

JUANITA R. DOMINGO, PETITIONER, VS. HON. DIONISIO DE LEON, ET AL., RESPONDENTS.*G.R. No. L-17686. November 29, 1961*

Ponente: BAUTISTA ANGELO, J.

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This is a special civil action of certiorari and mandamus under Rule 67 of the Rules of Court seeking to set aside the entry of judgment made on August 16, 1960 by the Clerk of Court of the Court of Appeals in CA-G. R. No. 19223—R, and to annul the resolutions dated September 21, 1960 and October 24, 1960 of the First Division of said Court composed of the justices who are respondents herein.

It appears that in the case of CA-G. R. No. 19223-R, entitled Juanita R. Domingo, plaintiff-appellant vs. Isidro Soriente, defendant-appellee, the Court of Appeals (First Division) promulgated a decision on June 30, 1958 copy of which was received on July 8, 1958 by counsel for defendant-appellee. On July 23, 1958, said defendant, thru counsel, filed a motion for reconsideration, which was denied for lack of merit. Copy of the resolution of the court was received by counsel for defendant on August 15, 1960, as evidenced by the delivery receipt signed by said counsel on the date just mentioned. On August 16, 1960, Romeo Mercado, Clerk of Court of the Court of Appeals, made an entry of judgment to the effect that the decision promulgated on June 30, 1958 had become final and executory on said date August 16, 1960.

Thirty days thereafter, that is, on September 15, 1960, counsel for plaintiff filed a motion to set aside the entry of judgment contending that the date mentioned therein— August 16, 1960—is not correct on the alleged ground that the counsel for defendant Soriente received on August 12, 1960 (not on August 15, 1960) his copy of the resolution of August 8, 1960, as stated by Benjamin Agustin, a messenger of the Court of Appeals, in his report entitled "Official Service Rendered Outside of the Office August 12, 1960." Counsel filed a written opposition to this motion stating therein that according to his personal record the resolution of the Court of Appeals dated August 8, 1960 was received by him on August 15, 1960 and not on August 12, 1960 as alleged in the motion. On September 21, 1960, the Court of Appeals denied the motion. On September 30, 1960, counsel for plaintiff filed a motion for reconsideration alleging that the date appearing in the delivery receipt is doubtful and appears to be post- dated. To this motion Soriente's counsel also filed a written opposition. And after considering both the motion and the opposition the Court of Appeals denied the motion for lack of merit. Hence the present petition for certiorari.

Section 10, Rule 27, of our Rules of Court provides in substance that the proof of service of a pleading shall consist (1) in case of personal service, of a written admission of the party served, (2) of the affidavit of the party serving containing a full statement of the date, place, and manner of service, and (3) if service is made by mail, of the affidavit of the person serving, together with the registry receipt, if registered. Here it appears that a copy of the resolution of the Court of Appeals of August 8, 1960 was personally served upon counsel for respondent Soriente as evidenced by the delivery receipt copy of which is Annex D. Such being the case, it is clear that under our rule relative to proof of service said delivery receipt constitutes the best evidence of the service made upon

Soriente's counsel of the copy of the aforesaid resolution. And it appearing on the face thereof that said copy was served on counsel on August 15, 1960 and that in the entry of judgment made by Clerk of Court Mercado the decision had become final and executory on August 16, 1960, respondent justices had no other alternative than to deny the motion to set aside the entry of judgment.

But it is claimed that said justices erred in relying more on the date appearing on the delivery receipt signed by counsel for respondent Soriente than on the date appearing on the report submitted by the messenger of the Court of Appeals wherein it appears that counsel received copy of the resolution of August 8, 1960, not on August 15, 1960, but on August 12, 1960, for the reason that the report of said messenger is part of the official record of the Court of Appeals and as such deserves more weight and credit.

We do not see how we can agree to this claim much as we admit that the report of the messenger of the court on the service he makes in the performance of his duties is deemed to be part of the court's record for the simple reason that the same conflicts with what our rule provides. As already stated, there are three ways by which proof of service may be given, the first one being the written admission of the party served. Note that the affidavit of the party serving only comes next, which indicates that said affidavit does not necessarily have to be the best evidence or be given more weight and credit. Of course, there may be cases where both proofs may conflict, as in the present, in which case it becomes the duty of the court to determine upon the facts and circumstances obtaining which should be believed. The present is one of such cases, and when the matter was brought to the attention of the Court of Appeals (First Division) it readily acted thereon taking into account the evidence on hand. In our opinion, respondent justices correctly interpreted our rule and properly denied the petition for nullification of the entry of judgment.

It is true that counsel for petitioner claims that the delivery receipt signed by counsel for respondent Soriente cannot prevail over the report of the messenger of the court because said delivery receipt appears irregular and postdated, but such claim was not upheld by respondent justices because they found that the delivery receipt appeared clean on its face. They did not find any suspicious circumstance that may justify its rejection. And with regard to the allegation of the court's messenger Benjamin Agustin in his affidavit that the delivery receipt was postdated the most we can say is that such allegation was not given credence by respondent justices because said messenger did not report the matter, if true, to the clerk of court until almost two months after the service he has made when he subscribed to the affidavit wherein he mentioned the question of postdating for the first time. Verily, it is for this reason that the clerk of court made the entry of judgment based upon the delivery receipt as he did not then have any knowledge of the postdating now claimed by messenger Agustin.

The case of *De los Angeles, et al. vs. Hon. Sotero Caba-hug, et al.*, 106 Phil., 839; 57 Off. Gaz., [12] 2141, invoked by counsel for petitioner is not in point, for the facts therein involved are not analogous or similar to those involved in the instant case. In the *De los Angeles* case, there was proof that the delivery receipt was tampered, or was dated under suspicious circumstances, and so the court had to rely on the report submitted by the messenger who made the service. No such irregularity appears in this case. On the contrary, respondent justices found that the delivery receipt appears clean on its face. Hence it is entitled to full faith and credit. In the circumstances, we find no reason for disturbing the ruling made by respondent justices on the incident in question.

Wherefore, petition is dismissed, without costs.

Bengzon, C. J., Padilla, Labrador, Concepcion, Reyes, J. B. L., Barrera, Paredes, and Dizon, JJ., concur.

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