APEX MINING, INC., ENGR. PANFILO FRIAS AND ENGR. REY DIONISIO, PETITIONERS, VS. HON. COURT OF APPEALS, HON. PEDRO CASIA, AS JUDGE OF BRANCH 2, TAGUM, DAVAO DEL NORTE, MIGUEL BAG...

G.R. No. 133750. November 29, 1999

Ponente: DAVIDE, JR., C.J.

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DAVIDE, JR., C.J.:

This appeal by certiorari of the decision[1] of the Court of Appeals dated 30 April 1993 and its Resolution[2] dated 7 May 1998 in CA-G.R. SP No. 39872 raised the issue of whether the negligence of counsel can justify annulment of judgment.

The present petition stemmed from a complaint for damages filed on 9 December 1987 by herein private respondents, Miguel Bagaipo, Alfredo Roa, Edgar Barrera, Bonifacio Baruis, Jr., Francisco Bello, and Leopoldo I. Cagatin, against herein petitioners Apex Mining Corporation (hereafter APEX) and/or Engr. Panfilo Frias and Engr. Rey Dionisio before the Regional Trial Court of Davao del Norte. The case was raffled to Branch 11 of Tagum, 11th Judicial Regional and was docketed as Civil Case No. 2131. The complaint alleged in substance that sometime in November 1987, the bulldozer owned by APEX, due to its negligence, damaged private respondents mining claim known as Tunnel T-45, thereby putting a stop to private respondents' mining operations.[3]

Petitioners through their retained counsel filed an answer denying the material allegations in the complaint and alleging that the claims of private respondents were without factual and legal bases since they constructed the tunnel within the mining claim area of APEX without any authority from or approval of the latter.[4]

During trial on the merits, plaintiffs (private respondents herein) presented three witnesses who were cross-examined by the petitioners' retained law firm through Atty. Gerardo C. Olaguer, a partner of the firm. After private respondents rested their case, petitioners' counsel filed a demurrer to evidence, which was denied by the trial court in its order of 23 June 1992. In the same order the trial court set the reception of evidence for the defendants (herein petitioners) on 18 February 1993. Notice of the order was received by petitioners' counsel; however, when the case was called on 18 February 1993, petitioners' counsel did not appear. On motion of the plaintiffs, the trial court issued an order declaring defendants to have waived their right to present evidence in their defense.

Despite due notice of the order, counsel for petitioners did not move for reconsideration of the order.

On 24 June 1993, the trial court rendered a decision finding APEX liable for damages but absolving the other defendants. The dispositive portion thereof reads:

From the evidence presented by the plaintiffs which has not been disputed as no evidence was presented by the defendant, judgment is hereby rendered in favor of the plaintiffs and against defendant Apex Mining Corporation ordering the latter as follows:

- To pay the plaintiffs the amount of P100,000.00 representing expenses that will be incurred by the plaintiffs in the rehabilitation of Tunnel No. 45;

- To pay the plaintiffs the unearned income equivalent to P72,000.00 a day from November 14, 1987 until Tunnel No. 45 shall have been completely rehabilitated;

- To pay P5,000.00 representing expenses in the preparation of the complaint and P10,000.00 attorney's fees; and

- To pay the costs.

Given this 24th day of June 1993 at Tagum Davao, Philippines.[5]

Counsel for the petitioners appealed from the decision to the Court of Appeals.[6] The appeal was entered as CA-G.R. CV No. UDK-7265. However, it was subsequently dismissed by the Court of Appeals in its Resolution[7] of 13 May 1994 for failure to pay the docket fees within the reglementary period. Again, despite due notice, counsel for petitioners did not move for reconsideration of the dismissal of the appeal. Accordingly, the resolution of 13 May 1994 became final, and entry of judgment[8] was made on August 10, 1994. Again, petitioners' counsel was duly notified of the entry of judgment.

The case was remanded to the court of origin and upon motion of private respondents, a writ of execution[9] was issued on 15 February 1995. However, it appearing that APEX was in a joint venture with Base Metals Mineral Resources Corporation under a Memorandum of Agreement, the trial court issued on 7 September 1995 an order[10] directing the Base Metals Mineral Resources Corporation, through its officers, to turn over to the clerk of court and/or the sheriff all money and machineries due in favor of APEX, by reason of said Memorandum of Agreement.

Upon its receipt of said order sometime in December 1995, Base Metals Mineral Resources Corporation informed APEX about the same. Thereafter, APEX confronted its retained counsel about the matter and it was only then that APEX learned that its appeal of the judgment against it in Civil Case No. 2131 had been dismissed by the Court of Appeals.

On 26 February 1996, APEX and/or Engr. Panfilo Frias and Engr. Rey Dionisio, through their new counsel, filed a Petition for Annulment of Judgment with application for the issuance of a writ of preliminary injunction and/or temporary restraining order before the Court of Appeals. Petitioners contended that the actuation of their former counsel constituted professional chicanery amounting to extrinsic or collateral fraud properly warranting the annulment of the judgment of the trial court and that by reason of said actuation of their former counsel they have been unduly deprived of their right to be heard and to due process of law through no fault of their own.

On 2 February 1996, the Court of Appeals issued a temporary restraining order. On 8 March 1996, a hearing on the application for preliminary injunction was conducted wherein the vice-president of APEX testified not only on the propriety of the issuance of the injunction but also on the alleged "sell-out" and gross negligence of their former counsel. On the said hearing, pieces of documentary evidence were marked and formally offered.[11]

On 13 March 1998, private respondents filed an answer wherein they argued that the petition for annulment should be dismissed because it is not the proper remedy, that the grounds invoked do not warrant the annulment of the challenged decision, and that petitioners are guilty of forum-shopping.[12]

On 21 March 1996, the Court of Appeals granted the issuance of the writ of preliminary injunction.[13] Thereafter, the case was set for preliminary conference pursuant to Sec. 1 (c), Rule 6 of the Revised Internal Rules of the Court of Appeals.[14] At the preliminary conference, attorneys for both parties expounded on their

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respective positions. Respondents marked and offered in evidence four court certifications and official receipt. The parties also agreed to file simultaneous memoranda within 20 days from 10 May 1996. The parties also informed the Court that they were open to an amicable settlement so the Court of Appeals granted them an additional 20 days within to submit their compromise agreement, if one is reached. Otherwise, the petition for annulment shall be deemed submitted for decision.[15]

The parties failed to reach a compromise agreement; hence, they filed their respective memoranda.

On 30 April 1997, the Court of Appeals rendered a decision[16] dismissing the petition for annulment of judgment on the ground that it has no jurisdiction to annul or set aside its own decision and that petitioners are bound by the negligence, mistake or lack of competence of their counsel. The Court of Appeals also dissolved the writ of preliminary injunction previously issued. A timely motion for reconsideration was filed by petitioners but was likewise denied by the Court of Appeals in its Resolution[17] of 7 May 1998, wherein it ruled that:

> xxx. Suffice it to repeat that generally, a client will suffer the consequences of the negligence, mistake or lack of competence of his counsel. But where a party was given every opportunity to present his evidence and to pursue appeal from the adverse judgment but counsel's negligence resulted in the loss of said appeal, the defeated party cannot raise the alleged gross negligence of his counsel resulting in the denial of due process to warrant the reversal of the lower court's decision. In the first place, the neglect or failure of counsel to inform his client of an adverse judgment resulting in the loss of his right to appeal will not justify setting aside a judgment that is valid and regular on its face (Mayuga vs. Court of Appeals, 261 SCRA 309, 317-318, citing Tuason v. Court of Appeals, G.R. No. 116607, April 10, 16 and other cases). Secondly, there would be no end to litigation if this was allowed as every error of counsel could be the subject of challenge by the client through another counsel who, if he is also found wanting, would likewise be disowned by the same client through another counsel, and so on ad infinitum. There would be no end to litigation since court proceedings would be subject to reopening at any time by the mere subterfuge of replacing counsel.[18]

Petitioners are now before us reiterating the same arguments they raised before the Court of Appeals. They contended that the Court of Appeals erred in disregarding the significant and uncontroverted acts of petitioners' counsel amounting to a "sell-out" of his clients' interest which are sufficient reasons to annul the adverse decision of the trial court, to wit:

> - he failed to inform his clients, herein petitioners of the scheduled hearing for reception of their evidence, despite due notice to him, precluding the submission of their evidence which would have disproved the material allegations in plaintiffs' complaints;
>
> - he failed to attend the scheduled hearing for reception of petitioners' evidence for which reason the case was deemed submitted for decision without this evidence;
>
> - he never bothered to verify what transpired at the hearing he failed to attend, and thus, was not able to file the necessary pleadings to lift the order considering the case submitted for decision without petitioners' evidence;
>
> - after receiving the court a quo's adverse decision awarding in toto everything plaintiffs prayed for in their complaint, he did not notify or inform his clients, herein petitioners, opting to appeal the said decision to the Court of Appeals without prior consultation with them;
>
> - he did not pay the docketing fees to perfect his appeal for which reason the undocketed appeal was dismissed by the Court of Appeals;
>
> - after receiving the Resolution of the Court of Appeals dismissing his appeal, he did not file a motion to reinstate the dismissed appeal with a tender of the unpaid docketing fees;
>
> - he hid from the petitioners the dismissal by the Court of appeals of his Appeal, resulting in the Entry of

> Judgment on 10 August 1994;
>
> - when his law firm submitted a progress report to petitioner APEX on the status of the case handled by the firm, it was misrepresented that the instant case was "still pending on appeal with the Court of Appeals" when as of the date the report was submitted, the appeal had already been dismissed fifteen (15) months earlier; and
>
> - when asked on 17 October 1995 for the second time the status of the instant case, a partner of the law firm assured APEX (thru it Makati City corporate lawyer) that the case was still pending resolution and that the company will be advised accordingly of whatever developments, stressing that the more urgent cases are those which have been decided with finality and that the case is not one that merits Apex's immediate concern and attention.[19]

At the outset, error was committed by the Court of Appeals in holding that it has no jurisdiction over the petition for annulment. It is clear under Section 9 (2) of the Batas Pambansa Blg. 129 (now Rule 47 of the 1997 Rules of Civil Procedure) that exclusive original jurisdiction over actions for annulment of judgment of the decision of the Regional Trial Courts is vested on the Court of Appeals. The fact that petitioners appealed the decision of the Regional Trial Court of Davao del Norte in Civil Case No. 2131 with the Court of Appeals is immaterial. The said appeal was dismissed for non-payment of docket fees within the reglementary period. An appeal is not deemed perfected if the appellate court's docket fee is not fully paid.[20]

Perfection of an appeal in the manner and within the period laid down by law is not only mandatory but also jurisdictional, and that the failure to perfect an appeal as required by the rules has the effect of defeating the right of appeal of a party and precluding the appellate court from acquiring jurisdiction over the case.[21]

It follows then that the Court of Appeals did not acquire appellate jurisdiction over the decision of the trial court.

On the merit, we are persuaded by petitioners' contention.

A judgment can be annulled only on two grounds: (1) lack of jurisdiction and (2) extrinsic fraud.[22] Fraud is regarded as extrinsic or collateral where it has prevented a party from having a trial or from presenting all of his case to the court.[23] It is the kind of fraud which denied the party the opportunity to fully litigate upon the trial all the rights or defenses he was entitled to assert.[24]

It is settled that the negligence of counsel binds the client. This is based on the rule that any act performed by a counsel within the scope of his general or implied authority is regarded as an act of his client. Consequently, the mistake or negligence of counsel may result in the rendition of an unfavorable judgment against the client.[25] However, the application of the general rule to a given case should be looked into and adopted according to the surrounding circumstances obtaining. Thus, exceptions to the foregoing have been recognized by the court in cases where reckless or gross negligence of counsel deprives the client of due process of law,[26] or when its application will result in outright deprivation of the client's liberty or property or where the interests of justice so require, and accord relief to the client who suffered by reason of the lawyer's gross or palpable mistake or negligence.[27]

The instant case falls within the exception. Petitioners' counsel is guilty of gross negligence in handling their case before the trial court. Records show that petitioners' former counsel did not attend the scheduled hearing for the reception of the evidence for the defense despite due notice. The law firm did not even bother to inform its client of the scheduled hearing, as a result of which both counsel and petitioners were unable to attend the same. Worse, after the trial court issued an order declaring defendants [petitioners herein] as having waived their right to present evidence, their counsel did not take steps to have the same set aside. Although after a decision against APEX was rendered by the trial court, petitioners' counsel was able to file a timely notice of appeal. However, it failed to pay the docket fee and refused to do so despite repeated notice to pay was given by the Court of Appeals, by reason of

which the appeal was dismissed. The situation was further aggravated by the fact that no action was taken by the counsel on the said dismissal, thereby allowing it to become final and executory.

Petitioners cannot be faulted in not inquiring into the records and status of the case. They expected that their counsel would amply protect their interest since they were their retained counsel which handled a majority, if not all of the cases of petitioners, including the case subject of this petition.[28]

A client may reasonably expect that his counsel will make good his representations and has the right to expect that his lawyer will protect his interests during the trial of his case. For the general employment of an attorney to prosecute or defend a case or proceeding ordinarily vests in a plaintiff's attorney the implied authority to take all steps or do all acts necessary or incidental to the regular and orderly prosecution and management of the suit, and in a defendant's attorney, the power to take such steps as he deems necessary to defend the suit and protect the interests of the defendant.[29]

Further, there is ample showing that petitioners' previous counsel misrepresented to the former about the true status of the damage suit filed by herein private respondents. They were made to believe, per the Progress Report submitted by the said Law Firm, that Civil Case 2131 was still pending on appeal with the Court of Appeals when in truth, the appeal has already been dismissed sixteen months ago.[30]

The foregoing incompetence or negligence of petitioners' counsel is so great which prevented them from fairly presenting their defense as interposed in the answer that they could not be liable for damages, considering that the plaintiffs' tunnel was constructed within the claim area of the petitioners without permission, and that the award of P72,000 a day by the trial court is excessive and without basis since the tunnel's daily production was of low grade ore and was practically nil due to the hardness of the vein materials and excessive flow of water aggravated by the withdrawal of plaintiff's financier of his generator and water pumps.[31]

If the incompetence, ignorance or inexperience of counsel is so great and the error committed as a result thereof is so serious that the client, who otherwise has a good cause, is prejudiced and denied his day in court, the litigation may be reopened to give the client another chance to present his case.[32] Similarly, when an unsuccessful party has been prevented from fully and fairly presenting his case as a result of his lawyer's professional delinquency or infidelity the litigation may be reopened to allow the party to present his side.[33] Where counsel is guilty of gross ignorance, negligence and dereliction of duty, which resulted in the client's being held liable for damages in a damage suit, the client is deprived of his day in court and the judgment may be set aside on such ground.[34]

In view of the foregoing circumstances, higher interests of justice and equity demand that petitioners be allowed to present evidence on their defense. Petitioners may not be made to suffer for the lawyer's mistakes and should be afforded another opportunity, at least, to introduce evidence on their behalf. To cling to the general rule in this case is only to condone rather than rectify a serious injustice to a party whose only fault was to repose his faith and entrust his innocence to his previous lawyers.[35]

What should guide judicial action is that a party be given the fullest opportunity to establish the merits of his action or defense rather than for him to lose life, liberty, honor or property on mere technicalities.[36] In cases involving gross or palpable negligence of counsel the courts must step in and accord relief to a client who has suffered thereby.[37] This Court will always be disposed to grant relief to parties aggrieved by perfidy, fraud, reckless inattention and downright incompetence of lawyers, which has the consequence of depriving their clients, of their day in court.[38]

WHEREFORE, the petition is GRANTED. The questioned decision and resolution of the Court of Appeals in CA-G.R.- S.P. No. 39872 are hereby SET ASIDE. The decision of the trial court in Civil Case No. 2131 and the

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writ of execution and the Order dated 7 September 1998 issued pursuant thereto are hereby ANNULLED.

The Regional Trial Court of Davao del Norte, Branch II is hereby directed to REOPEN Civil Case No. 2131, for the reception of evidence for the defendants (petitioners herein), and of rebuttal and surrebuttal evidence if warranted, and as the case may be, and to dispose of the case with reasonable dispatch.

No pronouncement as to costs.

SO ORDERED.

Puno, Kapunan, Pardo, and Ynares-Santiago, JJ., concur.

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[1] Rollo, 172-180. Per Martin, F. Jr., J., with De Pano P. Jr. and Morales, C. JJ., concurring.

[2] Ibid., 205-208.

[3] Annex "A," Rollo, 42-46.

[4] Annex "B," Id., 47-52.

[5] Annex "C," Rollo, 53-59.

[6] Annex "D," Id., 61.

[7] Annex "E," Id., 62.

[8] Annex "F," Id., 63.

[9] Annex "G," Id., 64.

[10] Annex "H," Rollo, 65.

[11] See C.A. Rollo, 128-131; TSN, 8 March 196, unpaginated.

[12] CA Rollo, 108-117.

[13] Ibid., 128-131.

[14] Supra note 11.

[15] Ibid., 154-155.

[16] Supra note 1.

[17] Supra note 2.

[18] Rollo, 208.

[19] Rollo, 279-280.

[20] Lazaro vs. Endencia, 57 Phil. 552 [1932], cited in Hodges vs. Court of Appeals, 184 SCRA 281 [1990].

[21] Villanueva v. CA, 205 SCRA 537 [1992].

[22] Section 2, Rule 47, 1997 Rules of Court.

[23] Asian Security and Insurance Co., Inc. v. Island Steel, Inc., 118 SCRA 233 [1982], as cited in Ruiz v. Court of Appeals, 201 SCRA 577 [1991].

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[24] Crouch vs. Mc. Gaw, 138 S.W. 2d 94, 134 Tex. 633.

[25] Salonga, et al. v. Court of Appeals, et al., 269 SCRA 534, [1997].

[26] Ibid., citing Legarda v. Court of Appeals, 195 SCRA 418, 426 [1991].

[27] Aguilar v. Court of Appeals, 250 SCRA 371 [1995]; Alabanzas v. Intermediate Appellate Court, 204 SCRA 304 [1991]; Escudero v. Dulay, 158 SCRA 69, 78 [1988].

[28] The client is, as a general rule, entitled to relief from a default resulting from his attorney's mistake or neglect, particularly where the client has employed reputable attorneys habitually practicing in the court where the case is brought. (Grandy vs. Carolina Metal Products Co., 175 NC 511, 95 SE 914).

[29] Suarez v. Court of Appeals, et al., 220 SCRA 274, 279 [1993].

[30] Annex "I," Rollo, 66-88; Annex "I-1," id., 69-70.

[31] Rollo, 286.

[32] U.S. v. Umali, 15 Phil. 33 [1910]; People v. Manzanilla, 43 Phil. 167 [1922]; Tesorio v. Court of Appeals, 54 SCRA 26 [1973] ; Macavinta, Jr. v. People, 54 SCRA 420 [1973].

[33] See Laxamana v. Court of Appeals, 11 SCRA 58 [1978].

[34] Lao v. Court of Appeals, 119 SCRA 58 [1991].

[35] De Guzman vs. Sandiganbayan, 256 SCRA 171, 178 [1996].

[36] Aguilar v. Court of Appeals, 250 SCRA 371 [1995].

[37] See People v. Salido, 258 SCRA 291 [1996].

[38] Yuseco v. Court of Appeals, et al., 68 SCRA 484, 487 [1975].

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