

XERXES G. GARCIA, PLAINTIFF AND APPELLANT, VS. DAMIANA SANTICO, DEFENDANT AND APPELLEE.*G.R. No. L-7383. May 27, 1955*

Ponente: LABRADOR, J.

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This is an appeal from a judgment of the Court of First Instance of Pampanga dismissing a civil action for damages for a defamation committed by defendant against plaintiff. While the case was still in the lower court pending the approval of the record on appeal, the defendant presented a motion to dismiss the appeal on the ground that the same was not perfected within the 30-day period prescribed by the Rules of Court. The trial court denied this motion to dismiss the appeal and approved the record on appeal giving due course to the appeal. After the plaintiff had filed his brief in this Court, and when defendant presented her brief, she again reiterated her motion to dismiss the appeal on the ground that the same was not perfected within the time prescribed by the Rules.

The record discloses that the plaintiff-appellant in this case received a copy of the judgment dismissing the action on September 9, 1953. On October 2, that is, 23 days after he was notified of the judgment, he presented a motion for reconsideration. This motion was denied by the court on October 14, 1953. Copy of this order was sent by registered mail to the defendant under registered letter No. 5128 on October 15, 1953. On the same date, October 15, 1953, the first registry notice, Bureau of Post form No. 1525, was sent to the plaintiff. Again on October 26, 1953, another second registry notice was sent to said plaintiff. The plaintiff filed his notice of appeal on November 18, 1953 and the record on appeal on November 20, 1953.

The plaintiff-appellant did not file an answer to the motion for dismissal filed in the trial court and does not seem to deny the facts upon which the motion for dismissal are based. Neither has he replied to the reiteration of the said motion in defendant-appellee's brief. The sending of the first notice of the registered mail to plaintiff-appellant of the order of denial of his motion for reconsideration is proved by the certificate of the postmaster of San Fernando where the plaintiff resides. The letter was addressed to the plaintiff because he appeared personally and was not represented by any attorney of record in the court below. According to the certificate, the first notice was sent plaintiff-appellant on October 15, 1953.

Under the facts above set forth which are not denied by the plaintiff-appellant, it is sufficiently shown that as he received copy of the judgment on September 9, 1953, when he presented his motion for reconsideration on October 2, 1953, a period of 23 days had elapsed. Again it is sufficiently proven that he was sent the first notice of the order of denial of his motion for reconsideration on October 15, 1953, so that the said notice became effective on October 20, 1953. Hence, when he presented his notice on appeal November 18, and his record on appeal on November 20, another period of 20 days had expired. All in all, therefore, 51 days elapsed before he presented his record on appeal and notice of appeal. The trial court evidently counted the date of the period in which to perfect the appeal not from the notice of the original judgment But from the date of denial of the motion for reconsideration, which is supposed to be October 20. This is contrary to Section 3 of Rule 41, which provides that

the appeal must be made within 30 days from notice of the judgment, the time during which a motion for reconsideration is pending to be deducted in the computation of the said period.

Considering, therefore, that the notice of appeal and the record on appeal were not presented within the 30-day period prescribed by Section 3 of Rule 41, the appeal should be, as it is hereby, dismissed, with costs against plaintiff-appellant.

Pablo, Padilla, Montemayor, Reyes, A., Bautista Angelo, Concepcion and Reyes, J. B. L., JJ., concur.

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