

HON. ELOY B. BELLO, JUDGE OF THE COURT OF FIRST INSTANCE OF PANGASINAN, AND EUSEBIO E. FERRER, PETITIONERS, VS. VALENTIN A. FERNANDO, RESPONDENT.

G.R. No. L-16970. January 30, 1962

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

Petitioner Eusebio E. Ferrer, in this appeal by certiorari, seeks reversal of the decision of the Court of Appeals in its C.A. G.R. No. 25203-R giving due course to the appeal interposed by respondent Valentin A. Fernando from the summary judgment of the Court of First Instance of Pangasinan in Civil Case No. 13798.

It appears that in said Civil Case No. 13798, an action for damages filed by petitioner Ferrer against the respondent Fernando, the trial court, upon motion of the plaintiff, rendered a summary judgment on the ground "that there is really no genuine issue between the complaint and the answer"; that respondent Fernando received copy of said judgment on April 28, 1959; that 24 days hereafter, or on May 22, 1959, Fernando filed a motion for reconsideration; that on June 17, 1959, the trial court denied the motion, and copy of the order of denial was served on Fernando on June 24, 1959; that on the same day, June 24, 1959, i.e., six days before the expiration of his time to appeal, Fernando filed a notice of appeal and a motion for extension of 30 days within which to submit his record on appeal and appeal bond "due to heavy pressure of work from other cases" on the part of counsel; that on July 1, 1959, one day after his 30-day period for appeal had expired, Fernando received copy of the court order dated June 26, 1959, denying his motion for extension; that even then, on July 8, 1959, Fernando filed his record on appeal, and appeal bond; and that on July 25, 1959, the court disapproved the record on appeal and appeal bond on the ground that its decision "had already become final and executory."

On September 23, 1959, Fernando filed with the Court of Appeals a petition for certiorari alleging grave abuse of discretion on the part of the trial court in denying his motion to extend period for appeal and in disapproving his record of appeal and appeal bond; The appellate court found the petition meritorious and on February 29, 1960, rendered judgment nullifying the order of the trial court disallowing Fernando's appeal, and ordering that said appeal be given due course. From this judgment, plaintiff Ferrer appealed to this Court.

We agree with appellant that the Court of Appeals erred in holding that the trial court committed grave abuse of discretion in disapproving respondent Fernando's appeal.

The right to appeal is not a natural right nor a part of due process; it is merely a statutory privilege, and may be exercised only in the manner and in accordance with the provisions of the law (*Aguila vs. Navarro*, 55 Phil. 898; *Santiago vs. Valenzuela*, 78 Phil. 397). Section 3, Rule 41 of the Rules of Court requires that the notice of appeal, the appeal bond, and the record on appeal be all filed in court, and served on the adverse party, within thirty days from notice of judgment, deducting the time when a motion for reconsideration is pending; and compliance with this period for appeal is considered absolutely indispensable for the prevention of needless delays and to the orderly and speedy discharge of judicial business (*Altavas Conlu vs. C. A.*, 106 Phil., 940; 60 off. Gaz., [35]

5324), so that if said period is not complied with, the judgment becomes final and executory and the appellate court does not acquire jurisdiction over the appeal (Layda vs. Legaspi, 38 Phil. 83 Pampolina vs. Suiza, 12 Phil. 99; Caisip vs. Cabangon, L-14684, Aug. 26 1960)

There is no question here that both the record on appeal and the appeal bond of respondent Fernando were filed out of time. It is true that Fernando filed a motion to extend the period for the filing of both documents, but as we have repeatedly held, the filing of such motion for extension does not suspend the running of the period for appeal (Escolin vs. Garduño, 57 Phil. 924; Govt. vs. Abad, 66 Phil., 504; Alejandro vs. Endencia, 64 Phil., 321; Capinpin vs. Hon. Ysip, Aug. 31 1959, L-14018) since the only purpose of such motion is to ask the court to grant an enlargement of the time fixed by law (Escolin vs. Garduño and Alejandro vs. Endencia, supra). The movant, therefore, has no right to assume that his motion would be granted, and should check with the court as to the outcome of his motion, so that if the same is denied, he can still perfect his appeal within his remaining period. Respondent Fernando realized the urgency of the matter when he set his motion for extension "for resolution immediately upon receipt thereof" (Annex "I" of Fernando's Petition before the Court of Appeals), and the trial court acted on the motion with dispatch when, two days after receipt of the motion, it issued an order denying the same, on the ground that "the necessary pleadings on which the record on appeal shall consist are few, and there is no reason why defendant could not have finished the record on appeal within the thirty (30) days period, not counting the time during which the motion for reconsideration was pending" (Annex "H", op. cit.). Unfortunately, Fernando did not receive a copy of the order of denial until July 1, 1959, or one day after the expiration of his 30-day period for appeal. But it was his duty to take steps to verify from the court whether or not his motion for extension had been granted, considering that his time was running out, rather than rely on the court officials to see that he received the order of denial before the expiration of his period for appeal. A litigant cannot expect court officials to single out his particular case and give it preferential attention, unless special arrangements have been made for the purpose.

Fernando's lack of interest and lethargy are further emphasized by the fact that even as he received the order denying his motion for extension one day after his period for appeal had expired, still he waited seven days or until July 8 before he filed his record on appeal and appeal bond. As to be expected, his appeal was disallowed by the trial court for having been filed out of time.

As for the question whether the trial court abused its discretion in denying Fernando's motion to extend the time for the filing of his record on appeal and appeal bond, we agree with said court that as there were only very few pleadings to be included in the record, there was no reason why Fernando could not have filed his record on appeal within the eight days that he still had left when he filed his motion for extension. Fernando is certainly mistaken in his belief that "pressure of work from other cases" entitles him to an extension of his 30-day period. The rule, in fixing the term of thirty days, already assumes that other cases will make demands upon counsel's attention. Otherwise, a much shorter period would have been prescribed.

The Court of Appeals, however, "held that for the preparation and filing of Fernando's appeal bond, certainly petitioner needed time as he was residing in Angat, Bulacan, his counsel had his office in Manila, and the appeal bond had to be deposited or filed in Lingayen, Pangasinan." To this view we can not subscribe, for Fernando needed only to deposit P60 in cash with the Pangasinan court or send an appeal bond by registered mail, and even if he resided in Bulacan and his counsel had his office in Manila, he could very well have performed either act within the six remaining days that he still had for appeal when he filed his motion for extension. The rule is that while the trial court may, in its discretion, extend the time for appeal beyond the period fixed by law, it must be satisfactorily shown that there is justifiable reason for such action, like fraud, accident, mistake, or excusable negligence, or similar supervening casualty, without fault on the part of the appellant (Alvero vs. De la Rosa, 76

Phil. 428; Moya vs. Barton, 76 Phil. 831; Lopez vs. Lopez, 77 Phil., 188; Peralta it. Solon, 77 Phil. 610; Santiago vs. Valenzuela, 78 Phil. 897). No such reasons exist in this case so aa to justify the lower court in relieving the respondent Fernando from compliance with the period for appeal prescribed by the rules.

Wherefore, the judgment appealed from is reversed, and the orders of June 26, 1959 and July 25, 1959 of the trial court are reinstated, with costs against respondent Valentin A. Fernando.

Bengzon, C. J., Padilla, Bautista Angelo, Labrador, Concepcion, Barrera, Paredes, Dizon, and De Leon, JJ., concur.

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