

## **FIRST DIVISION**

**[ G.R. No. 189207, June 15, 2011 ]**

**ERIC U. YU, PETITIONER, VS. HONORABLE JUDGE AGNES REYES-CARPIO, IN HER OFFICIAL CAPACITY AS PRESIDING JUDGE, REGIONAL TRIAL COURT OF PASIG-BRANCH 261; AND CAROLINE T. YU, RESPONDENTS.**

### **D E C I S I O N**

**VELASCO JR., J.:**

#### **The Case**

This is a Petition for Certiorari under Rule 65 which seeks to annul and set aside the March 31, 2009 Decision <sup>[1]</sup> of the Court of Appeals (CA) in CA-G.R. SP No. 106878. The CA Decision affirmed the Orders dated August 4, 2008 <sup>[2]</sup> and October 24, 2008 <sup>[3]</sup> of the Regional Trial Court (RTC), Branch 261 in Pasig City.

#### **The Facts**

The instant petition stemmed from a petition for declaration of nullity of marriage filed by petitioner Eric U. Yu against private respondent Caroline T. Yu with the RTC in Pasig City. The case was initially raffled to Branch 163.

On May 30, 2006, Judge Leili Cruz Suarez of the RTC-Branch 163 issued an Order, stating that petitioner's Partial Offer of Evidence dated April 18, 2006 would already be submitted for resolution after certain exhibits of petitioner have been remarked. But the exhibits were only relative to the issue of the nullity of marriage of the parties. <sup>[4]</sup>

On September 12, 2006, private respondent moved to submit the incident on the declaration of nullity of marriage for resolution of the court, considering that the incidents on custody, support, and property relations were mere consequences of the declaration of nullity of the parties' marriage. <sup>[5]</sup>

On September 28, 2006, petitioner opposed private respondent's Motion, claiming that the incident on the declaration of nullity of marriage cannot be resolved without the presentation of evidence for the incidents on custody, support, and property relations. <sup>[6]</sup> Petitioner, therefore, averred that the incident on nullity of marriage, on the one hand, and the incidents on custody, support, and property relations, on the other, should both proceed and be simultaneously resolved.

On March 21, 2007, RTC-Branch 163 issued an Order in favor of petitioner's opposition. Particularly, it stated that:

The Court agrees with the contention of the Petitioner that it would be more in accord with the rules if the Parties were first allowed to present their evidence relative to the issues of property relations, custody and support to enable the Court to issue a comprehensive decision thereon.

[7]

Subsequently, private respondent was able to successfully cause the inhibition of Judge Cruz Suarez of the RTC-Branch 163. Consequently, the case was re-raffled to another branch of the Pasig RTC, particularly Branch 261, presided by Judge Agnes Reyes-Carpio. [8]

Thereafter, while the case was being heard by the RTC-Branch 261, private respondent filed an Omnibus Motion on May 21, 2008. The Omnibus Motion sought (1) the strict observation by the RTC-Branch 261 of the Rule on Declaration of Absolute Nullity of Void Marriages, as codified in A.M. No. 02-11-10-SC, in the subject proceedings; and (2) that the incident on the declaration of nullity of marriage be already submitted for resolution. [9] Conversely, private respondent prayed that the incident on the declaration of nullity of marriage be resolved ahead of the incidents on custody, support, and property relations, and not simultaneously.

Quite expectedly, petitioner opposed the Omnibus Motion, arguing that the issues that were the subject of the Omnibus Motion had already been resolved in the March 21, 2007 Order. Concurrently, petitioner prayed that the incidents on nullity, custody, support, and property relations of the spouses be resolved simultaneously. [10]

In its Order dated August 4, 2008, the RTC-Branch 261 granted the Omnibus Motion. Judge Reyes-Carpio explained that:

At the outset, the parties are reminded that the main cause of action in this case is the declaration of nullity of marriage of the parties and the issues relating to property relations, custody and support are merely ancillary incidents thereto.

x x x x

Consistent, therefore, with Section 19 of A.M. No. 02-11-10-SC, the Court finds it more prudent to rule first on the petitioner's petition and respondent's counter-petition for declaration of nullity of marriage on the ground of each other's psychological incapacity to perform their respective marital obligations. If the Court eventually finds that the parties' respective petitions for declaration of nullity of marriage is indeed meritorious on the basis of either or both of the parties' psychological incapacity, then the parties shall proceed to comply with Article[s] 50 and 51 of the Family Code before a final decree of absolute nullity of marriage can be issued. Pending such ruling on the declaration of nullity of the parties' marriage, the Court finds no legal ground, at this stage, to proceed with the reception of evidence in regard the issues on custody and property relations, since these are mere incidents of the nullity of the parties' marriage. [11]

On August, 28, 2008, petitioner moved for the reconsideration of the August 4, 2008 Order. On October 24, 2008, Judge Reyes-Carpio issued an Order denying petitioner's motion for reconsideration. In denying the motion, Judge Reyes-Carpio reasoned:

x x x [I]t is very clear that what petitioner seeks to reconsider in the Court's Order dated August 4, 2008 is the procedure regarding the reception of evidence on the issues of property relations, custody and support. He opposes the fact that the main issue on declaration of nullity is submitted for decision when he has not yet presented evidence on the issues on property relations, custody and support.

Considering that what he seeks to set aside is the procedural aspect of the instant case, *i.e.* the reception of evidence which is a matter of procedure, there is no question that it is A.M. 02-11- [10]-SC which should be followed and not the procedures provided in Articles 50 and 51 of the Family Code. While it is true that the Family Code is a substantive law and rule of procedure cannot alter a substantive law, the provisions laid in Articles 50 and 51 relative to the liquidation and dissolution of properties are by nature procedural, thus there are no substantive rights which may be prejudiced or any vested rights that may be impaired.

In fact, the Supreme Court in a number of cases has even held that there are some provisions of the Family Code which are procedural in nature, such as Article[s] 185 and 50 of the Family Code which may be given retroactive effect to pending suits. Adopting such rationale in the instant case, if the Court is to adopt the procedures laid down in A.M. No. 02-11- [10]-SC, no vested or substantive right will be impaired on the part of the petitioner or the respondent. Even Section 17 of A.M. No. 02-11- [10]-SC allows the reception of evidence to a commissioner in matters involving property relations of the spouses.

x x x x

Lastly, it is the policy of the courts to give effect to both procedural and substantive laws, as complementing each other, in the just and speedy resolution of the dispute between the parties. Moreover, as previously stated, the Court finds it more prudent to rule first on the petitioner's petition and respondent's counter-petition for declaration of nullity of marriage on the ground of each other's psychological incapacity to perform their respective marital obligations. **If the Court eventually finds that the parties' respective petitions for declaration of nullity of marriage is indeed meritorious on the basis of either or both of the parties' psychological incapacity, then the parties shall proceed to comply with Article[s] 50 and 51 of the Family Code before a final decree of absolute nullity of marriage can be issued.** [12]

### **The Ruling of the Appellate Court**

On January 8, 2009, petitioner filed a Petition for Certiorari under Rule 65 with the CA, assailing both the RTC Orders dated August 4, 2008 and October 24, 2008. The petition impleaded Judge Reyes-Carpio as respondent and alleged that the latter committed grave abuse of discretion in the issuance of the assailed orders.

On March 31, 2009, the CA affirmed the judgment of the trial court and dismissed the petition. The dispositive portion of the CA Decision reads:

All told, absent any arbitrary or despotic exercise of judicial power as to amount to abuse of discretion on the part of respondent Judge in issuing the assailed *Orders*, the instant petition for certiorari cannot prosper.

**WHEREFORE**, the petition is hereby **DISMISSED**.

**SO ORDERED.**<sup>[13]</sup>

### **The Issues**

This appeal is, hence, before Us, with petitioner maintaining that the CA committed grave abuse of discretion in upholding the assailed orders issued by the trial court and dismissing the Petition for Certiorari. Particularly, petitioner brings forth the following issues:

- A. Whether or not the [CA] committed grave abuse of discretion amounting to lack of jurisdiction in holding that a petition for certiorari is not a proper remedy of the Petitioner
- B. Whether or not the [CA] committed grave abuse of discretion amounting to lack [or excess] of jurisdiction in upholding the Respondent Judge in submitting the main issue of nullity of marriage for resolution ahead of the reception of evidence on custody, support, and property relations
- C. Whether or not the reception of evidence on custody, support and property relations is necessary for a complete and comprehensive adjudication of the parties' respective claims and [defenses]. <sup>[14]</sup>

### **The Court's Ruling**

We find the petition without merit.

A Petition for Certiorari under Rule 65 is the proper remedy in assailing that a judge has committed grave abuse of discretion amounting to lack or excess of jurisdiction. Section 1, Rule 65 of the Rules of Court clearly sets forth when a petition for certiorari can be used as a proper remedy:

SECTION 1. *Petition for certiorari*. - 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, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require. (Emphasis Ours.)

The term "grave abuse of discretion" has a specific meaning. An act of a court or tribunal can only be considered as with grave abuse of discretion when such act is done in a "capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction." [15] The abuse of discretion must be so patent and gross as to amount to an "evasion of a positive duty or to a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility." [16] Furthermore, the use of a petition for certiorari is restricted only to "truly extraordinary cases wherein the act of the lower court or quasi-judicial body is wholly void." [17] From the foregoing definition, it is clear that the special civil action of certiorari under Rule 65 can only strike an act down for having been done with grave abuse of discretion if the petitioner could manifestly show that such act was patent and gross. [18] But this is not the case here.

Nowhere in the petition was it shown that the acts being alleged to have been exercised with grave abuse of discretion--(1) the Orders of the RTC deferring the presentation of evidence on custody, support, and property relations; and (2) the appellate court's Decision of upholding the Orders--were patent and gross that would warrant striking down through a petition for certiorari under Rule 65.

At the very least, petitioner should prove and demonstrate that the RTC Orders and the CA Decision were done in a capricious or whimsical exercise of judgment. [19] This, however, has not been shown in the petition.

It appears in the records that the Orders in question, or what are alleged to have been exercised with grave abuse of discretion, are interlocutory orders. An interlocutory order is one which "does not finally dispose of the case, and does not end the Court's task of adjudicating the parties' contentions and determining their rights and liabilities as regards each other, but obviously indicates that other things remain to be done by the Court." [20] To be clear, certiorari under Rule 65 is appropriate to strike down an interlocutory order only when the following requisites concur:

- (1) when the tribunal issued such order without or in excess of jurisdiction or with grave abuse of discretion; and
- (2) when the assailed interlocutory order is patently erroneous and the remedy of appeal would not afford adequate and expeditious relief. [21]