



SUPREME COURT OF THE PHILIPPINES
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Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

**MA. MELISSA VILLANUEVA
MAGSINO,**

Petitioner,

G.R. No. 205333

Present:

- versus -

CARPIO, J., *Chairperson*,
PERLAS-BERNABE,
CAGUIOA,
REYES, J. JR., and
HERNANDO, * JJ.

ROLANDO N. MAGSINO,
Respondent.

Promulgated:

18 FEB 2019

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DECISION

REYES, J., JR., J.:

The case stemmed from a Petition to Fix the Rights of the Father *Pendente Lite* with Prayers for the Issuance of a Temporary Protection Order and Hold Departure Order filed by Rolando N. Magsino (respondent) against his wife Ma. Melissa V. Magsino (petitioner), docketed with the Regional Trial Court (RTC) of Quezon City, Branch 102, as Civil Case No. Q-0862984.¹

Respondent and petitioner were married on December 6, 1997 and their union was blessed with two children – one born in 2002 and the other 2003.² Sometime in 2005, Melissa started suspecting that Rolando was sexually molesting his own children, then aged 3 years old and 2 years old, as she would often see them playing with their genitalia.³ When she asked

* Additional Member per S.O. No. 2630 dated December 18, 2018.

¹ *Rollo*, pp.102-116.

² *Id.* at 57-58.

³ *Id.* at 58.

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who taught them of such activity, the children would answer “Papa.”⁴ Thus, to protect the minors from further abuse, Melissa left the conjugal dwelling and took the children to their maternal grandparents.⁵

In July 2008, Rolando filed the aforesaid petition.⁶ Melissa filed her Answer (to the petition) with Prayer for Protection Order.⁷

During pre-trial, Rolando manifested that he would be presenting, among other witnesses, Dr. Cristina Gates (Gates), who will testify on the mental status and fitness of Rolando to exercise parental authority over the minors.

At the hearing, Gates was presented as an expert witness. She confirmed the technical qualifications and professional skill stated in her judicial affidavit and curriculum vitae. She also discussed the findings contained in Rolando’s psychological evaluation report. Applying clinical hypnosis, phenomenological-existential study and historical-contextual approach, Gates opined that Rolando could not have molested the minors. As retrieved from Rolando’s memory while under hypnotic trance, Gates narrated that the children have accidentally witnessed their parents in the act of sexual intercourse for several occasions and explained that this experience caused them to develop sexual hyperactivity.

Gates was then subjected to cross-examination. But before propounding any questions, Melissa’s counsel, in open court, moved to strike out the direct testimony of Gates on grounds that her expertise had not been established and that any evidence derived from hypnotically-induced recollection is inadmissible.

The RTC ruled to retain the testimony as part of the record subject to a continuing objection on the qualification of the witness. Melissa’s counsel thereafter proceeded with the cross-examination, grilling Gates about her qualifications and the methodology used in conducting her sessions with Rolando.

On June 5, 2010, Melissa’s counsel filed a Motion to Expunge the testimony of Gates reiterating the doubts on her expertise and to suppress related evidence particularly the psychological evaluation report by reason of inadmissibility of hypnotically-induced recollection.

In its Order⁸ dated October 11, 2010, the RTC denied the motion to expunge the testimony on the ground of waiver of objection for failure to timely question the qualifications of the witness. On the motion to suppress psychological evaluation report, the RTC ruled that the same is premature considering that such documentary evidence has not yet been formally

⁴ Id.

⁵ Id.

⁶ Id. at 102-116.

⁷ Id. at 120-153.

⁸ Id. at 96-100.

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offered. Melissa moved to reconsider but it was denied. Hence, Melissa filed a petition for *certiorari* with the Court of Appeals (CA) ascribing grave abuse of discretion on the part of the RTC.

In the now assailed Decision⁹ dated September 28, 2012, in CA-G.R. SP No. 119205, the CA dismissed the petition and ruled that the RTC committed no grave abuse of discretion in denying the motion to suppress evidence and to expunge the testimony of a witness. The CA ruled that petitioner's counsel failed to make a timely objection to the presentation of Gates' testimonial evidence. It was observed that no objection was raised during the course of Gates' direct testimony where she confirmed her qualifications as an expert witness and explained the psychological examination conducted on respondent. According to the CA, such silence at the time of the testimony, when there was an opportunity to speak, operates as an implied waiver of the objection to the admissibility of evidence. Moreover, petitioner's counsel repeatedly cross-examined Gates thereby waiving any objection to her testimony. As to the motion to suppress the psychological evaluation report, the CA ruled that an objection thereto cannot be made in advance of the offer of the evidence sought to be introduced.

Dissatisfied with the aforesaid ruling, petitioner filed the instant Petition for Review¹⁰ with this Court, arguing as follows:

- I. THE COURT *A QUO* COMMITTED REVERSIBLE ERROR IN HOLDING THAT PETITIONER WAIVED HER RIGHT TO RAISE OBJECTIONS TO THE TESTIMONY OF CRISTINA GATES SIMPLY BECAUSE THE OBJECTION WAS RAISED BEFORE CROSS-EXAMINATION, NOT DURING DIRECT EXAMINATION, CONSIDERING THAT PETITIONER'S COUNSEL OBJECTED TO THE TESTIMONY AS SOON AS THE GROUNDS THEREFORE BECAME REASONABLY APPARENT.
- II. THE COURT *A QUO* COMMITTED REVERSIBLE ERROR IN UPHOLDING THE DENIAL OF PETITIONER'S MOTION TO EXPUNGE TESTIMONY ON THE GROUND THAT CROSS-EXAMINATION CONSTITUTED A WAIVER OF THE RIGHT TO OBJECT CONSIDERING THAT THE OBJECTION WAS RAISED BEFORE CROSS-EXAMINATION, AND THE INADMISSIBILITY OF THE TESTIMONY WAS REINFORCED DURING CROSS-EXAMINATION.
- III. THE TESTIMONY INVOLVING HYPNOTICALLY INDUCED MEMORY IN THE PRESENT CASE MAY PROPERLY BE SUPPRESSED FOR BEING INADMISSIBLE AND VIOLATIVE OF PETITIONER'S RIGHT TO DUE PROCESS AND EQUAL PROTECTION OF LAW.

⁹ Penned by Associate Justice Mario V. Lopez, with Associate Justices Ricardo R. Rosario and Socorro B. Inting, concurring; *rollo*, pp. 57-63.

¹⁰ *Id.* at 21-55.

IV. THE COURT *A QUO* COMMITTED REVERSIBLE ERROR IN HOLDING THAT THE DENIAL OF THE MOTION TO SUPPRESS WAS PROPER ON THE GROUND THAT EVIDENCE MAY NOT BE OBJECTED TO BEFORE A FORMAL OFFER IS MADE CONSIDERING THAT A MOTION TO SUPPRESS IS NOT THE SAME AS AN OBJECTION TO THE OFFER OF EVIDENCE.¹¹

No error can be ascribed on the part of the CA when it affirmed the RTC in denying petitioner's (a) Motion to Expunge the testimony of the expert witness for failure to timely question her qualifications and her (b) Motion to Suppress psychological report containing hypnotically-induced evidence as the said motion is premature.

In order to exclude evidence, the objection to admissibility of evidence must be made at the proper time, and the grounds specified.¹² Grounds for objections not raised at the proper time shall be considered waived, even if the evidence was objected to on some other ground.¹³ Thus, even on appeal, the appellate court may not consider any other ground of objection, except those that were raised at the proper time.¹⁴

Thus, it is basic in the rule of evidence that objection to evidence must be made after the evidence is formally offered.¹⁵ Thus, Section 35, Rule 132 of the 1997 Rules of Court, provides when to make an offer of evidence, thus:

SEC. 35. *When to make offer.* — As regards the testimony of a witness, the offer must be made at the time the witness is called to testify.

Documentary and object evidence shall be offered after the presentation of a party's testimonial evidence. Such offer shall be done orally unless allowed by the court to be done in writing.

On the other hand, Section 36, Rule 132 of the same rules, provides when objection to the evidence offered shall be made, thus:

SEC. 36. *Objection.* — Objection to evidence offered orally must be made immediately after the offer is made.

Objection to a question propounded in the course of the oral examination of a witness shall be made as soon as the grounds therefor shall become reasonably apparent.

An offer of evidence in writing shall be objected to within three (3) days after notice of the offer unless a different period is allowed by the court.

¹¹ Id. at 31-32.

¹² *Spouses Tapayan v. Martinez*, 804 Phil. 523, 534 (2017).

¹³ Id. at 535.

¹⁴ Id.

¹⁵ *Westmont Investment Corp. v. Francia, Jr.*, 678 Phil. 180, 188 (2011).

In other words, objection to oral evidence must be raised at the earliest possible time, that is after the objectionable question is asked or after the answer is given if the objectionable issue becomes apparent only after the answer was given.¹⁶ In case of documentary evidence, offer is made after all the witnesses of the party making the offer have testified, specifying the purpose for which the evidence is being offered.¹⁷ It is only at this time, and not at any other, that objection to the documentary evidence may be made.¹⁸

As correctly found by the CA, the objections interposed by petitioner – as to both oral and documentary evidence – were not timely made.

Petitioner should have objected during the course of Gates' direct testimony on her qualifications as an expert witness and explaining the mechanics of the psychological examination which she conducted on respondent. Petitioner should not have waited in ambush after the expert witness had already finished testifying. By so doing, petitioner did not save the time of the court in hearing the testimony of the witness that after all according to her was inadmissible.¹⁹ And thus, for her failure to make known her objection at the proper time, the procedural error or defect was waived.²⁰ Indeed, the reason why offer must be made at the time the witness is called to testify and the objection thereto be made, so that the court could right away rule on whether the testimony is necessary on the ground of irrelevancy, immateriality or whatever grounds that are available at the onset. Here, petitioner allowed a substantial amount of time to be wasted by not forthrightly objecting to the inadmissibility of the respondent's testimonial evidence.

It bears to stress however that allowing the testimony does not mean that courts are bound by the testimony of the expert witness. It falls within the discretion of the court whether to adopt or not to adopt testimonies of expert witnesses, depending on its appreciation of the attendant facts and applicable law. As held by the Court:

Although courts are not ordinarily bound by expert testimonies, they may place whatever weight they may choose upon such testimonies in accordance with the facts of the case. The relative weight and sufficiency of expert testimony is peculiarly within the province of the trial court to decide, considering the ability and character of the witness, his actions upon the witness stand, the weight and process of the reasoning by which he has supported his opinion; his possible bias in favor of the side for whom he testifies, the fact that he is a paid witness, the relative opportunities for study and observation of the matters about which he testifies, and any other matters which deserve to illuminate his

¹⁶ Id.

¹⁷ *Spouses Tapayan v. Martinez*, supra note 11, at 534.

¹⁸ Id.

¹⁹ *Catuirra v. Court of Appeals*, 306 Phil. 424, 427 (1994).

²⁰ Id.

statements. The opinion of the expert may not be arbitrarily rejected; it is to be considered by the court in view of all the facts and circumstances in the case and when common knowledge utterly fails, the expert opinion may be given controlling effect. The problem of the credibility of the expert witness and the evaluation of his testimony is left to the discretion of the trial court whose ruling thereupon is not reviewable in the absence of abuse of discretion.²¹

Objections to documentary evidence should likewise be timely raised. True, petitioner acted prematurely when it objected to the psychological report at the time when it is still being identified. Objection to documentary evidence must be made at the time it is formally offered, not earlier.²² Because at that time the purpose of the offer has already been disclosed and ascertained. Suffice it to say that the identification of the document before it is marked as an exhibit does not constitute the formal offer of the document as evidence for the party presenting it.²³ Objection to the identification and marking of the document is not equivalent to objection to the document when it is formally offered in evidence.²⁴ What really matters is the objection to the document at the time it is formally offered as an exhibit.²⁵ However, while objection was prematurely made, this does not mean that petitioner had waived any objection to the admission of the same in evidence. Petitioner can still reiterate its former objections, this time seasonably, when the formal offer of exhibits was made.²⁶

At any rate, it must be stressed that admissibility of evidence should not be confused with its probative value.²⁷ Admissibility refers to the question of whether certain pieces of evidence are to be considered at all, while probative value refers to the question of whether the admitted evidence proves an issue.²⁸ Thus, a particular item of evidence may be admissible, but its evidentiary weight depends on judicial evaluation within the guidelines provided by the rules of evidence.²⁹

Hence, the CA is correct when it ruled that the RTC did not commit grave abuse of discretion amounting to lack or in excess of jurisdiction when it denied petitioner's Motion to Expunge the testimony of the expert witness and the Motion to Suppress the documentary evidence.

²¹ *People v. Basite*, 459 Phil. 197, 206-207 (2003).

²² *People v. Lenantud*, 405 Phil. 189, 206 (2001).

²³ *Macasiray v. People*, 353 Phil. 353, 360 (1998).

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Interpacific Transit, Inc. v. Aviles*, 264 Phil. 753, 760 (1990).

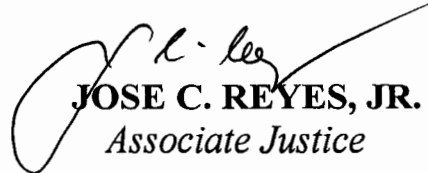
²⁷ *W-Red Construction and Devt. Corp. v. Court of Appeals*, 392 Phil. 888, 894 (2000).

²⁸ *Heirs of Lourdes Sabanpan v. Comorposa*, 456 Phil. 161, 172 (2003).

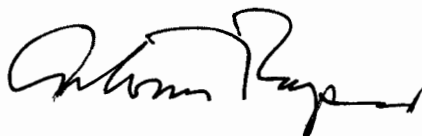
²⁹ *Id.*


WHEREFORE, the petition is **DENIED**. The assailed September 28, 2012 Decision of the Court of Appeals in CA-G.R. SP No. 119205 is **AFFIRMED**.

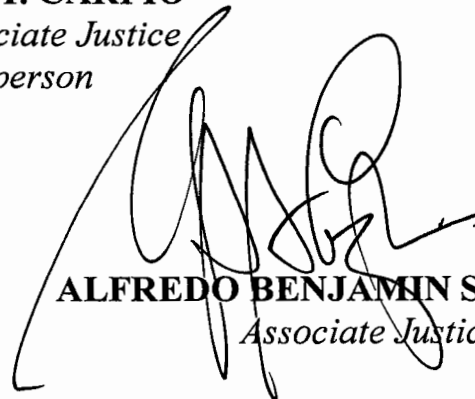
SO ORDERED.


JOSE C. REYES, JR.
Associate Justice

WE CONCUR:


ANTONIO T. CARPIO
Senior Associate Justice
Chairperson

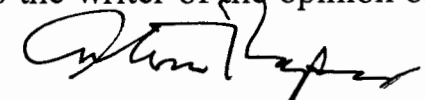

ESTELA M. PERLAS-BERNABE
Associate Justice


ALFREDO BENJAMIN S. CAGUIOA
Associate Justice


RAMON PAUL L. HERNANDO
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
Senior 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