

JACINTO NOTOR, PETITIONER, VS. IÑIGO S. DAZA, JUDGE OF FIRST INSTANCE OF BATANGAS, AND RAMON MARTINEZ, AS GUARDIAN OF INCOMPETENT PEDRO MARTINEZ, RESPONDENTS.

G.R. No. L-320. July 31, 1946

Ponente: PERFECTO, J.

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PERFECTO, J.:

In Civil Case No. 181 of the Court of First Instance of Batangas, entitled "Ramon Martinez, as Guardian of the Incompetent Pedro Martinez, versus Jacinto Sotor," defendant filed on November 24, 1945, his notice of appeal, appeal bond, and record on appeal for the purpose of appealing against a decision rendered on August 18, 1945. Respondent judge, in an order dated December 12, 1945, disapproved the record on appeal upon the ground that it was filed 35 days after notice of decision which, according to the lower court, was served on September 3, 1945.

The order states that the motion for new trial was filed on September 25 and denied on November 8, and that? "From September 3, 1945 to September 22, 1945 and from November 8, 1945 to November 24, 1945 there intervenes a period of 35 days."

Petitioner on January 2, 1946, filed a motion for reconsideration, alleging that service of the decision was effected, not on September 5, 1945, when a copy thereof was left in the house of defendant's father-in-law, but on September 9, 1945, when defendant's attorney actually received copy of the decision, 18 days having elapsed from then until the motion for new trial was filed on September 22, 1945; and that notice of the order denying the motion for new trial was actually received by said attorney only on November 10, 1945, and the time consumed from then until the record on appeal was filed on November 24, 1945, was only 14 days. Adding them to the previous period of 13 days, there is a total of only 27 days to be counted against defendant.

The respondent judge denied the motion for reconsideration on February 7, 1946.

Complaining against the two orders of respondent judge dated December 12, 1945, and February 7, 1946, appellant comes to us to seek relief by mandamus to compel the lower court to approve the record on appeal.

Considering completely groundless the lower court's allegation that the motion for new trial filed by defendant on September 22, 1945, is clearly pro forma, which it is not, as we see it on the record, the respondent judge himself not having taken it seriously even in his order of December 12, 1945, when in making the computation he excluded expressly the time intervening between the date of the filing of the motion for new trial and the date of the order denying it, the legal issue in this case boils down as to when service of copy of the decision took legal effect, i. e.: on September 5, 1945, when service was made to defendant with the leaving of a copy of the decision in the house of his father-in-law; or on September 9, 1945, when defendant's attorney of record actually received copy of said decision.

The question may be disposed of by reading section 2 of Rule 27 of the Rules of Court.

"SEC. 2. Papers to be filed and served.— Every order required by its terms to be served, every pleading

subsequent to the complaint, every written motion other than one which may be heard ex-parte. and every written notice, appearance, demand-offer of judgment or similar papers shall be filed with the court, and served upon the parties affected thereby. If any of such parties has appeared by an attorney or attorneys, service upon him shall be made upon his attorneys or one of them, unless service upon the party himself is ordered by the court. Where one attorney appears for several parties, he shall only be entitled to one copy of any paper served upon him by the opposite side."

In its order of February 7, 1946, the lower court maintains that the section does not apply to a decision, arguing thus: "It makes mention only of every order which by its terms is required to be served. An order is not a decision. The Court understands that an order is a mandate or determination of the Court upon some subsidiary or collateral matter arising in an action, not disposing of the merits, but adjudicating a preliminary point or directing some step in the proceedings. A decision is the determination of the Court upon the issue presented by the pleadings which entertains and fixes absolutely and finally the rights of the parties in the particular suit in relation to the subject matter in litigation, and puts an end to the suit."

Respondent judge's position is wrong: (a) because the rule includes "every written notice"; (b) because a decision is also a judicial order, so much so that respondent judge himself ended his decision of August 18, 1945, with the words "So ordered" and (c) because respondent judge's idea in restricting the meaning of the word "order" to preliminary procedural matters lacks logical ground.

The lower court made a faint attempt to justify its action by stating: "Besides, service of the decision upon the defendant himself has the sanction of the Court." The statement is incompatible with the provision of section 2 of Rule 27 which, in the excepted case, reads "unless service upon the party himself is ordered by the court." It means unmistakably not mere sanction given either belatedly or immediately after violation of the mandatory provision that service be made upon the attorneys of record. Positive order issued previous to service is required.

The respondent judge had the indubitable duty of approving the record on appeal filed by petitioner on November 24, 1945, in case No 181 of the Court of First Instance of Zatangas. It is commanded that it be approved and given due course, with the costs of these proceedings to be taxed against respondent Ramon Martinez, as guardian of the incompetent Pedro Martinez.

Moran, C.J., Paras, Feria, Pablo, Hilado, Bengzon, Briones, Padilla, and Tuason, JJ., concur.

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