

WATERFRONT CEBU CITY CASINO HOTEL, INC. AND MARCO PROTACIO, PETITIONERS, VS. ILDEBRANDO LEDESMA, RESPONDENT.

G.R. No. 197556. March 25, 2015

Ponente: VILLARAMA, JR., J.

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VILLARAMA, JR., J.:

This is a petition for review on certiorari under Rule 45 of the 1997 Rules of Civil Procedure, as amended, seeking to set aside the Decision[1] dated March 17, 2011 and Resolution[2] dated June 21, 2011 of the Court of Appeals (CA) in CA-G.R. CEB SP No. 05071. The CA reversed the Decision[3] dated November 27, 2009 and Resolution[4] dated February 22, 2010 of the National Labor Relations Commission (NLRC) and reinstated the Decision[5] dated April 29, 2009 of the Labor Arbiter (LA). The LA declared that respondent Ildebrando Ledesma was illegally dismissed from his employment by petitioner Waterfront Cebu City Casino Hotel, Inc. (Waterfront).

The factual antecedents follow:

Respondent was employed as a House Detective at Waterfront located at Salinas Drive, Cebu City.

On the basis of the complaints filed before Waterfront by Christe[6] Mandal, a supplier of a concessionaire of Waterfront, and Rosanna Lofranco, who was seeking a job at the same hotel, Ledesma was dismissed from employment.[7] From the affidavits[8] and testimonies[9] of Christe Mandal and Rosanna Lofranco during the administrative hearings conducted by Waterfront, the latter found, among others, that Ledesma kissed and mashed the breasts of Christe Mandal inside the hotel's elevator, and exhibited his penis and asked Rosanna Lofranco to masturbate him at the conference room of the hotel.

On August 12, 2008, Ledesma filed a complaint[10] for illegal dismissal which was docketed as NLRC RAB-VII Case No. 08-1887-08. The LA found that the allegations leveled against Ledesma are mere concoctions, and concluded that Ledesma was illegally dismissed. The dispositive portion of the April 29, 2009 Decision of the LA, reads:

WHEREFORE, in view of the foregoing, a decision is hereby rendered declaring the suspension as well as the dismissal of herein complainant illegal. Consequently, respondent Waterfront Cebu City Hotel is ordered to reinstate complainant Ildebrando Ledesma to his former position without loss of seniority right and with full backwages reckoned from the date of the suspension up to actual reinstatement.

Herein respondent is likewise ordered to pay complainant Ledesma service incentive leave pay in the amount of THREE THOUSAND NINE HUNDRED TEN PESOS AND FIFTY CENTAVOS (P3,910.50) plus ten percent (10%) of the total monetary award as attorney's fees.

All other claims are DISMISSED for lack of merit.

SO ORDERED.[11]

On appeal to the NLRC, the latter reversed the ruling of the LA and held that Ledesma's acts of sexual overtures to Christe Mandal and Rosanna Lofranco constituted grave misconduct justifying his dismissal from employment. The fallo of the November 27, 2009 Decision of the NLRC reads:

WHEREFORE, premises considered, the appealed Decision is hereby REVERSED and SET ASIDE. Another one is entered declaring the dismissal of complainant as valid.

SO ORDERED.[12]

The NLRC denied Ledesma's motion for reconsideration in a Resolution dated February 22, 2010. A copy of the said Resolution was received by Atty. Gines Abellana (Atty. Abellana), Ledesma's counsel of record, on March 15, 2010.[13]

On May 17, 2010,[14] or sixty-three (63) days after Atty. Abellana received a copy of the NLRC's Resolution denying the motion for reconsideration, said counsel filed before the CA a petition for certiorari under Rule 65 of the Rules of Court.

In its Comment,[15] Waterfront prayed for the outright dismissal of the petition on the ground that it was belatedly filed.

On August 5, 2010, Ledesma, now assisted by a new counsel, filed a motion for leave to file amended petition,[16] and sought the admission of his Amended Petition for Certiorari.[17] In the amended petition, Ledesma contended that his receipt on March 24, 2010 (and not the receipt on March 15, 2010 by Atty. Abellana), is the reckoning date of the 60-day reglementary period within which to file the petition. Hence, Ledesma claims that the petition was timely filed on May 17, 2010.[18]

By its Resolution[19] dated August 27, 2010, the CA granted leave of court to Ledesma and admitted his amended petition for certiorari. The CA, thereafter, rendered a Decision dated March 17, 2011, reversing the Decision of the NLRC and reinstating the ruling of the LA. The fallo of the assailed CA Decision reads:

IN LIGHT OF ALL THE FOREGOING, this petition is GRANTED. The 27 November 2009 NLRC Decision and 22 February 2010 Resolution in NLRC Case No. VAC-09-000912-2009 is REVERSED and SET ASIDE and the 29 April 2009 Decision of the Labor Arbiter is hereby REINSTATED.

No pronouncement as to costs.

SO ORDERED.[20]

The CA denied the motion for reconsideration filed by Waterfront in a Resolution dated June 21, 2011. Thus, the present petition for review on certiorari where Waterfront raised the main issue of whether the petition for certiorari was timely filed with the CA.[21]

In his Comment,[22] Ledesma sought the dismissal of the instant petition of Waterfront on the basis of the following formal infirmities: (1) the presentation of Gaye Maureen Cenabre, the representative of Waterfront, of a Community Tax Certificate before the Notary Public to prove her identity, violated A.M. No. 02-8-13-SC, and rendered the jurat in the verification and certification on non-forum shopping of the petition as defective; and (2) no certified true copy of the August 10, 2011 Board Resolution quoted in the Secretary's Certificate was attached to the petition.

The Court finds Waterfront's petition to be meritorious.

The procedural infirmities[23] pointed out by Ledesma are not adequate to cause the dismissal of the present petition. Gaye Maureen Cenabre presented to the Notary Public a Community Tax Certificate numbered

27401128 to prove her identity instead of a current identification document issued by an official agency bearing her photograph and signature as required by A.M. No. 02-8-13-SC. This rendered the jurat in the verification/certification of non-forum shopping of Waterfront as defective. Nonetheless, any flaw in the verification, being only a formal, not a jurisdictional requirement, is not a fatal defect.[24] In like manner, there is no need to attach the certified true copy of the Board Resolution quoted in the Secretary's Certificate attached to the petition. Only the judgment, order or resolution assailed in the petition are the attachments required under Section 4,[25] Rule 45 of the Rules of Court to be duplicate originals or certified true copies.

On the main issue, the unjustified failure of Ledesma to file his petition for certiorari before the CA within the 60-day period is a ground for the outright dismissal of said petition.

Section 4, Rule 65 of the Rules of Court, as amended by A.M. No. 07-7-12-SC, reads:

SEC. 4. When and where to file the petition. – The petition shall be filed not later than sixty (60) days from notice of the judgment, order or resolution. In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the petition shall be filed not later than sixty (60) days counted from the notice of the denial of the motion.

If the petition relates to an act or an omission of a municipal trial court or of a corporation, a board, an officer or a person, it shall be filed with the Regional Trial Court exercising jurisdiction over the territorial area as defined by the Supreme Court. It may also be filed with the Court of Appeals or with the Sandiganbayan, whether or not the same is in aid of the court's appellate jurisdiction. If the petition involves an act or an omission of a quasi-judicial agency, unless otherwise provided by law or these rules, the petition shall be filed with and be cognizable only by the Court of Appeals.

In election cases involving an act or an omission of a municipal or a regional trial court, the petition shall be filed exclusively with the Commission on Elections, in aid of its appellate jurisdiction.

In *Laguna Metts Corporation v. Court of Appeals*,[26] we categorically ruled that the present rule now mandatorily requires compliance with the reglementary period. The period can no longer be extended as previously allowed before the amendment, thus:

As a rule, an amendment by the deletion of certain words or phrases indicates an intention to change its meaning. It is presumed that the deletion would not have been made if there had been no intention to effect a change in the meaning of the law or rule. The amended law or rule should accordingly be given a construction different from that previous to its amendment.

If the Court intended to retain the authority of the proper courts to grant extensions under Section 4 of Rule 65, the paragraph providing for such authority would have been preserved. The removal of the said paragraph under the amendment by A.M. No. 07-7-12-SC of Section 4, Rule 65 simply meant that there can no longer be any extension of the 60-day period within which to file a petition for certiorari.

The rationale for the amendments under A.M. No. 07-7-12-SC is essentially to prevent the use (or abuse) of the petition for certiorari under Rule 65 to delay a case or even defeat the ends of justice. Deleting the paragraph allowing extensions to file petition on compelling grounds did away with the filing of such motions. As the Rule now stands, petitions for certiorari must be filed strictly within 60 days from notice of judgment or from the order denying a motion for reconsideration.[27] (Additional emphasis and underscoring supplied)

In the subsequent case of *Domdom v. Third & Fifth Divisions of the Sandiganbayan*,[28] the absence of a specific prohibition in Section 4 of Rule 65, as amended, for the extension of the 60-day period to file a petition for certiorari was construed as a discretionary authority of the courts to grant an extension.

Republic v. St. Vincent De Paul Colleges, Inc.[29] clarified the "conflict" between the rulings in *Laguna Metts*

Corporation[30] and Domdom,[31] in that the former is the general rule while the latter is the exception, thus:

What seems to be a “conflict” is actually more apparent than real. A reading of the foregoing rulings leads to the simple conclusion that Laguna Metts Corporation involves a strict application of the general rule that petitions for certiorari must be filed strictly within sixty (60) days from notice of judgment or from the order denying a motion for reconsideration. Domdom, on the other hand, relaxed the rule and allowed an extension of the sixty (60)-day period subject to the Court’s sound discretion.[32] (Emphasis in the original)

In relaxing the rules and allowing an extension, *Thenamaris Philippines, Inc. v. Court of Appeals*[33] reiterated the necessity for the party invoking liberality to advance a reasonable or meritorious explanation[34] for the failure to file the petition for certiorari within the 60-day period.

The petition for certiorari was filed

with the CA beyond the 60-day period

Atty. Abellana, Ledesma’s counsel, admittedly received a copy of the NLRC Resolution denying the Motion for Reconsideration on March 15, 2010 while Ledesma received his copy on March 24, 2010.

Ledesma erroneously asserted in his petition for certiorari filed before the CA, that the 60[th] day is May 15, 2010, counted from March 15, 2010.[35] In computing a period, the first day shall be excluded, and the last included;[36] hence, the last day to file his petition for certiorari is on May 14, 2010, a Friday. Ledesma therefore belatedly filed his petition on May 17, 2010.

Realizing his procedural faux pas, Ledesma filed an amended petition where he contended that he timely filed his petition for certiorari on May 17, 2010 counted from his receipt of the NLRC Resolution denying his motion for reconsideration on March 24, 2010.[37] This stance is bereft of any legal basis. When a party to a suit appears by counsel, service of every judgment and all orders of the court must be sent to the counsel. This is so because notice to counsel is an effective notice to the client, while notice to the client and not his counsel is not notice in law.[38] Receipt of notice by the counsel of record is the reckoning point of the reglementary period.[39]

The negligence of Atty. Abellana in the computation of the 60-day period, and reckoning such period from the party’s receipt of the assailed NLRC resolution were similar arguments rejected in *Labao v. Flores*.[40] In the *Labao* case,[41] the respondents maintained that they should not suffer the negligence of their counsel in the late filing of their petition for certiorari, and the 60-day period be reckoned from their own notice of the NLRC’s denial of their motion for reconsideration. In rejecting said arguments we ruled as follows:

The general rule is that a client is bound by the acts, even mistakes, of his counsel in the realm of procedural technique. The exception to this rule is when the negligence of counsel is so gross, reckless and inexcusable that the client is deprived of his day in court. The failure of a party’s counsel to notify him on time of the adverse judgment, to enable him to appeal therefrom, is negligence that is not excusable. We have repeatedly held that notice sent to counsel of record is binding upon the client, and the neglect or failure of counsel to inform him of an adverse judgment resulting in the loss of his right to appeal is not a ground for setting aside a judgment valid and regular on its face.[42] (Emphasis omitted)

With the expiration of the 60-day period to file a petition for certiorari, a review of the Resolution of the NLRC will be beyond the jurisdiction of any court.[43] No longer assailable, the NLRC Resolution could not be altered or modified, as previously held in *Labao v. Flores*:[44]

The NLRC’s resolution became final ten (10) days after counsel’s receipt, and the respondents’ failure to file the petition within the required (60)-day period rendered it impervious to any attack through a Rule 65 petition for certiorari. Thus, no court can exercise jurisdiction to review the resolution.

Needless to stress, a decision that has acquired finality becomes immutable and unalterable and may no longer be modified in any respect, even if the modification is meant to correct erroneous conclusions of fact or law and whether it will be made by the court that rendered it or by the highest court of the land. All the issues between the parties are deemed resolved and laid to rest once a judgment becomes final and executory; execution of the decision proceeds as a matter of right as vested rights are acquired by the winning party. Just as a losing party has the right to appeal within the prescribed period, the winning party has the correlative right to enjoy the finality of the decision on the case. After all, a denial of a petition for being time-barred is tantamount to a decision on the merits. Otherwise, there will be no end to litigation, and this will set to naught the main role of courts of justice to assist in the enforcement of the rule of law and the maintenance of peace and order by settling justiciable controversies with finality.

Ledesma did not attempt to justify
the belated filing of his petition for
certiorari

The relaxation of procedural rules may be allowed only when there are exceptional circumstances to justify the same.[45] There should be an effort on the part of the party invoking liberality to advance a reasonable or meritorious explanation for his/her failure to comply with the rules.[46] Moreover, those who seek exemption from the application of a procedural rule have the burden of proving the existence of exceptionally meritorious reason warranting such departure.[47] In *Philippine National Bank v. Commissioner of Internal Revenue*,[48] we said:

It is an accepted tenet that rules of procedure must be faithfully followed except only when, for persuasive and weighting reasons, they may be relaxed to relieve a litigant of an injustice commensurate with his failure to comply with the prescribed procedure. Concomitant to a liberal interpretation of the rules of procedure, however, should be an effort on the part of the party invoking liberality to adequately explain his failure to abide by the rules. (Emphasis supplied)

Both in his petition and amended petition, Ledesma never invoked the liberality of the CA nor endeavored to justify the belated filing of his petition. On the contrary, Ledesma remained firm that his petition was filed with the CA within the reglementary period.[49] Absent valid and compelling reasons for the procedural lapse, the desired leniency cannot be accorded to Ledesma.[50]

In sum, the late filing by Ledesma of his petition for certiorari, and his failure to justify his procedural lapse to merit a lenient application of the rules divested the CA of jurisdiction to entertain the petition.[51]

Assuming for a moment that the petition for certiorari was timely filed with the CA, said recourse should suffer the same fate of dismissal for lack of merit. Otherwise stated, there is no substantial justice that may be served here in disregarding the procedural flaw committed by Ledesma because the NLRC correctly found him guilty of misconduct or improper behavior in committing lascivious conduct and demanding sexual favors from Christe Mandal and Rosanna Lofranco.

The CA ruled in favor of Ledesma since it believed his version that the complainants merely invented the accusations against him because Waterfront failed to present as evidence the CCTV footages of the alleged lascivious conduct of Ledesma inside the elevator and the conference room. But this argument was not even raised by Ledesma himself and it was only the CA which utilized this as a justification to bolster its findings that Ledesma did not commit any infraction. This being a labor case, the evidence required is only substantial evidence which was adequately established here by the positive and credible testimonies of the complainants.

Notably, Ledesma never refuted, at the administrative investigation level at Waterfront, and even at the proceedings before the LA, NLRC, and the CA, the allegations leveled against him by Rosanna Lofranco that,

after deluding her to perform a massage on him, Ledesma exhibited to her his penis and requested that he be masturbated while inside the conference room of the hotel. If not for the position of Ledesma as a House Detective, he will not have access to the conference room nor will he know that the premises is not monitored through a closed-circuit television,[52] thus giving him the untrammelled opportunity to accomplish his lewd design on the unsuspecting victim. Such acts of Ledesma constituted misconduct or improper behavior[53] which is a just cause for his dismissal.

WHEREFORE, the petition for review on certiorari is GRANTED. The March 17, 2011 Decision and June 21, 2011 Resolution of the Court of Appeals in CA-G.R. CEB SP No. 05071 are REVERSED and SET ASIDE. The November 27, 2009 Decision and February 22, 2010 Resolution of the National Labor Relations Commission which found as valid the dismissal from employment of Ildebrando Ledesma are REINSTATED.

No pronouncement as to costs.

SO ORDERED.

Velasco, Jr., (Chairperson), Peralta, Reyes, and Jardeleza, JJ., concur.

[1] Rollo, pp. 43-56. Penned by Associate Justice Edwin D. Sorongon and concurred in by Associate Justices Portia Aliño-Hormachuelos and Socorro B. Inting.

[2] Id. at 58-59. Penned by Associate Justice Nina G. Antonio-Valenzuela with Associate Justices Portia Aliño-Hormachuelos and Myra V. Garcia-Fernandez concurring.

[3] CA rollo, pp. 81-87.

[4] Id. at 93-95.

[5] Id. at 56-62.

[6] Also spelled as Christie or Christy.

[7] Records, pp. 22-24.

[8] Id. at 55-62 and 65-66.

[9] See the Joint Resolution/Decision of the administrative panel of Waterfront, id. at 22-24.

[10] Id. at 1-2.

[11] CA rollo, p. 62.

[12] Id. at 86.

[13] Id. at 5. Paragraph 14 of the Petition for Certiorari.

[14] Id. at 3. See the date of receipt by the CA stamped at the upper right portion.

[15] Id. at 103-110.

[16] Id. at 112-114.

[17] Id. at 116-135.

[18] Id. at 118-119.

[19] Id. at 223-224.

[20] Rollo, p. 56.

[21] Id. at 22.

[22] Id. at 89-120.

[23] Id. at 103-104.

[24] *Galicto v. Aquino III*, G.R. No. 193978, February 28, 2012, 667 SCRA 150, 175, citing *In-N-Out Burger, Inc. v. Sehwan, Incorporated and/or Benita's Frites, Inc.*, 595 Phil. 1119, 1140 (2008).

[25] SEC. 4. Contents of petition. – The petition shall x x x (d) be accompanied by a clearly legible duplicate original, or a certified true copy of the judgment or final order or resolution certified by the clerk of court of the court a quo and the requisite number of plain copies thereof, and such material portions of the record as would support the petition; x x x. [26] 611 Phil. 530 (2009).

[27] Id. at 536-537.

[28] 627 Phil. 341 (2010).

[29] G.R. No. 192908, August 22, 2012, 678 SCRA 738.

[30] *Supra* note 26.

[31] *Supra* note 28.

[32] *Republic v. St. Vincent De Paul Colleges, Inc.*, *supra* note 29, at 747.

[33] G.R. No. 191215, February 3, 2014, 715 SCRA 153, 166, citing *Labao v. Flores*, G.R. No. 187984, November 15, 2010, 634 SCRA 723, 732.

[34] Among the “recognized exceptions” are: (1) most persuasive and weighty reasons; (2) to relieve a litigant from an injustice not commensurate with his failure to comply with the prescribed procedure; (3) good faith of the defaulting party by immediately paying within a reasonable time from the time of the default; (4) the existence of special or compelling circumstances; (5) the merits of the case; (6) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules; (7) a lack of any showing that the review sought is merely frivolous and dilatory; (8) the other party will not be unjustly prejudiced thereby; (9) fraud, accident, mistake or excusable negligence without appellant’s fault; (10) peculiar legal and equitable circumstances attendant to each case; (11) in the name of substantial justice and fair play; (12) importance of the issues involved; and (13) exercise of sound discretion by the judge guided by all the attendant circumstances. *Thenamaris Philippines, Inc. v. Court of Appeals*, *id.*

[35] Paragraph 14 of the Petition provides:

14. That the said resolution denying the motion for reconsideration was served upon the petitioner on March 15, 2010 and the sixty (60) day period allowed by Rule 65 falls on May 15, 2010 which is a Saturday so that the next business day is still within the period to file the x x x petition; (CA rollo, p. 5.)

[36] Article 13 of the Civil Code reads:

ART. 13. When the law speaks of years, months, days or nights, it shall be understood that years are of three hundred sixty-five days each; months, of thirty days; days, of twenty-four hours, and nights from sunset to sunrise.

If months are designated by their name, they shall be computed by the number of days which they respectively have.

In computing a period, the first day shall be excluded, and the last day included.

[37] CA rollo, pp. 118-119.

[38] *Ramos v. Sps. Lim*, 497 Phil. 560, 564-565 (2005).

[39] See *Manaya v. Alabang Country Club, Inc.*, 552 Phil. 226, 233 (2007), citing *Ram's Studio and Photographic Equipment, Inc. v. Court of Appeals*, 400 Phil. 542, 549 (2000).

[40] *Supra* note 33.

[41] *Id.* at 733.

[42] *Id.*

[43] *Thenamaris Philippines, Inc. v. Court of Appeals*, *supra* note 33, at 169, quoting *Labao v. Flores*, *supra* note 33, at 734.

[44] *Id.* at 734-735.

[45] *Tagle v. Equitable PCI Bank*, 575 Phil. 384, 405 (2008).

[46] *People v. Castañeda, Jr.*, G.R. No. 208290, December 11, 2013, 712 SCRA 800, 807, citing *Republic v. St. Vincent de Paul Colleges, Inc.*, *supra* note 29, at 748, further citing *Labao v. Flores*, *supra* note 33, at 732.

[47] *Gipa v. Southern Luzon Institute*, G.R. No. 177425, June 18, 2014, p. 1.

[48] G.R. No. 172458, December 14, 2011, 662 SCRA 424, 436-437, quoting *Suarez v. Judge Villarama, Jr.*, 526 Phil. 68, 77 (2006).

[49] CA rollo, pp. 5 and 118-119.

[50] See *Ramirez v. Court of Appeals*, 622 Phil. 782, 803 (2009).

[51] See *Thenamaris Philippines, Inc. v. Court of Appeals*, *supra* note 33, at 169.

[52] Only specific areas of the hotel are covered by surveillance cameras. See rollo, p. 33.

[53] Its elements are: (a) must be serious; (b) must relate to the performance of the employee's duties; and (c) must show that the employee has become unfit to continue working for the employer. See *Lopez v. NLRC* (2nd Div.), 513 Phil. 731, 737 (2005); *Fujitsu Computer Products Corp. of the Philippines v. Court of Appeals*, 494 Phil. 697, 725 (2005).

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