

**PHILIPPINE AMUSEMENT AND GAMING CORPORATION (PAGCOR),
PETITIONER, V. COURT OF APPEALS AND ANGELINE V. PAEZ,
RESPONDENTS.**

G.R. No. 230084. August 20, 2018

Ponente: GESMUNDO, J.

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GESMUNDO, J.:

This is a petition for certiorari under Rule 65 of the 1997 Rules of Court (ROC) assailing the April 27, 2016[1] and January 3, 2017[2] Resolutions of the Court of Appeals (CA) in CA-G.R. SP No. 126110, which deemed abandoned the petition for review brought by the Philippine Amusement and Gaming Corporation (PAGCOR) under Rule 43 of the ROC. The said petition for review sought to reverse and set aside the January 24, 2012 Resolution[3] of the Civil Service Commission (CSC), which nullified the dismissal of Angeline V. Paez (respondent) and reinstated her into service.

The Antecedents

Respondent was an employee of PAGCOR with a position of Dealer stationed at Casino Filipino-Waterfront Hotel, Lahug, Cebu City. In a random drug testing conducted by PAGCOR to all its employees, respondent allegedly tested positive for methamphetamine. Thus, in its March 30, 2006 Letter,[4] respondent was informed that she was dismissed from the service for gross misconduct and violation of company rules and regulations. Respondent moved for reconsideration which PAGCOR denied in its May 11, 2006 letter.

On May 19, 2006, respondent appealed her dismissal with the CSC. The CSC, in its March 24, 2008 resolution, dismissed the appeal and affirmed her dismissal. When respondent moved for reconsideration of this resolution, the CSC, in its January 24, 2012 resolution, reversed itself and reinstated respondent into service.

The CSC exonerated respondent from the administrative charges on account of PAGCOR's failure to comply with the requirements of Section 38 of Republic Act (R.A.) No. 9165 or the Comprehensive Dangerous Drugs Act of 2002. It found that respondent was not notified of the positive screening result, which should have given her a window of opportunity to impugn the result through a confirmatory testing. It held that notice of the screening test is part of her substantive rights and the absence thereof is tantamount to denial of the due process granted to her by law. Thus, it exonerated her of the administrative charges.

PAGCOR filed a motion for reconsideration but it was denied by the CSC in its July 17, 2012 resolution.[5]

Thus, on August 17, 2012, PAGCOR filed a petition for review before the CA under Rule 43 of the ROC.

In a Resolution,[6] dated June 13, 2014, the CA required PAGCOR, within ten (10) days from notice, to (1) submit proof that copies of the petition, together with its annexes, had been duly received by respondent or her counsel; and (2) manifest the current correct and complete address of respondent and of her counsel. This is because copies of all resolutions of the CA furnished to counsel for respondent, the Yap Gonzales & Associates Law Firm, were returned unserved with uniform postal notation on the envelopes "RTS-MOVED (out)."

The CA Ruling

In a Resolution,[7] dated November 28, 2014, the CA dismissed the petition.

It noted that PAGCOR failed to comply with its June 13, 2014 resolution as of November 17, 2014. It further noted that the copy of its June 13, 2014 resolution to respondent's counsel was again returned unserved with the same postal notation of "Moved."

It held that due to PAGCOR's failure to provide the exact addresses of respondent and her counsel, it failed to acquire jurisdiction over respondent as provided for under Section 4, Rule 46 of the ROC. Thus, it dismissed the petition for failure to acquire jurisdiction over respondent.

PAGCOR moved for reconsideration of this resolution. Meanwhile, respondent filed a Manifestation,[8] dated May 13, 2015, and Motion cum Manifestation,[9] dated August 5, 2015, insisting that she be provided copies of the petition and the CA's November 28, 2014 resolution. She also alleged that PAGCOR had prior knowledge of her counsel's change of address and requested that all subsequent court processes be sent to her counsel's new address.

In a Resolution,[10] dated October 22, 2015, the CA reinstated the petition in view of respondent's voluntary submission to its jurisdiction. It ordered PAGCOR to furnish respondent a copy of the petition for review, complete with annexes, within five (5) days from notice and to submit proof of compliance therewith.

In a resolution, dated April 27, 2016, the CA deemed the petition abandoned and dismissed the same. It noted that, as of March 3, 2016, PAGCOR had yet to comply with its October 22, 2015 resolution. Accordingly, it dismissed the petition.

PAGCOR moved for reconsideration of this resolution, which the CA denied in its January 3, 2017 resolution.

Hence, this petition, anchored on the ground that the CA committed grave abuse of discretion amounting to lack or excess of jurisdiction when it rendered the April 27, 2016 and January 3, 2017 resolutions.

PAGCOR argues that its failure to comply with the CA's October 22, 2015 resolution was unintentional. It was merely due to the heavy workload of its former counsel, as well as the effect of the recurring water intrusion/leakage in its offices due to bursting of the PAGCOR FCU Chilled Water. This outpour of water soaked and damaged the computers, case files, confidential documents and other materials belonging to the lawyers.

Further, PAGCOR argues that the gross negligence of its former handling lawyer should not bind it as it would be tantamount to a deprivation of its right to due process and to be rightfully heard on the merits of the case.

In her Comment/Opposition,[11] dated July 22, 2017, respondent alleges that PAGCOR failed to demonstrate a highly meritorious ground for the relaxation of the rules of procedure in its favor. Thus, the CA rightfully dismissed the action.

In its Reply,[12] dated March 14, 2018, PAGCOR insists that its former counsel's negligence was so gross that it should not be bound thereby. Otherwise, it would amount to a deprivation of due process.

ISSUE

WHETHER THE CA COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT DISMISSED THE PETITION FOR REVIEW OF PAGCOR.

The Court's Ruling

The petition is devoid of merit.

PAGCOR comes before this Court seeking exemption from the general rule that a client is bound by the acts, even mistakes, of his counsel in the realm of procedural technique.[13] However, PAGCOR's disregard for technical procedure is made manifest by the fact that the instant petition is a substitute for a lost appeal. Further, the CA did not commit any grave abuse of discretion when it dismissed the petition for review before it.

The instant petition is a substitute for a lost appeal.

The right to appeal is neither a natural right nor a part of due process. It is merely a statutory privilege and may be exercised only in the manner and in accordance with the provisions of law. Thus, one who seeks to avail of the right to appeal must comply with the requirements of the ROC. Failure to do so often leads to the loss of the right to appeal.[14]

Under Section 1, Rule 45 of the ROC, the proper remedy to question the CA's judgment, final order or resolution, as in the present case, is an appeal by certiorari. The petition must be filed within fifteen (15) days from notice of the judgment, final order or resolution appealed from; or of the denial of petitioner's motion for reconsideration filed in due time after notice of the judgment.[15]

PAGCOR received the January 3, 2017 resolution of the CA denying its motion for reconsideration on January 11, 2017. Hence, PAGCOR had fifteen (15) days, or until January 26, 2017, to file its appeal. It let this period lapse and, instead, filed herein petition for certiorari on March 13, 2017. Evidently, the present petition is a substitute for the lost remedy of appeal.

Time and again, the Court has ruled that a special civil action for certiorari under Rule 65 is an independent action based on the specific grounds therein provided and proper only if there is no appeal or any plain, speedy and adequate remedy in the ordinary course of law. It is an extraordinary process for the correction of errors of jurisdiction and cannot be availed of as a substitute for the lost remedy of an ordinary appeal.[16] Mere invocation of "grave abuse of discretion amounting to lack or excess of jurisdiction" will not permit the substitution of a lost remedy of appeal with a special civil action for certiorari.

Since PAGCOR filed the instant special civil action for certiorari instead of the lost remedy of appeal by certiorari, the petition should be dismissed.

The negligence of PAGCOR's counsel binds it. None of the recognized exceptions obtains in this case.

The petition necessarily fails even if the Court were to consider it as a petition for certiorari. The CA did not commit any grave abuse of discretion amounting to lack or excess of jurisdiction when it dismissed the petition for review of PAGCOR on the ground that it abandoned the same.

It is settled that the negligence of counsel binds the client. This is based on the rule that any act performed by a counsel within the scope of his general or implied authority is regarded as an act of his client. Consequently, the mistake or negligence of counsel may result in the rendition of an unfavorable judgment against the client. We have, however, carved out exceptions to this rule; as where the reckless or gross negligence of counsel deprives the client of due process of law; or where the application of the rule will result in outright deprivation of the client's liberty or property; or where the interests of justice so requires and relief ought to be accorded to the client who suffered by reason of the lawyer's gross or palpable mistake or negligence. In order to apply the exceptions rather than the rule, the circumstances obtaining in each case must be looked into.[17]

In the case at bar, PAGCOR argues that the negligence of its former counsel was so gross that it effectively deprived it of due process.

Gross negligence has been defined as the want or absence of or failure to exercise slight care or diligence, or the entire absence of care. It examines a thoughtless disregard of consequences without exerting any effort to avoid them.[18] Mere allegation of gross negligence does not suffice.[19] The fact of gross negligence must be proven and supported by evidence.

The Court finds in the instant case that PAGCOR failed to prove that the negligence of its former counsel was so gross that it effectively deprived it of due process.

PAGCOR argues in its petition that its failure to comply with the CA's October 22, 2015 resolution was unintentional. It contends that its failure was merely due to the heavy workload of its former counsel and an effect of the recurring water intrusion/leakage in its offices. The Court fails to see how these excuses could amount to gross negligence on the part of its former counsel. In fact, they themselves characterized it as a mere, unintentional lapse. This is simple negligence. There is simply no gross negligence to speak of in the instant case.

Further, PAGCOR was not deprived of due process. On the contrary, it was given every opportunity to be heard, which is the very essence of due process. The merits of its case were heard by the CSC. It appealed the decision of the CSC to the CA. The CA initially dismissed the case for failure to acquire jurisdiction over respondent due to PAGCOR's failure to comply with its orders regarding service of a copy of the petition to respondent and/or her counsel. When the CA reinstated the case in view of respondent's voluntary submission to its jurisdiction, PAGCOR squandered the second chance given to it by failing to comply with the CA's directive to furnish respondent with a copy of the petition. This is despite respondent volunteering the current address of her counsel through the manifestations she filed. To add salt to injury, PAGCOR let the period to appeal the January 3, 2017 resolution of the CA before this Court lapse. Instead, it filed the present petition for certiorari as a substitute for its lost appeal.

The acts of its former counsel did not deprive PAGCOR of due process. PAGCOR was given every opportunity to be heard but it failed to take advantage of the said opportunities. Hence, the general rule that the negligence of the counsel binds the client applies herein.

On a last note, PAGCOR's cavalier attitude towards court processes and procedure is plain to see. Its conduct before the CA and before this Court underscores this. The Court reminds PAGCOR, as we have consistently reminded countless other litigants, that the invocation of substantial justice is not a magic potion that will automatically compel this Court to set aside technical rules. This principle is especially true when a litigant, as in the present case, shows a predilection for utterly disregarding the ROC, as well as court directives.[20]

WHEREFORE, the petition is DISMISSED. The April 27, 2016 and January 3, 2017 Resolutions of the Court of Appeals in CA-G.R. SP No. 126110 are AFFIRMED.

SO ORDERED.

Leonardo-De Castro (Chairperson), Bersamin, Leonen, and A. Reyes, Jr., JJ., concur.

[1] Rollo, pp. 20-21; penned by Associate Justice Pedro B. Corales with Associate Justice Sisinando E. Villon and Associate Justice Rodil V. Zalameda, concurring.

[2] Id. at 23-25.

[3] Id. at 57-63; penned by Commissioner Mary Ann Z. Fernandez-Mendoza with Chairman Francisco T. Duque III and Commissioner Rasol L. Mitmug, concurring.

[4] Id. at 72.

[5] Id. at 64-67.

[6] Id. at 150.

[7] Id. at 152-154; penned by Associate Justice Pedro B. Corales with Associate Justice Sesinando E. Villon and Associate Justice Melchor Quirino C. Sadang, concurring.

[8] Id. at 181-184.

[9] Id. at 190-192.

[10] Id. at 199-201; penned by Associate Justice Pedro B. Corales with Associate Justice Sesinando E. Villon and Associate Justice Melchor Quirino C. Sadang, concurring.

[11] Id. at 222-226.

[12] Id. at 231-237.

[13] *Producers Bank of the Philippines v. Court of Appeals, et al.*, 430 Phil. 812-823 (2002).

[14] *Prieto v. Alpadi Development Corporation*, 715 Phil. 705, 717 (2013); *Nueva Ecija II Electric Cooperative, Inc., et al. v. Mapagu*, G.R. No. 196084, February 15, 2017, citing *National Transmission Corporation v. Heirs of Teodulo Ebessa*, 781 Phil. 594, 602-603 (2016), citing *Julian v. Development Bank of the Philippines, et al.*, 678 Phil. 133, 143 (2011).

[15] *Indoyon, Jr. v. Court of Appeals*, 706 Phil. 200, 208 (2013).

[16] *Jan-Dec Construction Corp. v. Court of Appeals, et al.*, 517 Phil. 96, 104-105 (2006).

[17] *Multi-Trans Agency Phils., Inc. v. Oriental Assurance Corp.*, 608 Phil. 478, 493-494 (2009); citations omitted.

[18] Id. at 494.

[19] *Baclaran Marketing Corp. v. Nieva, et al.*, G.R. No. 189881, April 19, 2017.

[20] *Indoyon, Jr. v. Court of Appeals*, *supra* note 15 at 209.

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