

SECOND DIVISION

[G.R. No. 185899, December 08, 2010]

**SPOUSES REUBEN DELA CRUZ AND MINERVA DELA CRUZ,
PETITIONER, VS. RAMON C. PAPA IV, IN HIS CAPACITY AS CO-
ADMINISTRATOR OF THE ESTATE OF ANGELA M. BUTTE,
RESPONDENT.**

D E C I S I O N

ABAD, J.:

This case is about the plaintiff's lone witness who passed away due to illness before the adverse party could cross-examine him.

The Facts and the Case

In 1994, the Intestate Estate of Angela M. Butte (the Estate) filed an action for cancellation of titles, recovery of properties, and damages against several defendants, including petitioner spouses Reuben and Minerva Dela Cruz (the Dela Cruzes) before the Regional Trial Court (RTC) of Antipolo City in Civil Cases 94-3447 and 95-3816. On October 21, 1999 the Estate presented Myron C. Papa (Myron), its executor, to testify on the substance of the complaint. At the conclusion of Myron's testimony on that day, the RTC required the Estate and the latter agreed to present Myron anew at the next scheduled hearing to identify the originals of certain exhibits, after which counsels for the defendants, would begin to cross-examine him.

But the Estate never got around recalling Myron to the witness stand. He was taken ill and diagnosed as suffering from stage four colon and liver cancer, prompting respondent Ramon C. Papa IV (Ramon), the Estate's co-administrator, to seek repeated postponements of hearings in the case to allow Myron undergo intensive treatment. Later, the Estate filed a motion for leave to have the defendants cross-examine Myron by deposition at the hospital where he was confined. The RTC granted the motion on February 22, 2001^[1] and eventually set the deposition-taking on September 7, 2001 but Myron passed away on August 16, 2001.

On November 15, 2001 one of the defendants moved to expunge Myron's direct testimony. The Dela Cruzes for their part moved to dismiss the case for failure of the Estate to prosecute it. On March 13, 2002 the RTC issued an order, denying the two motions based on the ground that the Estate had no control of the circumstances that caused the delay in the case.

On December 3, 2003 the Estate asked leave of court to file its formal offer of exhibits. On December 5, 2003 the Dela Cruzes filed a motion to strike out Myron's testimony on the ground of failure to cross-examine him. Meanwhile, the Estate filed its formal offer of evidence.

In a March 4, 2005 Order,^[2] the RTC granted the Dela Cruzes' motion to strike out Myron's testimony on the ground that, due to the Estate's fault, such testimony was never completed, depriving the defendants of the opportunity to cross-examine him. Because the RTC denied the Estate's motion for reconsideration,^[3] it filed a special civil action of *certiorari* and *mandamus* before the Court of Appeals (CA) in CA-G.R. SP 91074, assailing the March 4, 2005 Order. Meanwhile, on August 16, 2005 the RTC admitted the Dela Cruzes' demurrer to evidence.

On July 25, 2008 the CA rendered a Decision,^[4] granting the petition and setting aside the RTC's order that struck out Myron's testimony. The CA denied the Dela Cruzes' motion for reconsideration.

Although the CA likewise set aside the RTC's denial of the respondent's documentary evidence and its admission of the Dela Cruzes' demurrer, it held that the RTC may not be compelled by *mandamus* to admit the documentary exhibits in issue, since the matter of admitting them is discretionary upon it. Because the CA declined to reconsider,^[5] the Dela Cruzes filed this petition for review, seeking reinstatement of the RTC's Order dated March 4, 2005.

The Issue Presented

The key issue in this case is whether or not the CA erred in reinstating Myron's testimony after the RTC ordered the same stricken out for depriving the defendants of the opportunity to cross-examine him.

The Court's Ruling

The CA said that the defendants were guilty of unreasonable delay in objecting to Myron's testimony. Myron died on August 16, 2001 yet the other defendants moved to expunge his testimony only on November 15, 2001. On the other hand, the Dela Cruzes filed a similar motion only in December 2003. Citing Section 36, Rule 132 of the Rules of Court,^[6] the CA held that they should have objected to Myron's testimony when it was offered or soon after the reason for objecting to its admission became apparent. When they failed to do so, said the CA, the defendants waived their right to object to the same.

The CA characterized the defendants' actions as betraying an "intention to defeat the (Estate's) action through a technicality."^[7] Because Myron's testimony was expunged after the respondent Estate had rested its case, it could no longer present other witnesses who may testify on and identify its documentary evidence, thus resulting in its inadmissibility. The CA ruled that as a result of the RTC's error in sustaining the defendants' actions, the Estate was thus "effectively deprived of an opportunity to meet the consequences of the expunction of Myron's testimony."^[8]

But it is evident that the defendants' right to cross-examine Myron did not yet come up when he finished his direct testimony on October 21, 1999. The Estate undertook to return him to the witness stand to identify for it the originals of certain documents. Consequently, when Myron was taken ill, the obligation to move the case forward continued to be on the Estate's side. Rather than move it, however,