

ILDEFONSO ORTIZ, PLAINTIFF AND APPELLEE, VS. HERMOGENES MANIA, DEFENDANT AND APPELLANT.

G. R. No. L-5147. June 02, 1953

Ponente: LABRADOR, J.

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LABRADOR, J.:

This is an appeal from an order of the Court of First Instance of Camarines Sur denying a petition to set aside a judgment by default. The order in question is as follows:

"The defendant has filed a petition for relief from judgment on the ground that the failure to answer within the period prescribed by the Rules of Court was due to excusable negligence. The defendant received the notice of the Court requiring him to answer the complaint on January 6, 1950, but on February 7, 1950, had still failed to answer the complaint. The fact that the defendant's grandmother got sick and the defendant had to leave for Nueva Ecija, does not constitute excusable negligence, especially when it is taken into consideration that, according to the petition, the defendant had secured the services of Attys. Reyes and Dy-Liacco. It was, therefore, incumbent upon Attys. Reyes and Dy-Liacco, if their services had in fact been secured by the defendant, to file his answer within the period prescribed by the Rules of Court. As a matter of fact, defendant had not filed his answer to the complaint even until March, 1950, showing that he had been absolutely negligent in defending himself from the complaint of the plaintiff." (Record on Appeal, pp. 37-38)

In his second assignment of error appellant claims that no legal notice of the pendency of the action in the Court of First Instance was given him, because the notice was given to him and not to his attorneys. But the trial court found that the attorneys who perfected appellant's appeal from the justice of the peace court were his lawyers only for that purpose, i.e., to perfect the appeal. (Order of July 15, 1950, Record on Appeal, pp. 46-47.) Appellant's claim is, therefore, not justified by the facts.

But assuming, for the sake of argument, that said attorneys were, from the time they perfected defendant's appeal, the defendant's lawyers, Section 7 of Rule 40, which governs appeals from justice of the peace courts to Courts of First Instance, expressly provides that notice of the pendency of the appeal be given to the parties. This provision, being express and specific, can not be interpreted to mean that the notice can be given to the lawyer alone. The reason for this provision for notification of parties, and not of the lawyers, lies in the fact that on an appeal from an inferior court, only the complaint in the justice of the peace court is deemed reproduced, and the proceeding immediately following the filing of the complaint is the summoning of the defendant. Instead, however, of being summoned, he is only personally notified because he is already within the court's jurisdiction, the notice taking the place of the summons.

Neither is there any merit in the claim that defendant's neglect is excusable. His neglect to file his answer in the month of January may be excusable, but not his neglect to file it promptly thereafter. His answer was not filed until March 22, 1950. There is no excuse given by him why he failed to file it in the month of February or within the first twenty days of March. We, therefore, find that the trial court correctly denied his petition for relief. Costs shall be taxed against the appellant.

Paras, C. J., Feria, Bengzon, Padilla, Tuason, Montemayor, Reyes. Jugo and Bautista Angelo, JJ., concur.

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