

**ESTATE OF JUAN BUENAVENTURA, DECEASED. SINFOROSO
BUENAVENTURA AS ADMINISTRATOR, AND TIMOTEO DEL ROSARIO,
APPELLEES, VS. TOMAS B. RAMOS ET AL., APPELLANTS.**

G. R. No. 18034. December 08, 1921

Ponente: JOHNSON, J.

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JOHNSON, J.:

The question presented herein is, When must an appeal in a special proceeding be perfected? That question is presented by a motion to dismiss the appeal for the reason that it was not perfected within the time required by the law and rules.

It appears from the record that during the administration of the estate, the administrator, on the 4th day of January, 1921, presented a motion, asking for permission to sell a parcel of land, constituting a fishery, belonging to the estate, for the reason stated therein. On the 5th day of February, 1921, an opposition was presented to the granting of said motion. On the 7th day of February, 1921, the lower court denied the said motion.

On the 21st day of February, 1921, the administrator renewed his motion asking permission to sell the said parcel of land. On the 24th day of February, opposition to said motion was again presented. Notwithstanding the opposition, the lower court, on the 2d day of March, 1921, granted the said motion, authorizing the administrator to sell the parcel of land in question.

On the 14th day of March, 1921, an exception was presented to said order, and a motion for reconsideration was made. The motion for reconsideration was based upon the ground that the authority granted by the court was illegal and contrary to the provisions of sections 714, 716, 717, and 718 of Act No. 190.

On the 15th day of March, 1921, the administrator presented another motion asking that the court permit him to execute and deliver a deed of sale for the land in question in favor of Timoteo del Rosario.

On the 19th day of March, 1921, the lower court, after a consideration of the motion for reconsideration of the 14th day of March, among other things, denied said motion.

On the 19th day of March, 1921, the administrator presented another motion or petition asking the court to approve the sale of said parcel of land to Timoteo del Rosario.

On the 21st day of March, 1921, the attorney for the appellants excepted to the order of the court denying his motion for a reconsideration, made on the 19th day of March, 1921, and presented his opposition to the petition of the administrator for the confirmation of the sale to Timoteo del Rosario.

On the 30th day of March, the lower court, in an order, confirmed the sale by the administrator of said parcel of land to Timoteo del Rosario.

On the 2d day of April, 1921, the attorney for the appellants presented another exception to, and a motion for the reconsideration of, the said orders of the court of the 2d, 19th, and 30th days of March, 1921, and, in said

exception and motion for reconsideration, asked the court, in case the motion should be denied, to fix the amount of the appeal bond at P1,000, in order that he might appeal to the Supreme Court.

On the 8th day of April, 1921, the lower court denied said motion for reconsideration of the orders of the 2d, 19th, and 30th days of March, above indicated, and fixed the amount of the appeal bond at P1,000.

On the 28th day of April, 1921, the respondents presented their bill of exceptions and an appeal bond in the sum of P1,000. The record does not show whether said appeal bond has been approved or not.

The appellees now claim that the appeal was not perfected within the time prescribed by the law. Section 783 of Act No. 190 provides for appeals in cases like the present. It further provides that the appeal shall be effected in the manner provided in sections 781 and 782 of said Act. Section 781 provides that the appeal shall be effected by an application within twenty days after the entry of the judgment, and by the execution and filing of a bond such as is required by section 780.

It will be noted from said section 781 that two things are necessary in order to effect the appeal: (1) an application within twenty days after the entry of the judgment, and (2) the presentation of the bond. By section 780 the appellant is required to give a bond satisfactory to the court, which requires the court not only to fix the amount of the bond but to approve the same. Naturally, the appellant cannot give a bond until the amount thereof has been fixed by the court.

In the present case, the orders appealed from, dated the 2d, 19th, and 30th of March, 1921, were not final, for the reason that motions for reconsideration were pending, until the 8th day of April, 1921. While the appellant indicated his intention to appeal in his motion of the 2d day of April, 1921, and on the same date asked the court to fix the amount of the bond, said request was not passed upon by the lower court until the 8th day of April, 1921. The bill of exceptions was presented on the 28th day of April, 1921, or within twenty days from the date on which the court fixed the amount of the bond. The appellees, however, argue that the appellants should have perfected their appeal within twenty days from the date of the entry of the order of March 2, 1921, as required by section 783 in relation with section 781 of Act No. 190. It will be remembered, however, that other motions for reconsideration were later made, having a direct relation with said order of March 2, 1921, and that they were not finally disposed of until the 8th day of April, 1921. It will also be remembered that the lower court did not fix the amount of the appeal bond until the 8th day of April, 1921. By virtue of section 783, in relation with section 781 of Act No. 190, the giving of a bond is a prerequisite to the perfection of the appeal. An appeal in cases like the present cannot be perfected without the giving of a bond to the satisfaction of the court (sec. 781). The bond cannot be given until the amount is fixed by the court, and the appeal cannot be perfected until the bond is approved.

It will be seen that it is impossible from the provisions of the law to fix definitely the time for the perfection of the appeal after the date of the judgment. We can only fix the time for taking the various steps for the perfection of the appeal. The appellant cannot control the time within which the court will fix the amount of the appeal bond nor the time taken to approve the same after it is presented. The appellant is helpless during that period. The only time fixed by the law is the time for the presentation of the application for an appeal. Obviously, the appellant cannot be required to perfect his appeal within that time, for the reason that the amount of the bond may not have been fixed nor the approval of the same made by the court. It will be seen, therefore, that the appellant must wait (a) until the court has fixed the amount of the bond, and (b) then, again, until the court has approved it after it is presented. Those two periods must be eliminated from the time within which the appeal must be perfected. The appellant cannot be charged with the time occupied by the court in the considerations of those questions. And again, if a motion for a new trial or reconsideration is made, then the time occupied by the court in deciding that

question must also be eliminated from the period within which the appeal must be perfected. (*Tindoc vs. Donato*, 40 Phil., 732.)

From all of the foregoing facts, in relation with sections 783 and 781 of Act No. 190, we are of the opinion and so announce that appeals, in special proceedings, from judgments falling under sections 781, 782, and 783 must be perfected in the following manner:

(a) The appellant must file with the Court of First Instance an application for an appeal within twenty days after the entry of the judgment appealed from. (Sec. 781, Act No. 190.)

(b) The application for an appeal must contain a petition to the court to fix the amount of the appeal bond. (Sec. 780, Act No. 190.) The court should fix the amount of the bond at once.

(c) After the amount of the appeal bond is fixed by the court, the appellant must present his appeal bond for the approval of the court, within a reasonable time thereafter, and not to exceed a period of five days. The court should act upon the bond at once.

(d) After the approval of the appeal bond by the court, the appeal must be perfected in the manner provided for in section 783, in relation with sections 781 and 782 of Act No. 190 and Rule 16 (a) of the Court of First Instance, within a reasonable time, and not to exceed a period of ten days from the date of the approval of the appeal bond. (*Tindoc vs. Donato*, supra.)

There is nothing in the law which limits the time within which the judge shall fix the amount of the bond, but once having fixed the same the appellant should be required to present it within a reasonable time as above indicated. The law (sec. 782) requires the appellant to present an application for an appeal within a period of twenty days; but in the absence of a provision requiring him to present a bond within a definite period, and in the absence of a provision which requires the judge to fix the amount of the bond within a definite period, we are of the opinion that the times fixed above for the perfection of the appeal are within the reasonable contemplation of the law and the rules of this court. In other words, if the appellant presents his application for an appeal within twenty days, and requests the court to fix the amount of the bond, he has done all that he can do until the court does fix the amount. Then he must present the bond and wait until the same is approved. He cannot present the appeal bond until the court has fixed the amount thereof. He cannot perfect his appeal until the appeal bond has been approved. (*Hernaez vs. Norris*, 2 Phil., 83; *Abello vs. Kock de Monasterio*, 2 Phil., 188; *Aleman vs. Sweeney*, 2 Phil., 654, 657.) The law (sec. 782) fixes the time within which the appellant should present his application for an appeal. The rules fix the time within which the other steps must be taken for the perfection of the appeal.

There is nothing in the record which shows when the bond was filed nor when it was approved. We will assume therefore that it was presented within a reasonable time and that the appeal was perfected in accordance with the law and rules.

Therefore, the motion to dismiss the appeal is hereby denied. So ordered.

Araullo, C. J., Street, Malcolm, Avancena, Villamor, Ostrand, Johns, and Romualdez, JJ., concur.

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