

DIGNA BALDEVARONA VDA. DE GOMEZ, PLAINTIFF-APPELLANT, VS. AMBROSIO FORTALEZA, DEFENDANT-APPELLEE.

G.R. No. L-20872. August 10, 1968

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

The Court of First Instance of Negros Occidental dismissed plaintiff's complaint, reproduced therein on appeal by defendant from a judgment rendered against the latter by the municipal court of Bacolod City. Plaintiff in turn appealed directly to us from the order of dismissal.

The action was for recovery of money. The municipal court sentenced defendant to pay P3,200, with interest, attorney's fees and costs. Both parties adopted their respective pleadings in the Court of First Instance, and the case was set for hearing. After several postponements and some six months following the perfection of the appeal, plaintiff moved to dismiss the same on the ground that it had been filed out of time. Specifically, it was alleged that copy of the decision, of the municipal court was posted in the mail on January 3, 1962, addressed to defendant's counsel, and that the appeal was perfected after the lapse of the reglementary period of fifteen days thereafter, or on January 30, 1962. The motion to dismiss the appeal was denied by the Court of First Instance, which found that although, notice of the registered mail containing copy of the decision had been sent to defendant's counsel he failed to claim the same and his failure was excusable.

The Court denied the motion to dismiss the appeal in an order September 18, 1962, at the same time setting the case for trial on the following October 12. On October 10, plaintiff filed a motion for reconsideration of the order of denial and set the motion for hearing also on October 12. On this latter date the Court of First Instance not only denied the motion in a formal order but also dismissed the case for failure of plaintiff to prosecute, since she was not ready to present evidence while defendant was ready for trial.

Plaintiff's notice of appeal, dated October 30, 1962, is "from the order dismissing the complaint rendered ...(on) October 12, 1962, the said order being contrary to law."

In her brief on appeal, plaintiff devotes the first two of the three errors she assigns to a discussion of the order of the Court of First Instance denying her motion to dismiss defendant's appeal from the judgment of the municipal court. We agree with defendant that the correctness of that order is a moot and academic question, since the present appeal to us is only from the dismissal of the complaint. In any case, whether or not to dismiss defendant's appeal from the municipal court on the alleged ground that it had been perfected out of time depended on whether or not the failure of defendant's counsel to claim his mail containing a copy of the decision appealed from was for a justifiable reason, and is a matter that is addressed principally to the discretion of the trial court. We are not prepared to say that the said court committed a reversible error in ruling that the delay was excusable and therefore the appeal was on time.

On the other hand, we are loath to deny liberal treatment to plaintiff similar to that extended by the lower court to defendant. It is true that plaintiff did not come prepared for trial on October 12, 1962, nor had she pre-viously

filed a motion for its postponement. But then she had a motion for reconsideration of the order denying dismissal of defendant's appeal, and was intending - as in fact she announced much intention in open court - to elevate the matter to a higher court should her motion be turned down. Apparently she had a meritorious claim against defendant, as shown by the fact that the judgment of the municipal court was in her favor. The dismissal of her complaint virtually wrote finis to her claim, since such dismissal had the effect of an adjudication on the merits. (Sec. 3, Rule 17).

We believe that at the risk of some delay in this case - for which both parties appear to be at fault - plaintiff should be given a fair chance to vindicate her asserted right.

Wherefore, the order of dismissal appealed from is set aside and the case is remanded for trial and judgment on the merits. No pronouncement as to costs.

Concepcion, C.J., Reyes, Dizon, Zaldivar, Sanchez, Castro, Angeles, and Fernando, JJ., concur.

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