

DOLORES FAJARDO, PETITIONER, VS. COURT OF APPEALS AND REXIE EFREN A. BUGARING, RESPONDENTS.

G.R. No. 140356. March 20, 2001

Ponente: PUNO, J.

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PUNO, J.:

This is a petition for review on certiorari of the decision of the Court of Appeals dated February 4, 1999 and its resolution dated September 30, 1999 in CA-G.R. SP No. 49866 entitled "Dolores S. Fajardo vs. Hon. Percival M. Lopez, RTC, Branch 78, Quezon City, and Rexie Efren A. Bugaring."

This case originated from a complaint filed by respondent Rexie Efren A. Bugaring before the Regional Trial Court of Quezon City against petitioner Dolores Fajardo for collection of attorney's fees. The complaint alleged that petitioner engaged the services of respondent to represent her in several civil and criminal cases pending before various courts. However, despite successful termination of some of these cases and subsequent demands made by respondent upon petitioner, the latter refused to pay respondent's fees. Respondent prayed that petitioner be ordered to pay his unpaid attorney's fees and other legal service fees, plus interest, moral damages, exemplary damages, and other litigation expenses and costs.[1]

Respondent was allowed to present evidence *ex parte* after the trial court declared petitioner as in default for failure to appear during the pre-trial.

After the presentation of evidence, the trial court rendered a decision dated October 15, 1997 in favor of respondent. The dispositive portion stated:

"ACCORDINGLY, judgment is hereby rendered in favor of plaintiff, Efren Rexie Bugaring and against defendant Dolores Fajardo, ordering the latter to pay plaintiff in the amount of THREE MILLION FIVE HUNDRED THIRTY TWO THOUSAND ONE HUNDRED SEVENTY (P3,532,170.00) PESOS for plaintiff's attorney's fees covering Civil Case No. B-3472 and Civil Case No. B-3896 plus legal interest reckoned from the time of the filing of this instant case, as actual and compensatory damages; plus costs of suit.

SO ORDERED."[2]

On December 10, 1997, respondent filed before the trial court a motion for correction of judgment.

On February 3, 1998, petitioner, alleging that she received a copy of the trial court's decision on January 19, 1998, filed a notice of appeal.

On the same day, the trial court denied the notice of appeal for being premature, considering that there was a pending motion for correction of the decision dated October 15, 1997.[3]

On February 13, 1998, the trial court issued an order granting respondent's motion for correction. It revised the dispositive portion of the decision which now reads:

"WHEREFORE, judgment is hereby rendered in favor of plaintiff, Efren C. Bugaring and against defendant Dolores Fajardo, ordering the latter to pay plaintiff in the amount of THREE MILLION FIVE HUNDRED THIRTY TWO THOUSAND ONE HUNDRED SEVENTY (P3,532,170.00) PESOS, Philippine Currency, for plaintiff's unpaid attorney's fees covering the legal cases which he handled in favor of defendant, as actual and compensatory damages; plus costs of suit.

SO ORDERED."[4]

Respondent subsequently filed a motion for issuance of a writ of execution which was granted by the trial court in its resolution dated September 28, 1998.[5]

On December 11, 1998, petitioner filed before the Court of Appeals a petition for certiorari seeking the annulment of: (1) Order dated February 3, 1998, (2) Order dated February 13, 1998, and (3) Resolution dated September 28, 1998, all issued by the trial court. She contended that the trial court acted with grave abuse of discretion in holding that the notice of appeal was premature because of the pendency of respondent's motion for correction. She argued that said motion for correction was a mere scrap of paper because first, she was not furnished a copy thereof, and second, it contained no notice of hearing. She claimed that the filing of the notice of appeal perfected the appeal and consequently, the trial court no longer had jurisdiction over the case when it issued the order dated February 13, 1998 and resolution dated September 28, 1998.[6]

The Court of Appeals dismissed the petition and affirmed the resolution of the trial court dated September 28, 1998 directing the issuance of a writ of execution. It held that the decision of the trial court became final and executory when petitioner failed to file a notice of appeal after she received a copy of the order amending its dispositive portion. The notice of appeal filed by petitioner on February 3, 1998 was not sufficient to elevate the case to the Court of Appeals as it was filed prematurely due to the pendency of the motion for correction filed by respondent. The Court of Appeals further ruled that even if the court considered the notice of appeal as an appeal from the original decision dated October 15, 1997, the same should still be dismissed for being late. Relying on the certification issued by Ms. Melina D. Oliva, Chief of Records Section, Philippine Postal Corporation, stating that a copy of the decision was received by petitioner on December 15, 1997, the Court of Appeals ruled that the notice of appeal submitted by petitioner on February 3, 1998 was filed out of time.[7]

The Court of Appeals likewise denied petitioner's motion for reconsideration.[8]

Petitioner filed the instant petition with the following assignment of errors:

"I.

The Court of Appeals committed reversible error in finding that Branch 78 of the Regional Trial Court of Quezon City acted within its jurisdiction in issuing an amended decision after perfection of the appeal.

II.

The Court of Appeals committed reversible error in finding that Branch 78 of the Regional Trial Court of Quezon City acted within its jurisdiction in issuing Orders dated February 3 and 13, 1998 and Resolution dated September 28, 1998 after perfection of the appeal."[9]

The petition is impressed with merit.

The Court of Appeals erred in ruling that the decision of the trial court dated October 15, 1997 as amended by its order dated February 13, 1998 became final and executory when petitioner failed to appeal therefrom within the reglementary period, and subsequently sustaining the validity of the order of execution issued by the trial court. It appears from the record that petitioner filed a notice of appeal from the decision of the lower court dated October

15, 1997 on February 3, 1998.[10] The pendency of petitioner's appeal tolled the finality of the assailed decision. Consequently, the resolution of the trial court ordering the execution of the assailed judgment was without basis.

The lower court ruled that petitioner's notice of appeal was premature due to the pendency of respondent's motion for correction of judgment. It subsequently issued an order amending the original decision. We, however, find that these orders of the trial court were rendered without jurisdiction. These orders were issued in consideration of the motion for correction of judgment filed by respondent with the trial court. It appears, however, that said motion was defective as it did not have a proper notice of hearing. It did not specify the date and time of the hearing on the motion. This fact was never controverted by respondent. Such defect reduced the motion to a mere scrap of paper which may not be taken cognizance of by the court.

The Rules of Court require that every written motion be set for hearing by the movant, except those motions which the court may act upon without prejudicing the rights of the adverse party. The notice of hearing must be addressed to all parties and must specify the time and date of the hearing. Sections 4 and 5 of Rule 15 of the 1997 Rules of Civil Procedure provide:

"Sec. 4. Hearing of motion. -- Except for motions which the court may act upon without prejudicing the rights of the adverse party, every written motion shall be set for hearing by the applicant.

Every written motion required to be heard and the notice of the hearing thereof shall be served in such a manner as to ensure its receipt by the other party at least three (3) days before the date of hearing, unless the court for good cause sets the hearing on shorter notice.

Sec. 5. Notice of hearing. -- The notice of hearing shall be addressed to all parties concerned, and shall specify the time and date of the hearing which must not be later than ten (10) days after the filing of the motion."

A motion without notice of hearing is pro forma, a mere scrap of paper. It presents no question which the court could decide. The court has no reason to consider it and the clerk has no right to receive it. The rationale behind the rule is plain: unless the movant sets the time and place of hearing, the court will be unable to determine whether the adverse party agrees or objects to the motion, and if he objects, to hear him on his objection.[11] The objective of the rule is to avoid a capricious change of mind in order to provide due process to both parties and ensure impartiality in the trial.[12]

Hence, the orders dated February 3, 1998 and February 13, 1998 issued by the trial court based on a pro forma motion are of no force and effect.

Respondent asserts that petitioner's appeal was ineffective as she failed to pay the appeal docket fee. The argument is not well-taken. A party's omission to pay the appeal docket fee does not automatically result in the dismissal of the appeal. The failure to pay the appellate court docket fee within the reglementary period confers a discretionary, and not mandatory, power to dismiss the proposed appeal. 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 great deal of circumspection, considering all attendant circumstances. Said discretion must be exercised wisely and prudently, never capriciously, with a view to substantial justice.[13]

As regards the timeliness of petitioner's notice of appeal, we find that the same was properly filed within the reglementary period. While it is true that the Chief of the Records Section of the Quezon City Central Post Office did certify that a copy of the decision was received by a certain Gloria Fajardo at petitioner's given address on December 15, 1997,[14] the registry return receipt shows that a copy of the decision was received by petitioner's counsel only on January 19, 1998.[15] The appeal should be taken within fifteen (15) days from notice of the judgment appealed from.[16] The fifteen-day period for filing the appeal should be counted from the date when

petitioner's counsel received a copy of said judgment because that is the effective service of the decision, not the service upon petitioner herself. When a party is represented by counsel, service of process must be made on counsel, not on the party.[17] thus, counting from the date of receipt of the decision by petitioner's counsel on January 19, 1998, we find that the notice of appeal filed on February 3, 1998 was timely.

IN VIEW WHEREOF, the petition is GRANTED. The Decision of the Court of Appeals dated February 4, 1999 and its Resolution dated September 30, 1999 are REVERSED and SET ASIDE. The Order dated February 3, 1998, Order dated February 13, 1998, and Resolution dated September 28, 1998, all issued by the trial court are likewise SET ASIDE. Let this case be REMANDED to the trial court for proper disposition.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Kapunan, Pardo, and Ynares-Santiago, JJ., concur.

[1] Complaint, Rollo, pp. 76-86.

[2] Decision penned by Judge Percival Mandap Lopez, Rollo, pp. 37-38.

[3] Order dated February 3, 1998, Rollo, p. 41.

[4] Order dated February 13, 1998, Rollo, pp. 42-43.

[5] Rollo, pp. 44-45.

[6] Rollo, pp. 52-62.

[7] Decision dated February 4, 1999 penned by Justice Eugenio S. Labitoria, Rollo, pp. 23-29.

[8] Resolution dated September 30, 1999, Rollo, p. 31.

[9] Rollo, p. 7.

[10] Rollo, p. 40.

[11] People vs. Court of Appeals, 296 SCRA 418 (1998).

[12] Meris vs. Ofilada, 293 SCRA 606 (1998).

[13] Santos vs. Court of Appeals, 253 SCRA 632 (1996).

[14] Rollo, p. 109.

[15] Rollo, p. 39.

[16] Section 3, Rule 41, 1997 Rules of Civil Procedure.

[17] Section 2, Rule 13, 1997 Rules of Civil Procedure; NIAConsult, Inc. vs. NLRC, 266 SCRA 17 (1997).

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