ESPERIDION LOPEZ AND SPOUSES ROSALAIDA AND AUDIE ABOY, PETITIONERS, VS. HON. COURT OF APPEALS AND CARMEN L. CABRERA, RESPONDENTS.

G.R. No. 145588. September 10, 2001

Ponente: VITUG, J.

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VITUG, J.:

A petition for review on certiorari under Rule 45, Rules of Court, seeks a reversal of two resolutions, dated 21 August 2000 and 28 September 2000, of the Court of Appeals. The dispute involves a piece of land situated in Barrio Kauswagan, Cagayan de Oro City, covered by TCT-T-49610 registered in the name of deceased Silvino Daculan.

On 15 May 1990, Luz Daculan, the surviving spouse of Silvino who died on 19 January 1988, sold a portion, hereunder described, of the property to Carmen Cabrera.

> "xxx that remaining portion of Lot 1282-C-2, after deducting therefrom Lot 1282-C-2-C and Lot 1282-C-2-D, with an area of 2,751 sq. m., which remaining portion of Lot 1282-C-2 has an area of Four Hundred Seventy Six (476) square meters, xxx."[1]

Rodolfo Roldan claimed to have acquired the subject property on 03 December 1987 from and during the lifetime of Silvino Daculan. Rodolfo, in turn, sold the property to the spouses Rosalaida and Audie Aboy, herein petitioners, on 29 April 1989. Petitioners would thus assert superior right over the property.

A civil case for recovery of ownership and possession was filed by private respondent before the Regional Trial Court of Misamis Oriental, Branch 20, Cagayan de Oro City, docketed Civil Case No. 93-534, against petitioners.

The trial court ruled in favor of private respondent.

On 29 October 1998, petitioners filed a timely notice of appeal. The trial court thereupon issued an order, dated 09 December 1998, directing the branch Clerk of Court to forward the records of the case to the Court of Appeals.

On 24 April 2000, petitioners' counsel, Atty. Angel R. Quimpo, sent a letter addressed to the Clerk of Court of the Court of Appeals, inquiring about the status of the case and whether the appellate court had already received the records from the court a quo.

The Division Clerk of Court (8[th] Division) Atty. Adelaida Reyes, in her letter of 02 June 2000, informed petitioners' counsel that a notice to file the appellants' brief was sent on 14 February 2000. After a thorough search, counsel found the notice which was received by the law office, through its understudy clerk Jenefer Oclarit, on 23 February 2000. He averred that due to inexperience, the clerk had inadvertently filed the notice in another folder. Considering that the period to file appellants' brief had already lapsed by then, a petition for relief was filed by petitioners with the Court of Appeals, on 05 July 2000, attaching thereto the appellants' brief.

In its resolution of 21 August 2000, the Court of Appeals (Special Eighth Division) dismissed the appeal for

petitioners' failure to pay the required docket and other legal fees within the required period, on the basis of Section 1(c), Rule 50, of the 1997 Rules of Civil Procedure. A motion for reconsideration was filed by petitioners on 6 September 2000. In a resolution, dated 28 September 2000, the Court of Appeals, denying the petition for relief, said:

> "Considering this Court's resolution of dismissal on August 21, 2000 (page 21 of the Rollo), appellants' "Petition for Relief (pages 89-94, Id.) finds no anchorage-and is hereby DENIED.
>
> "Consequently, let the appellant's brief (pages 22-53, Id.), which was presented for consideration after our aforementioned resolution of dismissal, be stricken off the record."[2]

In the petition for review on certiorari under Rule 45, petitioners contended that-

> "I) The Court of Appeals gravely and totally erred to dismiss the appeal for failure to pay the `docket and appeal fees' inconsistent with the clear meaning of the `report of the Judicial Record Division' and the actual records in the rollo;
>
> "II) The Court of Appeals totally erred and gravely abused its discretion when it only `implicitly' denied the motion for reconsideration in due form and substance conclusively did not clearly and distinctly state the facts and law;
>
> "III) The Court of Appeals gravely erred and abused its discretion when it ordered in the September 28, 2000 resolution that due to the dismissal of the appeal in the assailed August 21, 2000 resolution;
>
> "IV) The petition for relief (or motion to admit appellants' brief) is for a meritorious appeal and decision of the appeal on the merits would render real justice over technicalities."[3]

In his comment, private respondent maintained that the appellate court had correctly dismissed the appeal because of the inexcusable failure of petitioners to file the required appellants' brief within the reglementary period. Private respondent argued that the appellate court had merely committed a clerical error in stating that "the dismissal was for non-payment of appeal fees" instead of a "failure to file appellants' brief."

Section 1, Rule 50, of the Revised Rules of Court provides that an appeal may be dismissed by the Court of Appeals on its own motion, or on that of the appellee, for a failure on the part of the appellant to pay the docket and other lawful fees as so prescribed in Section 4 of the Rule 41. The records here disclose, however, that petitioners did pay the required docket and legal fees before the Regional Trial Court of Cagayan de Oro City, Branch 20,[4] well in conformity with the requirements laid down by the rule that the docket fee and other lawful fees are to be paid within the period for taking an appeal to the clerk of the court which rendered the judgment or order appealed from.[5] The trial court in its order, dated 09 December 1998, has thereby directed that the records of the case be forwarded to the Court of Appeals.

The appellate court would thus appear to have erred in dismissing the appeal for the supposed failure of petitioners to pay the required docket and legal fees. It would be inappropriate, given the circumstances, for this Court to conjecture that the Court of Appeals merely committed a clerical error in anchoring its assailed orders on the non-payment of appeal fees rather than on the late filing of the appellants' brief.

WHEREFORE, the resolutions, dated 21 August 2000 and 28 September 2000, of the appellate court are set aside. The case is remanded to the Court of Appeals for its appropriate action. No costs.

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SO ORDERED.

Melo, (Chairman), Panganiban, Gonzaga-Reyes, and Sandoval-Gutierrez, JJ., concur.

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[1] Rollo, p. 55.

[2] Rollo, p. 38.

[3] Rollo, pp. 15-22.

[4] Rollo, pp. 43-46.

[5] Rule 41, Section 4, Revised Rules of Civil Procedure.

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