

ALFREDO G. SAMSON, PLAINTIFF-APPELLEE, VS. LAMBERT G. SAMSON AND MICHELLE SAMSON, DEFENDANTS-APPELLANTS.

Ponente: DIAMANTE, J.

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DIAMANTE, J.:

The case under consideration is one where plaintiff-appellee could not be furnished with copies of herein defendant-appellant Lambert G. Samson's (Lambert) appeal Brief as the address of the former, as well as his counsel, could not be ascertained despite diligent efforts on the part of the latter.

On June 18, 2014, this Court promulgated its Resolution[1] dismissing Lambert's appeal for failure on his part to furnish plaintiff-appellee with copies of the appeal Brief.

Lambert filed a Motion for Reconsideration[2] of the said Resolution.

Meanwhile, copies of the Resolution sent to plaintiff-appellee and his counsel informing them of the June 18, 2014 Resolution of this Court, as well as the July 31, 2014 Minute Resolution requiring plaintiff-appellee to file his Comment on Lambert's Motion for Reconsideration[3] were returned unclaimed with postal notation "RTS-Moved Out."

In a Minute Resolution[4] dated November 4, 2014, this Court resolved to declare the service of the aforesaid Resolutions to plaintiff-appellee and his counsel deemed complete and the Motion for Reconsideration filed by Lambert submitted for resolution sans comment of appellee.

We have carefully examined the disquisitions posited by Lambert in his motion for reconsideration and found the arguments he raised to be meritorious. A revisit of the records of the case and as well as Our previous directives convinced this Court of the need to reconsider Our earlier resolution.

Indeed, the dismissal of an appeal for failure of the appellant to serve and file the required number of copies of his brief or memorandum within the time provided is sanctioned under Sec. 1 [e], Rule 50 of the Revised Rules of Court.

However, in the case at bench, it cannot be gain said that Lambert failed to observe the requirement of furnishing plaintiff-appellee with copies of his appeal Brief just because the latter was not able to receive the same.

Records show that Lambert has not been remiss in complying with this Court's numerous directives for him to furnish plaintiff-appellee with copies of his Brief. It just so happened that his efforts were futile as copies of his Brief, which were sent to plaintiff-appellee's last known address, were returned to him with the notation from the postal office that the addressee had already moved out. Attempts to serve copies of the appeal Brief to plaintiff-appellee's counsel on record also remained unsuccessful to date for as with her client, Atty. Rebecca Mojares-Buenaventura's whereabouts could not also be ascertained having transferred office without informing this Court or the lower court for that matter, of her present office address. Even this Court's notice to plaintiff-appellee's counsel for the filing of an appellee's brief remained unclaimed with postal notation "RTS Moved Out." [5]

We find the case of Garrucho vs. Court of Appeals, et al.,[6] wherein the Supreme Court upheld the Decision of the Court of Appeals dismissing the appeal of petitioner for his failure to file brief, applicable by analogy in the case at bench.

In Garrucho, the Court of Appeals sent notice to file an appeal brief to both petitioner and his counsel to their last known address. The envelope containing the notice sent to petitioner's counsel returned stamped with "Return to Sender, Moved Out." Meanwhile, the notice that was sent to petitioner was returned to the Court with a notation "Unclaimed." Thus, the Court of Appeals, in a Minute Resolution declared the service of notice on petitioner to be complete. Consequently, the Court of Appeals dismissed petitioner's appeal. Copy of the Resolution dismissing petitioner's appeal was sent by the Court of Appeals through registered mail to petitioner's counsel but the said resolution was returned to the Court with "Return to Sender, Moved Out," stamped on the envelope. Separate copy was sent to petitioner at his office address but the same was returned to the Court of Appeals with the notation "Unclaimed."

Appealing the dismissal to the Supreme Court via a Petition for Certiorari, petitioner argued that he was deprived of due process when the Court of Appeals and the RTC failed to serve copies of the assailed resolutions and orders. The Highest Tribunal, in upholding the dismissal of the petition by the Court of Appeals, had the occasion to discuss, thus:

"Section 2, Rule 13 of the Rules of Civil Procedure provides that if any party has appeared by counsel, service upon him shall be made upon his counsel unless served upon the party himself is ordered by the trial court. Notice or service made upon a party who is represented by counsel is a nullity. Notice to the client and not to his counsel of record is not notice in law. The rule admits of exceptions, as when the court or tribunal orders service upon a party or when the tribunal defendant is waived.

In the absence of a proper and adequate notice to the court of a change of address, the service of the order or resolution of a court upon the parties must be made at the last address of their counsel on record. It is the duty of the party and his counsel to device a system for the receipt of mail intended for them, just as it is the duty of the counsel to inform the court officially of a change in his address. It is also the responsibility of a party to inform the court of the change of his address so that in the event the court orders that an order or resolution be served on the said party to enable him to receive the said resolution or order."

In the case at bench, plaintiff-appellee and his counsel did not inform the Court of the change in their respective addresses. Thus, Lambert could not be faulted if plaintiff-appellee and his counsel were not able to receive copies of the appeal Brief. More so that persistent efforts were exerted by Lambert to locate the present whereabouts of plaintiff-appellee and his counsel and attempts had been made to furnish them with copies of the appeal Brief as shown by the registry receipts attached to the Affidavit of Service filed before Us.

On Our part, We have been furnishing plaintiff-appellee's counsel with copies of our Minute Resolutions including that which required plaintiff-appellee to comment on the Motion for Reconsideration filed by Lambert. As far as We are concerned, the last known address on record of plaintiff-appellee's counsel is the correct address where all notices shall be served until We are officially informed to the contrary. Thus, in the interest of justice, We are inclined to reinstate Lambert's appeal. It is apparent from the records that Lambert had been acting with prudence and diligence in pursuing his appeal right from the very start. As he aptly pointed out, grave injustice will be committed against him if his appeal is dismissed on the basis of plaintiff-appellee and his counsel not receiving a copy of the brief, not discounting the possibility that the two may have gone into hiding to avoid being served.

IN VIEW OF THE FOREGOING, the Motion for Reconsideration is hereby GRANTED.

Our Resolution promulgated on June 18, 2014 is RECONSIDERED. Accordingly, Defendant-appellant Lambert G. Samson's appeal is hereby REINSTATED.

SO ORDERED.

Librea-Leagogo, (Chairperson), and Sadang, JJ., concur.

[1] Rollo, pp. 109-113.

[2] Id. at 118-120.

[3] Id. at 124 and 126.

[4] Id. at 127.

[5] Id. at 18.

[6] G.R. No. 143791, January 14, 2005.

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