

VILL TRANSPORT SERVICE, INC., PETITIONER, VS. HON. COURT OF APPEALS, THE ENERGY CORPORATION, AND THE DEPUTY SHERIFF OF THE REGIONAL TRIAL COURT, MAKATI, METRO MANILA, RESPONDENTS.

G.R. No. 76232. January 18, 1991

Ponente: FERNAN, C.J.

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FERNAN, C.J.:

The issue in this petition for review on certiorari is whether or not notice of a decision served upon counsel in a case who did not leave a forwarding address after he had moved from his address of record, is a valid service thereby making the decision final and executory after the lapse of the period to appeal.

The facts as found by the Court of Appeals are as follows:

In Civil Case No. 45167 before the Regional Trial Court of Makati, Branch CXLI, defendant Vill Transport Service, Inc. (Vill Transport for brevity) was held liable for damages for breach of contract in favor of the plaintiff Energy Corporation. Vill Transport was ordered to pay Energy Corporation US\$25,524.75 or P191,435.62 as damages, P40,000 for charter fees, P33,931.65 for rental and maintenance costs and P63,750 for service fees, with all of these amounts being subject to 12% interest per annum from June 16, 1980, plus attorney's fees of P8,866.60.

On June 7, 1985, a copy of the decision was sent by registered mail to Atty. Amante Pimentel, counsel of record of Vill Transport, at his address at 563 Tanglaw Street, Mandaluyong, Metro Manila. However, it was returned to the court with the notation that the addressee had moved out of his given address without leaving a forwarding address.

On September 14, 1985, Energy Corporation moved for execution of the decision and on September 19, 1985, the court favorably acted on the motion. On September 24, 1985, a writ of execution was therefore issued.

A month later, Vill Transport filed an urgent motion for reconsideration of the order of September 19, 1985 and served notice of its intention to appeal. It contended that the decision had not as yet become final because it came to know of the decision only on October 21, 1985. It also claimed that the writ of execution was void as no copy of the motion for execution was served on it.

Energy Corporation filed an opposition to said urgent motion pointing out that the decision had become final and executory since a copy of the decision was served on Vill Transport through its counsel at his address of record and no appeal was perfected within the reglementary period of appeal. It added that a motion for execution of a final and executory judgment did not have to be with notice to defendant.

Before the motion for reconsideration could be resolved by the court, Vill Transport filed a motion for new trial based on newly-discovered evidence. Again, without waiting for the resolution of said motion, it filed with the

Court of Appeals a petition for certiorari and mandamus with preliminary injunction aimed at the setting aside of the order of execution and the issuance of an order for a new trial.

On September 30, 1986, the Court of Appeals[1] rendered a decision dismissing the petition for lack of merit.[2] It held that petitioner's counsel was duty-bound to notify the trial court of any change of address and his failure to do so could not be excused. It added that the trial court had every reason to consider the service of its decision completed upon the expiration of five days from notice to counsel in the absence of prior notice by the latter of any change of address. It opined that "to hold that Rule 13, Sec. 8 cannot apply here because Atty. Pimentel did not get the notice, would be to encourage litigants or their attorneys to evade the service of judgments and orders by simply leaving their addresses without notice of their whereabouts." [3]

Its motion for the reconsideration of said decision having been denied. Vill Transport interposed the instant petition for review on certiorari.

Petitioner admits the negligence of its counsel in not leaving a forwarding address but contends that its counsel was not actually notified of the registered letter containing a copy of the trial court's decision for he had moved from his address of record. Hence, service thereof could not have taken effect after the lapse of the five-day period mentioned in Rule 13, Section 8 of the Rules of Court. It invokes due process complaining that it was deprived of its right to appeal from the decision of the lower court on account of its failure to receive a copy of the decision.

On the other hand, private respondent avers that the petition was prosecuted manifestly to delay execution of the decision of the lower court which had long become final and executory. It stresses the fact that, being designated by Section 2, Rule 13 of the Rules of Court to receive copies of all court processes, petitioner's counsel was duty-bound to inform the court of any changes in his address of record and therefore, should he fail to do so, service of such processes in his address of record should be considered complete and binding upon his client.

We find for the private respondent.

Section 8, Rule 13 of the Rules of Court provides that "(s)ervice by registered mail is complete upon actual receipt by the addressee; but if he fails to claim his mail from the post office within five (5) days from the date of first notice of the postmaster, service shall take effect at the expiration of such time." In *Barrameda vs. Castillo*, [4] the Court held that since the exception in service by registered mail refers to constructive service, not to actual receipt of the mail, it is but fair and just that there be conclusive proof that a first notice was sent by the postmaster to the addressee. While in the more recent case of *De la Cruz vs. De la Cruz*, [5] the Court appears to have adopted the more stringent rule of requiring not only that the notice of the registered mail be sent but that it should also be delivered to and received by the addressee, We find that this rule cannot be applied in this case wherein the element of negligence is present.

Petitioner herein disputes that a first notice was ever sent to its counsel of record because "the post office just returned the registered letter and put the stampmark x x x 'Moved'" thereon. [6] To our mind, petitioner's contention is sufficient proof that indeed a first notice was sent to its counsel of record. Its nonreceipt by the addressee, however, was due entirely to his neglect in informing the court of the fact that he had moved and had a new address. To cater to petitioner's rhetorical argument would put a premium on negligence and encourage the nontermination of cases by reason thereof.

In *Antonio vs. Court of Appeals*, [7] the Court categorically stated that the requirement of conclusive proof of receipt of the registry notice "presupposes that the notice is sent to the correct address as indicated in the records of the court. It does not apply where, as in the case at bar, the notice was sent to the lawyer's given address but did

not reach him because he had moved therefrom without informing the court of his new location. The service at the old address should be considered valid. Otherwise, no process can be served on the client through his lawyer if the latter has simply disappeared without leaving a forwarding address. There is no need to stress that service on the lawyer, if valid, is also valid service on the client he represents. The rule in fact is that it is on the lawyer and not the client that the service should first be made."

Losing a case on account of one's counsel's negligence is a bitter pill to swallow for the litigant. But then, the Court is duty-bound to observe its rules and procedures. And, in the observance thereof for the orderly administration of justice, it cannot countenance the negligence and ineptitude of lawyers who wantonly jeopardize the interests of their clients.[8] On his part, a lawyer shall observe the rules of procedure and shall not misuse them to defeat the ends of justice.[9]

Thus, a lawyer should so arrange matters that official and judicial communications sent by mail will reach him promptly and should he fail to do so, not only he but his client as well must suffer the consequences of his negligence.[10] Failure to claim registered mail of which notice had been duly given by the postmaster is not excusable negligence that would warrant the reopening of a decided case.[11] The same rule applies in cases like the instant one where the counsel, through his negligence, caused the nondelivery of a judicial notice.

WHEREFORE, the instant petition is hereby denied for lack of merit. This decision is immediately executory. Costs against the petitioner.

SO ORDERED.

Gutierrez, Jr., Feliciano, and Bidin, JJ., concur.

[1] Penned by Justice Vicente V. Mendoza and concurred in by Justices Josue N. Bellosillo and Hector C. Fule.

[2] Rollo, p. 41.

[3] Rollo, pp. 40-41.

[4] L-27211, July 6, 1977, 78 SCRA 1.

[5] L-48697, April 15, 1988, 160 SCRA 361.

[6] Rollo, p. 14.

[7] L-35434, November 9, 1988, 167 SCRA 127.

[8] Justice Conrado V. Sanchez aptly pointed out the effects that a counsel's failure to inform the court of his change of address may bring in *Juane v. Garcia* (L-21115, October 29, 1968, 25 SCRA 801, 807). He said:

"The time has come, we believe, for this Court to remind the members of the Bar that it is their inescapable duty to make of record their correct address in all cases in which they are counsel for a suitor. For, instances there have been in the past when, because of failure to inform the court of the change of address, litigations were delayed. And this, not to speak of inconvenience caused the other parties and the court. Worse still, litigants have lost their cases in court because of such negligence on the part of their counsel. It is painful enough for a litigant to suffer a setback in a legal battle. It is doubly painful if defeat is occasioned by his attorney's failure to receive notice because the latter has changed the place of his law office without giving the proper notice therefor. It is only when some such situation comes about that the negligent lawyer comes to realize the grave responsibility that he has incurred both to his client and to the cause of justice. It is then that the lawyer is reminded that in his oath of

office he solemnly declared that he 'will conduct' himself 'as a lawyer according to the best of his knowledge and discretion.' Too late. Experience indeed is a good teacher. To a lawyer, though, it could prove very expensive.”

[9] Rule 10.03, Canon 10, 1988 Code of Professional Responsibility.

[10] *Feraren v. Santos*, L-41323, April 27, 1982, 113 SCRA 707 citing *Islas v. Platon and Ona*, 47 Phil. 162.

[11] *Feraren v. Santos*, *Ibid.*, citing *Pielago v. Generosa*, 73 Phil. 654.

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