

THIRD DIVISION

[G.R. No. 152716, October 23, 2003]

**ELNA MERCADO-FEHR, PETITIONER, VS. BRUNO FEHR,
RESPONDENT.**

D E C I S I O N

PUNO, J.:

This case arose from a petition for declaration of nullity of marriage on the ground of psychological incapacity to comply with the essential marital obligations under Article 36 of the Family Code filed by petitioner Elna Mercado-Fehr against respondent Bruno Fehr before the Regional Trial Court of Makati in March 1997.^[1]

After due proceedings, the trial court declared the marriage between petitioner and respondent void *ab initio* under Article 36 of the Family Code and ordered the dissolution of their conjugal partnership of property.^[2] The dispositive portion of the Decision dated January 30, 1998 states:

WHEREFORE, in the light of the foregoing, the marriage between Elna D. Mercado and Bruno F. Fehr on March 14, 1985 is hereby declared null and void on the ground of psychological incapacity on the part of respondent to perform the essential obligations of marriage under Article 36 of the Family Code.

Accordingly, the conjugal partnership of property existing between the parties is dissolved and in lieu thereof, a regime of complete separation of property between the said spouses is established in accordance with the pertinent provisions of the Family Code, without prejudice to the rights previously acquired by creditors.

Custody over the two minor children, MICHAEL BRUNO MERCADO FEHR and PATRICK FRANZ FEHR, is hereby awarded to petitioner, she being the innocent spouse.

Let a copy of this Decision be duly recorded in the proper civil and property registries in accordance with Article 52 of the Family Code.

SO ORDERED.^[3]

On August 24, 1999, the trial court issued an Order resolving the various motions^[4] filed by respondent after the case had been decided. The Order pertained to the properties held by the parties, thus:

x x x

x x x

x x x

After a careful scrutiny of the inventory of properties submitted by both parties, the Court finds the following properties to be excluded from the conjugal properties, namely:

a) the Bacolod property covered by Transfer Certificate of Title No. T-137232, considering that the same is owned by petitioner's parents, Herminio Mercado and Catalina D. Mercado xxx and

b) Suite 204 of the LCG Condominium covered by Condominium Certificate of Title No. 14735, considering that the same was purchased on installment basis by respondent with his exclusive funds prior to his marriage, as evidenced by a Contract to Sell dated July 26, 1983. xxx

Accordingly, the conjugal properties of the petitioner and respondent shall be distributed in the following manner:

TO PETITIONER ELNA MERCADO:

a. Ground Floor, LCG Condominium, with an area of 671.84 sq. m., covered by Condominium Certificate of Title No. 14734; and

b. Tamaraw FX (1995 model)

TO RESPONDENT BRUNO FRANZ FEHR:

a. Upper Basement, LCG Condominium, with an area of 180.81 sq. m. and covered by Condominium Certificate of Title No. 14733; and

b. Nissan Sentra with Plate No. FDJ-533 (1994 model)

Furthermore, Suite 204, LCG Condominium with an area of 113.54 sq. m. and covered by Condominium Certificate of Title NO. 14735 is hereby declared the EXCLUSIVE PROPERTY of respondent, BRUNO FRANZ FEHR. Accordingly, petitioner is hereby directed to transfer ownership of Suite 204 in the name of respondent, covered by Condominium Certificate of Title No. 14735, being respondent's exclusive property, acquired prior to his marriage.

Anent the monthly rentals prior to the issuance of this Order of the subject properties, namely the Ground Floor Front (Friday's Club), Ground Floor Rear Apartment and Upper Basement at LGC Condominium, all leased by Bar 4 Corporation, the same shall be shared by the parties in common, in proportion to one-half each or share and share alike, after deducting all expenses for Income Taxes, Business Permits, Realty Taxes, Municipal License fees, clearances, etc. Accordingly, petitioner is hereby directed to deliver to respondent the following: a) the balance of his share of the monthly rentals from February 1998 to May 1998; and b) his one-half share (1/2) of the monthly rentals of the aforesaid properties from June 1998 up to this date. Thereafter, the parties shall own and enjoy their respective share of the monthly rentals derived from the properties adjudicated to them as stated above.

The Petitioner and Respondent are further enjoined to jointly support their minor children, Michael and Patrick Fehr, for their education, uniforms, food and medical expenses.^[5]

Petitioner filed a motion for reconsideration of said Order with respect to the adjudication of Suite 204, LCG Condominium and the support of the children. Petitioner alleged that Suite 204 was purchased on installment basis at the time when petitioner and respondent were living exclusively with each other as husband and wife without the benefit of marriage, hence the rules on co-ownership should apply in accordance with Article 147 of the Family Code. Petitioner further claimed that it would not be in the best interests of the children if she would be made to demand periodically from respondent his share in the support of the children. She instead proposed that the Upper Basement and the Lower Ground Floor of the LCG Condominium be adjudicated to her so that she could use the income from the lease of said premises for the support of the children.^[6]

Resolving said motion, the trial court held in an Order dated October 5, 2000 that since the marriage between petitioner and respondent was declared void *ab initio*, the rules on co-ownership should apply in the liquidation and partition of the properties they own in common pursuant to Article 147 of the Family Code. The court, however, noted that the parties have already agreed in principle to divide the properties and/or proceeds from the sale thereof proportionately among them and their children as follows: 1/3 for petitioner, 1/3 for respondent and 1/3 for the children. It also affirmed its previous ruling that Suite 204 of LCG Condominium was acquired prior to the couple's cohabitation and therefore pertained solely to respondent.^[7]

On November 28, 2000, petitioner filed a notice of appeal questioning the October 5, 2000 Order of the trial court.^[8] Respondent filed an Opposition to the Notice of Appeal.^[9] On January 12, 2001, petitioner withdrew the notice of appeal^[10] and instead filed on the following day a special civil action for *certiorari* and prohibition with the Court of Appeals, questioning the findings of the trial court in its Order dated October 5, 2000.^[11]

The Court of Appeals, in its Decision dated October 26, 2001, dismissed the petition for *certiorari* for lack of merit. The appellate court stated that petitioner has not shown any reason to warrant the issuance of a writ of certiorari as the errors she raised were mere errors of judgment which were the proper subject of an ordinary appeal, not a petition for certiorari.^[12]

Petitioner filed a motion for reconsideration of said Decision, which was also denied by the appellate court.^[13]

Hence this petition. Petitioner raises the following arguments:

- 1) Petitioner correctly filed a petition for certiorari and prohibition against the Regional Trial Court of Makati, Branch 149 in the Court of Appeals in view of the fact that the questioned orders were issued with grave abuse of discretion amounting to excess of or lack of jurisdiction.

- 2) The Court of Appeals erred in ruling that the questioned orders were errors of judgment and not of jurisdiction.^[14]

We shall first address the procedural issue, whether the Court of Appeals erred in dismissing the special civil action for certiorari filed by petitioner.

Petitioner argues that the filing of a petition for *certiorari* with the Court of Appeals was proper because the trial court committed grave abuse of discretion in the issuance of its Order dated October 5, 2000, and there were no other speedy and adequate remedies available. She asserts that the trial court committed grave abuse of discretion when it held that Suite 204 of the LCG Condominium was the exclusive property of respondent, although it was established that they lived together as husband and wife beginning March 1983, before the execution of the Contract to Sell on July 26, 1983. Furthermore, the trial court's ruling dividing their properties into three, instead of two as provided under Article 147 of the Family Code, or four, as allegedly agreed by the parties during a conference with the trial court judge on May 3, 2000, also constituted grave abuse of discretion.^[15]

Respondent, on the other hand, contends that petitioner may no longer avail of any remedy, whether an appeal or a petition for *certiorari*, as she had lost all the right to appeal from the time the Decision of January 30, 1998 became final and executory. He argues that the Order of the trial court dated October 5, 2000 is no longer assailable because it was merely issued to execute the final and executory Decision of January 30, 1998. He also submits that the division of the properties into three and the distribution of 1/3 share each to the petitioner, the respondent, and their children was proper, in accordance with Articles 50, 51, 147 and 148 of the Family Code mandating the delivery of the presumptive legitime of the common children upon dissolution of the property regime. Respondent further claims Suite 204 of LCG Condominium to be his exclusive property as it was acquired on July 26, 1983, prior to their marriage on March 14, 1985.^[16]

A petition for *certiorari* is the proper remedy when any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction and there is no appeal, nor any plain speedy, and adequate remedy at law. Grave abuse of discretion is defined as the capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. As a **general rule**, a petition for *certiorari* will not lie if an appeal is the proper remedy such as when an error of judgment or procedure is involved. As long as a court acts within its jurisdiction and does not gravely abuse its discretion in the exercise thereof, any supposed error committed by it will amount to nothing more than an error of judgment reviewable by a timely appeal and not assailable by a special civil action of certiorari. However, in certain **exceptional cases**, where the rigid application of such rule will result in a manifest failure or miscarriage of justice, the provisions of the Rules of Court which are technical rules may be relaxed. *Certiorari* has been deemed to be justified, for instance, in order to prevent irreparable damage and injury to a party where the trial judge has capriciously and whimsically exercised his judgment, or where there may be danger of clear failure of justice, or where an ordinary appeal would simply be inadequate to relieve a party from the injurious effects of the judgment complained of.^[17]