

THIRD DIVISION

[G.R. No. 138731, December 11, 2000]

**TESTATE ESTATE OF MARIA MANUEL VDA. DE BIASCAN,
PETITIONER, VS. ROSALINA C. BIASCAN, RESPONDENT.**

DECISION

GONZAGA-REYES, J.:

This is a petition for review of the decision^[1] of the Court of Appeals in CA-G.R. SP Case No. 44306 affirming the orders dated October 22, 1996 and February 12, 1997 of the Regional Trial Court, Branch 4, Manila. These orders dismissed the appeal of petitioner from the orders dated April 2, 1981 and April 30, 1985 of the same Regional Trial Court.

The facts of the case are as follows:

On June 3, 1975, private respondent Rosalina J. Biascan filed a petition^[2] denominated as Special Proceeding No. 98037 at the then Court of First Instance, Branch 4, Manila praying for her appointment as administratrix of the intestate estate of Florencio Biascan and Timotea Zulueta. In an Order dated August 13, 1975, private respondent was appointed as regular administratrix of the estates.

On October 10, 1975, Maria Manuel Vda. De Biascan, the legal wife of Florencio Biascan entered her appearance as Oppositor-Movant in SP. Proc. No. 98037.^[3] Simultaneous with her appearance, she filed a pleading containing several motions including a motion for intervention, a motion for the setting aside of private respondent's appointment as special administratrix and administratrix, and a motion for her appointment as administratrix of the estate of Florencio Biascan.^[4]

After an exchange of pleadings between the parties, Judge Serafin Cuevas, then presiding judge of CFI Manila, Branch 4, issued an Omnibus Order^[5] dated November 13, 1975 which, among others, granted Maria's intervention and set for trial the motion to set aside the Orders appointing respondent as administratrix.

On April 2, 1981, the trial court issued an Order^[6] resolving that: (1) Maria is the lawful wife of Florencio; (2) respondent and her brother are the acknowledged natural children of Florencio; (3) all three are the legal heirs of Florencio who are entitled to participate in the settlement proceedings; (4) the motion to set aside the order appointing private respondent as administratrix is denied; and (5) the motion to approve inventory and appraisal of private respondent be deferred. Maria, through her counsel, received a copy of this April 2, 1981 Order on April 9, 1981.^[7]

On June 6, 1981, or fifty-eight (58) days after he receipt of the April 2, 1981 Order, Maria filed her motion for reconsideration^[8] which private respondent opposed.^[9]

On November 15, 1981, the fourth floor of the City Hall of Manila was completely gutted by fire. The records of the settlement proceedings were among those lost in the fire. Thus, on January 2, 1985, private respondent filed a Petition for Reconstitution^[10] of the said records.

Due to the delay caused by the fire and the reconstitution of the records, it was only on April 30, 1985 that the Regional Trial Court of Manila, Branch 4 issued an Order^[11] denying Maria's June 6, 1981 Motion for Reconsideration.

Sometime thereafter, Maria died and her testate estate also became the subject of settlement proceedings. Atty. Marcial F. Lopez was appointed as interim special administrator and engaged the services of the Siguion Reyna Montecillo and Ongsiako Law Offices on Behalf of the estate.

On August 21, 1996, the law firm was allegedly made aware of and given notice of the April 30, 1985 Order when its associate visited Branch 4 of the Regional Trial Court of Manila to inquire about the status of the case. The associate checked the records if there was proof of service of the April 30, 1985 Order to the former counsel of Maria, Atty. Marcial F. Lopez, but he discovered that there was none.^[12] He was able to secure a certification^[13] from the Clerk of Court of the Regional Trial Court of Manila, Branch 4 which stated that there was no proof of service of the Order dated April 30, 1985 contained in the records of SP. Proc. No. 98037.

A Notice of Appeal^[14] dated April 22, 1996 was filed by petitioner from the Orders dated April 2, 1981 and April 30, 1985 of the trial court. While the said notice of appeal was dated April 22, 1996, the stamp of the trial court on the first page of the notice clearly indicated that the same was received by the trial court on September 20, 1996. A Record of Appeal^[15] dated September 20, 1996 was likewise filed by petitioner.

On October 22, 1996, the trial court issued an Order^[16] denying petitioner's appeal on the ground that the appeal was filed out of time. The trial court ruled that the April 2, 1981 Order which was the subject of the appeal already became final as the Motion for Reconsideration thereof was filed sixty-five (65) days after petitioner received the same. In addition, the court ruled that the notice of appeal itself was filed manifestly late as the same was filed more than 11 years after the issuance of the June 11, 1985 Order denying petitioner's Motion for Reconsideration. The Motion for Reconsideration dated November 13, 1996 of petitioner was likewise denied by the trial court in an Order^[17] dated February 12, 1997.

Not satisfied with this decision, petitioner filed a Petition for *Certiorari* with Prayer for Mandatory Injunction^[18] with the Court of Appeals questioning the October 12, 1996 and February 12, 1997 Orders of the Regional Trial Court.

In a Decision^[19] dated February 16, 1999, the First Division of the Court of Appeals denied the petition for *certiorari* of petitioner. Petitioner's Motion for Reconsideration was likewise denied by the appellate court in a Resolution^[20] dated May 18, 1999.

Hence, this Petition for Review on *Certiorari* where petitioner sets forth the following

ground for the reversal of the decision of the appellate court:

"THE FIRST DIVISION OF THE COURT OF APPEALS (REVIEWING COURT) HAS SANCTIONED THE DEPARTURE BY THE REGIONAL TRIAL COURT OF MANILA BRANCH 4 (TRIAL COURT) FROM THE USUAL COURSE OF JUDICIAL PROCEEDING IN ISSUING THE ASSAILED 16 FEBRUARY 1999 DECISION AND THE 18 MAY 1999 RESOLUTION WHEN IT AFFIRMED THE ERRONEOUS FINDING OF THE TRIAL COURT THAT THE ORDER DATED APRIL 2, 1981 BECAME FINAL AND EXECUTORY DESPITE THE FACT THAT NO OPPOSITION ON ITS TIMELINESS WAS FILED AND MOREOVER NO RULING AS REGARDS ITS TIMELINESS WAS MADE."^[21]

There is no merit in the petition.

Section 1, Rule 109 of the Rules of Court enumerates the orders and judgments in special proceedings which may be the subject of an appeal. Thus:

"Section 1. Orders or *judgments from which appeals may be taken*. - An interested person may appeal in a special proceeding from an order or judgment rendered by a Regional Trial Court or a Juvenile and domestic Relations Court, where such order or judgment:

- (a) Allows or disallows a will;
- (b) Determines who are the lawful heirs of a deceased person, or the distributive shares of the estate to which such person is entitled;
- (c) Allows, or disallows, in whole or in part, any claim against the estate of a deceased person, or any claim presented on behalf of the estate in offset to a claim against it;
- (d) Settles the account of an executor, administrator, trustee or guardian;
- (e) Constitutes, in proceedings relating to the settlement of the estate of a deceased person, or the administration of a trustee or guardian, a final determination in the lower court of the rights of the party appealing, except that no appeal shall be allowed from the appointment of a special administrator; and
- (f) Is the final order or judgment rendered in the case, and affects the substantial rights of the person appealing, unless it be an order granting or denying a motion for new trial or for reconsideration."

An appeal is allowed in these aforesaid cases as these orders, decrees or judgments issued by a court in a special proceeding constitute a final determination of the rights of the parties so appealing.^[22] In contrast, interlocutory orders are not appealable as these are merely incidental to judicial proceedings. In these cases, the court issuing such orders retains control over the same and may thus modify, rescind, or revoke the same on sufficient grounds at any time before the final judgment.^[23]

In the instant case, the Order dated April 2, 1981 of the trial court decreed, among

others, that Maria Manuel Vda. De Biascan, the lawful wife of the deceased Florencio Biascan, private respondent Rosalina Biascan and her brother, German Biascan, are entitled to participate in the settlement proceedings. Moreover, the said Order likewise denied Maria's motion to set aside the order appointing private respondent as regular administratrix of the estate. These rulings of the trial court were precisely questioned by Maria in her Motion for Reconsideration dated June 6, 1981.

The ruling of the trial court that Maria, private respondent Rosalina Biascan and German Biascan were entitled to participate in the settlement proceedings falls squarely under paragraph (b), Section 1, Rule 109 of the Rules of Court as a proper subject of appeal. By so ruling, the trial court has effectively determined that the three persons are the lawful heirs of the deceased. As such, the same may be the proper subject of an appeal.

Similarly, the ruling of the trial court denying petitioner's motion to set aside the order appointing private respondent as the regular administratrix of the estate of Florencio Biascan is likewise a proper subject of an appeal. We have previously held that an order of the trial court appointing a regular administrator of a deceased person's estate is a final determination of the rights of the parties thereunder, and is thus, appealable.^[24] This is in contrast with an order appointing a special administrator who is appointed only for a limited time and for a specific purpose. Because of the temporary character and special character of this appointment, the Rules deem it not advisable for any party to appeal from said temporary appointment.^[25] Considering however that private respondent has already been appointed as regular administratrix of the estate of Florencio Biascan, her appointment as such may be questioned before the appellate court by way of appeal.

It is thus clear that the Order dated April 2, 1981 may be the proper subject of an appeal in a special proceeding. In special proceedings, such as the instant proceeding for settlement of estate, the period of appeal from any decision or final order rendered therein is thirty (30) days, a notice of appeal and a record on appeal being required.^[26] The appeal period may only be interrupted by the filing of a motion for new trial or reconsideration. Once the appeal period expires without an appeal or a motion for reconsideration or new trial being perfected, the decision or order becomes final.

With respect to the Order dated April 2, 1981 issued by the trial court, petitioner admits that Maria Manuel Vda. De Biascan, its predecessor-in-interest, received a copy of the same on April 9, 1981. Applying these rules, Maria or her counsel had thirty (30) days or until May 9 within which to file a notice of appeal with record on appeal. She may also file a motion for reconsideration, in which case the appeal period is deemed interrupted.

Considering that it was only June 6, 1981, or a full fifty-eight (58) days after receipt of the order, that a motion for reconsideration was filed, it is clear that the same was filed out of time. As such, when the said motion for reconsideration was filed, there was no more appeal period to interrupt as the Order had already become final.

Petitioner insists, however, that the order dated April 2, 1981 of the trial court did not become final and executory as no opposition on its timeliness was filed and no