

## SECOND DIVISION

[ G.R. NO. 140929, May 26, 2005 ]

**MARGARITO R. JAMERO, PETITIONER, VS. THE HONORABLE  
ACHILLES L. MELICOR, IN HIS CAPACITY AS PRESIDING JUDGE  
OF THE REGIONAL TRIAL COURT OF TAGBILARAN CITY, BRANCH  
4, ATTY. ALBERTO BAUTISTA, IN HIS CAPACITY AS THE  
APPOINTED SPECIAL ADMINISTRATOR, AND ERNESTO R.  
JAMERO, RESPONDENTS.**

### DECISION

**AUSTRIA-MARTINEZ, J.:**

This refers to the petition for review on *certiorari* seeking that the Resolution<sup>[1]</sup> of the Court of Appeals (CA) promulgated on June 14, 1999 dismissing the petition for *certiorari* filed with it by petitioner Margarito R. Jamero and the Resolution promulgated on November 24, 1999 denying petitioner's motion for reconsideration be set aside and declared null and void on the ground that said Resolutions were issued in a way not in accord with law and jurisprudence.

The antecedent facts of the case are as follows:

Petitioner filed Special Proceedings No. 1618 for the Administration and Settlement of the Estate of his deceased mother Consuelo Jamero with the Regional Trial Court (RTC), Branch 4, Tagbilaran City. Private respondent Ernesto R. Jamero, a brother of petitioner, opposed the latter's petition for appointment as regular administrator of the estate.

Upon motion of private respondent Ernesto and over the objections of petitioner, the respondent court, in its Order dated December 4, 1998,<sup>[2]</sup> appointed Atty. Alberto Bautista as special administrator pending the appointment of a regular administrator. Petitioner received said Order on December 11, 1998 and filed a motion for reconsideration on December 28, 1998, the last day of the 15-day reglementary period, that is, December 26, 1998, falling on a Saturday during which, according to petitioner, the Bureau of Post Office held no office. The court *a quo* denied petitioner's motion for reconsideration in its Order dated February 26, 1999 which petitioner received on March 4, 1999.<sup>[3]</sup>

On April 21, 1999, petitioner filed a petition for *certiorari* with the CA, docketed as CA-G.R. SP No. 53020, entitled *Margarito R. Jamero, Petitioner vs. Hon. Achilles L. Melicor, as Judge RTC of Tagbilaran City, Branch 4, and Alberto Bautista*.

On June 14, 1999, the CA issued the herein assailed Resolution, to wit:

A perusal of the petition indicates no statement as to the date when the petitioner filed a Motion for Reconsideration of the public respondent's

decision, in violation of Section 3, paragraph 2, Rule 46 of the 1997 Rules of Civil Procedure as amended by Circular No. 39-98 dated August 18, 1998 of the Supreme Court, to wit:

In actions filed under Rule 65, the petition shall further indicate the material dates showing when notice of the judgment or final order or resolution subject hereof was received when a motion for new trial or reconsideration, if any, was filed and when notice of the denial thereof was received.

The attention of the petitioner is likewise called to the amended Section 4, Rule 65 (*Ibid.*).

SEC. 4. Where and when petition to be filed. – The petition may be filed not later than sixty (60) days from notice of the judgment, order or resolution sought to be assailed in the Supreme Court or, if it relates to the acts or omissions of a lower court or of a corporation, board, officer or person, in the Regional Trial Court exercising jurisdiction over the territorial area as defined by the Supreme Court. It may also be filed in the Court of Appeals whether or not the same is in aid of its appellate jurisdiction, or in the Sandiganbayan if it is in aid of its jurisdiction. If it involves the acts or omissions of a quasi-judicial agency, and unless otherwise provided by law or these Rules, the petition shall be filed in and cognizable only by the Court of Appeals.

If the petitioner had filed a motion for new trial or reconsideration in due time after notice of said judgment, order or resolution the period herein fixed shall be interrupted. If the motion is denied, the aggrieved party may file the petition within the remaining period, but which shall not be less than five (5) days in any event, reckoned from notice of such denial. No extension of time to file the petition shall be granted except for the most compelling reason and in no case to exceed fifteen (15) days.

Hence, pursuant to the last paragraph of Section 3, Rule 46, the petition may be dismissed outright. In any case, even if we consider the date of the Motion for Reconsideration (December 26, 1998) as the date of its filing, the petition would be late by three (3) days.

WHEREFORE, the petition is denied due course and accordingly DISMISSED.

SO ORDERED.<sup>[4]</sup>

Petitioner filed a Motion for Reconsideration which the appellate court denied in its Resolution, promulgated on November 24, 1999, to wit:

The petitioner filed a Motion for Reconsideration of our Resolution of dismissal dated June 14, 1999, imploring us to use merciful discretion by relaxing the rules on technicality to effect substantial justice, and citing

the importance of the legal issues involved herein.

We find the motion devoid of merit. This Court has no authority to extend the definitive period fixed in Sec. 4, Rule 65 of the 1997 Rules of Civil Procedure, as amended.

In any case, the appointment of a special administrator is discretionary to the appointing court. Being an interlocutory order, the same is not appealable nor subject to *certiorari*.

WHEREFORE, the Motion for Reconsideration is DENIED for lack of merit.

SO ORDERED.<sup>[5]</sup>

Hence, the present petition for review on certiorari filed by petitioner against Judge Achilles L. Melicor, Atty. Bautista and, this time, including oppositor Ernesto R. Jamero, based on the following grounds:

I

THE COURT OF APPEALS HAD DECIDED IN A WAY NOT IN ACCORD WITH LAW AND ESTABLISHED JURISPRUDENCE WHEN IT ALLOWED TECHNICALITY TO OVERRIDE, AND TAKE PRECEDENCE OVER, THE DEMONSTRATED SUBSTANTIVE MERITS OF THE PETITION.

II

THE COURT OF APPEALS HAS DECIDED IN A WAY NOT IN ACCORD WITH LAW AND ESTABLISHED JURISPRUDENCE WHEN IT RULED THAT THE APPOINTMENT OF SPECIAL ADMINISTRATOR IS DISCRETIONARY TO THE APPOINTING COURT, AND THAT BEING AN INTERLOCUTORY ORDER THE SAME IS NOT APPEALABLE NOR SUBJECT TO *CERTIORARI*.

III

THE COURT OF APPEALS HAD DECIDED IN A WAY NOT IN ACCORD WITH LAW AND ESTABLISHED JURISPRUDENCE WHEN IT SUSTAINED THE ORDER OF THE TRIAL COURT APPOINTING ATTY. ALBERTO Y. BAUTISTA AS SPECIAL ADMINISTRATOR OF THE ESTATE OF THE LATE CONSUELO R. JAMERO, IN THAT:

- (A) THE LATE CONSUELO R. JAMERO DIED INTESTATE, LEAVING NO DEBTS. HENCE, THE APPOINTMENT OF A SPECIAL ADMINISTRATOR IS NOT NECESSARY AS IT WOULD ONLY UNDULY BURDEN OR OTHERWISE EXPOSE THE ESTATE TO BEING WASTED OR SQUANDERED.
- (B) ASSUMING ARGUENDO THAT A SPECIAL ADMINISTRATOR IS NECESSARY, THE ORDER OF PREFERENCE PRESCRIBED BY THE RULES IN THE APPOINTMENT OF REGULAR ADMINISTRATOR SHOULD HAVE BEEN OBSERVED. THUS, THE