

## FIFTH DIVISION

[ CA-G.R.CV NO. 100152, March 02, 2015 ]

**MARIE PAZ D. GONZALES, PLAINTIFF-APPELLANT, VS. TRADERS ROYAL BANK, ESTER L. PISCOSO-FLOR AND REGISTER OF DEEDS OF QUEZON CITY, DEFENDANTS-APPELLEES.**

### DECISION

**TIJAM, J.:**

This is an Appeal from the Orders, dated November 15, 2010<sup>[1]</sup> and November 22, 2012<sup>[2]</sup> of the Regional Trial Court (RTC) of Quezon City Branch 98 in Civil Case No. Q-98-34274, which dismissed Plaintiff-appellant's complaint for Declaration of Nullity of Certificate of Sale on TCT No. RT-7356 (237379) for failure to prosecute for unreasonable length of time.

The facts of the case are as follows:

On May 8, 1998, Plaintiff-appellant Marie Paz Gonzales (Gonzales) filed a Complaint<sup>[3]</sup> for the Declaration of Nullity of Certificate of Sale of Transfer Certificate of Title (TCT) No. RT-7356 (237379) of the Registry of Deeds of Quezon City. On May 12, 1998, the Clerk of Court of the RTC issued summonses to the Defendants-appellees, Traders Royal Bank (TRB), Ester L. Piscoso-Flor (Piscoso-Flor)<sup>[4]</sup> and the Register of Deeds (RD) of Quezon City. However, per Sheriff's Return,<sup>[5]</sup> dated May 13, 1998, only summonses for the RD and Piscoso-Flor were served.

In an Order,<sup>[6]</sup> dated June 1, 1998, the RTC dispensed with the filing of the responsive pleading of the RD upon the latter's manifestation. On June 15, 1998, Piscoso-Flor instead of filing a responsive pleading, filed a motion to dismiss<sup>[7]</sup> the complaint on the ground that the law relied upon by Gonzales which was Administrative Order No. 3 is not applicable, as it is Act No. 3135 which governs the instant case. However, Gonzales opposed<sup>[8]</sup> the said motion.

On July 16, 1998, Gonzales filed an *Ex-parte* Motion to Admit Amended Complaint<sup>[9]</sup> with attached copy of the amended complaint. In two separate Orders,<sup>[10]</sup> dated August 10, 1998, the RTC denied Piscoso-Flor's motion to dismiss and granted Gonzales' motion to admit amended complaint. As a consequence, Piscoso-Flor filed her Answer with Counterclaim,<sup>[11]</sup> while Gonzales filed her Answer to Compulsory Counterclaim and reply<sup>[12]</sup> thereto.

However, the RTC on June 30, 1999, dismissed the complaint without prejudice, for lack of interest to prosecute.<sup>[13]</sup> Upon receipt of the copy of the said RTC Order on July 9, 1999, Gonzales filed her Motion for Reconsideration on even date.<sup>[14]</sup>

In an Order,<sup>[15]</sup> dated July 23, 1999, the RTC reconsidered its Order, dated June 30, 1999, and reinstated the case. The RTC, however, noted that it has not yet acquired jurisdiction over TRB, thus, it ordered Gonzales to cause the service of summons to TRB. The RTC also ordered the case to be archived until such time that the jurisdiction of TRB has been acquired by the court.

Gonzales filed a *Motion for Partial Reconsideration of the July 23, 1999 Order* regarding the temporary archiving of the case pending acquisition of jurisdiction by the RTC over the TRB. Gonzales committed herself to cause the service of summons to TRB and to make arrangement with the Branch Deputy Sheriff within 5 days from the filing of the said motion.<sup>[16]</sup>

On October 13, 1999, the RTC issued an Order denying Gonzales Motion for Partial Reconsideration of the Order, dated July 23, 1999.<sup>[17]</sup> On November 9, 1999, Gonzales filed an *Ex-parte Motion for Leave to Serve Summons before Archival of the Case*<sup>[18]</sup> but the same was denied by the RTC in its Order,<sup>[19]</sup> dated December 4, 2000.

On September 11, 2003, Gonzales filed a *Motion to De-Archive*<sup>[20]</sup> the case which motion was denied by the RTC in its Order,<sup>[21]</sup> dated August 1, 2005.

On October 2, 2007, Gonzales filed an *Omnibus Motion*<sup>[22]</sup> seeking: 1) the amendment of the complaint to amend the name of TRB to Bank of Commerce (BOC) in view of the Purchase and Sale Agreement between the said banks; 2) issuance of summons; and 3) re-opening of the case. On December 13, 2007, Defendant-Appellee BOC filed a Very Urgent Ex-parte Motion for Postponement seeking the re-setting of the December 14, 2007 hearing of Gonzales' Omnibus Motion (re-opening of the case). At the May 2, 2008 hearing of Gonzales Omnibus Motion, counsels for BOC and of Gonzales appeared. In the said hearing, the RTC ordered BOC and Piscoso-Flor to file their respective comment within 10 days, and for Gonzales to file reply thereto.

On June 16, 2008, Gonzales filed a *Motion for Consolidation*, praying for the consolidation of the instant case with the case filed by BOC pending before the RTC, Branch 92 (Branch 92), docketed as LRC Case No.Q-23797(07). However, the RTC denied Gonzales motion for consolidation and deferred the resolution of the omnibus motion until Piscoso-Flor is notified of the RTC's order directing her to file her comment/opposition to the said omnibus motion.

On November 15, 2010, the RTC issued an Order denying Gonzales omnibus motion and dismissed the case for failure to prosecute. Gonzales filed a motion for reconsideration of the said Order. Pending resolution of the said motion, Gonzales filed again a motion for consolidation seeking the consolidation of the case with LRC Case No. Q-23797(07) before Branch 92 of the RTC.

In an Order, dated February 9, 2011, the RTC granted the consolidation and ordered that the records of the case be forwarded to Branch 92 for consolidation subject to the approval of the latter court. However, on March 11, 2011, Branch 92 denied the motion for consolidation.

On July 21, 2011, BOC and Ushio Realty and Development Corporation (Ushio) filed a Joint Motion for Substitution with Withdrawal and Entry of Appearance, to which Gonzales filed her opposition.

On November 9, 2011, Gonzales again filed a *Motion for Leave to Allow Amendment of the Complaint*, which the BOC opposed. Thereafter, Gonzales filed a *Motion Seeking the Admission of a Supplemental Complaint* containing allegations of events that transpired after the filing of the case.

On November 22, 2012, the RTC issued an Order denying Gonzales' motion for reconsideration of the November 15, 2010 Order.

Feeling aggrieved, Gonzales filed an Appeal<sup>[23]</sup> with this Court raising the following issues:

1. WHETHER OR NOT PLAINTIFF-APPELLANT'S MOTION FOR RECONSIDERATION OF THE ORDER DATED 15 NOVEMBER 2010 WAS FILED OUT OF TIME.

2. WHETHER OR NOT PLAINTIFF-APPELLANT'S MOTION FOR RECONSIDERATION OF THE ORDER DATED 15 NOVEMBER 2010 IS A SECOND MOTION FOR RECONSIDERATION.

3. WHETHER OR NOT PLAINTIFF-APPELLANT, UNDER THE CIRCUMSTANCES, HAS LOST INTEREST IN PROSECUTING THE INSTANT CASE."

*Gonzales' Motion for Reconsideration of the Order, dated November 15, 2010 was timely filed.*

In the RTC Order, dated November 22, 2012, it stated that:

"xxx xxx Plaintiff cannot claim that she was deprived of due process when **she received the Order of Dismissal dated November 15, 2010 only on December 21, 2010. She has filed her Motion for Reconsideration only on January 4, 2011, or after the lapse of more than 15 days.** xxx."

The RTC erred in ruling that Gonzales' motion for reconsideration was filed beyond the 15-day period required by the rules as the 15<sup>th</sup> day within which to file the said motion was until January 5, 2011. Hence, Gonzales' motion for reconsideration which was filed on January 4, 2011 was indeed filed on time.<sup>[24]</sup>

*However, Gonzales' motion for reconsideration of the RTC's Order, dated November 15, 2010 violates the prohibition against second motion for reconsideration.*

We agree with the RTC's ruling on this issue, thus said:

"The rule provides that the complaint may be dismissed if the plaintiff fails to prosecute his action for unreasonable length of time and the said

dismissal shall have the effect of adjudication upon the merits. **Therefore, plaintiff's Motion for Reconsideration could no longer stand. This Court cannot allow another Motion for Reconsideration when in fact the Plaintiff has already availed of the same as early as July 9, 1999."**

Records show that the RTC's Order,<sup>[25]</sup> dated June 30, 1999, which first dismissed the case for lack of interest to prosecute was without prejudice. However, the second order of dismissal of the case, which was issued by the RTC on November 15, 2010, was without any qualification, hence, We construe it as dismissal with prejudice, consistent with prevailing jurisprudence.<sup>[26]</sup>

However, even if the complaint was dismissed with or without prejudice, it does not make any difference, in that, Gonzales can only file one motion for reconsideration to said order of dismissal. We stress that the dismissal without prejudice of a complaint does not however mean that said dismissal order was any less final. Such Order of dismissal is complete in all details, and though without prejudice, nonetheless finally disposed of the matter. It was not merely an interlocutory order but a final disposition of the complaint.<sup>[27]</sup>

Section 5, Rule 37 of the Rules of Court clearly provides that no party shall be allowed a second motion for reconsideration of **"a judgment or final order."** The RTC Order, dated June 30, 1999 dismissing the case was a final order to which Gonzales filed a motion for reconsideration, and was granted. Thereafter, on November 15, 2010, the RTC again issued a dismissal order on the same ground, thus, the motion for reconsideration to said Order is clearly prohibited by the rules as it pertains to the same order of dismissal.

*The RTC correctly dismissed the complaint due to failure to prosecute on the part of Gonzales.*

Section 3, Rule 17 of the 1997 Rules of Civil Procedure, as amended, provides only three instances wherein the Court may dismiss a case for failure to prosecute:

*Sec. 3. Dismissal due to fault of plaintiff. — If, for no justifiable cause, the plaintiff fails to appear on the date of the presentation of his evidence in chief on the complaint, or to prosecute his action for an unreasonable length of time, or to comply with these Rules or any order of the court, the complaint may be dismissed upon motion of the defendant or upon the court's own motion, without prejudice to the right of the defendant to prosecute his counterclaim in the same or in a separate action. This dismissal shall have the effect of an adjudication upon the merits, unless otherwise declared by the court.*

An action may be dismissed for failure to prosecute in any of the following instances: (1) if the plaintiff fails to appear at the time of trial; or (2) if he fails to prosecute the action for an unreasonable length of time; or (3) if he fails to comply with the Rules of Court or any order of the court. *Once a case is dismissed for failure to prosecute, this has the effect of an adjudication on the merits and is understood to be with prejudice to the filing of another action unless otherwise provided in the order of dismissal. In other words, unless there be a qualification in the order of*