

FERNANDO SARMIENTO, PETITIONER, VS. HON. MAGNO S. GATMAITAN, CHAIRMAN, HON. JOSE N. LEUTERIO AND HON. LUIS B. REYES, MEMBERS, COURT OF APPEALS, MANILA, AND CATALINA PONCE AS GUA...

G.R. No. L-38173. November 12, 1987

Ponente: PADILLA, J.

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PADILLA, J.:

This case originated in the trial court as an action for acknowledgment and support of two (2) minor children, namely, Jaime Ponce and Romeo Ponce, filed by their mother, Catalina Ponce, against herein petitioner Fernando Sarmiento.

After trial, on 29 March 1971, the court a quo rendered a decision[1] favorable to the plaintiff. Defendant received copy of the decision on 14 April 1971. Not satisfied with the decision, defendant, now petitioner herein, on 20 April 1971, clearly within the reglementary period, filed a notice of appeal and, thereafter, the record on appeal. On 18 June 1971, the trial court approved the record on appeal and appeal bond, without any objection from herein private respondent, and despite due notice to her. More than one month thereafter, or specifically, on 30 July 1971, private respondent filed a motion for reconsideration of the order of the trial court, dated 18 June 1971. Acting on said motion and the opposition of petitioner thereto, the trial court ordered the petitioner to file an amended record on appeal, which the petitioner did on 26 August 1971, as shown on the face of the original of said amended record on appeal. On 11 January 1972, the amended record on appeal was approved by the trial court.

Before the Court of Appeals in CA-GR No. 50093-R entitled "Catalina Ponce, etc., plaintiff-appellee vs. Fernando Sarmiento, defendant-appellant", private respondent filed a motion to dismiss petitioner's appeal. Despite opposition, the respondent appellate court[2], in a minute resolution, dated 18 June 1973, dismissed the appeal on the ground that the statement of facts and arguments in appellant's brief do not contain any citation of the transcript of stenographic notes (TSN) or page references to the record and that the Record on Appeal does not contain any averment that the appellant ever filed an appeal bond. Reconsideration of the resolution of dismissal having been denied on 3 August 1973, the instant petition was filed before this Court.

Under the present rules, an appeal bond is no longer required in taking an appeal[3]. This relatively new procedural rule may be given retroactive effect. The extent of its retroactive application is, however, limited to actions pending and undetermined at the time of its approval but it does not extend to actions which had already become final and executory[4].

Under the 1964 Rules of Court, a judgment or order of the Court of First Instance becomes final upon the expiration of thirty (30) days after service of notice thereof, unless an appeal is taken to the Court of Appeals within the said period by serving upon the adverse party and filing with the trial court a notice of appeal, an appeal bond, and a record on appeal[5].

While it is the contention of petitioner herein that he filed the notice of appeal, appeal bond and record on appeal on time, an examination of the records, however, shows that what was filed on time was only the notice of appeal[6]. The cash appeal bond was paid only on 7 November 1971 as certified to by Mariano Kintanar Officer-in-Charge for Jesus Bajarias, Branch Clerk of Court[7], or long after the period for perfecting an appeal had lapsed. As to the record on appeal, the records are silent as to when it was actually filed. The appeal, not having been perfected on time, the decision of the trial court became final and executory on 14 May 1971, thirty (30) days from receipt thereof by the petitioner on 14 April 1971.

While it may be argued that the record on appeal and appeal bond were approved by the trial court, as shown in its order dated 18 June 1971, such approval did not render the appeal valid, effective and legal[8]. As stated earlier, the cash appeal bond was actually paid on 7 November 1971; whereas, the judgment had become final and executory on 14 May 1971.

WHEREFORE, the instant petition is hereby DENIED. The resolutions of the respondent Court of Appeals, dated 18 June 1973 and 3 August 1973, are AFFIRMED. With costs against petitioner.

SO ORDERED.

Yap, (Chairman), Melencio-Herrera, Paras, and Sarmiento, JJ., concur.

[1] Penned by Judge Francisco S. Tantuico, Jr. of the Court of First Instance of Cebu, 14th Judicial District, Branch VI.

[2] Third Division composed of Justice Magno S. Gatmaitan, Chairman, and Justices Jose N. Leuterio and Luis B. Reyes, members.

[3] Section 18. Interim Rules of Court, promulgated 11 January 1983.

[4] The Municipal Government of Coron, Palawan vs. Carino, et al., G.R. No. 65894, 24 September 1987 citing the case of Alday vs. Camilon, 120 SCRA 521

[5] Sec. 3, Rule 41 of the Rules of Court. Under Batas Pambansa Blg. 129, what is required to be filed on time is only the notice of appeal.

[6] Original amended Record on Appeal, p. 52

[7] Brief for the petitioner, p. 17

[8] Garganta vs. Court of Appeals, 105 Phil. 412; 417-418

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