

CRISELDA F. JOSE, PETITIONER, VS. HON. COURT OF APPEALS AND DANILO OMEGA, RESPONDENTS.

G.R. No. 128646. March 14, 2003

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

Before us is a petition erroneously entitled as a “Petition for Review on Certiorari” which should be a petition for certiorari under Rule 65 of the Rules of Court.

The factual background of the case is as follows:

On November 14, 1994, the Regional Trial Court of Cebu City (Branch 22) rendered a decision in Civil Case No. CEO-15709, entitled “Danilo Omega, Plaintiff, versus, Criselda F. Jose, Defendant.”, the dispositive portion of which reads as follows:

“WHEREFORE, based on the evidence thus presented, this Court finds for the plaintiff. Judgment is hereby rendered declaring the March 3, 1981 marriage between plaintiff Danilo Omega and Criselda F. Jose, null and void ab initio. Custody over the three children Joselyn, Danilo, Jr. and Jordan, all surnamed Omega shall be entrusted to plaintiff Danilo Omega.

“Furnish the Local Civil Registrar of Manila with a copy of this judgment. No costs.

“SO ORDERED.”[1]

The ground for declaring the marriage null and void is psychological incapacity on the part of defendant Criselda under Article 36 of the Family Code of the Philippines. During the trial, the counsel on record of defendant Criselda was Atty. Margarito D. Yap of the Cebu City District Office of the Public Attorney’s Office (PAO). However, defendant Criselda filed a Notice of Appeal, dated December 7, 1994, on her own, without the assistance of Atty. Yap.[2]

The Judicial Records Division (JRD) of the Court of Appeals sent a notice to pay docket fee, dated August 3, 1995 to Atty. Yap which was received by him.[3] On October 24, 1995, the appellate court, through the Former Sixteenth Division,[4] promulgated a Resolution which reads as follows:

“For failure of the defendant-appellant to pay the docketing fee in this case within the reglementary period which expired on August 25, 1995, despite receipt by his counsel on August 10, 1995 of this Court’s notice dated August 3, 1995, this appeal is hereby DISMISSED pursuant to Section 1(d), Rule 50 of the Rules of Court.

SO ORDERED.”[5]

On May 9, 1996, the Division Clerk of Court issued the Entry of Judgment certifying that the above-quoted Resolution had become final and executory as of December 1, 1995.[6] It is indicated at the bottom of said Entry of Judgment that Atty. Yap and the Special and Appealed Cases Division of the PAO were sent copies of the

Entry of Judgment.

On May 13, 1996, the appellate court received a letter of even date from defendant-appellant Criselda addressed to the Clerk of Court of the Court of Appeals inquiring about the status of her appeal and claiming that she has not received any notice from the appellate court.[7]

The appellate court noted the explanation of the clerk in the Civil Cases Section of the Judicial Records Division (JRD) of said court that Atty. Yap was sent the notice to pay docket fee because Criselda had sent a copy of her Notice of Appeal to Atty. Yap and that per the records of the case, Atty. Yap was earlier sent a copy of the formal offer of exhibits and duly received in his behalf, he filed the comments and objections to the exhibits for the plaintiff; he appeared at the hearings conducted by the trial court.[8]

On October 28, 1996, Criselda through counsel filed a Motion for Leave of Court to File Omnibus Motions/Motion to Reinstate Appeal.[9] On December 16, 1996, the Court of Appeals issued the following Resolution:

“Considering that the Resolution dismissing this appeal has become final on December 1, 1995 and an Entry of Judgment has in fact been made on May 9, 1996, the Motion for Leave of Court to File Omnibus Motions/Motion to Reinstate Appeal and the Omnibus Motions/Motion to Reinstate Appeal are hereby denied.

SO ORDERED.”[10]

Criselda’s motion for reconsideration was denied by the Court of Appeals.

Hence, the present petition on the following ground:

“The public respondent Honorable Court of Appeals committed grave error in denying the petitioner’s Motion for Leave of Court to file Omnibus Motions/Motion to Reinstate Appeal and the Omnibus Motions/Motion to Reinstate Appeal which if not corrected, would deprive petitioner of her constitutional right to due process and injustice would be done to her.”[11]

on which basis, petitioner Criselda raises the following issues:

“I.

“WHETHER OR NOT THE PETITIONER WHO APPEALED HER CASE BY HERSELF WITHOUT COUNSEL WAS VALIDLY SERVED WITH NOTICE TO PAY THE DOCKETING FEE AND NOTICE OF THE RESOLUTION DISMISSING HER APPEAL FOR FAILURE TO PAY THE DOCKETING FEE.

“II.

“WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED IN DENYING THE PETITIONER’S MOTION FOR LEAVE OF COURT TO FILE OMNIBUS MOTIONS/MOTION TO REINSTATE APPEAL AND THE OMNIBUS MOTIONS/MOTION TO REINSTATE APPEAL.”[12]

After private respondent filed his Comment, parties filed their respective Memoranda in compliance with the Resolution of the Court dated December 14, 1998.

We find the petition devoid of merit.

Based on the records, it appears that the PAO, through Atty. Victor C. Laborte and Atty. Yap, represented petitioner during the trial of the case. Although petitioner herself personally filed the Notice of Appeal, the fact remains that Atty. Yap or the PAO has not filed any formal notice of withdrawal of appearance in the trial court. Therefore, insofar as the appellate court is concerned, Atty. Yap is the counsel of record. As such, the appellate court did not commit any grave abuse of discretion in denying petitioner’s motion for leave of court to file

omnibus motions or motion to reinstate appeal.

Section 22, Rule 138 of the Rules of Court, provides:

“Section 22. Attorney who appears in lower court presumed to represent client on appeal. – An attorney who appears de parte in a case before a lower court shall be presumed to continue representing his client on appeal, unless he files a formal petition withdrawing his appearance in the appellate court.”

Payment of the docket and other legal fees within the prescribed period is both mandatory and jurisdictional, and failure of the appellant to conform with the rules on appeal renders the judgment final and executory.[13]

Indeed, the Court, in some instances, had allowed liberal construction of the Rules of Court with respect to the rules on the manner and periods for perfecting appeals on equitable consideration.[14] In *Buenaflor vs. Court of Appeals*, the Court has enunciated the following:

“The established rule is that the payment in full of the docket fees within the prescribed period is mandatory. Nevertheless, this rule must be qualified, to wit: First, the failure to pay appellate court docket fee within the reglementary period allows only discretionary dismissal, not automatic dismissal, of the appeal; Second, such power should be used in the exercise of the Courts’ sound discretion ‘in accordance with the tenets of justice and fair “play and with great deal of circumspection considering all attendant circumstances.

“Admittedly, this Court has allowed the filing of an appeal in some cases where a stringent application of the rules would have denied it, only when to do so would serve the demands of justice and in the exercise of the Court’s equity jurisdiction. This is based on the rule of liberality in the interpretation of the Rules to achieve substantial justice. It may be recalled that the general rule is that the Rules of Court are rules of procedure and whenever called for they should be so construed as to give effect rather than defeat their essence.

“Section 6, Rule 1 of the 1997 Rules of Civil Procedure provides:

‘SEC. 6. Construction – These Rules shall be liberally construed in order to promote their objective of securing a just, speedy and inexpensive disposition of every action and proceeding.’

“Rules of procedures are intended to promote, not to defeat, substantial justice and, therefore, they should not be applied in a very rigid and technical sense. The exception is that, while the Rules are liberally construed, the provisions with respect to the rules on the manner and periods for perfecting appeals are strictly applied. As an exception to the exception, these rules have sometimes been relaxed on equitable considerations. Also, in some cases the Supreme Court has given due course to an appeal perfected out of time where a stringent application of the rules would have denied it, but only when to do so would serve the demands of substantial justice, and in the exercise of equity jurisdiction of the Supreme Court.

“The underlying consideration in this petition is that the act of dismissing the notice of appeal, if done in excess of the trial court’s jurisdiction, amounts to an undue denial of the petitioner’s right to appeal. The importance and real purpose of the remedy of appeal has been emphasized in *Castro v. Court of Appeals* where this Court ruled that an appeal is an essential part of our judicial system and trial courts are advised to proceed with caution so as not to deprive a party of the right to appeal and instructed that every party-litigant should be afforded the amplest opportunity for the proper and just disposition of his cause, freed from the constraints of technicalities.”[15]

However, the Court finds no cogent reason to be liberal in the present case for the following reasons:

Petitioner’s counsel, Atty. Margarito Yap of the PAO was properly sent by the appellate court a notice to pay the docket fees. Atty. Yap or the PAO did not file any formal withdrawal of appearance and therefore, for all intents and purposes, the appellate court correctly sent the notice to Atty. Yap. It is settled that clients are bound by the mistakes, negligence and omission of their counsel.[16]

Moreover, under Section 21, Rule 138 of the Rules of Court, an attorney is presumed to be properly authorized to represent any cause in which he appears. Under Section 22 of the same Rule, an attorney who appears de parte in a case before a lower court shall be presumed to continue representing his client on appeal, unless he files a formal petition withdrawing his appearance in the appellate court.

Petitioner failed to pursue her appeal for almost two years. She herself filed the notice of appeal on December 4, 1994 but thought of inquiring from the Court of Appeals about her appeal only on May 13, 1996 (or after the lapse of one year and five months) as to the status of her appeal.

Petitioner failed to show that her appeal is extremely meritorious that to deprive her of an appeal would unduly affect her substantial rights.

In other words, petitioner failed to show any compelling reason to warrant the issuance of the writ of certiorari. The Court of Appeals committed no grave abuse of discretion in denying petitioner's Motion for Leave of Court to File Omnibus Motions/Motion to Reinstate Appeal. Its Resolution dated October 24, 1995 dismissing petitioner's appeal had become final and executory as of December 1, 1995.

WHEREFORE, the petition is DENIED for lack of merit. Costs against petitioner.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Quisumbing, and Callejo, Sr., JJ., concur.

[1] Original Records, p. 47.

[2] Id., at p. 51.

[3] Rollo, p. 11.

[4] Composed of Justices Salome A. Montoya, Godardo A. Jacinto and Oswaldo D. Agcaoili.

[5] CA Rollo, p. 24.

[6] Ibid, at p. 24.

[7] Rollo, pp. 11-12.

[8] Rollo, pp. 17-18; TSN of hearings held on July 8, 1994 and September 28, 1994.

[9] Annex "A-1", rollo, pp. 40-44.

[10] Annex "B", rollo, p. 49.

[11] Rollo, p. 17.

[12] Id., at p. 18.

[13] Lazaro vs. Court of Appeals, 330 SCRA 208, 213 (2000).

[14] Buenaflor vs. Court of Appeals, 346 SCRA 563, 567 (2000).

[15] Id., at pp. 567-569.

[16] Yu vs. Court of Appeals, 135 SCRA 181, 190 (1985).

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