

SECOND DIVISION

[G.R. No. 219260, November 06, 2017]

**BERNICE JOAN TI, PETITIONER, VS. MANUEL S. DIÑO,
RESPONDENT.**

D E C I S I O N

PERALTA, J.:

This is to resolve the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court dated July 31, 2015 of petitioner Bernice Joan Ti that seeks to reverse and set aside the Decision^[1] dated January 10, 2014 and Resolution^[2] dated June 30, 2015 of the Court of Appeals (CA) reversing the Order^[3] dated May 20, 2011 of the Regional Trial Court (RTC), Branch 77, Quezon City in SP. Civil Action No. Q-09-65933, disapproving respondent's Notice of Appeal for being filed out of time.

The facts follow.

The Office of the City Prosecutor (*City Prosecutor*), on February 19, 2008, issued a Resolution recommending the filing of an Information against petitioner and a certain Julieta Fernandez (*Fernandez*) for falsification of public documents, to which the petitioner and Fernandez filed a Motion for Reconsideration of said resolution. The Metropolitan Trial Court (*MeTC*) allowed the reinvestigation of the case and, thereafter, the first ruling of the City Prosecutor was reversed and set aside. Thus, a Motion to Withdraw Information was filed before the MeTC which was granted by the latter in an Order dated June 24, 2008.

Subsequently, respondent, through a private prosecutor, filed a Motion for Reconsideration of the MeTC's Order dated June 24, 2008 and, on November 14, 2008, the MeTC issued an Order granting the same motion for reconsideration and, thus, finding probable cause to indict petitioner and Fernandez for the crime charged.

As such, petitioner and Fernandez filed a petition for *certiorari* and prohibition with prayer for temporary restraining order/preliminary injunction with the RTC, Branch 77, Quezon City and the case was docketed as SP. Civil Action No. Q-09-65933 seeking to enjoin the MeTC from proceeding with the case claiming that the MeTC committed grave abuse of discretion amounting to lack or excess of jurisdiction when it granted respondent's motion for reconsideration.

On March 8, 2010, the RTC rendered a decision and ruled that the MeTC committed grave abuse of discretion amounting to lack or excess of jurisdiction in reviving and reinstating the criminal case against petitioner and Fernandez on the basis of respondent's motion for reconsideration filed by the private prosecutor without the concurrence or conformity of the public prosecutor. Respondent, thereafter, filed a Motion for Reconsideration dated April 5, 2010, with the contention that the RTC

erred in its resolution because the private prosecutor had the right to file a motion for reconsideration even without the conformity or concurrence of the public prosecutor.

Thereafter, petitioner and Fernandez filed a Motion to Expunge the Motion for Reconsideration dated April 5, 2010 of the respondent on the ground that there was a violation of the 3-day notice rule for motions and the lack of MCLE Compliance of the respondent's counsel. Respondent also filed an Opposition to the motion to expunge the motion for reconsideration.

The RTC, on December 28, 2010, denied respondent's Motion for Reconsideration dated April 5, 2010. It was ruled that the failure of the respondent movant to comply with the 3-day notice rule on motions rendered the said motion for reconsideration defective. It was found by the RTC that respondent's motion for reconsideration was set for hearing on April 16, 2010, and that a copy thereof was received by the petitioner's counsel only on April 19, 2010 or three (3) days after the hearing. Respondent received a copy of the said RTC Resolution on February 11, 2011. Thereafter, respondent filed a Notice of Appeal on February 24, 2011 which petitioner opposed. Respondent also filed a Motion for the Transmittal of the Records of the Case to the Court of Appeals.

On May 20, 2011, the RTC disapproved respondent's Notice of Appeal for not having been perfected within the fifteen-day reglementary period, and thus, no order was made to transfer the records of the case to the CA.

Respondent, therefore, filed a petition for *certiorari* under Rule 65 with the CA assailing the Order of the RTC. Respondent contended that the RTC committed grave abuse of discretion amounting to lack or excess of jurisdiction in denying respondent's motion to transmit the records of the case to the CA despite the filing of the notice of appeal on time.

On January 10, 2014, the CA granted respondent's petition and reversed and set aside the RTC's Order dated May 20, 2011 and, thus, the notice of appeal of respondent was given due course. The CA further directed the RTC to transmit the entire records of the case to the former. The dispositive portion of the CA's decision reads as follows:

WHEREFORE, on all the foregoing, the instant petition for *certiorari* is GRANTED. The assailed Resolution dated May 20, 2011 is hereby REVERSED and SET ASIDE and petitioner's Notice of Appeal in SP Civil Action No. Q-09-65933 is GIVEN DUE COURSE. Accordingly, the court *a quo* is hereby DIRECTED to transmit the entire records of the said case to this Court.

SO ORDERED.^[4]

According to the CA, the respondent was able to file the notice of appeal within the fifteen-day reglementary period, thus, the RTC should have ordered the transfer of the records of the case with the CA. Aggrieved, petitioner filed a motion for reconsideration, which the CA denied in its Resolution dated June 30, 2015.

Hence, the present petition.

Petitioner contends that respondent's filing of a petition for *certiorari* under Rule 65 with the CA was premature. According to petitioner, the respondent should have first filed a motion for reconsideration of the RTC's denial of respondent's notice of appeal and motion for the transmittal of records to the CA before he filed the petition for *certiorari* before the CA. Petitioner further insists that respondent violated the three-day notice rule requiring every movant of a motion required to be heard to ensure the receipt of the said motion with notice of hearing to the other party at least three (3) days before the date of the hearing. Petitioner argues that respondent should have resorted to personal service of the motion because such is not impossible considering that the counsel of petitioner's office is located in Ortigas Center, Pasig City, while that of the respondent's counsel is located in Malate, Manila.

In his Comment^[5] dated October 13, 2015, respondent reiterates the CA's decision and claims that the CA did not commit any error. In her Reply^[6] dated December 18, 2015, petitioner rehashes the arguments she stated in her petition.

The petition is meritorious.

The basic issue presented before this Court is whether or not, under the circumstances of this case, the provisions of the Rules of Court be interpreted liberally.

Sections 4 and 5, Rule 15 of the Rules of Court read as follows:

Section 4. Hearing of motion. - Except for motions which the court may act upon without prejudicing the rights of the adverse party, every written motion shall be set for hearing by the applicant.

Every written motion required to be heard and the notice of the hearing thereof shall be served in such a manner as to ensure its receipt by the other party at least three (3) days before the date of hearing, unless the court for good cause sets the hearing on shorter notice.

Section 5. Notice of hearing. - The notice of hearing shall be addressed to all parties concerned, and shall specify the time and date of the hearing which must not be later than ten (10) days after the filing of the motion.

These requirements are mandatory.^[7] Except for motions which the court may act on without prejudice to the adverse party, all motions must set a hearing.^[8] This includes motions for reconsideration.

The notice of hearing on the motion must be directed to the adverse party and must inform him or her of the time and date of the hearing.^[9] Failure to comply with these mandates renders the motion fatally defective, equivalent to a useless scrap of paper.^[10]

The RTC, in its Order^[11] dated December 28, 2010, ruled that respondent failed to comply with the 3-day notice rule in filing his motion for reconsideration, hence, the court treated the motion as mere scrap of paper and as such, the court granted

petitioner's motion to expunge respondent's motion for reconsideration. The said Order reads as follows:

x x x x

The records show that the private respondent's motion for reconsideration was set for hearing on April 16, 2010, and that a copy thereof was received by the petitioner's counsel only on April 19, 2010 or three (3) days after the hearing; and that there was no appearance on the part of the petitioners and their counsel at the hearing on the said motion for reconsideration.

The failure of the private respondent movant to comply with the 3-day notice rule on motions rendered the motion for reconsideration fatally defective. It is pro forma, a mere scrap or worthless piece of paper which is not entitled to judicial cognizance.

x x x x

Thus, the petitioner's "Motion to Expunge" from the record the private respondent's motion for reconsideration and to declare as final the Decision rendered in this case is meritorious.

Consequently, the Decision rendered in this case has become final after the lapse of fifteen (15) days or on May 5, 2010, pursuant to the ruling that a defective motion does not toll the running of the period to appeal from the judgment or final order.^[12]

It is indisputable that petitioner was not able to receive respondent's notice of hearing on time. According to respondent, a notice of hearing was sent to petitioner through registered mail. However, petitioner was only able to receive the said notice three days after the scheduled hearing. The Rules of Court mandates that every written motion required to be heard and the notice of the hearing thereof shall be served in such a manner as to ensure its receipt by the other party at least three (3) days before the date of hearing. In this case, respondent failed to ensure the receipt by the petitioner of the notice of hearing at least three days before the date of such hearing. The sending of a registered mail can hardly be an assurance that such notice will fall under the hands of the other party on time. Under the circumstances of the case, respondent should have personally served the notice of hearing since the offices of the respondent and petitioner's counsels are both located in the National Capital Region. The CA, however, did not find fault on the respondent, but ruled that the RTC should have exerted an effort to determine whether or not petitioner received the said notice of hearing, thus:

From the foregoing, it could be gleaned that public respondent court merely delved into technicalities instead of on the merits of the issues raised in petitioner's Motion for Reconsideration. In so ruling, it did not take into account the fact that, indeed, as alleged by herein petitioner, and, as proven by the certification issued by the Postmaster of the Pasig Central Post Office, the subject motion was served by registered mail to private respondent a considerable number of days before the scheduled hearing. Public respondent should not have faulted petitioner for private