

**GREGORIO V. PAJARILLO AND ROSA O. DE PAJARILLO,
PETITIONERS, VS. THE COURT OF APPEALS AND PROCESO J.
AREVALO, RESPONDENTS.**

G.R. No. L-38344. November 29, 1976

Ponente: ANTONIO, J.

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ANTONIO, J.:

Petition for certiorari and mandamus seeking to annul and set aside the Resolution dated January 28, 1974 of the Court of Appeals in CA-G.R. No. 53551-R,[1] dismissing the appeal on the ground that the printed Amended Record on Appeal does not show on its face that the appeal was perfected with-in the period fixed by the Revised Rules of Court, and to compel said Court to give due course to their appeal.

The records show that petitioners-spouses, Gregorio V. Pajarillo and Rosa O. de Pajarillo, re-ceived on February 16, 1973 a copy of the Order dated February 9, 1973 of the Court of First Ins-tance of Rizal, Quezon City, Branch XVI, in Civil Case No. Q-15561,[2] annulling and setting aside the Document of Admission of Satisfaction of Judg-ment-Debt.[3] From this Order, the petitioners ap-pealed to the Court of Appeals (CA-G.R. No.53551-R) by filing with the lower court their Notice of Ap-peat on February 21, 1973 and their Cash Appeal Bond and original Record on Appeal on February 22, 1973.[4] The lower court, on the basis of private respondent's objection and upon finding that the original Record on Appeal was incomplete, issued its Order of May 14, 1973, "directing the petition-ers to incorporate the omissions in the Record on Appeal as pointed out in the Opposition and/or Objections to the Approval of Record on Appeal dated April 10, 1973, filed by plaintiff Proceso Arevalo, thru counsel." [5] A copy of this Order was received by the petitioners on May 31, 1973.[6]

On June 4, 1973, a new counsel, Atty. H. M. Abdon, appeared for the petitioners and filed his appearance for said party,[7] "together with a Peti-tion for Extension of Time to File Amended Record on Appeal requesting that he be given thirty (30) days from date of receipt of the Order of May 14, 1973 within which to submit a redrafted Record on Appeal" due to the voluminous pleadings, some of which are not in his possession and, therefore, he may have to refer to the records of the court.[8]

Petitioners filed their Amended Record on Ap-peat on June 21, 1973, which is within the request-ed extension of thirty days from May 31, 1973, the date of their receipt of said Order of May 14, 1973, praying that "the same be approved, and all the re-cords and/or evidence in connection with said order be elevated to the Honorable Court of Appeals for corresponding review thereof".[9] A copy of said Amended Record on Appeal was received on June 23, 1973 by private respondent's counsel, but he did not interpose any objection to the approval of the same.[10]

On July 14, 1973, the lower court issued an Order approving the Amended Record on Appeal, stat-ing that "In the interest of justice and in order to give defendants their day in Court, the Court hereby admits and approves the Amended Record on Appeal dated June 21, 1973, filed by defendants, thru counsel." [11]

After the petitioners had filed on October 9, 1973 their printed Amended Record on Appeal with the Court of

Appeals in case CA-G. R. No. 53551-R, private respondent filed on October 27, 1973 a Motion to Dismiss on the ground of non-compliance with material data rule.

On January 28, 1974, the respondent Court of Appeals rendered its questioned resolution dismissing petitioners' appeal on the ground that while the printed Amended Record on Appeal shows that the date of the motion of the appellants for the approval of their Record on Appeal is "June 21, 1973", there is "nothing in the record on appeal showing that the said Amended Record on Appeal was filed on June 21, 1973"; furthermore, since the Order of the trial court did not specify the period within which the appellants should file their redrafted Record on Appeal, they should have only ten (10) days to do so, that is up to June 10, 1973; the fact that they asked for extension of thirty (30) days from May 31, 1973 within which to file the Amended Record on Appeal is of no moment, "for the granting of such an extension must not be relied upon by the appellants" and, therefore, their motion for the approval of the Amended Record on Appeal dated June 21, 1973 was filed beyond the ten-day period provided by said Rule.

Petitioners' motion for reconsideration having been denied by respondent Court of Appeals in its Resolution of March 6, 1974, they instituted the present petition for certiorari and mandamus.

The dismissal of the appeal must be set aside.

As already above indicated, petitioners received, on May 31, 1973, a copy of the Order of May 14, 1973 of the lower court, directing the petitioners to amend their original Record on Appeal and, although there was no order of the trial court granting or denying petitioners' motion dated June 4, 1973 for an extension of thirty (30) days from May 31, 1973, their Amended Record on Appeal was also filed well within the requested extension of thirty days, and the same was duly approved by the trial court on July 14, 1973, without objection on the part of private respondent.

There is, therefore, no dispute that the material dates as submitted show that petitioners' appeal was timely filed when their Amended Record on Appeal was filed on July 21, 1973, within the requested extended period, aside from the fact that the same is deemed to have been filed on the presentation of the original on February 22, 1973, which is within the original thirty-day reglementary period provided by Section 6 of Rule 41 of the Revised Rules of Court.

As early as *Vda. de Oyzon v. Vinzon*,^[12] We ruled that: "The fact that the amended record on appeal was submitted after the reglementary 30-day period, did not render the perfection thereof, untimely, because the amended record on appeal is deemed to have been filed on the presentation of the original, which was done within the reglementary period." As We explained in *Philippine Independent Church v. Juana Mateo, et al.*,^[13] "amendment presupposes the existence of something to be amended and, therefore, the tolling of the period should relate back to the filing of the pleading sought to be amended. * * *"^[14]

Herein private respondent does not dispute the fact that the original Record on Appeal was filed by petitioners on February 22, 1973, or six (6) days from their receipt on February 16, 1973 of the court's Order dated February 9, 1973, annulling and setting aside the Document of Admission of the Satisfaction of Judgment-Debt, thereby showing that said original Record on Appeal was duly filed within the reglementary period of thirty days provided by Section 6 of Rule 41 of the Revised Rules of Court. Moreover, petitioners' printed Amended Record on Appeal was also filed on June 21, 1973, which was within the requested extension of thirty-day period from May 31, 1973, the date of their receipt of said Order of May 14, 1973, directing the petitioners to amend their Record on Appeal. A copy of this printed Amended Record on Appeal was furnished to, and received by, private respondent's counsel, "Atty. Leovillo C. Agustin, Rm. 313 Doña Anita Bldg., 1300 Quezon Blvd. Extension Corner South Ave-nue, Q. C." on "6-23-73 Time 10:40 a.m."^[15]

It is true that there is no formal order of the court a quo expressly granting the extension. But in *Tambunting v. Court Appeal*,^[16] We held that the mere absence of a formal order granting the motion for extension of time to file the record on appeal should not be fatal to the appellants if the record on appeal filed within the requested extension period was approved by the trial court. 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.^[17] To the same effect is *Krueger v. Court of Appeals*,^[18] where this Court ruled that the failure to include in the record on appeal the order of the trial court granting extension of time to file record on appeal is not a fatal defect and is cured by order of approval of appeal by the trial court.

ACCORDINGLY , the Resolution of respondent Court of Appeals, dated January 28, 1974, dismissing petitioners' appeal is set aside and the case is hereby remanded to said respondent Court for proper proceedings and prompt disposition of the appeal on the merits. No costs.

Fernando, (Chairman), Barredo, Aquino, and Concepcion, Jr., concur.

[1] Entitled "Proceso J. Arevalo and Lolita Arboleda, Plain-tiffs-Appellees, versus Gregorio V. Pajarillo and Rosa O. de Pajarillo, Defendants-Appellants."

[2] Entitled "Proceso J. Arevalo and Lolita Arboleda, Plaintiffs, versus Gregorio Pajarillo and Rosa O. de Pajarillo, Defendants," for Collection of Sum of Money.

[3] Record on Appeal, p. 141

[4] *Ibid.*, pp. 142-143.

[5] *Ibid.*, pp. 185-186.

[6] *Ibid.*, p. 192.

[7] Atty. Basilio H. Alo, former petitioners' counsel, filed with the lower court his Manifestation, dated April 14, 1973, withdrawing his appearance for the petitioners (Record on Appeal, en. 186-190).

[8] Record on Appeal, pp. 191-194.

[9] *Ibid.*, pp. 194-195.

[10] *Ibid.*, p. 196.

[11] *Ibid.*, pp. 196-197.

[12] L-19360, July 26, 1963, 8 SCRA 455. Italics supplied.

[13] L-14793, April 28, 1961, 111 Phil. 752, 756.

[14] See also *Diola v. Court of Appeals*, L-36455, April 30, 1976, 70 SCRA 511.

[15] Record on Appeal, p. 196.

[16] L-40768, February 27, 1976, 69 SCRA 551.

[17] See also *Berkenkotter v. Court of Appeals*, L-36629, Sept. 28, 1973, 53 SCRA 228.

[18] L-41063, January 20, 1976, 69 SCRA 50.

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