

HEIRS OF THE LATE CRUZ BARREDO, petitioners, vs. SPS. VIRGILIO L. ASIS and MAUDE MASA ASIS, respondents.*G.R. No. 153306. August 27, 2004*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-153306/>**TINGA, J.:**

This Petition for Review on Certiorari[1] seeks to set aside the Resolutions of the Court of Appeals dated November 29, 2001[2] and April 29, 2002,[3] respectively dismissing petitioners' appeal for failure to file an appellants' brief and denying their Motion for Reconsideration and/or Petition for Relief from Judgment of the Resolution of November 29, 2001,[4] for having been filed out of time and for being an improper remedy.

We gather the following facts from the records before us:

On February 3, 1997, petitioners herein filed an action for Cancellation of Certificate of Title and Damages[5] against the respondents involving a seven (7)-hectare parcel of land located in Roxas City. After trial on the merits, the Regional Trial Court (RTC) rendered a decision[6] dated July 21, 2000 dismissing the complaint for lack of merit; ordering the Registry of Deeds of Roxas City to cancel the annotation of *lis pendens* on Transfer Certificate of Title No. T-34929 covering the subject property; and ordering the plaintiffs, petitioners herein, to pay the defendants the sum of P200,000.00 as attorney's fees and P50,000.00 as litigation expenses.

Upon petitioners' filing of a Notice of Appeal through their counsel, Atty. Ray B. Fagutao (Atty. Fagutao), the RTC forwarded the records of the case to the Court of Appeals. The appellate court issued a Notice to File Brief dated February 7, 2001 giving the appellants, petitioners herein, a period of 45 days within which to file their brief. However, petitioners failed to file their brief despite Atty. Fagutao's receipt of the Notice to File Brief on February 20, 2001. Hence, the appellate court considered the appeal abandoned and accordingly dismissed the same in its questioned Resolution dated November 29, 2001.[7]

Petitioners, through their new counsel, Atty. Diosdado B. Solidum, Jr., filed a Motion for Reconsideration and/or Petition for Relief from Judgment of the Resolution of November 29, 2001[8] dated March 1, 2002, alleging that they received a copy of the Resolution dated November 29, 2001 on December 10, 2001; and that the dismissal of their appeal as a result of the mistake or gross negligence of their former counsel effectively deprived them of their property without due process of law.

The respondents filed a Comment/Opposition[9] dated March 15, 2002 asserting that petitioners' Motion for Reconsideration and/or Petition for Relief from Judgment of the Resolution of November 29, 2001 was filed out of time. Having admitted receiving a copy of the questioned Resolution dated November 29, 2001 on December 10, 2001, the respondents aver that petitioners should have filed their motion within the 15-day period provided under Section 1, Rule 52 of the 1997 Rules of Civil Procedure (the Rules). Moreover, the remedy of petition for relief from judgment is unavailable in the Court of Appeals, was unverified, unaccompanied by an affidavit of merit and filed beyond the period provided under Section 3, Rule 38 of the Rules.

Agreeing with the respondents, the appellate court denied petitioners' Motion for Reconsideration and/or Petition for Relief from Judgment of the Resolution of November 29, 2001 in its second assailed Resolution[10] dated

April 29, 2002.

In the instant petition, petitioners reiterate their argument that the dismissal of their appeal as a result of the mistake or gross negligence of their counsel deprived them of their property without due process of law. Petitioners insist that theirs is a situation that must be viewed as an exception to the general rule that the negligence of counsel binds the client. They also question the trial court's award of attorney's fees and litigation expenses which they claim are damages imposed upon them for exercising their right to litigate.

The respondents filed a Comment[11] dated September 6, 2002 reaffirming their position that petitioners' Motion for Reconsideration and/or Petition for Relief from Judgment of the Resolution of November 29, 2001 was properly denied for the reasons set forth by the Court of Appeals. Additionally, the respondents emphasize that petitioners were equally negligent in failing to follow-up the status of their appeal. Besides, they did not even file the appropriate administrative charges against their former counsel. The respondents likewise insist that petitioners were not deprived of due process because a full trial was accorded them by the RTC. Moreover, petitioners' inaction on their appeal caused considerable damage to the respondents' real estate business.

Petitioners filed a Motion for Leave to file Incorporated Reply to Respondents' Comment Dated September 6, 2002 on the Petition for Review on Certiorari[12] dated September 30, 2002, arguing that the questioned Resolutions dismissing their appeal and denying their Motion for Reconsideration and/or Petition for Relief from Judgment of the Resolution of November 29, 2001 are void as they were deprived of due process. Since void resolutions do not attain finality, they posit that their Motion for Reconsideration and/or Petition for Relief from Judgment of the Resolution of November 29, 2001 was not filed out of time. They also aver that they were not negligent as they contacted Atty. Fagutao to inquire about their case but were not informed that the trial court had already ruled against them. In any case, petitioners insist that attorney's fees and litigation expenses should not have been awarded to the respondents.

The petition should be denied.

This Court has invariably ruled that the right to appeal is not 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 the law. The party who seeks to avail of the same must comply with the requirements of the Rules. Failing to do so, the right to appeal is lost.[13]

In the present case, petitioners failed to file the required brief within the period prescribed under Section 7, Rule 44 of the Rules. Thus, the appellate court rightly considered their appeal abandoned and consequently dismissed the same in its Resolution dated November 29, 2001.

Petitioners received a copy of this Resolution on December 10, 2001. They then had 15 days or until December 25, 2001, or the next working day since December 25, 2001 was a legal holiday, within which to file their motion for reconsideration.[14] However, it was only on March 1, 2002, more than two (2) months after the deadline, that they filed their Motion for Reconsideration and/or Petition for Relief from Judgment of the Resolution of November 29, 2001. Even their petition for relief (from the denial of their appeal) was filed beyond the period provided under Section 3, Rule 38 of the Rules.[15] Hence, the appellate court again correctly denied their motion.

Petitioners blame the alleged negligence of their former counsel for their failure to file an appellants' brief on time. However, there is no rule more settled than that a client is bound by his counsel's conduct, negligence and mistake in handling the case.[16] Besides, petitioners had an opportunity to rectify their former counsel's blunder by timely filing a motion for reconsideration of the Resolution dismissing their appeal. As it is, their new counsel

also belatedly filed their Motion for Reconsideration and/or Petition for Relief from Judgment of the Resolution of November 29, 2001.

Parenthetically, petitioners explain that the Resolution dated November 29, 2001 was received on December 10, 2001, not by their new counsel but by their former counsel, Atty. Fagutao. This despite the unequivocal statement in their Motion for Reconsideration and/or Petition for Relief from Judgment of the Resolution of November 29, 2001 that the questioned Resolution “was received by the herein counsel (Atty. Solidum) on December 10, 2001.”[17] This explanation is but a feeble attempt to justify the late filing of petitioners’ motion for reconsideration and does not hold favor with the Court.

What is more, their petition for relief lacked the requisite affidavits showing the fraud, accident, mistake or excusable negligence relied upon, and the facts constituting their good and substantial cause of action.[18]

While it is true that rules of procedure are not cast in stone, it is equally true that strict compliance with the Rules is indispensable for the prevention of needless delays and for the orderly and expeditious dispatch of judicial business.[19] Unfortunately for them, petitioners failed to show that their counsels’ negligence was so gross and palpable as to call for the exercise of this Court’s equity jurisdiction. Neither have they shown that the ends of justice will be better served by relaxing procedural rules. It should be recalled that petitioners were accorded a full trial by the RTC although its Decision was ultimately adverse to them. They cannot feign lack of due process.

In fine, the dismissal of petitioners’ appeal for failure to comply with the requirements of the Rules is fatal to their cause and renders the Decision of the RTC final, executory and no longer subject to review.

WHEREFORE, the petition is hereby DENIED for lack of merit. Costs against petitioners.

SO ORDERED.

Austria-Martinez, (Acting Chairman), Callejo, Sr., and Chico-Nazario, JJ., concur.
Puno, J., (Chairman), on official leave.

[1] Rollo, pp. 3-62, with Annexes; Dated May 20, 2002.

[2] Id. at 23-24, Annex A of the petition.

[3] Id. at 28-29, Annex B of the petition.

[4] Id. at 49-55, Annex D of the petition.

[5] With the Regional Trial Court of Roxas City, Branch 14.

[6] Supra, note 1 at 46; decision of the RTC, Annex C of the petition.

[7] Supra, note 2.

[8] Supra, note 4.

[9] Supra, note 1 at 58-61, Annex E of the petition.

[10] Supra, note 3.

[11] Supra, note 1 at 72-88.

[12] Id. at 94-101.

[13] Villanueva v. Court of Appeals, G.R. No. 99357, January 27, 1992, 205 SCRA 537, citing Tropical Homes, Inc. v. National Housing Authority, No. L-48672, 152 SCRA 540 (1987), Borre v. Court of Appeals, No. L-57204, 158 SCRA 560 (1988) and Ozaeta v. Court of Appeals, G.R. No. 83281, 179 SCRA 800 (1989).

[14] Sec. 1, Rule 52, 1997 Rules of Civil Procedure.

[15] Sec. 3. Time for filing petition; contents and verification.—A petition provided for in either of the preceding sections of this Rule must be verified, filed within sixty (60) days after the petitioner learns of the judgment, final order, or other proceeding to be set aside, and not more than six (6) months after such judgment or final order was entered, or such proceeding was taken; and must be accompanied with affidavits showing the fraud, accident, mistake, or excusable negligence relied upon, and the facts constituting the petitioner's good and substantial cause of action or defense, as the case may be.

[16] Alabanzas v. Intermediate Appellate Court, G.R. No. 74697, November 29, 1991, 204 SCRA 304.

[17] CA Records, p. 25.

[18] Supra, note 15.

[19] Villanueva v. Court of Appeals, supra, note 13, citing Alvero v. Dela Rosa, 76 Phil. 428 (1946).

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