

**GUILLERMO A. CRUZ, PETITIONER, VS. HON. COURT OF APPEALS
(FORMER FIFTEENTH DIVISION); REGIONAL TRIAL COURT, THIRD
JUDICIAL REGION, BRANCH 38, LINGAYEN, PANGASINAN;
SALVADOR C. V...**

G.R. NO. 156894. December 02, 2005

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

This petition for review on certiorari seeks to annul the resolutions dated September 9, 2002[1] and January 15, 2003[2] of the Court of Appeals in CA-G.R. CV No. 72600. The first resolution dismissed petitioner's appeal, while the second denied his motion for reconsideration.

The antecedent facts, as borne by the records, are as follows:

Spouses Salvador and Carmencita Valle filed an action for Annulment of Affidavit of Self-adjudication, Cancellation of Tax Declaration and Quieting of Title, docketed as Civil Case No. 17720 against the petitioner. The case was consolidated with Civil Case No. 17785. The latter case was an appeal by the petitioner from the judgment of the Municipal Trial Court (MTC) in an ejectment case filed by the respondent spouses against him.

On July 31, 2001, the Regional Trial Court (RTC) rendered a Decision[3] which affirmed the judgment of the MTC, annulled the Affidavit of Self-Adjudication, ordered the cancellation of Tax Declaration No. 5752, and declared Spouses Salvador and Carmencita Valle as the absolute owner of the land in dispute. The RTC ruled that the deed of donation, on which the respondents based their claim, was a donation inter vivos because, other than the title and the phrase "to take effect after her death", the deed, as it was worded, clearly disposed of the property with finality and without reservation. It cited the landmark case of *Laureta v. Mata and Magno*[4] stating that one who donates with a term, such as the donation effecting at one's death, but without reservation, already disposes of the thing donated and cannot again dispose of the thing in favor of another.

Petitioner appealed said decision of the trial court to the Court of Appeals. On March 19, 2002, he received notice to file a brief within 45 days from receipt of said notice. Within the period, petitioner filed a motion for extension of at least 90 days from May 3, 2002 or until August 1, 2002 to file the Appellant's Brief. The appellate court granted the motion. However, petitioner filed the required Appellant's Brief only on August 21, 2002, with an explanation that his collaborating counsel was sick with acute periodontosis.

On September 9, 2002, the appellate court dismissed the appeal for failure to file the required brief within the prescribed period. Petitioner sought reconsideration but it was denied.

Petitioner now comes before us raising the sole issue that:

THE HONORABLE COURT OF APPEALS GRAVELY ABUSED ITS DISCRETION IN DISMISSING THE APPEAL IN CA-G.R. CV No. 72600 DESPITE THE ATTENDANT JUSTIFYING REASON(S) IN THE BELATED SUBMISSION OF APPELLANT'S BRIEF WITH APPROPRIATE MOTION TO ADMIT

AND IN GROSS DISREGARD TO THE MERITS FAVORING APPELLANT THEREIN.[5]

Simply, the only issue for our resolution is whether the Court of Appeals erred in dismissing the appeal.

Petitioner explains that he sought the services of a collaborating counsel when, in the middle of July 2002, he discovered that his counsel of record had not yet started the preparation of his brief. He said that by then, there was only a short time left before the deadline. The lack of time was compounded by the illness (acute periodontosis) of his collaborating counsel.

Petitioner contends that the failure of an appellant to file his brief within the prescribed time does not result in the automatic dismissal of the appeal since the appellate court has discretion to dismiss it or not. He suggests that procedural rules may be relaxed in the interest of justice. He invokes the case of *Baylon v. Fact-Finding Intelligence Bureau*,[6] where the Court suspended the rules with the following to serve as guidelines: (1) the case involves life, liberty, honor or property; (2) counsel's negligence without any participatory negligence on the part of the client caused the delay; (3) there are compelling circumstances; (4) there is merit in the case; (5) the cause is not entirely attributable to the fault or negligence of the party favored by the suspension of the Rules; (6) there is lack of any showing that the review sought is merely frivolous and dilatory; and (7) the other party will not be unjustly prejudiced. He argues that since there were compelling reasons for his delay, substantial rights and interests are at stake, and there could neither be any injury nor prejudice to appellees, the appellate court should have allowed his appeal.

Respondents Salvador and Carmencita Valle argue that the right to appeal is neither a natural right nor a part of due process. As a statutory privilege, it is exercised only in the manner and in accordance with the provisions of law. They maintain that petitioner's excuse is unacceptable, considering that he actually had 135 days within which to file his brief.

Respondents argue that even petitioner's allegation – that it was only in the middle of July 2002 when he discovered that his counsel of record had not started working on his brief – is unacceptable since a client is bound by the negligence of his counsel and that a prudent party should constantly be in touch with his counsel. Respondents also question the claimed appearance of petitioner's collaborating counsel. They aver that in all prior proceedings there was only one lawyer representing the petitioner and that the collaborating counsel had never entered his appearance formally.

We find the instant petition bereft of merit.

Petitioner does not deny the procedural infraction on his part, but he asks for the relaxation of the rules. Granting his plea, however, would be to fault the appellate court for acting in faithful compliance with the rules of procedure which the court has been mandated to observe.[7]

The Rules of Court are designed for the proper and prompt disposition of cases before the appellate court. We cannot just turn a blind eye and tolerate its contravention.[8] Section 7,[9] Rule 44 of the Rules of Court provides that it shall be the duty of the appellant to file his brief within 45 days from receipt of notice. His failure to comply with this mandate is a ground for the dismissal of his appeal as provided under Section 1(e), Rule 50[10] of the Rules of Court. Petitioner actually had 135 days to prepare his brief which is a considerable period of time.

In not a few instances, we relaxed the rigid application of the rules of procedure, so that the ends of justice may be better served. However, such liberality may not be invoked if it would result in the wanton disregard of the rules, and cause needless delay. Save for the most persuasive of reasons, strict compliance with the rules is enjoined to facilitate the orderly administration of justice.[11] Negligence of petitioner's counsel and his own failure to enter the appearance of his collaborating counsel are, to our mind, unacceptable reasons for relaxing the observance of

the period set for filing briefs.

Further, Baylon cannot be applied in this case. In Baylon, there was no negligence on the part of the client. Moreover, here we must stress that negligence of counsel binds the client. This is especially true where the client has been as negligent as the lawyer.[12]

We note, at this juncture, that petitioner's counsel failed to distinguish between a petition for review on certiorari under Rule 45 from a petition for certiorari under Rule 65 of the Rules of Court. Under Rule 45, the court a quo's grave abuse of discretion is not a proper issue. Under Rule 45, the issue involves reversible error of law, if any.

In this case, we find that the Court of Appeals committed no reversible error of law when it dismissed the appeal for petitioner's failure to file the appellant's brief on time.

WHEREFORE, the instant petition is DENIED. The assailed resolutions dated September 9, 2002 and January 15, 2003 of the Court of Appeals in CA-G.R. CV No. 72600 are AFFIRMED. Costs against petitioner.

SO ORDERED.

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

[1] Rollo, pp. 96-97. Penned by Associate Justice Eliezer R. De Los Santos, with Associate Justices Roberto A. Barrios, and Danilo B. Pine concurring.

[2] Id. at 115-116.

[3] CA Rollo, pp. 47-62.

[4] No. 19740, 22 March 1923, 44 Phil. 668, 674.

[5] Rollo, pp. 20-21.

[6] G.R. No. 150870, 11 December 2002, 394 SCRA 21.

[7] *Casim v. Flordeliza*, G.R. No. 139511, 23 January 2002, 374 SCRA 386, 393.

[8] Id. at 393-394.

[9] SEC. 7. Appellant's brief. – It shall be the duty of the appellant to file with the court, within forty-five (45) days from receipt of the notice of the clerk that all the evidence, oral and documentary, are attached to the record, seven (7) copies of his legibly typewritten, mimeographed or printed brief, with proof of service of two (2) copies thereof upon the appellee.

[10] SEC. 1. Grounds for dismissal of appeal. – An appeal may be dismissed by the Court of Appeals, on its own motion or on that of the appellee, on the following grounds:

...

(e) Failure of the appellant to serve and file the required number of copies of his brief or memorandum within the time provided by these Rules;

...

[11] *El Reyno Homes, Inc. v. Ong*, G.R. No. 142440, 17 February 2003, 397 SCRA 563, 570

[12] *Air Philippines Corporation v. International Business Aviation Services Phils., Inc.*, G.R. No. 151963, 9 September 2004, 438 SCRA 51, 53.

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