

MARIANO REYES, ASUNCION REYES, ROSARIO REYES, AGAPITA REYES, FELICIDAD REYES, AND MARCOSA REYES, PETITIONERS, VS. HON. ANDRES STA. MARIA, AS PRESIDING JUDGE OF THE COURT OF FIRS...

G.R. No. L-29554. November 20, 1972

Ponente: ESGUERRA , J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/c37329fc47cf/>

ESGUERRA , J.:

Special civil action for mandamus, with prayer for a writ of preliminary injunction, to compel the respondent Judge of the Court of First Instance of Bulacan, Branch II, to approve the petitioners' record on appeal and to stop the Provincial Sheriff of Bulacan from proceeding with the execution of the judgment rendered in favor of the private respondent, Maria Vda. de Sayo, as plaintiff, and against the petitioners, as defendants, in Civil Case No. 2599 of said court.

In the decision rendered by the respondent Judge in Civil Case No. 2599, dated April 11, 1967, the plaintiff therein, herein private respondent Maria Reyes Vda. de Sayo [who died on January 25, 1968, and has been substituted by her heirs, Simon Ramos and Rosario R. Sayo], was declared the absolute owner of the two parcels of land, designated as 1st and 2nd Lots in paragraph 2 of the complaint; the defendants were ordered to pay the sum of P200.00 as the value of the fruits gathered therefrom; and plaintiff's claim for attorney's fees was dismissed for not having been sufficiently established, and the writ of preliminary injunction issued by respondent Judge on July 23, 1962, was made permanent.

The defendants in the court below, now petitioners, were notified of the decision of April 11, 1967 on July 3, 1967. On July 25, 1967, or 22 days thereafter, petitioners through counsel filed a notice and an urgent motion ex parte to appeal as pauper, and another ex parte motion of the same date for an extension of thirty (30) days from August 3, 1967, within which to file the record on appeal. When said motions were filed on July 25, 1967, the respondent Judge had already left for vacation and no one presided his court. Consequently, no action was taken on both motions during the remaining eight [8] days of the 30-day period for perfecting the appeal. The urgent motion for an extension of thirty [30] days from August 3, 1967, within which to file a record on appeal reads as follows:

"URGENT MOTION EX PARTE FOR EXTENSION OF PERIOD TO FILE RECORD ON APPEAL

"COME now defendants, through counsel and unto this Honorable Court, most respectfully move for a grace allowance of thirty [30] days period wherein which to file the record on appeal based on the following:

"1. That the decision of this case was received by undersigned counsel on July 3, 1967;

"2. That said decision was in favor of the plaintiff and against the defendants;

"3. That the defendant had filed their URGENT MOTION EX PARTE TO APPEAL AS PAUPER, sic [dated] within the reglementary period to appeal;

“4. That the 30-day period will expire on August 4, 1967;

“5. That due to lack of material time in view of the volume of work in the office;

“6. That in order that the defendant could file a more formal, presentable and acceptable Record on Appeal;

"WHEREFORE, it is most prayed that the defendants be allowed a grace period of extension of 30 days beginning August 3, 1967 within which a formal, presentable and acceptable Record on Appeal be filed with this Honorable Court.

"Manila for Malolos, Bulacan, July 25, 1967.

[Sgd.] J. SOLANO REYES
1867 M. Hizon St., Cruz, Mla.

Attorney for the Defendants."

The 30-day period asked by the petitioners within which to perfect the appeal having lapsed without a record on appeal having been filed by them, private respondent Maria Reyes Vda. de Sayo filed a motion dated September 16, 1967, to deny the appeal and to have a writ of execution issued for the judgment of April 11, 1967, alleging that since no action was taken on petitioners' motions to appeal as paupers and to extend the period to file their record on appeal which, by correct computation, expired on September 1, 1967, the decision had become final and executory. Said respondent also contended that the motion to appeal as pauper filed within the reglementary period did not interrupt the running of the reglementary period for perfecting the appeal by the filing of the record on appeal and the appeal bond. In an order dated October 31, 1967 [received by the petitioners on December 22, 1967], the urgent motion to appeal as paupers was denied, and it appearing that the extended period asked for filing a record on appeal had lapsed without a record on appeal having been filed, the appeal was dismissed and a writ of execution was ordered issued. Said order reads as follows:

"ORDER

"Before this Court are [1] urgent motion ex-parte to appeal as pauper, filed by the defendant and the opposition thereto filed by the plaintiffs; [2] urgent motion ex-parte for extension of period to file record on appeal; [3] motion to deny appeal and issue writs of execution filed by the plaintiff; and [4] opposition thereto filed by the defendants.

"It appearing that the defendants is not a pauper, the motion to appeal as pauper is hereby denied. Considering the urgent motion ex-parte for extension of time to file record on appeal, and it appears that the grace period of thirty [30] days beginning August 3, 1967 has long expired without presenting the record on appeal, the appeal in this case is hereby dismissed.

“Let a writ of execution issue forthwith.

"SO ORDERED.

"Malolos, Bulacan, October 31, 1967.

[Sgd.] ANDRES STA. MARIA
Judge"

The motion of December 22, 1967, for reconsideration of the order of October 31, 1967, was finally denied by the

respondent Judge on May 4, 1968.

On May 13, 1968, the petitioners filed another notice of appeal, no longer as paupers, and a motion for the approval of the record on appeal which they had in the meantime filed, both of which were denied by the respondent Judge in his order of June 25, 1968, on the ground that the appeal had been previously dismissed by the order of October 31, 1967, and the motion for reconsideration had also been denied by the order of May 4, 1968. Hence, this special action to set aside the order of execution of the judgment and to command the respondent Judge to approve the record on appeal and certify it to the appellate court.

The main question to be determined and on which the decision in this case hinges is whether the period for perfecting the appeal was interrupted by the filing on July 25, 1967, or 22 days after notice of the decision, of the ex-parte motions to appeal as pauper and for an extension of thirty [30] days within which to file a record on appeal, considering the fact that said motions were not acted upon by the trial Judge until October 31, 1967, or ninety [90] days from the lapse of the reglementary period on August 2, 1967.

The petitioners contend that by reason of the failure of the respondent Judge to resolve both motions to appeal as pauper and to extend for thirty [30] days the original period within which to file the record on appeal, the reglementary period did not continue to run until after receipt of the notice of the denial of both the motions.

On the other hand, respondents contend that the motions to appeal as pauper and to extend the period for filing the record on appeal did not suspend the running of the remaining 8-day period because to grant the right to appeal as pauper as well as to extend the period for filing the record on appeal is wholly discretionary with the trial court, and the mere filing of such motions does not have that effect; and even granting that it did so have, the failure of the petitioners to file their record on appeal within the requested extension period of thirty [30] days from August 3, 1967, forfeited their right to appeal and operated to make the judgment final and executory. Between these conflicting claims, We are inclined to sustain that of the respondents and to dismiss this petition.

A motion to be allowed to appeal as pauper and to extend the period for filing the record on appeal must be filed within the 30-day reglementary period for perfecting the appeal. It should be heard and resolved promptly, or before the lapse of said period, so as to apprise the appellant whether or not his obligation to file the record on appeal or the appeal bond within the said period is dispensed with [Semira vs. Enriquez, 88 Phil. 228, 231; Section 1, Rule 135, Rules of Court]. The parties or their attorneys should be immediately notified of the order issued on the matter so that they may avail themselves of the proper remedy if it is denied. In case it is granted and the court fails to state when the extension should commence to run, it should be joined to the original period or that fixed by law and must be computed from the date following the expiration thereof. If the order granting the extension is issued and notice thereof served after the expiration of the period fixed by law, the extension must be computed from the date of notice of the order granting it [Alejandro vs. Endencia, 64 Phil. 321]. The filing of such motion, however, does not suspend the running of the period for perfecting the appeal [Escolin vs. Garduño, 57 Phil. 924; Garcia vs. Buenaventura, 74 Phil. 611, 613; King vs. Joe, 20 SCRA 117], and the appellant has the duty to ascertain the status of his motion, for if no action is taken thereon or is denied after the lapse of the period, the right to appeal is lost [Cumplido vs. Mendoza, 11 SCRA 477, 481.]

Here the petitioners failed to obtain approval of their motion to appeal as pauper and to extend the period for filing their record on appeal during the remainder of the 30-day period because of the leave of absence of the respondent Judge who, upon his return and when said period had lapsed, denied the motion with valid reason. His absence, however, did not excuse petitioners from taking such action as was demanded by the circumstances such as having it submitted to one of the judges of the other branches of the Court of First Instance of Nueva Ecija and the City of Cabanatuan, or to the judge of the provincial capital in accordance with section 88 of the Judiciary

Act, as amended [Cumplido vs. Mendoza, *supra*].

Petitioners had no right to take for granted that their motion would be favorably acted upon, the grant thereof being wholly discretionary with the Judge. To allow an appellant a new 30-day period, or to avail himself of the remaining period, from receipt of the notice of denial of the motion, especially when that notice is received after the lapse of the requested period, would give him an undue advantage as then the reglementary period would be indefinitely suspended from running, which is contrary to the established rule that a motion for extension of time to perfect an appeal does not suspend the running of said period. When an appellant asks the court to extend the period for perfecting the appeal and he himself fixes the extension period in his motion, the motion is deemed denied if no action is taken thereon and the period thereafter lapses.

Notwithstanding that the petitioners fixed the period of 30 days in their motion for extension to begin from August 3, 1967, yet they failed to file their record on appeal within the period they requested. They cannot invoke the inaction of the court due to the authorized absence of the presiding Judge as justification for having a longer or indefinite period. So when the petitioners received notice of the denial of their motion for reconsideration of the order of October 31, 1967, such denial was final and it did not give them the right to utilize the remaining eight-day period or to have a new 30-day period from notice of the denial.

The order of the respondent Judge dated June 25, 1968, dismissing the appeal and ordering the issuance of the writ of execution to effectuate the judgment of April 11, 1967, is in accordance with law and no grave abuse of discretion was thereby committed. Mandamus, therefore, does not lie to compel respondent Judge to approve the appeal.

While some members of the Court feel that the petitioners should be given a chance to appeal and have their basic case decided on the merits, however, upon careful consideration of the facts and circumstances thereof they arrived at the conclusion that there is little prospect of overturning the decision sought to be appealed.

WHEREFORE, the petition is dismissed with costs against the petitioner.

Zaldivar, Teehankee, Makasiar, and Antonio, JJ., concur.

Concepcion, C.J., and Fernando, J., concur in the result.

Makalintal, J., is on official leave.

Castro, J., did not take part.

Barredo, J., concurs in a separate opinion.

CONCURRING OPINION

BARREDO, J.:

I concur in the result.

For whatever it may be worth, I would like to state my personal views regarding the rules that should govern in the circumstances herein involved.

To say merely that the filing of a motion to be allowed to appeal as pauper does not suspend the period for appeal and that the motion must be filed and the court must act on it before the expiration of the original period for the taking of the appeal may be quite inaccurate. As I know the rule in this respect, as long as the motion is filed

within the original period, the court does not lose jurisdiction to act on it even after the expiration of said period, but in such an event, the appellant assumes the risk of denial, for if the motion is denied, and such denial takes place after the period for appeal has already lapsed, the filing of the motion is not considered as having suspended said period. However, if the motion is granted, then the appeal may be deemed as made timely, provided the corresponding notice of appeal and record on appeal have been filed within the prescribed period. Of course, it goes without saying that in order to avoid difficulties, it is best that the motion to appeal as pauper is filed early enough to enable the court to act on it before the expiration of the original period and to notify the appellant within said period, thus affording him to make the necessary adjustments in case the motion is denied.

Similarly, the mere filing within the original period for appeal of a motion for extension time to submit the record on appeal would not have the effect of extending the period for appeal if such motion is denied after the period has already lapsed. However, if the motion is granted, the extension requested is tacked to the original period, even if the favorable order is issued after the expiration of the latter. In any event, the record on appeal must be filed within the extension asked, for once said period expires and no record on appeal has yet been filed, the court loses jurisdiction to approve the extension unless the delay is due to fraud, accident, mistake or excusable neglect.

In the present case, I agree that respondent judge is right in holding that petitioners' failure to file their record on appeal within the period of extension they themselves proposed is fatal to their appeal, regardless of the inaction of the court. There is no indication whatsoever that petitioners were prevented from filing said record by any of these circumstances just mentioned. And upon these premises, it becomes pointless to inquire further as to whether or not respondent judge properly denied petitioners' motion to be allowed to appeal as pauper.

Withal, there being no showing that a different result on the merits is possible, the equitable remedy of mandamus must be denied.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.