



Republic of the Philippines
Supreme Court
 Manila

SUPREME COURT OF THE PHILIPPINES
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SECOND DIVISION

ILUMINADA C. BERNARDO,
 Petitioner,

G.R. No. 200104

Present:

CARPIO, J., Chairperson,
 PERLAS-BERNABE,
 CAGUIOA,
 J. REYES, JR., and
 LAZARO-JAVIER, JJ.

- versus -

ANA MARIE B. SORIANO,
 Respondent.

Promulgated:

19 JUN 2019

X-----*Alfonso C. Briones*-----X

DECISION

CAGUIOA, J.:

Before the Court is a Petition for Review on *Certiorari*¹ (Petition) under Rule 45 of the Rules of Court filed by petitioner Iluminada C. Bernardo (Bernardo) against respondent Ana Marie B. Soriano (Soriano), assailing the Decision² dated August 11, 2011 (assailed Decision) and Resolution³ dated January 6, 2012 (assailed Resolution) rendered by the Court of Appeals (CA) in CA-G.R. SP No. 118506.

The Facts and Antecedent Proceedings

The facts of the case are simple and straightforward. As narrated by the CA in its assailed Decision, and as culled from the records of the instant case, the essential facts and antecedent proceedings of the case are as follows:

¹ Rollo, pp. 9-27.

² Id. at 29-43. Penned by CA Associate Justice Rodil V. Zalameda with Associate Justices Amelita G. Tolentino and Normanie B. Pizarro, concurring.

³ Id. at 45-46.

[Bernardo] filed a Petition for Habeas Corpus⁴ praying that Evangeline Lawas, Head Social Worker of the Department of Social Welfare and Development in Mandaluyong City, be ordered to produce the person of her minor granddaughter, Stephanie Verniese B. Soriano [(Stephanie),] before the [Regional Trial Court of Mandaluyong City, Branch 209 (RTC)]. The case, entitled "*In the Matter of Petition for Habeas Corpus of Stephanie Verniese Soriano through her Grandmother, Iluminada C. Bernardo v. Evangeline Lawas, In Her Capacity as Head Social Worker, Department of Social Welfare and Development, Nayon ng Kabataan, Acacia Lane, Welfareville Compound, Mandaluyong City,*" was docketed as SP Proc. No. MC09-4159]. According to [Bernardo], Stephanie was being deprived and restrained of her liberty while under the custody of the DSWD, and despite demand by [Bernardo], the DSWD refused to release the minor under [Bernardo's] custody and care.

The [RTC] issued an Order dated 23 October 2009 stating therein that considering [Bernardo's] failure to prove that the DSWD's custody over the minor is illegal, the Petition filed was ordered to be converted into a case for custody.

[Soriano], the surviving parent of Stephanie, for her part, filed a Complaint-in-Intervention⁵ seeking to be granted custody of her child, and thus, the battle for the permanent custody of Stephanie between [Bernardo] and [Soriano] ensued.

The [RTC, through Presiding Judge Monique A. Quisumbing-Ignacio (Quisumbing), in its] Decision⁶ dated 05 August 2010, [issued a judgment and] upheld [Soriano's] right to parental custody and parental authority but ruled that, in the meantime, it will be for the best interest of the minor to stay with [Bernardo] for the school year 2009-2010 while studying at Notre Dame of Greater Manila. Thus, the [RTC] granted temporary custody of the minor to [Bernardo].

[Bernardo] filed a Motion for Reconsideration⁷ alleging therein that [Soriano] is unfit to take care of her child, who, allegedly, verbally maltreats Stephanie, among others. x x x

On 31 August 2010, the [RTC issued an Order⁸ denying] [Bernardo's] Motion for Reconsideration. [On the very same day, Soriano timely filed through registered mail her Comment (With Motion for Partial Reconsideration)⁹ dated August 27, 2010. In sum, Soriano asserted that the custody of Stephanie should be granted in her favor immediately and not only after school year 2009-2010.]

[The RTC's denial of Bernardo's Motion for Reconsideration on August 31, 2010] prompted [Bernardo] to file

⁴ Id. at 47-51.

⁵ Id. at 99-111.

⁶ Id. at 118-121.

⁷ Id. at 122-129.

⁸ Id. at 138-140.

⁹ Id. at 132-137.



a **Notice of Appeal**¹⁰ on 08 September 2010. However, the [RTC], through the **first assailed Order**¹¹ dated 09 September 2010 ruling therein that the assailed 05 August 2010 Decision and the 31 August 2010 Order denying the Motion for Reconsideration have not yet attained finality, and thus, may not be the subject of an appeal. **[Hence, the Notice of Appeal of Bernardo was denied due course.]** The [RTC] ratiocinated that [Soriano], who received a copy of the 05 August 2010 Decision on 13 August 2010, timely filed her Comment (with Motion for Partial Reconsideration) [dated] 27 August 2010. The dispositive portion of the said Order states:

WHEREFORE, premises considered, the Notice of Appeal dated 7 September 2010 is hereby DENIED DUE COURSE.

[Bernardo] is ORDERED to file her comment on the Comment (With Motion for Partial Reconsideration) dated 27 August 2010 within five (5) days from receipt hereof.

SO ORDERED.

Accordingly, the [RTC] rendered the second assailed Order¹² dated 22 October 2010 granting [Soriano's] partial reconsideration and allowing the latter to take custody of her minor child immediately. The dispositive portion reads:

WHEREFORE, plaintiff-intervenor Ana Marie Bernardo Soriano's Motion for Partial Reconsideration dated 27 August 2010 is hereby GRANTED. Accordingly, Ana Marie Bernardo Soriano is hereby ALLOWED TO TAKE IMMEDIATE CUSTODY of the minor, STEPHANIE VERNIESE SORIANO from her grandmother, ILUMINADA C. BERNARDO.

SO ORDERED.

[Bernardo] filed her Motion for Reconsideration¹³ [dated November 22, 2010,] seeking a reconsideration of the [RTC's] 09 September 2010 and 22 October 2010 Orders. However, it was denied through the third assailed Order¹⁴ dated 31 January 2011. [Thus, on March 15, 2011, Bernardo filed a **Petition for Certiorari**¹⁵ (*Certiorari* Petition) under Rule 65 of the Rules of Court, seeking the annulment and setting aside, on the ground of grave abuse of discretion amounting to lack or excess of jurisdiction, the RTC's Orders denying due course to Bernardo's Notice of Appeal.]¹⁶

¹⁰ Id. at 141-142.

¹¹ Id. at 146-147.

¹² Id. at 144-145.

¹³ Id. at 148-152.

¹⁴ Id. at 153-154.

¹⁵ Id. at 155-170.

¹⁶ Id. at 30-33; emphasis and underscoring supplied.

The Ruling of the CA

In the assailed Decision, the CA denied Bernardo's *Certiorari* Petition.

In sum, the CA held that because Soriano seasonably filed her own Motion for Partial Reconsideration of the RTC's Decision dated August 5, 2010, the said Decision of the RTC is not an appealable judgment despite the denial of Bernardo's Motion for Reconsideration. The CA believed that Bernardo's Notice of Appeal was premature owing to the pendency of Soriano's Motion for Partial Reconsideration:

At a quick glance, it will seem that the Order dated 31 August 2010 denying [Bernardo's] Motion for Reconsideration, on the issue of permanent custody, left nothing else for the court to do. However, it must be emphasized that the said Order was issued before the court a quo received [Soriano's] Comment (With Motion for Partial Reconsideration) which was filed via registered mail on the very same day, 31 August 2010. As with [Bernardo], [Soriano] had an equal right to file a motion for reconsideration of the [RTC's] Decision within the proper reglementary period. x x x¹⁷

The RTC's Decision cannot yet be considered a judgment that may be appealed due to the filing of Soriano's Motion for Partial Reconsideration because, as explained by the CA:

x x x Unlike a *'final judgment or order, which is appealable, as above pointed out, an 'interlocutory order may not be questioned on appeal except only as part of an appeal that may eventually be taken from the final judgment rendered in the case. x x x*

Simply stated a final order contemplates one in which there is nothing more for the court to do in order to resolve the case.

x x x Thus, when the said Comment (With Motion for Partial Reconsideration) was filed, there remains something left for the court to do; to thresh out the issue of whether or not to reverse the temporary custody given to [Bernardo].¹⁸

In other words, the CA held that despite the RTC's Decision being a judgment on the merits of the case and despite the RTC having already disposed Bernardo's Motion for Reconsideration of such Decision, the pendency of Soriano's Motion for Partial Reconsideration warranted the treatment of the RTC's Decision as an interlocutory order and not a final judgment that can be appealed, as there was still something left for the RTC to do, which was to decide the Motion for Partial Reconsideration.

¹⁷ Id. at 38.

¹⁸ Id. at 38-39.



On September 2, 2011, Bernardo filed a Motion for Reconsideration¹⁹ dated August 31, 2011. The CA denied the same in the assailed Resolution.

Hence, the instant appeal.

Soriano filed her Comment²⁰ dated June 6, 2012, to which Bernardo responded to with her Reply²¹ dated October 22, 2012.

Issue

Stripped to its core, the sole issue to be decided by the Court in the instant case is whether the CA erred in denying Bernardo's *Certiorari* Petition, holding that the RTC did not commit grave abuse of discretion when the latter denied Bernardo's Notice of Appeal due course due to the pendency of Soriano's Motion for Partial Reconsideration.

The Court's Ruling

The Court resolves to deny the instant Petition.

According to Section 1, Rule 41 of the Rules of Court, an appeal may be taken from a judgment or final order that completely disposes of the case, or of a particular matter therein when declared by these Rules to be appealable.

Further, according to Section 2(a) of the same Rule, the appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its original jurisdiction shall be taken by filing a notice of appeal with the court which rendered the judgment or final order appealed from and serving a copy thereof upon the adverse party.

In connection with the foregoing, Section 5 of the same Rule states that the notice of appeal shall indicate the parties to the appeal, specify the judgment or final order or part thereof appealed from, specify the court to which the appeal is being taken, and state the material dates showing the timeliness of the appeal.

With respect to the period for filing the notice of appeal, the appeal shall be taken within 15 days from notice of the judgment or final order appealed from. The period of appeal shall be interrupted by a timely motion for new trial or reconsideration. No motion for extension of time to file a motion for new trial or reconsideration shall be allowed.²² When a

¹⁹ Id. at 171-177.

²⁰ Id. at 190-211.

²¹ Id. at 265-270.

²² RULES OF COURT, Rule 41, Sec. 3.



motion for new trial or reconsideration was filed by the party, which was subsequently denied by the court, there is a fresh period of fifteen (15) days within which to file the notice of appeal, counted from receipt of the order dismissing a motion for a new trial or motion for reconsideration.²³

A party's appeal by notice of appeal is deemed perfected as to him upon the filing of the notice of appeal in due time.²⁴

Applying the foregoing to the instant case, it is not disputed that the RTC rendered its Decision dated August 5, 2010, which resolved the merits of the Custody case, upholding Soriano's right to parental custody and parental authority, albeit ruling that it will be for the best interest of the child to stay with Bernardo first for the school year 2009-2010 while studying at Notre Dame of Greater Manila.

An appealable judgment or final order refers to one that adjudicates the parties' contention and determines their rights and liabilities as regards each other,²⁵ disposing the whole subject matter of the case.²⁶

The subject RTC Decision, having delved into the merits of the Custody case and having fully disposed of the respective issues and causes of action raised by the parties, was undoubtedly a *judgment on the merits* and not a mere interlocutory order. The RTC's Decision did not merely rule on incidental matters; it decided on the subject matter of the case, *i.e.*, the custody of Stephanie.

Being an appealable judgment on the merits, Bernardo had the right to appeal under Rule 41 of the Rules of Court the RTC's Decision by filing a notice of appeal within 15 days from receipt of the RTC's Order dated August 31, 2010 denying Bernardo's timely-filed Motion for Reconsideration. This was exactly what Bernardo did. She timely filed a Notice of Appeal, containing all the required contents of a notice of appeal under Section 5, Rule 41 of the Rules of Court and paid the corresponding appeal fees on September 8, 2010.

Assuming of course that the notice of appeal satisfies the content requirements set under Section 5, Rule 41 of the Rules of Court, the approval of a notice of appeal becomes the ministerial duty of the lower court, provided the appeal is filed on time.²⁷ Hence, the RTC's Order dated September 9, 2010 denying due course to Bernardo's seasonably-filed Notice of Appeal was a departure from the provisions of Rule 41 of the Rules of Court. In accordance with the Rules, Bernardo's Notice of Appeal should have been deemed perfected as to her.

²³ *Neypes v. Court of Appeals*, 506 Phil. 613, 626 (2005).

²⁴ RULES OF COURT, Rule 41, Sec. 9.

²⁵ *Denso (Phils.), Inc. v. Intermediate Appellate Court*, 232 Phil. 256, 264 (1987).

²⁶ *Marcelo v. Hon. De Guzman*, 200 Phil. 137, 143 (1982).

²⁷ *Oro v. Judge Diaz*, 413 Phil. 416, 426 (2001).

In denying due course to Bernardo's Notice of Appeal, it was the RTC's contention, as affirmed by the CA, that the pendency of the Motion for Partial Consideration of Soriano precluded Bernardo from filing her own Notice of Appeal. The CA ratiocinated that the RTC's Decision dated August 5, 2010, despite being a judgment on the merits, was not appealable at that time by Bernardo, asserting that "a final order contemplates one in which there is nothing more for the court to do in order to resolve the case."²⁸ The RTC believed that Bernardo could more appropriately file her Notice of Appeal only after Soriano's Motion for Partial Consideration had been decided upon.

In other words, following the line of thinking of the RTC and CA, in so far as Bernardo was concerned, the RTC's Decision dated August 5, 2010, notwithstanding the fact that it is a judgment on the merits, was to be treated as a mere interlocutory order not subject to appeal owing to the pendency of Soriano's Motion for Partial Reconsideration. Hence, despite already having her own Motion for Reconsideration denied by the RTC, Bernardo's right to appeal was made contingent and dependent on Soriano's Motion for Partial Reconsideration.

The RTC and CA's positions are erroneous.

With respect to Bernardo, the RTC's Decision did not cease to be an appealable judgment, transforming into a mere interlocutory order, for the sole reason that the opposing party, Soriano, filed her own Motion for Partial Reconsideration. With Bernardo's own Motion for Reconsideration having been denied by the RTC, according to Rule 41 of the Rules of Court, Bernardo already had 15 days to file a Notice of Appeal regardless of Soriano filing her own Motion for Reconsideration.

The RTC and CA seem to have confused the right of a party to appeal and the right of another party to file a motion for reconsideration. There is nothing in the Rules which makes a party's right to appeal dependent or contingent on the opposing party's motion for reconsideration. Similarly, a party's undertaking to file a motion for reconsideration of a judgment is not hindered by the other party's filing of a notice of appeal. Jurisprudence holds that "each party has a different period within which to appeal"²⁹ and that "[s]ince each party has a different period within which to appeal, the *timely* filing of a motion for reconsideration by one party does not interrupt the other or another party's period of appeal."³⁰

Hence, a party's ability to file his/her own appeal upon receipt of the assailed judgment or the denial of a motion for reconsideration challenging the said judgment within the reglementary period of 15 days is not

²⁸ *Rollo*, p. 38.

²⁹ *BPI v. Far East Molasses Corporation*, 275 Phil. 756, 774 (1991).

³⁰ *Franco-Cruz v. Court of Appeals*, 587 Phil. 307, 318 (2008).



affected by the other parties' exercise of discretion to file their respective motions for reconsideration.

Contrary to the holding of the CA, if the RTC granted due course to Bernardo's Notice of Appeal, the RTC would not have been divested of jurisdiction to decide Soriano's Motion for Partial Reconsideration and that Soriano's right to file her own Motion for Reconsideration would not have been defeated whatsoever. This is the case because under Section 9, Rule 41 of the Rules of Court, in appeals by notice of appeal, the court loses jurisdiction over the case only upon the expiration of the time to appeal of the other parties.

Further, the CA's concern that allowing due course Bernardo's Notice of Appeal would have led to a multiplicity of appeals is unfounded, considering that the respective appeals of Bernardo and Soriano could have been consolidated by the appellate court.

Nevertheless, despite the foregoing, even with the RTC having committed an error in procedure when it denied due course Bernardo's Notice of Appeal, the CA was not in error to deny Bernardo's *Certiorari* Petition.

First and foremost, the extraordinary writ of *certiorari* will not be issued to cure mere errors in proceedings or erroneous conclusions of law or fact.³¹

Further, grave abuse of discretion implies such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction or, in other words, where the power is exercised in an arbitrary manner by reason of passion, prejudice, or personal hostility, and it must be so patent or gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.³²

The RTC's act of denying due course Bernardo's Notice of Appeal was not borne out of a capricious, whimsical, and arbitrary exercise of judgment. The records reveal that the RTC was motivated, albeit erroneously, by practicality, wanting to first decide Soriano's Motion for Partial Reconsideration and avoid a multiplicity of appeals before the CA.

More importantly, it is elementary that a writ of *certiorari* will not issue where the remedy of appeal is available to the aggrieved party. The remedies of appeal in the ordinary course of law and that of *certiorari* under Rule 65 of the Rules of Court are mutually exclusive and not alternative or cumulative.³³ A petition for *certiorari* under Rule 65 of the Rules of Court is

³¹ *Leviste v. Court of Appeals*, 629 Phil. 587, 599 (2010).

³² *Cathay Pacific Steel Corp. v. Court of Appeals*, 531 Phil. 620, 630-631 (2006).

³³ *Id.* at 631.



proper only if the aggrieved party has **no plain, adequate and speedy remedy in the ordinary course of law.**³⁴

As seen in the RTC's Order dated September 9, 2010 denying due course Bernardo's Notice of Appeal, the RTC did not completely preclude Bernardo from appealing the RTC's Decision dated August 5, 2010. What the RTC merely did was to deny due course the Notice of Appeal in the meantime and order Bernardo to file her comment on Soriano's Comment (With Motion for Partial Reconsideration), so that upon the RTC's eventual disposition of the said Motion for Partial Reconsideration, Bernardo and/or Soriano could henceforth file their respective notices of appeal.

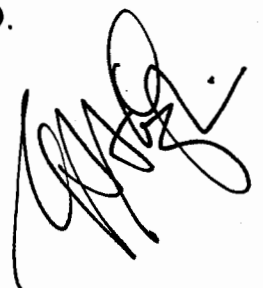
Subsequently, the RTC issued its Order dated October 22, 2010 granting Soriano's Motion for Partial Reconsideration, modifying the RTC's Decision dated August 5, 2010. Hence, Bernardo could have, at that time, appealed yet again by filing another notice of appeal assailing the RTC's Decision. In fact, as a clear indication that Bernardo had an adequate and available remedy, Bernardo was able to question the modification of the RTC's Decision and file a Motion for Reconsideration on November 22, 2010, which was prior to the filing of the *Certiorari* Petition on March 15, 2011. When such Motion for Reconsideration was denied by the RTC in its Order dated January 31, 2011, Bernardo had 15 days from the receipt of the said Order to appeal the RTC's Decision dated August 5, 2010 before the CA.

Simply stated, despite the earlier denial of due course by the RTC of Bernardo's Notice of Appeal, Bernardo still had the available remedy of filing another Notice of Appeal after the RTC eventually modified its Decision dated August 5, 2010 when it granted Soriano's Motion for Partial Reconsideration.

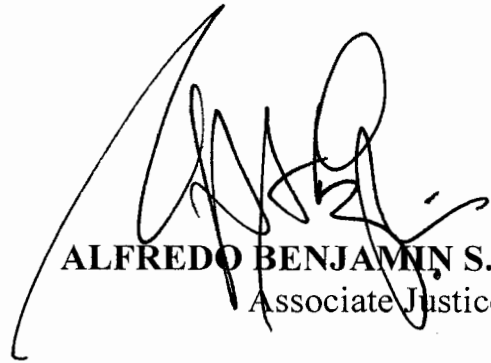
However, despite the remedy of assailing the RTC's judgment on the merits *via* an ordinary appeal being readily available to Bernardo prior to the filing of her *Certiorari* Petition, the latter chose to instead focus her sight on ascribing grave abuse of discretion on the RTC's Order denying due course Bernardo's Notice of Appeal. Instead of fixating on the denial on due course of her earlier Notice of Appeal, Bernardo could have appealed the modified RTC Decision before the CA by filing anew another Notice of Appeal. To reiterate, a petition for *certiorari* can be availed of only if the aggrieved party has no plain, adequate and speedy remedy in the ordinary course of law.

WHEREFORE, the instant Petition is **DENIED**. The Decision dated August 11, 2011 and Resolution dated January 6, 2012 rendered by the Court of Appeals in CA-G.R. SP No. 118506 are **AFFIRMED**.

³⁴ *Belonio v. Rodriguez*, 504 Phil. 126, 143 (2005).




SO ORDERED.




ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

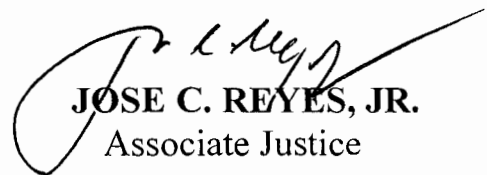
WE CONCUR:




ANTONIO T. CARPIO
Associate Justice
Chairperson



ESTELA M. PERLAS-BERNABE
Associate Justice



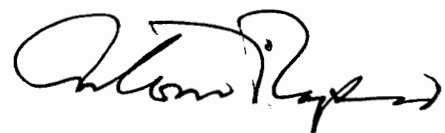
JOSE C. REYES, JR.
Associate Justice



AMY C. LAZARO-JAVIER
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



ANTONIO T. CARPIO
Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


LUCAS P. BERSAMIN
Chief Justice

