

**[ CV No. 83371, October 15, 2007 ]**

**ERWIN F. MACATANGAY, AND MAILA M. OBCIANA,  
PETITIONERS-APPELLEES, VS. REPUBLIC OF THE PHILIPPINES,  
OPPOSITOR-APPELLANT.<sup>[\*]</sup>**

This appeal is taken in the name of the Government, represented by the Office of the Solicitor General (OSG), from the decision rendered on February 24, 2004 in Special Proceedings No. R99-015 of the Regional Trial Court (RTC) in Rosario, Batangas entitled *In the Matter of Petition to Approve the Will of Candelaria M. Yap, Deceased; Erwin F. Macatangay and Maila M. Obciana, Petitioners*,<sup>[1]</sup> disposing as follows:

Wherefore, in view of all the foregoing considerations, the Court finding the petition impressed with merit, it being possessed with sufficient legal bases, hereby GRANTS the same. Accordingly, the Last Will and Testament executed by Candelia M. Yap dated February 2, 1999, is hereby APPROVED and ALLOWED, with respect to her share in the house and lot located in Quezon City, with the recognition of the disinheritance of the husband by reason of infidelity. With the approval and allowance of the Will, let a letter of administration over the properties of the decedent be issued to appellee Erwin F. Macatangay.

SO ORDERED.

The antecedents follow.

On February 2, 1999, Candelaria Macatangay Yap (testatrix), a retired government employee, 68 years old and residing at Barangay 8, Rosario, Batangas at the time of her death, executed a holographic will bequeathing her share of all her conjugal properties consisting of a house and lot located at Road 20, Depora Subdivision, Project 8, Quezon City to her niece Maila M. Obciana and nephew Erwin F. Macatangay. She also thereby expressly disinherited her estranged husband Renato Yap from any share in her properties. On the same date, she delivered the holographic will to Erwin F. Macatangay.

On March 11, 1999, the testatrix died due to cardio-respiratory failure,<sup>[2]</sup> arising from complications of cancer.

On July 26, 1999, Erwin F. Macatangay and Maila M. Obciana commenced this case by petition in the RTC, seeking the allowance and approval of the holographic will of the testatrix and praying for the issuance of the letters of administration in favor of Macatangay.

On July 30, 1999, the RTC set the petition for initial hearing on September 7, 1999 at 8:30 am.<sup>[3]</sup>

On August 19, 1999, the RTC granted the motion for leave of court to allow the petitioners thereat (appellees herein) to publish the notice of hearing in a

newspaper of their own choice.<sup>[4]</sup>

On September 20, 1999, the hearing was reset on October 21 and 28, 1999 at 8:30 am.<sup>[5]</sup>

At the initial hearing on October 21, 1999, the appellees offered documentary exhibits to establish their compliance with jurisdictional requirements.<sup>[6]</sup>

Thereafter, Renato Yap and Eulalia Macatangay opposed the petition for probate.

The RTC then tentatively set the hearing on December 15, 1999 at 8:30 am.<sup>[7]</sup>

Thereafter, the oppositors filed a motion for judicial declaration of nullity of the supposed will and the institution of heirs made therein and for the dismissal of the petition.<sup>[8]</sup>

On March 1, 2000, the appellees filed their comment on the motion to dismiss and petition for declaration of nullity.<sup>[9]</sup>

On March 27, 2000, the RTC denied the motion to dismiss and allowed the appellees to present documentary evidence and the witnesses in support of the petition.<sup>[10]</sup>

On November 27, 2001, the appellees submitted their formal offer of their documentary exhibits.<sup>[11]</sup>

The oppositors did not file any comment or opposition to the written formal offer of exhibits.

On February 8, 2002, the RTC admitted the offer of evidence.<sup>[12]</sup>

On May 13, 2002, the oppositors prayed that they be allowed to file a motion on demurrer to evidence. The RTC granted the motion.<sup>[13]</sup>

Meanwhile, the continuation of the hearing of the intended demurrer to evidence was set on July 24, 2002 at 8:30 am.

On September 18, 2002, the parties were given time to file their memoranda in support of their respective positions.<sup>[14]</sup>

On December 4, 2003, the RTC issued an order declaring the oppositors to have waived their right to present evidence and considering the case submitted for resolution.<sup>[15]</sup>

On February 24, 2004, the RTC rendered its assailed decision, *supra*.

Instead of the original oppositors themselves appealing, the OSG, as of then a total stranger to the case, filed a *notice of appeal* dated March 23, 2004.<sup>[16]</sup>

In this appeal, the OSG posits the lone error that:

## THE TRIAL COURT ERRED IN UPHOLDING THE EXTRINSIC VALIDITY OF THE WILL.

In support of its appeal, the OSG contends that a visual examination of the holographic will of the testatrix shows that the strokes of her handwritten signature are clearly different from the strokes of the provisions; that the real signature of the testatrix in the disposition is not readable; that two different signatures appear in the will; that where the holographic will is contested, the law requires that three witnesses must declare that the will is in fact in the handwriting of the deceased; that although the appellees presented such number of witnesses as required by law, there was no showing that the will executed by the testatrix was entirely written, dated and signed by her; that her signature indicated that she did not execute the entire will; and that thereby the due execution and validity of the holographic will were not competently established.

On the other hand, the appellees submit that the OSG could not legally and procedurally appeal the decision of the RTC for lack of showing of any interest; that the OSG was primarily the lawyer for the Government which was not even a real party in interest in the proceedings for lack of any actual and substantial interest in the subject matter of the case due to the holographic will concerning only the private property of the testatrix; that no public interest was involved to justify the direct or collateral intervention of the OSG; and that the OSG did not even show in its brief that the Government had any direct, material and substantial interest in the subject matter of the probate of the will.

The appeal has no merit.

To be entitled to appeal from a judgment or order of a court, the person appealing must have a present interest in the subject matter of the litigation and must be aggrieved or prejudiced by the judgment or order.<sup>[17]</sup> A party is aggrieved or prejudiced when his interest recognized by law in the subject matter of the lawsuit is injuriously affected by the judgment or order.<sup>[18]</sup> A party not aggrieved by the judgment or order may not appeal because he would have no arguable error to assign on appeal. Thus, the prevailing party in a lawsuit is not normally entitled to appeal from a judgment or order in his favor.<sup>[19]</sup>

Does the OSG, representing the Government, have the right to appeal the decision *a quo*?

We answer the query in the negative.

Under Book IV, Title III, Chapter 12, Executive Order 292 (Administrative Code of 1987), the OSG is described as an "independent and autonomous office attached to the Department of Justice," headed by the Solicitor General "who is the principal law officer and legal defender of the Government."

The powers of the OSG are set forth in Sec. 35, Chapter 12, Title III, Book IV, of EO 292, thus:

*Sec. 35. Powers and Functions.*—The Office of the Solicitor General shall represent the Government of the Philippines, its agencies and instrumentalities and its officials and agents in any litigation, proceeding,