

**SOLEDAD OLVIDO AND VENANCIO ALBANIEL, PETITIONERS, VS.
MAMERTO FERRARIS AND JOSE TEODORO SR., JUDGE OF THE
COURT OF FIRST INSTANCE OF NEGROS OCCIDENTAL,
RESPONDENTS.**

G.R. No. L-4276. December 17, 1951

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

This is a petition for mandamus seeking to compel the respondent judge to entertain and give course to the appeal interposed by petitioners against the decision rendered by said respondent judge in favor of Mamerto Ferraris on July 18, 1950.

On June 18, 1946, Mamerto Ferraris filed a complaint in the Court of First Instance of Negros Occidental against petitioners for the recovery of a parcel of land. On June 29, 1946, petitioners filed their answer to the complaint. On July 18, 1950, the court rendered decision in favor of the plaintiff copy of which was received by petitioners on July 20, 1950. On August 12, petitioners filed a motion for reconsideration, which was denied on August 29, and copy of the order denying said motion was received by petitioners on September 1. On September 2, Petitioners filed with the clerk of court their notice of appeal, the appeal bond, and the record on appeal, but did not set said record on appeal for hearing and approval until September 12, when the period of 30 days for appeal had already expired. Because of this late filing of the notice for hearing, the plaintiff objected to the approval of the record on appeal and prayed that the appeal be dismissed, and finding the objection well taken, the court denied the admission and approval of the record on appeal on the ground that it has been filed out of time. Hence this petition for mandamus.

The only question to be determined is whether petitioners have perfected their appeal within the period of 30 days provided for in section 3, Rule 41, of the Rules of Court.

It is not disputed that when petitioners filed with the clerk of court their notice of appeal, appeal bond and record on appeal on September 2, 1950, only 24 days had elapsed from the date they received copies of the decision of the court on the merits, discounting the period spent incident to the filing of the motion for reconsideration. The only reason why the respondent Judge disapproved the record on appeal is the failure of the petitioners to set the record on appeal for hearing within the reglementary period, which fact in the opinion of the respondent Judge is fatal and renders the decision final and executory. And in reaching such conclusion the court invoked the case of *Manakil and Tison vs. Revilla and Tuaño*, 42 Phil. 81, wherein it was held "that a motion presented in the Court of First Instance, which does not comply with the requirements of rule 10 of the Court of First Instance, is nothing but a piece of paper filed with the court. It is not a motion. It presents no question which the court could decide. The court has no right to consider it and the clerk has no right to receive it without that compliance with the rules. It is not, in fact, a motion at all".

The ruling thus invoked is not in point. That ruling only refers to motions in general, and not to bill of exceptions,

or record on appeal. Thus, in the case of *Cuento vs. Paredes*, 40 Phil. 346, this Court said:

"It is alleged by the respondents that when the petitioner's bill of exceptions was filed on March 14, 1919, there was no proof presented that the adverse party was notified, at least three days in advance, of the day same would be heard for approval, until the court on account of this defect and on motion of the other respondents, declared the exclusion of said bill of exceptions from the record. In so deciding, the respondent judge took into consideration the provisions of Rules 9 and 10 of the Court of First Instance which require this notice. Moreover, these rules are not applicable to the filing of bill of exceptions. They are only applicable, as is expressly stated under Rule 9, when no other provision is made by law. But, with regard to the bill of exceptions, the law provides for a special procedure and, consequently, it should not be governed by the Rules of Court. Section 143 of the Code of Civil Procedure provides that, when the bill of exceptions is presented, the judge shall, after reasonable notice to both parties, consider its allowance or correction. According to this, it should be the judge, and not the appellant, who has to notify the parties of the day on which said bill of exceptions will be heard for allowance or amendment". (Phil. pp. 348-349).

This is still the law relative to the hearing and approval of the record on appeal as may be implied from section 7, Rule 41 of the Rules of Court. There is nothing in the rules which requires the appellant to set for hearing the record on appeal as is required in the case of a motion (Sections 4 and 6, Rule 26). The only thing that the rule requires is that the appellant must serve the adverse party with a copy of the notice of appeal, appeal bond and record on appeal (Section 3, Rule hi). Upon submission of the record on appeal, the trial judge may then approve it as presented, or direct its amendment, upon his own motion or at the instance of the appellee. There is no need for appellant to set it for hearing. Upon its filing, the record on appeal is deemed submitted for approval, modification, or disapproval, as the case may be. It is evident that the respondent judge erred in dismissing the appeal.

Wherefore, the order of the respondent Judge dated September 30, 1950, is hereby set aside and a writ of mandamus is hereby issued directing said respondent Judge to approve the record on appeal submitted by petitioners and to give course to it in accordance with the Rules of Court, with costs against respondent Mamerto Ferraris.

Paras, C.J., Feria, Pablo, Bengzon, Padilla, Tuason, Reyes, and Jugo, JJ., concur.

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