

M.A. SANTANDER CONSTRUCTION, INC., PETITIONER, VS. ZENAIDA VILLANUEVA, RESPONDENT.

G.R. No. 136477. November 10, 2004

Ponente: SANDOVAL-GUTIERREZ, J.

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SANDOVAL-GUTIERREZ, J.:

Is non-payment of the docket fees and other legal fees a valid ground to dismiss an appeal? This is the only issue in the instant case presented for our resolution.

Challenged in this petition for review are the Resolutions[1] of the Court of Appeals dated November 5, 1998 and December 4, 1998 in CA-G.R. CV No. 60439. The Appellate Court dismissed the appeal taken by M.A. Santander Construction, Inc., petitioner, from the adverse Decision of the Regional Trial Court (RTC), Branch 15, San Mateo, Rizal in Civil Case No. 1153-95 for non-payment of docket and other lawful fees.

The instant case stemmed from a complaint for a sum of money filed with the RTC of San Mateo, Rizal on April 11, 1995 by respondent Zenaida Villanueva against petitioner, docketed as Civil Case No. 1153-95. After hearing the case on the merits, the trial court rendered an undated Decision in favor of respondent.

On March 9, 1998, petitioner interposed an appeal to the Court of Appeals.

As earlier mentioned, the Court of Appeals dismissed the appeal for petitioner's failure to pay the required appeal fees.

In its motion for reconsideration, petitioner, through counsel alleged:

“II

With deepest apology to this Honorable Tribunal, herein undersigned counsel admits that he failed to pay the corresponding docket and other fees before the Clerk of Court of the Regional Trial Court of San Mateo, Rizal, for reason that still entertains in his mind the old procedure of waiting from this Honorable COURT for an order/directive to pay the fee before this Honorable COURT OF APPEALS pursuant to the then old standing procedure.”[2]

On November 13, 1998, petitioner paid the required fees.

On December 4, 1998, the Court of Appeals denied petitioner's motion for reconsideration, thus:

“Attached to defendant's Motion for Reconsideration dated November 17, 1998 are xerox copies of OR Nos. 8128693, 3078792, and 7403620, showing its payments of the appellate docket and other lawful fees on November 13, 1998. Obviously, such payments were made only after defendant's receipt of the resolution of November 5, 1998. Not being in accord with Section 4 of Rule 41, which requires payment of the docket and other lawful fees within the period to appeal, the payments made by defendant on November 13, 1998 did not cure the failure to perfect an appeal.

WHEREFORE, the motion for reconsideration is hereby DENIED for lack of merit.

SO ORDERED.”[3]

Hence, the instant recourse to this Court.

Petitioner contends that an appeal is perfected by the mere filing of a Notice of Appeal. The payment of the docket fee, not being necessary for its perfection, payment should be made only when directed by the court concerned. The Court of Appeals should have liberally interpreted the Rules in keeping with the principle of procedural due process.

Respondent counters that the Court of Appeals did not err when it dismissed petitioner’s appeal considering that an appeal fee must be paid within the time for perfecting an appeal.

Petitioner’s contention is bereft of merit.

The right to appeal is not a natural right or a part of due process; it is merely a statutory privilege and may be exercised only in the manner and in accordance with the provisions of law.[4] Thus, one who seeks to avail of the right to appeal must strictly comply with the requirements of the rules,[5] and failure to do so leads to the loss of the right to appeal.

Rule 41, Section 4 of the 1997 Rules of Civil Procedure, as amended, provides:

“SEC. 4. Appellate court docket and other lawful fees. – Within the period for taking an appeal, the appellant shall pay to the clerk of the court which rendered the judgment or final order appealed from, the full amount of the appellate court docket and other lawful fees. Proof of payment of said fees shall be transmitted to the appellate court together with the original record or the record on appeal.

Failure to pay the appellate court docket and other lawful fees on time is a ground to dismiss the appeal.”

The “period for taking an appeal” is fixed by both statute and procedural rules. Batas Pambansa Blg. 129, as amended, provides:

“SEC. 39. Appeals. – The period for appeal from final orders, resolutions, awards, judgments, or decisions of any court in all cases shall be fifteen (15) days counted from the notice of the final order, resolution, award, judgment, or decision appealed from: Provided, however, That in habeas corpus cases, the period for appeal shall be forty-eight (48) hours from the notice of the judgment appealed from. x x x”

Section 3, Rule 41, of the same Rules state:

“SEC. 3. Period of ordinary appeal. - The appeal shall be taken within fifteen (15) days from notice of the judgment or final order appealed from. Where a record of appeal is required, the appellant shall file a notice of appeal and a record on appeal within thirty (30) days from notice of the judgment or final order. x x x”

In the instant case, petitioner received a copy of the Decision of the trial court on March 3, 1998.[6] Accordingly, it had, pursuant to Section 3, Rule 41, until March 18, 1998 within which to perfect its appeal by filing within that period the Notice of Appeal and paying the appellate docket and other legal fees. While petitioner filed the Notice of Appeal on March 9, 1998, or within the reglementary period, however, it paid the required docket fees only on November 13, 1998, or late by 7 months and 25 days.

The mere filing of the Notice of Appeal is not enough, for it must be accompanied by the payment of the correct appellate docket fees.[7] Payment in full of docket fees within the prescribed period is mandatory.[8] It is an essential requirement without which the decision appealed from would become final and executory as if no appeal had been filed. Failure to perfect an appeal within the prescribed period is not a mere technicality but jurisdictional and failure to perfect an appeal renders the judgment final and executory.[9]

In *Guevarra vs. Court of Appeals*,^[10] where the docket fees were not paid in full within the prescribed period of fifteen (15) days but were paid forty-one (41) days late due to “inadvertence, oversight, and pressure of work,” we held that the Court of Appeals correctly dismissed the appeal. In *Lee vs. Republic of the Philippines*,^[11] where half of the appellate docket fee was paid within the prescribed period, while the other half was tendered after the period within which payment should have been made, we ruled that no appeal was perfected. Clearly, where the appellate docket fee is not paid in full within the reglementary period, the decision of the trial court becomes final and no longer susceptible to an appeal.^[12] For once a decision becomes final, the appellate court is without jurisdiction to entertain the appeal.^[13]

We thus hold that the Court of Appeals correctly dismissed petitioner’s appeal. Under Section 1, Rule 50, of the 1997 Rules of Civil Procedure, as amended, one of the grounds for dismissal of an appeal is failure of the appellant to pay the docket and other lawful fees.

We note that petitioner’s counsel made the following admissions in the petition filed before us:

(1)

“[H]e was deceptively misled by the previous practice of waiting for an order from public respondent to pay the appeal docket and related fees in the number of cases that he has brought up.”^[14]

(2)

“[C]ounsel for petitioner was guided by the old rule when the notice of appeal was filed on March 9, 1998...”^[15]

While we appreciate the candor of petitioner’s counsel in admitting his mistakes, however, we can not deviate from the Rules. The facts obtaining in this case leave us no option but to deny the petition.

WHEREFORE, the petition is DENIED. The assailed Resolutions of the Court of Appeals dated November 5 and December 4, 1998 in CA-G.R. CV No. 60439 are AFFIRMED. Costs against petitioner.

SO ORDERED.

Panganiban, (Chairman), Carpio-Morales, and Garcia, JJ., concur.
Corona, J., on leave.

[1] CA Rollo, p. 9. Penned by Associate Justice Artemio G. Tuquero (ret.) and concurred in by Associate Justices Eubolo G. Verzola and Renato C. Dacudao.

[2] Rollo at 38-39.

[3] Id. at 44.

[4] *Tan Tiag Chiong vs. Hon. Rodrigo Cosico*, 434 Phil. 753, 760 (2002), citing *Villanueva vs. Court of Appeals*, 205 SCRA 537 (1992).

[5] *Neplum, Inc. vs. Orbeso*, 433 Phil. 844, 867 (2002), citing *Pedrosa vs. Spouses Hill*, 327 Phil. 153 (1996); *Del Rosario vs. Court of Appeals*, G.R. No. 113890, February 22, 1995, 241 SCRA 553.

[6] Notice of Appeal, Rollo at 35.

[7] *Rodillas vs. COMELEC*, G.R. No. 119055, July 10, 1995, 245 SCRA 702, 705, citing *Galang vs. Court of Appeals*, 199 SCRA 683 (1991); *Guevara vs. Court of Appeals*, G.R. No. 43714, January 15, 1988, 157 SCRA 32.

[8] Pedroso vs. Spouses Hill, *supra* at 156.

[9] Almeda vs. Court of Appeals, 354 Phil. 600, 607 (1998), citing *Phil. Airlines, Inc. vs. NLRC*, 263 SCRA 638 (1996).

[10] *Supra*.

[11] G.R. No. 15027, January 31, 1964, 10 SCRA 65, 67, citing *Lazaro vs. Endencia and Andres*, 57 Phil. 552 (1932).

[12] *Aramas vs. Endona*, G.R. No. 32719, October 27, 1982, 117 SCRA 753, 758.

[13] *Garcia vs. Echiverri*, G.R. No. 44455, October 23, 1984, 132 SCRA 631, 638, citing *Santos vs. Court of Appeals*, 125 SCRA 22 (1983); *Acda vs. Minister of Labor*, 119 SCRA 309 (1982); and *Agricultural and Industrial Marketing, Inc. vs. Court of Appeals*, 118 SCRA 49 (1982).

[14] *Petition*, Rollo at 13.

[15] *Memorandum*, *Id.* at 189.

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