

RAFAEL S. RALLOS, PLAINTIFF-APPELLEE, VS. GEMMA SALARDA RALLOS, DEFENDANT-APPELLANT.

Ponente: LAGURA-YAP, J.

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LAGURA-YAP, J.:

To recall, on January 17, 2014, We issued the Resolution[1], directing the defendant-appellant and counsel to furnish this Court within ten (10) days from notice their copy of the TSN dated October 15, 2003 and the Psychiatric Report (Exhibit “D”) with stern warning that failure on their part to comply with the directive shall be sufficient ground to dismiss the Appeal.

On March 23, 2014, the Judicial Records Division (CA-JRD) made a report[2] that no compliance has been made by the defendant-appellant to the Resolution dated January 17, 2014 as per Civil docket entry.

Under Rule 17 of the Rules of Court, Section 3. Dismissal due to fault of plaintiff, which reads:

Sec. 3. Dismissal due to fault of plaintiff. - if, for no justifiable cause, the plaintiff fails to appear on the date of the presentation of his evidence in chief on the complaint, or to prosecute his action for an unreasonable length of time, or to comply with these Rules or any order of the court, the complaint may be dismissed upon motion of the defendant or upon the court's own motion, without prejudice to the right of the defendant to prosecute his counterclaim in the same or in a separate action. This dismissal shall have the effect of an adjudication upon the merits, unless otherwise declared by the court.(emphasis supplied)

Likewise, under Rule 50 of the Rules of Court, Section 1. Ground for dismissal of appeal. - An appeal may be dismissed by the Court of Appeals, on its own motion or on that of the appellee, on the following grounds.

xxx xxx xxx

(g) Failure of the appellant to take the necessary steps for the correction or completion of the record within the time limited by the court in its order;

Records show that this Court issued a Resolution dated January 17, 2013 directing to furnish this Court within ten (10) days from notice their copy of the TSN dated October 15, 2003 and the Psychiatric Report (Exhibit “D”). The considerable lapse of time from receipt of notice without positive action and compliance from the defendant-appellant is a manifest and indication that appellant is no longer interested in pursuing the instant appeal.[3]

IN VIEW OF THE FOREGOING, pursuant to Section 1(h), Rule 50[4] and Section 3, Rule 17[5] of the Revised Rules of Court, the appeal is hereby DISMISSED.

SO ORDERED.

Ingles,[*] and Lopez, JJ., concur.

[*] In lieu of Justice Edgardo L. Delos Santos who is on wellness leave per Office Order No. 13-14-GTI.

[1] Rollo, pages 30-33.

[2] Rollo, dorsal portion of page 51.

[3] Commissioner Rufus Rodriguez, et al., vs. Samuel Jardin, G.R. No. 141834, July 30, 2007.

[4] 1997 Rules of Civil Procedure, Rule 50, Section 1. Grounds for Dismissal of Appeal. - (h) Failure of the appellant to appear at the preliminary conference under Rule 48 or to comply orders, circulars, or directives of the court without justifiable cause; (Bold supplied).

[5] Sec. 3 Dismissal due to fault of plaintiff. - If, for no justifiable cause, the plaintiff fails to appear on the date of the presentation of his evidence in chief on the complaint, or to prosecute his action for an unreasonable length of time, or to comply with these Rules or any order of the court, the complaint may be dismissed upon motion of the defendant to or upon the court's own motion, without prejudice to the right of the defendant to prosecute his counterclaim in the same or in separate action. The dismissal shall have the effect of an adjudication upon the merits, unless otherwise declared by the court.

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