

**ALFREDO MIRANDA, THROUGH PATRICIO D. SENADOR, AS
GUARDIAN AD LITEM, PETITIONER, VS. DAVID GUANZON ET AL.,
AND COURT OF APPEALS, RESPONDENTS.**

G.R. No. L-4992. October 27, 1952

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

This is an appeal by way of certiorari from an order of the Court of Appeals dated June 11, 1951, denying the motion filed by appellee in CA-G. R. No. 7813-R wherein it is prayed that the appeal interposed by appellant in :said case be dismissed on the ground that the same was not perfected within the reglementary period.

On March 8, 1951, the Court of First Instance of Manila rendered judgment in favor of Alfredo Miranda, now petitioner, against David Guanzon, now respondent, In civil case No. 8465, copy of which judgment was received by respondent on March 17, 1951;

On April 5, 1951, nineteen days from receipt of copy of said judgment, respondent filed a notice of appeal and a cash appeal bond as well as a record on appeal;

On April 7, 1951, the court entered an order approving the record on appeal and directed the clerk of court to forward it to the Court of Appeals together with all, the corresponding evidence;

On June 9, 1951, petitioner filed in the Court of Appeals a motion to dismiss the appeal alleging among other grounds that respondent failed to perfect his appeal within the period prescribed by section 17, Rule 41 of the Rules of Court;

On June 12, 1951, respondent filed an opposition claiming that the appeal has been perfected in due time because the case does not come within the purview of the Workmen's Compensation Act. He also claims that petitioner has already waived his right to object to the appeal.

On June 11, 1951, the Court of Appeals entered a resolution of the following tenor:

"28. Acting on the motion filed by counsel for plaintiff-appellee in case CA G.R. No. 7813R, Alfredo Miranda etc. vs. David Guanzon et al., praying on the grounds therein stated for the dismissal of appellant's appeal and the opposition thereto of the appellant; and it appearing that plaintiff-appellee failed to object to the approval of appellant's record on appeal in the lower court and that appellee's motion was filed after appellant's record on appeal had been already printed for which reason dismissal of the case at this stage of the proceedings is prejudicial to appellant; and considering that the failure of the appellee to raise in the lower court the question as to whether appellant perfected his own appeal within the reglementary period is a waiver of his right to invoke the same question in this court for the first time; motion denied."

On July 12, 1951, petitioner filed a motion for reconsideration, which was denied. Hence this petition for certiorari.

As may be gleaned from the disputed resolution, the Court of Appeals denied the motion to dismiss for the reason that appellee failed to object to the approval of appellant's record on appeal in the lower court for he sought of doing so only after said record on appeal had been printed and certified, which dismissal, it is claimed, is prejudicial to appellant, and for the further reason that the failure of appellee to object to the appeal in the lower court is a waiver of his right to invoke the same question in the Court of Appeals for the first time. Petitioner now contends that the Court of Appeals erred in not granting his motion to dismiss the appeal because the failure of respondent to file his record on appeal within the reglementary period is mandatory and cannot be waived as it affects the jurisdiction of the lower court.

It appears that the case filed by petitioner against respondent in the Court of First Instance of Manila, docketed as civil case No. 8465, is one which comes within the purview of the Workmen's Compensation Act, as may be gleaned from the averments of the complaint and the findings made by the lower court. Section 17, Rule 41 of the Rules provides that the appeal in a workmen's compensation case shall be perfected in the manner provided by the rules in ordinary cases, but within fifteen days, and that, instead of the record on appeal, the original record of the case shall be transmitted to the appellate court. In this case what respondent did was to perfect his appeal like in an ordinary case, namely, he submitted a record on appeal, instead of merely requesting the court to elevate the original record, but instead of filing his notice of appeal within fifteen days, as required by section 17, Rule 41, he did so after 19 days from the receipt of the decision. Undoubtedly the filing of a record on appeal in this case is not necessary inasmuch as the original record of the case is the one to be transmitted to the appellate court. Be it as it may, the fact remains that the appeal was perfected out of time and such failure takes the case out of the jurisdiction of the court. This can clearly be inferred from section 13, Rule 41, which provides that when the appeal is not perfected within the reglementary period the appeal shall be dismissed.

The claim that the motion to dismiss the appeal filed by petitioner in the Court of Appeals comes too late while his failure to file it in the court of origin before the transmittal of the record to the appellate court constitutes a waiver on his part to interpose such objection, is in our opinion untenable. The requirement regarding the perfection of an appeal within the reglementary period is not only mandatory but jurisdictional. Such failure has the effect of rendering final the judgment of the court, and the certification of the record on appeal thereafter cannot restore the jurisdiction which has been lost. This dismissal can be effected even after the case has been elevated to the Court of Appeals (section 1 [a], Rule 52).

"Failure to perfect the appeal, within the time prescribed by the rules of court, will cause the judgment to become final, and the certification of the record on appeal thereafter, cannot restore the jurisdiction which has been lost. (Roman Catholic Bishop of Tuguegarao vs. Director of Lands, 34 Phil., 623; Estate of Cordoba and Zarate vs. Alabado, 34 Phil., 920; and Bermudez vs. Director of Lands, 3G Phil., 774.)

"The period within which the record on appeal and appeal bond should be perfected and filed may, however, be extended by order of the court, upon application made, prior to the expiration of the original period. (Layda vs. Legaspi, 39 Phil., 83.)

"Rules of courts, promulgated by authority of law, have the force and effect of law; and rules of court prescribing the time within which certain acts must be done, or certain proceedings taken, are considered absolutely indispensable to the prevention of needless delays and to the orderly and speedy discharge of judicial business. (Shioji vs. Harvey, 43 Phil., 333.)

"Strict compliance with the rules of court has been held mandatory and imperative, so that failure to pay the docket fee in the Supreme Court, within the period fixed for that purpose, will cause the dismissal of the appeal. (Salaveria vs. Aibindo, 39 Phil., 922.) In the same manner, on failure of the appellant in a civil case to serve his brief, within the time prescribed by said rules, on motion of the appellee and notice to the appellant, or on its own motion, the court may dismiss the appeal (Shioji vs. Harvey, 43 Phil., 333). (Alvero vs. De la

Rosa, 42 Off. Gaz., No. 12, pp. 3161, 3165-3166).

"The judgments entered in the land registration cases having become final, the court below did not commit a grave abuse of discretion in ordering the issuance of the decrees based upon such final judgments. The failure of the petitioner to file the appeal bond within the reglementary period was fatal. Even if the court below should have allowed him to amend his record on appeal to include certain matters omitted or left out, the period for the filing of the appeal bond would not have been extended because the extension granted to amend a record on appeal did not carry with it the extension of the reglementary period for the filing of the appeal bond." (Salva, vs. Palacio, 90 Phil., 731.)

The cases of Slade Perkins vs. Perkins, 57 Phil. 223, and Luengo and Martinez vs. Herrero, 17 Phil., 29, invoked by respondent, are not in point. The objections which were deemed waived in those cases refer to questions which do not affect the jurisdiction of the court and as such they cannot be invoked as a precedent in the determination of this case.

Wherefore, the resolution of the Court of Appeals entered on June 11, 1951, is set aside. The appeal interposed by respondent is dismissed, without pronouncement as to costs.

Paras, C. J., Pablo, Bengzon, Padilla, Montemayor, Jugo, and Labrador, JJ., concur.

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