

ANTHONY CHAN, PLAINTIFF-APPELLEE, VS. OCEANIC WIRELESS NETWORK, INC., DEFENDANT-APPELLANT.

G.R. No. L-22705. November 27, 1968

Ponente: MAKALINTAL J.

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MAKALINTAL J.:

This is an appeal from the order of the Court of First Instance of Davao dismissing the appeal of the defendant for its failure to pay in full the appellate court's docket fee. The Court of Appeals certified this case to us for final determination for the reason that then question in-volved is one of law.

On July 18, 1962 the plaintiff instituted an action for damages against the defendant in the Justice of the Peace Court (now Municipal Court) of Mati, Davao. After trial judgment was rendered in favor of the plaintiff and against the defendant, ordering the latter to pay the former the sums of P1,036.49 as actual damages and P300.00 as attorney's fees. Notice of the judgment was received by counsel for the defendant on October 25, 1962. The next day the defendant filed with the Justice of the Peace Court a notice of appeal to the Court of First Instance, with the appeal bond of P25.00 in the form of cash deposit with the Municipal Treasurer, and a postal money order for P12.00 payable to the clerk of the Court of First Instance of Davao for the appellate court docket fee. The Justice of the Peace then transmitted the record of the case to the clerk of the Court of First Instance, who acknowledged receipt thereof in a notice dated November 10, 1962.

Two days after the expiration of the fifteen day period within which to perfect the appeal the plaintiff moved to dismiss the same on the ground of failure to pay in full the docket fee which, in accordance with Rule 130, Section 5 of the Rules of Court (old) should be P32.00 instead of P12.00. In an order dated November 17, 1962 the Court a quo dismissed the appeal. Thereupon the defendant moved to reconsider, but was turned down in an order dated December 22, 1962.

The only issue here is whether or not the appeal to the Court of First Instance of Davao was perfected in accordance with Rule 40, Section 2[1] of the Rules of Court (old), notwithstanding the failure to pay in full the appellate court docket fee.

Appellant contends that the Court a quo should have allowed the appeal as there was substantial compliance with the Rules of Court, the deficiency in the amount paid for docket fee being a technical defect which could be cured. Appellant maintains that the rules on procedure should be construed liberally so as not to deprive it of the right to appeal on mere technicality. Moreover, it claims good faith and lack of intention to disregard the Rules and explains that the deficiency of P20.00 in the docket fee was due to an honest mistake in computation on the part of counsel, he being a new practitioner who was then appealing a civil case for the first time. It had that counsel, upon realizing his mistake and without having been asked to do so by the clerk of the Court of First Instance, purchased a postal money order for P20.00 on November 16, 1962, with the intention of remitting the same to cover the shortage in the docket fee.

The rule is settled that, in case of appeals from inferior courts to the Courts of First Instance, the amount of the

appellate court docket fee should be deposited in full within a period of fifteen days. Thus, if half only of the amount is deposited and the other half is tendered after the expiration of such period, the appeal is not deemed perfected.[2] True, in several instances this Court has re-laxed the rule and then allowed the appeal in order to pre-vent a miscarriage of justice. For instance, where the appellants were from the very beginning ready and willing to pay the correct amount of docket fee and the failure to do so was caused by the mistake of either the clerk of the Court of First Instance[3] or the clerk of the justice of the peace court,[4] or of the justice of the peace and the municipal treasurer,[5] or of the municipal treasurer alone,[6] this Court held that it would be unjust to dismiss the appeal under the circumstances because:

"Every citizen has the right to assume and trust that a public officer charged by law with certain duties knows his duties and performs them in accordance with law. To penalize such a citizen for relying upon said officer in all good faith is repugnant to justice."

In the instant case, however, the failure of the appellant to pay the full amount of appellate court docket fee was due to the inexcusable negligence of Atty. Antonio Olmedo, its counsel in the Justice of the Peace Court, if not indeed to his ignorance of the Rules. The explanation that such failure was caused by an honest mistake of said counsel in the computation of the amount required is not credible. Under Rule 30, Section 5 of the Rules of Court (old), no computation was necessary. Besides, the amount of P12.00 which was actually paid was below the statutory minimum of P16.00. Evidently, said counsel did not refer to the Rules. The fact that he was a new practitioner did not justify his negligence. If anything, it should have made him more careful in the handling of his cases. Under the circumstances, the dismissal of the appeal does not constitute a reversible error.

WHEREFORE, the order appealed from is hereby affirmed, with costs against the appellant.

Concepcion, C.J., Reyes, J.B.L., Dizon, Zaldivar, Sanchez, Castro, Fernando, and Capistrano, JJ., concur.

[1] SEC. 2. Appeal, how perfected. - An appeal shall be perfected within fifteen days after notification to the party of the judgment complained of, (a) by filing with the justice of the peace or municipal judge a notice of appeal; (b) by delivering a certificate of the municipal treasurer showing that the appellant has deposited the appellate court docket fee, or, in chartered cities, a certificate of the clerk of such court showing receipt of the said fee; and (c) by giving a bond.

[2] *Gambol and Burog vs. Hon. Barcelona, et al.*, 106 Phil. 328, 330, citing the case of *Lazaro vs. Endencia, et al.*, 57 Phil. 552.

[3] *Segovia vs. Barrios, et al.*, 75 Phil. 764.

[4] *Marasigan vs. Palacio*, 87 Phil. 839.

[5] *Gambol and Burog vs. Hon. Barcelona*, *supra*

[6] *Amado Tagulao vs. Judge Fortunata Padlanmundok, et al.*, G. R. No. L-15550, May 30, 1960; *Barnido et al., vs. Balana*, G. R. No. L-26275, July 26, 1966.

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