

**SPOUSES EMMANUEL FLORES AND DAISY FLORES, PETITIONERS,
VS. THE HON. HERMES MONTERO PRESIDING JUDGE OF RTC-59 AS
NOMINAL PARTY; SPOUSES JOSE PAULIN AND ELEODORA
GANHINHIN AND SPO...**

Ponente: LAGURA-YAP, J.

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LAGURA-YAP, J.:

This is a Petition for Certiorari[1] filed pursuant to Rule 65 of the Rules of Court, seeking to assail the Orders dated July 14, 2011[2] and September 2, 2011,[3] of the Regional Trial Court (RTC), Branch 59 of Toledo City, in Civil Case No. T-862 entitled Spouses Emmanuel Flores and Daisy Flores vs. Spouses Jose G. Paulin and Eleodora Ganhinhin and Spouses Gershon N. Dulang and Luzviminda Tan Dulang.

The July 14, 2011 Order denied the Notice of Appeal of herein petitioners against the RTC's May 26, 2011 Decision,[4] thus:

“The Notice of Appeal dated June 9, 2011 filed by the (petitioners), through counsel, is defective, because of the following reasons:

(1) The lawyer concerned failed to indicate the date of issue of his MCLE Certificate of Compliance, a violation of Bar Matter No. 1922- which requires that the date of issue must be indicated in the pleading filed with the court- otherwise, the same may be expunged from the record; and

(2) There is failure of the date of official receipt of payment of annual membership dues to the Integrated Bar of the Philippines, on violation of Supreme Court Circular No. 10- which requires the inclusion of the date in all pleadings, motions and papers to be filed in court.

Accordingly, the Notice of Appeal dated June 9, 2011 filed by the (petitioners), through counsel, is hereby denied.

Furnish the parties concerned with copy of this Order.

SO ORDERED.”

While the September 2, 2011 Order denied petitioners' Motion for Reconsideration of the July 14, 2011 Order, as follows:

“It must be emphasized that Bar Matter No. 1922 issued by the Supreme Court en banc on June 3, 2008 states, among others, to wit:

xxx xxx xxx

“The court further resolved, upon the recommendation of the Committee on Legal Education and Bar Matters, to require practising members of the Bar to indicate in all pleadings filed before the courts of quasi-judicial bodies, the number and date of issue of their MCLE Certificate of Compliance or Certificate of Exemption, as may be applicable, for the immediately preceding compliance period. Failure to disclose the required information would cause the dismissal of the case and the expunction of the pleadings from the records.”

It is therefore clear and unequivocal that Bar Matter No. 1922 requires practicing members of the Bar to indicate in all pleadings filed before the courts xxx the Number and Date of Issue of their MCLE Certificate of Compliance or Certificate of Exemption xxx. Failure to disclose the required informations would cause the dismissal of the case and the expunction of the pleadings from the record.

A Notice of Appeal is a pleading in contemplation of the law, hence, the same is not exempted from the operation of Bar Matter No. 1922. In other words, it is mandatory for all lawyers to indicate in all pleadings filed with the Court the required informations.

Besides, the “date of issue” of the lawyer's MCLE Certificate of Compliance- as stated in his Motion for Reconsideration dated August 5, 2011- is “September 4, 2008”, hence the same is no longer “current”, and had already expired when the Notice of Appeal was filed.

Accordingly, the Motion for Reconsideration dated August 5, 2011 , as well as the additional authority dated August 20, 2011, filed by the (petitioners), through counsel, is hereby denied.

Furnish the parties concerned with copies of this Order.

SO ORDERED.”

The petition therefore prays 1) that We render judgment annulling the order denying the Notice of Appeal and 2) that the decision of the court a quo which is the subject of the Notice of Appeal be certified for appeal.

The antecedents of the petition, as summarized by petitioners, are as follows:

1. On August 3, 2000, petitioners filed an action for Declaration of Illegality and Nullity of the order of award/issuance of patent original certificate of title no. IP-130300, against Spouse Jose G. Paulin and Eleodora Gahinhin and Spouses Gershon N. Dulang and Luzviminda Tan Dulang. The case was docketed as Civil Case No. T-862 and was assigned to RTC -Branch 59.[5] xxx;
2. (Respondents) filed their Answer[6] xxx;
3. After trial the court rendered a decision dated May 26, 2011. xxx The decision was received by petitioners on June 8, 2011;
4. That on June 22, 2011, petitioners filed a Notice of Appeal;[7] That was fourteen (14) days after they received the decision; docket fees and other filing fees were paid to the court; xxx;
5. That on July 14, 2011, the respondent Judge issued an order denying the Notice of Appeal (moto proprio). This order was received by the herein petitioner on July 26, 2011. xxx; Counsel's copy of this order was received on August 4, 2011. xxx;
6. That on August 9, 2011, petitioners filed a Motion for Reconsideration to the order of the court denying the Notice of Appeal.[8] xxx;
7. The petitioners' Motion for Reconsideration was denied by the Court in an order dated September 2, 2011 and received by the petitioner on October 28, 2011.

Hence the instant petition, with petitioners' primary assertion that the RTC's denial of their Notice of Appeal curtailed their right to litigate; and for such reason, the court a quo acted without or in excess of its jurisdiction, or with grave abuse of discretion.

Petitioners' reasons for the allowance of their petition,[9] are as follows:

“In this particular case, the Notice of Appeal was denied by the Court on the flimsy ground that (petitioners)

(their lawyer) failed to indicate in their Notice of Appeal, the date of issuance of their lawyer's MCLE and the date of issuance of the IBP No.850235. These are very technical matters which should give way in favor of substantial justice. Besides we indicated in our Notice of Appeal the MCLE and IBP number. What was missing was only the date of issuance. Further these MCLE and IBP number will apply only to initiatory pleadings which refer to complaint, answer, cross claim, etc. and a Notice of Appeal is not an initiatory pleading, hence not applicable.

In our Motion for Reconsideration we pointed out that approval of Notice of Appeal is a ministerial duty of the Court (*Comelec vs. Silva*, 286 SCRA 177) . The filing of the Notice of Appeal divest the Court of its jurisdiction over the case, hence the denial of our Notice of Appeal is void ab initio it being filed within the time frame.

In its ruling denying our Motion for Reconsideration, the Court pointed out that the Lawyer's MCLE Compliance No.III is not current as it was issued on September 4, 2008. Be it noted that MCLE compliance 111 is effective until April 2012. Besides undersigned would humbly say that he is among the few lawyers in Cebu City who complied MCLE no. III ahead of time.”

OUR RULING

We are of the position, that the RTC committed grave abuse of discretion amounting to lack of or in excess of jurisdiction, in denying petitioners' Notice of Appeal and their Motion for Reconsideration filed before it. The denial was not in accord with the pertinent rules, and for such reason We find that the court a quo exceeded its authority in the issuance of the assailed orders.

We deem it important to emphasize, that the power of the trial court to disallow or disapprove a notice of appeal is expressly recognized by the Rules of Court. Section 13, Rule 41 explicitly provides:

Sec. 13. Dismissal of appeal. — Prior to the transmittal of the original record or the record on appeal to the appellate court, the trial court may motu proprio or on motion dismiss the appeal for having been taken out of time or for non-payment of the docket and other lawful fees within the reglementary period.

The above-quoted rule however, limits the grounds for dismissal of appeals to very specific instances, viz: 1) when the notice of appeal is filed out of time and/or 2) when there is non-payment of the required appeal fees within the 15-day reglementary period set forth in Section 4 of the same Rule. Illustrative of this point is the early case of *Ortigas and Company Limited Partnership vs. Velasco*,^[10] where the Supreme Court discussed:

“His Honor was apparently incognizant of the principle that dismissals of appeals from the judgment of a Regional Trial Court by the latter are authorized only in the instances specifically set forth in Section 13, Rule 41 of the Rules of Court. xxx

Dismissals of appeal may also be had upon the grounds specified by Rule 50 of the Rules of Court; but it is the Court of Appeals, not the trial court, which is explicitly authorized to dismiss appeals on said grounds. Generally, these grounds do not include matters which go into the merits of the cause or to the right of the plaintiff or defendant to recover. Case law has come to recognize other grounds for dismissal, by way of exception, e.g., that the cause has become moot, or the appeal is frivolous or manifestly dilatory. But, to repeat, authority to dismiss an appeal on the ground that it is frivolous or taken manifestly for delay "is not certainly with the court a quo whose decision is in issue, but with the appellate court."

Observably, in the instant case, the RTC's ground for dismissing petitioners' Notice of Appeal, which is non-compliance with BAR Matter No. 1922, does not fall under either of the recognized grounds.

Further, it must be highlighted that the approval of a notice of appeal becomes the ministerial duty of the lower court, when the appeal is filed on time.^[11] It is only when the appeal is not seasonably filed, that the trial court

can exercise its power or discretion to refuse or disallow the appeal, in accordance with the Rules.[12]

We note that in the case at bar, the record shows that the RTC Decision which petitioners are appealing from, was received by petitioner on June 8, 2011. On June 22, 2011, or well within the 15-day reglementary period, petitioners through counsel filed their Notice of Appeal and paid the requisite fees. By the aforementioned rule and case law, this seasonable filing of the notice and the payment of the corresponding fees, made it ministerial for the RTC to allow petitioners' appeal. This being the case, the RTC, was divested of any ground to axe the appeal. Thus it acted arbitrarily 1) when it denied the appeal, for reason that petitioners' lawyer failed to indicate the date of issuance of his Mandatory Continuing Legal Education Certificate in the Notice, pursuant to the mandatory nature of Bar Matter 1922, and 2) when it denied petitioners' Motion for Reconsideration, even when the lawyer for petitioners had already rectified such defect. Apparently, these arbitrary acts of the RTC, rid petitioners of their right to appeal, and for this reason, We resolve to nullify them.

To end, We quote the Highest Court, in *Sps. Heber & Charlita Edillo vs. Sps. Norberto and Desideria Dulpina*,^[13] thus:

“In not a few cases, we have ruled that the right to appeal is neither a natural right nor a part of due process; it is a mere statutory privilege that may be exercised only in the manner and strictly in accordance with the provision of law allowing the appeal. The party who seeks to appeal must comply with the requirements of the law and the rules, failure to comply leads to the dismissal and the loss of the right to appeal.

But while we have so ruled, we recognize nonetheless that the right to appeal is an essential part of our system of judicial process, and courts should proceed with caution in order not to deprive a party of the right to appeal. We invariably made this recognition due to our overriding concern that every party-litigant be given the amplest opportunity to ventilate and secure the resolution of his cause, free from the constraints of technicalities. This line of rulings is based no less on the Rules of Court which itself calls for a liberal construction of its provisions, with the objective of securing for the parties, a proper and just determination of his cause, free from the constraints of technicalities. The law and jurisprudence grant to courts- in the exercise of their discretion along the lines laid down by this Court- the prerogative to relax compliance with procedural rules of even the most mandatory character, mindful of the duty to reconcile both the need to put an end to litigation speedily and the parties' right to an opportunity to be heard.”

Thusly, even granting that it was within the discretion of the RTC to either allow or deny petitioners' appeal, We are of the opinion that the RTC should not have outrightly denied the same, on the ground that counsel for petitioners inadvertently failed to indicate in the notice, the date of issuance of his MCLE Certificate and the date of his payment of his IBP dues. As it has been established that there really was compliance by petitioners' counsel of his MCLE and IBP requirements, the court should have allowed correction of the notice's defects. After all, the purpose of these requirements is merely the protection of litigants from bogus lawyers. The court should have proceeded with caution in acting on the case, and in the interest of justice, should have put a premium on petitioners' right to appeal over a strict implementation of the rules.

WHEREFORE, premises considered, the instant petition is GRANTED. The Orders dated July 14, 2011 and September 2, 2011 of the RTC, Branch 59 of Toledo City, in Civil Case No. T-862 are ANNULLED and SET ASIDE. The RTC is DIRECTED to ADMIT petitioners' notice of appeal of its May 26, 2011 Decision and to cause the transmittal of the case records to the Court of Appeals, with dispatch.

SO ORDERED.

Delos Santos, J., Chairperson, and Lopez, JJ., concur.

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- [1] Rollo, pp. 3-9.
- [2] Rollo, p. 100.
- [3] Rollo, pp. 62-64.
- [4] Rollo, pp. 40-59.
- [5] Rollo, pp. 12-19.
- [6] Rollo, pp. 22-32; 34-38.
- [7] Rollo, pp. 60-61.
- [8] Rollo, pp. 66-71.
- [9] Rollo, pp.7-8 (Petition for Certiorari).
- [10] G.R. No. 109645, July 25, 1994.
- [11] Commission on Elections v. Silva Jr., 286 SCRA 177, February 10, 1998.
- [12] Ramon Oro vs. Judge Gerardo D. Diaz, Presiding Judge, Regional Trial Court, Branch 68, Dumangas, Iloilo; and Donato Manejero, G.R. No. 140974, July 11, 2001.
- [13] G.R. No. 188360, January 21, 2010.

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