

CARMEN C. VIUDA DE ORDOVEZA, PETITIONER, VS. HONORIA RAYMUNDO, RESPONDENT.

G. R. No. 45155. July 31, 1936

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

Petitioner is the appellee and respondent the appellant in a case now pending on appeal in the Court of Appeals, entitled Domingo Ordoveza vs. Honoria Raymundo, and numbered 44763 in the records of that court. The period for the filing of the appellant's brief in that case expired on March 20, 1936. On March 31, 1936 the Court of Appeals dismissed the appeal for failure of the appellant to file her brief within the time prescribed by the rules of the court, and ordered that after fifteen days the record of the case be remanded to the court below. On April 6, 1936 the appellant filed a petition for reconsideration of the order dismissing the appeal, which petition was denied on April 8, 1936. A second petition for reconsideration was filed by the appellant, and in view thereof the Court of Appeals on April 14, 1936, passed the following resolution:

"Upon consideration of the second petition of the attorneys for the appellant in case G. R. No. 44763, Domingo Ordoveza vs. Honoria Raymundo, etc. praying that the resolution of this court of March 31, 1936, dismissing the appeal for failure to file their brief be reconsidered; in view of the reasons given in said petition and the special circumstances of the case, said resolution is hereby set aside and the appeal reinstated; provided, however, that the attorneys for the appellant shall file their printed brief within five days from notice hereof."

On April 17, 1936 the appellee filed a motion praying that the resolution above quoted be reconsidered and set aside, which motion was denied.

Upon the foregoing state, of facts, the appellee filed this petition for a writ of certiorari with a view to having declared null and void the order of the Court of Appeals reinstating the appeal.

Petitioner now contends (1) that the Court of Appeals had no power to reinstate the appeal because it lost jurisdiction of the case on April 5, 1936, in that fifteen days had already elapsed from March 20, 1936, the date when the period fixed for the filing of the appellant's brief expired; and (2) that granting that the Court of Appeals retained jurisdiction of the case, it had no authority to grant the appellant an additional period of five days within which to file her brief.

By section 145-P of the Revised Administrative Code, as amended by Commonwealth Act No. 3, and in virtue of the resolution adopted by the Court of Appeals on February 8, 1936, the rules of the Supreme Court governing: the filing of briefs and the dismissal of appeals are applicable to cases cognizable by the Court of Appeals.

Rules 23 and 24 of the Supreme Court are pertinent to the consideration of the present petition. The rules read as follows:

"23. Motions for extension of time for the filing of briefs must be presented before the expiration of the time mentioned in Rules 21 and 22, or within a time fixed by special order of the court. No more than one extension

of time for the filing of briefs shall be allowed, and then only for good and sufficient cause shown, to be demonstrated by affidavit.

"24. If the appellant, in any civil case, fails to serve his brief within the time prescribed by these rules the court may, on motion of the appellee and notice to the appellant, or on its own motion, dismiss the bill of exceptions or the appeal."

- The first contention of the petitioner rests on the theory developed in his argument that upon the failure of the appellant to file her brief within the time prescribed by the rules of the court, her appeal! became, ipso facto, dismissed. Consequently, he argues that at the expiration of the period of fifteen days from March 20, 1936, the Court of Appeals lost jurisdiction of the case, and had, therefore, no power to reinstate the appeal. This view finds no support in the rules of this court. Rule 24 above transcribed clearly indicates the contrary view when it says that upon failure of the appellant to file his brief within the period prescribed by the rules, the court "may", on motion of the appellee and notice to the appellant, or on its own motion, dismiss the bill of exceptions or the appeal. The use of the word "may" implies that the matter of dismissing the appeal or not rests within the sound discretion of the court, and that failure of the appellant to file his brief within the time prescribed by the rules does not have the effect of dismissing the appeal automatically. Viewed in this light, the period of fifteen days must be counted in the case under consideration not from March 20, 1936, but from March 31, 1936. Having been entered on April 14, 1936, the order reinstating the appeal came within such fifteen-day period.

- Granted that the Court of Appeals still had jurisdiction of the case when it reinstated the appeal, it seems reasonable to conclude that it also had authority to grant the appellant an additional period of five days within which to file her brief. Rule 23 provides in specific terms that the court may by special order fix a time within which motions for extension of time for the filing of briefs must be presented. It would seem to be within the spirit of this rule to hold that the court may grant either the appellant or appellee an additional time for the filing of his brief even without any previous application therefor. Moreover, as the Supreme Court of the United States has aptly observed, "it is always in the power of the court to suspend its own rules, or to except a particular case from its operation, whenever the purposes of justice require it." (U. S. vs, Breitling, 20 How., 252; 15 Law. ed., 900, 902.)

We conclude that the Court of Appeals had authority to reinstate the appeal in the aforesaid case numbered 44763 in its records, and to grant the appellant an additional period of five days within which to file her brief.

The petition for a writ of certiorari must be denied. So ordered.

Avanceña, C. J., Villa-Real, Imperial, Diaz, and Laurel, JJ., concur.

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