

THIRD DIVISION

[G.R. No. 109979, March 11, 1999]

RICARDO C. SILVERIO, SR., PETITIONER, VS. COURT OF APPEALS, SPECIAL SEVENTH DIVISION, HON. FRANCISCO X. VELEZ, PRESIDING JUDGE, RTC, MAKATI, BRANCH 57, AND EDGARDO S. SILVERIO, RESPONDENTS.

DECISION

PURISIMA, J.:

At bar is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court seeking the reversal of the Decision^[1] of the Court of Appeals (Special Seventh Division)^[2] dated January 20, 1993 in CA GR SP No. 29038.

On October 7, 1987, Beatriz Silverio died without leaving any will in the Municipality of Makati, Metro Manila, she was survived by the legal heirs, namely:

NAMES	RELATION
1. Ricardo Silverio	Husband
2. Edmundo Silverio	Son
3. Edgardo Silverio	Son
4. Ricardo Silverio, Jr.	Son
5. Nelia Silverio	Daughter
6. Ligaya S. dela Merced	Daughter ^[3]

On November 12, 1990, or more than three (3) years from the death of the deceased, Edgardo Silverio filed a Petition for Letters of Administration with Branch 57, of the Regional Trial Court in Makati City. On November 28, 1990, he filed an Urgent Petition for Appointment of Special Administrator, alleging that during her marriage with Ricardo Silverio, the deceased acquired real and personal properties in the Philippines and outside the country, the character, identity and aggregate value of which are still undetermined and not known to petitioner except the personal properties estimated to be worth P1,000,000.00; that during the lifetime of the late Beatriz Silverio, the surviving spouse has not made any settlement, judicial or extrajudicial, of the properties of the deceased; that their surviving son, Ricardo Silverio, Jr., has taken control and management of the properties left by the deceased for his own benefit and advantage; that petitioner, one of the legal heirs of the deceased, is competent and willing to act as administrator.

On December 4, 1990, the respondent judge issued an Order to the following effect:

"WHEREFORE, notice is hereby given that said Petition is set for hearing on January 24, 1991 at 8:30 o'clock in the morning, at which date and time, all interested parties are hereby cited to appear and show cause if any they have, why said Petition should not be granted.

Let this Order be published at the expense of the Petitioner, once a week for three (3) consecutive weeks in a newspaper of general circulation, the publication of which is to be assigned to the newspaper chosen after the raffle conducted by the Executive Judge of this Court.

Likewise, let this Order and the Petition be posted at least two (2) weeks before hearing by the Branch Sheriff at petitioner's expense in the Bulletin Board of the Clerk of Court of Makati, Metro Manila, Municipal Building and Public Market of Makati, Metro Manila.

Let copies of this Order be sent by registered mail to all the surviving heirs of the late BEATRIZ SILVERIO mentioned above."^[4]

On December 17, 1990, respondent Judge Francisco X. Velez of Branch 57, Regional Trial Court, Makati City, issued the following Order appointing Edgardo Silverio as Special Administrator:

"WHEREFORE, EDGARDO SILVERIO is hereby appointed as Special Administrator pending appointment of a Regular Administrator and the Branch Clerk of this Court is hereby commissioned to administer the oath of EDGARDO SILVERIO."^[5]

On January 24, 1991, Ricardo Silverio, Sr. interposed his Opposition to the Petition for Letter of Administration.

On February 21, 1991, the private respondent testified on his behalf and was cross-examined on October 7, 1991.

The reception of evidence for petitioner was scheduled on October 25 and 28, 1991. However, on October 22, 1991, the petitioner filed an Urgent Motion to Transfer the Hearing to any day during the last week of November or first week of December 1991 because he had a settlement conference in the case against Land Use Development Corporation at Department 8 of the Superior Court of Contra Costa County at 725, Court Street, Martinez, California, in Case No. C-105-025, entitled *Silicor USA, Inc. vs. Kraft Developers, Incorporated, et al.*

On October 28, 1991, the trial judge declared that the failure of petitioner to appear and adduce evidence on his behalf amounted to a waiver of his right to present evidence; ratiocinating, thus:

"When this case was called for hearing today, for the start of the reception of the evidence for the Oppositor, Ricardo Silverio, Sr., counsel for the said Oppositor instead invited the attention of this Court to this URGENT MOTION FOR TRANSFER OF HEARING dated October 21, 1991 and pointed out to this Court that the said motion was also intended to postpone the hearing set for today. For his part, petitioner's counsel thereupon reiterated his vehement objection to another postponement, pointing out that eventhough the said oppositor filed his OPPOSITION herein as early as January 1991, yet the said Oppositor never has appeared personally nor exerted any effort to prosecute his Opposition and has instead, employed all means to postpone or otherwise defer the reception of his evidence, even after the herein petitioner had been

designated by this Court as Special Administrator (see our Order of December 17, 1990). Petitioner's counsel also pointed out that the opposing counsel is aware that he resides in Sydney, Australia and incurs substantial expenses everytime he comes to Philippines for the hearing of this case, and then only to be faced by a postponement sought each time by the oppositor's counsel.

This Court recalls the setting of this case on October 25 and 28, 1991 were fixed after the oppositor's counsel assured this Court that the oppositor would return from the United States for this purpose. Yet, again, we are now confronted with another effort of the oppositor to postpone the hearing of this case, despite the petitioner's own open court motion to consider the oppositor as having waived his right to adduce evidence in support of his petition. Since there is no indication whatever that the oppositor is serious in his opposition, other than the assurances of his counsel which have all turned out to be false inasmuch as the oppositor has never appeared as promised since January of this year, thereby resulting in the undue delay bereft of any progress in this present case, the court, hereby resolves to consider the failure of the Oppositor Ricardo Silverio, Sr. to appear or present evidence in his behalf as a waiver of his right to present evidence in support of his opposition."

[6]

On October 29, 1991, the respondent judge appointed the private respondent as regular administrator in an Order stating:

"WHEREFORE, EDGARDO SILVERIO is hereby appointed as regular ADMINISTRATOR of the Intestate Estate of the late Beatriz Silverio to serve with a P200,000.00 bond. He is hereby required to take possession and management of all the real and personal estate of the deceased and shall return to this Court a true inventory and appraisal of all the properties of the deceased which shall come into his possession and knowledge within three (3) months from date thereof."

xxx xxx xxx"

On November 19, 1991, the Oppositor presented an Omnibus Motion to transfer the hearing set on June 4, 1992 on the ground that oppositor movant was preoccupied with a) post-election matters and b) preparation for his assumption of office as Congressman for the Third District of Bulacan, but the said motion was denied on June 4, 1992, respondent Judge ruling, as follows:

"In response thereto, the petitioner's counsel registered his vehement objections to the postponement, first upon the ground that the excuse given in the said motion is not a valid ground for the cancellation of hearing. Furthermore, according to petitioner's counsel, the hearing today was set as a result of a joint agreement of the contending counsels arrived in open Court during the last hearing on Feb. 5, 1991 and that said petitioner's counsel was not given ample time to react thereto because the said motion was filed only last June 1, 1992 and the said petitioner's counsel has not even received yet a copy thereof. Moreover, petitioner's counsel likewise recalled to the Court that he agreed to postpone his cross-examination of the Oppositor during the last hearing

of this case upon the declared agreement for its resumption set for today. Lastly, petitioner's counsel complains that both the respondent and his counsel are aware of the fact that petitioner's counsel is domiciled in Sydney, Australia and it has cost a lot of time, effort and money for the said petitioner's counsel to travel to the Philippines in order to be present in court today, and only to find out that both Oppositor and his counsel have not appeared. As correctly concluded by the petitioner's counsel, the Oppositor and his counsel have no legal ground to presume that their motion for transfer of hearing will be approved by this Court."^[8]

So also, on August 17, 1992, the respondent judge denied the Motion for Reconsideration filed by the petitioner on June 29, 1992.

On September 23, 1992, Ricardo C. Silverio Sr. filed a Petition for *Certiorari* with Prayer for a Writ of Preliminary Injunction, Prohibition and/or Restraining Order with the Court of Appeals docketed as CA GR SP No. 29038, seeking to annul and set aside the following orders of the respondent judge, to wit:

- "a) Order dated December 17, 1990 appointing Private Respondent as Special Administrator;
- b) Order dated October 28, 1991;
- c) Order dated October 29, 1991 appointing Private Respondent as Regular Administrator;
- d) Order dated June 4, 1992;
- e) Order dated August 17, 1992."^[9]

On January 20, 1993, the respondent court dismissed for lack of merit the petition for *certiorari*, pursuant to Section 2(c), Rule 6 of the Revised Internal Rules of the Court of Appeals, ratiocinating thus:

"First of all, with respect to respondent Judge Benito of Branch 152, RTC of Makati, there is no showing that said respondent has acted with grave abuse of discretion, amounting to lack or in excess of jurisdiction in Civil Case No. 11-9146. When private respondent filed the said civil case, he had been appointed as special administrator by respondent Judge Velez of Branch 57 of the same court in Sp. Proc. M-2629. x x x

Secondly, petitioner is estopped by laches from questioning the validity of the Order December 17, 1990 appointing private respondent as special administrator considering that he participated in the subsequent proceedings without assailing said order in due time.

xxx xxx xxx

xxx. The petition failed to show that respondent Judge was whimsical or capricious in issuing said orders. It is evident from said orders that the herein petitioner has not been true to his assurance that he will be

present the next hearing agreed upon by the parties. xxx

xxx xxx xxx

The rule is clear and unequivocal. It does not provide that the surviving spouse takes precedence exclusive of and over all other heirs of the deceased in the appointment of the administrator. xxx"

Lastly, xxx If at all an error is committed by respondent Judge Velez, it is an error of judgment that is correctible only by appeal. Errors of judgment are not within the province of a special civil action for certiorari (Purefoods Corp. vs. NLRC, 171 SCRA 415) Petitioner made mention of an appeal brought by him to this Court but a verification from the Judicial Record Division does not show that an appeal from the orders appointing private respondent as regular administrator and denying petitioner's motion for reconsideration has been perfected. xxx"^[10]

On April 27, 1993, respondent court denied the motion for reconsideration of its Decision dated February 8, 1993.

Undaunted, petitioner found his way to this Court **via** the present petition for review on *certiorari*, contending that:

I

RESPONDENT COURT COMMITTED GRAVE ABUSE OF DISCRETION IN HOLDING THAT PETITIONER WAS NOT DENIED DUE PROCESS OF LAW

II

RESPONDENT COURT ERRED IN ITS INTERPRETATION THAT SECTION 6, RULE 78^[11] OF THE REVISED RULES OF COURT DOES NOT PROVIDE FOR AN ORDER OF PREFERENCE IN THE APPOINTMENT OF THE ADMINISTRATOR.

III

RESPONDENT COURT ERRED IN NOT RULING THAT PRIVATE RESPONDENT HAS NOT SATISFACTORILY ESTABLISHED BY AT LEAST AN IOTA OF PROOF THAT HE IS QUALIFIED AND COMPETENT TO ACT AS ADMINISTRATOR.^[12]

On July 26, 1993, the private respondent sent in a Comment stating as follows:

"Another cognate reason that militates against the appointment of petitioner as administrator, is his utter failure to show that he is a fit and proper person to discharge the duties of an administrator. The conduct of the petitioner in relation to the management of the assets of the conjugal partnership between petitioner and the deceased spouse betrays his moral fitness to act as administrator of the intestate estate of the decedent. Petitioner was not only cheating on his wife by maintaining illicit relationship with another woman. He was also at the same time