

FRANK RAYMOND KRUEGER, ASSISTED BY HIS GUARDIAN AD LITEM, FRANCIS AUSTRIA KRUEGER, PETITIONER, VS. THE HON. COURT OF APPEALS, BERNARDO O. VALDEZ AND LUCINA SIAPNO, RESPONDENTS.

G.R. No. L-41063. January 20, 1976

Ponente: MUÑOZ PALMA, J.

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MUÑOZ PALMA, J.:

This is another case covered by the liberalized interpretation and application of the "material data rule" enunciated in recent decisions of this Court.

The Court of Appeals dismissed the appeal of herein petitioner Frank Raymond Krueger who is assisted by a guardian-ad-litem, Francis Austria Krueger, in CA-G.R. No. 55992-R "for failure to comply with the provisions of Section 6, Rule 41, Revised Rules of Court." Krueger now seeks a review of said Order of dismissal. By reason of the nature of the issues involved and parties having filed their corresponding pleadings, We resolved to treat the petition as special civil action and pass upon it without need of memoranda or briefs.

The records show that on January 7, 1970, petitioner Krueger filed through his guardian-ad-litem, a complaint with the Court of First Instance of Baguio and Benguet docketed as Civil Case 1104, against now respondent Bernardo O. Valdez for recovery of a sum of money and damages concerning a mining claim. The complaint was later amended to implead Lucina V. Siapno so as to include an alternative prayer for the restitution by the latter of the mining claim described in the complaint.

After trial, the court a quo, presided then by Hon. Feliciano Belmonte, rendered on March 29, 1974, a decision dismissing the complaint as well as the counterclaim of the defendants therein.

Krueger appealed to the Court of Appeals where the defendants, Valdez and Siapno, filed on March 5, 1975, a motion to dismiss the appeal on the following grounds:

"1. That plaintiff-appellant failed to comply with Section 6, Rule 41, in conjunction with Section 1, Rule 50 of the Rules of Court, in that his mimeographed Record on Appeal failed to state the date he received the Decision appealed from in his Notice of Appeal.

"2. That plaintiff-appellant failed to comply with Section 6, Rule 41, in conjunction with Section 1, Rule 50 of the Rules of Court, in that his mimeographed Record on Appeal failed to show the kind of appeal Bond posted, and if not in cash, whether the same was approved by the court as required under Section 5, Rule 41 of the Rules of Court." (p. 36, CA record; italics supplied)

Appellant Krueger opposed the above-mentioned motion and called the attention of the appellate court inter alia to a portion of page 46 of his mimeographed record on appeal which reads:

"21. And, that as an indication that the requisites of the appeal have been complied with and/or filed within the

reglementary period for perfecting the appeal is shown as follows: (a) counsel for the plaintiff received the copy of the decision on April 8, 1974; (b) received the Order, dated 30 May 1974 denying plaintiffs Motion for Reconsideration of Decision, on June 11, 1974; (c) filed a Motion for First Extension of Time within which to File Record on Appeal on June 13, 1974 which was granted and allowed the Plaintiff to file his Record on Appeal up to July 12, 1974 (letter date 17 June 1974); (d) the Notice of Appeal and Appeal Bond were filed on June 13, 1974; and (e) this Record on Appeal submitted on July 12, 1974." (p. 46 RA, p. 34 CA record).

He further explained that "when his counsel received the decision on April 8, 1974, and filed the motion for reconsideration on May 7, 1974 (Record on Appeal, p. 42), he had consumed twenty-nine (29) days and therefore, had still one (1) day left within which to perfect the appeal. When his counsel received on June 11, 1974, the Order denying the Motion for Reconsideration, the last day to appeal would naturally be on June 12, 1974. Considering, however, that the expiry date is a holiday, the filing on June 13, 1974, of the Notice of Appeal, Motion for First Extension of Time within which to file Record on Appeal and the Motion to Appeal as pauper erroneously designated as appeal bond, and the filing of the record on appeal on July 12, 1974 within the period sought for and granted by the Court, are all within the reglementary period; * * *" (p. 3 of Comment on Motion to Dismiss Appeal found at p. 43, CA record)

Notwithstanding the above explanation, the appellate court through its Ninth Division[1] issued a Resolution dated April 10, 1975, dismissing the appeal of Krueger for reasons indicated earlier on page one of this Opinion.

We now find and so hold that petitioner Frank Krueger is deserving of relief.

This Court, in a long line of cases, treated the "material data rule" embodied in Section 6, Rule 41, Rules of Court,[2] with a well-nigh absolute rigidity so much so that not a few appeals were dismissed for non-compliance with the requirements of the rule, this Court placing no significance or treating as inconsequential for being mere conclusions of the court a quo, the approval by the trial court of the record on appeal, or the statement by the court a quo in the approval order that the appeal was filed within the reglementary period, or that the record on appeal was in order - the controlling doctrine being that under Section 6, Rule 41, all the necessary data to show that the appeal was perfected on time must appear on the face of the record on appeal elevated to the appellate court, that this was mandatory and jurisdictional, and non-compliance therewith justified dismissal of the appeal. (Government vs. Antonio, L-23736, October 19, 1965, 15 SCRA 119) Neither was the failure of the appellee to object to the trial court's order approving the record on appeal treated as estoppel to bar him from asking in the appellate court the dismissal of the appeal on the ground of non-compliance with the "material data ride." To mention just a few of the latest notable decisions on this matter, We have Valera vs. Court of Appeals, L-29416, January 28, 1971, 37 SCRA 80; Reyes vs. Carrasco, L-28783, March 31, 1971, and ten other cases jointly decided with it, 38 SCRA 297; Marsman et al. vs. Syquia, et al., L-28027, March 29, 1972, 44 SCRA 113; Palarica vs. Philippine Commercial & Industrial Bank, L-28713, May 31, 1972, 45 SCRA 331, and Sison vs. Gatchalian, et al., L-34709, June 15, 1973, 51 SCRA 262.

In Sison vs. Gatchalian, petitioner Sison filed with the Court of Appeals a motion to dismiss the appeal of respondent Gatchalian on the ground that the latter's record on appeal on file with the appellate court did not show on its face that the appeal was perfected on time because while it was stated that copy of the decision of the Court of First Instance was received by the appellant on March 29, 1971, the record on appeal was filed with the Court of First Instance on May 3, 1971, and there was no indication in the record on appeal that extension of time for filing the same was granted. The Court of Appeals denied the motion to dismiss on the ground that from the printed record on appeal it appeared that said record on appeal was filed within the reglementary period of thirty days, although in the typewritten record on appeal filed with the trial court it appeared that the record on appeal was filed five days late. Upon appeal to this Court on certiorari, the order denying the dismissal of the appeal was

set aside and the appeal of respondent Gatchalian was dismissed. After a detailed and exhaustive review of the jurisprudence on Section 6, Rule 41, the Court with Justice Enrique Fernando penning the decision, held inter alia that the requirement of Section 6 of Rule 41 that the record on appeal should contain "such data as will show that the appeal was perfected on time" is mandatory and jurisdictional; that the fact that a day before the last day for perfecting the appeal a motion for extension to complete the record on appeal was filed and was granted by the trial court on the same day is not a valid defense where this fact is not so stated in the record on appeal, more particularly in the typewritten record 'on appeal filed with the trial court.

Barely three months after the Gatchalian case a new atmosphere swept the Court and like the first fresh breath of spring with its message of hope, *Berkenkotter vs. Court of Appeals* appeared to set down a relaxation of what has almost been an impregnable doctrine of a literal adherence to the "material data rule."^[3] In this case the order granting the motion for five-day extension to file the record on appeal did not appear in the record on appeal, but a certificate by the Clerk of Court as to its approval was therein incorporated. The defendant-appellee filed with the Court of Appeals a motion to dismiss the appeal on the ground that the record on appeal did not show that it was filed within the reglementary period, and the appellate court granted the motion. *Berkenkotter* came up to this Court for review of said order, and secured the desired relief in a decision which gave out certain pronouncements of far-reaching significance as they constituted a departure from the rigid rule theretofore prevailing.^[4]

Prescinding from what was categorically held in *Director of the Bureau of Buildings & Real Property Management vs. Court of Appeals, et al.*, L-31054, March 31, 1971, 38 SCRA 296, 317, that an order by the trial judge approving the record on appeal, the notice of appeal and appeal bond as having been filed within the prescribed period is a mere conclusion and cannot take the place of a statement of material data showing that the appeal was indeed perfected on time, the Court in *Berkenkotter* expounded, among other things, that "(T)he mere absence of a formal order granting the motion for extension of time to file the record on appeal should not be fatal if the record on appeal filed within the requested extension period was approved by the Court a quo. As previously stated, the approval thereof carries with it the approval of the motion for extension and the mere failure of the record on appeal to show such approval should not defeat the right to appeal. No trial Judge in his right mind and who is aware of the serious responsibilities of his office, would approve a record on appeal that was not timely filed. There is every reason to assume that the record on appeal was 'filed on time' because it was approved after due hearing by the Court in its Order dated November 14, 1972." (p. 236, *supra*; italics supplied)

Adding further dent to what has heretofore been an almost stringent application of Section 6, Rule 41, is the case of *Pimentel, et al. vs. Court of Appeals, et al.*, L-39423 & L-39684, June 27, 1975, 64 SCRA 475. In *Pimentel*^[5] where both the original and printed records on appeal did not include (1) the motion for a 30-day extension within which to perfect the records on appeal, (2) the order of the court granting the 30-day extension from October 25, 1973, and (3) the order of the court of January 14, 1974, giving petitioner Pimentel five days to finalize the amended records on appeal, the respondent Court of Appeals dismissed the appeal for failure to show all the material data indicating that the appeal was seasonably perfected.

Setting aside the aforementioned order of dismissal, this Court in the words of Justice Felix Makasiar ruled thus:

"The reason for Section 6, Rule 41 of the Revised Rules of Court in requiring that the record on appeal shall include such data as will show that the appeal was perfected on time, was to obviate and eliminate waste of time that would be incurred by the Appellate Tribunal in requiring the lower court to forward the original record and in examining such records to determine the timeliness of the appeal (*Araneta vs. Madrigal & Co., Inc.* L-26227-28, October 25, 1966, 18 SCRA 446, 449-50; *Government vs. Antonio*, L-23735, Oct. 19, 1965, 15 SCRA 119). With the existence of the aforementioned order of January 24, 1974 approving the records on appeal because the trial court found that the notice of appeal, the records on appeal and appeal bonds were all filed within the reglementary period and because of the absence of further objections to the corrected records

on appeal, the veracity of the grounds stated in said order not being disputed by herein private respondents, the reason for the rule ceases; because thereby the Appellate Court can rely thereon without need of sending for, and of any further examination of, the original records of the case." (pp. 477-478, *supra*)

More cases followed to reinforce the less rigorous application of the "material data rule." Thus, last October 21, in the case of "Heirs of Ceferino Morales vs. Court of Appeals," G.R. No. L-37229, where respondent appellate court dismissed the appeal of the Heirs of Ceferino Morales on the ground their record on appeal failed to indicate the date when they received copy of the trial court's decision, this Court[6] set aside the order of dismissal because, in the words of Justice Ruperto G. Martin, ponente:

"* * * there is an inescapable feature that redeems petitioners' record on appeal from its apparent deficiency. It is a fact of record that the trial court approved petitioners' record on appeal * * *.

"Since the validity and accuracy of this approval order of the trial court has not been questioned by private respondents, respondent appellate court should have relied thereon and held that the petitioners' appeal had been made on time. * * *

"The intent is thus clear that every party-litigant must be afforded the amplest opportunity for the proper and just determination of his cause, free from the unacceptable plea of technicalities. At length, the ruling in *Valera vs. Court of Appeals* (*supra*) that the theory of estoppel does not operate against a party who interposes no objection to the approval of record on appeal in the court below as well as the holding in *Director, Bureau of Printing & Real Property Management vs. Court of Appeals* (*supra*) that the mere statement that the record on appeal, notice of appeal or appeal bond had been filed 'within the period' or 'within the reglementary period' is a mere conclusion, not a fact indicative of the seasonable perfection of the appeal, despite the non-objection on the part of the opposing party to the approval of the record on appeal by the trial court as filed on time, have therefore lost what appears to be their 'ephemeral vitality'." (Italics supplied)

In *Republic of the Philippines vs. Court of Appeals, Tomas Carag, et al.* L-40495-96, October 21, 1975, the Court[7] once more set aside an order of dismissal of an appeal promulgated by the Court of Appeals. In this case, the record on appeal of petitioner Republic of the Philippines was found defective by the appellate court for two reasons, one of which was that there was no showing in the records on appeal that the appellant's motion for second extension of time to file its records on appeal was granted by the trial court. Brushing aside said order of dismissal, this Court speaking through Justice Claudio Teehankee, ponente, held the dismissal on this particular ground as manifestly erroneous on two scores:

"Firstly, its own resolution denying reconsideration of dismissal reproduces the trial court's Order dated February 7, 1974, *supra*, and shows that the trial judge did act and correctly held (although expressing himself imprecisely) that as he could not act earlier on the motion for second extension due to his father's death, he considered it 'moot and academic', i.e. no longer necessary to expressly grant the same, as the records on appeal were already filed (on February 5, 1974) well within the second extension requested, which was yet to expire on February 10, 1974; and Secondly, the trial court's Order in open court of March 18, 1974 as duly reproduced in the Records on Appeal records its express finding, in approving the Records on Appeal, that they were 'filed on time,' and such express finding of timeliness of filing and its correctness and veracity have at no time been questioned, impugned or disputed by any of respondents-appellees."

Again, in *Manuel R.L. Luna vs. Court of Appeals, Capati, et al.*, L-37123, October 30, 1975, the Court en banc, speaking again through Justice Claudio Teehankee as ponente, reiterated its recent rulings that when the trial court finds and declares in its order of approval of a record on appeal that it was filed "on time" or "within the reglementary period," and the correctness, accuracy, and veracity of its finding are not impugned, questioned, or disputed by the adverse party, the non-inclusion in the record on appeal of a motion and order for extension of time for the filing of the same is not fatal and does not warrant dismissal of the appeal, since the appellate court

may properly rely on the trial court's order of approval and determination of timeliness of the appeal.

Coming now to the case at bar, private respondents claim in their motion to dismiss appeal that petitioner's record on appeal is defective because in the notice of appeal filed with the trial court the date of receipt of the decision is not stated. No rule of procedure, however, requires such a statement in the notice of appeal. In fact, Section 4, Rule 41, Rules of Court, which deals with the notice of appeal simply provides that said notice shall specify the parties to the appeal, shall designate the judgment or order or part thereof appealed from, and shall specify the court to which the appeal is taken. If at all, such date of receipt of the decision subject of the appeal is one of the material data which should appear in the record of appeal itself, but not necessarily in the notice of appeal. Withal, in the light of the liberalized rulings of the Court mentioned above, an omission of the date of receipt of the decision is no longer fatal provided the record on appeal was duly approved by the court a quo for being in order or for having been filed within the reglementary period.

As a matter of fact, in the case of herein petitioner, there is no necessity for invoking the liberalized rulings of the Court on this point for the simple reason that on page 46 of petitioner's mimeographed record on appeal, there is an express statement that counsel of petitioner received a copy of the decision on April 8, 1974. That, however, was ignored by the appellate court although its attention was called to that fact.

Private respondents, nonetheless, argue in their motion to dismiss the appeal that there is no mention in the disputed record on appeal as to when petitioner filed his motion for reconsideration of the decision of the trial court. This We find to be clearly unfounded, designed to mislead respondent court, considering that on page 42 of said record on appeal, right on top of the page, it is stated that on May 7, 1974, plaintiff, now petitioner, filed through his counsel a motion for reconsideration of the adverse decision, followed by a verbatim reproduction of such motion.

It is further contended by respondents in their motion to dismiss the appeal that the alleged letter of the trial court granting extension of time to file the record on appeal is not reproduced in the record on appeal and that such failure is fatal. While under the previous rulings of the Court such an omission would indeed have justified a dismissal of the appeal as there would be no showing that the record on appeal was filed within the reglementary period or extended time for doing so, the Berkenkotter decision promulgated in 1973, *supra*, places said omission under the latter's liberal mantle, so that the approval of petitioner's record on appeal by the trial court which We quote:

"ORDER

"Considering the motion to appeal as pauper filed by counsel for the Plaintiff to be well founded and there being no objection thereto, the same is hereby granted.

"Finding the Record on Appeal filed by counsel for plaintiff under date of July 12, 1974, to be in order, the same is hereby approved."

"SO ORDERED.

"GIVEN in open Court, at the City of Baguio, Phil., this 7th day of August, 1974.

"FELICIANO BELMONTE

Judge"

(p. 47, RA)

cures whatever defects or omissions there are with reference to Section 6, Rule 41, Rules of Court, especially so where the veracity of the finding of the trial court on the matter has not been disputed by respondents herein, and

where the record on appeal in question was approved by the court a quo under date of August 7, 1974, almost a year after the Berkenkotter decision.

As to the last ground invoked by respondents for dismissing the appeal of petitioner, i.e., that petitioner's record on appeal fails to show the kind of appeal bond posted and the court's approval of the same, We find this unmeritorious. The truth of the matter is that appellant is not required to file an appeal bond and that fact was brought to the attention of respondent appellate court in view of the approval by the trial court of petitioner's motion to appeal as pauper. This approval is evident from the first paragraph of the Order of August 7, 1974, quoted on page 10 of this Opinion. Having been granted the right to appeal as pauper, petitioner is necessarily exempt from filing an appeal bond pursuant to Section 22, Rule 3, Rules of Court. Respondents' counsel is expected to be cognizant of the law, hence, his argument in the motion to dismiss the appeal filed with respondent court that the record on appeal fails to mention the kind of appeal bond filed by petitioner and its approval by the trial court is simply gratuitous to say the least. It is incongruous to expect appellant to state the kind of appeal bond he posted when such bond is non-existent. Petitioner had satisfactorily explained that he inadvertently made a mistake when he mentioned on page 46 of his record on appeal that he filed his notice of appeal and appeal bond on June 13, 1974, for what he had in mind was his motion to appeal as pauper.

Premises considered, We hereby set aside the Order under review for having been issued with grave abuse of discretion and reinstate the appeal of petitioner in CA-G.R. No. 55992-R before respondent Court of Appeals, With costs against private respondents. So Ordered.

Teehankee (Acting Chairman), Makasiar, Esguerra and Martin, JJ., concur.

[1] The membership of the 9th division at the time was composed of Justice Ramon Fernandez, chairman, and JJ. Efren I. Plana and Venicio Escolin, members.

[2] Sec. 6. Record on appeal; form and contents thereof. — The full names of all the parties to the proceedings shall be stated in the caption of the record on appeal and it shall include the order or judgment from which the appeal is taken, and, in chronological order, copies of only such pleadings, petitions, motions and all interlocutory orders as are related to the appealed order or judgment and necessary for the proper understanding of the issue involved, together with such data as will show that the appeal was perfected on time. * * *

[3] L-36629, September 28, 1973, 53 SCRA 228

[4] Esguerra, J., ponente Makalintal, Actg. C.J., Zaldivar, Castro, Fernando, Teehankee, Barredo, Makasiar and Antonio, JJ., concurring

[5] Decision en banc, Makasiar, J., ponente; Makalintal, C.J., Fernando, Barredo, Antonio, Esguerra, Aquino, Concepcion Jr., and Martin, JJ., concurring; Teehankee and Muñoz Palma, JJ., on official leave

[6] First Division

[7] First Division

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