaintiff interest of 6% per annum on both amounts until the same are fully paid and delivered to plaintiff; (d) to pay to plaintiff attorney's fees in the amount of P20,000.00; and (e) to pay the costs of suit." [3]

A copy of the decision was received by private respondent through her former counsel Atty. Jose J. Acejas on 6 April 1979.

On 10 May 1979, or four (4) days after the 30-day reglementary period to appeal had lapsed, private respondent through her new counsel Atty. Sedfrey A. Ordoñez, filed a Motion for New Trial on the ground of newly discovered evidence. [4] The alleged newly discovered evidence proffered by this Motion consisted of a certification dated 17 December 1975, issued by Dr. Hinigio Tan of the Chinese General Hospital, relating to the physical and medical examination undergone by the deceased Lorenzo Velasco during his confinement at that hospital and thereafter as of 24 January 1975. The certification read as follows:

"This is to certify that I was one of the attending physicians of a certain Lorenzo Velasco who was confined at the Chinese General Hospital from November 20 to December 22, 1974. I was called to see the patient in connection with his hip fracture accident which occurred on November 22, 1974. After his discharge, he came to my clinic for regular follow-up treatment of his hip fracture. His last visit to my clinic was on January 24, 1975. During this period I asked him questions about his illness and disability and other things and he was able to answer them intelligently although his speech was such that he could only answer in slow stuttering or faltering manner." [5]

In the Motion for New Trial, private respondent's new counsel sought to impugn the diagnosis of Dr. Raul V. Idea, contending that that diagnosis was "indirect and speculative" and that "Dr. Idea [had] not categorically ruled out the possibility of Lorenzo Velasco's ability on February 5 and 14, 1975 to comprehend questions and to indicate his assent or dissent to said questions which may have been addressed to him regarding [the withdrawals from Lorenzo's bank accounts]." [6] Private respondent's new counsel sought to excuse the tardiness of the filing of the Motion for New Trial by pleading "excusable negligence". Atty. Sedfrey A. Ordoñez stated that his professional services had been engaged only on 18 April 1979 and that:

"x x x Believing in good faith that the undersigned counsel still have thirty (30) days from April 18, 1979 within which to file the appropriate pleadings and/or motions to vacate and/or appeal the judgment and due to daily court appearances and other professional engagements, he deferred action on the matter. It was only yesterday (i.e. 9 May 1979) that the undersigned counsel was informed that the former counsel of defendant, Atty. Jose Acejas, has not filed any petition or motion insofar as the decision is concerned despite the fact that

he realized that the period within which the defendant can have the judgment set aside or vacated has already lapsed. x x x "[7]

The trial court, by that time presided over by respondent Judge Rodolfo A. Ortiz, granted the Motion for New Trial in an order dated 26 July 1979. In this order, Judge Ortiz held that the excuse offered by private respondent's new counsel constituted excusable negligence and that the "newly discovered evidence" would probably alter the result of the case. Petitioner moved for reconsideration of this order; the trial court refused reconsideration in an order dated 18 October 1979.

Accordingly, on 26 November 1979, petitioner commenced the instant Petition for Certiorari and Prohibition with prayer for preliminary injunction. In a resolution dated 5 December 1979, this Court issued a Temporary Restraining Order enjoining respondent Judge from proceeding with the case (Civil Case No. 23208).

The sole issue to be resolved here relates to the propriety of the grant by the respondent judge of private respondent's Motion for New Trial.

Section 1 of Rule 37 of the Revised Rules of Court provides:

"SECTION 1. Grounds of and period for filing motion for new trial. - Within the period for perfecting appeal, the aggrieved party may move the trial court to set aside the judgment and grant a new trial for one or more of the following causes materially affecting the substantial rights of said party:

(a) Fraud, accident, mistake or excusable negligence which ordinary prudence could not have guarded against and by reason of which such aggrieved party has probably been impaired in his rights;

(b) Newly discovered evidence, which he could not, with reasonable diligence, have discovered and produced at the trial, and which if presented would probably alter the result:

(c) Award of excessive damages, or insufficiency of the evidence to justify the decision, or that the decision is against the law." (Italics supplied.)

There is no dispute that at the time the Motion for New Trial was filed, the reglementary period to appeal had already lapsed and that Judge Valencia's decision dated 17 March 1979 had already become final and executory. It is firmly established that a judgment which has become final and executory can no longer be altered and modified, and much less set aside by the court which rendered it since such court has already lost jurisdiction over the case.[8] Thereafter, the power and prerogative to order suspension of the rules of procedure is reposed, not in the court which had rendered such decision, but rather in an appellate court and ultimately this Court, and then only upon a showing that otherwise the imperious demands of substantial justice will be thwarted.[9]

Respondent judge in his order granting the Motion for New Trial invoked *Reyes v. Court of Appeals*,[10] as authority for the proposition that the respondent judge could, "in the interest of justice extend the period within which a motion for new trial may be filed by the defendant provided there was excusable negligence on her part, which prevented her from filing the said motion within the reglementary period." [11]

While it is not necessary to tarry long on this point, it appears to us useful to note that *Reyes v. Court of Appeals* is far more rigorous than respondent judge apparently believed it was. There, this Court through Mr. Justice Ozaeta said:

"Fourth. Neither a mistake of law - in this case the appellant mistakenly believed that his pro forma motion suspended the time for appeal - nor the fact that the delay in the filing of the appeal bond was only one day, nor both of these circumstances together, are legal justifications for noncompliance or relaxation of the rule. If mistake of law were ever excusable, the law would be unenforceable. That is why it is expressly provided that 'ignorance of the law does not excuse anyone from compliance therewith.' (Art. 2, Civil Code.) If, without

legal justification, transgression of the deadline fixed by the rule for perfecting an appeal may be sanctioned, the public policy behind that rule would necessarily have to be abandoned, and the litigants would be at a loss to know exactly when they may obtain execution of judgments or consider the case terminated. On the other hand, when the law fixes thirty days, we cannot take it to mean also thirty-one days. If that deadline could be stretched to thirty-one days in one case, what would prevent its being further stretched to thirty-two days in another case, and so on, step by step, until the original line is forgotten or buried in the growing confusion resulting from the alterations? That is intolerable. We cannot fix a period with the solemnity of a statute and disregard it like a joke. If law is founded on reason, whim or fancy should play no part in its application.

We do not agree that 'the ends of justice would be better subserved' by allowing an appeal presented 'only one day late.' There is no basis in fact, law or reason for such conclusion. On the contrary, these considerations militate against it: (1) The orderly administration of justice would suffer a drawback if the period for perfecting appeals be rendered uncertain, as it would be, by sanctioning such transgression of the deadline. (2) The appealed decision is presumed by law to be just and correct, and therefore the denial of the appeal does not necessarily imply an injustice to the appellant. (3) The right to appeal is a purely statutory right, and he who wants to exercise it must comply with the statute.

x x x x x x x x"[12]

It also seems useful to point out that where the reglementary period to appeal has not yet expired, a Motion for New Trial under Rule 37 of the Revised Rules of Court is the appropriate remedy. Where, upon the other hand, the judgment involved has already become final, the appropriate recourse is either to a petition for relief from judgment under Rule 38 of the Revised Rules of Court, or in an appropriate case, a petition for annulment of judgment. It is not mere coincidence that the principal grounds which justify grant of the Motion for New Trial under Rule 37, are the same grounds which must be shown in a petition for relief from judgment under Rule 38: fraud, accident, mistake or excusable negligence.

In the case at bar, as already noted, new counsel for private respondent pleaded his own negligence in filing the Motion for New Trial four (4) days after the judgment had become final "excusable negligence," such negligence consisting of his failure to determine and inform himself of the exact date of receipt by his client of Judge Valencia's decision, due to his erroneous belief that he still had thirty (30) days (i.e., the full reglementary period) from the time he accepted the case from his client. The newly retained counsel in addition pleaded that he "has had court appearances and other professional engagements in equally important cases" such that "he forgot all about the decision rendered in this case [Civil Case No. 23208, Court of First Instance of Rizal, Branch 31 in Quezon City]."[13]

We are unable to adopt the view taken by respondent judge on this matter. Even a novice litigator would have instinctively ascertained the date of finality of the judgment he is retained to reverse. We find it difficult to understand how a lawyer as distinguished and experienced as private respondent's new counsel could have supposed, without asking his client, that he had the full reglementary period to file a Motion for New Trial or to appeal, from the day his services were retained. Moreover, this Court has frequently rejected claimed volume of work and a loaded calendar as an excuse for failure to comply with the reglementary periods established by the Revised Rules of Court. For instance, in *Roldan v. Republic of the Philippines, et al.*,^[14] the Court said:

"The volume and pressure or work of the Solicitor-in-charge of the case does not constitute such fraud, accident, mistake or excusable negligence as to warrant the relief from judgment contemplated under the Rules of the Commission. There are many other members or associates in the Office of the Solicitor General to whom the case may be reassigned to file the motion for reconsideration or appeal. While it cannot be denied that the said office is swamped with work, some system can always be devised to give priority to cases like this. Indeed, there is no cogent reason why in such a big law office with so many lawyers at its beck and call,

even a simple petition for relief from judgment could not have been prepared within a three month period from the time the judgment was rendered or within thirty days from the time it learned of the judgment."

While private law firms like that of the new counsel are commonly smaller than the present Office of the Solicitor General, the same principle of policy must be held applicable to them.

We turn to the question of whether or not Dr. Hinigio Tan's certification may be regarded as "newly discovered evidence" under Rule 37 of the Revised Rules of Court. In *Tumang v. Court of Appeals*, the requirements of a Motion for New Trial grounded upon newly discovered evidence were summarized in the following manner:

"A motion for new trial upon the ground of newly-discovered evidence, is properly granted where there is concurrence of the following requisites, namely: (a) the evidence had been discovered after trial; (b) the evidence could not have been discovered and produced during trial even with the exercise of reasonable diligence; and (c) the evidence is material and not merely corroborative, cumulative or impeaching and is of such weight that if admitted, would probably alter the result.

x x x x x x x x

In order that a particular piece of evidence may be properly regarded as "newly discovered" for purposes of a grant of new trial, what is essential is not so much the time when the evidence offered first sprang into existence nor the time when it first came to the knowledge of the party now submitting it; what is essential is, rather, that the offering party had exercised reasonable diligence in seeking to locate such evidence before or during trial but had nonetheless failed to secure it. Thus a party who, prior to the trial had, no means of knowing that a specific piece of evidence existed and was in fact obtainable, can scarcely be charged with lack of diligence. It is commonplace to observe that the term 'diligence' is a relative and variable one, not capable of exact definition and the contents of which must depend entirely on the particular configuration of facts obtaining in each case." (Underscoring supplied.)[15]

Private respondent Tan Sim Te claimed that she had discovered Dr. Tan's certification only after trial, i.e., on 13 February 1979. This was vehemently controverted by petitioner's counsel who indeed described such statement as a "blatant perjury". Petitioner, both in her opposition to the Motion for New Trial before the trial court[16] and in her memorandum submitted to this Court[17] pointed out that the same piece of evidence had been submitted by private respondent Tan Sim Te as part of her evidence as respondent in a preliminary investigation for "falsification of public document" in IS No. 75-16615 before the Fiscal of Quezon City in late 1975 or early 1976, which preliminary investigation resulted in the filing in court of an information against Tan Sim Te and others for falsification of public documents. Obviously, then, Dr. Tan's certification was known and available to private respondent during the trial of Civil Case No. Q-23208. While the records of IS No. 75-16615, Office of the City Fiscal of Quezon City, are not before this Court, private respondent's failure to deny petitioner's allegations lead us to believe that such allegations are true and that consequently Dr. Hinigio Tan's certification could not have properly been regarded as "newly discovered evidence."

Moreover, Dr. Tan's certification is clearly in the nature of impeaching evidence, for it seeks merely to weaken or controvert the written findings of Dr. Raul V. Idea that as of 28 January 1975 (that is, four (4) days after the last visit of the deceased Lorenzo Velasco to the clinic of Dr. Hinigio Tan) Lorenzo's mental condition was already in the process of deterioration. Being merely impeaching evidence in character, Dr. Tan's certification certainly by itself would not have resulted in a different decision. The trial court had found private respondent Tan Sim Te's testimony to be full of inconsistencies and outright prevarication. When presented as an adverse witness, she testified that she had deposited P99,504.83 into her personal individual account and had spent the same, thereby contradicting her own allegations in her Answer that the said amount had been turned over to Lorenzo Velasco. Evidence was also adduced before the trial court that the P37,000.00 was withdrawn upon instructions of Tan Sim

Te to purchase a cashier's check payable to Supercars Inc. obviously in payment of a new car bought by or for her. One of respondent's own witnesses Lydia Alolon, testified that one of her duties then had been to clean up Lorenzo of his feces and urine, thereby indicating that Lorenzo no longer had the capacity to communicate even his basic physiological needs. Finally, no accounting of the amounts withdrawn by Tan Sim Te was ever presented by her, and her allegations that those sums had been used to defray Lorenzo's hospital bills and to pay Lorenzo's creditors remained unsubstantiated. In view of all these circumstances, we find it very difficult to understand how private respondent judge could have supposed that Dr. Tan's certification would have sustained a different result.

WHEREFORE, the Court Resolved to GRANT the Petition for Certiorari and to SET ASIDE and ANNUL the Orders dated 26 July 1979 and 18 October 1979 of respondent judge in Civil Case No. Q-23208. The Temporary Restraining Order issued by the Court on 5 December 1979 is hereby made PERMANENT. The Court also Resolved to REMAND the case to the proper Regional Trial Court for execution. Costs against private respondent.

SO ORDERED.

Fernan, C.J., Bidin, and Cortes, JJ., concur.
Gutierrez, Jr., J., on leave.

[1] Decision, dated 17 March 1979 of the trial court in Civil Case No. Q-23208; Rollo, p. 24.

[2] Id.

[3] Id., p. 29.

[4] Rollo, p. 30.

[5] Opposition to the Motion for New Trial dated 15 May 1979; Rollo, p. 41.

[6] Motion for New Trial dated 10 May 1979; Rollo, p. 31.

[7] Rollo, p. 33; parenthesis supplied.

[8] See e.g., *Ocampo v. Calaug*, 19 SCRA 971 (1967); *Vda. de Emmas v. Emmas*, 95 SCRA 470 (1980); *United CMC Textile Workers Union v. Labor Arbiter*, 149 SCRA 424 (1987).

[9] *C. Viuda de Ordoveza v. Raymundo*, 63 Phil. 275 (1936); *Republic v. Court of Appeals*, 83 SCRA 453 (1978); *Siguenza v. Court of Appeals*, 137 SCRA 570 (1985).

[10] 74 Phil. 235 (1943).

[11] Rollo, p. 44.

[12] 74 Phil. at 238; underscoring supplied.

[13] Rollo, p. 37.

[14] G.R. No. L-45618, 15 February 1990.

[15] G.R. No. 82072 promulgated 17 April 1989; see also *People v. Aleman*, 102 SCRA (1981); *People v. Damosa*, 91 SCRA 364 (1979); *People v. Mangulabnan*, 99 Phil. 992 (1956).

[16] Rollo, p. 38.

[17] Rollo, p. 99.

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