

FIRST DIVISION

[G.R. NO. 166239, June 08, 2006]

**ELSIE ANG, PETITIONER, VS. DR. ERNIEFEL GRAGEDA,
RESPONDENT.**

D E C I S I O N

CALLEJO, SR., J.:

Before the Court is a Petition for Review of the Resolution^[1] of the Court of Appeals in (CA) CA-G.R. SP No. 76339 dismissing the petition for *certiorari* filed by petitioner, and its resolution denying the motion for reconsideration thereof.

The Antecedents

On February 9, 1996, Janet Ang had liposuction surgery on her thighs at the EPG Cosmetic and Aesthetics Surgery Clinic in Alabang, Muntinlupa City. She was attended to and operated on by Dr. Erniefel Grageda, who owned and ran the said clinic. In the course of the operation, Janet began to have fits of seizure. The doctor tried to stop the seizures but Janet had a grandmal seizure that led to her death. Medico-legal experts of the National Bureau of Investigation listed the cause of death as "irreversible shock."

Ang Ho Chem, Janet's father, filed a criminal complaint against respondent. On June 10, 1996, the Office of the City Prosecutor of Muntinlupa filed an Information^[2] against Grageda for reckless imprudence resulting to homicide before the Metropolitan Trial Court (MeTC) of Muntinlupa City. The accusatory portion of the Information reads:

That on or about the 4th (*sic*) day of February, 1996,^[3] in the City of Muntinlupa, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being then a doctor of EPG Cosmetics and Aesthetics Surgical Clinic, without taking the necessary care and precaution to avoid injury to person, did then and there, unlawfully and feloniously conducted a liposuction operation on the person of Janet Ang in a careless, negligent and imprudent manner without employing the necessary corrective and/or preventive measures to prevent and/or arrest the irreversible shock, which directly caused her death.

The case was raffled to Branch 80 of the MeTC of Muntinlupa and docketed as Criminal Case No. 21815.

After trial on the merits, the MeTC rendered judgment on March 4, 2002, acquitting accused Grageda.^[4] The lower court ruled that the accused complied with the minimum standards followed by physicians in the treatment of their patients; that liposuction of the thighs is a minor surgery, hence, the clinical setting of accused

was acceptable; that in trying to save the life of Janet Ang, accused followed the standard procedure in the conduct of the same; that all the elements of the crime of reckless imprudence are not present in the case; that accused was not negligent; and that the liposuction surgery was not the proximate cause of the death of Janet Ang. The dispositive part of the decision states:

WHEREFORE, premises considered, the Court finds accused Dr. Erniefel Grageda NOT GUILTY of the crime of reckless imprudence resulting to homicide.

SO ORDERED.

Private complainant appealed the decision on the civil aspect thereof to the Regional Trial Court (RTC), Branch 276, Muntinlupa City. The case was docketed as Criminal Case No. 02-397.^[5]

On April 30, 2002, the RTC directed the private complainant (now appellant) to file the necessary appeal memorandum/brief within 15 days from notice.^[6] Appellant received his copy of the order on May 8, 2002.

However, appellant, through counsel, the Solis & Medina Law Offices, failed to file the required memorandum within the specified period. Appellant filed no less than 15 motions for extension of time to file said memorandum dated as follows: May 22, 2002,^[7] June 5, 2002,^[8] June 21, 2002,^[9] July 4, 2002,^[10] July 18, 2002,^[11] August 2, 2002,^[12] August 16, 2002,^[13] August 27, 2002,^[14] September 6, 2002,^[15] September 16, 2002,^[16] October 1, 2002,^[17] October 16, 2002,^[18] October 30, 2002,^[19] November 15, 2002,^[20] and November 28, 2002.^[21] In his last motion, appellant prayed that he be given up to December 15, 2002 within which to finalize and file his appeal memorandum.

On December 2, 2002, the RTC issued an Order^[22] dismissing the appeal for failure of appellant to file his appeal memorandum.

Still unaware that the appeal had been dismissed by the court, accused-appellee filed a Motion to Dismiss the Appeal^[23] on December 10, 2002, on the ground of appellant's failure to comply with the order of the court. On December 16, 2002, appellant received a copy of the December 2, 2002 Order of the RTC dismissing his appeal, and finally filed his appeal memorandum/brief^[24] by registered mail as well as a motion for reconsideration^[25] of the December 2, 2002 RTC Order.

On January 20, 2003, the RTC issued an Order^[26] denying appellant's motion for reconsideration. The court ratiocinated that:

Considering that at the time the Order dismissing the appeal was issued, appellant still had not yet filed the appeal memorandum/brief, despite being granted several extension[s] of time to so file, to a total of 155 days. In fact, the memorandum was filed only on the same date the Motion for Reconsideration was filed. The Court did not find sufficient reason to reconsider her Order and hereby DENIES the same.

On March 4, 2003, counsel for appellant filed a Manifestation^[27] informing the RTC of the appellant's death and named the latter's daughter, Elsie Ang, as his substitute and representative in accordance with Section 16, Rule 3 of the Revised Rules of Court.

Instead of appealing the December 2, 2002 Order of the RTC via a petition for review under Rule 42 of the Rules of Court within the period therefor, Elsie Ang (petitioner) filed a Petition for *Certiorari*^[28] on April 4, 2003 before the CA, questioning the December 2, 2002 and January 20, 2003 Orders of the RTC. Petitioner raised the following arguments in support of her petition:

1. RESPONDENT COURT GRAVELY ABUSED ITS DISCRETION WHEN IT ISSUED THE ASSAILED ORDERS DISMISSING THE APPEAL AND DENYING THE MOTION FOR RECONSIDERATION DESPITE THE FACT THAT THE APPEAL MEMORANDUM/BRIEF WAS SEASONABLY FILED AND THE EXTENSIONS WERE NECESSARY AND JUSTIFIED IN VIEW OF THE IMPORTANCE OF THE APPEAL;
2. RESPONDENT COURT GRAVELY ABUSED ITS DISCRETION IN DISREGARDING APPELLANT-PETITIONER'S STATUTORY RIGHT TO APPEAL, AND THE NUMEROUS PRONOUNCEMENTS OF THE SUPREME COURT ADMONISHING APPELLATE COURTS TO REVIEW A DECISION ON THE MERITS RATHER THAN ABORTING THE RIGHT TO APPEAL BY A LITERAL APPLICATION OF PROCEDURAL RULES;
3. RESPONDENT COURT GRAVELY ERRED IN RELYING ON TECHNICAL RULES WHICH IT OUGHT TO HAVE SET ASIDE ON THE PRINCIPLE THAT WHERE THE RIGID APPLICATION OF THE RULES WOULD FRUSTRATE SUBSTANTIAL JUSTICE OR BAR THE VINDICATION OF A LEGITIMATE GRIEVANCE, THE COURTS ARE JUSTIFIED IN EXEMPTING A PARTICULAR CASE FROM THE OPERATION OF THE RULES; and,
4. IT WAS INDEED GRAVE ERROR FOR THE RESPONDENT COURT TO DISMISS THE APPEAL AND DISALLOW THE FILING OF THE APPEAL MEMORANDUM/BRIEF DESPITE ITS APPARENT MERITS x x x^[29]

On May 15, 2003, the CA issued a Resolution^[30] dismissing the petition for being the wrong remedy to question the RTC Orders. The CA reasoned that petitioner should have filed a petition for review under Rule 42 of the Rules of Court within the reglementary period, instead of a petition for *certiorari* which was filed beyond the original 15-day period. The CA emphasized that *certiorari* cannot take the place of a lost appeal.

Petitioner filed a motion for reconsideration^[31] of the resolution, arguing that there was no appeal from an order dismissing or disallowing an appeal, hence, the proper remedy is a petition for *certiorari*. In his Comment^[32] filed on July 9, 2003, respondent argued that, under the Rules of Court, a party desiring to question a decision of the RTC rendered in the exercise of its appellate jurisdiction should file a petition for review under Rule 42 of the Rules of Court before the CA, and not a *certiorari* petition under Rule 65.

In the Reply^[33] filed on August 1, 2003, petitioner contended that the RTC gravely abused its discretion; hence, *certiorari* was the proper remedy. Petitioner, likewise, invoked liberality in the application of the Rules of Court. Respondent, in the August 11, 2003 Rejoinder,^[34] posited that the RTC did not abuse its discretion and that *certiorari* cannot take the place of a lost appeal. In her Sur-Rejoinder^[35] filed on September 17, 2003, petitioner maintained that her appeal memorandum/brief was, indeed, filed on December 16, 2002 within the extension period sought, thus, petitioner did not fail in filing the same. She insisted that the dismissal of her appeal was a nullity.

Finding no reversible error in its previous dismissal order, the CA, on December 10, 2004, denied petitioner's motion for reconsideration.^[36]

The Present Petition

On January 31, 2005, petitioner filed the instant petition for review on *certiorari*, contending that:

I

THE COURT OF APPEALS ERRED IN DISMISSING THE PETITION FOR *CERTIORARI* UNDER RULE 65 FILED BY HEREIN PETITIONER FOR ALLEGEDLY BEING A WRONG REMEDY:

- A. The Regional Trial Court acted with grave abuse of discretion in dismissing the appeal even before the lapse of the extended period within which to (*sic*) herein petitioner's Appeal Memorandum/Brief.
- B. There was no appeal nor any plain, speedy, and adequate remedy in the ordinary course of law.

II

ASSUMING FOR THE SAKE OF PURE ARGUMENT THAT THE PETITION FOR *CERTIORARI* UNDER RULE 65 WAS NOT THE PROPER LEGAL REMEDY, THE SUBSTANTIAL AND OBVIOUS MERITS OF THE APPEAL AND THE IMPORTANCE OF THE MATTERS AND/OR ISSUES DISCUSSED THEREIN WARRANT THE ADJUDICATION OF THE SAID APPEAL ON THE MERITS:

- A. The Trial Court totally disregarded the testimonies of competent witnesses and medical experts including the voluminous documentary exhibits presented by the prosecution when it reproduced in toto the Memorandum of the private respondent in issuing its decision in Criminal Case No. 21815.
- B. Liposuction of the thighs is not a minor, trivial or simple procedure contrary to what Dr. Grageda portrays it to be. Since liposuction of the thighs is not a minor surgical procedure, the standards of care are more rigid. The evidence showed that Grageda did not observe or did not

adhere to these standards.

- C. Dr. Grageda is not even a surgeon who is qualified to perform liposuction operation which is a form of plastic surgery.
- D. When the victim Janet Ang went into seizures, the appellee Dr. Grageda did not observe the proper standards of care in managing the said seizures; as shown by the evidence, the efforts which Dr. Grageda exerted were inadequate, manifesting the lack of foresight or due care expected of a surgeon.
- E. When the victim Janet Ang went into cardiac arrest, the appellee Dr. Grageda did not observe the proper standards of care in managing the cardiac arrest in accordance with known treatises or medical authorities on the subject. Dr. Grageda's clinic was ill-equipped both in terms of vital medical equipment needed and of competent personnel assistance; and
- F. Dr. Grageda did not observe the appropriate standards for pre-operative care; his pre-operative examination of the victim lacked thoroughness, nay inadequate and peremptorily administered.^[37]

The issues raised by the parties in their pleadings are the following: (1) whether the RTC erred in dismissing the appeal of petitioner; and (2) whether the filing of a petition for *certiorari* under Rule 65 of the Rules of Court was the proper remedy of petitioner in the appellate court.

On the first issue, petitioner points out that she filed her appeal memorandum within the extended period therefor; for this reason, the Order of the RTC dismissing her appeal allegedly for failure to file the memorandum is null and void, depriving her of her right to due process. Moreover, she had no appeal or any plain, speedy, and adequate remedy in the ordinary course of law; hence, her petition for a writ of *certiorari* under Rule 65 of the Rules of Court is appropriate.

Petitioner insists that the trial court did not issue any orders denying her several motions for extension to file her appeal memorandum; neither did respondent oppose her motions. Respondent did not suffer any injury by the tardy filing of her appeal memorandum. It was thus unjust and arbitrary for the RTC to dismiss her appeal.

Petitioner maintains that, in any event, she filed her appeal memorandum within the period prayed for by her in her last motion for extension. Since the RTC had already acquired jurisdiction over her appeal, it erred in dismissing her appeal on its belief that she failed to file her appeal memorandum on time. Petitioner cites the ruling of this Court in *Development Bank of the Philippines v. Court of Appeals*^[38] to buttress her contentions.

Petitioner posits that even assuming her petition for *certiorari* was not the proper