

DOMINGO NEYPES, LUZ FAUSTINO, ROGELIO FAUSTINO, LOLITO VICTORIANO, JACOB OBANIA AND DOMINGO CABACUNGAN, PETITIONERS, VS. HON. COURT OF APPEALS, HEIRS OF BERNARDO DEL MUNDO, NAME...

G.R. NO. 141524. September 14, 2005

Ponente: CORONA, J.

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CORONA, J.

Petitioners Domingo Neypes, Luz Faustino, Rogelio Faustino, Lolito Victoriano, Jacob Obania and Domingo Cabacungan filed an action for annulment of judgment and titles of land and/or reconveyance and/or reversion with preliminary injunction before the Regional Trial Court, Branch 43, of Roxas, Oriental Mindoro, against the Bureau of Forest Development, Bureau of Lands, Land Bank of the Philippines and the heirs of Bernardo del Mundo, namely, Fe, Corazon, Josefa, Salvador and Carmen.

In the course of the proceedings, the parties (both petitioners and respondents) filed various motions with the trial court. Among these were: (1) the motion filed by petitioners to declare the respondent heirs, the Bureau of Lands and the Bureau of Forest Development in default and (2) the motions to dismiss filed by the respondent heirs and the Land Bank of the Philippines, respectively.

In an order dated May 16, 1997, the trial court, presided by public respondent Judge Antonio N. Rosales, resolved the foregoing motions as follows: (1) the petitioners' motion to declare respondents Bureau of Lands and Bureau of Forest Development in default was granted for their failure to file an answer, but denied as against the respondent heirs of del Mundo because the substituted service of summons on them was improper; (2) the Land Bank's motion to dismiss for lack of cause of action was denied because there were hypothetical admissions and matters that could be determined only after trial, and (3) the motion to dismiss filed by respondent heirs of del Mundo, based on prescription, was also denied because there were factual matters that could be determined only after trial.[1]

The respondent heirs filed a motion for reconsideration of the order denying their motion to dismiss on the ground that the trial court could very well resolve the issue of prescription from the bare allegations of the complaint itself without waiting for the trial proper.

In an order[2] dated February 12, 1998, the trial court dismissed petitioners' complaint on the ground that the action had already prescribed. Petitioners allegedly received a copy of the order of dismissal on March 3, 1998 and, on the 15th day thereafter or on March 18, 1998, filed a motion for reconsideration. On July 1, 1998, the trial court issued another order dismissing the motion for reconsideration[3] which petitioners received on July 22, 1998. Five days later, on July 27, 1998, petitioners filed a notice of appeal[4] and paid the appeal fees on August 3, 1998.

On August 4, 1998, the court a quo denied the notice of appeal, holding that it was filed eight days late.[5] This

was received by petitioners on July 31, 1998. Petitioners filed a motion for reconsideration but this too was denied in an order dated September 3, 1998.[6]

Via a petition for certiorari and mandamus under Rule 65 of the 1997 Rules of Civil Procedure, petitioners assailed the dismissal of the notice of appeal before the Court of Appeals.

In the appellate court, petitioners claimed that they had seasonably filed their notice of appeal. They argued that the 15-day reglementary period to appeal started to run only on July 22, 1998 since this was the day they received the final order of the trial court denying their motion for reconsideration. When they filed their notice of appeal on July 27, 1998, only five days had elapsed and they were well within the reglementary period for appeal.[7]

On September 16, 1999, the Court of Appeals (CA) dismissed the petition. It ruled that the 15-day period to appeal should have been reckoned from March 3, 1998 or the day they received the February 12, 1998 order dismissing their complaint. According to the appellate court, the order was the "final order" appealable under the Rules. It held further:

Perforce the petitioners' tardy appeal was correctly dismissed for the (P)erfection of an appeal within the reglementary period and in the manner prescribed by law is jurisdictional and non-compliance with such legal requirement is fatal and effectively renders the judgment final and executory.[8]

Petitioners filed a motion for reconsideration of the aforementioned decision. This was denied by the Court of Appeals on January 6, 2000.

In this present petition for review under Rule 45 of the Rules, petitioners ascribe the following errors allegedly committed by the appellate court:

I

THE HONORABLE COURT OF APPEALS ERRED IN DISMISSING THE PETITIONERS' PETITION FOR CERTIORARI AND MANDAMUS AND IN AFFIRMING THE ORDER OF THE HON. JUDGE ANTONIO N. ROSALES WHICH DISMISSED THE PETITIONERS' APPEAL IN CIVIL CASE NO. C-36 OF THE REGIONAL TRIAL COURT, BRANCH 43, ROXAS, ORIENTAL MINDORO, EVEN AFTER THE PETITIONERS HAD PAID THE APPEAL DOCKET FEES.

II

THE HONORABLE COURT OF APPEALS LIKEWISE ERRED IN RULING AND AFFIRMING THE DECISION OR ORDER OF THE RESPONDENT HON. ANTONIO M. ROSALES THAT PETITIONERS' APPEAL WAS FILED OUT OF TIME WHEN PETITIONERS RECEIVED THE LAST OR FINAL ORDER OF THE COURT ON JULY 22, 1998 AND FILED THEIR NOTICE OF APPEAL ON JULY 27, 1998 AND PAID THE APPEAL DOCKET FEE ON AUGUST 3, 1998.

III

THE HONORABLE COURT OF APPEALS FURTHER ERRED IN RULING THAT THE WORDS "FINAL ORDER" IN SECTION 3, RULE 41, OF THE 1997 RULES OF CIVIL PROCEDURE WILL REFER TO THE [FIRST] ORDER OF RESPONDENT JUDGE HON. ANTONIO M. MORALES DATED FEBRUARY 12, 1998 INSTEAD OF THE LAST AND FINAL ORDER DATED JULY 1, 1998 COPY OF WHICH WAS RECEIVED BY PETITIONERS THROUGH COUNSEL ON JULY 22, 1998.

IV.

THE HONORABLE COURT OF APPEALS FINALLY ERRED IN FINDING THAT THE DECISION IN THE CASE OF *DENSO, INC. V. IAC*, 148 SCRA 280, IS APPLICABLE IN THE INSTANT CASE

THEREBY IGNORING THE PECULIAR FACTS AND CIRCUMSTANCES OF THIS CASE AND THE FACT THAT THE SAID DECISION WAS RENDERED PRIOR TO THE ENACTMENT OF THE 1997 RULES OF CIVIL PROCEDURE.[9]

The foregoing issues essentially revolve around the period within which petitioners should have filed their notice of appeal.

First and foremost, the right to appeal is neither a natural right nor 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. Thus, one who seeks to avail of the right to appeal must comply with the requirements of the Rules. Failure to do so often leads to the loss of the right to appeal.[10] The period to appeal is fixed by both statute and procedural rules. BP 129,[11] as amended, provides:

Sec. 39. Appeals. – The period for appeal from final orders, resolutions, awards, judgments, or decisions of any court in all these 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 (48) forty-eight hours from the notice of judgment appealed from. x x x

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

SEC. 3. Period of ordinary appeal. — The appeal shall be taken within fifteen (15) days from the notice of the 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 the notice of judgment or final order.

The period to appeal shall be interrupted by a timely motion for new trial or reconsideration. No motion for extension of time to file a motion for new trial or reconsideration shall be allowed. (emphasis supplied)

Based on the foregoing, an appeal should be taken within 15 days from the notice of judgment or final order appealed from. A final judgment or order is one that finally disposes of a case, leaving nothing more for the court to do with respect to it. It is an adjudication on the merits which, considering the evidence presented at the trial, declares categorically what the rights and obligations of the parties are; or it may be an order or judgment that dismisses an action.[12]

As already mentioned, petitioners argue that the order of July 1, 1998 denying their motion for reconsideration should be construed as the "final order," not the February 12, 1998 order which dismissed their complaint. Since they received their copy of the denial of their motion for reconsideration only on July 22, 1998, the 15-day reglementary period to appeal had not yet lapsed when they filed their notice of appeal on July 27, 1998.

What therefore should be deemed as the "final order," receipt of which triggers the start of the 15-day reglementary period to appeal — the February 12, 1998 order dismissing the complaint or the July 1, 1998 order dismissing the MR?

In the recent case of *Quelnan v. VHF Philippines, Inc.*,^[13] the trial court declared petitioner Quelnan non-suited and accordingly dismissed his complaint. Upon receipt of the order of dismissal, he filed an omnibus motion to set it aside. When the omnibus motion was filed, 12 days of the 15-day period to appeal the order had lapsed. He later on received another order, this time dismissing his omnibus motion. He then filed his notice of appeal. But this was likewise dismissed — for having been filed out of time.

The court a quo ruled that petitioner should have appealed within 15 days after the dismissal of his complaint since this was the final order that was appealable under the Rules. We reversed the trial court and declared that it was the denial of the motion for reconsideration of an order of dismissal of a complaint which constituted the final order as it was what ended the issues raised there.

This pronouncement was reiterated in the more recent case of *Apuyan v. Haldeman et al.*[14] where we again considered the order denying petitioner Apuyan's motion for reconsideration as the final order which finally disposed of the issues involved in the case.

Based on the aforementioned cases, we sustain petitioners' view that the order dated July 1, 1998 denying their motion for reconsideration was the final order contemplated in the Rules.

We now come to the next question: if July 1, 1998 was the start of the 15-day reglementary period to appeal, did petitioners in fact file their notice of appeal on time?

Under Rule 41, Section 3, petitioners had 15 days from notice of judgment or final order to appeal the decision of the trial court. On the 15[th] day of the original appeal period (March 18, 1998), petitioners did not file a notice of appeal but instead opted to file a motion for reconsideration. According to the trial court, the MR only interrupted the running of the 15-day appeal period.[15] It ruled that petitioners, having filed their MR on the last day of the 15-day reglementary period to appeal, had only one (1) day left to file the notice of appeal upon receipt of the notice of denial of their MR. Petitioners, however, argue that they were entitled under the Rules to a fresh period of 15 days from receipt of the "final order" or the order dismissing their motion for reconsideration.

In *Quelnan* and *Apuyan*, both petitioners filed a motion for reconsideration of the decision of the trial court. We ruled there that they only had the remaining time of the 15-day appeal period to file the notice of appeal. We consistently applied this rule in similar cases,[16] premised on the long-settled doctrine that the perfection of an appeal in the manner and within the period permitted by law is not only mandatory but also jurisdictional.[17] The rule is also founded on deep-seated considerations of public policy and sound practice that, at risk of occasional error, the judgments and awards of courts must become final at some definite time fixed by law.[18]

Prior to the passage of BP 129, Rule 41, Section 3 of the 1964 Revised Rules of Court read:

Sec. 3. How appeal is taken. — Appeal maybe taken by serving upon the adverse party and filing with the trial court within thirty (30) days from notice of order or judgment, a notice of appeal, an appeal bond, and a record on appeal. The time during which a motion to set aside the judgment or order or for new trial has been pending shall be deducted, unless such motion fails to satisfy the requirements of Rule 37.

But where such motion has been filed during office hours of the last day of the period herein provided, the appeal must be perfected within the day following that in which the party appealing received notice of the denial of said motion.[19] (emphasis supplied)

According to the foregoing provision, the appeal period previously consisted of 30 days. BP 129, however, reduced this appeal period to 15 days. In the deliberations of the Committee on Judicial Reorganization[20] that drafted BP 129, the *raison d'etre* behind the amendment was to shorten the period of appeal[21] and enhance the efficiency and dispensation of justice. We have since required strict observance of this reglementary period of appeal. Seldom have we condoned late filing of notices of appeal,[22] and only in very exceptional instances to better serve the ends of justice.

In *National Waterworks and Sewerage Authority and Authority v. Municipality of Libmanan*,[23] however, we declared that appeal is an essential part of our judicial system and the rules of procedure should not be applied rigidly. This Court has on occasion advised the lower courts to be cautious about not depriving a party of the right to appeal and that every party litigant should be afforded the amplest opportunity for the proper and just disposition of his cause, free from the constraint of technicalities.

In *de la Rosa v. Court of Appeals*,[24] we stated that, as a rule, periods which require litigants to do certain acts must be followed unless, under exceptional circumstances, a delay in the filing of an appeal may be excused on

grounds of substantial justice. There, we condoned the delay incurred by the appealing party due to strong considerations of fairness and justice.

In setting aside technical infirmities and thereby giving due course to tardy appeals, we have not been oblivious to or unmindful of the extraordinary situations that merit liberal application of the Rules. In those situations where technicalities were dispensed with, our decisions were not meant to undermine the force and effectivity of the periods set by law. But we hasten to add that in those rare cases where procedural rules were not stringently applied, there always existed a clear need to prevent the commission of a grave injustice. Our judicial system and the courts have always tried to maintain a healthy balance between the strict enforcement of procedural laws and the guarantee that every litigant be given the full opportunity for the just and proper disposition of his cause.[25]

The Supreme Court may promulgate procedural rules in all courts.[26] It has the sole prerogative to amend, repeal or even establish new rules for a more simplified and inexpensive process, and the speedy disposition of cases. In the rules governing appeals to it and to the Court of Appeals, particularly Rules 42,[27] 43[28] and 45,[29] the Court allows extensions of time, based on justifiable and compelling reasons, for parties to file their appeals. These extensions may consist of 15 days or more.

To standardize the appeal periods provided in the Rules and to afford litigants fair opportunity to appeal their cases, the Court deems it practical to allow a fresh period of 15 days within which to file the notice of appeal in the Regional Trial Court, counted from receipt of the order dismissing a motion for a new trial or motion for reconsideration. [30]

Henceforth, this "fresh period rule" shall also apply to Rule 40 governing appeals from the Municipal Trial Courts to the Regional Trial Courts; Rule 42 on petitions for review from the Regional Trial Courts to the Court of Appeals; Rule 43 on appeals from quasi-judicial agencies[31] to the Court of Appeals and Rule 45 governing appeals by certiorari to the Supreme Court.[32] The new rule aims to regiment or make the appeal period uniform, to be counted from receipt of the order denying the motion for new trial, motion for reconsideration (whether full or partial) or any final order or resolution.

We thus hold that petitioners seasonably filed their notice of appeal within the fresh period of 15 days, counted from July 22, 1998 (the date of receipt of notice denying their motion for reconsideration). This pronouncement is not inconsistent with Rule 41, Section 3 of the Rules which states that the appeal shall be taken within 15 days from notice of judgment or final order appealed from. The use of the disjunctive word "or" signifies disassociation and independence of one thing from another. It should, as a rule, be construed in the sense in which it ordinarily implies.[33] Hence, the use of "or" in the above provision supposes that the notice of appeal may be filed within 15 days from the notice of judgment or within 15 days from notice of the "final order," which we already determined to refer to the July 1, 1998 order denying the motion for a new trial or reconsideration.

Neither does this new rule run counter to the spirit of Section 39 of BP 129 which shortened the appeal period from 30 days to 15 days to hasten the disposition of cases. The original period of appeal (in this case March 3-18, 1998) remains and the requirement for strict compliance still applies. The fresh period of 15 days becomes significant only when a party opts to file a motion for new trial or motion for reconsideration. In this manner, the trial court which rendered the assailed decision is given another opportunity to review the case and, in the process, minimize and/or rectify any error of judgment. While we aim to resolve cases with dispatch and to have judgments of courts become final at some definite time, we likewise aspire to deliver justice fairly.

In this case, the new period of 15 days eradicates the confusion as to when the 15-day appeal period should be counted – from receipt of notice of judgment (March 3, 1998) or from receipt of notice of "final order" appealed from (July 22, 1998).

To recapitulate, a party litigant may either file his notice of appeal within 15 days from receipt of the Regional Trial Court's decision or file it within 15 days from receipt of the order (the "final order") denying his motion for new trial or motion for reconsideration. Obviously, the new 15-day period may be availed of only if either motion is filed; otherwise, the decision becomes final and executory after the lapse of the original appeal period provided in Rule 41, Section 3.

Petitioners here filed their notice of appeal on July 27, 1998 or five days from receipt of the order denying their motion for reconsideration on July 22, 1998. Hence, the notice of appeal was well within the fresh appeal period of 15 days, as already discussed.[34]

We deem it unnecessary to discuss the applicability of *Denso (Philippines), Inc. v. IAC*[35] since the Court of Appeals never even referred to it in its assailed decision.

WHEREFORE, the petition is hereby GRANTED and the assailed decision of the Court of Appeals REVERSED and SET ASIDE. Accordingly, let the records of this case be remanded to the Court of Appeals for further proceedings.

No costs.

SO ORDERED.

Davide, Jr., Puno, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Carpio Morales, Callejo, Sr., Azcuna, Tinga, Chico-Nazario, and Garcia, JJ., concur.

[1] "Exh. B," Records, p. 37.

[2] "Exh. E," Records, p. 47.

[3] "Exh. G," Records, pp. 56-57.

[4] "Exh. H," Records, p. 58.

[5] "Exh. I," Records, pp. 61-62. The trial court received the notice of appeal dated July 27, 1998 on July 31, 1998. According to the court, it was eight days late, counted from July 23, 1998, which was the last day to file the notice since petitioners had one (1) day left to file it.

[6] "Exh. K," Records, pp. 67-69.

[7] Rollo, p. 41.

[8] Penned by Justice Roberto A. Barrios and concurred in by Justices Godardo O. Jacinto and Eriberto U. Rosario, Jr. of the 16th Division.

[9] Rollo, p. 12.

[10] *M.A. Santander Construction, Inc. v. Zenaida Villanueva*, G.R. No. 136477, November 10, 2004.

[11] The Judiciary Reorganization Act of 1980.

[12] *Intramuros Tennis Club, Inc. (ITC) et al. v. Philippine Tourism Authority, et al.*, G.R. No. 135630, 26 September 2000, 341 SCRA 90.

[13] G.R. No. 145911, July 7, 2004.

[14] G.R. No. 129980, September 20, 2004.

[15] *Supra*.

[16] *Bank of America v. Gerochi*, G.R. No. 73210, 10 February 1994, 230 SCRA 9; *Dayrit v. Philippine Bank of Communications*, 435 Phil. 120 (2002); *Gallego v. Spouses Galang*, G.R. No. 130228, July 27, 2004.

[17] *BPI Data Systems Corp. v. Hon. Court of Appeals and Commissioner of Internal Revenue*, 324 Phil. 267 (1996).

[18] *Borre v. Court of Appeals*, No. L-57204, 14 March 1988, 158 SCRA 561.

[19] Appeals from the Court of First Instance (now RTC) and the Social Security Commission to the Court of Appeals.

[20] Created by virtue of Executive Order No. 611.

[21] MR. MILLORA: Mr. Speaker, although I am a Member of the committee I have been granted permission to ask questions about some unresolved matters and I would like to begin with the period of appeal.

Under Section 39, Mr. Speaker, the period for appeal from final orders, resolutions, awards, judgments or decisions of any court in all cases shall be fifteen days. This is very good because it will shorten the period to appeal. Under our rules today, the period to appeal is 30 days. x x x

(February 2, 1981, Record of the Batasan, Volume IV, p. 2004.)

[22] *Ramos v. Bagasao*, No. L-51552, 28 February 1980, 96 SCRA 395; *Republic v. Court of Appeals*, No. L-31303-04, 31 May 1978, 83 SCRA 453; *Olacao v. National Labor Relations Commission*, G.R. No. 81390, 29 August 1989, 177 SCRA 38.

[23] No. L-27197, 28 April 1980, 97 SCRA 138.

[24] 345 Phil. 678 (1997).

[25] *Allied Banking Corp. and Pacita Uy v. Spouses Eserjose*, G.R. No 161776, October 22, 2004.

[26] Article VIII, Section 5 (5), 1987 Constitution.

[27] Petition for Review from the Regional Trial Courts to the Court of Appeals.

[28] Appeals from (the Court of Tax Appeals and) Quasi-Judicial Agencies to the Court of Appeals. RA 9282 elevated the Court of Tax Appeals to the level of a collegiate court with special jurisdiction.

[29] Appeal by Certiorari to the Supreme Court.

[30] Rule 22, Section 1. How to compute time — In computing any period of time prescribed or allowed by these Rules, or by order of the court, or by any applicable statute, the day of the act or event from which the designated period of time begins to run is to be excluded and the date of performance included x x x. (1997 Rules of Civil Procedure)

[31] Before the effectivity of RA 9282 (AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS [CTA], ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP) on March 30, 2004, decisions or rulings of the CTA were appealable to the Court of Appeals under Rule 45 of the 1997 Rules of Civil Procedure. With the passage of the new law, Section 19 thereof provides that a party adversely affected by a decision or ruling of the

Court of Tax Appeals en banc may file with the Supreme Court a verified petition for review on certiorari pursuant to Rule 45 of the 1997 Rules of Procedure.

[32] As far as Rule 65 (Petition for Certiorari, Mandamus and Prohibition) is concerned, Section 3 thereof, as amended by SC Adm. Memo. No. 00-2-03, states that no extension of time shall be granted except for compelling reason and in no case exceeding 15 days.

[33] *Katindig v. People*, 74 Phil. 45 (1942) as cited in Agpalo, *Statutory Construction*, 3rd Edition (1995).

[34] Rules of procedure may be applied retroactively to actions pending and undetermined at the time of their passage. (*Valenzuela v. Court of Appeals*, 416 Phil. 289 [2001] as cited in Agpalo, *Statutory Construction*, 1995 Edition, p. 294)

[35] No. L-75000, 27 February 1987, 148 SCRA 280.

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