

THIRD DIVISION

[G.R. No. 247345, July 06, 2020]

**FILIPINA D. ABUTIN, PETITIONER, VS. JOSEPHINE SAN JUAN,
RESPONDENT.**

DECISION

LEONEN, J.:

Obstinate disregard of basic and established rule of law or procedure is not mere error of judgment. It amounts to evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law. It is grave abuse of discretion correctible by certiorari.

This resolves a Petition for Review on Certiorari^[1] under Rule 45 of the 1997 Rules of Civil Procedure praying that the assailed Decision^[2] and Resolution^[3] of the Court of Appeals be reversed and set aside.

The assailed Decision found no grave abuse of discretion on the part of Regional Trial Court Judge Teresa Patrimonio-Soriaso (Judge Patrimonio-Soriaso) in issuing the November 25, 2016^[4] and August 7, 2017^[5] orders in Spec. Pro. No. 08-119593. Her November 25, 2016 Order set aside her prior December 28, 2015 Order and denied probate to two (2) holographic wills ostensibly executed by Corazon M. San Juan (Corazon)—the same wills that her original December 28, 2015 Order admitted to probate.^[6] Her August 7, 2017 Order denied petitioner Filipina D. Abutin's (Filipina) Motion to Admit Record on Appeal, and dismissed her appeal for failing to include the record on appeal.^[7] The assailed Resolution denied Filipina's Motion for Reconsideration.^[8]

Corazon, who, as a matter of public knowledge, had been in a same-sex relationship with Purita Dayao (Purita),^[9] passed away on March 23, 2008.^[10] She died without any surviving ascendants or descendants. She left behind a 108 square-meter lot in Tondo, Manila, on which a residential house was constructed. Corazon and Purita lived on this house for 48 years, along with Purita's daughter, Filipina.^[11]

On July 7, 2008, Purita and Filipina filed before the Regional Trial Court of Manila, a Petition for the probate of three (3) holographic wills ostensibly executed and left by Corazon. The first will was dated December 23, 2007; the second, March 10, 2008; and the third was not dated. Albeit phrased differently, each of the wills bequeathed to Purita and Filipina all of Corazon's properties which she referred to as "lote, bahay at lahat ng aking maiiwan," (House, lot, and all I will leave behind).^[12]

On September 2, 2008, Corazon's sister, Julita San Juan (Julita), and Corazon's niece, respondent Josephine San Juan (Josephine), filed an Opposition to Purita and

Filipina's Petition for Probate.^[13]

During trial, three (3) witnesses authenticated Corazon's handwriting and signature: Cecilia San Juan, who testified that she was familiar with Corazon's signature and handwriting; Norma Manabat who testified on personally witnessing Corazon write and sign a will; and a document expert from the National Bureau of Investigation's Questioned Documents Section, Romero Magcuro (Magcuro). Magcuro testified on his findings that the handwriting and signatures on the purported wills were made by one and the same person as those who made the handwriting and signatures on the documents presented as containing Corazon's authentic signature and handwriting.^[14]

In an Order dated December 28, 2015,^[15] the Regional Trial Court, through Judge Patrimonio-Soriaso, admitted to probate the wills dated December 23, 2006 and March 10, 2008. Both parties, through their respective counsels—Atty. Raul A. Mora for Purita and Filipina, and Atty. Adorlito B. Ginete (Atty. Ginete) for Julita and Josephine —were served copies of this Order by registered mail.^[16]

Sometime in March 2016, Purita and Filipina, realizing that the Order should have attained finality as there was no Motion for Reconsideration filed in the interim, inquired, through a representative, with the Regional Trial Court on when Atty. Ginete received a copy of the December 28, 2015 Order. Their representative was told to come back on another day. On another inquiry, their representative was given information on how inquiry could be made with the Post Office concerning Atty. Ginete's receipt.^[17] Subsequently, Purita and Filipina obtained a Certification^[18] from the Office of the Postmaster that the copy for Julita and Josephine were received on behalf of Atty. Ginete by a certain Rodnelito Capuno (Capuno) on February 9, 2016.

On April 6, 2016, Atty. Ginete filed a Manifestation with Motion to withdraw appearance.^[19] He disavowed receiving a copy of the December 28, 2015 Order and explained that he only found out about it when informed by Josephine.^[20] He explained that he was withdrawing his appearance because he was running as mayor of Sta. Teresita, Batangas.^[21]

Convinced that the December 28, 2015 Order had attained finality, Purita and Filipina filed a Motion for Entry of Judgment and Writ of Execution^[22] on April 7, 2016. Even as this Motion was pending, on April 12, 2016, Julita and Josephine, through their new counsel, Atty. Melchor V. Mibolos (Atty. Mibolos) filed a Motion for Reconsideration^[23] of the December 28, 2015 Order.

On April 19, 2016, Purita and Filipina filed a Motion to Stricken-Out (sic) the Motion for Reconsideration.^[24] They insisted that the December 28, 2015 Order had attained finality. On May 2, 2016, they filed their Opposition to the Motion for Reconsideration.^[25] Attached to this Opposition were "several registry return receipts of service of pleadings which were addressed to Atty. Ginete, but were actually received for him by [Capuno], his driver."^[26]

At around this point, Julita passed away,"^[27]

On May 20, 2016, Josephine filed a Reply^[28] to Purita and Filipina's Opposition. Attached to this was Atty. Ginete's Affidavit^[29] insisting that Capuno was not authorized to receive mail for him and that he himself "used to get mail matters from the mail box."^[30]

On June 9, 2016, Purita and Filipina filed their Rejoinder.^[31] Sometime after this, Purita passed away.^[32]

On November 25, 2016, the Regional Trial Court issued an Order^[33] setting aside its December 28, 2015 Order and denying probate to the wills dated December 23, 2006 and March 10, 2008.

On January 11, 2017, Filipina filed her Notice of Appeal.^[34] On February 20, 2017, Josephine filed a Manifestation with Motion^[35] asking that Filipina's Notice of Appeal be dismissed as it was unaccompanied by the record on appeal.

On February 25, 2017, Filipina filed her Opposition^[36] to Josephine's Manifestation with Motion explaining that she was unable to furnish the record on appeal because the Clerk of Court of the Regional Trial Court, who had already received from her P2,000.00 for the photocopying of the relevant documents, told her that the completion of the records was "stopped" because Josephine opposed it.^[37] This Opposition was accompanied by Filipina's Motion to Admit Record on Appeal.

In an Order^[38] dated August 7, 2017, the Regional Trial Court denied Filipina's Motion to Admit Record on Appeal, and dismissed her appeal for failing to include the record on appeal.

Following the denial of her Motion for Reconsideration, Filipina filed a Petition for Certiorari^[39] before the Court of Appeals.

In its assailed February 6, 2019 Decision,^[40] the Court of Appeals dismissed Filipina's Rule 65 Petition. In its assailed May 15, 2019 Resolution, ^[41] the Court of Appeals denied Filipina's Motion for Reconsideration.

Aggrieved, Filipina filed the present Petition.^[42]

For resolution are the issues of:

First, whether or not Regional Trial Court Judge Patrimonio-Soriano committed grave abuse of discretion amounting to lack or excess of jurisdiction in reversing her own December 28, 2015 Order allowing probate of the holographic wills dated December 23, 2006 and March 10, 2008; and

Second, whether or not Judge Patrimonio-Soriano committed grave abuse of discretion amounting to lack or excess of jurisdiction in dismissing petitioner Filipina D. Abutin's appeal for failing to include the record on appeal.

The standards for issuing a writ of certiorari are settled. "[A] petition for certiorari is a remedy directed not only to correct errors of jurisdiction, 'but also to set right, undo[,] and restrain any act of grave abuse of discretion amounting to lack or excess of jurisdiction by any branch or instrumentality of the Government[.]'"^[43]

Grave abuse of discretion is the "evasion of a positive duty or a virtual refusal to perform a duty enjoined by law or to act in contemplation of law as when the judgment rendered is not based on law and evidence but on caprice, whim and despotism."^[44] It is a "capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction."^[45] To qualify, "[m]ere abuse of discretion is not enough. It must be grave abuse of discretion as when the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and must be so patent and so gross as to amount to an evasion of a positive duty[.]" ^[46]

It was serious error for the Court of Appeals to not issue the writ of certiorari sought by petitioner. Judge Patrimonio-Soriasco so recklessly disregarded long-settled standards on service of papers and processes on parties and their counsels, finality of judgements, and the duties of clerks of court in preparing records on appeal. In so doing, she acted in manifest disregard of what is contemplated and impelled by law, effectively evading her positive, solemn duty as a judge. She gravely abused her discretion.

II (A)

It is settled that the Regional Trial Court sent to respondent's counsel, Atty. Ginete, a copy of its December 28, 2015 Order. This was sent through registered mail to an address which is equally settled to have been Atty. Ginete's mailing address. All that remains in dispute is whether receipt of that Order by Capuno, amounts to valid service upon Atty. Ginete and, ultimately, upon respondent and her mother.

It has been respondent's consistent claim that receipt by Capuno does not amount to valid service, as Capuno was supposedly never authorized to receive mail matter for Atty. Ginete.^[47]

Respondent's contention fails to impress.

Rule 13, Section 2 of the 1997 Rules of Civil Procedure defines service as "the act of providing a party with a copy of the pleading or paper concerned." It further stipulates that, unless otherwise ordered, service upon a party's counsel effectively works as service upon the actual party:

SECTION 2. Filing and service, defined. — Filing is the act of presenting the pleading or other paper to the clerk of court.

Service is the act of providing a party with a copy of the pleading or paper concerned. If any party has appeared by counsel, service upon him shall be made upon his counsel or one of them, unless service upon the

party himself is ordered by the court. Where one counsel appears for several parties, he shall only be entitled to one copy of any paper served upon him by the opposite side.

When a party is represented by counsel, "notices of all kinds, including motions, pleadings, and orders must be served on said counsel and notice to him is notice to client."^[48] *Delos Santos v. Elizalde*^[49] explained the rationale for this:

To reiterate, service upon the parties' counsels of record is tantamount to service upon the parties themselves, but service upon the parties themselves is not considered service upon their lawyers. The reason is simple — the parties, generally, have no formal education or knowledge of the rules of procedure, specifically, the mechanics of an appeal or availment of legal remedies; thus, they may also be unaware of the rights and duties of a litigant relative to the receipt of a decision. More importantly, it is best for the courts to deal only with one person in the interest of orderly procedure — either the lawyer retained by the party or the party him/herself if/s/he does not intend to hire a lawyer.^[50]

Under Rule 13, Section 5, service may either be personal or by mail.^[51] However, should personal service or service by mail be unavailable, service may be made through substituted service.^[52]

Rule 13, Section 9 specifically governs service of judgments, final orders, or resolutions, such as Judge Patrimonio-Soriaso's December 28, 2015 Order:

SECTION 9. Service of judgments, final orders, or resolutions. — Judgments, final orders or resolutions shall be served either personally or by registered mail. When a party summoned by publication has failed to appear in the action, judgments, final orders or resolutions against him shall be served upon him also by publication at the expense of the prevailing party.

Rule 13, Section 11 expresses a preference for personal service: "[w]henever practicable, the service and filing of pleadings and other papers shall be done personally." Rule 13, Section 6 specifies how personal service is done:

SECTION 6. Personal service. — Service of the papers may be made by delivering personally a copy to the party or his counsel, or by leaving it in his office with his clerk or with a person having charge thereof. If no person is found in his office, or his office is not known, or he has no office, then by leaving the copy, between the hours of eight in the morning and six in the evening, at the party's or counsel's residence, if