

SOTERA VIRAY, PETITIONER, VS. THE HON. COURT OF APPEALS HON. GREGORIO LEGASPI AND HEIRS OF CEZARIA MERENDO, RESPONDENTS.

G.R. No. L-25290. March 18, 1966

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

On October 25, 1965, petitioner received notice that her motion for reconsideration of the adverse decision rendered by the Court of Appeals in CA-G.R. No. 31922-R was denied. Admittedly, the 15-day period allotted her by the Rules to appeal the decision to this Supreme Court expired on November 9, 1965, since October had 31 days. However, upon petition by her counsel, petitioner-appellant was granted—

"an extension of only 15 days from the expiration of the reglementary period." (Res. of Nov.15, 1965, G. R. No. L-25290).

The petition for certiorari having been actually filed only on November 26, 1965, when the period for so doing expired on November 24, this Court, by Resolution of February 8, 1966, dismissed the petition for having been filed out of time.

Petitioner-appellant now moves for reconsideration, claiming that her first fifteen days that should be counted from and after October 25, 1965, and which ended on November 9, should be considered as expiring on November 10, 1965, because November 9 was a holiday (Election day); that the 15-day extension granted her should, therefore, be counted from November 10; that the 15 days from November 10 terminated on November 25; and as the latter was also a holiday (Thanksgiving Day), the petitioner had until the next day, Friday, November 26, to file her petition for review, which she did.

We rule that the motion for reconsideration is based on an erroneous premise. The extension of 15 days granted to the petitioner, tacked to the original 15 days granted her by the Rules of Court, in effect gave her a thirty (30)-day period, from October 25, 1965, within which to file her petition in this Court. Since October had 31 days, her last day was November 24, and not November 26.

The rule that excludes the last day of a period, should the same be a holiday, refers to the performance of the act prescribed or required. But it does not apply where at the end of the period no such act is to be done. The rule is stated thus in American Jurisprudence:

"Rules of Court in respect to the time for the doing of an act in a judicial proceeding relating to a matter of practice are usually construed, where the last day for the doing of an act falls on Sunday, to allow the whole of the next day for the purpose; and in many states this construction has been adopted by statute or rule of court. The principle announced, however, is subject to an exception where there is nothing to be done on the last day, in which case Sunday is not to be excluded in the computation of time." (52 Am. Jur. p. 345, sec. 19) (Emphasis supplied)

Nor do we see any merit in the substance of the petition itself. The refusal by the trial court to admit an amended answer that would withdraw previous admissions and change the theory of the case, adopted in the answer originally filed, can not constitute a grave abuse of discretion considering that (1) no adequate excuse was offered for the delay in tendering the allegedly correct facts and theory, and that (2) the unauthorized abandonment of her certificate of public convenience, averred by petitioner Viray in the proposed amended answer, was in violation of law, and can not be used by her to avoid her statutory obligations, as correctly held by the Court of Appeals.

Wherefore, the motion for reconsideration is denied.

Bengzon, C.J., Bautista Angelo, Concepcion, Barrera, Regala, Makalintal, Bengzon, J. P., Zaldivar, and Sanchez, JJ., concur.

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