

**DR. LORNA VILLA, PETITIONER, VS. HEIRS OF ENRIQUE ALTAVAS,
NAMELY: ENRIQUE ALTAVAS II, ERLINDA B. LIBORO AND MARIA A.
DE JESUS, RESPONDENTS.**

G.R. No. 162028. July 14, 2008

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

Assailed in the present Petition for Review on Certiorari under Rule 45 of the Rules of Court is the Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 63123 promulgated on January 31, 2003 which affirmed the Orders dated December 13, 2000[2] and January 19, 2001[3] of the Regional Trial Court (RTC) of Roxas City, Branch 16; and the CA Resolution[4] of January 14, 2004, denying herein petitioner's Motion for Reconsideration.

The facts of the case are as follows:

On November 26, 1997, Enrique Altavas II, Erlinda Liboro and Maria de Jesus (respondents), in their capacity as heirs of Enrique Altavas (Enrique), filed a Complaint[5] for ejectment with the 2nd Municipal Circuit Trial Court (MCTC) of Pontevedra-Panay in the Province of Capiz against Dr. Lorna Villa (petitioner) together with Virginia Bermejo (Virginia) and Rolito Roxas (Roxas), alleging that respondents are heirs of the deceased Enrique, the registered owner of two parcels of fishpond designated as Lot No. 2816 and Lot No. 2817, who have been in actual possession through their administrator, overseer and representative, the late councilor Mussolini C. Bermejo, the husband of Virginia; that on January 31, 1994, after the death of Mussolini, Virginia took over the possession of the premises in question without the consent or permission of respondents; that Virginia leased in favor of petitioner a portion of about five hectares of Lot No. 2816, without any right whatsoever to do so; that on October 21, 1997, respondents through counsel formally sent demand letters to Virginia and petitioner to vacate the respective portions occupied by them; and that despite said demands, they persisted in continuing their illegal possession of the premises.

Petitioner and Virginia filed their respective Answers to the Complaint.

On her part, petitioner contended that: she is in lawful possession of the area possessed and developed by her as lessee; she is a possessor in good faith; the subject lot was leased to her by a person who was in actual possession thereof, and who represented herself as the owner of the said lot; and respondents have no cause of action against her, as they (respondents) are no longer the owners of the said lots, it appearing that the same were already conveyed by the original owners during their lifetime; and the complaint was premature, as there was still a pending case in court involving the ownership of the properties in question.[6]

After preliminary conference and submission by the parties of their respective affidavits, evidence and position papers, the MCTC rendered a Decision with the following dispositive portion:

WHEREFORE, in the light of the foregoing circumstances, judgment is hereby rendered in favor of plaintiffs

[respondents], declaring them as rightful owners and legal possessors of Lot. Nos. 2816 and 2817 portion of which are possessed by defendants [petitioner and Virginia], ordering the following:

1. a)

To defendant Virginia Bermejo to vacate the premises of portion of Lot no. 2817 presently occupied by her, surrendering peacefully its possession to plaintiffs;

b)

Payment of Ten Thousand (P10,000.00) Pesos per hectare a year as compensation to plaintiff's deprivation of possession of the property reckoned from October 21, 1997 until possession is returned;

c)

The payment of attorney's fees in the amount of Fifty Thousand (P50,000.00) Pesos and costs of suit.

2.

To defendant Lorna Villa to vacate the premises over portion of Lot No. 2817 she occupies with an area of five (5) hectares and to peacefully return its possession to plaintiffs, as well as pay the amount of Ten Thousand (10,000.00) Pesos per hectare a year reckoned from the date of demand until possession is returned to plaintiffs;

x x x x

c)

Payment of attorney's fees in the amount of Fifty Thousand (P50,000.00) Pesos and costs of suit.

SO DECIDED.[7]

Aggrieved by the Decision of the MCTC, petitioner and Virginia filed an appeal with the RTC of Roxas City.

However, in its Order dated December 13, 2000, the RTC dismissed the appeal of petitioner pursuant to Section 7, Rule 40 of the Rules of Court for her failure to file her appeal memorandum. Virginia's appeal, on the other hand, was dismissed because of her withdrawal of her appeal.

Petitioner filed a Motion for Reconsideration but the same was denied by the RTC in its Order of January 19, 2001.

Petitioner then filed a special civil action for certiorari with the CA contending that the RTC committed grave abuse of discretion in dismissing her appeal on technical ground.

On January 31, 2003, the CA promulgated its presently assailed Decision dismissing the petition for certiorari and affirming the December 13, 2000 and January 19, 2001 Orders of the RTC.

Petitioner moved for reconsideration but her motion was denied by the CA in its Resolution dated January 14, 2004.

Hence, the present petition raising the following issues:

I

WHETHER OR NOT THE SUBMISSION OF POSITION PAPER WILL SUFFICE TO SUPPORT A DECISION IN FAVOR OF RESPONDENTS IN THE EJECTMENT CASE?

II

WHETHER OR NOT RESPONDENTS WHO DID NOT HAVE ACTUAL, PHYSICAL POSSESSION OF THE LOT IN QUESTION FOR YEARS RECOVER POSSESSION THEREOF THROUGH THE SUMMARY REMEDY OF EJECTMENT? WILL AN ACTION FOR EJECTMENT LIE AGAINST PETITIONER?

III

WHETHER OR NOT THE AWARD OF ATTORNEY'S FEES EXCEEDING THE AMOUNT OF P20,000.00 LEGAL?

IV

WHETHER OR NOT THE COURT OF APPEALS ERRED IN AFFIRMING THE DECISION OF THE RTC, BR. 16.[8]

Petitioner contends that respondents failed to comply with the provisions of Section 10, Rule 70 of the Rules of Court requiring the submission of affidavits of witnesses and other evidence on the factual issues of the case; that the complaint, the exhibits marked by respondents and their position paper do not constitute preponderance of evidence in their favor, especially in view of the fact that the allegations in respondents' complaint were controverted by petitioner; and that since there is no sufficient evidence to support respondents' complaint, the MCTC committed error when it rendered judgment in favor of respondents.

Petitioner also avers that respondents failed to establish that they are in actual possession of the lots in question; that, in fact, they have not proven that they are the owners of the said properties; and that petitioner has a valid contract of lease with Virginia which entitles her to the possession of Lot No. 2817.

Petitioner argues that respondents have no cause of action against her as they are not lessors, vendors or persons with whom petitioner has a contract, express or implied and that respondents failed to aver facts constitutive of either forcible entry or unlawful detainer. As such, the MCTC did not acquire jurisdiction over the case.

Petitioner further contends that the MCTC erred in awarding attorney's fees exceeding the amount of P20,000.00 because the Rules on Summary Procedure clearly provide that in ejectment cases, irrespective of the amount of damages or unpaid rentals sought to be recovered, the attorney's fees to be awarded should not exceed P20,000.00.

Lastly, petitioner avers that the CA erred in ruling that the RTC did not commit grave abuse of discretion in denying petitioner's appeal considering that the latter's failure to submit her appeal memorandum on time was due to a fortuitous event. Petitioner cites jurisprudence holding that technical rules should be liberally construed in favor of the parties so as not to frustrate substantial justice or bar vindication of a legitimate grievance.

Respondents counter that the Decision of the MCTC is based on the titles over the disputed lots which they presented in evidence; and that the award of damages is supported by the stipulations in the Lease Contract entered into between petitioner and Virginia.

Respondents assert that the findings of fact by lower courts are not subject to review by this Court. Moreover, the findings of fact by the MCTC and the CA are based on stipulations of facts made by the parties as contained in the Pre-Trial Order of the MCTC dated September 10, 1999 and on the parties' admissions in their respective pleadings.

The petition is unmeritorious.

However, certain clarification must first be made. While respondents in their Complaint filed with the RTC refer to Lot No. 2816, which is allegedly occupied by herein petitioner, the MCTC and the CA, in their respective

Decisions, found that the disputed property occupied by petitioner is Lot No. 2817. Respondents never questioned this finding in any of their pleadings in the present petition. Hence, insofar as the Court is concerned, the subject property is Lot No. 2817.

The Court will resolve the last issue ahead of the first three issues. The Court finds that the CA did not err in ruling that the RTC did not commit grave abuse of discretion when it denied petitioner's appeal for her failure to timely file her appeal memorandum.

Section 7(b), Rule 40 of the Rules of Court provides:

Sec. 7. Procedure in the Regional Trial Court. - x x x

(b) Within fifteen (15) days from such notice, it shall be the duty of the appellant to submit a memorandum which shall briefly discuss the errors imputed to the lower court, a copy of which shall be furnished by him to the adverse party. Within fifteen (15) days from receipt of the appellant's memorandum, the appellee may file his memorandum. Failure of the appellant to file a memorandum shall be a ground for dismissal of the appeal. (Emphasis supplied)

Rules of procedure do not exist for the convenience of the litigants.[9] These rules are established to provide order to and enhance the efficiency of our judicial system.[10] They are not to be trifled with lightly or overlooked by the mere expedience of invoking "substantial justice." [11] In a long line of decisions, this Court has repeatedly held that, while the rules of procedure are liberally construed, the provisions on reglementary periods are strictly applied, indispensable as they are to the prevention of needless delays, and are necessary to the orderly and speedy discharge of judicial business.[12] The same is true with respect to the rules on the manner of and periods for perfecting appeals.[13]

In *Enriquez v. Court of Appeals*, [14] the Court further elucidated on the meaning and consequence of the provisions of Section 7(b), Rule 40 of the Rules of Court, to wit:

Rule 40, Section 7 (b) provides that, "it shall be the duty of the appellant to submit a memorandum" and failure to do so "shall be a ground for dismissal of the appeal." The use of the word "shall" in a statute or rule expresses what is mandatory and compulsory. Further, the Rule imposes upon an appellant the "duty" to submit his memorandum. A duty is a "legal or moral obligation, mandatory act, responsibility, charge, requirement, trust, chore, function, commission, debt, liability, assignment, role, pledge, dictate, office, (and) engagement." Thus, under the express mandate of said Rule, the appellant is duty-bound to submit his memorandum on appeal. Such submission is not a matter of discretion on his part. His failure to comply with this mandate or to perform said duty will compel the RTC to dismiss his appeal.

In rules of procedure, an act which is jurisdictional, or of the essence of the proceedings, or is prescribed for the protection or benefit of the party affected is mandatory. As private respondent points out, in appeals from inferior courts to the RTC, the appellant's brief is mandatory for the assignment of errors is vital to the decision of the appeal on the merits. This is because on appeal only errors specifically assigned and properly argued in the brief or memorandum will be considered, except those affecting jurisdiction over the subject matter as well as plain and clerical errors. Otherwise stated, an appellate court has no power to resolve an unassigned error, which does not affect the court's jurisdiction over the subject matter, save for a plain or clerical error.

It is true that the Rules should be interpreted so as to give litigants ample opportunity to prove their respective claims and that a possible denial of substantial justice due to legal technicalities should be avoided. But it is equally true that an appeal being a purely statutory right, an appealing party must strictly comply with the requisites laid down in the Rules of Court. In other words, he who seeks to avail of the right to appeal must play by the rules. This the petitioner failed to do when she did not submit her memorandum of appeal in Civil Case No. 12044 as required by Rule 40, Section 7 of the 1997 Rules of Civil Procedure. That she lost her case

is not the trial court's fault but her own.[15]

The aforequoted ruling of the Court was reiterated in the more recent case of *Gonzales v. Gonzales*.^[16]

In the instant case, upon motion of petitioner, she was granted by the RTC an additional 45 days, within which to file the appeal memorandum, with a warning that the period is non-extendible. The last day for filing the memorandum is December 8, 2000. The Court is not persuaded by petitioner's contention that because of a typhoon that hit Roxas City, her counsel was not able to go to work on December 7, 2000 and finish the preparation of her memorandum. In the first place, the 45-day extension given to petitioner was an ample period for her counsel to prepare the required memorandum, such that the failure of the latter to go to work on December 7, 2000 was not a sufficient justification for the RTC to grant another extension, especially in light of the warning that the 45-day period is non-extendible. Secondly, petitioner's counsel was already able to go to work on December 8, 2000 and, instead of filing a motion for extension, she should have finished the preparation of the memorandum. She had until the closing of government offices on that day to finish and file the said memorandum. Yet, she failed to do so.

The Court is also not persuaded by petitioner's contention that her failure to submit her appeal memorandum was because her counsel also had to prepare a memorandum required by this Court in another case which was due for submission on December 10, 2000. Petitioner's counsel should have prioritized the preparation of the memorandum required by the RTC because of its earlier deadline.

Clearly, petitioner's counsel is guilty of simple negligence. Settled is the rule that the negligence of counsel binds the client.^[17] This is based on the rule that any act performed by a lawyer within the scope of his general or implied authority is regarded as an act of his client.^[18] Consequently, the mistake or negligence of petitioners' counsel may result in the rendition of an unfavorable judgment against them.^[19] It is true that there are recognized exceptions to this rule, as in cases where reckless or gross negligence of counsel deprives the client of due process of law, or when its application results in the outright deprivation of one's property through a technicality.^[20] However, none of these exceptions have been shown to be present in the instant case. Hence, the negligence of her counsel binds petitioner, and she cannot insist that the principle of liberal interpretation of the rules of procedure be applied to her case.

In any event, petitioner's claim over the subject property has no leg to stand on.

With respect to the first and second issues, the CA sustained the following findings of the MCTC, to wit: that respondents' predecessor, Enrique Altavas, was not divested of his ownership of the subject lots; that the titles over the subject properties remain in his name; that, not being the owner or administrator of the said lots, Virginia has no right to enter into any contract for the lease of the said properties; and that petitioner's possession of portions of the disputed properties is merely upon tolerance of respondents.

Settled is the rule that the trial court's findings of fact, especially when affirmed by the CA, are generally binding and conclusive upon this Court.^[21] There are recognized exceptions to this rule, among which are: (1) the conclusion is grounded on speculations, surmises or conjectures; (2) the inference is manifestly mistaken, absurd or impossible; (3) there is grave abuse of discretion; (4) the judgment is based on a misapprehension of facts; (5) the findings of fact are conflicting; (6) there is no citation of specific evidence on which the factual findings are based; (7) the finding of absence of facts is contradicted by the presence of evidence on record; (8) the findings of the CA are contrary to the findings of the trial court; (9) the CA manifestly overlooked certain relevant and undisputed facts that, if properly considered, would justify a different conclusion; (10) the findings of the CA are beyond the issues of the case; and (11) such findings are contrary to the admissions of both parties.^[22] However, petitioner failed to show that any of the exceptions is present in the instant case to warrant a review of the findings

of fact of the lower courts.

As to respondents' ownership and right of possession of the subject properties, records show that the MCTC based its Decision not only on the Position Paper of respondents but also on the pieces of evidence submitted by them. Respondents attached, as annexes to their Complaint, the Original Certificates of Title Nos. RO-4326 and RO-4327 in the name of Enrique, covering Lot Nos. 2816 and 2817, respectively, as evidence of their ownership and right to possess the disputed properties.

Moreover, being a mere lessee, petitioner steps into the shoes of her lessor, Virginia. However, Virginia's claim of ownership was not sustained by the MCTC, which instead found that she was not the owner of and had no right to possess the disputed property or to transfer possession of the same, through lease, in favor of another person. Virginia later withdrew her appeal filed with the RTC. By reason of such withdrawal, she is bound by the findings of the MCTC.

The third issue raised by petitioner is misplaced. Only Roxas and Virginia, co-defendants of petitioner, were ordered by the MCTC to pay attorney's fees in the amount of P50,000.00. Both appealed the MCTC Decision. However, their respective appeals were dismissed by the RTC - Roxas's, for failure to file his appeal memorandum; and Virginia's, because of her subsequent withdrawal of her appeal.

WHEREFORE, the petition is DENIED. The Decision of the Court of Appeals dated January 31, 2003 and its Resolution of January 14, 2004 in CA-G.R. SP No. 63123 are AFFIRMED.

Double costs against petitioner.

SO ORDERED.

Quisumbing, Ynares-Santiago, Nachura, and Reyes, JJ., concur.

* In lieu of Justice Minita V. Chico-Nazario, per Special Order No. 508 dated June 25, 2008.

[1] Penned by Justice Edgardo P. Cruz with the concurrence of Justices Salvador J. Valdez, Jr. and Mario L. Guariña III, rollo, pp. 29-35.

[2] Annex "A", Petition for Certiorari, CA rollo, p. 29.

[3] Annex "B", id. at 31.

[4] Id. at 256.

[5] Annex "C", CA rollo, p. 32.

[6] Annex "D", id. at 38-43.

[7] Annex "G", id. at 69.

[8] Rollo, pp. 186-187.

[9] Ko v. Philippine National Bank, G.R. Nos. 169131-32, January 20, 2006, 479 SCRA 298, 303.

[10] Id. at 303-304.

[11] Id. at 304.

[12] Moneytrend Lending Corporation v. Court of Appeals, G.R. No. 165580, February 20, 2006, 482 SCRA 705,

714.

[13] Id.

[14] 444 Phil. 419 (2003).

[15] Id. at 428-429.

[16] G.R. No. 151376, February 22, 2006, 483 SCRA 57, 66-69.

[17] Maquilan v. Maquilan, G.R. No. 155409, June 8, 2007, 524 SCRA 166, 179.

[18] Id. at 179-180

[19] Id. at 180.

[20] Id.

[21] Sandejas v. Ignacio, Jr., G.R. No. 155033, December 19, 2007, 541 SCRA 61, 74.

[22] Id. at 74-75.

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