

AUREA MATIAS, PETITIONER, VS. HON. PRIMITIVO L. GONZALES, IN HIS CAPACITY AS JUDGE OF THE COURT OF FIRST INSTANCE OF CAVITE AND AUGUSTO DE LA ROSA, RESPONDENTS.*G.R. No. L-13391. May 25, 1960*

Ponente: MONTEMAYOR, J.

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This is a petition by Aurea Matias for "Writs of Mandamus and Prohibition, with Preliminary Injunction" to compel respondent Judge Primitivo L. Gonzales to approve and certify the record on appeal filed by her in Special Proceedings No. 5213 in the Court of First Instance of Cavite, wherein she sought to appeal the order of said court dated October 11, 1957, granting the claim for attorney's fees in favor of Atty. Augusto de la Rosa, "and to prohibit said Judge from taking further interest in the case."

Aurea Matias was the petitioner for the probate of the will of Gavina Raquel in Special Proceedings No. 5213, aforementioned (denied probate in the lower court but allowed by this Tribunal on appeal, in its decision dated June 23, 1958, G. R. No. L-10751); while respondent Augusto de la Rosa was the attorney for oppositor Basilia Salud. On October 4, 1957, respondent De la Rosa filed a claim for attorney's fees in the sum of P3,000.00 against the administratrix for services allegedly rendered by him in connection with the removal of the former special administrator, Horacio Rodriguez. On October 11, 1957, petitioner Matias filed opposition to the claim for attorney's fees, alleging that Atty. De la Rosa had no right to collect said fees from the estate, but rather from his client, and that granting that he was entitled to do so, the claim was unreasonable and excessive. On the same day (October 11, 1957), the trial court issued an order granting the claim for attorney's fees in the amount of P2,000.00.

Matias' counsel received copy of said order on October 21, 1957. She filed a motion for reconsideration of the order. On the same date, Atty. De la Rosa filed a motion for reconsideration of the order approving the claim of Atty. Orense for attorney's fees. Both motions for reconsideration were set for hearing on November 18, 1957; on the said date, respondent De la Rosa filed opposition to the motion for reconsideration of Matias, claiming that the same was devoid of any legal or factual merit. On the same date, November 18, 1957, the trial court after Attys. De la Rosa and Orense had "expressed their lack of interest in prosecuting their appeal", issued an order denying both motions for reconsideration, petitioner's counsel receiving said order on November 25, 1957.

On December 5, 1957, there was received in the office of the clerk of court petitioner's notice of appeal, appeal bond and record on appeal.

On December 12, 1957, Atty. De la Rosa filed an opposition to the approval of the record on appeal, at the same time moving to dismiss said appeal on the ground that the notice of appeal, the appeal bond, and the record on appeal had been filed out of time.

On January 7, 1958, respondent Judge issued an order dismissing the appeal, considering the same to have been filed out of time and denying approval of the record on appeal. Hence, the present petition for mandamus to

compel respondent Judge to certify and approve said record on appeal.

The decisive issue in this, case is whether the notice of appeal, appeal bond and the record on appeal were filed within the thirty day reglementary period. Respondent De la Rosa maintains that petitioner's appeal was not presented on time because from October 21, 1957, when her counsel received a copy of the order sought to be appealed, to November 11, 1957 when her motion for reconsideration was filed, twenty-one days had elapsed, and that even granting for the sake of argument that the order denying petitioner's motion for reconsideration was received by her or her counsel only on November 25, 1957, still from the latter date up to the filing of the notice of appeal, appeal bond and the record on appeal on December 5, 1957, ten days had elapsed; and adding these ten days to the twenty-one days abovementioned, then thirty-one days had passed from the date of receipt of the order sought to be appealed.

However, petitioner insists that her notice of appeal, appeal bond and the record on appeal were filed on time, that is to say, on the 30th day, because according to her, she sent the same by registered-special delivery mail from the Manila Post Office under registry receipt No. 33488 on December 4, 1957, which was the 30th day.

In the interest of justice and to expedite the proceedings, we made the necessary inquiry at the Manila Post Office and the Cavite City Post Office, regarding the abovementioned registry receipt No. 33488. The Acting Postmaster of Cavite City, in his letter of April 20, 1960, informs that one Miss Ligaya Mariano, apparently an employee in the Court of First Instance of Cavite, received the mail matter (notice of appeal, appeal bond and record on appeal) under registry receipt No. 33488 from the Manila Post Office on December 5, 1957; that it was a special delivery-registered mail, with P.45 stamps affixed. No information has yet been received from the Manila Postmaster. But we are willing to believe and to find that petitioner, according to her claim, really posted at the Manila Post Office the notice, of appeal, appeal bond and the record on appeal on December 4, 1957, allowing at least one day for said mail to reach Cavite City on December 5, 1957, with the result that the notice of appeal, the appeal bond and the record on appeal were filed on the 30th day, pursuant to the provisions of Section 1, Rule 27 of the Rules of Court, which reads:

"Section 1. Filing with the court, defined.—The filing of pleadings, appearances, motions, notices, orders and other papers with the court as required by these rules shall be made by filing them with the clerk of the court. The dates of the mailing of motions, pleadings or any other papers or payments or deposits, as shown by the post office registry receipt, shall be considered as the date of their filing, payment, or deposit in this court."

In view of the foregoing, we are satisfied that the appeal had been duly perfected. Granting the writ of mandamus, the respondent Judge or anyone acting in his place is hereby directed to give due course to the appeal. No pronouncement as to costs.

Paras, C. J., Bengzon, Padilla, Bautista Angelo, Labrador, Concepcion, Barrera, and Gutierrez David, JJ., concur.

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