

YUSUKE FUKUZUMI, PETITIONER, VS. SANRITSU GREAT INTERNATIONAL CORPORATION, TETSUJI MARUYAMA, AKIRA KUBOTA, YUKIO MATSUZAKA, RESPONDENTS.

G.R. No. 140630. August 12, 2004

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

This is a petition for review on certiorari under Rule 45 of the Rules of Court of the Order[1] of the Regional Trial Court of Parañaque City, Branch 258, dated August 5, 1999 in Civil Case No. 97-0237 denying the petition of Yusuke Fukuzumi for relief from the Order[2] of the court dated June 2, 1999 denying his notice of appeal of the decision of the trial court against him and consequently dismissing his appeal.

The records show that on January 26, 1999, the trial court rendered judgment[3] in Civil Case No. 97-0237 in favor of the plaintiffs Sanritsu Great International Corporation, Tetsuji Maruyama, Akira Kubota and Yukio Matsuzaka, ordering defendant Yusuke Fukuzumi to pay to the plaintiffs sums of money. The fallo of the decision reads:

WHEREFORE, premises considered, judgment is hereby rendered in favor of plaintiff Sanritsu Great International Corporation and against defendant YUSUKE FUKUZUMI who is hereby ordered to pay said plaintiff the following, to wit:

- The amount of PhP90,000.00 representing two (2) month's rental deposit;
- The amount of PhP112,500.00 representing unused rental payments for two-and-a-half (2-½) months;
- The amount of PhP16,500.00 for the cost of the pressure pump and overhead tank;
- The amount of PhP8,000.00 as cost of hauling;
- The amount of PhP137,148.15 as actual damages representing plaintiffs' hotel bills at Traders Hotel and Mount Sea Resort Hotel and Restaurant;
- The amount of PhP50,000.00 as and way of attorney's fees; and
- To pay the costs of suit.

SO ORDERED.[4]

The defendant received a copy of the decision on February 9, 1999 and on February 23, 1999, filed his motion for reconsideration of the decision. On April 27, 1999, the trial court issued an Order denying the defendant's motion. The latter received a copy of the order on May 5, 1999. Instead of perfecting his appeal on May 6, 1999, he filed his notice of appeal only on May 7, 1999, or one day beyond the reglementary period therefor. The court issued an Order on June 2, 1999 denying the defendant's notice of appeal. The defendant received the court's order on June 10, 1999. On June 22, 1999, the defendant filed a Verified Petition for Relief from the order of the

trial court denying his notice of appeal.

In his petition for relief, the petitioner averred that his counsel suffered a high blood pressure on May 6, 1999 which impelled said counsel to rest for three days, upon the advice of his doctor, thus, hindered him from filing the notice of appeal on May 6, 1999. The petitioner appended to his petition a verified Medical Certificate issued by Dr. Ma. Lakambini Cruz-Crespo dated June 18, 1999, viz:

MEDICAL CERTIFICATE

To Whom It May Concern:

This is to certify that I have seen and examined Atty. Jonathan Polines, from Las Piñas on May 6, 1999 with the chief complaint of headache of two days duration.

Impression: Essential hypertension, moderate.

The patient was advised to rest for at least 3 days (May 6-8, 1999).

He was given Nifedipine (Calcibloc).

(Sgd). MA. LAKAMBINI CRUZ-CRESPO, M.D.

SUBSCRIBED AND SWORN to before me this 18th day of June 1999, affiant exhibited to me his CTC No. 18652403 issued at Las Piñas City on August 7, 1998.

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Series of 1999.[5]

On August 5, 1999, the trial court issued an Order denying the defendant's petition on the ground that Section 2, Rule 38 of the Rules of Court was not applicable. The defendant's motion for reconsideration of the order was denied by the court per its Order dated October 22, 1999.

The defendant, now the petitioner, filed his petition for review on certiorari with this Court alleging that:

(A) THE COURT A QUO HAS DECIDED A QUESTION OF SUBSTANCE IN A WAY NOT IN ACCORD WITH LAW WHEN IT RULED THAT THE PETITIONER'S PETITION FOR RELIEF FROM DENIAL OF APPEAL FILED PURSUANT TO SECTION 2, RULE 38 OF THE 1997 RULES OF CIVIL PROCEDURE IS NOT APPLICABLE SINCE THE DENIAL OF THE APPEAL WAS BASED ON SECTION 3, RULE 41 IN RELATION TO SECTION 2, RULE 22 OF THE 1997 RULES OF CIVIL PROCEDURE.

(B) THE COURT A QUO HAS SO FAR DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS WHEN, IN DENYING THE PETITION FOR RELIEF FROM DENIAL OF APPEAL, IT DID NOT RULE ON THE MERIT OF THE GROUNDS RAISED THEREIN BUT, INSTEAD, SUBSTITUTED ITS OWN SPECULATION BY SAYING THAT THE PETITION FOR RELIEF FROM DENIAL OF APPEAL IS ALLEGEDLY MORE OF AN AFTERTHOUGHT.[6]

In his comment on the petition, the respondents averred that (a) the petitioner cannot invoke Rule 38, Section 2 of the Rules of Court which applies only to negligence of a party and not of his counsel; (b) by his negligence, the petitioner failed to avail of other remedies other than filing his petition for relief from the June 22, 1999 Order of the trial court; and (c) the alleged high blood pressure of the petitioner's counsel is merely an afterthought.

The petition is denied.

The remedy of a party whose notice of appeal is denied by the trial court, although such notice is filed within the period therefor, is to file a motion for reconsideration of such order and, if the court denies such motion, to file a petition for certiorari under Rule 65 of the Rules of Court. If the party is prevented by fraud, accident, mistake or excusable negligence from filing his notice of appeal within the reglementary period therefor, his remedy is to file a petition for relief, in the same case, from the order of the trial court denying his notice of appeal. This is provided in Section 2, Rule 38 of the 1997 Rules of Civil Procedure, which reads:

SEC. 2. Petition for relief from denial of appeal.— When a judgment or final order is rendered by any court in a case, and a party thereto, by fraud, accident, mistake, or excusable negligence, has been prevented from taking an appeal, he may file a petition in such court and in the same case praying that the appeal be given due course.

Such party is not entitled to relief under Rule 38, Section 2 of the Rules of Court if he was not prevented from filing his notice of appeal by fraud, accident, mistake or excusable negligence. Such relief will not be granted to a party who seeks to be relieved from the effects of the judgment when the loss of the remedy of law was due to his own negligence, or a mistaken mode of procedure for that matter; otherwise, the petition for relief will be tantamount to reviving the right of appeal which has already been lost either because of inexcusable negligence or due to a mistake of procedure by counsel.[7]

If the petition for relief is denied by the trial court, the remedy of the petitioner is to file a petition for certiorari under Rule 65 of the 1997 Rules of Civil Procedure, which reads:

SECTION 1. Subject of appeal.— An appeal may be taken from a judgment or final order that completely disposes of the case, or of a particular matter therein when declared by these Rules to be appealable.

No appeal may be taken from:

- (a) An order denying a motion for new trial or reconsideration;
- (b) An order denying a petition for relief or any similar motion seeking relief from judgment;
- (c) An interlocutory order;
- ...

In all the above instances where the judgment or final order is not appealable, the aggrieved party may file an appropriate civil action under Rule 65. (Underscoring supplied)

The petitioner's failure to file his notice of appeal within the period therefor is far from excusable. It, rather, shows negligence no less. The medical certificate issued to his counsel shows that he was examined by Dr. Lakambini Cruz-Crespo on May 6, 1999 and was advised to rest for three days from May 6, 1999 or until May 8, 1999. The petitioner would like the trial court and this Court to believe that his counsel was unable to file the notice of appeal on or before May 6, 1999 because he was even advised to take a rest for three days. But his counsel was able, well enough, to prepare and file the notice of appeal on May 7, 1999 when he was supposed to be resting. The petitioner even failed to allege in his notice of appeal that the same was filed one day late because his counsel was suffering from high blood pressure on May 6, 1999. It was only after the petitioner received the order of the trial court denying his notice of appeal and filed his petition for relief on June 22, 1999 did he allege that his counsel was suffering from high blood pressure on May 6, 1999. It was only on June 18, 1999 that the petitioner secured a medical certificate from Dr. Crespo.

Thus, we are not convinced by the petitioner's claim that his counsel was suffering from high blood pressure on May 6, 1999, which prevented him from filing said notice of appeal on said date. Said allegation is a mere afterthought to cover up his and his own counsel's collective negligence. It is settled that clients are bound by the mistakes, negligence and omission of their counsel.[8]

It bears stressing that perfection of an appeal in the manner and within the period prescribed by law is not only mandatory but jurisdictional as well and failure to perfect an appeal has the effect of rendering the judgment or resolution final and executory.[9] After all, 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.[10]

While we have ruled that delay in the filing of a notice of appeal does not justify the dismissal of the appeal, however, the petitioner has not shown any exceptional circumstances justifying a reversal of the assailed order of the trial court and the reinstatement of his appeal.

IN LIGHT OF ALL THE FOREGOING, the petition is DENIED for lack of merit.

SO ORDERED.

Puno, (Chairman), Austria-Martinez, Tinga, and Chico-Nazario, JJ., concur.

[1] Annex “H,” Rollo, p. 57.

[2] Annex “E,” Id. at 42.

[3] Annex “A,” Rollo, pp. 20-27.

[4] Rollo, pp. 26-27.

[5] Id. at 52.

[6] Id. at 13.

[7] *Ibabao vs. Intermediate Appellate Court*, 150 SCRA 76 (1987).

[8] *Jose vs. Court of Appeals*, 399 SCRA 83 (2003).

[9] *Manipor vs. Ricafort*, 407 SCRA 298 (2003).

[10] *Republic vs. Court of Appeals*, 322 SCRA 81 (2000).

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