

ATLAS CONSOLIDATED MINING & DEVELOPMENT CORPORATION, PLAINTIFF-APPELLANT, VS. PROGRESSIVE LABOR ASSOCIATION, BERNARDO O. CALANG, AND DELFIN MERCADER, DEFENDANTS-APPELLEES.

G.R. No. L-27125. September 15, 1967

Ponente: ANGELES, J.

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ANGELES, J.:

Before Us is a motion to dismiss the appeal of plaintiff-appellant, filed by the defendants-appellees, on the ground that the record on appeal filed by the plaintiff-appellant does not "contain such data as will show that the appeal was perfected on time", as required by Section 6, Rule 41 of the Rules of Court.

The record on appeal in question shows that on August 31, 1966, the Court of First Instance of Cebu dismissed, for lack of jurisdiction, the complaint for breach of contract, damages and injunction. On September 15, 1966, the plaintiff filed a motion for reconsideration. On October 8, 1966, the motion for reconsideration was denied. On November 14, 1966, the plaintiff filed a notice of appeal, and on the 19th of the same month and year, the record on appeal was filed. The record, however, does not show such important data as: (1) when the plaintiff received notice of the order of dismissal of the case, from which would commence the period for appeal; and (2) when it received notice of the denial of the motion for reconsideration, from which date, the period for appeal would again resume to run. Without stating in the record on appeal the respective dates when the plaintiff had received notice of the order of dismissal of the case and of the denial of the motion for reconsideration, the record on appeal, on its face, shows that the appeal was perfected fifty three (53) days after the rendition of the order dismissing the case. The omission of such important data in the record on appeal, makes it impossible for Us to determine from the face of the record whether or not the appeal was perfected on time.

Section 6 of Rule 41 of the Revised Rules of Court, which enumerates the pleadings and documents that should be stated in the record on appeal, provides that the record on appeal shall also state "such data as will show that the appeal was perfected on time." This was not required under the old Rules,^[1] and the reason for the amendment is stated in the opinion of this Court in *Araneta vs. Madrigal & Co., Inc., et al.*, G.R. No. L-26277-78, promulgated on October 25, 1966, to wit:

"This Court noticed, however, that issues were often raised in appellate courts on whether the appeal had been perfected on time or not, owing to the fact that the data pertinent thereto was not set forth in the record on appeal. Inasmuch as the records of the trial courts, in cases appealed by record on appeal, are not forwarded to appellate courts, the latter had no means of checking or verifying the conflicting allegations of fact made, either in the briefs, or in the motion to dismiss the appeal and the opposition thereto, filed by the parties. As a consequence, appellate courts had to examine such evidence as the parties may have submitted thereto, in support of their respective contentions. This entailed additional work and unnecessary waste of time, that contributed to the delay in the final determination of appealed cases. To eliminate such obstacles to the speedy administration of justice, this Court deemed it best not only to rephrase the first sentence of said section 6 but,

also to add, at the end thereof, the clause "together with such data as will show that the appeal was perfected on time."

To give efficacy to said amendment, Section 1, Rule 50 of the Rules of Court specifies as one of the grounds for dismissal of an appeal "(a) failure of the record on appeal to show on its face that the appeal was perfected within the period fixed by these rules." [2]

Since the effectivity of the new Rules of Court, in a number of appeals in which the appellants therein failed to comply with the abovementioned rule, this Court has invariably held that this kind of deficiency in the record on appeal is fatal. [3]

The appellant here, as that in the case of *Araneta vs. Madrigal, et al.*, supra, although not denying the pointed deficiencies in the record on appeal, maintains that the appeal, anyway, had been actually perfected within the reglementary period as certified to by the clerk of court, and submitting in support of its opposition to the motion to dismiss, a certification from the Clerk of Court of the court below giving the dates when said appellant received the notices of dismissal and denial of its motion for re-consideration. But, as stated in that case of *Araneta vs. Madrigal, et al.*, supra, "the amendment (of the Rule) would become useless and its purpose completely defeated, if we gave thereto the interpretation advocated by the main respondent herein (appellant in our case) x x x we would have the same issues and the same waste of time that were sought to be eliminated by the amendment."

In *Government of the Philippines, etc. vs. Antonio et al.*, supra, this Court held that the requirement as to what should be included in the record on appeal is mandatory and jurisdictional, for unless the appeal is perfected on time, the appellate court acquires no jurisdiction over the appealed case. [4] The certification by the clerk of court that the appeal was filed within the reglementary period cannot now bring the case within the jurisdiction of the court, since it was submitted after the expiration of the period for appeal. [5]

WHEREFORE, for failure of the appellant to comply with section 6, Rule 41, in conjunction with section 1, Rule 56, [6] of the Rules of Court, the appeal must be, as it is hereby, dismissed, pursuant to section 1 (a), Rule 50 of the same Rules. Without pronouncement as to costs.

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

[1] Section 6, Rule 41, old Rules of Court.

[2] Also a new provision.

[3] See *Government of the Phil. etc. v. Antonio, et al.*, G.R. No. L-23736, Oct. 19, 1965; *Development Bank of the Phil. v. Santos*, G.R. No. L-26387, Sept 27, 1966; *Araneta v. Madrigal*, supra.

[4] Citing *Bellos vs. Fernando*, G.R. No. L-16970, January 30, 1962; *Caisip vs. Catanga*, G.R. No. L-14684, August 26, 1960; *Espartero vs. Ladaw*, 49 O.G. 1439.

[5] See *Gov't of the Phil. etc. vs. Antonio, et al.* supra, citing *Alvaro vs. de la Rosa*, 76 Phil. 428, 433.

[6] Provision to the effect that "procedure in the Supreme Court in original as well as in appealed cases shall be the same as in the Court of Appeals, except as hereafter provided."

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