

LEONCIA REYES, IN HER OWN REPRESENTATION AND AS ADMINISTRATRIX OF THE ESTATE OF THE DECEASED DALMACIO CELINO, PETITIONER, VS. THE COURT OF APPEALS AND ENRIQUE BAUTISTA, RESPONDE...*G.R. No. 48960. June 29, 1943*

Ponente: OZAETA, J.

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Prohibition to the Court of Appeals from taking cognizance of the appeal entitled "Enrique Bautista, plaintiff and appellant, vs. Leoncia Reyes, etc., defendant and appellee" (C. A.—C. R. No. 311), on the ground that, the appeal bond having been presented out of time, said appeal was unlawfully allowed by the trial court.

In said case the Court of First Instance of Laguna (Judge Vicente del Rosario presiding) rendered judgment in favor of the defendant on September 19, 1942, of which, the plaintiff received notice on October 10. The plaintiff filed a notice of appeal on October 23, the record on appeal on November 2, and the appeal bond on November 10, 1942, after a pro forma motion for new trial filed by him on October 17 had been denied by the court on the same date and notice of the denying order had been received by him on October 22. Counsel for the defendant moved to dismiss the appeal and Opposed the approval of the record on appeal on the ground that the appeal bond was not presented within thirty days after the appellant was notified of the decision appealed from. The court (Judge Claudio Sandoval presiding) denied the motion to dismiss and overruled the opposition to the approval of the record on appeal on the theory that the filing of the pro forma motion for new trial suspended the running of the thirty-day period provided for the perfection of the appeal by section 3 of Rule 41. Counsel for the appellee reiterated his motion for dismissal in the Court of Appeals, but the First Division of that Court likewise denied his motion upon a different ground, which is synthesized in its conclusion that "the ends of Justice would be better subserved if we allow the present appeal to take its due course, considering that the bond was filed only one day late," The Court of Appeals noted that the appellant "must have been of the honest opinion, although erroneously, that his motion, which was not a motion to set aside, interrupted the period for filing his appeal bond." It also cited our decision in *Bustamente vs. Tirona*, G.R. No. 48813, 1 Off. Gaz., 875, wherein among other things we said: "The petitioner having admittedly tendered his record on appeal after the lapse of the thirty-day reglementary period, it was not mandatory but, if at all purely discretionary in the respondent judge to approve or disapprove it in the interest of justice."

First. The Court of Appeals assumed, rightly, that under the new Rules of Court the filing of a pro forma motion for new trial does not suspend the running of the period for perfecting an appeal. We have so decided in the case of *Valdez vs. Jugo*, G. R. No. 48859 (Nov. 28, 1942), wherein we said:

"Petitioner maintains that, since the 30-day period within which to perfect his appeal was interrupted by his motion for new trial and since he received notice of the denial of said motion only on August 14, 1942, his record on appeal filed on September 1, 1942, is not out of time. This connection rests on an erroneous premise. Petitioner's motion for new trial did not and could not interrupt the period for appeal, it having failed to state in

detail as required by the rules, the reasons in support of the grounds alleged therein.

* * * * *

"Under the former Code of Civil Procedure, the appellate court could have no jurisdiction to examine the evidence unless appellant had filed a motion for new trial on the ground of mistake of fact and had excepted in due time to the Order denying the motion. (Act No. 190, sec. 497, No. 2). A motion for new trial founded upon mistake of fact was accordingly filed pro forma, as an antecedent to an appeal, and was not required to set forth specifically the reasons in support of said ground. (Crisostomo vs. Viri and Trillana, 53 Phil, 446.) This was found by this Court to be a useless technicality conducive to unnecessary delay in the proceedings and was thus expressly abolished by Rule 48, section 19, which provides that:

" 'Whether or not the appellant has filed a motion for new trial in the court below, he may include in his assignment of errors any question of law or of fact that has been raised in the court below and which is within the issues made by the parties in their pleadings.'

"A motion for new trial upon mistake of fact is, therefore, no longer an antecedent to an appeal and cannot be filed as a matter of form. Accordingly, it is now required to 'point out specifically the findings or conclusions of the judgment which are not supported by the evidence or which are contrary to law, making express reference to the testimonial or documentary evidence or to the provisions of law alleged to be contrary to such findings or conclusions.' (Rule 37, sec. 2, third paragraph.) And when, as in the instant case, the motion fails to make the specification thus required, it will be treated as a motion pro forma intended merely to delay the proceedings, and as such, it shall be stricken out as offensive to the new rules."

Second. The filing of an appeal bond is an indispensable prerequisite to the perfection of an appeal. Thus, section 3 of Rule 41 provides that "appeal may be taken by serving upon the adverse party and filing with the trial court within thirty days from notice of order or judgment, a notice of appeal, an appeal bond, and a record on appeal." The appeal bond shall be in the amount of P60 unless the court shall fix a different amount, or unless a supersedeas bond is filed. (Sec. 5, id.) "Where the notice of appeal, appeal bond, or record on appeal is filed but not within the period of time herein provided, the appeal shall be dismissed." (Sec. 13, id.) An appeal may be dismissed by the Court of Appeals on its own motion or on that of the appellee for failure to file the appeal bond within the said period of thirty days. (Rule 52, sec. 1 [a].)

Third. Is the court vested with discretion to allow or admit an appeal filed out of time? We have intimated the affirmative in the case of Bustamante vs. Tirona, supra, provided the delay or failure to perfect the appeal on time be justified by any of the circumstances recognized by law such as fraud, accident, mistake or excusable negligence. (Sec. 2, Rule 38.) In said case the thirty-day period for the filing of the record on appeal expired on January 19, 1942 but it was not filed in court until March 16, and was not served on the adverse party until May 26, 1942. On account of the war the office of the Clerk of the Court of First Instance of Manila was closed on and for some time before January 19 and was not reopened until January 23, nor were the judges appointed "under the actual administration until February 24, 1942, when the court resumed its functions. There the failure or inability of Bustamante to file the record on appeal up to February 24, 1942, was justified by an unavoidable accident; but the court found no justification for the further delay up to March 16 and May 26, 1942, when, respectively, said record on appeal was filed and served on the adverse party. So this Court refused to compel the respondent judge to approve and certify the record on appeal, holding that he who would justify noncompliance of a legal requirement on account of force majeure or unavoidable accident, should exercise due diligence to supply the omission as soon as possible after the justifying circumstance has ceased. When we said that "it was not mandatory but, if at all, purely discretionary in the respondent judge to approve or disapprove it in the interest of justice," we did not mean that a judge is vested with discretion to approve a record on appeal presented out of time without legal justification. For instance, if in that case Bustamante had filed the record on appeal on January 23,

1942, the respondent judge would have been justified in admitting it although it was filed beyond the thirty-day reglementary period, for the reason that on account of war the office of the clerk of court was closed before said date. Conversely, in the absence of any justifying circumstance the court has no discretion to approve or admit an appeal filed out of time. The interest of justice cannot be invoked against the rule unless there is lawful justification. It is the intervention of such circumstance as the law recognizes as a valid reason for relaxing the rule—fraud, accident, mistake, excusable negligence—that creates the "interest of justice" in favor of the victim of the circumstance.

Fourth. Neither a mistake of law—in this case the appellant mistakenly believed that his pro forma motion suspended the time for appeal—nor the fact that the delay in the filing of the appeal bond was only one day, nor both of these circumstances together, are legal justifications for noncompliance or relaxation of the rule. If mistake of law were ever excusable, the law would be unenforceable. That is why it is expressly provided that "ignorance of the law does not excuse anyone from compliance therewith." (Art. 2 Civil Code.) If, without legal justification, transgression of the deadline fixed by the rule for perfecting an appeal may be sanctioned the public policy behind that rule would necessarily have to be abandoned, and the litigants would be at a loss to know exactly when they may obtain execution of judgments or consider the case terminated. On the other hand, when the law fixes thirty days, we cannot take it to mean also thirty-one days. If that deadline could be stretched to thirty-one days in one case, what would prevent its being further stretched to thirty-two days in another case, and so on, step by step, until the original line is forgotten or buried in the growing confusion resulting from the alterations? That is intolerable. We cannot fix a period with the solemnity of a statute and disregard it like a joke. If law is founded on reason, whim or fancy should play no part in its application.

We do not agree that "the ends of justice would be better subserved" by allowing an appeal presented "only one day late." There is no basis in fact, law, or reason for such conclusion. On the contrary, these considerations militate against it: (1) The orderly administration of justice would suffer a drawback if the period for perfecting appeals be rendered uncertain, as it would be, by sanctioning such transgression of the deadline. (2) The appealed decision is presumed by law to be just and correct, and therefore the denial of the appeal does not necessarily imply an injustice to the appellant. (3) The right to appeal is a purely statutory right, and he who wants to exercise it must comply with the statute.

It results from all of the foregoing that the decision of the trial court in the case in question became final upon the lapse of the thirty-day period provided in section 3 of Rule 41 without the appellant's having filed the required appeal bond, and that consequently the appeal should have been dismissed by the trial court as provided by section 13 of the same rule, or by the Court of Appeal under section 1 (a) of Rule 52.

Wherefore, the petition for prohibition is granted as prayed for, with costs against the respondent Enrique Bautista.

Yulo, C. J., Moran, Paras and Bocobo, JJ., concur.

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