

TRANS WORLD AIRLINES, INC., PETITIONER, VS. THE COURT OF APPEALS AND AIR INDIA, RESPONDENTS.

G.R. No. L-35363. August 10, 1981

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

This is a Petition for Review on Certiorari of the Resolution of the Court of Appeals dated July 27, 1972, which dismissed the appeals of both plaintiffs-appellants Esperanza Osmeña, Rosalinda O. Valencia and Elpidio Valencia (collectively referred to as the Osmeñas), and defendant-appellant, now petitioner, Trans World Airlines, Inc. (TWA for short), on the ground that their Joint Record on Appeal failed to show on its face that their appeals were perfected on time.

This case started on November 4, 1966 when the Osmeñas filed Civil Case No. 9605 for Damages, against TWA and Air India, before the Court of First Instance of Rizal, Branch VIII, presided by Hon. Benjamin H. Aquino.

The Complaint alleged that while in New York on October 19, 1964, the Osmeñas (excluding Elpidio Valencia, husband of Rosalinda O. Valencia, who was impleaded as a formal party) bought and were issued confirmed first class tickets by TWA, acting as agent, for accommodations on Air India's Flight No. 110 from Cairo to New Delhi scheduled on November 7, 1964. After their arrival in Cairo on November 3, 1964, the Osmeñas claimed that they verified and were assured by Air India that their reservation was in order. Plaintiff, Esperanza Osmeña, had to keep an appointment with her heart specialist in New Delhi. Shortly before departure time on November 7, 1964, officials of Air India informed the Osmeñas that there were no more available first class seats and that they had to take the tourist section, a lower and cheaper category than that which they had paid for. Despite the Osmeñas' protestations and the intercessions made by the Philippine Ambassador to Cairo, as well as a former United Arab Republic Ambassador to the Philippines, Air India failed to admit the Osmeñas into the first class section.

On September 30, 1970, the trial Court held TWA solely liable to the Osmeñas for P85,000.00 as moral damages, P20,000.00 as exemplary damages and P5,000.00 as and for attorney's fees. The basis for so holding was that TWA acted beyond the scope of its authority as agent for Air India for having issued the tickets to the Osmeñas despite instruction to wait-list them.

TWA received the Decision on October 9, 1970. On October 28, 1970, it seasonably filed its Notice of Appeal, cash appeal bond of P120.00 and Record on Appeal, with the latter being set for hearing on November 7, 1970.

On November 3, 1970, the Osmeñas filed a "Motion for Deferment of the Hearing of TWA's Record on Appeal" on the ground that they also intended to appeal. This Motion was granted on November 7, 1970, and the hearing was reset for November 21, 1970, the Judge hinting on the possibility of consolidating their Records on Appeal.

On November 11, 1970, the Osmeñas, who received the Decision on October 16, 1970, filed their Notice of Appeal and cash appeal bond, well within the reglementary period. At the same time, they filed a Motion for

Extension of thirty (30) days from November 15, 1970 within which to file their Record on Appeal and set the hearing for November 21, 1970, the same date scheduled for the hearing on TWA's Record on Appeal. This hearing was postponed to November 23, 1970.

On November 23, 1970, the Osmeñas filed a "Motion for Amendment of Record on Appeal of Defendant TWA and Approval as Joint Record on Appeal," to include additional pleadings and Orders. This was set for hearing on December 5, 1970.

On December 3, 1970, TWA filed a "Manifestation and Motion for Approval of (its) Record on Appeal" objecting to the Osmeña proposal of submitting a Joint Record on Appeal.

On December 5, 1970, the trial Court withheld action on TWA's Motion, set the same for consideration on December 19, 1970, and gave the Osmeñas ten (10) days from December 5, 1970 within which to submit their objections to TWA's Record on Appeal and to file their own Record on Appeal.

On December 9, 1970, the Osmeñas filed an "Opposition/Manifestation to TWA's Record on Appeal and Motion for Deferment and/or Extension of Filing of Plaintiffs' Record on Appeal" for thirty (30) days from December 15, 1970.

On December 19, 1970, at the hearing for the consideration of TWA's Record on Appeal and the Osmeñas' Opposition thereto, as well as the Motion for Extension to file their Record on Appeal, defendant Air India appeared, interposed no objection to the Record on Appeal of TWA, and suggested that the items desired by the Osmeñas be added at the bottom of TWA's Record on Appeal.

On December 23, 1970, the Osmeñas filed a "Motion for Joint Record on Appeal", which was granted on January 19, 1971. The Order of approval reads in part as follows:

"Finding the 'Motion for Joint Record on Appeal', dated December 23, 1970, filed by plaintiffs through counsel to be well-taken, it appearing that said motion was filed in accordance with Sec. 8, Rule 41 of the Revised Rules of Court, and for want of any objection from the defendants, as prayed for, said motion is granted and the joint record on appeal attached thereto is approved.

"x x x x

"SO ORDERED."

On June 10, 1971, the printed Joint Record on Appeal, the cost of which was shared by the Osmeñas and TWA, was filed with the Court of Appeals; on July 13, 1971, TWA's Brief; and on August 10, 1971, the Brief of the Osmeñas.

After filing a "Motion for Leave to File Consolidated Brief and a Motion for Extension of ninety (90) days within which to file Brief," defendant-appellee Air India, on November 20, 1971, filed a "Motion to Dismiss Appeal Both of Plaintiffs and Defendant TWA" on the ground that their Joint Record on Appeal failed to show on its face that their appeals were perfected on time.

On December 9, 1971, TWA filed its Opposition and moved that the Court of Appeals order the trial Court to elevate its original Record on Appeal filed on October 28, 1970.

Upon personal representations of the TWA counsel, the Clerk of Court of the trial Court, on March 22, 1972, certified to the Court of Appeals the original Record on Appeal filed by TWA, which then became part of the Appellate Court records.

On July 27, 1972, respondent Court of Appeals, by a split three-to-two vote,[1] issued the Resolution in question

dismissing the appeals of the Osmeñas and TWA.

On August 11, 1972, TWA filed the instant Petition for Review on Certiorari. This Court initially denied it for lack of merit but subsequently resolved to give it due course on February 23, 1973. It should be noted that only TWA has filed this Petition.

The lone error assigned by TWA reads:

"The Court of Appeals erred in dismissing the appeal of petitioner in CA-G.R. No. 48347 entitled 'Esperanza Osmeña, et al. vs. Trans World Airlines, Inc. and Air India' on the sole ground that the printed Joint Record on Appeal that was unilaterally filed by the Osmeñas did not contain data showing that the appeal of Trans World Airlines, as well as that of the Osmeñas, had been perfected on time, despite the fact that the original Record on Appeal filed by Trans World Airlines was admittedly filed on time, and despite the fact that the circumstances leading to the trial Court's approval of the Joint Record on Appeal indicated that the trial Court acted without or in excess of jurisdiction or with such a grave abuse of discretion as amounted to lack of jurisdiction."

Noticeably, the Joint Record on Appeal fails to show on its face the timeliness of the appeals. Failure to do so, however, is no longer necessarily fatal. This case now falls within the ambit of the liberalized interpretation and application of the "material data rule".[2] The ruling in *Araneta vs. Madrigal & Co., Inc.*[3] on the mandatory and jurisdictional requirement of section 6, Rule 41, relied upon by the Court of Appeals, has since been abandoned.

It is not denied that the Joint Record on Appeal was filed within the period of extension requested. The Order approving it, *supra*, specifically states that it was filed "in accordance with section 8, Rule 41", and that there was no objection thereto from the defendants (meaning TWA as defendant-appellant and Air India, as defendant-appellee).[4] Section 8, in turn, mentions section 3 of the same Rule treating of the 30-day period within which the Notice of Appeal, an Appeal Bond and Record on Appeal should be filed. In other words, the trial Court concluded that the Joint Record on Appeal was filed on time. This inescapable feature redeems the Joint Record on Appeal from its apparent deficiency. The Appellate Court could have relied on said approval.

"The dismissal of the appeal for failure to include all the material data indicating that the appeal was seasonably perfected is erroneous and constitutes a grave abuse of discretion, if there is attached in the records on appeal the unopposed order of the trial court stating that the notice of appeal, records on appeal and appeal bonds have been filed within the reglementary period, the truth and correctness of which statement is not disputed. Such order a part of the original and printed record on appeal and the accuracy and truth of the factual statements therein not being impugned by the appellees could be relied upon by the appellate court to determine whether the appeal was perfected on time."[5]

And while it may be that it is only TWA who has appealed by Certiorari from the Appellate Court's Resolution disallowing both appeals, we are not inclined to adopt too narrow and simplistic a view of the entire proceedings in the higher interest of real and substantial justice. Every litigant should be liberally given assistance in obtaining a fair, expeditious and reasonable determination of his rights without technicalities and without strict adherence to the letter of the Rules, thereby promoting their objective.[6]

TWA's submission that the Order of the trial Court granting the Osmeñas' Motion to File Joint Record on Appeal on January 19, 1971 was void *ab initio* because said Order did not thereby grant also the extension of time requested to file the Osmeñas' Record on Appeal, or, if it did, the same came four days late of the requested period of extension of thirty days, is untenable. The Order of January 19, 1971 had the effect of allowing not only the "Motion to File Joint Record on Appeal" but also the "Motion for Deferment and/or Extension of Filing of Plaintiffs' (Osmeñas') Record on Appeal" for thirty days from December 15, 1970. So that, when the Joint Record on Appeal was actually filed on December 23, 1970, the trial Court still had jurisdiction to approve the same even

if such grant or approval was made after the lapse of the requested period of extension.

"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 petitioner if the record on appeal filed within the requested period was approved by the court a quo. 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." [7]

Besides, the Joint Record on Appeal was actually more of an amended Record on Appeal. In fact, on November 23, 1970, the Osmeñas moved for the amendment of the TWA Record on Appeal and its approval as a joint Record on Appeal. The trial Court granted this Motion. The Osmeñas merely added two paragraphs to the TWA Record on Appeal, namely, (1) the date of plaintiffs' answer to defendant's counterclaim, and (2) the respective dates of plaintiffs' Notice of Appeal, Appeal Bond and Motion for Extension to file Record on Appeal. The Joint Record on Appeal, therefore, is deemed to have been filed upon the presentation of the original Record on Appeal by TWA, which was done within the reglementary period, without even asking for an extension of time to file the same. [8] As has been held "the fact that the amended record on appeal was submitted after the reglementary 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." For, "x x x 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 x x x." [9]

In any case, the plain truth can not be ignored that the Joint Record on Appeal was filed within the requested period of extension and was duly approved by the trial Court. This is what decisively matters. That approval waived whatever defects or omissions there were with reference to section 6, Rule 41, of the Rules of Court specially so where, as in this case, the veracity of the findings of the trial Court on the matter had not been disputed by any of the parties. The case of *Nuguid Vda. de Herber vs. Martinez* [10] is authority for the view that no trial Judge in his right mind and who is aware of the serious responsibilities of his office would approve an appeal that has not been seasonably perfected.

WHEREFORE, respondent Court of Appeals' Resolution in CA-G.R. No. 48347-R, dated July 27, 1972, dismissing both appeals of plaintiffs-appellants Esperanza Osmeña, et al., and defendant-appellant Trans World Airlines, Inc., is hereby set aside, their appeals reinstated, and the case remanded for judgment on the merits.

No costs.

SO ORDERED.

Teehankee, Acting C.J., Makasiar, Guerrero, and De Castro, JJ., concur.
Fernandez, J., no part.

[1] Penned by Reyes, A., J., concurred in by Muñoz Palma and Reyes, L.B., JJ. with Enriquez, Actg. Pres. J. and Fernandez, J., dissenting.

[2] *Garcia vs. Court of Appeals*, 76 SCRA 609 (1977).

[3] 18 SCRA 446 (1966).

[4] Annex "L", Joint Record on Appeal, pp. 43-44.

[5] *Pimentel vs. Court of Appeals*, G.R. No. L-39423 and L-39684, June 27, 1975, 71 O.G. 6603.

[6] Commercial Union Assurance Co., Ltd. vs. Lepanto Consolidated Mining Co., 86 SCRA 79 (1978).

[7] Berkenkotter vs. Court of Appeals, 53 SCRA 228 (1973).

[8] Pajarillo vs. Court of Appeals, 74 SCRA 151 (1976); Diola vs. Court of Appeals, 70 SCRA 511 (1976); Rodriguez vs. Court of Appeals, 68 SCRA 262 (1975).

[9] NAWASA vs. Mun. of Libmanan, 97 SCRA 138 (1980), citing Vda. de Oyzon vs. Vinzon, 8 SCRA 455 (1963); Philippine Independent Church vs. Mateo, et al., 111 Phil. 752 (1961).

[10] 62 SCRA 162 (1975).

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