

AMANDO ABANGAN, PLAINTIFF-APPELLEE, vs. TEODULO E. CATULONG, CARMEN P. CATULONG AND JOHN DOES, DEFENDANT-APPELLANT.

Ponente: QUIJANO-PADILLA, J.

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QUIJANO-PADILLA, J.:

This Court issued a Resolution[1] dated December 9, 2013, directing the Judicial Records Division [JRD] Civil Cases Section to issue notices to file brief to the parties and their respective counsels.

On February 28, 2014, the JRD complied with Our earlier Resolution. The Registry Return Card showed that Atty. Wilmark K. Requina, counsel of plaintiff-appellee, Atty. Romeo Rama Reyes, counsel of defendants-appellants and Amando Abangan all received the the Notice to File Brief issued by this Court.

On June 9, 2014, per Judicial Records Division Report[2], defendants-appellants failed to file the requisite appellant's brief despite receipt of notice.

We are constrained to dismiss this appeal.

The failure to file the Appellant's Brief, though not jurisdictional, results in the abandonment of the appeal which may be the cause for its dismissal. It is true that it is not the ministerial duty of this Court to dismiss the appeal. The appellate court has the discretion to do so, and such discretion must be a sound one, to be exercised in accordance with the tenets of justice and fair play, having in mind the circumstances obtaining in each case.[3]

In the case obtaining, despite the receipt of the notice to file brief by defendants-appellant's counsel on record on March 19, 2014,[4] he did not file a motion for extension of time nor had he complied with Our directive, instead he allowed the period of time to file appellant's brief to lapse. The negligence of defendants-appellants counsel on record therefore binds his clients.

Pertinent, is the Supreme Court ruling in *Lagua v. CA, et al.*[5] citing *Estate of Felomina G. Macadangdang v. Gaviola*[6] wherein the Supreme Court made a clear finding of negligence on the part of the lawyer handling the petitioner's case, but nevertheless affirmed the denial of the appeal. It confirmed that the petitioner was bound by his counsel's negligence. It ruled that "the right to appeal is not a natural right or a part of due process, but is merely a statutory privilege that may be exercised only in the manner prescribed by the law."

Indeed, an appealing party must strictly comply with the requisites laid down in the Rules of Court since the right to appeal is a purely statutory right.[7]

WHEREFORE, premises considered the instant appeal is hereby DISMISSED and WITHDRAWN from the docket of active cases of this Court pursuant to Section 1(e), Rule 50[8] of the Rules of Court.

SO ORDERED.

Ingles,[*] and Azcarraga-Jacob, JJ., concur.

[*]J. Hernando, Per Office Order No. 14-14-GTI, June 26, 2014

[1] Rollo, pp. 138-140

[2] Rollo, p. 143 (dorsal portion)

[3] Beatingco v. Gasis, G.R. No. 179641, February 9, 2011

[4] Rollo, p. 143 (dorsal portion)

[5] G.R. No.173390, June 27, 2012

[6] G.R. No. 156809, March 4, 2009

[7] Pineda v. Arcalas, G.R. No. 170172, November 23, 2007

[8] Section 1. Grounds for dismissal of appeal.- An appeal may be dismissed by the Court of Appeals, on its own motion or that of the appellee, on the following grounds:

xxx

e) Failure of the appellant to serve and file the required number of copies of his brief or memorandum within the time provided by these Rules;

xxx

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