

PAZ REYES AGUAM, PETITIONER, VS. COURT OF APPEALS AND BONIFACIO RONSAYRO, RESPONDENTS.

G.R. No. 137672. May 31, 2000

Ponente: PARDO, J.

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PARDO, J.:

The case is an appeal via certiorari seeking to set aside the resolution of the Court of Appeals[1] dismissing petitioner's appeal because petitioner's motion for extension to file appellant's brief was filed late by nine (9) days due to counsel's mistake in counting the period for filing the same. The court also denied petitioner's motion for reconsideration.[2]

The facts are as follows:

On January 8, 1998, the Regional Trial Court, Pasig City, in an action for sum of money and damages arising from malicious mischief filed by petitioner Paz Reyes Aguam against respondent Bonifacio Ronsayro,[3] rendered decision, the dispositive portion of which reads as follows:

"WHEREFORE, in view of the foregoing, judgment is rendered in favor of the defendant dismissing the complaint and ordering the plaintiff to pay the defendant the following:

- a) P595,500.00 representing the share of the defendant from the lot plaintiff sold, plus legal interest until the amount is paid from date of demand;
- b) The amount of P100,000.00 as moral damages;
- c) P50,000.00 as and for attorney's fees; and,
- d) Cost of suit."

In due time, petitioner filed an appeal to the Court of Appeals.[5]

On September 25, 1998, the Court Appeals, through the Clerk of Court, issued a notice addressed to Atty. Carlos G. Nery, Jr., petitioner's counsel, requiring her as plaintiff-appellant to file within forty-five (45) days from receipt an appellant's brief, furnishing a copy of the notice to Atty. Eladio P. Samson, respondent's counsel.[6]

The notice was sent by registered mail to petitioner's counsel, Atty. Carlos G. Nery at the latter's address of record, 26 Masbate St., West Ave., 1100 Quezon City.[7] The notice was received by an office clerk of a realty firm with which Atty. Nery was sharing office. She was not an employee of petitioner's counsel and she did not note down the date of receipt.[8]

On November 25, 1998, petitioner filed with the Court of Appeals a motion for extension of time to file appellant's brief, asking for ninety (90) days from the expiry date within which to do so.[9]

On December 11, 1998, the Court of Appeals denied the motion for extension and accordingly dismissed the appeal for failure of the appellant to file brief within the reglementary period.[10]

On December 14, 1998, petitioner filed with the Court of Appeals her appellant's brief.[11] On December 22, 1998, petitioner filed with the Court of Appeals a motion for reconsideration of the denial and to admit appellant's brief.[12]

On January 21, 1999, respondent filed an opposition to the motion for reconsideration.[13]

On February 23, 1999, the Court of Appeals denied petitioner's motion for reconsideration.[14]

Hence, this appeal.[15]

The issue raised is whether or not the Court of Appeals acted with grave abuse of discretion in dismissing petitioner's appeal because of the late filing of appellant's brief due to counsel's mistake in the counting of the reglementary period from notice to file appellant's brief.

Technically, the Court of Appeals may dismiss an appeal for failure to file appellant's brief on time.[16] However, the dismissal is directory, not mandatory.[17] It is not the ministerial duty of the court to dismiss the appeal. "The failure of an appellant to file his brief within the time prescribed does not have the effect of dismissing the appeal automatically." [18] The court has discretion to dismiss or not to dismiss an appellant's appeal. It is a power conferred on the court, not a duty.[19] The "discretion must be a sound one, to be exercised in accordance with the tenets of justice and fair play, having in mind the circumstances obtaining in each case." [20] Technicalities, however, must be avoided. The law abhors technicalities that impede the cause of justice. The court's primary duty is to render or dispense justice.[21] "A litigation is not a game of technicalities." [22] "Law suits, unlike duels, are not to be won by a rapier's thrust. Technicality, when it deserts its proper office as an aid to justice and becomes its great hindrance and chief enemy, deserves scant consideration from courts." [23] Litigations must be decided on their merits and not on technicality.[24] Every party litigant must be afforded the amplest opportunity for the proper and just determination of his cause, free from the unacceptable plea of technicalities.[25] Thus, dismissal of appeals purely on technical grounds is frowned upon where the policy of the court is to encourage hearings of appeals on their merits and the rules of procedure ought not to be applied in a very rigid, technical sense; rules of procedure are used only to help secure, not override substantial justice.[26] It is a far better and more prudent course of action for the court to excuse a technical lapse and afford the parties a review of the case on appeal to attain the ends of justice rather than dispose of the case on technicality and cause a grave injustice to the parties, giving a false impression of speedy disposal of cases while actually resulting in more delay, if not a miscarriage of justice.

In the case before us, the notice to file appellant's brief was given to counsel of petitioner. The rules require the notice to file brief to be given to the party appellant.[27] The reason is that after taking an appeal, the party may change attorney for purposes of the appeal. Hence, the notice must be given to the party appellant. Thus, there was here a technical violation committed by the clerk of the appellate court that ought not to prejudice the appellant.

Moreover, the notice was sent by registered mail. This is, of course, permitted in the rules.[28] However, the mail matter must be received by the addressee or his duly authorized representative Service of papers which includes every written notice on a person who was not a clerk, employee or one in charge of the attorney's office, is invalid.[29] Here, the notice was received by an employee of a realty firm with which the counsel was sharing office. She was not an employee of petitioner's counsel. He was a solo practitioner.

In the higher interest of justice, considering that the delay in filing a motion for extension to file appellant's brief was only for nine (9) days, and normally, the Court of Appeals would routinely grant such extension, and the appellant's brief was actually filed within the period sought, the better course of action for the Court of Appeals

was to admit appellant's brief.

Lapses in the literal observance of a rule of procedure will be overlooked when they arose from an honest mistake, when they have not prejudiced the adverse party.[30] The Court can overlook the late filing of the motion for extension, if strict compliance with the rules would mean sacrificing justice to technicality.[31]

Consequently, we find that the Court of Appeals gravely abused its discretion in denying petitioner's motion for extension of time to file appellant's brief, and in dismissing the appeal.

WHEREFORE, the Court hereby REVERSES and SETS ASIDE the resolutions of the Court of Appeals dismissing the appeal. The Court remands the case to the Court of Appeals for further proceedings, and disposition of the appeal on its merits.

No costs.

SO ORDERED.

Puno, and Kapunan, JJ., concur.

Davide, Jr., C.J., (Chairman), on official leave.

Ynares-Santiago, J., no part.

[1] In CA-G. R. CV No. 60077, promulgated on December 11, 1998, Cosico, J., ponente, Luna and Magtolis, JJ., concurring, Petition, Annex "C", Rollo, pp. 33-34.

[2] Resolution, promulgated on February 23, 1999; Petition, Annex "F", Rollo, p. 26.

[3] Docketed as Civil Case No. 65605.

[4] Petition, pp. 2-3, Rollo, pp. 6-7.

[5] Docketed as CA-G. R. CV No. 60077.

[6] Petition, Annex "A", Rollo, p. 16.

[7] Ibid.

[8] Petition, pp. 5-6, Rollo, pp. 9-10.

[9] Petition, Annex "B", Rollo, p. 16.

[10] Petition, Annex "C", Rollo, pp. 17-18.

[11] Petition, p. 4, Rollo, p. 8.

[12] Petition, Annex "D", Rollo, pp. 19-22.

[13] Petition, Annex "E", Rollo, pp. 23-24.

[14] Petition, Annex "F", Rollo, p. 26.

[15] Filed on April 12, 1999, Petition, Rollo, pp. 5-14. On September 06, 1999, we gave due course to the petition, Rollo, pp. 42-43.

[16] Rule 50, Section 1 (e), 1997 Rules of Civil Procedure, as amended.

[17] *Catindig vs. Court of Appeals*, 88 SCRA 675, 680 [1979]; *Lopez vs. Court of Appeals*, 75 SCRA 401, 406 [1977].

[18] *Haberer vs. Court of Appeals*, 104 SCRA 534, 544 [1981], citing *Ordoveza vs. Raymundo*, 63 Phil. 275 [1936].

[19] *Catindig vs. Court of Appeals*, supra, Note 17; *Philippine National Bank vs. Philippine Milling Co., Inc.*, 26 SCRA 712, 715 [1969]; *Maqui vs. Court of Appeals*, 69 SCRA 368, 374 [1969].

[20] *Philippine National Bank vs. Philippine Milling Co., Inc.*, supra; *Maqui vs. Court of Appeals*, supra; *Haberer*

vs. Court of Appeals, *supra*, at p. 543; Gregorio vs. Court of Appeals, 72 SCRA 120 [1990]; Regalado, Remedial Law Compendium, Vol. I, 1999 ed., 570.

[21] *Alonso vs. Villamor*, 16 Phil. 315, 322 [1910]; *Aguinaldo vs. Aguinaldo*, 36 SCRA 137, 141 [1970]; *Canlas vs. Court of Appeals*, 164 SCRA 160, 180 [1988].

[22] *Alonso vs. Villamor*, *supra*; *Canlas vs. Court of Appeals*, *supra*, at p. 173.

[23] *Alonso vs. Villamor*, *supra*; *American Express International, Inc. vs. Intermediate Appellate Court*, 167 SCRA 209, 221 [1988]; *Canlas vs. Court of Appeals*, *supra*.

[24] *Tan Boon Bee & Co., Inc. vs. Judge Jarencio*, 163 SCRA 205, 213 [1988] citing *de las Alas vs. Court of Appeals*, 83 SCRA 200, 216 [1978]; *Nerves vs. Civil Service Commission*, 276 SCRA 610, 617 [1997].

[25] *Tan Boon Bee & Co., Inc. vs. Judge Jarencio*, *supra*, citing *Heirs of Ceferino Morales vs. Court of Appeals*, 67 SCRA 304, 310 [1975]; *A-One Feeds, Inc. vs. Court of Appeals*, 100 SCRA 590, 594 [1980].

[26] *American Home Insurance Co. vs. Court of Appeals*, 109 SCRA 180 [1981] concurring opinion, citing *Gregorio vs. Court of Appeals*, *supra*, Note 20; *Catindig vs. Court of Appeals*, *supra*, at p. 681, Note 17; *Nerves vs. Civil Service Commission*, *supra*, Note 24.

[27] See Rule 44, Sections 4, 7, 1997 Rules of Civil Procedure, as amended.

[28] Rule 13, Sec. 3, 1997 Rules of Civil Procedure, as amended.

[29] Rule 13, Sections 2, 4, 1997 Rules of Civil Procedure, as amended; *Tuazon vs. Molina*, 103 SCRA 365, 368 [1981].

[30] *Case and Hantz vs. Jugo*, 77 Phil. 517, 522 [1946]; *Maqui vs. Court of Appeals*, *supra*, Note 19.

[31] Cf. *Yong Chan Kim vs. People*, 193 SCRA 344 [1991].

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