ELEVENTH DIVISION

[CA G.R. SP NO. 89405, May 03, 2006]

DANIEL U. CUARESMA, PETITIONER, VS. HON. LETICIA MORALES, IN HER CAPACITY AS PRESIDING JUDGE OF BRANCH 140, REGIONAL TRIAL COURT, MAKATI CITY, MARGIE CUARESMA, RESPONDENTS.

D E C I S I O N

PERLAS-BERNABE, E., J.:

Before the Court is a petition for certiorari under Rule 65 of the Rules of Court which seeks to annul and set aside the Order[1] dated February 10, 2005 rendered by the Regional Trial Court (RTC), Branch 140, Makati City, and its Order[2] dated March 8, 2005, for having been issued with grave abuse of discretion amounting to lack or in excess of jurisdiction. The assailed Orders denied petitioner's two (2) motions for reconsideration from the Decision[3] dated November 30, 2004 in Civil Case No. 00-966 dismissing petitioner's action for declaration of nullity of marriage.

The instant petition stemmed from a complaint filed by petitioner Daniel U. Cuaresma against his wife, Margie P. Cuaresma (herein private respondent), before the RTC for declaration of nullity of their marriage based on the latter's purported psychological incapacity under Article 36 of the Family Code, docketed as Civil Case No. 00-966. After due proceedings, however, the RTC rendered the Decision dated November 30, 2004 dismissing petitioner's action, thus:

> "WHEREFORE, PREMISES CONSIDERED, the Court hereby DISMISSES the petition for Declaration of Nullity filed by Daniel U. Cuaresma against Margie P. Cuaresma for lack of merit.
>
> SO ORDERED."

Aggrieved, petitioner filed a motion for reconsideration[4] from the foregoing decision but the same was denied in the assailed Order dated February 10, 2005, the pertinent portions of which read:

> "Before this Court is a MOTION FOR RECONSIDERATION x x x
>
> It is noted by this Court that the said motion does not comply with Section 5, Rule 15 of the 1997 Rules of Civlil Procedure, as amended. It merely stated in its notice of hearing to 'submit the foregoing motion for the consideration and resolution of the Honorable Court immediately upon receipt hereof.'
>
> 'A notice addressed to the Clerk of Court requesting him to set the foregoing **Motion for the consideration and approval of this**

Honorable Court upon receipt hereof does not comply with the requirements of Section 5, Rule 15 and the subsequent action of the Court thereon does not cure the flaw, for a motion with a notice fatally defective is a useles piece of paper.' (citations omitted)

'In de la Peña v. de la Peña, 258 SCRA 298, the Court held that the notice shall be directed to the parties concerned and shall state the time and place for the hearing of the motion, are mandatory. If not religiously complied with, they render the motion pro forma. As such, the motion is a useless piece of paper that will not toll the running of the prescriptive period.' x x x

Premises considered, the Court will not act on the instant Motion for Reconsideration the same being pro forma."[5]

Thereafter, petitioner filed a second motion for reconsideration[6] which the RTC likewise denied in its Order dated March 8, 2005, the decretal portion of which states:

'WHEREFORE, premises considered, the present MOTION FOR RECONSIDERATION is hereby DENIED for having been filed out of time. The Decision of this Court had become final with respect to the petitioner.

SO ORDERED."

Hence, this petition based on the question of whether or not the RTC committed grave abuse of discretion amounting to lack or excess of jurisdiction in denying petitioner's motions for reconsideration based on a technicality.

The petition is bereft of merit.

In resolving the foregoing issue, the Supreme Court ruled thus:

"Section 4 of Rule 15 of the Rules of Court requires that notice of motion be served by the movant on all parties concerned at least three (3) days before its hearing. Section 5 of the same Rule provides that the notice shall be directed to the parties concerned, and shall state the time and place for the hearing of the motion. A motion which does not meet the requirements of Sections 4 and 5 of Rule 15 of the Rules of Court is considered a worthless piece of paper which the clerk has no right to receive and the court has no authority to act upon. Service of copy of a motion containing notice of the time and place of hearing of said motion is a mandatory requirement and the failure of the movant to comply with said requirements renders his motion fatally defective."[7]

In the case at bar, it is undisputed that petitioner's first motion for reconsideration was not addressed to the parties concerned nor did it contain any date or time for the hearing thereof but was addressed to the Clerk of Court for "consideration and resolution of the Honorable Court immediately upon receipt hereof"[8]. As such, the same was indeed fatally defective and properly considered by the RTC to be pro forma. As held in the case of Hon. Pete Nicomedes Prado, etc., et al. vs. Hon. Regino T. Veridiano II, etc., et al.[9]:

> "To emphasize once more, the directives in Section 2 of Rule 37 and Sections 4, 5 and 6 of Rule 15 of the Revised Rules of Court are as mandatory as they are clear and simple; and non-compliance therewith is fatal to the cause of the movant, because the mere filing of the motion for reconsideration, without the requisite notice of hearing, does not toll the running of the period for appeal. Unless the movant sets the time and place of hearing in the notice and serves the adverse party with the same, the court would have no way to determine whether the party agrees to or objects to the motion, and if he objects, to hear him on his objection, since the rules themselves do not fix any period within which to file his reply or opposition. The rules commanding the movant to serve on the adverse party a written notice of the motion (Section 2, Rule 37) and that the notice of hearing 'shall be directed to the parties concerned, and shall state the time and place for the hearing of the motion' (Section 5, Rule 15), do not provide for any qualifications, much less exceptions. To deviate from the peremptory principle thus uniformly reaffirmed in the latest cases aforecited in, and to exempt from the rigor of the operation of said principle, the case at bar would be one step in the emasculation of the revised rules and would be subversive of the stability of the rules and jurisprudence thereon – all to the consternation of the Bench and Bar and other interested persons as well as the general public who would thereby be subjected to such an irritating uncertainty as to when to render obedience to the rules and when their requirements may be ignored. x x x"

Likewise, it has been ruled in the case of Purificacion Chua vs. Court of Appeals, et al.[10] that -

> "Moreover, the notice of hearing of the motion was directed to the clerk of court and not to the party. This violates the requirements of Secs. 4 and 5 of Rule 15 of the Rules of Court which expressly provide that the notice shall be served by the applicant to all parties concerned, and shall state the time and place for the hearing of the motion. A notice of hearing addressed to the clerk of court and not to the parties is no notice at all. The rule commanding the movant that the notice of hearing shall be directed to the parties concerned does not provide for any qualification much less exception. The violation of the above directive is fatal and in cases of motions to reconsider a decision, the running of the period to appeal is not tolled by their filing or pendency."

Since petitioner admittedly received the assailed Order dated February 10, 2005 denying his first motion for reconsideration on February 23, 2005[11] then, he should have proceeded to file his notice of appeal therefrom within fifteen (15) days as provided under Sections 2(a) and 3[12] of Rule 41 of the Rules of Court. Instead, petitioner filed a second motion for reconsideration[13] which was a prohibited pleading under Section 5, Rule 37 of the Rules of Court, to wit:

> "SEC. 5. Second motion for new trial. - A motion for new trial shall include all grounds then available and those not so included shall be deemed waived. A second motion for new trial, based on a ground not existing nor available when the first motion was made, may be filed within the time herein provided excluding the time during which the first