

ANTONIO BORBON, AS REPRESENTED BY HIS BROTHER CANDIDO BORBON, GUARDIAN AD LITEM, PETITIONER, VS. THE COURT OF APPEALS, ERNESTO CATINDIG, SPOUSES RENATO SITAY AND PRINCESITA O. S...

G.R. No. 138495. December 09, 2004

Ponente: SANDOVAL-GUTIERREZ, J.

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SANDOVAL-GUTIERREZ, J.:

For review on certiorari are two Resolutions[1] of the Court of Appeals in CA-G.R. CV No. 57392, entitled “Antonio Borbon, represented by Candido Borbon, Guardian Ad Litem, Plaintiff-Appellant, versus Ernesto Catindig, Sps. Renato and Princesita Sitay, Amparo Investment Corp., represented by its President, Guillermo B. Francisco, Defendants-Appellees.”

The factual antecedents of this case are:

Antonio Borbon, petitioner, represented by his brother Candido Borbon, his guardian ad litem, is an incompetent, having been found to be suffering from chronic schizophrenia by the then Court of First Instance (CFI) of Rizal in Sp. Proc. No. 924 on January 29, 1957. The Philippine National Bank (PNB) was appointed as his guardian. At that time, he was the owner of a 277-square meter lot in Makati City covered by Transfer Certificate of Title (TCT) No. 49221 issued on January 29, 1957 by the Registry of Deeds of Rizal.

On September 19, 1957, the CFI issued an Order declaring petitioner competent and terminating PNB’s guardianship over him. On July 7, 1958, this Order was duly annotated on petitioner’s T.C.T. On the same day, he sold one-half (½) of his lot to Mariano Sitay.

On February 7, 1978, Mariano had his ½ portion subdivided into two lots: Lot 8-A and Lot 8-B. He sold Lot 8-A to respondent Renato Sitay who mortgaged the same to respondent Amparo Investment Corporation. Later, Mariano also sold his remaining lot, Lot 8-B, to respondent Ernesto Catindig.

On May 23, 1997, petitioner, through his brother, Candido Borbon, filed with the Regional Trial Court, Branch 145, Makati City a complaint for reconveyance of property against spouses Renato and Princesita Sitay, Amparo Investment Corporation and Ernesto Catindig, docketed as Civil Case No. 97-1135. Petitioner, in his complaint, alleged that the contracts of sale and mortgage of the subject property are all void because of lack of consent on his part as he was then suffering from acute schizophrenia. On June 9, 1997, the trial court appointed Candido Borbon as petitioner’s guardian ad litem.

Amparo Investment Corporation filed a motion to dismiss the complaint on the grounds of lack of sufficient cause of action and prescription.

In a Resolution dated September 24, 1997, the trial court granted the motion, holding that the action for reconveyance has prescribed.

On October 11, 1997, petitioner interposed an appeal to the Court of Appeals, docketed as CA-G.R. CV No. 57392.

On May 11, 1998, petitioner received a copy of the Order of the Court of Appeals requiring him to file the appellant's brief within forty-five (45) days from notice.

Records show that petitioner had up to June 25, 1998 within which to file the required brief.

On June 23, July 24 and August 15, 1998, petitioner filed separate motions for extension, or a total of 60 days, within which to file the appellant's brief.

On September 22, 1998, the Court of Appeals issued a Resolution allowing appellant to file his brief until September 7, 1998.

On December 9, 1998, the Court of Appeals issued the following Resolution:

For failure of plaintiff-appellant to file his brief within the extended period, the instant appeal is hereby considered ABANDONED and accordingly DISMISSED pursuant to Sec. 1 (e), Rule 50 of the 1997 Rules of Civil Procedure.

SO ORDERED.[2]

Petitioner did not file a motion for reconsideration of this Order.

On February 16, 1999, petitioner filed by registered mail a motion to admit brief attached thereto. Counting from September 7, 1998, the last day allowed by the Appellate Court within which to file the appellant's brief, its filing on February 16, 1999 was late by 159 days.

On March 9, 1999, the Court of Appeals issued a Resolution[3] denying petitioner's motion to admit brief, thus:

It appearing that our resolution dated 09 December 1998 (dismissing the appeal) was returned to the Court unclaimed on 21 January 1999, for which reason a copy of the said resolution was re-sent to counsel of the appellant by personal service which was received on 01 February 1999, so that the last day to file a motion for reconsideration of the resolution of dismissal was on 16 February 1999, but no motion for reconsideration was ever filed within the reglementary period, instead on 17 February 1999, plaintiff-appellant filed a motion to admit appellant's brief, it is self-evident that the said motion cannot be entertained as the order of dismissal has become final and executory.

WHEREFORE, the motion to admit brief filed by appellant dated 15 February is hereby DENIED.

SO ORDERED.

The core issue here is whether the Court of Appeals acted with grave abuse of discretion in dismissing the appeal for petitioner's failure to file the appellant's brief seasonably.

Section 3, Rule 41 of the 1997 Rules of Civil Procedure provides:

SEC. 3. Period of ordinary appeal. – The appeal shall be taken within fifteen (15) days from notice of judgment or final order appealed from. Where a record on 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.

The period of appeal shall be interrupted by a timely motion for new trial or reconsideration. No motion for new trial or reconsideration shall be allowed.

The foregoing Rule should be read in consonance with Section 7, Rule 44, which states:

SEC. 7. Appellant's brief. – It shall be the duty of the appellant to file with the court, within forty-five (45) days from receipt of notice of the clerk that all the evidence, oral and documentary, are attached to the record, seven (7) copies of his legibly typewritten, mimeographed or printed brief with proof of service of two (2) copies thereof upon the appellee.

Courts have the power and jurisdiction to grant an extension of time to perfect the appeal with the filing of the appellant's brief, but the motion seeking an extension of time to file an appellant's brief must be filed within the period to perfect an appeal.

Here, the Appellate Court, upon petitioner's timely motion, allowed him to file the appellant's brief up to September 7, 1998. But he filed the same only on February 2, 1999, or after a lapse of 159 days.

We frown upon lawyer's practice of repeatedly seeking extensions of time to file pleadings and thereafter simply let the period lapse without submitting any pleading or even any explanation or manifestation of their failure.[4] Atty. Rogelio Padilla, the managing partner of the law firm handling this case for petitioner, manifested that the reason for the failure of Atty. Samuel Marquez, the assigned lawyer, to submit the required appellant's brief, "was the great burden of guilt that Atty. Marquez was carrying over the death of his wife – that rendered him confused and debilitated from performing his work as a lawyer."

We fail to see any good reason why Atty. Marquez failed to transfer the case to another lawyer in the same office. We likewise fail to understand why the partners therein did not properly supervise and monitor the work of Atty. Marquez. Indeed, the delay is, by any standard, simply inexcusable.

Rule 12.03 of the Code of Professional Responsibility provides that "A lawyer shall not, after obtaining extensions of time to file pleadings, memoranda or briefs, let the period lapse

without submitting the same or offering an explanation for his failure to do so."

Canon 18 likewise provides that "A lawyer shall serve his client with competence and diligence." And Canon 19 states that "A lawyer shall represent his client with zeal within the bounds of law."

In *Galen vs. Paguirigan*,[5] we held:

"An attorney is bound to protect his client's interest to the best of his ability and with utmost diligence. A failure to file brief for his client certainly constitutes inexcusable negligence on his part. The respondent has indeed committed a serious lapse in the duty owed by him to his client as well as to the Court not to delay litigation and to aid in the speedy administration of justice."

Undoubtedly, petitioner's counsel failed to exercise due diligence in protecting the interest of his client, to the latter's prejudice. His lack of devotion to duty is so gross and palpable which warrants disciplinary action.

WHEREFORE, the petition is DENIED. The assailed Resolutions of the Court of Appeals dated December 9, 1998 and March 9, 1999 in CA-G.R. CV No. 57392 are AFFIRMED. Costs against petitioner.

Atty. Manuel Marquez, counsel for petitioner, is hereby required to show cause in writing, within ten (10) days from notice, why he should not be held administratively liable for his acts and omissions described in this Decision.

SO ORDERED.

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

[1] Penned by Associate Justice Buenaventura J. Guerrero (ret.) and concurred in by Associate Justices Portia Aliño-Hormachuelos and Presbitero J. Velasco (now Court Administrator), Rollo at 23, 25.

[2] Id. at 25.

[3] Id. at 23.

[4] Edrial vs. Quilat-Quilat, G.R. No. 133625, September 6, 2000, 339 SCRA 760, 770 citing Achacoso vs. Court of Appeals, 51 SCRA 424 (1973); Casals vs. Cusi, Jr., 52 SCRA 58 (1973).

[5] Adm. Case No. 5558, March 7, 2002, 378 SCRA 527, citing Tan vs. Lapak,, 350 SCRA 74 (2001), with citations.

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