

FIRST DIVISION

[G.R. No. 209057, March 15, 2017]

**RENATO S. MARTINEZ, PETITIONER, V. JOSE MARIA V.
ONGSIAKO, RESPONDENT.**

R E S O L U T I O N

SERENO, C.J.:

In this Petition for Review on Certiorari,^[1] petitioner Renato S. Martinez seeks to set aside the Decision^[2] and the Resolution^[3] of the Court of Appeals (CA) in CA-G.R. CV No. 96202. He contends that the CA committed an egregious error when it denied his appeal from the Order^[4] and the Resolution^[5] of the Regional Trial Court (RTC) declaring that he had waived his right to cross-examine respondent Jose Maria V. Ongsiako during the proceedings for the perpetuation of the latter's testimony.

ANTECEDENT FACTS

The facts, as culled from the records, are as follows.

On 17 May 2010, respondent filed a Petition^[6] before the RTC of Makati seeking permission to perpetuate his testimony under Rule 24 of the Rules of Civil Procedure.^[7] He alleged that the taking of his deposition was necessary, because (a) he expected to be a party to certain actions involving properties in which he had an interest; (b) he was diagnosed with end-stage renal disease secondary to chronic glomerulonephritis; (c) his health continued to deteriorate; and (d) he needed to preserve his testimony on certain material facts in anticipation of future suits. He also identified the areas to be covered by his proposed testimony.^[8]

In his Petition, respondent named the expected adverse parties in the actions he anticipated would be filed: (a) petitioner as the administrator of the estate of Nori V. Ongsiako; (b) Juan Miguel V. Ongsiako, respondent's brother; and (c) the Bank of the Philippines Islands (BPI), a mortgagee of a certain property over which respondent had an interest.

On 17 June 2010, petitioner filed a Comment/Opposition^[9] to the Petition. He objected to the proceedings on the ground that estate proceedings over the properties mentioned by respondent in the latter's petition were then pending before Branch 58 of the RTC Makati. He explained that it was more appropriate to perpetuate the testimony of respondent in those proceedings, since the latter was also an active participant in that case, in which the intended testimony would inevitably be used. Petitioner likewise asserted that the filing of a separate action for the perpetuation of testimony was tantamount to forum shopping.

In a Resolution^[10] dated 21 June 2010, the RTC granted the Petition. It noted that all the requirements under Rule 24 of the Rules of Court had been satisfied; hence, respondent should be allowed to perpetuate his testimony. The trial court ordered his deposition to be taken on 23 June 2010.

Petitioner, along with the other expected adverse parties, sought a reconsideration of the RTC Resolution. To resolve the motion, the trial court directed the parties to orally argue their grounds in support of, or against, the reconsideration of the earlier Resolution during the hearing on 23 June 2010.^[11] After considering the contentions of all the parties, the RTC thereafter denied the motions in open court.^[12] The hearing then proceeded with the parties agreeing that the direct testimony of respondent would be taken through a judicial affidavit to be submitted on or before 4 June 2010, while the cross-examination by adverse parties would be on 7 July 2010.^[13] The RTC eventually reset the hearing scheduled for 7 July 2010 to 13 July 2010.^[14]

On 13 July 2010, the hearing proceeded notwithstanding the absence of petitioner and his counsel, and the direct examination of respondent was concluded. The RTC thereafter scheduled the cross-examination of the expected adverse parties on 21 July, 4 August, and 11 August 2010.^[15]

To allow the parties to attempt settlement negotiations, the scheduled cross-examination did not proceed on 21 July 2010. Instead, the RTC conducted confidence-building activities for respondent and his brother. The hearing on 4 August 2010 did not push through either, presumably for the same reason. The parties, however, failed to reach an agreement.

The inability of the parties to settle their conflict prompted the RTC to continue the proceedings on 11 August 2010. The scheduled hearing was, however, impeded by the withdrawal of appearance^[16] by the law firm representing Juan Miguel. Again, the trial court was constrained to cancel the cross-examination of respondent and reset the hearing to 18 August 2010.^[17] This directive was announced to all parties present in open court.^[18] For those who were absent during the hearing, such as petitioner and his counsel, the RTC directed that copies of the written order be served upon them.^[19]

On 16 August 2010, the RTC received a copy of the Petition for Certiorari^[20] filed by petitioner with the CA. The Petition questioned the Resolution dated 21 June 2010, as affirmed by the Order dated 23 June 2010, allowing the perpetuation of respondent's testimony in a separate proceeding.

On 18 August 2010, the cross-examination of respondent finally proceeded.^[21] Juan Miguel's new counsel requested for a continuance to have more time to prepare for the cross-examination, but the RTC denied his request upon noting that he had already been given sufficient time to do so.^[22] It likewise observed that the proceedings had already suffered many delays.^[23] BPI's counsel then proceeded to cross-examine respondent;^[24] Juan Miguel's counsel, on the other hand, persisted in his refusal to participate in the proceedings.^[25]

As to petitioner and his counsel, both were again absent at the hearing.^[26] The RTC noted, however, that petitioner had filed a Motion to Suspend Proceedings^[27] right before the start of hearing on 18 August 2010. In his motion, he requested that the proceedings for the perpetuation of testimony be suspended pending the final resolution of the Petition for Certiorari earlier filed with the CA.

THE RULING OF THE RTC

Towards the end of the proceedings on 18 August 2010, the RTC issued an Order^[28] declaring that petitioner and Juan Miguel had waived their right to cross-examine respondent:

Considering that Mr. Juan Miguel Ongsiako has been forewarned by the Court to be prepared to cross-examine the petitioner herein last week, he is hereby now deemed to have waived his right to cross-examine herein petitioner Jose Maria V. Ongsiako.

The prospective adverse party Renato Martinez is hereby also declared to have waived his right to cross-examine the herein petitioner.

A fortiori, the testimony of Mr. Jose Maria V. Ongsiako is now perpetuated.

Considering that the testimony of Jose Maria V. Ongsiako has already been perpetuated, the petition extant is now deemed CLOSED and TERMINATED.^[29] (Emphasis supplied)

On 20 August 2010, counsel for petitioner appeared before the trial court for the hearing of the Motion to Suspend Proceedings. He was informed that the motion had merely been noted by the RTC, considering that the testimony of respondent had already been perpetuated.^[30]

Petitioner thereafter filed a Motion for Reconsideration^[31] of the Order dated 18 August 2010. He pointed out that neither he nor his counsel received notice of the scheduled hearing on 18 August 2010 and for this reason, they were not in court at the time. Petitioner emphasized that under the circumstances, their absence should not have been taken as a waiver of his right to cross-examine respondent. He also argued that it was imperative for the trial court to allow all the expected adverse parties to cross-examine respondent in the interest of justice.

In a Resolution^[32] dated 8 November 2010, the RTC denied the Motion for Reconsideration. It ruled that petitioner and his counsel had been properly notified of the hearing, although the notice sent to counsel was returned unserved, because the latter had moved to a new address without notifying the trial court. The RTC also noted that petitioner and his counsel failed to attend the hearing on 11 August 2010 despite due notice, and that their absence caused them to miss the announcement of the resetting. The Resolution stated:

Contrary to the stand of Mr. Martinez, he is legally and judicially presumed to have been validly and duly notified of the 18 August 2010 hearing apropos.

x x x x

Since the counsel of record of Mr. Juan Miguel withdrew his appearance on the very same day of 11 August 2010, the Court had no other option left but to cancel the 11 August 2010 schedule and reset the same to 18 August 2010 at ten o'clock in the morning. It is to be underscored that it was incumbent upon Mr. Martinez and/or his counsel to have attended the 11 August 2010 setting but they unjustifiably did not. At any rate, facsimiles of the 11 August 2010 Order of the Court were served by registered mail to both Mr. Martinez and his attorney. However, the copy for the counsel of record for Mr. Martinez was returned unserved as the Ongsiako Dela Cruz Antonio and Timtiman Law Firm moved out of its office sans apprising the Court accordingly. It goes without saying that the counsel for Mr. Martinez was inexcusably negligent in not informing this Court of its change of address at once so the Court could have sent the copy of its 11 August 2010 Order to its new address. But it lamentably did not. Its negligence definitely binds its client, Mr. Martinez.

In fine, the aforementioned are the reasons why this Court deemed Mr. Martinez to have waived its right to cross-examine Mr. Ongsiako.^[33]

On 24 November 2010, petitioner filed a Notice of Appeal^[34] with the RTC to manifest his intention to elevate the matter to the CA. The trial court gave due course to the appeal on 25 November 2010.^[35]

THE RULING OF THE CA

In his appeal before the CA, petitioner claimed that the RTC had deprived him of the right to cross-examine respondent in violation of the fundamental principles of due process.^[36] Petitioner contradicted the trial court's pronouncement that he had been given sufficient notice of the hearing to be held on 18 August 2010. He pointed out that the records clearly showed that the copy intended for his counsel had been sent to the wrong address.^[37] Petitioner likewise emphasized that the RTC erred in allowing respondent to perpetuate testimony in a separate proceeding.^[38]

Respondent, on the other hand, sought the dismissal of the appeal. He maintained that the RTC did not err in giving due course to the Petition for the perpetuation of testimony;^[39] and that it correctly ruled that petitioner had waived the latter's right to cross-examination.^[40]

In a Decision^[41] dated 14 May 2013, the CA denied the appeal. It ruled that since depositions consist merely in the taking down of statements of witnesses for discovery purposes, the rules governing the procedure are accorded a broad and liberal treatment:

Thus, the perpetuation of testimony is not a trial where the opposing party has to introduce his evidence. It is again, merely taking down the statements of the witnesses with opportunity to cross-examine them. That the opportunity for cross-examination was afforded during the taking of the deposition does not matter as much as whether such opportunity was accorded a party at the time the testimonial evidence is actually presented against him during the trial or hearing. Deposition-

discovery rules are to be accorded a broad and liberal treatment and the liberty of a party to make discovery is well-nigh unrestricted if the matters inquired into are otherwise relevant and not privileged, and the inquiry is made in good faith and within the bounds of the law.

x x x x

Guided by these principles, oppositor-appellant's contentions are clearly wanting in merit. Utmost freedom is allowed in taking depositions and restrictions are imposed upon their use. No limitations other than relevancy and privilege have been placed on the taking of depositions. Oppositor-appellant has the burden to show that the deposition requested is not relevant to the issues and/or establish the existence of any claimed privilege. These, the oppositor-appellant has failed to do.^[42]

Petitioner sought a reconsideration of the Decision but the CA denied the motion. In its Resolution, it reiterated its discussion on the nature of depositions. In addition, it affirmed the findings of the RTC on the waiver of petitioner's right to cross-examine respondent. The appellate court ruled that the failure of petitioner and his counsel to attend hearings without justification was sufficient to warrant the waiver of the party's right to cross-examination.^[43]

PROCEEDINGS BEFORE THIS COURT

Before this Court, petitioner asserts that the CA erred in affirming the pronouncements of the RTC. He reiterates his arguments on the invalidity of the trial court's ruling citing due process grounds. He likewise insists that it was a grave error for the RTC to allow the perpetuation of respondent's testimony in a separate proceeding despite the pendency of a related estate case. In doing so, the trial court allegedly allowed respondent to commit forum shopping.

In his Opposition,^[44] respondent seeks the dismissal of the petition on the following grounds: (a) failure to raise new issues for the consideration of this Court; (b) absence of proof that the CA committed a reversible error in affirming the RTC ruling; (c) the negligence exhibited by petitioner and his counsel in their failure to attend hearings before the RTC, which thereby justified the Order depriving petitioner of the right to cross-examination; and (d) the absence of any proof that respondent committed forum shopping.

ISSUE

We note the attempt of petitioner to raise before this Court the issue of whether the CA correctly ruled that the deposition of respondent was properly taken in a separate proceeding. From the records of this case, however, it is evident that this very question was the subject of a Petition for Certiorari^[45] earlier filed by petitioner before the CA. Both parties have neglected to inform this Court of the outcome of the case. Nonetheless, the existence of that petition renders it improper for us to rule on that question.

In any event, the RTC Order and Resolution assailed in this case only involve the supposed waiver by petitioner of his right to cross-examine respondent. Hence, the sole issue presented to this Court for resolution is whether the CA correctly affirmed the RTC ruling that declared petitioner to have waived his right to cross-examination.