ELSIE ANG, PETITIONER, VS. DR. ERNIEFEL GRAGEDA, RESPONDENT.

G.R. NO. 166239. June 08, 2006

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

Before the Court is a Petition for Review of the Resolution[1] of the Court of Appeals in (CA) CA-G.R. SP No. 76339 dismissing the petition for certiorari filed by petitioner, and its resolution denying the motion for reconsideration thereof.

The Antecedents

On February 9, 1996, Janet Ang had liposuction surgery on her thighs at the EPG Cosmetic and Aesthetics Surgery Clinic in Alabang, Muntinlupa City. She was attended to and operated on by Dr. Erniefel Grageda, who owned and ran the said clinic. In the course of the operation, Janet began to have fits of seizure. The doctor tried to stop the seizures but Janet had a grandmal seizure that led to her death. Medico-legal experts of the National Bureau of Investigation listed the cause of death as "irreversible shock."

Ang Ho Chem, Janet's father, filed a criminal complaint against respondent. On June 10, 1996, the Office of the City Prosecutor of Muntinlupa filed an Information[2] against Grageda for reckless imprudence resulting to homicide before the Metropolitan Trial Court (MeTC) of Muntinlupa City. The accusatory portion of the Information reads:

> That on or about the 4th (sic) day of February, 1996,[3] in the City of Muntinlupa, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being then a doctor of EPG Cosmetics and Aesthetics Surgical Clinic, without taking the necessary care and precaution to avoid injury to person, did then and there, unlawfully and feloniously conducted a liposuction operation on the person of Janet Ang in a careless, negligent and imprudent manner without employing the necessary corrective and/or preventive measures to prevent and/or arrest the irreversible shock, which directly caused her death.

The case was raffled to Branch 80 of the MeTC of Muntinlupa and docketed as Criminal Case No. 21815.

After trial on the merits, the MeTC rendered judgment on March 4, 2002, acquitting accused Grageda.[4] The lower court ruled that the accused complied with the minimum standards followed by physicians in the treatment of their patients; that liposuction of the thighs is a minor surgery, hence, the clinical setting of accused was acceptable; that in trying to save the life of Janet Ang, accused followed the standard procedure in the conduct of the same; that all the elements of the crime of reckless imprudence are not present in the case; that accused was not negligent; and that the liposuction surgery was not the proximate cause of the death of Janet Ang. The dispositive part of the decision states:

> WHEREFORE, premises considered, the Court finds accused Dr. Erniefel Grageda NOT GUILTY of the crime of reckless imprudence resulting to homicide.

SO ORDERED.

Private complainant appealed the decision on the civil aspect thereof to the Regional Trial Court (RTC), Branch 276, Muntinlupa City. The case was docketed as Criminal Case No. 02-397.[5]On April 30, 2002, the RTC directed the private complainant (now appellant) to file the necessary appeal memorandum/brief within 15 days from notice.[6] Appellant received his copy of the order on May 8, 2002.

However, appellant, through counsel, the Solis & Medina Law Offices, failed to file the required memorandum within the specified period. Appellant filed no less than 15 motions for extension of time to file said memorandum dated as follows: May 22, 2002,[7] June 5, 2002,[8] June 21, 2002,[9] July 4, 2002,[10] July 18, 2002,[11] August 2, 2002,[12] August 16, 2002,[13] August 27, 2002,[14] September 6, 2002,[15] September 16, 2002,[16] October 1, 2002,[17] October 16, 2002,[18] October 30, 2002,[19] November 15, 2002,[20] and November 28, 2002.[21] In his last motion, appellant prayed that he be given up to December 15, 2002 within which to finalize and file his appeal memorandum.

On December 2, 2002, the RTC issued an Order[22] dismissing the appeal for failure of appellant to file his appeal memorandum.

Still unaware that the appeal had been dismissed by the court, accused-appellee filed a Motion to Dismiss the Appeal[23] on December 10, 2002, on the ground of appellant's failure to comply with the order of the court. On December 16, 2002, appellant received a copy of the December 2, 2002 Order of the RTC dismissing his appeal, and finally filed his appeal memorandum/brief[24] by registered mail as well as a motion for reconsideration[25] of the December 2, 2002 RTC Order.

On January 20, 2003, the RTC issued an Order[26] denying appellant's motion for reconsideration. The court ratiocinated that:

> Considering that at the time the Order dismissing the appeal was issued, appellant still had not yet filed the appeal memorandum/brief, despite being granted several extension[s] of time to so file, to a total of 155 days. In fact, the memorandum was filed only on the same date the Motion for Reconsideration was filed. The Court did not find sufficient reason to reconsider her Order and hereby DENIES the same.

On March 4, 2003, counsel for appellant filed a Manifestation[27] informing the RTC of the appellant's death and named the latter's daughter, Elsie Ang, as his substitute and representative in accordance with Section 16, Rule 3 of the Revised Rules of Court.

Instead of appealing the December 2, 2002 Order of the RTC via a petition for review under Rule 42 of the Rules of Court within the period therefor, Elsie Ang (petitioner) filed a Petition for Certiorari[28] on April 4, 2003 before the CA, questioning the December 2, 2002 and January 20, 2003 Orders of the RTC. Petitioner raised the following arguments in support of her petition:

> - RESPONDENT COURT GRAVELY ABUSED ITS DISCRETION WHEN IT ISSUED THE ASSAILED ORDERS DISMISSING THE APPEAL AND DENYING THE MOTION FOR RECONSIDERATION DESPITE THE FACT THAT THE APPEAL MEMORANDUM/BRIEF WAS SEASONABLY FILED AND THE EXTENSIONS WERE NECESSARY AND JUSTIFIED IN VIEW OF THE IMPORTANCE OF THE APPEAL;
>
> - RESPONDENT COURT GRAVELY ABUSED ITS DISCRETION IN DISREGARDING APPELLANT-PETITIONER'S STATUTORY RIGHT TO APPEAL, AND THE NUMEROUS PRONOUNCEMENTS OF THE SUPREME COURT ADMONISHING APPELLATE COURTS TO REVIEW A DECISION ON THE MERITS RATHER THAN ABORTING THE RIGHT TO APPEAL BY A LITERAL APPLICATION OF PROCEDURAL RULES;

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- RESPONDENT COURT GRAVELY ERRED IN RELYING ON TECHNICAL RULES WHICH IT OUGHT TO HAVE SET ASIDE ON THE PRINCIPLE THAT WHERE THE RIGID APPLICATION OF THE RULES WOULD FRUSTRATE SUBSTANTIAL JUSTICE OR BAR THE VINDICATION OF A LEGITIMATE GRIEVANCE, THE COURTS ARE JUSTIFIED IN EXEMPTING A PARTICULAR CASE FROM THE OPERATION OF THE RULES; and,

- IT WAS INDEED GRAVE ERROR FOR THE RESPONDENT COURT TO DISMISS THE APPEAL AND DISALLOW THE FILING OF THE APPEAL MEMORANDUM/BRIEF DESPITE ITS APPARENT MERITS x x x[29]

On May 15, 2003, the CA issued a Resolution[30] dismissing the petition for being the wrong remedy to question the RTC Orders. The CA reasoned that petitioner should have filed a petition for review under Rule 42 of the Rules of Court within the reglementary period, instead of a petition for certiorari which was filed beyond the original 15-day period. The CA emphasized that certiorari cannot take the place of a lost appeal.

Petitioner filed a motion for reconsideration[31] of the resolution, arguing that there was no appeal from an order dismissing or disallowing an appeal, hence, the proper remedy is a petition for certiorari. In his Comment[32] filed on July 9, 2003, respondent argued that, under the Rules of Court, a party desiring to question a decision of the RTC rendered in the exercise of its appellate jurisdiction should file a petition for review under Rule 42 of the Rules of Court before the CA, and not a certiorari petition under Rule 65.

In the Reply[33] filed on August 1, 2003, petitioner contended that the RTC gravely abused its discretion; hence, certiorari was the proper remedy. Petitioner, likewise, invoked liberality in the application of the Rules of Court. Respondent, in the August 11, 2003 Rejoinder,[34] posited that the RTC did not abuse its discretion and that certiorari cannot take the place of a lost appeal. In her Sur-Rejoinder[35] filed on September 17, 2003, petitioner maintained that her appeal memorandum/brief was, indeed, filed on December 16, 2002 within the extension period sought, thus, petitioner did not fail in filing the same. She insisted that the dismissal of her appeal was a nullity.

Finding no reversible error in its previous dismissal order, the CA, on December 10, 2004, denied petitioner's motion for reconsideration.[36]

The Present Petition

On January 31, 2005, petitioner filed the instant petition for review on certiorari, contending that:

I

THE COURT OF APPEALS ERRED IN DISMISSING THE PETITION FOR CERTIORARI UNDER RULE 65 FILED BY HEREIN PETITIONER FOR ALLEGEDLY BEING A WRONG REMEDY:

- The Regional Trial Court acted with grave abuse of discretion in dismissing the appeal even before the lapse of the extended period within which to (sic) herein petitioner's Appeal Memorandum/Brief.

- There was no appeal nor any plain, speedy, and adequate remedy in the ordinary course of law.

II

ASSUMING FOR THE SAKE OF PURE ARGUMENT THAT THE PETITION FOR CERTIORARI UNDER RULE 65 WAS NOT THE PROPER LEGAL REMEDY, THE SUBSTANTIAL AND OBVIOUS MERITS OF THE APPEAL AND THE IMPORTANCE OF THE MATTERS AND/OR ISSUES DISCUSSED THEREIN WARRANT THE ADJUDICATION OF THE SAID APPEAL ON THE MERITS:

- The Trial Court totally disregarded the testimonies of competent witnesses and medical experts including the voluminous documentary exhibits presented by the prosecution when it reproduced in toto the Memorandum of the private respondent in issuing its decision in Criminal Case No. 21815.

- Liposuction of the thighs is not a minor, trivial or simple procedure contrary to what Dr. Grageda portrays it to be. Since liposuction of the thighs is not a minor surgical procedure, the standards of care are more rigid. The evidence showed that Grageda did not observe or did not adhere to these standards.

- Dr. Grageda is not even a surgeon who is qualified to perform liposuction operation which is a form of plastic surgery.

- When the victim Janet Ang went into seizures, the appellee Dr. Grageda did not observe the proper standards of care in managing the said seizures; as shown by the evidence, the efforts which Dr. Grageda exerted were inadequate, manifesting the lack of foresight or due care expected of a surgeon.

- When the victim Janet Ang went into cardiac arrest, the appellee Dr. Grageda did not observe the proper standards of care in managing the cardiac arrest in accordance with known treatises or medical authorities on the subject. Dr. Grageda's clinic was ill-equipped both in terms of vital medical equipment needed and of competent personnel assistance; and

- Dr. Grageda did not observe the appropriate standards for pre-operative care; his pre-operative examination of the victim lacked thoroughness, nay inadequate and peremptorily administered.[37]

The issues raised by the parties in their pleadings are the following: (1) whether the RTC erred in dismissing the appeal of petitioner; and (2) whether the filing of a petition for certiorari under Rule 65 of the Rules of Court was the proper remedy of petitioner in the appellate court.

On the first issue, petitioner points out that she filed her appeal memorandum within the extended period therefor; for this reason, the Order of the RTC dismissing her appeal allegedly for failure to file the memorandum is null and void, depriving her of her right to due process. Moreover, she had no appeal or any plain, speedy, and adequate remedy in the ordinary course of law; hence, her petition for a writ of certiorari under Rule 65 of the Rules of Court is appropriate.

Petitioner insists that the trial court did not issue any orders denying her several motions for extension to file her appeal memorandum; neither did respondent oppose her motions. Respondent did not suffer any injury by the tardy filing of her appeal memorandum. It was thus unjust and arbitrary for the RTC to dismiss her appeal.

Petitioner maintains that, in any event, she filed her appeal memorandum within the period prayed for by her in her last motion for extension. Since the RTC had already acquired jurisdiction over her appeal, it erred in dismissing her appeal on its belief that she failed to file her appeal memorandum on time. Petitioner cites the ruling of this Court in Development Bank of the Philippines v. Court of Appeals[38] to buttress her contentions.

Petitioner posits that even assuming her petition for certiorari was not the proper remedy, a relaxation of the rule is warranted, in view of the substantive issues raised in her petition.

On the merits of her appeal in the RTC, petitioner assails the decision of the trial court as anomalous and collusive with respondent because the trial court merely reproduced the Memorandum of respondent in its decision. Liposuction of the thighs is not a trivial or simple procedure, but is, at the very least, classified as a minor surgery. As shown by the evidence on record, respondent did not observe the proper standards of care when the victim suffered seizures. His efforts were inadequate, manifesting lack of foresight or due care expected of a surgeon. Even when the victim had cardiac arrest, respondent did not observe the proper standards of care in managing the cardiac arrest in accordance with known treatises or medical authorities. His clinic is ill-equipped both in terms of

vital medical equipment needed and competent personnel or assistant. Petitioner insists that the trial court erred in failing to render judgment for damages and attorney's fees against respondent.

By way of comment, respondent avers that the RTC did not commit any error when it dismissed the appeal of petitioner for her failure to file her appeal memorandum despite no less than fifteen (15) motions for extensions of 155 days to file the same. In any event, the remedy of petitioner was to file a petition for review to the CA under Rule 42 of the Rules of Court, not a petition for certiorari under Rule 65. By failing to file said petition for review within the period therefor, petitioner lost her right to appeal. Respondent points out that a petition for certiorari cannot be used as substitute for a lost appeal.

By way of reply, petitioner avers that as held by this Court in Sanchez v. Court of Appeals,[39] certiorari may be entertained despite the existence of appeal in accordance with the dictates of public welfare, the advancement of public policy, and the broader interest of justice, or where the orders complained of are found to be completely null and void. Petitioner posits that the Rules of Court 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.

The Court's Ruling

The petition is not meritorious.

On the first issue, we declare that the December 2, 2002 Order of the RTC dismissing petitioner's appeal for her failure to file her memorandum despite her successive motions for extension of time to do so was a final order. The remedy of petitioner from said Order of the RTC, as well as the January 20, 2003 Order denying her motion for reconsideration, was to appeal by filing a petition for review in the CA under Rule 42 of the Rules of Court. It bears stressing that when the RTC issued the aforementioned Order, it did so in the exercise of its appellate jurisdiction. Thus, the remedy of petitioner was to appeal the order under Rule 42, which reads:

> Section 1. How appeal taken; time for filing. - A party desiring to appeal from a decision of the Regional Trial Court rendered in the exercise of its appellate jurisdiction may file a verified petition for review with the Court of Appeals, paying at the same time to the clerk of said court the corresponding docket and other lawful fees, depositing the amount of P500.00 for costs, and furnishing the Regional Trial Court and the adverse party with a copy of the petition. The petition shall be filed and served within fifteen (15) days from notice of the decision sought to be reviewed or of the denial of petitioner's motion for new trial or reconsideration filed in due time after judgment. Upon proper motion and the payment of the full amount of the docket and other lawful fees and the deposit for costs before the expiration of the reglementary period, the Court of Appeals may grant an additional period of fifteen (15) days only within which to file the petition for review. No further extension shall be granted except for the most compelling reason and in no case to exceed fifteen (15) days.

This rule is based on Section 22 of Batas Pambansa Blg. 129 which explicitly states:

> SEC. 22. Appellate Jurisdiction. - Regional Trial Courts shall exercise appellate jurisdiction over all cases decided by Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts in their respective territorial jurisdictions. Such cases shall be decided on the basis of the entire record of the proceedings had in the court of origin, such memoranda and/or briefs as may be submitted by the parties or required by the Regional Trial Courts. The decision of the Regional Trial Courts in such cases shall be appealable by petition for review to the Court of Appeals which may give it due course only when the petition shows prima facie that the lower court has committed an error of fact or law that will warrant a reversal or modification of the decision or judgment sought to be reviewed.

Perfection of an appeal within the statutory or reglementary period is not only mandatory but also jurisdictional;

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failure to do so renders the questioned decision/final order final and executory, and deprives the appellate court of jurisdiction to alter the judgment or final order, much less to entertain the appeal.[40] When the RTC issued its December 2, 2002 and January 20, 2003 Orders, the court was exercising its appellate jurisdiction over the judgment rendered by the MeTC of Muntinlupa City. To reiterate, the December 2, 2002 Order of the RTC denying the appeal of petitioner was a final order, appealable to the CA via petition for review under Rule 42 of the Rules of Court within the 15-day reglementary period thereof.

Petitioner received the December 2, 2002 Order of the RTC on December 16, 2002. She then filed a motion for reconsideration on December 23, 2002. She received the January 20, 2003 Order of the RTC denying the motion for reconsideration on February 7, 2003. As the 15th day fell on a Saturday, petitioner had up to February 24, 2003 to file a petition for review before the CA. However, she allowed the reglementary period to lapse without filing a petition for review in the CA. Thus, the Order of the RTC dismissing petitioner's appeal had become final and executory, beyond the competence of the CA to reverse, much less modify.

Apparently to resuscitate her lost appeal, petitioner filed, on April 4, 2003, a petition for certiorari under Rule 65 of the Rules of Court, alleging that the RTC committed a grave abuse of its discretion in issuing its December 2, 2002 and January 20, 2003 Orders. She likewise insisted that she filed her Memorandum well within the extension prayed for by her inher November 29, 2002 motion for extension. The CA, however, saw through her scheme and dismissed her petition, and in so doing acted in accord with case law. Indeed, certiorari is an extraordinary remedy. It is not and should not be a substitute for lost appeal.[41] It 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. A judgment which has acquired finality becomes immutable and unalterable, hence, may no longer be modified in any respect except only to correct clerical errors or mistakes. Once a judgment or order becomes final, all the issues between the parties are deemed resolved and laid to rest.[42]

The RTC cannot be faulted for dismissing petitioner's appeal on account of her failure to file her appeal memorandum despite the lapse of the reglementary period therefor. Under Section 7, Rule 46 of the 1997 Rules of Civil Procedure, the failure of petitioner, as appellant, to file a memorandum within fifteen (15) days from notice from the clerk of court is a ground for the dismissal of an appeal. The Rule reads:

> Sec. 7. Procedure in the Regional Trial Court. -
>
> (a) Upon receipt of the complete record or the record on appeal, the clerk of court of the Regional Trial Court shall notify the parties of such fact.
>
> (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.
>
> (c) Upon the filing of the memorandum of the appellee, or the expiration of the period to do so, the case shall be considered submitted for decision. The Regional Trial Court shall decide the case on the basis of the entire record of the proceedings had in the court of origin and such memoranda as are filed.

The records show that, on April 30, 2002, the RTC issued an Order[43] directing petitioner, as appellant, to file her Memorandum within fifteen days from notice thereof, with a warning that her failure to file her brief will be a ground for the dismissal of her appeal. Petitioner received a copy of said Order on May 8, 2002 and had until May 23, 2002 within which to file her Memorandum. Petitioner moved for an extension to file her pleading, until June 7, 2002, on the ground that Atty. Ronald Solis, the lawyer handling the case, was in the United States on a personal matter. Atty. Solis had returned to the Philippines but still failed to file the pleading. Petitioner again

prayed for an extension of fifteen days or until June 22, 2002 for her to file said memorandum, and again, she failed. She sought another extension of fifteen days, until July 5, 2002, to finalize her draft, but once again failed to file her memorandum. She thereafter filed successive motions for extension based on her representation that her Memorandum was in the final stages of preparation: paul

DUE DATE GROUND FOR EXTENSION

July 5, 2002

2. The draft of the said Appeal Memorandum/Brief is in the final stages of preparation. Initially, undersigned counsel had the impression that the extension of time he sought for earlier would be sufficient for the purposes of finalizing and filing the said pleading. However, it did not turn out to be so in view of the fact that undersigned counsel is currently under heavy burden of work consisting of preparation of pleadings due in cases of equal import, and almost daily court appearances and conferences.[44]

July 18, 2002

1. Due today, July 18, 2002 is the appellant's Appeal Memorandum/Brief.
2. In fact, the same was supposed to be finalized for filing except that heavy rains and flooding in the last two (2) weeks had considerably slowed down work in the law offices, thereby creating backlogs not only with respect to the present case but also on other legal assignments of the undersigned.[45]

August 2, 2002

1. Due today, August 2, 2002 is the appellant's Appeal Memorandum/Brief.
2. The brief is in the process of final preparation. Undersigned is just incorporating applicable new jurisprudence on quasi-delictual liability and double checking his factual narrations based on the voluminous transcript of stenographic notes.[46]

August 17, 2002

1. Due tomorrow, August 17, 2002 is the appellant's Appeal Memorandum/Brief.
2. Much as the same [is] in the process of finalization and filing, the undersigned counsel was not able to do so because he was absent for work for the last ten (10) days due to flu and viral infection. He was only able to report back for work today. He undertakes to submit the appropriate medical certificate as soon as it becomes available.[47]

August 27, 2002

1. Due today, August 27, 2002 is the appellant's Appeal Memorandum/Brief.
2. The Brief is in the final stages of preparation and due to heavy volume of professional work counsel is constrained to ask for at least ten (10) more days to finalize and file the same.[48]

September 6, 2002

1. Due today, September 6, 2002 is the appellant's Appeal Memorandum/Brief.
2. The Brief is in the final stages of preparation and due to heavy volume of professional work counsel is constrained to ask for at least ten (10) more days to finalize and file the same.[49]

September 16, 2002

1. Due today, September 16, 2002 is the appellant's Appeal Memorandum/Brief.
2. The Brief is in the final stages of preparation and due to heavy volume of professional work counsel is constrained to ask for at least fifteen (15) more days to finalize and file the same.[50]

October 1, 2002

1. Due today, October 1, 2002 is the appellant's Appeal Memorandum/Brief.
2. The Brief is in the final stages of preparation and due to heavy volume of professional work counsel is constrained to ask for at least fifteen (15) more days to finalize and file the same.[51]

October 16, 2002

1. Due today, October 16, 2002 is the appellant's Appeal Memorandum/Brief.
2. The Brief is in the final stages of preparation and due to heavy volume of professional work counsel is constrained to ask for at least fifteen (15) more days to finalize and file the same.[52]

October 31, 2002

1. Due tomorrow, October 31, 2002 is the appellant's Appeal Memorandum/Brief.
2. The Brief is in the final stages of preparation and due to heavy volume of professional work counsel is constrained to ask for at least fifteen (15) more days to finalize and file the same.[53]

November 15, 2002

1. Due today, November 15, 2002 is the appellant's Appeal Memorandum/Brief.
2. The Brief is in the final stages of preparation and due to heavy volume of professional work counsel is constrained to ask for at least fifteen (15) more days to finalize and file the same.[54]

November 30, 2002

1. Due on November 30, 2002 is the appellant's Appeal Memorandum/Brief.
2. The Brief is in the final stages of preparation and due to heavy volume of professional work counsel is constrained to ask for at least fifteen (15) more days to finalize and file the same.[55]

However, the counsel of petitioner failed to submit any medical certificate as promised by him. Petitioner incessantly represented to the court that her Memorandum had been in the "final stages" of preparation since July 5, 2002, and repeatedly assured the RTC in her motions for extension that she needed ten (10) more days to finalize and file her memorandum. Yet, she filed her memorandum only on December 16, 2002 or almost seven (7) months after the lapse of the 15-day reglementary period for her to file her memorandum, and only after the RTC had already issued its Order on December 2, 2002 dismissing the appeal.

It bears stressing that the grant or denial of motions for extension, including the duration thereof, lies within the sound discretion of the court, to be exercised in accordance with the particulars of each case. Moreover, the movant is not justified in presuming that the extension sought will be granted, or that it will be granted for the length of time sought. Thus, it is the duty of the movant of extension to exercise due diligence and file her pleading within the extension granted by the court.[56]

Under Rule 12.03 of the Code of Professional Responsibility, a lawyer should not, after obtaining extensions of time to file pleadings, memoranda, or briefs, let the period lapse without submitting the same and making an explanation for failing to do so. A lawyer is obliged to serve his client with competence and diligence and defend the latter's cause with wholehearted fidelity, care, and dedication. A lawyer's fidelity to the cases of his client requires him to be ever mindful of the responsibilities that should be expected of him. He is mandated to exert his best effort to protect, within the bounds of the law, the interest of his client. He should never neglect a legal matter entrusted to him.

In this case, Atty. Solis, despite having been granted several extensions to file the memorandum for petitioner, assumed that his motions for extension filed on November 29, 2002 would be granted by the court and that he had until December 10, 2002 within which to file the same. He then failed to ascertain from the records of the court whether his motion had been acted upon. He must have known that in the event that the court would grant the

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November 29, 2002 motion for extension, he would only have until December 10, 2002 within which to file the Memorandum. He waited until after December 16, 2002 to file the required pleading; by then, the RTC had had enough of petitioner's successive motions for extension and issued the order dismissing the appeal.

Petitioner's counsel should not have readily assumed that his November 29, 2002 motion for extension (the last motion filed) had been granted by the court, for, as it had been, the court denied the same through the December 2, 2002 dismissal order. Petitioner's counsel should have been wary that he was filing the 15th motion for extension, containing substantially the same reasons as his former motions, and that the court had already given him a latitude of more than 200 days to file his appeal memorandum/brief. It was thus already imperative on the part of the appellate court to dismiss the appeal for non-filing of the required memorandum/brief. If at all, the dismissal of the appeal can only be attributed to counsel's negligence. Petitioner's counsel ignored his client's case by filing with the lower court a series of unmeritorious motions for extension of time, and again by allowing the reglementary period to file a petition for review under Rule 42 to lapse before the CA.

That respondent did not oppose the motions of petitioner is of de minimis importance. Petitioner cannot use respondent's silence as basis for her unbridled neglect to file her memorandum. The administration of justice should not be delayed or derailed at the whims and caprices of the parties.

Petitioner, further, deliberately included in the instant petition a discussion of the merits of his case, possibly to convince this Court to excuse her counsel's procedural lapses. We are not, however, persuaded. Granting that we, indeed, spare petitioner's blind disregard of the Rules, we still cannot possibly review the factual findings of the lower court, as we are not a trier of facts; a petition for review under Rule 45 allows only questions of law to be raised. Thus, the lower court's factual findings that respondent was not negligent and that the liposuction surgery was not the proximate cause of the death of Janet Ang, stand. This being so, such findings defeat any claim for civil liability arising from the offense. As we discussed in Caiña v. People:[57]

> It is noted by the Court that in the dispositive portion of the decision of the Municipal Trial Court, the accused' (petitioner in this case) acquittal was based on the ground that his guilt was not proved beyond reasonable doubt making it possible for Dolores Perez to prove and recover damages. (See Article 29, Civil Code) However, from a reading of the decision of the Municipal Trial Court, there is a clear showing that the act from which civil liability might arise does not exist. Civil liability is then extinguished. (See Padilla vs. Court of Appeals, 129 SCRA 558, 570 [1984]).[58]

IN VIEW OF ALL THE FOREGOING, the instant petition is DISMISSED for lack of merit. Costs against petitioner.

SO ORDERED.

Panganiban, C.J., (Chairperson), Austria-Martinez, and Chico-Nazario, JJ., concur.
Ynares-Santiago, J., on leave.

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[1] Penned by Associate Justice Eloy R. Bello, Jr. (now retired), with Presiding Justice Cancio C. Garcia (now Associate Justice of this Court) and Associate Justice Mariano C. Del Castillo, concurring; rollo, pp. 89-90.

[2] Rollo, p. 96.[3] This appears to be a typographical error in the Information. As indicated in the MeTC Decision and in all the pleadings of the parties, the date of the liposuction surgery is February 9, 1996, not February 4.[4] Rollo, p. 103-122.[5] Id. at 123.[6] Id. at 126.[7] Id. at 127.[8] Id. at 129.[9] Id. at 131.[10] Id. at 134.[11] Id. at 137.[12] Id. at 139.[13] Id. at 142.[14] Id. at 145.[15] Id. at 148.[16] Id. at 151.[17] Id. at 154.[18] Id. at 157.[19] Id. at 160.[20] Id. at 163.[21] Id. at 166.[22] Id. at 232.[23] Id. at 330-332.[24] Id. at 169.[25] Id. at

233.[26] Id. at 249.[27] Id. at 250.[28] Id. at 253.[29] Id. at 269-270.[30] Id. at 89.[31] Id. at 76.[32] CA rollo, p. 353.[33] Id. at 357.[34] Id. at 366.[35] Id. at 374.[36] Rollo, p. 75.[37] Id. at 11-12.[38] 411 Phil. 121 (2001).[39] 345 Phil. 155 (1997).[40] Republic of the Philippines v. Court of Appeals, 372 Phil. 259, 266 (1999).[41] Conejos v. Court of Appeals, 435 Phil. 849, 855 (2002); Del Mar v. Court of Appeals, 429 Phil. 19, 30 (2002).[42] Salva v. Court of Appeals, 364 Phil. 281, 294 (1999).[43] Rollo, p. 126.[44] Id. at 134.[45] Id. at 137.[46] Id. at 139.[47] Id. at 142.[48] Id. at 145.[49] Id. at 148.[50] Id. at 151.[51] Id. at 154.[52] Id. at 157.[53] Id. at 160.[54] Id. at 163.[55] Id. at 166.[56] Supra note 37, at 134.[57] G.R. No. 78777, September 2, 1992, 213 SCRA 309.[58] Id. at 315.

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