

## SECOND DIVISION

[ G.R. NO. 170632, July 10, 2007 ]

**EUGENIA D. POLIDO, PETITIONER, VS. HON. COURT OF APPEALS  
AND MARIANO P. GASAT, RESPONDENTS.**

### DECISION

**CARPIO MORALES, J.:**

After the death of her husband Jacinto Polido (Polido), Eugenia Duque Polido, petitioner, tried to withdraw the joint savings deposit they maintained at the Philippine National Bank, Camiling, Tarlac Branch, but failed because one Mariano Gasat (Gasat), herein respondent who claimed to be the couple's adopted child, objected thereto.

Petitioner thus filed on January 21, 2004 a complaint before the Regional Trial Court of Tarlac, with Motion for the Issuance of a Writ of Preliminary Injunction, against Gasat.

In her complaint, petitioner prayed for the following reliefs:

1. An Order granting the issuance of [a] writ of preliminary injunction enjoining and restraining the defendant and all persons acting under him from preventing the officers or employee[s] of the Philippine National Bank, Camiling, Tarlac Branch from releasing in favor of the plaintiff the money deposited with the said bank upon posting of a bond by the plaintiff in an amount to be fixed by the Court;
2. After trial, to declare the defendant not the adopted child of the plaintiff and her husband Jacinto Polido;
3. Directing the defendant to pay plaintiff attorney's fees and litigation expenses in the amount of P100,000.00 and moral damages in the amount of P50,000.00.

Other reliefs which are just and equitable under the premises are likewise prayed for.<sup>[1]</sup> (Underscoring supplied)

In his Answer with Compulsory Counterclaim,<sup>[2]</sup> Gasat alleged that petitioner and her late husband had adopted him as their child, annexing as proof thereof a photocopy of an Order dated September 23, 1970 of the Municipal Trial Court (MTC) of Camiling in Civil Case No. 2497, "*In the Matter of the Adoption of the Minors, Lea D. Tomas and Mariano Gasat, JACINTO POLIDO AND EUGENIA POLIDO, Petitioners,*"<sup>[3]</sup> and a copy of a Certification <sup>[4]</sup> from the MTC Clerk of Court that a "[c]opy of the decree of adoption dated September 23, 1970 was furnished to the Office of the Local Civil Registrar" and said decree had become final and executory; and that

petitioner cannot withdraw any amount from the bank account because she should follow legal procedures governing settlement of the estate of a deceased, unless a competent court issues an order allowing her to withdraw from said account. [5]

In his Opposition to the Issuance of Preliminary Injunction and Motion to Set the Affirmative Defenses for Preliminary Hearing, [6] Gasat argued that:

X X X X

3. Even assuming but without admitting that the defendant's adoption paper is ineffective, still he cannot be deprived of his inheritance from the Estate of Jacinto Polido because said deceased and the plaintiff are childless and all the properties subject of inheritance are exclusive properties of the late Jacinto Polido, the same being inherited from his late father, NARCISO POLIDO[,] who died in Hawaii, USA.
4. The Estate of Narciso Polido was inherited by his two children, namely, said JACINTO POLIDO and PETRA P. GASAT, also deceased and the latter was survived by her husband and SEVEN (7) children of which the defendant (MARIANO D. POLIDO) is one . . . ;
5. Thus, by virtue of the provision of Art. 1001 of the Civil Code of the Philippines, which reads as follows:12345

"ART. 1001. Should brothers and sisters or their children survive with the widow or widower, the latter shall be entitled to one-half of the inheritance and the brothers and sisters or their children to the other half."

[T]he heirs of the late Jacinto Polido are his WIFE (plaintiff) [who is entitled to] one- half (1/2) and Petra P. Gasat's SEVEN (7) CHILDREN which would include the defendant[, who are entitled to] one-half (1/2).

**HENCE,** THERE IS NO WAY WHATSOEVER TO JUSTIFY THE ISSUANCE OF PRELIMINARY INJUNCTION AGAINST THE DEFENDANT EVEN IF HIS ADOPTION WOULD BE NULLIFIED OR OF NO EFFECT WHATSOEVER. [7]  
(Emphasis in the original; underscoring supplied)

Gasat subsequently filed an Omnibus Motion [8] withdrawing 1) the allegation he had made in various pleadings that he is an adopted son of the couple and 2) his Motion to Set the Affirmative Defenses for Preliminary Hearing. And he moved to convert the case to an action for partition, at his instance, of the estate of his grandfather Narciso Polido, [9] father of petitioner's husband and Gasat's mother, and to require petitioner to file income tax returns and pay the estate tax due.

To Gasat's prayer to convert the action to one for partition and to require her to file Estate Tax Returns, petitioner filed an Opposition. [10] And she moved for Judgment on the Pleadings. [11]

To justify her motion for judgment on the pleadings, petitioner argued that Gasat, in withdrawing his claim and allegation that he is an adopted child, "practically

admitted [her] material allegations [in the Complaint] that [he] is not an adopted child."<sup>[12]</sup>

By Order<sup>[13]</sup> dated December 7, 2004, the trial court denied Gasat's motion to convert the case to an action for partition and granted petitioner's motion for judgment on the pleadings in this wise:

On November 30, 2004, the plaintiff filed a Motion for Judgment on the ground that by withdrawing all his allegations that he is [an] adopted child of the plaintiff, defendant practically admitted all the material allegations in the complaint and prayed that judgment be rendered as the complaint may warrant.

This Court resolves to grant the motion for judgment on the ground that the defense that he is an adopted child of the plaintiff is withdrawn by the defendant himself. By withdrawing his defense, he is deemed to have admitted the main allegation of the plaintiff that he is not an adopted child. On the motion of the defendant that the instant action be converted into a partition and that the plaintiff be ordered to file her real estate tax return, the same is denied for lack of merit.<sup>[14]</sup> (Underscoring supplied)

Accordingly, the trial court disposed as follows:

WHEREFORE, judgment is hereby rendered:

1. Declaring the defendant not the adopted child of the plaintiff,
2. Ordering the Manager of the Philippine National Bank, Camiling Branch or any other branch to release to plaintiff upon her request the money she deposited or her deceased husband Jacinto Polido;
3. Directing the defendant to pay the plaintiff moral damages in the amount of P25,000.00 and attorney's fee[s] in the amount of P25,000.00.

SO ORDERED.<sup>[15]</sup> (Underscoring supplied)

Gasat filed a Notice of Appeal.<sup>[16]</sup> On May 26, 2005, before the Court of Appeals, he filed an Ex-Parte Motion to Admit Payment of Docket Fee,<sup>[17]</sup> explaining that being jobless, it took some time for him to raise the docket fee. He added that he had to borrow at an exorbitant interest rate. Finally, he explained that when he went to the trial court to pay the docket fee, he was advised to pay the same at the Court of Appeals, the records having already been forwarded to it.

The Court of Appeals denied his motion and dismissed his appeal.<sup>[18]</sup> On Motion for Reconsideration, however, the Court of Appeals, by Resolution dated July 19, 2005, admitted Gasat's docket fee.<sup>[19]</sup> Petitioner filed a Motion for Reconsideration, which the Court of Appeals denied in this wise:<sup>[20]</sup>

It is settled that "delay in the payment of the docket fees confers a discretionary, and not mandatory, power to dismiss the proposed

appeal." While the payment of the prescribed docket fee is a jurisdictional requirement, its non-payment at the time of filing does not automatically cause the dismissal of the case, as long as the fee is paid within the applicable prescriptive or reglementary period, more so, when the party involved demonstrates a willingness to abide by the rules prescribing such payment. On this score is the case of Spouses Gregorio Go and Juan Tan Go v. Johnson Y. Tong, et. al., where the Supreme Court ruled that:

While the cause of action of the private respondent was supposed to prescribe in four (4) years, he was allowed to pay; and he in fact paid the docket fee in a year's time. We do not see how this period can be deemed unreasonable. Moreover, on his part there is no showing of any pattern or intent to defraud the government of the required docket fee.

In the instant case, the period between the filing of the notice of appeal on February 28, 2005 and the payment of docket fee on May 26, 2005 is deemed reasonable. Moreover, justice will be better served with the admission of such belated payment.<sup>[21]</sup> (Underscoring supplied)

Hence, the present Petition for Certiorari and Prohibition with Urgent Motion for Injunction and Temporary Restraining Order,<sup>[22]</sup> petitioner faulting the Court of Appeals for committing grave abuse of discretion in relaxing the rule on the payment of docket fees on the ground of substantial justice.<sup>[23]</sup>

The petition fails.

Indeed, jurisprudence allows the relaxation of the Rule on non-payment of appellate docket fees.

Notwithstanding the mandatory nature of the requirement of payment of appellate docket fees, we also recognize that its strict application is qualified by the following: *first*, failure to pay those fees within the reglementary period allows only discretionary, not automatic, dismissal; *second*, such power should be used by the court in conjunction with its exercise of sound discretion in accordance with the tenets of justice and fair play, as well as with a great deal of circumspection in consideration of all attendant circumstances.<sup>[24]</sup>

The relaxation by the appellate court of the rule on non-payment of the appellate docket fee appears justified as a perusal of the records of the case shows persuasive and weighty reasons to give due course to the appeal.<sup>[25]</sup>

Instead of remanding the case to the appellate court, however, this Court, in the interest of speedy dispensation of justice,<sup>[26]</sup> especially given that the main issue is a question of law, now passes on the merits of the appeal of Gasat.

Section 1 of Rule 34 of the Rules of Court provides:

SECTION 1. *Judgment on the Pleadings.* - Where an answer **fails to tender an issue,** or otherwise **admits the material allegations of the adverse party's pleading,** the court may, on motion of that party, direct