

## THIRD DIVISION

[ G.R. No. 178933, September 16, 2009 ]

**RICARDO S. SILVERIO, JR. PETITIONER, VS. COURT OF APPEALS (FIFTH DIVISION) AND NELIA S. SILVERIO-DEE, RESPONDENTS.**

### DECISION

**VELASCO JR., J.:**

#### The Case

This Petition for Review on Certiorari under Rule 65 seeks the reversal of the May 4, 2007 Resolution<sup>[1]</sup> and July 6, 2007 Decision<sup>[2]</sup> of the Court of Appeals (CA) in CA-G.R. SP No. 98764, entitled *Nelia S. Silverio-Dee and Ricardo C. Silverio, Sr. (impleaded as necessary party) v. Reinato G. Quilala, in his capacity as Presiding Judge of the RTC of Makati, Branch 57, Ricardo S. Silverio, Jr., Edmundo S. Silverio, represented by Nestor Dela Merced II, and Sheriff Villamor R. Villegas.*

The assailed resolution granted private respondent's prayer for the issuance of a Temporary Restraining Order against public respondent Judge Quilala. On the other hand, the assailed decision set aside the Writ of Execution dated April 17, 2007 and the Notice to Vacate dated April 19, 2007 while directing the respondent lower court to give due course to the appeal of herein private respondent.

#### The Facts

The instant controversy stemmed from the settlement of estate of the deceased Beatriz Silverio. After her death, her surviving spouse, Ricardo Silverio, Sr., filed an intestate proceeding for the settlement of her estate. The case was docketed as SP. PROC. NO. M-2629 entitled *In Re: Estate of the Late Beatriz D. Silverio, Ricardo C. Silverio, Sr. v. Ricardo S. Silverio Jr., et al.* pending before the Regional Trial Court (RTC) of Makati City, Branch 57 (RTC).

On November 16, 2004, during the pendency of the case, Ricardo Silverio, Jr. filed a petition to remove Ricardo C. Silverio, Sr. as the administrator of the subject estate. On November 22, 2004, Edmundo S. Silverio also filed a comment/opposition for the removal of Ricardo C. Silverio, Sr. as administrator of the estate and for the appointment of a new administrator.

On January 3, 2005, the RTC issued an Order granting the petition and removing Ricardo Silverio, Sr. as administrator of the estate, while appointing Ricardo Silverio, Jr. as the new administrator.

On January 26, 2005, Nelia S. Silverio-Dee filed a Motion for Reconsideration of the Order dated January 3, 2005, as well as all other related orders.

On February 4, 2005, Ricardo Silverio Jr. filed an Urgent Motion for an Order Prohibiting Any Person to Occupy/Stay/Use Real Estate Properties Involved in the Intestate Estate of the Late Beatriz Silverio, Without Authority from this Honorable Court.<sup>[3]</sup>

Then, on May 31, 2005, the RTC issued an Omnibus Order<sup>[4]</sup> affirming its Order dated January 3, 2005 and denying private respondent's motion for reconsideration. In the Omnibus Order, the RTC also authorized Ricardo Silverio, Jr. to, upon receipt of the order, immediately exercise his duties as administrator of the subject estate. The Omnibus Order also directed Nelia S. Silverio-Dee to vacate the property at No. 3, Intsia, Forbes Park, Makati City within fifteen (15) days from receipt of the order.

Nelia Silverio-Dee received a copy of the Omnibus Order dated May 31, 2005 on June 8, 2005.

On June 16, 2005, private respondent filed a Motion for Reconsideration dated June 15, 2005<sup>[5]</sup> of the Omnibus Order. This was later denied by the RTC in an Order dated December 12, 2005, which was received by private respondent on December 22, 2005.

Notably, the RTC in its Order dated December 12, 2005<sup>[6]</sup> also recalled its previous order granting Ricardo Silverio, Jr. with letters of administration over the intestate estate of Beatriz Silverio and reinstating Ricardo Silverio, Sr. as the administrator.

From the Order dated December 12, 2005, Ricardo Silverio, Jr. filed a motion for reconsideration which was denied by the RTC in an Order dated October 31, 2006. In the same order, the RTC also allowed the sale of various properties of the intestate estate of the late Beatriz Silverio to partially settle estate taxes, penalties, interests and other charges due thereon. Among the properties authorized to be sold was the one located at No. 3 Intsia Road, Forbes Park, Makati City.<sup>[7]</sup>

Meanwhile, on January 6, 2006, Nelia Silverio-Dee filed a Notice of Appeal dated January 5, 2006<sup>[8]</sup> from the Order dated December 12, 2005 while the Record on Appeal dated January 20, 2006<sup>[9]</sup> was filed on January 23, 2006.

Thereafter, on October 23, 2006, Ricardo Silverio, Jr. filed a Motion to Dismiss Appeal and for Issuance of a Writ of Execution<sup>[10]</sup> against the appeal of Nelia Silverio-Dee on the ground that the Record on Appeal was filed ten (10) days beyond the reglementary period pursuant to Section 3, Rule 41 of the Rules of Court.

Thus, on April 2, 2007, the RTC issued an Order<sup>[11]</sup> denying the appeal on the ground that it was not perfected within the reglementary period. The RTC further issued a writ of execution for the enforcement of the Order dated May 31, 2005 against private respondent to vacate the premises of the property located at No. 3, Intsia, Forbes Park, Makati City. The writ of execution was later issued on April 17, 2007<sup>[12]</sup> and a Notice to Vacate<sup>[13]</sup> was issued on April 19, 2007 ordering private respondent to leave the premises of the subject property within ten (10) days.

Consequently, private respondent filed a Petition for Certiorari and Prohibition (With

Prayer for TRO and Writ of Preliminary Injunction) dated May 2, 2007<sup>[14]</sup> with the CA.

On May 4, 2007, the CA issued the assailed Resolution granting the prayer for the issuance of a TRO. In issuing the TRO, the CA ruled that the Notice of Appeal was filed within the reglementary period provided by the Rules of Court applying the "fresh rule period" enunciated by this Court in *Neypes v. Court of Appeals*<sup>[15]</sup> as reiterated in *Sumaway v. Union Bank*.<sup>[16]</sup>

Afterwards, on July 6, 2007, the CA issued the assailed decision granting the petition of private respondent. The dispositive portion reads:

**WHEREFORE**, in view of the foregoing, the instant petition is **GRANTED** and **GIVEN DUE COURSE**. Accordingly, the **Order**, dated April 2, 2007, the **writ of execution**, dated April 17, 2007, and the **Notice to Vacate**, dated April 19, 2007, are **ANNULLED AND SET ASIDE**. Further, the court a quo is hereby directed to give due course to the appeal of Nelia S. Silverio-Dee.

**SO ORDERED.**

Hence, the instant petition.

### **The Issues**

-A-

The Omnibus Order dated May 31, 2005 (Annex G of Annex C) and the Order dated December 12, 2005 are Interlocutory Orders which are not subject to appeal under Sec. 1 of Rule 41;

-B-

The respondent Court seriously erred and/or committed grave abuse of discretion amounting to lack of or excess of jurisdiction, in deliberately failing to decide that the basis of the occupancy of Nelia S. Silverio-Dee are fraudulent documents, without any authority from the Intestate Court;

-C-

The respondent Court seriously erred and/or committed grave abuse of discretion amounting to lack of or excess of jurisdiction, in issuing precipitately the temporary restraining order (TRO) in its Resolution dated May 4, 2007 (Annex A-1);

-D-

The respondent Court seriously erred and/or committed grave abuse of

discretion amounting to lack of or excess of jurisdiction in annulling the Order dated April 2, 2007, the Writ of Execution dated April 17, 2007, and the Notice to Vacate dated April 19, 2007 because the respondent Silverio-Dee's occupancy of the Intestate property located at No. 3 Intsia Road, Forbes Park, Makati City (Annex N of Annex C) will prevent the sale authorized by the Order dated October 31, 2006 to secure funds for the payment of taxes due which are now high and rapidly increasing payment of which must not be enjoined.<sup>[17]</sup>

### **The Court's Ruling**

This petition is meritorious.

### **The May 31, 2005 Order of the RTC Is an Interlocutory Order, Not Subject to an Appeal**

To recapitulate, the relevant facts to the instant issue are as follows:

On May 31, 2005, the RTC issued an Omnibus Order ordering Nelia Silverio-Dee to vacate the premises of the property located at No. 3, Intsia Road, Forbes Park, Makati City. She received a copy of the said Order on June 8, 2005. Instead of filing a Notice of Appeal and Record on Appeal, private respondent filed a motion for reconsideration of the Order. This motion for reconsideration was denied in an Order dated December 12, 2005. This Order was received by private respondent on December 22, 2005. On January 6, 2006, private respondent filed her Notice of Appeal while she filed her Record on Appeal on January 23, 2006.

Thus, in denying due course to the Notice/Record on Appeal, the RTC, in its Order dated April 2, 2007, ruled:

Verily, the appeal taken by the movant Nelia Silverio-Dee from the Order of this Court dated December 12, 2005 denying the Motion for Reconsideration is misplaced as no appeal may be taken from the order denying the motion for reconsideration (see Section 1, Rule 41 of the 1997 Rules of Civil Procedure in relation to Section 1(f), Rule 109 of the Rules of Court). Furthermore, assuming that what said movant had appealed is the final Order dated May 31, 2005, still, the appeal cannot be given due course as the Record on Appeal had been filed beyond the thirty-day period to appeal (see Section 3 Rule 41 of the Rules of Court)

**WHEREFORE**, the appeal filed by Nelia Silverio is hereby **DENIED** due course.

Let a writ of execution issue to enforce the Order dated May 31, 2005 against Nelia Silverio-Dee requiring her to vacate the premises at No. 3 Intsia, Forbes Park, Makati City.

**SO ORDERED.**

Thus, the denial of due course by the RTC was based on two (2) grounds: (1) that Nelia Silverio-Dee's appeal was against an order denying a motion for reconsideration which is disallowed under Sec. 1(a), Rule 41 of the Rules of Court; and (2) that Nelia Silverio-Dee's Record on Appeal was filed beyond the reglementary period to file an appeal provided under Sec. 3 of Rule 41.

Sec. 1(a), Rule 41 of the Rules of Court provides:

RULE 41  
APPEAL FROM THE REGIONAL TRIAL COURTS

SECTION 1. Subject of appeal.--An appeal may be taken from a judgment or final order that completely disposes of the case, or of a particular matter therein when declared by these Rules to be appealable.

No appeal may be taken from:

(a) An order denying a motion for new trial or reconsideration;

x x x x

In all the above instances where the judgment or final order is not appealable, the aggrieved party may file an appropriate special civil action under Rule 65.

Petitioner argues that because private respondent filed a Notice of Appeal from the Order dated December 12, 2005 which denied her motion for reconsideration of the Omnibus Order dated May 31, 2005, her appeal is of an order denying a motion for reconsideration. Thus, petitioner alleges that private respondent employed the wrong remedy in filing a notice of appeal and should have filed a petition for certiorari with the CA under Rule 65 of the Rules of Court instead.

The CA, however, ruled that the filing of the Notice of Appeal in this case was proper saying that the appeal pertained to the earlier Omnibus Order dated May 31, 2005. The CA, citing *Apuyan v. Haldeman*,<sup>[18]</sup> argued that an order denying a motion for reconsideration may be appealed as such order is the "final order" which disposes of the case. In that case, we stated:

In the recent case of *Quelnan v. VHF Philippines, Inc.*, We held, thus:

... [T]his Court finds that the proscription against appealing from an order denying a motion for reconsideration refers to an interlocutory order, and not to a final order or judgment. That that was the intention of the above-quoted rules is gathered from *Pagtakhan v. CIR*, 39 SCRA 455 (1971), cited in above-quoted portion of the decision in *Republic*, in which this Court held that an order denying a motion to dismiss an action is interlocutory, hence, not appealable.