

R TRANSPORT CORPORATION, PETITIONER, VS. PHILIPPINE HAWK TRANSPORT CORPORATION, RESPONDENT.

G.R. NO. 155737. October 19, 2005

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

This petition for review on certiorari seeks to reverse and set aside the Decision[1] dated August 1, 2002 of the Court of Appeals in CA-G.R. SP No. 61717 denying due course to the Petition for Certiorari, as well as the appellate court's Resolution[2] dated October 21, 2002, denying petitioner's motion for reconsideration.

The antecedent facts, from the Court of Appeals and borne by the records, are as follows:

On April 7, 1997, the Regional Trial Court of Pasig City, Branch 162, rendered a Decision[3] against the petitioner in Civil Case No. 61983. A copy of said decision was sent to petitioner's counsel, Atty. Jose O. Uy Jr., but was returned to the trial court unserved, with notation, "RTS-Moved".

On November 19, 1999, respondents filed a Motion for Execution of said judgment. On March 3, 2000, the trial court issued an Order[4] directing that petitioner be furnished with a copy of said motion. This was for the sole purpose of notifying the party that an adverse decision had been rendered against it. Petitioner received the copy on March 13, 2000 and filed a Notice of Appeal on March 23, 2000. However, the trial court denied the appeal and granted respondent's motion for execution. The trial court also denied the subsequent motion for reconsideration of the petitioner.

Thereafter, petitioner filed a special civil action for certiorari against the presiding judge for granting the motion for execution despite the alleged timely appeal. This was denied due course by the appellate court. Petitioner moved for reconsideration but was likewise denied. Hence, this appeal by certiorari.

In its Memorandum, petitioner maintains that the sole issue is:

WHETHER OR NOT THE TRIAL COURT COMMITTED GRAVE ABUSE OF DISCRETION IN GRANTING THE MOTION FOR EXECUTION AND DENYING DUE COURSE . . . TO THE APPEAL FILED BY THE PETITIONER AS DEFENDANT IN CIVIL CASE NO. 61983 FOR NOT HAVING BEEN FILED WITHIN THE REGLEMENTARY PERIOD.[5]

Petitioner argues that the proper service of the trial court's decision was done only on March 13, 2000, contrary to the appellate court's finding that it was earlier served on petitioner's counsel. Therefore, it maintains that the counting of the reglementary period to appeal should start only on March 13, 2000 and not earlier.

Petitioner insists that insistence on the prior service before March 13, 2000, was improper since it was neither received by counsel nor by petitioner, citing Section 2, Rule 13 of the 1997 Rules of Civil Procedure, which provides that "if any party has appeared by counsel, service upon him shall be made upon his counsel or one of them, unless service upon the party himself is ordered by the court." Argues the petitioner: since the trial court ordered that petitioner shall be furnished a copy of the decision, then the reckoning point for the period to appeal

becomes the actual date of its receipt of the said decision. Therefore, petitioner submits, the trial court committed grave abuse of discretion when it dismissed the appeal on the ground that it was filed out of time.

Petitioner also contends that, since a timely appeal was made, the trial court had no authority to grant the motion for execution. It cites Section 9, Rule 41 which provides that "in appeals by notice of appeal, the court loses jurisdiction over the cases upon the perfection of the appeals filed in due time and the expiration of the time to appeal of the other parties."

Respondent submits that petitioner's argument is misleading because a copy of the decision was earlier sent to the last known address appearing on record of petitioner's counsel, Atty. Uy. It is the fault of petitioner's counsel, adds respondent, that Atty. Uy was not able to receive the decision since he had not filed any notice of change of address. Citing *Bernardo v. Court of Appeals*,^[6] respondent maintains that petitioner is bound by the mistakes of his counsel.

Respondent also cites Section 8, Rule 13 of the Revised Rules of Court,^[7] which provides that substituted service of decisions may be made by delivering the copy to the clerk of court, with proof of failure of both personal service and service by mail. The service is complete at the time of such delivery. This being so, respondent asserts, the notice of appeal was filed out of time since notice was filed after more than two years from the date when substituted service was done.

We find the instant petition clearly without merit. No reversible error could be attributed to the appellate court.

Under Section 2, Rule 13 of the Revised Rules of Court,^[8] if a party has appeared by counsel, service upon him shall be made upon his counsel. In the present case, petitioner was actively represented by Atty. Uy in the trial of the case. Records show that Atty. Uy filed an Answer to Counterclaim and an Answer to Cross-claim. He also cross-examined witnesses of the respondent. Further, the decision was properly sent to Atty. Uy's last known address appearing on the record. Though the copy of the decision was returned to court for the reason that the petitioner's counsel has moved, there was still proper service of the decision by substituted service under Section 8, Rule 13 of the Revised Rules of Court. It is also worthy to note that it was only the decision which was returned while all other previous pleadings, including the notices to present evidence, were received.

The general rule is that a client is bound by the acts, even mistakes of his counsel.^[9] Exceptions to the foregoing have been recognized by the Court in the cases of *Legarda v. Court of Appeals*,^[10] and *Escudero v. Dulay*,^[11] such as when the reckless or gross negligence of counsel deprives the client of due process of law, or when the application "results in the outright deprivation of one's property through a technicality."^[12]

We note that petitioner tried to show the gross negligence of its counsel. Petitioner suggests that when its counsel just disappeared and failed to notify the court of his change of address, where the court's decision could have been delivered, this resulted in the deprivation of petitioner's property without due process of law.

Regrettably, the *Legarda* and *Escudero* cases are inapplicable. The facts in these cases are not on all fours with the facts in the present case.

In *Legarda*, the counsel was found grossly negligent because of the complete absence of effort on his part to defend his client's cause. In contrast, Atty. Uy's failure to notify the court of his change of address is simply negligence since it could be gleaned from the records that the counsel actively participated in the proceedings of the case until respondent had rested its case and filed its offer of evidence.

In like manner, the case at bar is different from the *Escudero* case where there were "outright" deprivations of property without due process of law. In the case before us, petitioner, through counsel filed its Answer with

Counterclaim and Answer to Cross-claim. Counsel also cross-examined the witnesses of the respondent. Likewise, petitioner was given several opportunities to present evidence in its defense.[13] The essence of due process is the reasonable opportunity to be heard and submit evidence one may have in support of one's defense.[14] Here, we find no deprivation of due process.

On the matter of appeal, we ruled on several occasions that 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 strictly in accordance with the provisions of the law.[15] The party who seeks to appeal must comply with the requirements of the rules. Failure to do so results in the loss of that right.[16]

The perfection of an appeal in the manner and within the period permitted by law is not only mandatory but also jurisdictional. The failure to seasonably perfect the appeal to a higher court renders the judgment of the lower court final and executory. Just as a losing party has the right to file an appeal within the prescribed period, the winning party also has thereafter the correlative right to enjoy the finality of the decision in the case.[17]

In sum, if petitioner's counsel moved to another address without informing the court of his change of address, the omission or neglect will not stay the finality of the decision.[18]

WHEREFORE, the petition is hereby DENIED for lack of merit. The assailed Decision dated August 1, 2002 and Resolution dated October 21, 2002 of the Court of Appeals in CA-G.R. SP No. 61717 are AFFIRMED.

Costs against petitioner.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Ynares-Santiago, Carpio, and Azcuna, JJ., concur.

[1] Rollo, pp. 18-24. Penned by Associate Justice Jose L. Sabio, Jr., with Associate Justices Hilarion L. Aquino, and Amelita G. Tolentino concurring.

[2] Id. at 26.

[3] Id. at 82-87.

[4] Id. at 88.

[5] Id. at 156.

[6] G.R. No. 106153, 14 July 1997, 275 SCRA 413.

[7] SEC. 8. Substituted service. - If service of pleadings, motions, notices, resolutions, orders and other papers cannot be made under the two preceding sections, the office and place of residence of the party or his counsel being unknown, service may be made by delivering the copy to the clerk of court, with proof of failure of both personal service and service by mail. The service is complete at the time of such delivery.

[8] SEC. 2. Filing and service, defined. - Filing is the act of presenting the pleading or other paper to the clerk of court.

Service is the act of providing a party with a copy of the pleading or paper concerned. If any party has appeared by counsel, service upon him shall be made upon his counsel or one of them, unless service upon the party himself is ordered by the court. Where one counsel appears for several parties, he shall only be entitled to one copy of any paper served upon him by the opposite side.

- [9] Tolentino v. Leviste, G.R. No. 156118, 19 November 2004, 443 SCRA 274, 283.
- [10] G.R. No. 94457, 18 March 1991, 195 SCRA 418, 426.
- [11] No. L-60578, 23 February 1988, 158 SCRA 69, 78.
- [12] Sarraga, Sr. v. Banco Filipino Savings and Mortgage Bank, G.R. No. 143783, 9 December 2002, 393 SCRA 566, 574.
- [13] Rollo, p. 19.
- [14] Producers Bank of the Philippines v. Court of Appeals, G.R. No. 126620, 17 April 2002, 381 SCRA 185, 194; Salonga v. Court of Appeals, G.R. No. 111478, 13 March 1997, 269 SCRA 534, 547.
- [15] Barata v. Abalos, Jr., G.R. No. 142888, 6 June 2001, 358 SCRA 575, 581.
- [16] Ortiz v. Court of Appeals, G.R. No. 127393, 4 December 1998, 299 SCRA 708, 713.
- [17] Dayrit v. Philippine Bank of Communications, G.R. No. 140316, 1 August 2002, 386 SCRA 117, 125 citing Videogram Regulatory Board v. Court of Appeals, G.R. No. 106564, 28 November 1996, 265 SCRA 50, 55.
- [18] Magno v. Court of Appeals, No. L-58781, 31 July 1987, 152 SCRA 555, 559.

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