

GENOVEVA S. VILLALON AND AUGUSTO VILLALON, PETITIONERS, VS. HONORABLE BONIFACIO YSIP AND WILLIAM GOLANGCO, RESPONDENTS.

G.R. No. L-8546. April 20, 1956

Ponente: LABRADOR, J.

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LABRADOR, J.:

This is an appeal by way of certiorari against the judgment of the Court of Appeals denying a petition for mandamus to compel the respondent judge of the Court of First Instance of Manila to certify the record on appeal in Civil Case No. 21363, entitled "William Golangco vs. Genoveva S. Villalon and Augusto Villalon.

The proceedings had in the Court of First Instance leading to the petition for mandamus are as follows, according to the decision of the Court of Appeals:

"In Civil Case No. 21363 of the Court of First Instance, of Manila, in "which herein respondent William Golangco was plaintiff and herein petitioners were defendants, trial was set for March 25, 1954. When the case was called, defendant's counsel Signified that he was ready and plaintiff forthwith proceeded to present his evidence. After plaintiff rested his case it turned out that neither of defendants was present and for the first time their counsel moved for continuance, alleging that he agreed to go to trial in the belief that plaintiff would not be able to finish with his witnesses. The motion was denied and the case was considered submitted for decision. Counsel moved in open Court for a reconsideration and stated that his client, Mrs. Genoveva S. Villalon, was sick. The motion for reconsideration was likewise denied.

"The next day, March 26, 1954, defendants filed an urgent motion for reopening on the same ground, to wit, that Mrs. Villalon was ill in bed and had been ill for three days, for which reason she was not able to appear at the trial. Plaintiff opposed the motion and the same was subsequently denied, defendants receiving notice of the denial on March 30, 1954. On the following June 10 the Court rendered its decision, copy of which was received by the defendants on June 15, 1954. On June 25, 1954, they filed a motion to set aside the judgment and for a new trial based on the same ground as the previous motions, and again it was denied.1 Copy of the order of denial was served on counsel for defendants on July 7, 1954. On July 16,' 1954, defendants filed a motion of appeal from the judgment of the Court as well as from the order denying the motion to set aside the judgment and for new trial. An appeal bond was filed the same day and the record on appeal the next day, July 17, 1954. Plaintiff opposed the approval of the appeal bond and move to dismiss the appeal on the ground that it was filed out ,of time. * * *"

* * * * *

The Court of Appeals ruled that the record on appeal was presented beyond the 30-day period provided by the Rules inasmuch as petitioner's motion dated June 25, 1954 did not suspend the running of the period for the perfection of the appeal. The reason given for this ruling is that the grounds asserted in petitioner's motion of June 25, 1954 had already been previously raised, first in a motion for continuance, then in the motion for reconsideration denying such continuance, and lastly in a motion for reopening, all before the judgment was

rendered. Cited to support its ruling is *Sawit, et al. vs. Rodas, et al.*, 73 Phil., 310.

The issue presented to us is as follows: Does a motion for new trial or reconsideration, filed after judgment, on the ground that the defendants were not present at the time of the trial because of illness, which reason or ground was presented before judgment first in a motion for continuance, then in a motion for reconsideration, and lastly in a motion for reopening, suspend the 30-day period for perfecting an appeal or not? The trial judge held that such motion was pro forma and therefore did not suspend or interrupt the running of the period for perfecting the appeal. While the Court of Appeals also held that the presentation of said motion for new trial did not suspend or interrupt said period for appeal, it did so, not on the ground that the motion for new trial was pro forma but on the ground that the said motion was for the purpose of delay. Stated differently, the question is, should the pro forma rule be extended to a motion for new trial on the ground, of which has already been raised previously in a motion before judgment? The Rules are silent in this respect. Neither have we rendered any decision on the matter.

Our ruling that a pro forma motion for new trial does not suspend the running of the period of appeal finds support in an express provision of the Rules requiring the movant for new trial to point out specifically the findings or conclusions of the judgment which are contrary to law, or which are not sufficiently borne out by the evidence. (Section 2 of Rule 37.)

Under section 146 of the old Code of Civil Procedure (Act No. 190), it was not necessary in a motion for new trial to point out the specific conclusions or findings of fact which were not supported by the evidence or by the law. The motion entitled the movant or appellant to a review of the judgment or decision, even if the alleged conclusion of law or finding of fact disputed is not specially set forth in the motion for new trial (provided that an exception to the order denying the motion for new trial above-mentioned was made). So the real purpose of the motion for new trial on the ground of insufficiency of evidence or on the ground that it is contrary to law, under the old Rule, was to secure a review of the decision by the appellate court, not to make the trial court rendering the decision re-examine the questioned finding of fact or conclusion of law with a view to its reconsideration.

Since the adoption of the new Rules, motions on the ground of insufficiency of evidence or on the ground that the judgment is contrary to law which do not point out the supposed defects in the judgment, permitted under the Code of Civil Procedure as above set forth, have been called pro forma. Such motions are not permitted under the new Rules. This requires the movant for the new trial based on the ground of insufficiency or contrariness to law to point out the findings of fact or conclusions of law supposed to be insufficiently borne out by the evidence or contrary to law; and we have held that they do not interrupt the period of appeal because they merely cause delay.

While we feel justified in ruling that a pro forma motion for new trial does not interrupt the period of appeal, because such a motion is not authorized or permitted by the Rules, we do not feel so as to motions for new trial which may cause delay merely but whose use has not been outlawed by us. We have not prohibited the presentation of a motion for new trial on grounds previously raised in a motion prior to the rendition of the judgment. A ground may be insufficient for granting a continuance, but it may be sufficient for the setting aside of a judgment rendered after denial of the continuance, as when the judgment is very unjust or unreasonable and its unreasonableness was not expected at the time the continuance is being prayed for. So it does not follow necessarily that because a motion for continuance had been denied, the ground used for demanding such continuance, like illness, may not be sufficient ground for obtaining a reconsideration or setting aside of a judgment.

Considering the above possibilities and the general rule that the presentation of a motion for new trial after judgment ordinarily suspends the period of appeal, and there being no express prohibition against the presentation

of a motion for new trial on grounds already previously raised, we are loathe to penalize a party for taking" advantage of the remedy expressly authorized him by the Rules, even if it may cause some delay, by holding that his motion for new trial does not suspend the period of appeal. Were we to, hold that his motion for new trial did not suspend the period of appeal, we will be depriving him of his day in court, a constitutional right, on a ground of dubious justice, and soundness. We feel that the ends of justice would be better subserved by an opportunity for the review of the orders of the court denying continuance and denying petitioners the right to present their evidence.

The certiorari prayed for is hereby granted and the order of the Court of Appeals reversed and the record on appeal ordered to be certified to the latter court for, proceedings in accordance with the Rules. Without costs.

Paras, C. J., Bengzon, Padilla, Montemayor, Reyes, A., Jugo, Bautista Angelo, Concepcion, Reyes, J. B. L. and Endencia, JJ., concur.

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