

NOLI ALFONSO AND ERLINDA FUNDIALAN, PETITIONERS, VS. SPOUSES HENRY AND LIWANAG ANDRES, RESPONDENTS.

G.R. No. 166236. July 29, 2010

Ponente: DEL CASTILLO, J.

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DEL CASTILLO, J.:

Technical rules may be relaxed only for the furtherance of justice and to benefit the deserving.

In the present petition for review, petitioners assail the August 10, 2004 Resolution[1] of the Court of Appeals (CA) in CA-G.R. CV. No. 78362, which dismissed the appeal before it for failure of petitioners to file their brief within the extended reglementary period.

Factual Antecedents

The present case stemmed from a complaint for accion publiciana with damages filed by respondent spouses Henry and Liwanag Andres against Noli Alfonso and spouses Reynaldo and Erlinda Fundialan before the Regional Trial Court (RTC), Branch 77, San Mateo, Rizal.

On July 8, 1997, the RTC rendered a Decision[2] in favor of respondents. The dispositive portion of the Decision states:

WHEREFORE, premises considered judgment is rendered in favor of the plaintiffs and against the defendants and all persons claiming rights under them who are ordered:

- to vacate the premises located at 236 General Luna St., Dulongbayan 11, San Mateo, Rizal;
- to jointly and severally pay the sum [of] P100.00 as reasonable compensation for the use of said premises commencing from 04 September 1995; [and]
- to jointly and severally pay the sum of P10,000.00 as and for attorney's fees and to pay the cost of suit.

SO ORDERED.[3]

Petitioners,[4] thus, appealed to the CA.

Proceedings Before the Court of Appeals

On November 5, 2003, petitioners' previous counsel was notified by the CA to file appellants' brief within 45 days from receipt of the notice. The original 45-day period expired on December 21, 2003. But before then, on December 8, 2003, petitioners' former counsel filed a Motion to Withdraw Appearance. Petitioners consented to the withdrawal.

On December 19, 2003, petitioners themselves moved for an extension of 30 days or until January 21, 2004 within which to file their appellants' brief. Then on March 3, 2004, petitioners themselves again moved for a fresh period of 45 days from March 3, 2004 or until April 18, 2004 within which to file their appellants' brief.

On March 17, 2004, the CA issued a Resolution:[5] a) noting the withdrawal of appearance of petitioners' former counsel; b) requiring petitioners to cause the Entry of Appearance of their new counsel; and c) granting petitioners' motions for extension of time to file their brief for a period totaling 75 days, commencing from December 21, 2003 or until March 5, 2004.

Petitioners themselves received a copy of this Resolution only on April 6, 2004. By that time, the extension to file appellants' brief had already long expired.

On April 14, 2004, the Public Attorney's Office (PAO), having been approached by petitioners, entered[6] its appearance as new counsel for petitioners. However, on August 10, 2004, the CA issued the assailed Resolution dismissing petitioners' appeal, to wit:

FOR failure of defendants-appellants to file their brief within the extended reglementary period which expired on March 5, 2004 as per Judicial Records Division report dated July 26, 2004, the appeal is hereby DISMISSED pursuant to Sec. 1 (e), Rule 50 of the 1997 Rules of Civil Procedure.

SO ORDERED.

On September 6, 2004, the PAO filed their Motion for Reconsideration[7] which requested for a fresh period of 45 days from September 7, 2004 or until October 22, 2004 within which to file appellants' brief. On October 21, 2004, the brief[8] was filed by the PAO.

On November 26, 2004, the CA issued a Resolution[9] which denied petitioners' motion for reconsideration. Hence, this petition for review.

Issues

Petitioners raise the following issues:

I

THE HONORABLE COURT OF APPEALS ERRED IN DISMISSING PETITIONERS' APPEAL FOR FAILURE TO FILE THEIR DEFENDANTS-APPELLANTS' BRIEF, DESPITE THE ATTENDANCE OF PECULIAR FACTS AND CIRCUMSTANCES SURROUNDING SUCH FAILURE, LIKE THE GROSS AND RECKLESS NEGLIGENCE OF THEIR FORMER COUNSEL, THE ABSENCE OF MANIFEST INTENT TO CAUSE DELAY, THE SERIOUS QUESTIONS OF LAW POSED FOR RESOLUTION BEFORE THE APPELLATE COURT, AND THE FACT THAT THE APPELLANTS' BRIEF HAD ALREADY BEEN FILED WITH THE COURT OF APPEALS AND ALREADY FORMED PART OF THE RECORDS OF THE CASE.

II

THE DISMISSAL OF PETITIONERS' APPEAL BY THE HONORABLE COURT OF APPEALS IS HIGHLY UNJUSTIFIED, INQUITOUS AND UNCONSCIONABLE BECAUSE IT OVERLOOKED AND/OR DISREGARDED THE MERITS OF PETITIONERS' CASE WHICH INVOLVES A DEPRIVATION OF THEIR PROPERTY RIGHTS.[10]

Petitioners' Arguments

Petitioners contend that their failure to file their appellants' brief within the required period was due to their indigency and poverty. They submit that there is no justification for the dismissal of their appeal specially since the PAO had just entered its appearance as new counsel for petitioners as directed by the CA, and had as yet no opportunity to prepare the brief. They contend that appeal should be allowed since the brief had anyway already been prepared and filed by the PAO before it sought reconsideration of the dismissal of the appeal and is already

part of the records. They contend that the late filing of the brief should be excused under the circumstances so that the case may be decided on the merits and not merely on technicalities.

Respondents' Arguments

On the other hand, respondents contend that failure to file appellants' brief on time is one instance where the CA may dismiss an appeal. In the present case, they contend that the CA exercised sound discretion when it dismissed the appeal upon petitioners' failure to file their appellants' brief within the extended period of 75 days after the original 45-day period expired.

Our Ruling

The petition has no merit.

Failure to file Brief On Time

Rule 50 of the Rules of Court 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;

Petitioners plead for the suspension of the rules and cite a number of cases where the Court excused the late filing of a notice of appeal as well as the late filing of the appellant's brief. They further cite *Development Bank of the Philippines v. Court of Appeals*[11] where the late filing of the appellant's brief was excused because the Court found the case impressed with public interest.

The cases cited by petitioners are not in point. In the present civil case which involves the failure to file the appellants' brief on time, there is no showing of any public interest involved. Neither is there a showing that an injustice will result due to the application of technical rules.

Poverty cannot be used as an excuse to justify petitioners' complacency in allowing months to pass by before exerting the required effort to find a replacement lawyer. Poverty is not a justification for delaying a case. Both parties have a right to a speedy resolution of their case. Not only petitioners, but also the respondents, have a right to have the case finally settled without delay.

Furthermore, the failure to file a brief on time was due primarily to petitioners' unwise choices and not really due to poverty. Petitioners were able to get a lawyer to represent them despite their poverty. They were able to get two other lawyers after they consented to the withdrawal of their first lawyer. But they hired their subsequent lawyers too late.

It must be pointed out that petitioners had a choice of whether to continue the services of their original lawyer or consent to let him go. They could also have requested the said lawyer to file the required appellants' brief before consenting to his withdrawal from the case. But they did neither of these. Then, not having done so, they delayed in engaging their replacement lawyer. Their poor choices and lack of sufficient diligence, not poverty, are the main culprits for the situation they now find themselves in. It would not be fair to pass on the bad consequences of their choices to respondents. Petitioners' low regard for the rules or nonchalance toward procedural requirements, which they camouflage with the cloak of poverty, has in fact contributed much to the delay, and hence frustration of justice, in the present case.

No compelling reason to disregard technicalities

Petitioners beg us to disregard technicalities because they claim that on the merits their case is strong. A study of the records fails to so convince us.

Petitioners theorize that publication of the deed of extrajudicial settlement of the estate of Marcelino Alfonso is required before their father, Jose Alfonso (Jose) could validly transfer the subject property. We are not convinced. In *Alejandrino v. Court of Appeals*,^[12] the Court upheld the effectivity of a deed of extrajudicial settlement that was neither notarized nor published.

Significantly, the title of the property owned by a person who dies intestate passes at once to his heirs. Such transmission is subject to the claims of administration and the property may be taken from the heirs for the purpose of paying debts and expenses, but this does not prevent an immediate passage of the title, upon the death of the intestate, from himself to his heirs.^[13] The deed of extrajudicial settlement executed by Filomena Santos Vda. de Alfonso and Jose evidences their intention to partition the inherited property. It delineated what portion of the inherited property would belong to whom.

The sale to respondents was made after the execution of the deed of extrajudicial settlement of the estate. The extrajudicial settlement of estate, even though not published, being deemed a partition^[14] of the inherited property, Jose could validly transfer ownership over the specific portion of the property that was assigned to him.^[15]

The records show that Jose did in fact sell to respondents the subject property. The deed of sale executed by Jose in favor of the respondents being a public document, is entitled to full faith and credit in the absence of competent evidence that its execution was tainted with defects and irregularities that would warrant a declaration of nullity. As found by the RTC, petitioners failed to prove any defect or irregularities in the execution of the deed of sale. They failed to prove

by strong evidence, the alleged lack of consent of Jose to the sale of the subject real property. As found by the RTC, although Jose was suffering from partial paralysis and could no longer sign his name, there is no showing that his mental faculties were affected in such a way as to negate the existence of his valid consent to the sale, as manifested by his thumbmark on the deed of sale. The records sufficiently show that he was capable of boarding a tricycle to go on trips by himself. Sufficient testimonial evidence in fact shows that Jose asked respondents to buy the subject property so that it could be taken out from the bank to which it was mortgaged. This fact evinces that Jose's mental faculties functioned intelligently.

In view of the foregoing, we find no compelling reason to overturn the assailed CA resolution. We find no injustice in the dismissal of the appeal by the CA. Justice dictates that this case be put to rest already so that the respondents may not be deprived of their rights.

WHEREFORE, the petition is DENIED. The August 10, 2004 Resolution of the Court of Appeals in CA-G.R. CV. No. 78362 is AFFIRMED.

SO ORDERED.

Corona, C.J., (Chairperson), Velasco, Jr., Leonardo-De Castro, and Perez, JJ., concur.

[1] CA rollo, p. 82; penned by Associate Justice Ruben T. Reyes and concurred in by Associate Justices Perlita J.

Tria-Tirona and Jose C. Reyes, Jr.

[2] Records, pp. 93-101; penned by Judge Francisco C. Rodriguez, Jr.

[3] Id. at 101.

[4] Reynaldo Fundialan did not file a Notice of Appeal; id. at 102.

[5] CA rollo, p. 77.

[6] Id. at 78-79.

[7] Id. at 85-89.

[8] Id. at 96-110.

[9] Id. at 121-123.

[10] Rollo, p. 157.

[11] 411 Phil. 121, 135 (2001).

[12] 356 Phil. 851, 862 (1998).

[13] Heirs of Ignacio Conti v. Court of Appeals, 360 Phil. 536, 546 (1998). Civil Code, Art. 774.

[14] Art. 1082 of the Civil Code states: "Every act which is intended to put an end to indivision among co-heirs and legatees or devisees is deemed to be a partition, although it should purport to be a sale, an exchange, a compromise, or any other transaction."

[15] See Alejandrino v. Court of Appeals, *supra* note 12.

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