

**NENA A. CARIÑO, PETITIONER, VS. ESTRELLA M. ESPINOZA,
REPRESENTED BY HER ATTORNEY-IN-FACT MANUEL P. MEJIA, JR.,
RESPONDENT.**

G.R. No. 166036. June 19, 2009

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

Before the Court is a petition for review assailing the 30 October 2003[1] and 2 November 2004[2] Resolutions of the Court of Appeals in CA-G.R. CV No. 73034.

The Antecedent Facts

The case originated from an action for Legal Redemption and Damages with Writ of Preliminary Injunction filed by Estrella M. Espinoza (respondent), represented by her attorney-in-fact Manuel P. Mejia, Jr., against Nena A. Cariño (petitioner) and Modesto Penullar (Penullar).

Respondent was the co-owner, to the extent of 2/4 share, of a parcel of land, known as Lot 422 of the Mangaldan Cadastre, located in Poblacion, Mangaldan, Pangasinan. Penullar was the owner of 1/4 share of the land. However, the land remained undivided.

In 1988, respondent heard a rumor that Penullar was selling his share of the land. She inquired from both Penullar and petitioner if the rumor was true but they both denied it. On 25 July 1989, respondent learned that Penullar executed a deed of absolute sale in favor of petitioner.

Penullar alleged that he informed respondent of his intention to sell the land. Petitioner also claimed that the land was first offered to respondent but she was not interested in buying it.

The Regional Trial Court of Dagupan City, Branch 44 (trial court) ruled in favor of respondent. The trial court ruled that respondent was not notified of the sale of Penullar's share of the land. The trial court found that upon learning of the sale, respondent promptly filed the complaint and deposited the amount of redemption price. The dispositive portion of the trial court's Decision reads:

WHEREFORE, judgment is rendered in favor of Estrella Mejia Espinoza and against defendants Nena Cariño and Modesto Penullar, as follows:

- The defendants are ordered to allow the plaintiff to redeem the ¼ share/interest [that] defendant Modesto Penullar has over the land in question, Lot 422 of the Mangaldan Cadastre;
- The defendants are ordered to execute the corresponding deed of redemption in favor of the plaintiff; and
- The defendants are ordered jointly and severally to pay attorney's fee in the amount of P15,000.00 plus P500.00 for each day of hearing and actual litigation expenses of P5,000.00 plus costs of this suit.

The writ of preliminary injunction which the Court issued on November 22, 1996 enjoining the defendants and/or their agents or any other person acting in their [behalf] from continuing with the construction going on in the premises in question, is hereby made permanent.

Furnish copies of this Decision to Atty. Pedro M. Surdilla and Atty. Fernando P. Cabrera.

SO ORDERED.[3]

Petitioner appealed from the trial court's Decision.

In its 30 October 2003 Resolution, the Court of Appeals dismissed the appeal for petitioner's failure to file the appellant's brief. The Court of Appeals deemed that petitioner abandoned the appeal.

Petitioner filed a motion for reconsideration. In its 2 November 2004 Resolution, the Court of Appeals denied the motion.

Hence, the petition before this Court.

The Issue

The sole issue in this case is whether the Court of Appeals committed a reversible error in dismissing the appeal for failure of petitioner to file the appellant's brief.

The Ruling of this Court

The petition has no merit.

Petitioner alleges that the failure to file appellant's brief was not deliberate but was due to an exceptional reason, the illness of her counsel, which was supported by a medical certificate. Petitioner alleges that Section 1, Rule 50 of the 1997 Rules of Civil Procedure is merely directory and it is not the ministerial duty of the Court to dismiss the appeal. Petitioner alleges that the appellant's brief was submitted prior to the issuance of the 30 October 2003 Resolution and hence, there was substantial compliance with the Rules.

Section 1(e), Rule 50 of the 1997 Rules of Civil Procedure states:

SECTION 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:

x x x x

(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;

In its Order dated 16 January 2003, the Court of Appeals granted petitioner "another extension of forty five (45) days from January 15, 2003 or until March 1, 2003 within which to file brief with stern warning that no further extension shall be entertained." [4] The Judicial Records Division submitted a report dated 8 September 2003 that no appellant's brief was filed within the extended period granted by the Court.

In a Manifestation with Motion [5] dated 11 September 2003, respondent's counsel prayed that for failure to file the brief within the extended period, petitioner be deemed to have waived the right to submit the appellant's brief. It was only on 15 October 2003, after receipt of respondent's Manifestation and Motion, that petitioner's counsel filed the Urgent Ex-Parte Motion to Admit Appellant's Brief and the appellant's brief.

The general rule is that a client is bound by the acts, even mistakes, of his counsel in the realm of procedural technique. [6] There are exceptions to this rule, such as when the reckless or gross negligence of counsel deprives the client of due process of law, or when the application of the general rule results in the outright deprivation of

one's property through a technicality. [7] However, in this case, we find no reason to exempt petitioner from the general rule.

Petitioner's counsel alleges that the cause of the delay in filing the appellant's brief was his sickness. In his Urgent Ex-Parte Motion to Admit Appellant's Brief, petitioner's counsel claimed that he suffered an "attack of acute hypertension necessitating a day of close observation in a clinic for possible confinement, and close medical attention for about a month." [8] Petitioner's counsel further claimed that "by reason of said illness and upon strict advice of his attending physician to refrain from indulging in stressful activities, [he] was forced to lay aside all his pending assignments for about a month." [9] However, the Urgent Ex-Parte Motion to Admit Appellant's Brief shows that the hypertension attack happened on 8 February 2003. The appellant's brief was belatedly submitted only on 15 October 2003. The Court further notes that the medical certificate [10] was issued only on 13 October 2003.

We find that petitioner's reason did not fully justify the failure to comply with the Rules. Petitioner's counsel did not act for seven months from the expiration of the time given him by the Court of Appeals within which to file the appellant's brief. We cannot deem petitioner's belated submission of the appellant's brief, which was made only after respondent's Manifestation and Motion to the Court of Appeals, as substantial compliance with the Rules.

Rules of procedure must be used to facilitate, not to frustrate, justice. [11] However, the right to appeal is not a natural right but is a statutory privilege, and it may be exercised only in the manner and in accordance with the provisions of the law. [12]

WHEREFORE, we DENY the petition. We AFFIRM the 30 October 2003 and 2 November 2004 Resolutions of the Court of Appeals in CA-G.R. CV No. 73034.

SO ORDERED.

Puno, C.J., (Chairperson), Corona, Leonardo-De Castro, and Bersamin, JJ., concur.

[1] Rollo, p. 60. Penned by Associate Justice Perlita J. Tria Tirona with Associate Justices Portia Aliño-Hormachuelos and Rosalinda Asuncion-Vicente, concurring.

[2] Id. at 68-69.

[3] Id. at 40.

[4] CA rollo, p. 4.

[5] Id. at 11-12.

[6] Estate of Macadangdang v. Gaviola, G.R. No. 156809, 4 March 2009.

[7] Id.

[8] CA rollo, p. 15.

[9] Id.

[10] Rollo, p. 44.

[11] Canton v. City of Cebu, G.R. No. 152898, 12 February 2007, 515 SCRA 441.

[12] Id.

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