

MARIA ALICIA LEUTERIO, PETITIONER, VS. COURT OF APPEALS AND HEIRS OF BENITO LEUTERIO, RESPONDENTS.

G.R. No. L-35146. September 30, 1977

Ponente: TEEHANKEE, J.

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TEEHANKEE, J.:

The Court sets aside respondent appellate court's split resolution summarily dismissing petitioner's appeal (on the ground that "there is really no showing in the amended record on appeal which is the one elevated to this court that the original record on appeal had been filed within the reglementary period") and remands it for prompt disposition on the merits.

Where it is undisputed and duly shown and made of record in the original record on appeal as filed with the lower court that the notice of appeal, the appeal bond and the record on appeal itself were all timely filed within the original 30 day reglementary period for perfecting an appeal (without petitioner-appellant having even asked for any extension of the period), but subsequently petitioner-appellant filed an amended record on appeal pursuant to the lower court's order and the amended record on appeal duly showed and made of record that it was filed within the extended period granted by the lower court, the omission therein of any mention of the date of filling the original record on appeal within the original 30-day reglementary period cannot be said to be a "fatal defect" that would warrant the summary dismissal of the appeal.

The appeal in question is that taken by petitioner-appellant Maria Alicia Leuterio from the order of the Court of First Instance of Pampanga dated March 10, 1971 and received by her on March 18, 1971 dismissing her petition for confirmation as the acknowledged natural child and legitimated daughter of the decedent Pablo Leuterio, notwithstanding her averment of having been duly recognized as such since birth by said decedent Pablo Leuterio during his lifetime as well as three of the four surviving collateral relatives of the said decedent (children of Elena Leuterio, a deceased sister of the decedent Pablo Leuterio) who supported her petition as against a brother of the decedent, Benito Leuterio, now deceased and father of the private respondents who alone opposed the petition below.

As already stated, the Court of First Instance of Pampanga, which took cognizance of the intestate proceedings instituted in 1957, seven years after the death in 1950 of Pablo Leuterio by Benito Leuterio, deceased father of private respondents (during which 7-year period petitioner then a minor and her mother Ana Maglanque as the surviving widow of the decedent Pablo Leuterio allegedly uncontestedly possessed, administered and enjoyed the estate of the deceased Pablo Leuterio), issued its adverse order of March 10, 1971 dismissing the herein petitioner's petition therein. Within the original 30-day reglementary period from her receipt on March 18, 1971 of such adverse order, petitioner thru counsel filed on the 13th day i.e. on March 31, 1971 her notice of appeal and appeal bond and on the 28th day i.e. on April 15, 1971 filed her voluminous original record on appeal. Copy thereof was duly sent by registered mail on the same date (April 15, 1971) to private respondents with notice that the same would be submitted for the court's approval on April 30, 1971.

The hearing on the original record on appeal was, however, reset on August 7, 1971 due to the absence of a presiding judge and on said date the only objections of private respondents to its approval were that it was not typed in double space and that there were some clerical errors. Petitioner's counsel agreed to correct the clerical errors but submitted that there was no need to have the record on appeal typed in double space inasmuch as the same would be printed afterwards for the use of the appellate court. The lower court nevertheless issued in open court its order of August 7, 1971 giving petitioner's counsel a period of "20 days from today" within which to make the corrections and "(advising) said counsel to type her record on appeal in double space." Petitioner's counsel within the said 20-day period i.e. on August 26, 1971 (the 19th day) did submit the amended record on appeal retyped in double space and with the typographical errors duly corrected.

At the hearing on September 9, 1971 for the approval of the amended record on appeal, with due notice to respondents, private respondents and their counsel were present and manifested in open court that they had no opposition to the amended record on appeal and consequently on the same date, the lower court issued the following order:

"ORDER

"There being no opposition to the Record on Appeal, as amended, the same is hereby approved and the Branch Clerk of Court is hereby ordered to forward said Amended Record on Appeal, together with all the oral and documentary evidence in this case, which are hereby incorporated by reference, to the Court of Appeals.

"SO ORDERED.

"Given in open court, this 9th day of September, 1971, at Guagua, Pampanga."

All the foregoing dates and material data are duly shown and stated in the amended record on appeal, with the exception of the filing on April 15, 1971 (the 28th day of the original 30-day reglementary period for appeal) of the original record on appeal, which date however duly appears stamped on the original thereof as filed with the lower court.

It was only after the petitioner's appeal had been duly docketed in respondent appellate court and after the printing of the amended record on appeal (101 pages of printed text) that respondents filed a motion to dismiss the appeal on the ground that petitioner's printed amended record on appeal did not comply with the material data rule in that it did not show the date when petitioner filed her original record on appeal, completely ignoring and disregarding the fact on record as shown on pages 98 to 101 of said amended record on appeal that such amended record on appeal had been duly and timely filed on August 26, 1971 within the original 20-day extended period granted in the lower court's order of August 7, 1971 and approved in open court without opposition from respondents in the lower court's order of September 9, 1971.

Respondent appellate court thru a special division of five Justices[1] per its Resolution dated March 13, 1972 by a four to one vote granted the motion and dismissed the appeal on the ground that "there is really no showing in the amended record on appeal which is the one elevated to this court that the original record on appeal had been filed within the reglementary period" which it considered a 'fatal defect' under the decisions of this Court.

On reconsideration, the same special division of respondent appellate court voted this time by three to two to deny reconsideration, per its Resolution of March 16, 1972.[2]

The Resolution dismissing petitioner's appeal must be set aside.

This Court even in the days of strict and literal enforcement of the material data rule had not so rigidly applied the rule. At any rate, since the 1973 case of *Berkenkotter vs. Court of Appeals*[3] this Court swept aside what tended

to be a literal and rigid adherence to the rule and the ratio decidendi therein applied "like the first breath of spring with its message of hope"[4] is fully applicable, mutatis mutandis and without any pre-judgment, to the case at bar:

"A reading of the record on appeal discloses that petitioner has a meritorious case and, therefore, the 'element of rigidity should not be affixed to procedural precepts and made to cover the matter.' (Carillo v. Allied Workers Asso., 24 SCRA 566) The mere absence of a formal order granting the motion for extension of time to file the record on appeal should not be fatal to the petitioner if the record on appeal filed within the requested extension period was approved by the Court a quo. As previously stated, the approval thereof carries with it the approval of the motion for extension and the mere failure of the record on appeal to show such approval should not defeat the right to appeal. No trial Judge in his right mind and who is aware of the serious responsibilities of his office, would approve a record on appeal that was not timely filed. There is every reason, therefore, to apply the principle of substantial justice to the instant case for the following considerations: first, the court is given the discretion to extend the period for filing the record on appeal, notice of appeal and appeal bond, provided the notice for extension of time is filed within the 30-day reglementary period; second, there is every reason to assume that the record on appeal was 'filed on time' because it was approved after due hearing by the Court in its Order dated November 14, 1972; and last, but not the least, considering the merits of the case, to dismiss petitioner's appeal would not serve the ends of justice." [5]

The case of Diola vs. Court of Appeals[6] is squarely applicable to the present case. There, the only ground for the dismissal of the appeal was the non-incorporation in the amended record on appeal of the trial court's order requiring the inclusion of certain amendments to the original record on appeal, while here it is the mere non-incorporation of the date of timely filing of the original record on appeal. The Court therein ruled that "(S)uch omission is not fatal. As recently reiterated by the Court in Rodriguez vs. Court of Appeals (L-37522, Nov. 28, 1975, Second Division, per Felix Q. Antonio, J.; emphasis supplied). As early as the case of Vda. de Oyzon v. Vinzon, (L-19360, July 26, 1963. 8 SCRA 455). We ruled that: 'The fact that the amended record on appeal was submitted after the reglementary 30-day period, did not render the perfection thereof untimely, because the amended record on appeal is deemed to have been filed on the presentation of the original, which was done within the reglementary period.' As we explained in Philippine Independent Church vs. Juana Mateo, et al. (L-14793. April 22, 1961. Ill Phil. 752). 'amendment presupposes the existence of something to be amended, and, therefore, the tolling of the period should relate back to the filing of the pleading sought to be amended x x x.'

"The cited principle that since the appeal had unquestionably been timely perfected as shown by the very record on appeal, the admission of the amended record on appeal presented no longer a jurisdictional question of timeliness of the perfection of the appeal but a question of compliance with the trial court's order requiring certain amendments which rested on the said court's sound discretion, controls in the case at bar."

ACCORDINGLY, respondent appellate court's resolution dismissing petitioner's appeal is hereby set aside and the case is remanded to respondent court for prompt disposition of the appeal on its merits. With costs against private respondents.

Makasiar, Muñoz Palma, Martin, and Guerrero, JJ., concur.

Fernandez, J., took no part.

[1] Special division of five Justices originally composed of Antonio G. Lucero, J.. dissenting, and Magno S. Gatmaitan and Guillermo S. Santos. JJ.. who voted for dismissal, together with the two additional assigned Justices, namely, Manuel P. Barcelona and Ramon C. Fernandez. JJ.

[2] Justice Ramon C. Fernandez changed his previous vote with the majority and joined in the dissent of Justice

Antonio G. Lucero.

[3] En banc, 53 SCRA 228 (Sept. 28, 1973). per Salvador Esguerra. J., now retired.

[4] To quote Mme. Justice Cecilia Muñoz Palma who in Krueger vs. Court of Appeals, 69 SCRA 50 (Jan. 20, 1976) gives a resumes of the Court's decisions abandoning the rigid application of the rule theretofore Prevailing.

[5] 53 SCRA at page 236.

[6] 70 SCRA 511 515 (April 30, 1976).

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