

ERNESTO BATALLA, PETITIONER, VS. COMMISSION ON ELECTIONS AND TEODORO BATALLER, RESPONDENTS.

G.R. No. 184268. September 15, 2009

Ponente: VELASCO JR., J.

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VELASCO JR., J.:

The Case

In a Petition for Certiorari under Rules 65 in Relation to Rule 64 of the Rules of Court, petitioner assails the Order[1] of the Commission on Elections (Comelec) First Division dated April 3, 2008 dismissing his appeal from the February 12, 2008 Decision[2] of the Municipal Circuit Trial Court (MCTC), Bacacay, Albay, in Election Case No. B-2007-2, and the Order[3] of the Comelec En Banc dated August 5, 2008 denying his motion for reconsideration.

The Facts

Petitioner Ernesto Batalla (Batalla), who was a former Punong Barangay, and private respondent Teodoro Bataller (Bataller), then incumbent Punong Barangay, were candidates for the position of Punong Barangay or Barangay Chairperson in Barangay Mapulang Daga, Bacacay, Albay during the October 29, 2007 barangay elections. During the count, Batalla garnered 113 votes while Bataller garnered 108 votes. Consequently, Batalla was proclaimed the Punong Barangay winner in Barangay Mapulang Daga, Bacacay, Albay.

On November 7, 2007, Bataller filed an election protest,[4] docketed as Election Case No. B-2007-2, before the MCTC in Bacacay, Albay against Batalla and six members of the Board of Election Tellers in Precincts 107-A and 108-A for Barangay Mapulang Daga. Bataller claimed misappreciation of seven ballots. During the revision on December 7, 2007, Batalla did not protest any ballots.

The Ruling of the MCTC

On February 12, 2008, the trial court rendered its Decision finding that Batalla and Bataller had garnered an equal number of votes. The fallo reads:

WHEREFORE, premises considered, judgment is hereby rendered:

- Declaring that the protestant [Bataller] and the protestee [Batalla] have received equal number of votes for the position of Punong Barangay of Mapulang Daga, Bacacay, Albay, in the October 29, 2007 barangay election, and the winning candidate between the two shall be proclaimed as elected in accordance with Section 240, Article XIX of the Omnibus Election Code.

SO ORDERED.[5]

Section 240[6] of Batas Pambansa Bilang 881, as amended, otherwise known as the Omnibus Election Code, provides for the drawing of lots in case of a tie of two or more electoral candidates garnering the same or equal highest number of votes, with the proclamation as winner of the candidate favored by luck.

Of the seven ballots protested, the trial court appreciated five of them in favor of Bataller by applying the neighborhood and intent rules as enunciated in *Ferrer v. Comelec*[7] and *Velasco v. Commission on Elections*,[8] and the application of the doctrine of *idem sonans*. Consequently, the MCTC found both Batalla and Bataller garnering an equal number of 113 votes each.

Aggrieved, Batalla timely filed his Notice of Appeal[9] of the trial court's decision elevating the election protest before the Comelec, docketed as EAC (BRGY.) No. 89-2008.

The Ruling of the Comelec First Division

On April 3, 2008, the Comelec First Division issued the first assailed Order dismissing Batalla's appeal in this wise:

Pursuant to Sections 3 and 4, Rule 40 of the COMELEC Rules of Procedure which provide for the payment of appeal fee in the amount of [P3,000.00] within the period to file the notice of appeal, and Section 9 (a), Rule 22 of the same Rules which provides that failure to pay the correct appeal fee is a ground for the dismissal of the appeal, the Commission (First Division) RESOLVED as it here RESOLVES to DISMISS the instant case for Protestee-Appellant's [Batalla] failure to pay the appeal fee as prescribed by the Comelec Rules of Procedure within the five-(5)-day reglementary period.

SO ORDERED.

Aggrieved further, Batalla elevated before the Comelec En Banc the above Order of the Comelec First Division by filing on April 11, 2008 his Motion for Reconsideration[10] followed by a Supplemental Motion for Reconsideration[11] on April 30, 2008.

The Ruling of the Comelec En Banc

On August 5, 2008, the Comelec En Banc issued the second assailed Order affirming the Comelec First Division's earlier Order dismissing the appeal for Batalla's failure to pay the appeal fee and, moreover, denying his motion for reconsideration for his failure to verify the motion. The second assailed Order, in its entirety, reads:

Acting on the Motion for Reconsideration filed via registered mail on April 11, 2008 by protestee-appellant [Batalla], through counsel, seeking reconsideration of the Order issued by the Commission (First Division) on April 3, 2008 dismissing the herein appeal for protestee-appellant's [Batalla] failure to pay the appeal fee as prescribed by the Comelec Rules of Procedure within the five-day reglementary period and the Manifestation filed via registered mail on April 23, 2008 by protestant-appellee [Bataller], through counsel, stating that the Motion for Reconsideration was not verified and therefore inadmissible on record and must be expunged therefrom, and praying that the Order of April 3, 2008 be declared as final, the Commission En Banc resolved to:

- DENY the Motion for Reconsideration for movant's [Batalla] failure to VERIFY the same in accordance with Section 3, Rule 19 of the Comelec Rules of Procedure, which states:

"Rule 19 - Motions for Reconsideration.

Section 3. Form and Contents of Motion for Reconsideration - The motion shall be verified x x x"

- Declare the Order of April 3, 2008 to have become final and executory as of April 25, 2008, there being no motion for reconsideration to speak of, pursuant to Section 13 (c), Rule 18 of the Comelec Rules of Procedure, to wit:

"Section 13. Finality of Decisions or Resolutions.

x x x x

(c) Unless a motion is seasonably filed, a decision or resolution of a Division shall become final and executory after the lapse of five (5) days in Special Actions and Special Cases and after fifteen (15) days in all other actions or proceedings following its promulgation."

ACCORDINGLY, the Clerk of the Commission, Electoral Contests Adjudication Department, is hereby directed to immediately issue an Entry of Judgment and the Chief, Judicial Records Division of the same department, to remand the records of the case to the lower court for its proper disposition.

Let copies of this Order and the Order of April 3, 2008 be furnished to Her Excellency, President Gloria Macapagal-Arroyo, the Secretary, Department of the Interior and Local Government, the Chairman, Commission on Audit and the Secretary, Sangguniang Barangay of Barangay Mapulang Daga, Bacacay, Albay, pursuant to Section 11 (b), Rule 18 of the Comelec Rules of Procedure.

SO ORDERED.

Consequently, on August 11, 2008, the Comelec Electoral Contests Adjudication Department issued an Entry of Judgment[12] in EAC No. 89-2008.

The Issues

Thus the instant petition, with Batalla raising the following issues for our consideration:

A. WHETHER OR NOT THE RESPONDENT COMELEC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION WHEN IT ISSUED THE ASSAILED RESOLUTION DISMISSING THE APPEAL ON TWO GROUNDS OF TECHNICALITIES: A) FOR FAILURE ON THE PART OF THE PETITIONER TO PAY THE APPEAL FEE ON TIME; AND B) FAILURE TO VERIFY THE MOTION FOR RECONSIDERATION.

B. WHETHER OR NOT THE FIVE CONTESTED VOTES BE DECLARED VOID AND THE HEREIN PETITIONER BE DECLARED AS THE WINNER IN THE BARANGAY ELECTION LAST OCTOBER 29, 2007.[13]

The foregoing issues can be summarized into two: first, the procedural issue of whether Batalla's appeal ought to be given due course despite the procedural infirmities of belated payment of the appeal fee and the non-verification of his motion for reconsideration; and second, the corollary substantive issue—if the appeal is given due course—of whether the appeal is meritorious.

The Court's Ruling

The petition is meritorious.

Procedural Issue: Appeal Already Perfected

Respondent Comelec grievously erred and gravely abused its discretion when it dismissed and denied petitioner's appeal.

The records show that Batalla received the February 12, 2008 MCTC Decision on February 20, 2008. He timely filed his Notice of Appeal on February 22, 2008 with the MCTC and paid the PhP 1,000 appeal fee pursuant to A.M. No. 07-4-15-SC.[14] He admits paying to the Comelec the additional appeal docket fee of PhP 3,200[15] only on March 5, 2008 or 11 days after he received a copy of the MCTC Decision on February 20, 2008, way beyond the five-day reglementary period to file the appeal under Secs. 3 and 4, Rule 40 of the Comelec Rules of Procedure. Batalla, however, postulates that the delay in the payment of the appeal fee in the Comelec was caused by his difficulty in getting to Manila from Barangay Mapulang Daga which is located in an island off the poblacion of Bacacay, Albay due to the massive floods that inundated the Bicol area in the months of February

and March 2008, aside from the difficulty in getting a bus ride from Bacacay, Albay to Manila.

While Batalla concedes that his motion for reconsideration of the April 3, 2008 Order of the Comelec First Division was not verified, he submits that he cured the omission by attaching to the instant petition his Verification[16] as compliance for his motion. He begs our indulgence in light of the Court's ruling in *Buenafior v. Court of Appeals*,[17] which reiterated the liberal application of the rules in the perfection of an appeal upon substantial justice and equity considerations.

Be it noted that while the Office of the Solicitor General (OSG) on behalf of public respondent Comelec filed its Comment[18] on the instant petition, respondent Bataller, despite notice,[19] failed to register his comment. Thereafter, Bataller was sent notice[20] requiring him to show cause and to comply with the earlier notice to file his comment. To date, Bataller has neither filed his comment nor complied with the show-cause order. Thus, his opportunity to submit his comment is dispensed with.

The OSG argues that the instant petition is bereft of merit, since the Comelec did not gravely abuse its discretion in dismissing Batalla's appeal. The Comelec cannot be faulted for issuing the assailed orders, applying the clear provisions of the Comelec Rules of Procedure, specifically Sec. 9(a) of Rule 22. Moreover, the OSG reasons out that Batalla's late payment of the additional appeal fee to the Comelec is fatal, since his appeal was never perfected. The mere filing of a notice of appeal is not enough, for the timely payment of the full appeal fee is an essential requirement for the perfection of an appeal, based on *Rodillas v. Comelec*. [21] And finally, the OSG cites *Loyola v. Commission on Election*[22] and other cases,[23] which consistently emphasized that non-payment of filing fees in election cases is no longer excusable.

The general rule is that payment of appellate docket fees within the prescribed reglementary period for filing an appeal is mandatory for the perfection of an appeal. Secs. 3[24] and 4[25] of Rule 40 of the Comelec Rules of Procedure provide for the payment of an additional appeal fee in the amount of PhP 3,200 within the period to file the notice of appeal, i.e., within five days from receipt of the assailed decision of the trial court.[26] And an appellant's failure to pay the said appeal fee is a ground for the dismissal of the appeal by the Comelec under the succeeding Sec. 9(a) of Rule 22.[27]

Payment of the two appeal fees perfects the appeal

In the instant case, however, we find that Batalla already perfected his appeal by filing his Notice of Appeal and by paying the PhP 1,000 appeal fee, pursuant to A.M. No. 07-4-15-SC, within the five-day reglementary period, to the MCTC; and by paying the additional appeal fee of PhP 3,200 to the Comelec Cash Division on March 5, 2008. Consequently, the Comelec First Division committed grave abuse of discretion in dismissing Batalla's appeal and, likewise, so did the Comelec En Banc in not correcting this error by denying Batalla's motion for reconsideration.

The issue of the correct appeal fee to be paid for the perfection of an appeal from the decision of the trial court in electoral cases was clarified in very recent cases--*Aguilar v. Commission on Elections*[28] and *Divinagracia v. Commission on Elections*. [29] In both cases, the Court clarified that the appellant in an electoral protest case decided by the trial court must file his notice of appeal and pay the PhP 1,000 appeal fee to the trial court that rendered the decision, and must pay to the Comelec Cash Division the required additional PhP 3,200 appeal fee.

In *Aguilar*, the earlier case decided on June 30, 2009, the Court ruled that the issuance of A.M. No. 07-4-15-SC on April 24, 2007, which became effective on May 15, 2007, had superseded Secs. 3 and 4, Rule 40 of the Comelec Rules of Procedure (which provided for the payment of the additional PhP 3,200 appeal fee to the Comelec Cash Division within the same five-day reglementary period for filing the notice of appeal) in that the

payment of the Php 1,000 appeal fee to the trial court already perfected the appeal of appellant. The Court added that the nonpayment or the insufficient payment of said additional appeal fee to the Comelec Cash Division does not affect the perfection of the appeal or result in the outright or ipso facto dismissal of the appeal; and that the Comelec is merely given the discretion to dismiss the appeal or not, following Sec. 9 (a), Rule 22 of the Comelec Rules, or the Comelec may refuse to take action thereon until the appeal fees are paid pursuant to Sec. 18, Rule 40 of the Comelec Rules. This ruling, however, has been abandoned in *Divinagracia*.

In *Divinagracia*, decided on July 27, 2009, the Court took a second look at the issue of an appellant's compliance with the payment of the required appeal fees (both to the trial court and to the Comelec) in the backdrop of Comelec Resolution No. 8486 in relation to A.M. No. 07-4-15-SC. The Court ruled, thus:

Considering that a year has elapsed after the issuance on July 15, 2008 of Comelec Resolution No. 8486, and to further affirm the discretion granted to the Comelec which it precisely articulated through the specific guidelines contained in said Resolution, the Court NOW DECLARES, for the guidance of the Bench and Bar, that for notice of appeal filed after the promulgation of this decision, errors in the matter of non-payment or incomplete payment of the two appeal fees in election cases are no longer excusable.

Comelec Resolution No. 8486,[30] issued on July 15, 2008, clarified the procedural rules on the payment of appeal fees. In said resolution, the Comelec clarified that: (a) if the appellant had paid the Php 1,000 appeal fee to the trial court within the five-day reglementary period pursuant to A.M. No. 07-4-15-SC and his appeal was given due course by the trial court, said appellant was required to pay the additional appeal fee of P3,200.00 to the Commission's Cash Division within a period of fifteen (15) days from the time of the filing of the Notice of Appeal with the lower court, or else the appeal would be dismissible under Sec. 9 (a) of Rule 22; and (b) if the appellant had failed to pay the Php 1,000 appeal fee to the trial court within the five (5) day period as required under A.M. No. 07-4-15-SC, but the case was nonetheless elevated to the Comelec, no appeal was perfected and it should be dismissed outright pursuant to Sec. 9 (a) of Rule 22.

Thus, in holding that *Aguilar* had not diluted the force of Comelec Resolution No. 8486, the Court in *Divinagracia* categorically ruled that for an appeal to be perfected in an election case from the trial court, the appellant must: (1) file his Notice of Appeal and pay the Php 1,000 appeal fee within the five-day reglementary period to the trial court that rendered the assailed decision, pursuant to A.M. No. 07-4-15-SC; and (2) pay to the Comelec Cash Division the additional Php 3,200 appeal fee within 15 days from the time of the filing of the Notice of Appeal with the lower court pursuant to Comelec Resolution No. 8486. Thus, any error in the matter of nonpayment or incomplete payment of the two appeal fees in election cases is no longer excusable and is a cause for the outright dismissal of the appeal.

We, however, note that under the present Comelec Rules of Procedure, Sec. 3, Rule 40 provides for the payment of the additional Php 3,200 appeal fee to the Comelec Cash Division. The period in which to pay such additional appeal fee is provided under Sec. 4, Rule 40, thus:

Sec. 4. Where and When to Pay. - The fees prescribed in Sections 1, 2 and 3 hereof shall be paid to, and deposited with, the Cash Division of the Commission within a period to file the notice of appeal.

And the period to file the notice of appeal is provided under Sec. 3 of Rule 22, thus:

Sec. 3. Notice of Appeal. - Within five (5) days after promulgation of the decision of the court, the aggrieved party may file with said court a notice of appeal, and serve a copy thereof upon the attorney of record of the adverse party.

The promulgation of the decision is understood to mean the receipt by a party of a copy of the decision. Thus, to recapitulate, under Sec. 4, Rule 40 in relation to Sec. 3, Rule 22 of the Comelec Rules of Procedure, an appellant

from a decision of a trial court in an election protest case is given a reglementary period of five days from the receipt of a copy of the decision within which to pay the PhP 3,200 additional appeal fee to the Comelec Cash Division.

Considering that the Comelec En Banc issued on July 15, 2008 Comelec Resolution No. 8486, which allowed the payment of the additional appeal fee of PhP 3,200 to the Comelec Cash Division within 15 days from the filing of the notice of appeal, said Resolution, however, has effectively amended Sec. 4, Rule 40 of the Comelec Rules of Procedure. Thus, the Comelec is advised to reflect such amendment in their rules for the proper guidance of the Bench, the Bar, and litigants.

In the instant case, it is undisputed that Batalla had already perfected his appeal by paying the required appeal fees. He paid the PhP 1,000 appeal fee to the trial court on February 22, 2008 within the five-day period from receipt of the decision and the additional PhP 3,200 appeal fee to the Comelec Cash Division on March 5, 2008 or within 15 days from the filing of his notice of appeal. It is, thus, clear that Batalla had perfected his appeal by complying with the appeal requirements.

It must be noted that the required payment of separate and distinct appeal fees to the trial court under A.M. No. 07-4-15-SC and to the Comelec under its Rules of Procedure has caused much confusion to litigants. In fact, it became necessary for the Comelec to clarify the procedural rules on the payment of these appeal fees, and for this purpose issued Comelec Resolution No. 8486 on July 15, 2008.

While it seems that the Comelec First Division may not be faulted for following the then prevailing Comelec Rules of Procedure, still, it cannot close its eyes to the fact of the confusion in the payment of distinct appeal fees, which many litigants—like petitioner Batalla—went through. It must be noted that Batalla complied in good faith with the required payment of the additional appeal fee as soon as he was able.

But what was worse was the Comelec En Banc's denial of Batalla's motion for reconsideration on mere procedural grounds, through the second assailed Order of August 5, 2008, after it had already issued clarificatory Resolution No. 8486 on July 15, 2008. Having issued said clarificatory resolution a scant 16 days before it issued the second assailed Order, the Comelec En Banc was duty-bound to recognize the timeliness and the compliance of Batalla's appeal. Procedural rules are applied retroactively when no vested rights are prejudiced. Such was the case with Batalla's appeal. He had paid the PhP 1,000 appeal fee to the MCTC within the five-day reglementary period under Sec. 4 of Rule 40 of the Comelec Rules of Procedure. And he paid the additional PhP 3,200 appeal fee to the Comelec Cash Division within the 15-day period granted under Resolution No. 8486. Clearly, he had complied with the procedural appeal requirements of the Comelec.

Fairness and prudence dictate that the Comelec En Banc should have recognized Batalla's compliance with clarificatory Resolution No. 8486 when it resolved his motion for reconsideration and should not have merely denied it on the procedural ground of non-verification. It is true that the verification requirement was not complied with, but such procedural lapse pales in the face of the manifest error in the dismissal of Batalla's appeal by the Comelec First Division when the Comelec En Banc had already issued Resolution No. 8486, granting an appellant—in this case, Batalla—15 days within which to pay the additional fee of PhP 3,200, with which he had already complied.

Perforce, then, the assailed Orders must be reversed and set aside for having been issued with grave abuse of discretion. Accordingly, the appeal of Batalla must be given due course.

Substantive Issue: Petitioner Won in the Protested Election

In the interest of expeditious dispensation of justice, the Court will no longer remand Batalla's appeal to the

Comelec and instead rule on the merits of the appeal in this petition. The core issue is whether the five protested ballots were correctly appreciated by the MCTC as votes for Bataller, resulting into a tie between the contenders.

Batalla's arguments

Batalla vehemently disagrees with the findings of the trial court in appreciating the five protested ballots in favor of Bataller, specifically arguing that:

(a) Ballot 1: Exhibit "A"[31] shows, contrary to the finding of the MCTC, the contested name written on the line for Punong Barangay, but the surname is not discernable as it was written in a way susceptible to different interpretations, i.e., it can be read either as Batalla or Bataller. Batalla thus contends that this is a case of writing the first name of a candidate and the surname of the opposing candidate, in which case the ballot ought to be considered a stray ballot under Sec. 211(6)[32] of the Omnibus Election Code.

(b) Ballot 2: Exhibit "B"[33] shows that while the space for Punong Barangay is left blank, the first of the names for kagawad is unreadable and does not sufficiently identify Bataller, since the name written seems to be "tododer" and as such cannot be equated to Teodoro (Bataller), much less, credited to him pursuant to Sec. 211(14)[34] of the Omnibus Election Code, for there is no way of determining the intention of the voter as held in *Bautista v. Comelec*.^[35] Moreover, Batalla maintains that "tododer" cannot also be appreciated under the doctrine of *idem sonans* in favor of his opponent, as the MCTC erroneously held, for Bataller did not indicate or apply for "tododer" to be recognized as one of the names for which he can be voted, and neither has it been shown that Bataller is known in the barangay as such.

(c) Ballot 3: Exhibit "C,"[36] similar to Exhibit "B," should be deemed a stray ballot, for the real intention of the voter cannot be determined.

(d) Ballot 4: Exhibit "E"[37] shows the name of Teodoro Bataller written on the space for the candidates for kagawad, with that for Punong Barangay left blank, and should be considered a stray vote pursuant to Sec. 211(8)[38] of the Omnibus Election Code.

(e) Ballot 5: Exhibit "G"[39] is not legible and does not sufficiently identify the candidate, and to consider it a vote for Bataller is highly speculative and conjectural.

Only three ballots to be credited to Bataller

After a scrutiny of the five (5) contested ballots subject of Batalla's instant position, we rule that three (3) ballots marked as Exhibits "A," "E," and "G" were properly appreciated and credited in favor of Bataller under the neighborhood rule and intent rule. On the other hand, the ballots marked as Exhibits "B" and "C" are stray ballots.

We explain our ruling this way:

(1) The above Exhibit "A" ballot clearly shows the first name "Teodoro," while the surname written is a bit confusing; still, it certainly cannot be read as "Batalla" since the way it is written clearly indicates eight characters. The first six characters clearly make out "Batall," and the last two characters are the ones that are quite illegible. The name "Batalla" consists of only seven characters, while "Bataller" consists of eight characters. Thus, with the eight characters of the surname and the first name properly made out as "Teodoro," the benefit of the doubt tilts in favor of Bataller. More so, if the first name alone of a candidate (where no other candidate has a similar name)--in this case, for example, Teodoro or Ernesto--is sufficient to appreciate the vote for that candidate, with more reason should the first name of Teodoro and the surname making out "Bataller" be appreciated in his favor. Evidently, the voter wanted to cast his ballot in favor of Bataller as Punong Barangay. The intent rule is well settled in this jurisdiction that in the appreciation of the ballot, the objective should be to

ascertain and carry into effect the intention of the voter, if it could be determined with reasonable certainty. Hence, the intention of the voter to vote for Bataller is unequivocal from the face of the Exhibit "A" ballot. The ballot in question should be liberally appreciated to effectuate the voter's choice of Bataller.

(2) The ballot marked as Exhibit "E" above was properly credited in Bataller's name under the neighborhood rule as applied in *Ferrer*[40] and, more recently, in *Abad v. Co*[41] where the Court applied the same rule and credited to the candidates for Punong Barangay the votes written on the first line for kagawad with the spaces for Punong Barangay left vacant.

The neighborhood rule is a settled rule stating that where the name of a candidate is not written in the proper space in the ballot, but is preceded by the name of the office for which he is a candidate, the vote should be counted as valid for said candidate.[42] Such rule is usually applied in consonance with the intent rule which stems from the principle that in the appreciation of the ballot, the object should be to ascertain and carry into effect the intention of the voter, if it could be determined with reasonable certainty.

In *Velasco*, the Court explained the neighborhood rule and its application in this wise:

The votes contested in this appeal are all misplaced votes, i.e., votes cast for a candidate for the wrong or, in this case, inexistent office. In appreciating such votes, the COMELEC applied the "neighborhood rule." As used by the Court, this nomenclature, loosely based on a rule of the same name devised by the House of Representatives Electoral Tribunal (HRET), refers to an exception to the rule on appreciation of misplaced votes under Section 211(19) of *Batas Pambansa Blg. 881* (Omnibus Election Code) which provides:

Any vote in favor of a person who has not filed a certificate of candidacy or in favor of a candidate for an office for which he did not present himself shall be considered as a stray vote but it shall not invalidate the whole ballot. (Emphasis supplied.)

Section 211(19) is meant to avoid confusion in the minds of the election officials as to the candidates actually voted for and to stave off any scheming design to identify the vote of the elector, thus defeating the secrecy of the ballot which is a cardinal feature of our election laws. Section 211(19) also enforces Section 195 of the Omnibus Election Code which provides that in preparing the ballot, each voter must "fill his ballot by writing in the proper place for each office the name of the individual candidate for whom he desires to vote."

Excepted from Section 211(19) are ballots with (1) a general misplacement of an entire series of names intended to be voted for the successive offices appearing in the ballot; (2) a single or double misplacement of names where such names were preceded or followed by the title of the contested office or where the voter wrote after the candidate's name a directional symbol indicating the correct office for which the misplaced name was intended; and (3) a single misplacement of a name written (a) off-center from the designated space, (b) slightly underneath the line for the contested office, (c) immediately above the title for the contested office, or (d) in the space for an office immediately following that for which the candidate presented himself. In these instances, the misplaced votes are nevertheless credited to the candidates for the office for which they presented themselves because the voters' intention to so vote is clear from the face of the ballots. This is in consonance with the settled doctrine that ballots should be appreciated with liberality to give effect to the voters' will.[43]

The House of Representatives Electoral Tribunal (HRET) first laid down the particulars of the above "neighborhood rule" in *Nogralles v. Dureza*.[44] *Nogralles* and subsequent related rulings were later codified in its "Rules and Rulings on Appreciation of Ballots" (HRET Rules). We note that the HRET Rules[45] provided for the "neighborhood rule" and the "intent rule," and that the Senate Electoral Tribunal's Rules on Appreciation of Ballots has adopted the HRET's "neighborhood rule."

Thus, the MCTC is correct in appreciating name of Teodoro Bataller in the Exhibit "E" ballot as a vote for

Bataller although written on the space for Kagawad pursuant to the neighborhood and intent doctrines.

(3) The ballot marked as Exhibit "G" above was likewise properly credited in Bataller's name under the neighborhood rule and the intent rule, being similarly situated as the ballot marked as Exhibit "E." Moreover, contrary to Batalla's contention, the name of Bataller, written in this ballot on the first line for kagawad, is quite distinct and legible.

(4) The Exhibit "B" ballot above is a stray ballot and cannot be credited to Bataller. We agree with Batalla that neither the neighborhood rule nor the doctrine of idem sonans apply to this instance. First, the neighborhood rule applies when the name for Punong Barangay is left vacant, while the name of a candidate for Punong Barangay is clearly legible or discernable. This particular ballot does not clearly show the name of the candidate written on the first space for kagawad. Second, the word "tododer" written on the first line for kagawad does not necessarily refer to Teodoro Bataller. The word "tododer" does not sound like Teodoro under the idem sonans (having the same sound) rule. Said rule of law states that the occurrence in a document of a spelling of a material word that is wrong but has the sound of the word intended does not vitiate the instrument.[46] Neither was it shown that Bataller is known by that name in Barangay Mapulang Daga in Bacacay, Albay. Third, while it is paramount to give full expression to the voter's will under the intent rule as indicated in the ballots--thus, the liberality in ballot appreciation--it is necessary that the voter's intention be at least discernable with certainty. It has not been satisfactorily shown that "tododer" is used as a name of a person or the nickname of a candidate. Absent any indication of such discernable intent, we cannot appreciate this particular ballot in favor of Bataller. Thus, the MCTC erroneously credited this ballot to Bataller.

(5) Exhibit "C" ballot above is also a stray vote, for Bataller's name is not found on or near any of the lines corresponding to the offices of Punong Barangay and kagawads, and, thus, does not relate to any office. The name of Bataller was written in the upper portion of the ballot, above the instructions to the voter, but below the words "Bacacay, Albay," while the lines provided for the kagawads were properly filled up.

In Velasco,[47] a similar factual situation transpired in two protested ballots during the 2002 barangay elections. A particular ballot marked as Exhibit "13" showed that the lines for kagawad were properly filled up, but the line for Punong Barangay was left vacant and therein private respondent's name written above the instructions to the voter and below the words "San Pablo City." On the other hand, the ballot marked as Exhibit "9" similarly had the lines for kagawad properly filled up, but therein private respondent's name was written in the left uppermost part of the ballot. The Court ruled that the votes in the ballots marked as Exhibits "9" and "13" for therein private respondent were stray votes, for they did not relate to any office, and ratiocinated thus:

x x x Section 211(19), which treats misplaced votes as stray, speaks of a vote for a candidate "for an office for which he did not present himself." Thus, there is more reason to apply this rule here as the votes in Exhibits "9" and "13" do not even relate to any office.

Nor do the votes in question fall under any of the exceptions to Section 211(19) enumerated above. x x x Exhibits "9" and "13" present an unusual case of extremes--while respondent's name was written way off its proper place, the names of persons who were presumably candidates for Sangguniang Barangay Kagawad were properly placed, without the slightest deviation, in the first of the seven lines for that office.

This gives only two possible impressions. First, that the voters in these two ballots knew in fact where to write the candidates' names, in which case the votes for respondent written way off its proper place become stray votes. Second, the voters' manner of voting was a devise to identify the ballots, which renders the ballots invalid. We adopt the more liberal view--that the misplaced votes in Exhibits "9" and "13" are stray votes under Section 211(19), thus, leaving the ballots valid.

Considering that the vote for Teodoro in Exhibit "C" ballot does not even relate to any office, then said misplaced vote is treated as stray.

Thus, to recapitulate, of the five protested ballots, three are properly credited in favor of Bataller while the other two ballots are declared stray votes for Punong Barangay. Consequently, Batalla having garnered a total of 113 votes prevailed by two votes over Bataller, who only garnered an adjusted total of 111 votes (less the two ballots with stray votes, i.e., ballots marked as Exhibits "B" and "C").

WHEREFORE, the petition for certiorari is hereby GRANTED. The assailed Orders of the Comelec First Division and Comelec En Banc, dated April 3, 2008 and August 5, 2008, respectively, are REVERSED and SET ASIDE. The appeal of Ernesto Batalla is given DUE COURSE and the Decision of the MCTC in Bacacay, Albay dated February 12, 2008 is accordingly REVERSED and SET ASIDE. Ernesto Batalla is hereby DECLARED the WINNER for the position of Punong Barangay or Barangay Chairperson of Mapulang Daga, Municipality of Bacacay, Albay during the Barangay Elections held on October 29, 2007.

No pronouncement as to costs.

SO ORDERED.

Puno, C.J., Quisumbing, Carpio, Corona, Carpio Morales, Chico-Nazario, Nachura, Leonardo-De Castro, Brion, Peralta, Bersamin, Del Castillo and Abad, JJ., concur.
Ynares-Santiago, J., on official leave.

[1] Rollo, p. 29. Per Presiding Commissioner Romeo A. Brawner and Commissioner Moslemen T. Macarambon, Sr.

[2] Id. at 22-27, per Presiding Judge Marietta Lea B. Rosana.

[3] Id. at 38 and 40, per Chairperson Jose A.R. Melo and Commissioners Rene V. Sarmiento, Nicodemo T. Ferrer, Moslemen T. Macarambon, Sr., Leonardo L. Leonida and Lucenito N. Tagle.

[4] Id. at 16-18, Petition dated October 31, 2007.

[5] Id. at 27.

[6] Sec. 240. Election resulting in tie.--Whenever it shall appear from the canvass that two or more candidates have received an equal and highest number of votes, or in cases where two or more candidates are to be elected for the same position and two or more candidates received the same number of votes for the last place in the number to be elected, the board of canvassers, after recording this fact in its minutes, shall by resolution, upon five days notice to all the tied candidates, hold a special public meeting at which the board of canvassers shall proceed to the drawing of lots of the candidates who have tied and shall proclaim as elected the candidates who may be favored by luck, and the candidates so proclaimed shall have the right to assume office in the same manner as if he had been elected by plurality of vote. The board of canvassers shall forthwith make a certificate stating the name of the candidate who had been favored by luck and his proclamation on the basis thereof. Nothing in this section shall be construed as depriving a candidate of his right to contest the election.

[7] G.R. No. 139489, April 10, 2000, 330 SCRA 229.

[8] G.R. No. 166931, February 22, 2007, 516 SCRA 447.

[9] Rollo, p. 28, dated February 22, 2008.

[10] Id. at 30-33, dated April 11, 2008.

[11] Id. at 34-37, dated April 30, 2008.

[12] Id. at 39.

[13] Id. at 7.

[14] Rules of Procedure in Election Cases before the Courts involving Elective Municipal and Barangay Officials, dated May 15, 2007.

[15] Rollo, p. 47, Official Receipt No. 0513533.

[16] Id. at 45.

[17] G.R. No. 142021, November 29, 2000, 346 SCRA 563.

[18] Rollo, pp. 62-69, dated January 22, 2009.

[19] Id. at 48, Resolution dated September 30, 2008.

[20] Id. at 82, Resolution dated April 28, 2009.

[21] G.R. No. 119055, July 10, 1995, 245 SCRA 702; citing Galang v. Court of Appeals, G.R. No. 76221, July 29, 1991, 199 SCRA 683.

[22] G.R. No. 124137, March 25, 1997, 270 SCRA 404.

[23] Soller v. Comelec, G.R. No. 139853, September 5, 2000, 339 SCRA 685, 693; Miranda v. Castillo; G.R. No. 126361, June 19, 1997, 274 SCRA 503; Gatchalian v. Court of Appeals, G.R. No. 107979, June 19, 1995, 245 SCRA 208; Pahilan v. Tabalba, G.R. No. 110170, February 21, 1994, 230 SCRA 205.

[24] Sec. 3. Appeal Fees. - The appellant in election cases shall pay an appeal fee as follows:

- a. Election cases appealed from Regional Trial Courts P1,000.00.
- b. Election cases appealed from courts of limited jurisdiction P500.00.

In every case, a legal research fee of P20.00 shall be paid by the appellant in accordance with Sec. 4, Republic Act No. 3870, as amended. (Comelec's Resolution No. 02-0130, issued on September 18, 2002, prescribes P3,000 as appeal fee plus P50 for legal research and P150 for bailiff's fee.)

[25] Sec. 4. Where and When to Pay. - The fees prescribed in Sections 1, 2 and 3 hereof shall be paid to, and deposited with, the Cash Division of the Commission within a period to file the notice of appeal.

[26] Comelec Rules of Procedure, Rule 22, Sec. 3.

[27] Sec. 9. Grounds for Dismissal of Appeal.--The appeal may be dismissed upon motion of either party or at the instance of the Commission on any of the following grounds:

- (a) Failure of the appellant to pay the correct appeal fee.

[28] G.R. No. 185140, June 30, 2009.

[29] G.R. Nos. 186007 & 186016, July 27, 2009.

[30] Entitled "In the Matter of Clarifying the Implementation of COMELEC Rules Re: Payment of Filing Fees for Appealed Cases Involving Barangay and Municipal Elective Positions From the Municipal Trial Courts,

Municipal Circuit Trial Courts, Metropolitan Trial Courts and Regional Trial Courts."

[31] Rollo, p. 41.

[32] 6. When two words are written on the ballot, one of which is the first name of the candidate and the other is the surname of his opponent, the vote shall not be counted for either.

[33] Rollo, p. 42.

[34] 14. Any vote containing initials only or which is illegible or which does not sufficiently identify the candidate for whom it is intended shall be considered as a stray vote but shall not invalidate the whole ballot.

[35] G.R. No. 133840, November 3, 1998, 298 SCRA 480.

[36] Rollo, p. 43.

[37] Id. at 44.

[38] 8. When a name of a candidate appears in a space of the ballot for an office for which he is a candidate and in another space for which he is not a candidate, it shall be counted in his favor for the office for which he is a candidate and the vote for the office for which he is not a candidate shall be considered as stray, except when it is used as a means to identify the voter, in which case, the whole ballot shall be void.

[39] Rollo, p. 46.

[40] Supra note 7.

[41] G.R. No. 167438, July 25, 2006, 496 SCRA 505.

[42] See *Farin v. Gonzales*, No. L-36893, September 28, 1973, 53 SCRA 237.

[43] Supra note 8, at 455-459.

[44] HRET Case No. 34, June 16, 1989, 1 HRET Reports 138.

[45] Under the HRET Rules, the "neighborhood rule" provides:

A vote shall be counted in favor of a claimant where his name is found:

a) On any of the lines for Governor, Vice-Governor, Members of Sangguniang Panlalawigan, Provincial Board Member, Mayor, Vice-Mayor and Members Sangguniang Panlungsod/City Council provided that:

- i. the line for Representative is blank;
- ii. no other name of a congressional candidate was written on the ballot;
- iii. the misplaced vote was not intended as an identifying mark; and
- iv. there were no intervening votes between the line for Representative and the line on which the claimant's name could be found, except when the vote was written on the line for Governor, in which case, this requisite is no longer necessary.

b) On the line for President, provided that:

- i. the line for Representative is blank;
- ii. no other name of a congressional candidate was written on the ballot;
- iii. the misplaced vote was not intended as an identifying mark; and
- iv. the lines for Vice-President, Senators and Party-List are also blank.

c) On the line for Vice-President, provided that:

- i. the line for Representative is blank;
- ii. no other name of a congressional candidate was written on the ballot;
- iii. the misplaced vote was not intended as an identifying mark; and
- iv. the lines for Senators and Party-List are also blank.

d) On lines 1 and 2 for Senators, provided that:

- i. the line for Representative is blank;
- ii. no other name of a congressional candidate was written on other lines for Senators in the same ballot; and
- iii. the misplaced vote was not intended as an identifying mark.

The HRET also adopted the "Intent Rule," comprising two parts (the "Evident Intent Rule" and "Correct Sequence Rule"), which provides:

A) Evident Intent Rule

Claimed ballots shall be admitted where the name of the party-claimant appeared on any line other than that for Representative, and is preceded by the descriptive title "Congressman" or "Representative," or the word "Congressman" or "Representative" was written on a space immediately followed by the name of a claimant, or with an arrow pointing to the space for Representative subject to the following conditions:

- 1) the line for Representative is blank, or has an entry which is not a congressional candidate but with an arrow pointing to the appropriate space where the vote should be;
- 2) no other name of a congressional candidate is written on the ballot; and
- 3) the misplaced vote was not intended as an identifying mark.

B) Correct Sequence Rule

1) A misplaced name of a congressional candidate may be admitted provided it can be discerned from the sequence of votes or entries that the voter intended to vote for the congressional candidate named therein, provided that:

- a) the line for Representative is blank or need not be blank if the voter was not so lettered;
- b) no other name of a congressional candidate was written on the ballot; and
- c) the misplaced vote was not intended as an identifying mark.

2) Where the name of the party claimant appears below the line or space for Representative/Congressman and is followed by the name of a gubernatorial candidate or the names of the gubernatorial and vice-gubernatorial candidates, respectively, subject to the following conditions:

- a) the line for Representative is blank;
- b) no other name of a congressional candidate was written on the ballot;
- c) the misplaced vote was not intended as an identifying mark; and
- d) in case of misplaced names followed by a name of a gubernatorial candidate or by names of a gubernatorial and a Vice-gubernatorial candidates, respectively, the lines for Governor and Vice-Governor are also blank.

3) Where the name of the party claimant appears on other lines, but

- a) was preceded by the name of a candidate for Party-List and followed by the name of a candidate for Governor; or

b) was followed by the name of a candidate for Governor and a candidate for Vice-Governor provided that:

- i. the line for Representative is blank;
- ii no other name of a congressional candidate was written on the ballot; and
- iii. the misplaced vote was not intended as an identifying mark.

[46] Webster's Third New International Dictionary 1122 (1993).

[47] Supra note 8.

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