



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

LUISA NAVARRO MARCOS*,
Petitioner,

G.R. No. 198240

Present:

SERENO, C.J.,
Chairperson,
LEONARDO-DE CASTRO,
BERSAMIN,
VILLARAMA, JR., and
REYES, JJ.

- versus -

**THE HEIRS OF THE LATE DR.
ANDRES NAVARRO, JR., namely
NONITA NAVARRO, FRANCISCA
NAVARRO MALAPITAN,
SOLEDAD NAVARRO
BROCHLER, NONITA BARRUN
NAVARRO, JR., IMELDA
NAVARRO, ANDRES NAVARRO
III, MILAGROS NAVARRO YAP,
PILAR NAVARRO, TERESA
NAVARRO-TABITA, and
LOURDES BARRUN-REJUSO,**
Respondents.

Promulgated:

JUL 03 2013

X-----X

DECISION

VILLARAMA, JR., J.:

Petitioner Luisa Navarro Marcos appeals the Decision¹ dated February 28, 2011 and Resolution² dated July 29, 2011 of the Court of Appeals (CA) in CA-G.R. SP No. 92460.

The antecedent facts follow:

* Rollo, pp. 14, 42. While Lydia Navarro Grageda is named as co-petitioner in the title of the petition, only Luisa Navarro Marcos has verified it.

¹ Id. at 47-52. Penned by Associate Justice Mario V. Lopez with the concurrence of Associate Justices Magdangal M. De Leon and Franchito N. Diamante.

² Id. at 54-57.

Spouses Andres Navarro, Sr. and Concepcion Medina-Navarro died in 1958 and 1993, respectively. They left behind several parcels of land including a 108.3997-hectare lot (subject lot) located in Cayabon, Milagros, Masbate.³

The spouses were survived by their daughters Luisa Navarro Marcos, herein petitioner, and Lydia Navarro Grageda, and the heirs of their only son Andres Navarro, Jr. The heirs of Andres, Jr. are the respondents herein.⁴

Petitioner and her sister Lydia discovered that respondents are claiming exclusive ownership of the subject lot. Respondents based their claim on the Affidavit of Transfer of Real Property dated May 19, 1954 where Andres, Sr. donated the subject lot to Andres, Jr.⁵

Believing that the affidavit is a forgery, the sisters, through Assistant Fiscal Andres Marcos, requested a handwriting examination of the affidavit. The PNP handwriting expert PO2 Mary Grace Alvarez found that Andres, Sr.'s signature on the affidavit and the submitted standard signatures of Andres, Sr. were not written by one and the same person.⁶

Thus, the sisters sued the respondents for annulment of the deed of donation before the Regional Trial Court (RTC) of Masbate, where the case was docketed as Civil Case No. 5215.⁷

After the pre-trial, respondents moved to disqualify PO2 Alvarez as a witness. They argued that the RTC did not authorize the handwriting examination of the affidavit. They added that presenting PO2 Alvarez as a witness will violate their constitutional right to due process since no notice was given to them before the examination was conducted.⁸ Thus, PO2 Alvarez's report is a worthless piece of paper and her testimony would be useless and irrelevant.⁹

In its Order¹⁰ dated August 19, 2004, the RTC granted respondents' motion and disqualified PO2 Alvarez as a witness. The RTC ruled that PO2 Alvarez's supposed testimony would be hearsay as she has no personal knowledge of the alleged handwriting of Andres, Sr. Also, there is no need for PO2 Alvarez to be presented, if she is to be presented as an expert witness, because her testimony is not yet needed.

The sisters sought reconsideration of the order but the RTC denied their motion in an Order¹¹ dated October 11, 2005.

³ Id. at 48.

⁴ Id.

⁵ Id.

⁶ Id.

⁷ Id.

⁸ Id. at 48-49.

⁹ Id. at 211.

¹⁰ CA *rollo*, pp. 24-25.

¹¹ Id. at 26.

Aggrieved, the sisters filed a petition for certiorari before the CA, which however, dismissed their petition in the assailed Decision dated February 28, 2011 on the ground that the dismissal of Civil Case No. 5215 has mooted the issue of PO2 Alvarez's disqualification as a witness.

Later, the CA likewise denied their motion for reconsideration in its Resolution dated July 29, 2011. The CA refused to take judicial notice of the decision of another CA Division which reinstated Civil Case No. 5215. The CA held that a CA Justice cannot take judicial notice of decisions or matters pending before another Division of the appellate court where he or she is not a member. The CA also held that the sisters were negligent for belatedly informing it that Civil Case No. 5215 was reinstated.

Hence, this appeal.

Petitioner argues that the CA erred in refusing to reconsider the assailed decision in light of the reinstatement of Civil Case No. 5215. Petitioner adds that the CA erred in not ruling that the RTC committed grave abuse of discretion in disqualifying PO2 Alvarez as a witness.¹² They stress that PO2 Alvarez will be presented as an expert witness to render an opinion on whether the disputed handwriting was indeed made by Andres, Sr. or whether it is a forgery.¹³

In their comment,¹⁴ respondents counter that the CA properly disqualified PO2 Alvarez. They also agreed with the CA that her disqualification was mooted by the dismissal of Civil Case No. 5215.

We find in favor of petitioner.

The CA ruling that the dismissal of Civil Case No. 5215 has mooted the issue of PO2 Alvarez's disqualification as a witness can no longer be justified. Hence, we reverse the CA ruling. While we agree with the CA in considering the RTC's Orders¹⁵ which dismissed Civil Case No. 5215, we are unable to agree with its refusal to take judicial notice of the Decision¹⁶ of another CA Division which reinstated Civil Case No. 5215. Subsequent proceedings were even held in the reinstated Civil Case No. 5215 per Orders¹⁷ issued by the RTC which were already submitted to the CA. That Civil Case No. 5215 was reinstated is a fact that cannot be ignored.

We also agree with petitioner that the RTC committed grave abuse of discretion in disqualifying PO2 Alvarez as a witness. Grave abuse of discretion defies exact definition, but it generally refers to capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction. The

¹² *Rollo*, p. 29.

¹³ *Id.* at 35.

¹⁴ *Id.* at 530-532.

¹⁵ *CA rollo*, pp. 262, 267-268.

¹⁶ *Id.* at 297-306.

¹⁷ *Id.* at 307-308.

abuse of discretion must be patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility.¹⁸ Grave abuse of discretion arises when a lower court or tribunal violates the Constitution or grossly disregards the law or existing jurisprudence.¹⁹

In *Armed Forces of the Philippines Retirement and Separation Benefits System v. Republic of the Philippines*,²⁰ we said that a witness must only possess all the qualifications and none of the disqualifications provided in the Rules of Court. Section 20, Rule 130 of the Rules on Evidence provides:

SEC. 20. *Witnesses; their qualifications.*—Except as provided in the next succeeding section, all persons who can perceive, and perceiving, can make known their perception to others, may be witnesses.

Religious or political belief, interest in the outcome of the case, or conviction of a crime unless otherwise provided by law, shall not be a ground for disqualification.

Specific rules of witness disqualification are provided under Sections 21 to 24, Rule 130 of the Rules on Evidence. Section 21 disqualifies a witness by reason of mental incapacity or immaturity. Section 22 disqualifies a witness by reason of marriage. Section 23 disqualifies a witness by reason of death or insanity of the adverse party. Section 24 disqualifies a witness by reason of privileged communication.

In *Cavili v. Judge Florendo*,²¹ we have held that the specific enumeration of disqualified witnesses excludes the operation of causes of disability other than those mentioned in the Rules. The Rules should not be interpreted to include an exception not embodied therein. We said:

The generosity with which the Rule allows people to testify is apparent. Interest in the outcome of a case, conviction of a crime unless otherwise provided by law, and religious belief are not grounds for disqualification.

Sections 19 and 20 of Rule 130 provide for specific disqualifications. Section 19 disqualifies those who are mentally incapacitated and children whose tender age or immaturity renders them incapable of being witnesses. Section 20 provides for disqualification based on conflicts of interest or on relationship. Section 21 provides for disqualification based on privileged communications. Section 15 of Rule 132 may not be a rule on disqualification of witnesses but it states the grounds when a witness may be impeached by the party against whom he was called.

¹⁸ *Deutsche Bank AG v. Court of Appeals*, G.R. No. 193065, February 27, 2012, 667 SCRA 82, 100.

¹⁹ *Republic of the Philippines v. Hon. Ramon S. Caguioa, et al.*, G.R. No. 174385, February 20, 2013, p. 10.

²⁰ G.R. No. 188956, March 20, 2013, p. 5.

²¹ 238 Phil. 597, 602-603 (1987).

There is no provision of the Rules disqualifying parties declared in default from taking the witness stand for non-disqualified parties. The law does not provide default as an exception. **The specific enumeration of disqualified witnesses excludes the operation of causes of disability other than those mentioned in the Rules.** It is a maxim of recognized utility and merit in the construction of statutes that an express exception, exemption, or saving clause excludes other exceptions. x x x As a general rule, where there are express exceptions these comprise the only limitations on the operation of a statute and no other exception will be implied. x x x **The Rules should not be interpreted to include an exception not embodied therein.** (Emphasis supplied; citations omitted.)

As a handwriting expert of the PNP, PO2 Alvarez can surely perceive and make known her perception to others. We have no doubt that she is qualified as a witness. She cannot be disqualified as a witness since she possesses none of the disqualifications specified under the Rules. Respondents' motion to disqualify her should have been denied by the RTC for it was not based on any of these grounds for disqualification. The RTC rather confused the qualification of the witness with the credibility and weight of her testimony.

Moreover, Section 49, Rule 130 of the Rules of Evidence is clear that the opinion of an expert witness may be received in evidence, to wit:

SEC. 49. *Opinion of expert witness.*—The opinion of a witness on a matter requiring special knowledge, skill, experience or training which he is shown to possess, may be received in evidence.

For instance, in *Tamani v. Salvador*,²² we were inclined to believe that Tamani's signature was forged after considering the testimony of the PNP document examiner that the case involved simulated or copied forgery, such that the similarities will be superficial. We said that the value of the opinion of a handwriting expert depends not upon his mere statements of whether a writing is genuine or false, but upon the assistance he may afford in pointing out distinguishing marks, characteristics and discrepancies in and between genuine and false specimens of writing which would ordinarily escape notice or detection from an unpracticed observer.

Thus, we disagree with the RTC that PO2 Alvarez's testimony would be hearsay. Under Section 49, Rule 130 of the Rules on Evidence, PO2 Alvarez is allowed to render an expert opinion, as the PNP document examiner was allowed in *Tamani*. But the RTC already ruled at the outset that PO2 Alvarez's testimony is hearsay even before her testimony is offered and she is called to the witness stand. Under the circumstances, the CA should have issued a corrective writ of certiorari and annulled the RTC ruling.

True, the use of the word "may" in Section 49, Rule 130 of the Rules on Evidence signifies that the use of opinion of an expert witness is

²² G.R. No. 171497, April 4, 2011, 647 SCRA 132, 144.

permissive and not mandatory on the part of the courts.²³ Jurisprudence is also replete with instances wherein this Court dispensed with the testimony of expert witnesses to prove forgeries.²⁴ However, we have also recognized that handwriting experts are often offered as expert witnesses considering the technical nature of the procedure in examining forged documents.²⁵ More important, analysis of the questioned signature in the deed of donation executed by the late Andres Navarro, Sr. is crucial to the resolution of the case.

In sum, the RTC should not have disqualified PO2 Alvarez as a witness. She has the qualifications of witness and possess none of the disqualifications under the Rules. The Rules allow the opinion of an expert witness to be received as evidence. In *Tamani*, we used the opinion of an expert witness. The value of PO2 Alvarez's expert opinion cannot be determined if PO2 Alvarez is not even allowed to testify on the handwriting examination she conducted.

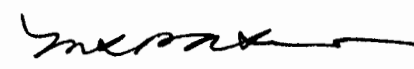
WHEREFORE, we **GRANT** the petition. We **SET ASIDE** the (1) Decision dated February 28, 2011 and Resolution dated July 29, 2011 of the Court of Appeals in CA-G.R. SP No. 92460, and (2) Orders dated August 19, 2004 and October 11, 2005 of the Regional Trial Court in Civil Case No. 5215. We **DENY** respondents' motion to disqualify PO2 Mary Grace Alvarez as a witness.

No pronouncement as to costs.

SO ORDERED.


MARTIN S. VILLARAMA, JR.
Associate Justice

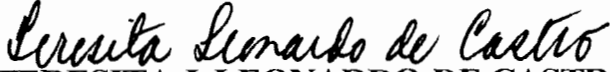
WE CONCUR:

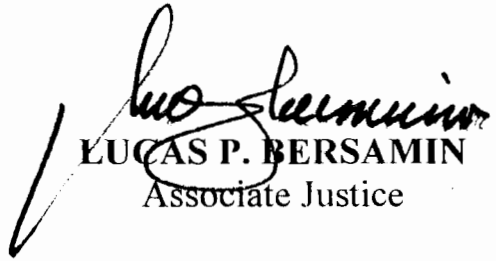

MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson

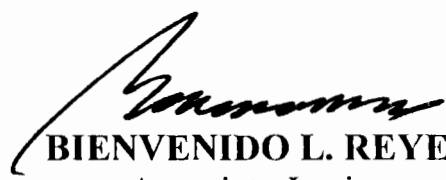
²³ *Tabao v. People*, G.R. No. 187246, July 20, 2011, 654 SCRA 216, 237.

²⁴ *Manzano, Jr. v. Garcia*, G.R. No. 179323, November 28, 2011, 661 SCRA 350, 357.

²⁵ *Mendez v. Court of Appeals*, G.R. No. 174937, June 13, 2012, 672 SCRA 200, 209.

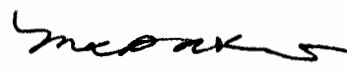

TERESITA J. LEONARDO-DE CASTRO
Associate Justice


LUCAS P. BERSAMIN
Associate Justice


BIENVENIDO L. REYES
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the 1987 Constitution, 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.


MARIA LOURDES P. A. SERENO
Chief Justice