

FIRST DIVISION

[G.R. No. 140484, January 28, 2008]

ISABELITA SEVILLA CASTRO, Petitioner, vs. LEONARDO-DE CASTRO, JJ. LAMBERTO RAMOS CASTRO; RTC of Valenzuela, Branch 75 JUDGE JAIME F. BAUTISTA, Respondents.

D E C I S I O N

AZCUNA, J.:

This is a petition for *certiorari*^[1] seeking the nullification of the Decision of the Regional Trial Court (RTC) of Valenzuela, Metro Manila, Branch 75, on August 19, 1998, and its Orders issued respectively on May 5, 1999, July 1, 1999 and September 20, 1999, in Civil Case No. 180- V-98 entitled "*Lamberto R. Castro v. Isabelita S. Castro.*"

The facts are as follows:^[2]

A petition for annulment of marriage on the ground of psychological incapacity under Article 36 of the Family Code was filed by private respondent Lamberto R. Castro against petitioner Isabelita S. Castro on July 1, 1998.

Summons, along with a copy of the petition for annulment, was allegedly received by petitioner's nephew on her behalf at her residence.

For failure of petitioner to file an answer, the RTC ordered the state prosecutor to conduct an investigation and to submit to the court a report thereon.

The state prosecutor submitted a report stating that no collusion existed between the parties in the filing of the petition. The petition was set for hearing on August 18, 1998 at 8:30 a.m. For failure of petitioner to appear and to file any responsive pleading to contest the petition, the trial court allowed private respondent to present his evidence *ex parte* in the presence of the state prosecutor.

At the *ex-parte* hearing, private respondent stated that he married petitioner in 1958. They have four children but they have been living apart for a number of years prior to the filing of the petition. Private respondent alleged that their relationship did not last because petitioner was irresponsible, violent, and had failed to show love and affection towards him and their children, and had an illicit affair with the family driver which prompted him (private respondent) to file an adultery case against her. He added that petitioner had neurotic and psychotic tendencies, and was always mad at him for no apparent reason.

To support private respondent's petition, Regine Marmee C. Cosico, a clinical psychologist, was presented to testify on petitioner's psychological incapacity based on the psychological tests that she conducted on both parties. According to her, the

tests revealed that petitioner is psychologically incapacitated, hence, unable to perform her marital obligations.

On August 19, 1998, public respondent Judge Jaime F. Bautista granted the petition. The dispositive portion of the decision reads:

WHEREFORE, premises considered, judgment is hereby rendered in favor of the petitioner and the marriage of petitioner and respondent on January 30, 1958 is hereby declared ANNULLED.

SO ORDERED.^[3]

On September 8, 1998, petitioner filed a Motion to Set Aside/Declare Judgment Null and Void^[4] on the ground that the trial court did not acquire jurisdiction over her person for failure to serve summons and a copy of the petition. She averred that the sheriff's return was invalid because she had no nephew residing with her, and no earnest effort was shown by the sheriff to serve the summons and a copy of the petition before resorting to substituted service. Petitioner also claimed that the allegations made by private respondent were false, and that the real reason for filing the petition for annulment was so that he can marry his concubine.

Private respondent filed an Opposition to Respondent's Motion to Set Aside Judgment asserting that summons was properly served on petitioner. After petitioner had filed her Reply, the trial court issued an Order on March 2, 1999 declaring that:

Before this court is respondent's ... Motion for Reconsideration, whereupon the petitioner, through counsel, filed [his] Opposition.

Finding the Opposition to be with merit, insofar as the absence of contrary evidence from the respondent, the Motion for Reconsideration is hereby GRANTED PARTIALLY, hence, the decision or judgment of this court is hereby tentatively set aside and the respondent is hereby allowed to present contrary evidence which is hereby set for March 29, 1999 at 10:00 o'clock in the morning.

. . .

SO ORDERED.^[5]

Petitioner's counsel filed a motion for postponement which was granted by the trial court. The hearing was reset to May 5, 1999 at 8:30 a.m.

On April 21, 1999, however, petitioner's counsel again moved for the postponement of the May 5, 1999 hearing to June 16, 1999.^[6]

Notwithstanding petitioner's motion for postponement, the trial court, on May 5, 1999, issued an Order affirming the Decision dated August 19, 1998, thus:

When this case was called for hearing today, only Atty. Froilan Zapanta was present in court. Although absent, respondent's counsel, Teresita

Marbibi, had earlier filed a "Motion for Postponement."

Upon manifestation of Atty. Zapanta, considering that the respondent's counsel, time and again, has been filing motions to postpone, the respondent is hereby deemed to have waived her right to present countervailing evidence and the Decision dated August 19, 1998 is hereby ordered MAINTAINED.

SO ORDERED.^[7]

Petitioner received a copy of the Order on May 7, 1999. She filed a motion for reconsideration^[8] on May 19, 1999, asserting that private respondent neither opposed the motion for postponement nor did she receive any order from the court denying the same. She likewise pointed out that public respondent should have allowed her the chance to present contrary evidence in court.

After private respondent filed his Opposition to the Motion for Reconsideration, the case was deemed submitted for resolution. On July 1, 1999, the trial court issued an Order denying petitioner's motion for reconsideration.^[9]

Petitioner received the Order on July 16, 1999, and on July 19, 1999, she filed a Notice of Appeal with the trial court^[10] against which a Motion to Dismiss Appeal was filed by private respondent.^[11]

On September 20, 1999, the trial court issued an Order maintaining its Decision dated August 19, 1998, thus:

Before this Court are several contrasting pleadings propounded by the contending parties through their respective counsels. It appears, however, that the petitioner's "Motion to Dismiss Appeal" vis-à-vis the Opposition thereto as well as the related pleadings, is with MERIT. In other words, the arguments or reasons propounded therein by the movant appear to be INDUBITABLE, hence, the Opposition thereto is accordingly DENIED, and consequently, the said Motion to Dismiss Appeal is hereby GRANTED.

The Decision of this court dated August 19, 1998 is hereby ordered MAINTAINED.

SO ORDERED. ^[12]

The decision having become final and executory on October 11, 1999, the trial court issued an entry of judgment on October 29, 1999.^[13]

Hence, this petition.

Petitioner contends that:

One, the trial court did not acquire jurisdiction over her (petitioner);