

EMETERIO O. PASIONA, JR., PETITIONER, COURT OF APPEALS, NATIONAL LABOR RELATIONS COMMISSION, AND SAN MIGUEL CORPORATION, RESPONDENTS.

G.R. No. 165471. July 21, 2008

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

This resolves the Petition for Certiorari under Rule 65 of the Rules of Court, seeking the nullification of the Decision[1] of the Court of Appeals (CA) dated April 30, 2004 dismissing the petition for certiorari filed by Emeterio O. Pasiona, Jr. (petitioner).

The antecedent facts, as accurately summarized by the CA, are as follows.

Records show that petitioner Emeterio Pasiona, Jr. was employed by San Miguel Corporation (SMC) as Account Specialist on February 1, 1986. He was assigned at the Naga Sales Office of the SMC for three (3) years handling the Partido Area, particularly, Lagonoy, Tigaon, Goa and other adjacent municipalities, all of Camarines Sur and was receiving a monthly salary of P19,440.00 and an average monthly commission of P10,000.00.

On August 18, 1997, SMC, through Mr. Gil Guerrero, issued a Memorandum requiring petitioner to explain within 48 hours from receipt thereof why the following violations of company policies occurred in his area of responsibility, to wit:

- Unauthorized check acceptance from Customer Gloria Cariaga for P5,218.00.
- Unauthorized check acceptance from Troy Monasterio for P242,978.76 on SMB Check payable to SMB Warehousing Services operated by Troy Monasterio.
- Indication of irregularities on transactions related to price rollback:
 - Pulled-out 40 cs. RPT - the partially unliquidated obligation of Mayor Melgarejo on the "Poronete" event was delivered to petitioner's brother Ike Pasiona the rebate of which after the price rollback was given to the latter by converting the amount of P1,800.00 to its equivalent of 8 cs. RH500;
 - Rebates amounting to P2,655.00 were converted to 9 cases PP320 in the name of Marcel Pan were likewise delivered to and signed by certain "Pasiona"; the SMC delivery team claimed that they were delivered and received by Mrs. Pasiona;
 - Questionable inventory counted by petitioner, i.e., 40 RPT, 10 RH330 and 70 RH500, since purchases showed a record of 150 cases last October 31, 1996, 1 rpt on March 21, 1997; and 70 RH500 on May 15, 1997; this refers to the inventory of Marcel Pan as counted by the petitioner;
 - Rebates amounting to P6,075.00 were converted to 27 RH500 in the name of Vice Mayor Elias Pan of Goa, Camarines Sur but were likewise delivered to and signed by Ike Pasiona; and

- Rebates amounting to P7,050.00 were converted to 30 cases PP1000 in the name of Ernesto Torres (not a regular customer), but were also delivered to and received by Mrs. Pasiona.
- Non-compliance in affixing the customer's signature and AS signature on the space provided for in the rover-generated receipts.
- Vale issuances without approved vale request.

In accordance with the said Memorandum, petitioner wrote an explanation and submitted the same to the respondent SMC.

After due investigation, the management of SMC found petitioner guilty of gross negligence, withholding of funds due the company, and insubordination. Petitioner after notice, was subsequently terminated effective January 19, 1998.

Thus, on January 19, 1998, petitioner filed a complaint for illegal dismissal, praying for reinstatement without loss of seniority rights and other privileges, full back wages, inclusive of allowances, and other benefits or the monetary equivalent thereof. He further prayed that he be awarded P500,000.00 for moral damages and another P500,000.00 for exemplary damages, plus P50,000.00 as and by way of attorney's fees. The case was thereafter docketed as RAB 05-01-00009-98.

On November 24, 1999, after the parties had submitted their respective Position Papers and evidence, Labor Arbiter Rolando Bobis rendered a decision, the dispositive portion of which states:

"WHEREFORE, in view of the foregoing, judgment is hereby rendered finding the dismissal of complainant by respondent to be illegal thereby ordering the latter as follows:

- To reinstate complainant to his former position without loss of seniority rights within ten (10) days from receipt of this Decision. Should reinstatement be no longer feasible, to pay complainant separation pay equivalent to one-month salary for every year of his service commencing from the date of dismissal to the supposed date of reinstatement. A fraction of six-months or more is equivalent to one-year.
- To pay complainant backwages at the rate of P19,440.00 per month from the date of dismissal on January 19, 1998 up to the date of actual reinstatement, including monthly allowance of P10,000.00 per month as well as other benefits or its monetary equivalent, which as of this date of decision amounted to P677,120.00.

All other claims are hereby dismissed for lack of merit.

SO ORDERED.

Both parties appealed to the NLRC. On December 18, 2001, the NLRC rendered its assailed Decision, the dispositive portion of which states:

"WHEREFORE, consistent with our finding that complainant's dismissal is valid, the assailed Decision of the Arbiter dated November 29, 1999 is hereby, REVERSED by declaring complainant's termination from employment valid and legal. Respondent, however, is ordered to pay complainant an average monthly variable monthly commissions of P10,000.00 from the period December 1999 up to the promulgation of this Decision. The Order of the Labor Arbiter dated August 6, 2000 awarding complainant the sum of P19,440.00 representing the one-time gift given by Eduardo M. Cojuanco, Jr., is hereby AFFIRMED.

SO ORDERED.[2]

From such adverse judgment, petitioner elevated his case to the CA via a petition for certiorari. On April 30, 2004, the CA promulgated the assailed Decision affirming the National Labor Relations Commission (NLRC) ruling, stating thus:

In the case at bar, there is no dispute that the petitioner is a regular employee of SMC and is occupying a position which calls for a high degree of trust and confidence. As such employee, petitioner is expected to recognize the rules and regulations of the company which have not been declared to be illegal or improper by competent authorities for the purpose of maintaining the viability of its business. Despite knowledge thereof, petitioner did some acts in direct violation of the company's policies, thus, justifying the company's act of losing its confidence towards the petitioner. Whatever may be the purpose behind the violation is immaterial. What matters is that petitioner knowingly violated the company's rules and regulations which constitutes a betrayal of the company's trust and confidence towards him. Definitely, this constitutes just cause for termination of employment.[3] (Emphasis supplied)

The dispositive portion of the CA Decision reads as follows:

WHEREFORE, finding no merit to the instant petition, the same is hereby ordered DISMISSED. Consequently, the December 18, 2001 Decision and the March 26, 2002 Order of the National Labor Relations Commission, in CA No. 022470-00, are AFFIRMED.

SO ORDERED.[4]

No motion for reconsideration was filed by either party, hence, the Decision became final and executory and Entry of Judgment[5] was made by the CA on May 29, 2004.

Almost five months later, or on October 18, 2004, petitioner, a resident of Naga City, Camarines Sur, filed the present petition for certiorari, alleging that despite his inquiries with his former counsel, Atty. Apolinario N. Lomabao, regarding the status of his case with the CA, said counsel never informed him of the CA Decision and the non-filing of a motion for reconsideration thereof. It was only on August 18, 2004, upon coming to Manila to get his Bar Examination Permit from the Supreme Court, when he discovered that a CA Decision had already been promulgated on April 30, 2004. When he asked Atty. Lomabao why no motion for reconsideration was filed, said counsel allegedly answered that "the case will be dismissed by the Supreme Court anyway." [6] Petitioner then obtained the services of his present counsel of record and filed the instant petition.

Petitioner asserts that he should be allowed to avail of the remedy of certiorari because he was denied due process due to the recklessness and gross negligence of his former counsel and there is no other plain, speedy, and adequate remedy available to him in the ordinary course of law. He prays for the Court to consider him to have received a copy of the CA Decision only on August 18, 2004, when he personally obtained a copy thereof, instead of May 13, 2004, when his former counsel received a copy of the same.

Petitioner then alleges that the CA and the NLRC committed grave abuse of discretion amounting to lack or excess of jurisdiction in finding that there was just cause for the dismissal of petitioner and in affirming the said dismissal when a lesser penalty would have served the purpose.

Private respondent, on the other hand, insists that the proper remedy of an aggrieved party from a decision of the CA is a petition for review on certiorari under Rule 45 of the Rules of Court, not a petition for certiorari under Rule 65 of the same Rules. Private respondent further lays emphasis on the fact that the CA Decision had actually become final and executory as shown by the CA's Entry of Judgment.

The petition fails for lack of merit.

The Court re-emphasizes the doctrine of finality of judgment. In *Alcantara v. Ponce*, [7] the Court, citing its much earlier ruling in *Arnedo v. Llorente*, [8] stressed the importance of said doctrine, to wit:

It is true that it is the purpose and intention of the law that courts should decide all questions submitted to them "as truth and justice require," and that it is greatly to be desired that all judgments should be so decided; but

controlling and irresistible reasons of public policy and of sound practice in the courts demand that at the risk of occasional error, judgments of courts determining controversies submitted to them should become final at some definite time fixed by law, or by a rule of practice recognized by law, so as to be thereafter beyond the control even of the court which rendered them for the purpose of correcting errors of fact or of law, into which, in the opinion of the court it may have fallen. The very purpose for which the courts are organized is to put an end to controversy, to decide the questions submitted to the litigants, and to determine the respective rights of the parties. With the full knowledge that courts are not infallible, the litigants submit their respective claims for judgment, and they have a right at some time or other to have final judgment on which they can rely as a final disposition of the issue submitted, and to know that there is an end to the litigation.[9] (Emphasis supplied)

Then, in *Juani v. Alarcon*,^[10] it was held thus:

This doctrine of finality of judgment is grounded on fundamental considerations of public policy and sound practice. In fact, nothing is more settled in law than that once a judgment attains finality it thereby becomes immutable and unalterable. It may no longer be modified in any respect, even if the modification is meant to correct what is perceived to be an erroneous conclusion of fact or law, and regardless of whether the modification is attempted to be made by the court rendering it or by the highest court of the land.^[11] (Emphasis supplied)

Again, in *Dinglasan v. Court of Appeals*,^[12] the Court declared that:

After the judgment or final resolution is entered in the entries of judgment, the case shall be laid to rest. x x x
x x x x

The finality of decision is a jurisdictional event which cannot be made to depend on the convenience of the party. To rule otherwise would completely negate the purpose of the rule on completeness of service, which is to place the date of receipt of pleadings, judgment and processes beyond the power of the party being served to determine at his pleasure.^[13] (Emphasis and underscoring supplied)

It should also be borne in mind that the right of the winning party to enjoy the finality of the resolution of the case is also an essential part of public policy and the orderly administration of justice. Hence, such right is just as weighty or equally important as the right of the losing party to appeal or seek reconsideration within the prescribed period.^[14]

In the present case, private respondent has the right to fully rely on the immutability of the CA Decision in its favor once entry of judgment was made by the CA on May 29, 2004.

Despite such finality, petitioner beseeches the Court to disregard this long-standing principle of finality of judgment and declare the CA Decision null and void, arguing that he was denied due process of law because of his former counsel's failure to file a timely motion for reconsideration of the CA Decision.

In a long line of cases, the Court has upheld the principle that a client is bound by the action or mistakes of his counsel, the only exception being, when such counsel's negligence is so gross and palpable resulting in the denial of due process to his client.^[15]

It is undisputed that there was negligence on the part of petitioner's former counsel. However, it is not only the gross negligence of counsel that would justify deviation from the principle of finality of judgment. It should be coupled with the denial of due process to the client by reason of said negligence. Thus, the CA Decision can only be nullified if petitioner can successfully show that he was deprived of due process.

Hence, the pivotal question is, was petitioner deprived of due process of law by reason of counsel's failure to file a motion for reconsideration of the CA Decision? The answer is in the negative.

In a number of cases wherein the factual milieu confronted by the aggrieved party was much graver than the one being faced by herein petitioner, the Court struck down the argument that the aggrieved parties were denied due process of law because they had the opportunity to be heard at some point of the proceedings even if they had not been able to fully exhaust all the remedies available by reason of their counsel's negligence or mistake. Thus, in *Dela Cruz v. Andres*,^[16] the Court held that "where a party was given the opportunity to defend his interests in due course, he cannot be said to have been denied due process of law, for this opportunity to be heard is the essence of due process."^[17] In the earlier case of *Producers Bank of the Philippines v. Court of Appeals*,^[18] the decision of the trial court attained finality by reason of counsel's failure to timely file a notice of appeal but the Court still ruled that such negligence did not deprive petitioner of due process of law. As elucidated by the Court in said case, to wit:

"The essence of due process is to be found in the reasonable opportunity to be heard and submit any evidence one may have in support of one's defense. x x x Where opportunity to be heard, either through oral arguments or pleadings, is accorded, there is no denial of due process."

Verily, so long as a party is given the opportunity to advocate her cause or defend her interest in due course, it cannot be said that there was denial of due process. x x x^[19] (Emphasis supplied)

Also, in *Victory Liner, Inc. v. Gammad*,^[20] the Court held that:

The question is not whether petitioner succeeded in defending its rights and interests, but simply, whether it had the opportunity to present its side of the controversy. Verily, as petitioner retained the services of counsel of its choice, it should, as far as this suit is concerned, bear the consequences of its choice of a faulty option. x x x^[21] (Emphasis supplied)

The Court succinctly ruled that there was no denial of due process despite the failure of the lawyer to file a motion for reconsideration of the trial court's order declaring his client to have waived the right to present evidence. It was held that the party had the opportunity to be heard when he assailed the trial court's decision through an appeal to the CA. The party was not considered to have been deprived of due process of law even if he had not been able to present evidence in his behalf and the trial court's decision was based only on the evidence presented by the opposing party.

In *Juani v. Alarcon*,^[22] the Court was likewise unconvinced by therein petitioner's invocation of the argument of denial of due process by reason of the former lawyer's negligence. It was held that the counsel's mistake of not objecting to the dismissal of his client's counterclaim does not amount to denial of due process.

In *GCP-Manny Transport Services v. Principe*,^[23] the Court held that there was no denial of due process in a case where petitioner failed to file a timely notice of appeal because of the failure of its former counsel (who did not submit a notice of withdrawal as counsel, thereby remaining as counsel of record) to inform petitioner of the date of receipt of the trial court's decision. The Court stated:

x x x [W]hile x x x counsel of petitioner was far from being vigilant in protecting the interest of his client, his infractions cannot be said to have deprived petitioner of due process that would justify deviation from the general rule that clients are bound by the actions of their counsel.

As may be gleaned from the records, petitioner was able to actively participate in the proceedings a quo. It was duly represented by counsel during the trial. While it may have lost its right to appeal, it was not denied its day in court. x x x As long as a party is given the opportunity to defend its interests in due course, it would have no reason to complain, for it is the opportunity to be heard that makes up the essence of due process.^[24] (Emphasis supplied)

In this case, petitioner's situation is far better than those of the aggrieved parties in the above-cited cases because

he had been able to present all his evidence and fully ventilate his arguments before the LA, then on appeal before the NLRC, and even in his petition for certiorari before the CA.

Akin to the aforementioned cases, herein petitioner's assertion, that he had been denied due process of law due to the negligence of counsel, is hollow. He had more than ample opportunity to be heard and fully thresh out his case. The reason he proffers as a ground for this Court to nullify the CA Decision - that his counsel's failure to notify him of the CA Decision and move for the reconsideration thereof deprived him of due process - had not been clearly established so as to justify divergence from the long-settled rule on finality of judgments and the principle that clients are bound by the actions of their counsels. Hence, the Court is bound by the CA's Decision which has become final and executory due to the simple negligence of petitioner's former counsel in not filing a motion for reconsideration within the reglementary period.

Even if this Court accedes to petitioner's request that he be considered to have received a copy of the CA Decision only on August 18, 2004, he is still not entitled to the remedy of a writ of certiorari. The Court categorically declared in *Iloilo La Filipina Uyongco Corporation v. Court of Appeals*,^[25] that if what is being assailed is a CA Decision, then "Rule 45 of the Rules of Civil Procedure specifically provides that an appeal by certiorari from the judgments or final orders or resolutions of the CA is by verified petition for review on certiorari." ^[26] The Court further held in said case that:

The aggrieved party is proscribed from assailing a decision or final order of the CA via Rule 65 because such recourse is proper only if the party has no plain, speedy and adequate remedy in the course of law. In this case, petitioner had an adequate remedy, namely, a petition for review on certiorari under Rule 45 of the Rules of Court. A petition for review on certiorari, not a special civil action for certiorari was, therefore, the correct remedy.

x x x x

Settled is the rule that where appeal is available to the aggrieved party, the special civil action for certiorari will not be entertained - remedies of appeal and certiorari are mutually exclusive, not alternative or successive. Hence, certiorari is not and cannot be a substitute for a lost appeal, especially if one's own negligence or error in one's choice of remedy occasioned such loss or lapse. One of the requisites of certiorari is that there be no available appeal or any plain, speedy and adequate remedy. Where an appeal was available, as in this case, certiorari will not prosper, even if the ground therefor is grave abuse of discretion. Petitioner's resort to this Court by Petition for Certiorari was a fatal procedural error, and the instant petition must, therefore, fail.^[27] (Emphasis and underscoring supplied)

Thus, even if petitioner is deemed to have received a copy of the petition on August 18, 2004, he only had 15 days therefrom within which to file a petition for review on certiorari under Rule 45. Thus, when he filed the instant petition for certiorari on October 18, 2004, the period to appeal had already expired, rendering the CA Decision final and executory. To repeat, certiorari is not a substitute for lost appeal.

Petitioner's reason for the delay in filing an appeal, i.e., that he had to attend to taking the Bar Examinations before he could look for a new lawyer to represent him, is not enough justification to suspend the application of the rules of procedure in this case. He made his choice not to give this case his preferential attention and now he has to accept the consequences of such choice. As aptly stated in *Ang v. Grageda*,^[28] the remedy of certiorari "is not a procedural devise to deprive the winning party of the fruits of the judgment in his or her favor. Courts should frown upon any scheme to prolong litigations."^[29]

WHEREFORE, the petition is DISMISSED for lack of merit.

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 Associate Justice Elvi John S. Asuncion, with Associate Justices Godardo A. Jacinto and Rosmari D. Carandang, concurring; rollo, pp. 48-54.

[2] Id. at 48-51.

[3] Id. at 53.

[4] Id. at 53-54.

[5] CA rollo, p. 409.

[6] Petition, rollo, p. 9.

[7] G.R. No. 131547, December 15, 2005, 478 SCRA 27.

[8] 18 Phil. 257 (1911).

[9] Alcantara v. Ponce, supra note 7 at 49-50, Arnedo v. Llorente, supra note 8, at 262-263.

[10] G.R. No. 166849, September 5, 2006, 501 SCRA 135.

[11] Id. at 155.

[12] G.R. No. 145420, September 19, 2006, 502 SCRA 253.

[13] Id. at 266.

[14] Peña v. Government Service Insurance System, G.R. No. 159520, September 19, 2006, 502 SCRA 383, 404.

[15] Grande v. University of the Philippines, G.R. No. 148456, September 15, 2006, 502 SCRA 67, 74; Juani v. Alarcon, supra note 10, at 154; GCP-Manny Transport Services, Inc. v. Principe, G.R. No. 141484, November 11, 2005, 474 SCRA 555, 562; Victory Liner, Inc. v. Gammad, G.R. No. 159636, November 25, 2004, 444 SCRA 355, 361.

[16] 522 SCRA 585.

[17] Id. at 90.

[18] G.R. No. 126620, April 17, 2002, 430 Phil. 812 (2002).

[19] Id. at 825-826.

[20] Supra note 15.

[21] Id. at 363, citing Gold Line Transit, Inc. v. Ramos, 415 Phil. 492, 505 (2001).

[22] Supra note 10.

[23] Supra note 15.

[24] Id. at 563.

[25] G.R. No. 170244, November 28, 2007, 539 SCRA 178.

[26] Id. at 187.

[27] Id. at 187-189.

[28] G.R. No. 166239, June 8, 2006, 490 SCRA 424.

[29] Id. at 439.

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