

JUAN DE DIOS CARLOS, PETITIONER, VS. THE HONORABLE COURT OF APPEALS AND SPOUSES PEDRO R. BALBANERO AND JOVITA AMITHS BALBANERO, RESPONDENTS.

G.R. NO. 134473. March 30, 2006

Ponente: GARCIA, J.

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GARCIA, J.:

By this petition for certiorari and mandamus under Rule 65 of the Rules of Court, petitioner Juan De Dios Carlos assails and seeks the setting aside of the May 20, 1998 Resolution[1] of the Court of Appeals (CA) in CA- G.R. CV No. 57625 which denied his motion to dismiss private respondents' appeal from an earlier decision of the Regional Trial Court (RTC) of Muntinlupa City, Branch 256, in Civil Case No. 94-1964. The mandamus aspect of the petition prays the Court to compel the CA to dismiss said appeal.

The facts:

Civil Case No. 94-1964, entitled Juan de Dios Carlos v. Felicidad S. Vda. de Carlos, et al., is an action for partition, recovery of property, reconveyance with damages. Petitioner is the plaintiff in that case while the herein private respondents are two of the defendants therein. The case was earlier concluded between the petitioner and the other defendants. However, a full-blown trial transpired as between the petitioner and the herein private respondents.

Involved in that case is a parcel of land located at Alabang, Muntinlupa City, covered by Transfer Certificate of Title (TCT) No. 139061 in the name of petitioner's deceased brother Teofilo Carlos. It was previously registered in the name of petitioner's father, Felix Carlos.

Prior to Felix's death, Teofilo, a lawyer, advised his father to transfer all his properties to one of the children in order to avoid payment of inheritance taxes and other expenses. Felix agreed, provided that the rights of all the other heirs will be respected and their shares duly delivered to them. The subject property was among those transferred to Teofilo.

Before the intended property partition could be effected, however, Teofilo died, survived by his spouse, Felicidad Carlos. Sometime in the early part of 1994, the petitioner demanded the division of the subject property and asked Felicidad for reimbursement of the expenses he advanced for Teofilo's hospitalization and burial. The request irked Felicidad who told the petitioner that the property no longer pertained to the Carlos family, the same having already been lost in a court case with the herein respondent spouses Pedro Balbanero and Jovita Amiths-Balbanero. This prompted the petitioner to file the partition case, Civil Case No. 94-1964, against Felicidad.

Petitioner would, upon inquiry, later discover about a sales agreement over the subject property which his brother Teofilo, during his lifetime, entered into with the private respondent spouses. This agreement, as it turned out, was the subject of a litigation which culminated in the CA ordering Teofilo to comply with the terms thereof by

executing in favor of the private respondent spouses a deed of absolute sale for the entire property upon payment of the agreed purchase price.

Subsequent events saw the petitioner asking the private respondents to exclude his one-half (1/2) share in the property from the sales transaction. Upon being rebuffed, the petitioner proceeded to implead the private respondents in the partition case.

After due proceedings, the trial court, in a decision^[2] dated November 28, 1997, upheld the hereditary nature of the subject property and declared that the registration of the title in the name of Teofilo Carlos established an implied trust in favor of the other compulsory heirs, such as the petitioner, with respect to their respective shares in the estate of the decedent Felix Carlos. Dispositively, the decision reads:

WHEREFORE, judgment is hereby rendered in favor of the plaintiff [now petitioner] and against defendants [now respondents] spouses Balbanero as follows:

- Declaring and confirming the ownership by plaintiff of an undivided one-half (1/2) share of the net area, after deducting the 2,331 square meters adjudicated to the plaintiffs in Civil Case No. 11975 of the property covered by [TCT] No. 139061 of the Register of Deeds of Makati City.
- Ordering the exclusion of the said plaintiff's one-half (1/2) undivided share from any deed of absolute sale should one be ordered executed in favor of defendants spouses Balbanero in Civil Case No. 18358 entitled "Pedro Balbanero, et al. v. Teofilo Carlos, et al.," before Branch 60, Regional Trial Court of Makati City;
- Declaring that the other half of the said property covered by TCT No. 139061, which pertained to Teofilo Carlos, is subject to plaintiff's right of pre-emption or redemption;
- Ordering defendants spouses Balbanero to pay plaintiff the amount of Php100,000.00 as moral damages and Php250,000.00 as attorney's fees;
- Ordering the dismissal of defendants spouses Balbanero's counterclaims.

Costs against defendants spouses Balbanero.

SO ORDERED. (Words in bracket added.)

From the aforementioned decision, two (2) Notices of Appeal were filed, the first, dated December 9, 1997, being filed by the private respondents' counsel wherein counsel acknowledged receipt of a copy of the same decision on December 5, 1997.^[3] The second notice, dated December 8, 1997, was filed by a certain Atty. Alejandro Abesamis, who attached therewith official receipts in the amounts of P352.00 and P48.00, or a total of P400.00.^[4] Atty. Abesamis entered his appearance for the first time at this stage.

At the CA, the appeal was docketed as CA-G.R. CV No. 57625.

On March 3, 1998, the petitioner, as plaintiff-appellee in the appellate proceedings before the CA, filed a Motion to Dismiss Appeal ^[5] on ground that the records allegedly do not show that the private respondents have paid the correct amount of the appellate court docket and other lawful fees. As the petitioner alleged, the amount thus paid for the appeal was P20.00 short of the legal requirement.

In a resolution^[6] dated March 16, 1998, the CA directed the private respondents to remit the P20.00 balance of the docket fee.

On March 23, 1998, the private respondents submitted their Compliance^[7] by transmitting a postal money order for P20.00. On the same day, the petitioner interposed a motion for reconsideration of the March 16, 1998 CA

resolution.

On May 20, 1998, the CA issued the herein challenged Resolution[8] denying petitioner's aforementioned Motion to Dismiss Appeal, followed by another Resolution[9]denying petitioner's motion for reconsideration.

Petitioner is now before us via the present recourse, basically faulting the CA for not dismissing the private respondents' appeal on account of their failure to tender the full payment of the appellate court docket and other lawful fees.

There is no dispute that the private respondents timely filed their appeal to the CA, remitting, in consonance with Section 4, Rule 41 of the Rules of Court, the amount of P400.00 representing the appellate court docket and lawful fees as fixed and assessed by the RTC clerk of court. Accordingly, with such proof of payment of said fees, the RTC transmitted to the CA the original records or the record on appeal.

Private respondents' attention to the deficiency in their payment of appellate court docket and other lawful fees was called for the first time by the petitioner himself when he moved for the dismissal of the former's appeal. Instead, however, of issuing the desired dismissal action, the CA issued a resolution dated March 16, 1998 requiring the private respondents to remit, within five days from their receipt thereof, the additional amount of P20.00 for payment of the appellate docket fee, which they promptly did.

In their comment, private respondents attribute their inability to pay the correct amount of the appellate court docket and other lawful fees to the error in computation committed by the RTC clerk of court. Pressing the point, they state that the clerk of court overlooked Section 7 of the CA Revised Internal Rules, as amended, which sets forth the true/accurate assessment of docketing fee and legal research fund in ordinary appeal in civil cases. Private respondents disclaim any participation in what turned out to be an erroneous assessment of docket and other appeal fees. They thus score the petitioner for making much of the mistake/error committed by the RTC clerk of court and for capitalizing on sheer technicality to deprive them of their right to due process.

We rule in favor of the private respondents.

It may be, as the Court has consistently held, that the payment of docket fees within the prescribed period is jurisdictional and is necessary for the perfection of an appeal. [10] But time and again, the Court, bearing in mind the importance and purpose of the remedy of appeal in our judicial structure, has advised courts to proceed with caution on matters of docket and appeal fees lest they undermine one's right to appeal or deprive a party-litigant "the amplest opportunity for the proper and just disposition of his cause, freed from the constraints of technicalities." [11] In line with this sound policy, we have thus held that, in appealed cases, the failure to pay the appellate court docket fee does not, without more, automatically result in the dismissal of the appeal nor affect the court's jurisdiction, the dismissal being discretionary on the part of the appellate court. As we stressed in *Santos v. Court of Appeals*: [12]

Case after case, this Court stressed the rule that failure to pay the appellate court docket fee within the reglementary period confers a discretionary, and not mandatory, power to dismiss the proposed appeal, and that such power should be used in the exercise of the court's sound judgment in accordance with the tenets of justice and fair play and with a great deal of circumspection considering all attendant circumstances. Said "discretion must be exercised wisely and prudently, never capriciously, with a view to substantial justice."

Furthermore, Section 5 of Rule 141 of the Rules of Court, on the payment of appellate docket fees in appeals from the RTC to the CA and this Court, provides in pertinent part:

Sec. 5. Fees to be paid by the advancing party. —

xxx If the fees are not paid, the court may refuse to proceed with the action until they are paid and may dismiss the appeal or the action or proceeding.

Given the foregoing perspective, the appellate court may very well extend the time for the payment of the docket fees should an appellant provide a justifiable reason for his failure to pay the correct amount of docket fees within the prescribed period, such as fraud, accident, mistake, excusable negligence, or a similar supervening casualty, without fault on the part of the appellant.[13] In *Mactan Cebu International Airport Authority v. Court of Appeals*,^[14] the Court held that the failure of the Solicitor General to pay the docket fees within the reglementary period was excusable since the 1997 Rules of Civil Procedure — requiring the payment of the docket fees to the court which rendered the judgment within the period for taking an appeal — took effect only fourteen days prior to the filing of the notice of appeal.

Here, there can be no quibbling that the erroneous assessment by the RTC clerk of court accounted for the private respondents' failure to pay the correct amount of docket fees. And when so required by the CA to address the deficiency, they immediately complied. [15]

All told, the private respondents cannot be faulted with prejudice for their failure to pay the required docket fees. For, given the prevailing circumstances, there was no intention on their part to engage in dilatory tactics or circumvent the Rules of Court. On the contrary, their subsequent payment of the P20.00 deficiency immediately when directed to do so by the CA was indicative of their good faith and willingness to comply with the Rules.[16]

WHEREFORE, the petition is DENIED and the assailed Resolution of the Court of Appeals dated May 20, 1998 is AFFIRMED.

SO ORDERED.

Puno, (Chairperson), Sandoval-Gutierrez, Corona, and Azcuna, JJ., concur.

[1] Penned by Associate Justice Quirino D. Abad Santos, Jr. (ret.) with Associate Justices Ruben T. Reyes (now Presiding Justice) and Eloy R. Bello, Jr. (ret.), concurring; Rollo, p. 31.

[2] Original Records, pp. 538-555.

[3] Rollo, p. 39.

[4] Id. at 43.

[5] Id. at 38-42.

[6] Id. at 29.

[7] Id. at 76-77.

[8] Id. at 31-33.

[9] Id. at 36.

[10] *Uy vs. CA*, G.R. No. 126337, February 12, 1998, 286 SCRA 343.

[11] *Moslares vs. CA*, G.R. No. 129774, June 26, 1998, 291 SCRA 440.

[12] *Santos vs. CA*, G.R. No. 114762, February 14, 1996, 253 SCRA 632, citing *Fontana vs. Bonsubre*, G.R. No. L-56315, November 25, 1986, 145 SCRA 663.

[13] Guevarra vs. CA, G.R. No. L-43714, January 15, 1988, 157 SCRA 32, citing cases.

[14] Mactan Cebu International Airport Authority vs. Mangubat, G.R. No. 136121, August 16, 1999, 312 SCRA 463.

[15] Rollo, pp. 76-77.

[16] Yambao vs. CA, G.R. No. 140894, November 27, 2000, 346 SCRA 141.

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