

**NIEVES PALMA GIL VILLARICA, ANGEL VILLARICA, PETITIONERS,
VS. COURT OF APPEALS, CONCEPCION PALMA GIL AND ILUMINADA
U. PACETES, RESPONDENTS.**

G.R. NO. L-28363. May 15, 1974

Ponente: CASTRO, J.

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CASTRO, J.:

Appeal by certiorari from the resolution of the Court of Appeals dated July 31, 1967 and its resolution dated October 18, 1967, in case 35422-R, ordering the dismissal of the appeal interposed by the spouses Nieves Palma Gil Villarica and Angel Villarica (hereinafter referred to as the "petitioners") from the two orders issued by the Court of First Instance of Davao in civil case 1160, pursuant to section 1(a), Rule 50 in relation to section 6, Rule 41 of the revised Rules of Court, on the ground that the record on appeal fails to state on its face that the appeal was perfected on time.[1]

The printed record on appeal in question states, inter alia, as follows:

"11. That on February 17, 1964, the Court of First Instance of Davao issued an Order a copy of which is attached herewith, marked as Annex 'K' and made an integral part hereof;

"12. That on February 21, 1964, the defendant filed a 'Motion for Reconsideration' of the Order dated February 17, 1964, a copy of which motion is attached herewith, marked as Annex 'L' and made an integral part hereof;

"13. That on February 29, 1964, the Court of First Instance of Davao issued an Order, a copy of which is attached herewith, marked as Annex 'M' and made an integral part hereof;

"14. That on March 4, 1964, the defendants filed a 'Notice of Appeal', a copy of which is attached herewith, marked as Annex 'N' and made an integral part hereof;

"15. That on March 9, 1964, the defendants deposited with the Court of First Instance of Davao the required cash appeal bond in the sum of P120.00 covered by Official Receipt No. H--8060022.

"NOW, THEREFORE, this RECORD ON APPEAL having been filed within the reglementary period as fixed by the Rules of Court, it is respectfully prayed that the same be approved and certified to the Honorable Court of Appeals, together with the documentary and oral evidence which are made part of and incorporated in this Record on Appeal, so that the errors complained of may be reviewed and corrected.

"Davao City, Philippines, March 20, 1964."

From the foregoing, it is quite clear that the petitioners' printed record on appeal does not disclose on-its face the date when it was filed. It appears, however, that the original (typewritten) record on appeal was submitted to the trial court for approval on (and so stamped) "March 20, 1964." Such defect is not fatal, as this Court has held in *Design Masters, Inc. vs. Court of Appeals*.^[2] Thus:

"The printed record on appeal in L-31510 does not show the date on which it was filed with the trial court, but

such date is stamped on the original record on appeal, which was approved by said court and forwarded to the Court of Appeals. Section 6, Rule 41 of the Rules of Court, obviously refers to the record on appeal filed with the trial court, not to the record on appeal printed in the appellate court. At any rate, the Court of Appeals is in a position to determine the date aforementioned by examining the original record on appeal thereto forwarded, and, hence, forming part of its own records. Accordingly, petitioner's record on appeal meets the objectives of said provision of the Rules of Court, which may be deemed to have been substantially complied with."

But while it is thus conceded that the record on appeal in question substantially complies with the requirements of the revised Rules of Court, the question nonetheless arises as to whether the appeal of the petitioners was timely filed on March 20, 1964.

The notice of appeal filed by the petitioners with the trial court discloses the following pertinent data:

"COME NOW the defendants, assisted by their undersigned counsel, and not being satisfied with the Order of February 17, 1964, which they received on February 18, 1964, and with the Order denying the Motion for Reconsideration, dated February 29, 1964, which they received on March 3, 1964, as well as with the Order of December 7, 1961, hereby appeal the said Orders to the Court of Appeals, both on questions of law and of evidence.

"Davao City, March 4, 1964."

Under the provisions of section 3, Rule 41 of the revised Rules of Court, an aggrieved party is allowed a period of 30 days within which to perfect its appeal to the Court of Appeals from a final order or judgment of the Court of First instance.

"Section 3. How appeal is taken. — Appeal may be taken by serving upon the adverse party and filing with the trial court within thirty (30) days from notice of order or judgment, a notice of appeal, and appeal bond, and a record on appeal. The time during which a motion to set aside the judgment or order or for a new trial has been pending shall be deducted, unless such motion fails to satisfy the requirements of Rule 37.

"But where such a motion has been filed during office hours of the last day of the period herein provided, the appeal must be perfected within the day following that in which the party appealing received notice of the denial of said motion."

It is evident that the order of the trial court dated February 17, 1964 which they appealed to the Court of Appeals became final and executory on March 19, 1964, that is, 30 days after the petitioners' receipt of the same on February 18, 1964. As they filed their record on appeal only on March 20, 1964, their appeal was, therefore, time-barred.

The petitioners' motion for reconsideration of the order of February 17, 1964 which merely and barely alleged:

"1. That the Order is contrary to law;

"2. That the Order is contrary to the facts of the case."

did not suspend the running of the period for appeal, being a mere pro forma motion. For, while it states that the order complained of is contrary to law and to the facts of the case, it utterly fails to give even an inkling as to what findings or conclusions in the said order are not supported by evidence or are contrary to law, in violation of the aforementioned section 3, Rule 41 in relation to Rule 37 of the revised Rules of Court.[3] The Court of Appeals did not therefore err in ordering the dismissal of the appeal.

But while the issue at bar exclusively involves the timeliness of the appeal of the petitioners to the Court of Appeals, this Court has nonetheless examined and analyzed the substantive aspects of this case and is satisfied

that the orders of the trial court complained of are morally just.

ACCORDINGLY, the instant appeal is dismissed, and the resolution of the Court of Appeals dated July 31, 1967 and its resolution dated October 18, 1967 are affirmed. No costs.

Makalintal, C.J., Teehankee, Esguerra, and Muñoz Palma, JJ., concur.

Makasiar, J., on leave.

[1] Section 6. Rule 41 states: "Record on appeal: form and contents thereof. — The full names of all the parties to the proceedings shall be stated in the caption of the record on appeal and it shall include the order or judgment from which the appeal is taken, and, in chronological order, copies of only such pleadings, petitions, motions and all interlocutory orders as are related to the appealed order or judgment and necessary for the proper understanding of the issue involved, together with such data as will show that the appeal was perfected on time.

Section 1. Rule 50 states, Grounds 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:

(a) Failure of the record on appeal to show on its face that appeal was perfected within the period fixed by these rules x x x"

[2] L-31510, March 31, 1971, 38 SCRA 297, 318.

[3] See Ferrer vs. Tabora, L-13010, December 28, 1959; Valdez vs. Jugo, 74 phil. 49; Reyes vs. CA, 74 Phil. 235; Alvero vs. De la Rosa, 76 Phil. 428; Villalon vs. Ysip, 52 O.G. 1094.

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