

**SPOUSES WILLIAM C. PFLEIDER AND MADALENA S. PFLEIDER,
PETITIONERS, VS. HONORABLE OSCAR R. VICTORIANO, ETC.,
SPOUSES POTENCIANO A. PALANCA AND HERMELINA PULMONES,
AND COURT OF AP...**

G.R. No. L-49809. June 30, 1980

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

This petition for review on certiorari concerns the resolution of the Court of Appeals dated October 18, 1978, in CA G. R. No. 63411-R, "William Pfleider, et al. vs. Potenciano Palanca, et al.," dismissing an appeal from a decision of the Court of First Instance of Negros Occidental.

The amended decision of the CFI of Negros Occidental in Civil Case No. 9187 entitled "William C. Pfleider, et al. vs. Potenciano A. Palanca, et al." was appealed by the plaintiffs, spouses Pfleiders, to the Court of Appeals by filing with the trial court the required notice of appeal, appeal bond and record on appeal. The trial court ordered the amendment of the record on appeal by deleting therefrom and including thereto certain pleadings and/or orders. Complying with said order, the spouses Pfleiders amended the record on appeal and submitted the same to the trial court for approval. Subsequently, however, they filed with the Court of Appeals a "Petition for Certiorari and Mandamus" questioning the trial court's order requiring the amendment of their record on appeal and alleging that they complied with said order merely to avoid being late in perfecting their appeal. Docketed as CA G.R. No. Sp-07561, the special civil action was assigned to the Fourth Division of the Court of Appeals.

On March 4, 1978, the spouses Pfleiders received from the trial court an order approving the amended record on appeal. On April 29, 1978, they received a communication from the Clerk of Court of the Court of Appeals informing them of the receipt by said court of the record on appeal and requiring them to pay, within fifteen (15) days, the docketing fees and to submit, within sixty (60) days, forty (40) printed copies of the record on appeal together with proof of service of fifteen (15) copies thereof upon the appellee. On May 8, 1978, appellants paid the docketing fees. Consequently, the appeal was docketed as CA G.R. No. 63411-R and assigned to the Ninth Division of the Court of Appeals.

No printed record on appeal was submitted by appellants despite the lapse of the reglementary period of sixty days from April 29, 1978. And it was only on September 19, 1978, that they filed with the Court of Appeals a manifestation that they cannot submit said printed record on appeal pending resolution by the Fourth Division of the Court of Appeals of CA G.R. No. SP-07561. Even as CA G.R. No. SP-07561 was pending resolution, the Court of Appeals, Ninth Division, dismissed the appeal in CA G.R. No. 63411-R in a resolution dated October 18, 1978 — a copy of which was received by appellants Pfleiders on October 25, 1978. On November 23, 1978, or twenty-nine (29) days from notice of the dismissal of the appeal, the appellants tiled with the Court of Appeals a motion for reconsideration which was denied by said court in a resolution dated January 4, 1979 — a copy of which was received by appellants on January 12, 1979.

On January 24, 1979, appellants Pfleiders, in a pleading entitled "Manifestation, Docketing Fee and Extension of Time to File Petition for Review on Certiorari," remitted to this Court by postal money order the sum of P160.00 as docketing fees and prayed for an extension of thirty (30) days from January 23, 1979, within which to file with this Court their petition for review on certiorari of the said resolution of dismissal dated October 18, 1978. On February 9, 1979, this Court granted the motion for extension of time to file petition but "conditioned upon the timeliness of the filing of (said) motion/"

The petition for review on certiorari was filed on February 22, 1979. On May 7, 1979, this Court, without giving due course to the petition, required the respondents to comment. But before the respondents could file their comment, the petitioners filed a "Manifestation and Motion to Withdraw Petition and Excess Payment" informing this Court of their receipt on March 12, 1979, of a resolution of the Court of Appeals dated February 27, 1979, granting their motion for reconsideration and suspending the period to submit their printed record on appeal until such time as their petition for certiorari in CA G.R. No. SP-07561 shall have been finally resolved, and praying for the withdrawal of their petition for review on certiorari and for the refund of excess payment of docketing fees. The motion was granted by this Court in a resolution dated May 30, 1979.

Subsequently, however, petitioners-appellants received from the Court of Appeals, Ninth Division, a resolution dated August 17, 1979, setting aside its resolution dated February 27, 1979, which granted their motion for reconsideration and suspended the period within which to submit their printed record on appeal pending resolution of their petition in CA G.R. SP-07561. They filed a motion for reconsideration on October 8, 1979, but the same was denied by the Court of Appeals in its resolution dated October 24, 1979 — a copy of which was received by petitioners-appellants on November 13, 1979.

On November 29, 1979, petitioners filed with this Court a motion for the revival of their petition for review on certiorari. Respondents Palancas filed their opposition to said motion on December 27, 1979, alleging, among others, that the dismissal of the appeal had already become final and that the petition represents "a deliberate attempt to drag out the case and impede the execution of the judgment." On January 16, 1980, petitioners filed a "Reply and Urgent Motion for a Restraining Order." This Court issued a resolution on January 18, 1980, reviving the petition for review on certiorari and issuing a temporary restraining order.

On February 1, 1980, respondents-appellees filed a motion for reconsideration or clarification of this Court's resolution of January 18, 1980. And on February 6, 1980, they filed an omnibus motion seeking the dismissal of the petition for review on certiorari for having been filed out of time and for reasons stated in their opposition to the revival of the petition.

On February 13, 1980, this Court resolved to inform respondents that their opposition to the revival of the petition dated January 16, 1980, and their omnibus motion dated February 6, 1980, will be considered as their comments on the revived petition for review.

AFTER CONSIDERATION of the foregoing procedural antecedents, this Court finds that the revived petition for review on certiorari should be denied for having been filed out of time and for lack of merit.

Section 1, Rule 45 of the Rules of Court provides:

"SEC. 1. FILING OF PETITION WITH SUPREME COURT. —A party may appeal by certiorari; from a judgment of the Court of Appeals, by filing with the Supreme Court a petition for certiorari within fifteen (15) days from notice of judgment or of the denial of his motion for reconsideration filed in due time, and paying to the clerk of said court the corresponding docketing fee. The petition shall not be acted upon without proof of service of a copy thereof to the Court of Appeals." (Italics supplied.)

Clearly, the fifteen day period within which to appeal to this Court a judgment of the Court of Appeals commences either from notice of said judgment or from notice of the denial of a motion for reconsideration provided that said motion for reconsideration has been "filed in due time." The reason is obvious. After the lapse of fifteen (15) days from notice of judgment, the same becomes final and the Court of Appeals loses jurisdiction over the case. And the subsequent filing of a motion for reconsideration cannot disturb the finality of the judgment nor restore jurisdiction which had already been lost.

Petitioners themselves admit in paragraph 14 of their petition (rollo, p. 11) that they received the resolution of the Court of Appeals dated October 18, 1978, on October 25, 1978. They therefore had fifteen (15) days from the latter date, or up to November 9, 1978, within which to file a motion for reconsideration with the Court of Appeals or a petition for review on certiorari with the Supreme Court. Since they failed to avail of either of said remedies within said reglementary period, the dismissal of the appeal became final on November 9, 1978.

Consequently, the motion for reconsideration (which was filed on November 23, 1978), the motion for extension of time to file petition (which was filed on January 24, 1979), and the petition for review on certiorari (which was filed on February 22, 1979) were all filed out of time. They were respectively filed fourteen (14), sixty-nine (69), and ninety-eight (98) days after the resolution sought to be reconsidered by the Court of Appeals or reviewed by this Court became final. Our grant of the motion for extension of time to file petition for review was of no moment since the same was "conditioned upon the timeliness of the filing of the motion" which, as stated, was filed out of time.

Furthermore, even if said petition were filed on time, the same would still be denied for lack of merit.

Section 5, Rule 46 of the Rules of Court, as amended by the Resolution of this Court, En Banc, dated September 17, 1974, provides, among others:

"SEC 5. DUTY OF APPELLANT UPON RECEIPT OF NOTICE. — It shall be the duty of the appellant, within fifteen (15) days from the date of the notice referred to in the preceding section, to pay to the Clerk of the Court of Appeals the fee for the docketing of the appeal, and within sixty (60) days from such notice to submit to the court twelve (12) printed copies of the record on appeal, or twelve (12) typewritten or mimeographed (on one side of good quality paper, eleven inches in length by eight and a half inches in width commonly known as letter size — written double spaced) copies of said record on appeal, together with proof of service of two (2) printed, typewritten or mimeographed copies thereof upon the appellee" (Italics supplied.)

Since the foregoing provision of the Rules, as amended, imposes upon the appellant the duty to submit to the Court of Appeals, within sixty (60) days from notice, twelve (12) printed, typewritten, or mimeographed copies of the record on appeal together with proof of service of two (2) copies thereof upon the appellee, the same should, thus, be construed as an implicit granted to the Court of Appeals of the power to dismiss the appeal in the event of appellant's failure to comply with said duty. Thus, it was well within the power of the Court of Appeals, in the case at bar, to dismiss petitioners-appellants' appeal, in its resolution dated October 18, 1978, for their failure or refusal to comply with the aforesaid duty to submit the required copies of the record on appeal despite notice to do so as far back as April 29, 1978. The pendency of CA G.R. No. SP-07561 did not justify petitioners-appellants' refusal to comply with the said duty. Nor did it impose upon the Court of Appeals the obligation to suspend the period within which to submit the required copies of the record on appeal, specially so since said special civil action questioning the trial court's order requiring the amendment of the record on appeal was filed by petitioners-appellants after they had complied with said order by amending their record on appeal and submitting the same to the trial court for approval, to sustain petitioner's stand would be to countenance the assumption by a party of contradictory postures before a court of law.

WHEREFORE, this Court resolves to lift the temporary restraining order issued on January 18, 1980, and to deny the Petition for Review on Certiorari.

Noting with regret the prevailing practice of the Clerk of Court of the Court of Appeals of requiring appellants to submit "forty (40) printed copies of the record on appeal together with the proof of service of fifteen (15) copies thereof upon the appellee" (CA-Judicial Form No. 1; rollo, p. 17) despite the amendment of the Rules of Court by Resolution of this Court, En Banc, dated September 17, 1974, reducing to twelve (12) the number of copies of the record on appeal to be submitted to the Court of Appeals and to two (2) the number of copies to be served upon the appellee, and allowing the submission of records on appeal in typewritten or mimeographed form, this Court further resolves to require the Clerk of Court of the Court of Appeals to revise CA-Judicial Form No. 1 to conform with the less expensive requirements of the heretofore-quoted Section 5, Rule 46 of the Rules of Court, as amended by Resolution of this Court, En Banc, dated September 17, 1974.

Finally, this Court resolves to require its Docket Division to be guided by this resolution in the processing of appeals from the Court of Appeals.

SO ORDERED.

Barredo (Chairman), Aquino, Concepcion Jr., and Fernandez,[*] JJ., concur.

[*] Justice Fernandez was designated to sit temporarily in the second division because Justice Pacifico de Castro look part in the resolution of the Court of Appeals under review.

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