

**THELMA TANALEGA, AND FERNANDO ROMAN, PETITIONERS VS.
HONORABLE TITO V. TIZON, AS PRESIDING JUDGE OF THE CFI OF
BATAAN; ANTONIO DELGADO, AND NELLIE C. DELGADO,
RESPONDENTS.**

G.R. No. L-30345. March 27, 1974

Ponente: FERNANDEZ, J.

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FERNANDEZ, J.:

In the civil case instituted by the private respondents as plaintiffs against the petitioners as defendants, the respondent Judge rendered on July 16, 1968 a decision[1] in favor of the private respondents, the dispositive part of which reads as follows:

"WHEREFORE, the Court hereby declare the proceedings in the reopening of Cadastral Case No. 19, L.R.C. Cadastral Record No. 1097, relative to Lot No. 592 of Mariveles Cadastre, as null and void, and the decision dated May 2, 1967, rendered therein in favor of the respondents, is hereby set aside; and Decree No. 114955, issued by the Commissioner of Land Registration and Original Certificate of Title No. 135 of the Registry of Deeds of Bataan issued pursuant thereto, are hereby ordered revoked and cancelled."

"The petitioners spouses Antonio C. Delgado and Nellie C. Delgado are hereby declared the lawful and rightful owners of Lot No. 592 of Mariveles Cadastre, and Original Certificate of Title No. 212 of the Registry of Deeds of Bataan issued to petitioners pursuant to Free Patent No. 291255 is hereby declared valid and binding for all legal purposes."

A copy of the decision was received by the petitioners on July 23, 1968. On August 10, 1968, they filed a seasoned motion to set aside the same on the ground that it is contrary to law and unsupported by the evidence. This motion was denied by the Judge in his order of November 11, 1968, a copy of which was received by the petitioners on November 16, 1968. On November 22, 1968, petitioners filed their notice of appeal, appeal bond, and a motion for a 15-day extension from November 29, 1968 within which to file their record on appeal. The Judge granted the motion for extension in his order of November 26, 1968, a copy of which was received by the petitioners on November 29, 1968.

On December 5, 1968, or within the 15-day extension granted by the Judge, petitioners filed their record on appeal. Upon motion of the private respondents, the Judge issued his order of January 27, 1969 which the petitioners now challenge on certiorari before this Court. This order denied approval of the record on appeal on the ground that:

"x x x. Although the notice of appeal and appeal bond appear to have been filed within the time, there is no indication or certification or proof that the filing of the record on appeal was within the reglementary period, as required by the provision of Sec. 6 Rules 41 of the Revised Rules of Court."

"The deficiencies pointed out are fatal. For the reason that in ordinary appeals the original record is not forwarded to the appellate court, and because the dates when an applicant received the notice of the pertinent

orders or judgment under appeal, and of the denial of his motion for reconsideration or new trial, are facts within the exclusive knowledge of said appellant, the Revised Rules of Court place upon the appellant, the burden of showing that his appeal is timely, and for that purpose prescribed (Rule 41, Sec. 6) that the record on appeal shall include 'such data as will show that the appeal was perfected on time. This requirement is mandatory and jurisdictional, for unless appeal is perfected on time, the appellate court acquires no jurisdiction over the appealed case, and has power only to dismiss the appeal (Bello vs. Fernando, L-16970, Jan. 30, 1962; Caisip vs. Cabangon, L-14684, Aug. 26, 1960; Espartero vs. Ladaw, 49 O.G. 1439). The certification of the record on appeal by the trial court, after expiration of the period to appeal cannot restore the jurisdiction which has been lost (Alvero vs. De la Rosa, 76 Phil. 428, 433, and cases cited). The principle is confirmed by Rule 50, Sec. 1, subpar. (a), heretofore quoted.' (Government vs. Antonio, et al., L-22736, Oct. 19, 1965; Development Bank of the Philippines vs. Santos, et. al., 18 Supreme Court Reports, 113; Atlas Consolidated Mining and Dev. Corp. vs. Progressive Labor Association, et al., 21 Supreme Court Reports 110; Jocson vs. Robles, 22 Supreme Court Reports, 521; italics supplied)." [Order of January 27, 1969]

The doctrine relied upon by the respondent Judge that the record on appeal must show on its face that the appeal was perfected on time otherwise the appellate court must dismiss the appeal,[2] is not applicable to the case at bar where the record on appeal, which does not show on its face that it was not perfected on time, is still within the jurisdiction of the Court of First Instance before whom it was filed.

The object of a record on appeal is simply to present in an intelligible form the facts necessary to enable the appellate court to review the rulings, orders, or judgments appealed from.[3]

We said in Araneta vs. Madrigal:[4]

"This Court noticed that issues were often raised in appellate courts on whether the appeal had been perfected on time or not, owing to the fact that the data pertinent thereto were not set forth in the record on appeal. Inasmuch as the records of trial courts, in cases appealed by record on appeal are not forwarded to appellate courts, the latter has no means of checking or verifying the conflicting allegations of fact made, either in the briefs, or in the motion to dismiss the appeal and the opposition thereto, filed by the parties. As a consequence, appellate courts had to examine such evidence as the parties may have submitted thereto, in support of their respective contentions. This entailed additional work and unnecessary waste of time, that contribute to the delay in the final determination of appealed cases. To eliminate such obstacles to the speedy administration of justice, this court deemed it best, not only to rephrase the first sentence of said Section 6, so as to read: '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, 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 issues involved.'

but also add, at the end thereto, the clause:

'together with such data as will show that the appeal was perfected on time.'"[5]

It is obvious, therefore, that Section 6, Rule 41 of the Revised Rules of Court is principally intended for the benefit of appellate courts in order that they can speedily facilitate the determination of whether or not there was a timely appeal. The said provision may not be invoked by a trial court which has before it the complete records and data for such a determination, and specifically since "it is a settled rule that a tribunal may at any time take judicial notice of the records of a case pending before it, and satisfy itself that copies of the pleadings filed by the parties are in the numbers required by its rules."[6] As early as 1934, this Court had already enunciated that rule in *People vs. Bautista*,[7] making it clear that "in a case on trial, the Court will take judicial notice of its records and of the facts which the record establishes. x x x"

In the more recent case of *Ozaeta, Jr. vs. Court of Appeals*:[8] this Court held: That while the necessary data

should be incorporated in the record on appeal to show that the appeal was perfected on time, failure to do so should not cause the outright dismissal of said appeal by the trial court when the records of the case are still with the latter. The Court should ascertain from the records in its possession whether the appeal was actually perfected on time.

We cited in the Ozaeta decision the cases of Guerra Enterprises Company, Inc. vs. Court of First Instance of Lanao del Sur[9] and Dela Torre vs. Ericta, et al.[10] In the former case, we ruled that "since the record on appeal was still within the control of the respondent court, all that was needed was to order appellant to make the requisite amendments, and not to bar the appeal x x x ...[11] Thus, it was held that although the record on appeal failed to specify the date when certain orders were received it was not proper for respondent court to bar the appeal. What it should have done was to order the appellant to amend the record on appeal to incorporate therein the omitted data pursuant to its powers under Sec. 7, Rule 41 of the Revised Rules of Court.[12] In the latter case of Dela Torre vs. Ericta, this Court stressed:

"There can be no question, therefore, that he could determine, by examining the whole record before him, what said date was and, consequently, whether or not the appeal had been perfected on time. He seems to be, however, under the impression that — even if said record warranted an affirmative answer — he could not order the amendment of petitioners' record on appeal for the completion of the data lacking in the original record on appeal." [13]

This Court contrasted in this case the trial court with the appellate court, stating that "while the appellate court has no means of determining if the record on appeal has been duly perfected, unless evidence thereon were introduced" which is one reason for making the requirements of Sec. 6, Rule 41 mandatory and jurisdictional, the trial court can determine from the records before it the question of whether or not the appeal was duly perfected. Accordingly, the appellant was permitted to amend the record on appeal.

Emphasis was also made of the fact that in cases of incomplete or defective record on appeal, Section 7, Rule 41,[14] clearly empowers the court to order the amendment of the same and to grant the appellant time within which to submit or file the amended record on appeal.[15]

In the instant case, the "intervening facts" which petitioners failed to incorporate in their record on appeal were particularly known to respondent Judge because he himself granted petitioners' motion for extension to file record on appeal in his order of November 26, 1968, as follows:

"x x x Considering the motion ex-parte for extension of time to file record on appeal by the defendants thru counsel for a period of fifteen (15) days from November 29, 1968 to be in order and justified, the Court hereby grants the same with the understanding that no further extension shall be granted."

Respondent Judge should not simply have closed his eyes, oblivious of his own order approving the extension, specially since petitioners complied with the said order and submitted the record on appeal well within the period allowed in the order. Sound discretion and a clear duty behoove him to have utilized his powers under Sec. 7, Rule 41, supra by directing petitioners to amend the record on appeal to include therein the ex-parte motion for extension and order granting the same. His adamant refusal to reconsider his position under the circumstances despite a motion for reconsideration by petitioners was whimsical and arbitrary, amounting to grave abuse of discretion.

WHEREFORE, respondent Judge's order of January 27, 1969 disapproving petitioner's record on appeal and his order of February 20, 1969 denying petitioner's motion for reconsideration, are hereby revoked and set aside. Respondent Judge, or whoever may now be presiding the Court of First Instance of Bataan, is directed to require petitioners to re-submit an amended record on appeal incorporating therein the motion for extension of time to file

the record on appeal and the order of November 26, 1968 granting the same and such subsequent data as may be necessary for the determination of the perfection of the appeal. Costs against private respondents.

SO ORDERED.

Zaidivar, (Chairman), Fernando, Barredo, Antonio, and Aquino, JJ., concur.

[1] Civil Case No. 3175. Court of First Instance of Bataan.

[2] Re-examination of this doctrine is being urged in a number of cases now pending before this Court.

[3] Comments on the Revised Rules of Court by Francisco, Vol. III, pp. 99-100, 1968 Ed., citing SEc. 6, Rule 41, Emphasis supplied.

[4] Nos. L-26227-28, Oct. 25, 1966, 18 SCRA 446.

[5] Emphasis supplied. There are a number of cases now before the Court where a re-examination of this doctrine is being urged.

[6] Universal Textile Mills, Inc. vs. CIR, Nos. L-31287 and L-31332, Dec. 29, 1970, 36 SCRA 619, 623, citing Sec. 1, Rule 129, Revised Rules of Court; Delos Angeles vs. Hon. Cabahug, 106 Phil. 839, 844; Dela Rosa vs. Director of Lands, 96 Phil. 641, 646; and De Jesus vs. Daza, 77 Phil. 152, Emphasis supplied.

[7] G.R. No. 40621, July 21, 1934 (Unpublished) cited in Evidence by Francisco, 1973 Ed., p. 78.

[8] L-26938, Oct. 29, 1971, 42 SCRA 79.

[9] L-28310, April 17, 1970, 32 SCRA 314, 317-318.

[10] L-29753, March 31, 1971, 38 SCRA 296.

[11] Italics supplied.

[12] See *Infra*.

[13] Emphasis supplied.

[14] Sec. 7. Hearing and approval of record. — Upon the submission for approval of the record on appeal, if no objection is filed within five (5) days, the trial judge may approve it as presented or, upon his own motion or at the instance of the appellee, may direct its amendment by the inclusion of any matters omitted which are deemed essential to the determination of the issue of law or fact involved in appeal. If the trial Judge orders the amendment of the record, the appellant, within the time limited in the order, or such extension thereof as may be granted or if no time is fixed by the order within ten (10) days from receipt thereof, shall redraft the record by including therein, in their proper chronological sequence, such additional matters as the court may have directed him to incorporate, and shall thereupon submit the redrafted record for approval, upon notice to the appellee, in like manner as the original draft (Emphasis supplied).

[15] Dela Torre vs. Ericta, et al., *supra*; See also Moya vs. Barton, 76 Phil. 831, cited in Comments on the Revised Rules of Court by Francisco, Vol. II, p. 112, 1968 Ed.

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