



Republic of the Philippines
Supreme Court
 Manila

FIRST DIVISION

NILO V. CHIPONGIAN,
 Petitioner,

G.R. No. 162692

Present:

- versus -

SERENO, C.J.,
 LEONARDO-DE CASTRO,
 BERSAMIN,
 PEREZ, and
 PERLAS-BERNABE, JJ.

VICTORIA BENITEZ-LIRIO,
FEODOR BENITEZ AGUILAR,
 and **THE COURT OF APPEALS,**
 Respondents.

Promulgated:

AUG 26 2015

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DECISION

BERSAMIN, J.:

This appeal seeks the review and reversal of the decision promulgated on October 30, 2002,¹ whereby the Court of Appeals (CA) dismissed the petition for *certiorari* that the petitioner had instituted to annul the dismissal by the trial court of his complaint-in-intervention in Special Proceedings No. SP-797 entitled *In the matter of the Intestate Estate of Vicente O. Benitez, Petition for Letters of Administration. Victoria Benitez Lirio and Feodor Benitez Aguilar, Petitioners.*

Antecedents

The late Vicente Benitez was married to Isabel Chipongian, the petitioner's sister. Isabel had predeceased Vicente, who died on November 13, 1989. The couple had no offspring.² On July 20, 1982, after the death of

¹ *Rollo*, pp. 22-28; penned by Associate Justice Portia Aliño-Hormachuelos (retired), and concurred in by Associate Justice Eliezer R. Delos Santos (retired/deceased) and Associate Justice Amelita G. Tolentino (retired).

² *Id.* at 22.

Isabel, Vicente and the petitioner had executed a deed of extrajudicial settlement respecting the estate of Isabel, whereby the latter waived all his rights to the estate of Isabel in favor of Vicente.³ According to the petitioner, however, Vicente executed an affidavit on the same date whereby he affirmed that the waiver did not extend to the paraphernal properties of Isabel.⁴

Upon the death of Vicente, Victoria Benitez Lirio (Victoria), a sister of Vicente, and Feodor Benitez Aguilar (Feodor), a nephew of Vicente, initiated proceedings for the settlement of the estate of Vicente in the Regional Trial Court on September 24, 1990 (RTC).⁵ In its order dated May 13, 1994,⁶ the RTC appointed Feodor the administrator of Vicente's estate. On May 20, 1994,⁷ it issued the letters of administration to Feodor.

The petitioner intervened in Special Proceedings No. SP-797.⁸ On May 27, 1994, he sought the partial revocation of the May 13, 1994 order in order to exclude the paraphernal properties of Isabel from inclusion in the estate of Vicente.⁹ He cited the affidavit of Vicente in support of the partial revocation.

Feodor countered with the request that he be allowed to continue to administer all the properties left by Vicente, including the paraphernal properties of Isabel.¹⁰

On June 8, 1994, the petitioner specifically moved for the exclusion of the paraphernal properties of Isabel from Vicente's estate. However, he withdrew the motion even before the RTC could rule on it. Instead, he filed a *Motion for Leave to Intervene and to Admit Complaint-in-Intervention*.¹¹

Respondents Victoria and Feodor opposed the complaint-in-intervention.¹²

The RTC granted the *Motion for Leave to Intervene and to Admit Complaint-in-Intervention*, and admitted the complaint-in-intervention of the petitioner.¹³

³ CA rollo, pp. 21-27.

⁴ Id. at 28-29.

⁵ Id. at 30-33.

⁶ Rollo, p. 23.

⁷ Id.

⁸ CA rollo, pp. 34-45.

⁹ Rollo, pp. 23.

¹⁰ Id.

¹¹ Id.

¹² Id.

¹³ Id.

Judgment of the RTC

On August 21, 1998, the RTC rendered judgment dismissing the complaint-in-intervention, and ordering the costs of suit to be paid by the petitioner,¹⁴ pertinently holding:

There is no dispute that the estate of the late Isabel Chipongian was extra-judicially settled on July 20, 1982 by and between Vicente O. Benitez and Nilo V. Chipongian and was published in the BAYANIHAN Weekly News on August 16, 23, and 30, 1982. The herein intervenor actively participated in the execution of the extra-judicial settlement of his sister's estate. As a matter of fact the intervenor therein "agreed x x x x x x to quitclaim and waive all my rights to the estate left by my declared sister Isabel Chipongian and I hereby adjudicated them in favor of my brother-in-law Vicente O. Benitez" (Exh. 23-B)

Section 4, Rule 74 of the Rules, provides for a limitation of 2 years after the settlement and distribution of an estate in accordance with either Section 1 or Section 2 of the same Rule, within which an heir or other person deprived of his lawful participation in the estate may compel the settlement of the said estate in the Courts for the purpose of satisfying such lawful participation (*Tinatan v. Serilla*, 54 O.G. p. 6080 9/15/58). The intervenor took part and had knowledge of the extra-judicial settlement of the estate and is therefore bound thereby. If he was indeed deprived of his lawful share or right in his sister's estate, it comes as a surprise why it took him more than 12 years assert the purported affidavit allegedly executed in his favor by Vicente O. Benitez.

Careful note was taken of the fact that the purported affidavit of Vicente O. Benitez in favor of the herein intervenor was executed simultaneously with the deed of extra-judicial settlement of Isabel Chipongian's estate which was published but the affidavit was not. No reason was advanced by the intervenor why Vicente O. Benitez's affidavit was not published and why it was only after 12 long years that intervenor brought it out.

It is well-settled that the negligence or omission to assert a right within a reasonable time warrants not only a presumption that the party entitled to assert it either had abandoned it or declined to assert it but also casts doubt on the validity of the claim of ownership. Such neglect to assert a right taken in conjunction with the lapse of time more or less great and other circumstances causing prejudice to the adverse party operates as a bar in a Court of equity (*Guerrero v. CA*, 126 SCRA 109).

WHEREFORE, on the foregoing premises, the complaint in intervention is hereby dismissed with costs. The petitioner's counterclaim is also dismissed.

SO ORDERED.¹⁵

¹⁴ CA *rollo*, pp. 34-45.

¹⁵ Id. at 44-45.

The petitioner moved for the reconsideration of the judgment,¹⁶ but the RTC denied the *Motion for Reconsideration* on March 8, 1999.¹⁷

Thus, on March 19, 1999, the petitioner filed a notice of appeal.¹⁸

On March 30, 1999, the RTC denied due course to the notice of appeal for having been filed beyond the reglementary period.¹⁹

On April 19, 1999, the petitioner filed a *Motion for Reconsideration* vis-à-vis the order denying due course to his notice of appeal.²⁰

On July 5, 1999, the RTC issued its order whereby it conceded that the petitioner had timely filed the notice of appeal, but still denied the *Motion for Reconsideration* on the ground that he had not perfected his appeal because of his failure to pay the appellate court docket fees.²¹

On July 26, 1999, the petitioner brought his *Motion to Set Aside* the July 5, 1999 order denying his *Motion for Reconsideration*.²²

On August 13, 1999, the RTC denied the *Motion to Set Aside*.²³

Decision of the CA

On October 26, 1999, the petitioner instituted his petition for *certiorari* in the CA,²⁴ alleging that the RTC had committed grave abuse of discretion amounting to lack or excess of jurisdiction in dismissing his appeal, and denying his *Motion for Reconsideration*. He averred that on March 19, 1999, he filed the notice of appeal;²⁵ that he paid the appellate court docket fees on March 31, 1999;²⁶ that the RTC denied due course to the notice of appeal on the ground that it had been filed beyond the reglementary period; that he thus filed his *Motion for Reconsideration* against the order denying due course;²⁷ that on July 5, 1999, the RTC issued its order whereby it conceded that the petitioner had timely filed the notice of appeal, but still denied the *Motion for Reconsideration* on the ground that

¹⁶ Id. at 46-54.

¹⁷ Id. at 55-57.

¹⁸ Id. at 58-59.

¹⁹ Id. at 60.

²⁰ Id. at 61-62.

²¹ Id. at 64.

²² Id. at 65-67.

²³ Id. at 69-70.

²⁴ Id. at 2-20.

²⁵ Id. at 10.

²⁶ Id.

²⁷ Id.

he had not perfected his appeal because of his failure to pay the appellate court docket fees;²⁸ that he filed his *Motion to Set Aside Order*, appending thereto the copies of the official receipts of the payment of the appellate court docket fees;²⁹ that through the order of August 13, 1999, the RTC still denied the *Motion to Set Aside Order*, a copy of which order was received by his counsel on August 27, 1999;³⁰ that his last day to bring the special civil action for *certiorari* was on October 26 1999, the 60th day from such date; and that there was no appeal, or any plain, speedy and adequate remedy in the ordinary course of law.³¹

On October 30, 2002, the CA dismissed the petition for *certiorari*,³² opining thusly:

The Supreme Court has time and again stressed that the perfection of appeals in the manner and within the period permitted by law is not only mandatory but jurisdictional. The failure to perfect an appeal renders the decision of the trial court final and executory. [Bank of America, NT & SA v. Gerochi, Jr., 230 SCRA 9 (1994) citing Alto Sales Corp. v. IAC, 197 SCRA 618 (1991), Falcon Mfg. v. NLRC, 199 SCRA 814 (1991), Kabushin Kaisha Isetan v. IAC, 203 SCRA 583 (1991)]

This rule is founded upon the principle that the right to appeal is not part of due process of law but is a mere statutory privilege to be exercised only in the manner and in accordance with the provisions of the law. [Bello v. Fernando, 4 SCRA 135 (1962); Borre v. Court of Appeals, 158 SCRA 660 (1998); Pedrosa v. Hill, 257 SCRA 373 (1996); People v. Esparas, 260 SCRA 539 (1996)]

Petitioner paid the appeal fees only on March 31, 1999, but as admitted by him in his Motion for Reconsideration (Rollo, p. 61), the last day to perfect his appeal was on August 21, 1998. (Rollo, p. 68) In a long line of cases, the Supreme Court has held that failure to comply with the requirement for payment on time of the appeal fees renders the decision final. (Republic of the Philippines vs. Court of Appeals, 322 SCRA at 90; Pedrosa vs. Hill, 257 SCRA 373; Luna vs. NLRC, 270 SCRA 227) We see no compelling reason to depart from this rule.

We find no further need to rule on the other assigned error. Suffice it to state that the respondent court acted pursuant to law and established jurisprudence; hence, did not commit any abuse of discretion.

WHEREFORE, for lack of merit, the petition is **DISMISSED**.

SO ORDERED.³³

²⁸ Id.

²⁹ Id.

³⁰ Id.

³¹ Id. at 10-11.

³² Supra note 1.

³³ Id. at 27.

On November 28, 2002, the petitioner sought reconsideration,³⁴ but the CA denied his *Motion for Reconsideration* on March 9, 2004.³⁵

Issues

Hence, this appeal, whereby the petitioner contends that the CA gravely abused its discretion in dismissing his petition for *certiorari* assailing the dismissal of his complaint-in-intervention and the denial of due course to his notice of appeal by the RTC on the ground of the late payment of the appellate court docket fees. He argues that he should not be deprived of his right to appeal solely on the basis of the late payment of the appellate court docket fees.³⁶

In contrast, respondents Victoria and Feodor seek the denial of the petition for review because the petitioner did not file a record on appeal,³⁷ as mandated under Section 2(a) Rule 41 of the *Rules of Court*.

In his reply to the respondents' comment,³⁸ the petitioner submits:

x x x It is to be noted that the appeal was from the decision of the trial court to dismiss petitioner's complaint-in-intervention and not 'the final order or judgment rendered in the case', obviously referring to the main case, that is, the intestate estate case. Since the intervention was not an independent proceeding but only ancillary or supplemental to the main case, the rule on multiple appeals does not apply and the filing of a record on appeal is not a pre-requisite to the acceptance and consideration of the appeal by the appellate court.

Ruling of the Court

The appeal lacks merit.

Intervention is "a remedy by which a third party, not originally impleaded in the proceedings, becomes a litigant therein to enable him, her or it to protect or preserve a right or interest which may be affected by such proceedings."³⁹ If an intervention makes a third party a litigant in the main proceedings, his pleading-in-intervention should form part of the main case.

³⁴ CA *rollo*, pp. 130-135.

³⁵ Id. at 160-162.

³⁶ *Rollo*, p. 11.

³⁷ Id. at 47.

³⁸ Id. at 61-62.

³⁹ *Mactan-Cebu International Airport Authority v. Heirs of Estanislao Miñoza*, G.R. No. 186045, February 2, 2011, 641 SCRA 520, 530.

Accordingly, when the petitioner intervened in Special Proceedings No. SP-797, his complaint-in-intervention, once admitted by the RTC, became part of the main case, rendering any final disposition thereof subject to the rules specifically applicable to special proceedings, including Rule 109 of the *Rules of Court*, which deals with appeals in special proceedings.

Section 1 of Rule 41 enunciates the *final judgment rule* by providing that an appeal “may be taken from a judgment or final order that completely disposes of the case, or of a particular matter therein when declared by these Rules to be appealable.” In the context of the *final judgment rule*, Section 1 of Rule 109 does not limit the appealable orders and judgments in special proceedings to the final order or judgment rendered in the main case, but extends the remedy of appeal to other orders or dispositions that completely determine a particular matter in the case, to wit:

Rule 109. - Appeals in Special Proceedings

Section 1. *Orders or judgments from which appeals may be taken.*

- An interested person may appeal in special proceedings from an order or judgment rendered by a Court of First Instance or a Juvenile and Domestic Relations Court, where such order or judgment:

- (a) Allows or disallows a will;
- (b) Determines who are the lawful heirs of a deceased person, or the distributive share of the estate to which such person is entitled;
- (c) Allows or disallows, in whole or in part, any claim against the estate of a deceased person, or any claim presented on behalf of the estate in offset to a claim against it;**
- (d) Settles the account of an executor, administrator, trustee or guardian;
- (e) Constitutes, in proceedings relating to the settlement of the estate of a deceased person, or the administration of a trustee or guardian, a final determination in the lower court of the rights of the party appealing, except that no appeal shall be allowed from the appointment of a special administrator; and**
- (f) Is the final order or judgment rendered in the case, and affects the substantial rights of the person appealing, unless it be an order granting or denying a motion for a new trial or for reconsideration.

The dismissal of the petitioner’s intervention constituted “a final determination in the lower court of the rights of the party appealing,” that is, his right in the paraphernal properties of his deceased sister. As such, it fell under paragraph (c) of Section 1, *supra*, because it had the effect of

disallowing his claim against the estate of Vicente, as well as under paragraph (e) of Section 1, *supra*, because it was a final determination in the trial court of his intervention. Conformably with either or both paragraphs, which are boldly underscored above for easier reference, the dismissal was the proper subject of an appeal in due course by virtue of its nature of completely disposing of his intervention.

The proper mode of appealing a judgment or final order in special proceedings is by notice of appeal and record on appeal. This is pursuant to Section 2(a), Rule 41 of the *Rules of Court*, viz.:

Section 2. Modes of appeal. –

(a) *Ordinary appeal.* - The appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its original jurisdiction shall be taken by filing a notice of appeal with the court which rendered the judgment or final order appealed from and serving a copy thereof upon the adverse party. **No record on appeal shall be required except in special proceedings and other cases of multiple or separate appeals where the law or these Rules so require.** In such cases, the record on appeal shall be filed and served in like manner.

X X X X

Under Section 3 of Rule 41, a party who wants to appeal a judgment or final order in special proceedings has 30 days from notice of the judgment or final order within which to perfect an appeal because he will be filing not only a notice of appeal but also a record on appeal that will require the approval of the trial court with notice to the adverse party, to wit:

Section 3. *Period of ordinary appeal.* - The appeal shall be taken within fifteen (15) days from notice of the judgment or final order appealed from. **Where a record on appeal is required, the appellant shall file a notice of appeal and a record on appeal within thirty (30) days from notice of judgment or final order.** However, an appeal in habeas corpus cases shall be taken within forty-eight (48) hours from notice of the judgment or final order appealed from.

The period of appeal shall be interrupted by a timely motion for new trial or reconsideration. No motion for extension of time to file a motion for new trial or reconsideration shall be allowed. (n) (bold emphasis supplied)

For the petitioner, therefore, the period for perfecting the appeal by record on appeal was 30 days from notice of the final order dismissing the intervention. The start of the period of 30 days happened on September 18, 1998, the date when his counsel received the decision dismissing his intervention. However, the entire time from the filing of his *Motion for Reconsideration* on October 2, 1998 until his receipt of the denial of the

Motion for Reconsideration on March 18, 1999 should be deducted from the reckoning of the period to perfect his appeal. He filed the notice of appeal on March 19, 1999, and paid the appellate court docket fees on March 31, 1999.⁴⁰ Initially, the RTC denied due course to the notice of appeal on the ground that it had been filed beyond the reglementary period; hence, the petitioner filed his *Motion for Reconsideration* against the order denying due course.⁴¹ On July 5, 1999, the RTC issued its order whereby it conceded that the petitioner had timely filed the notice of appeal, but still denied the *Motion for Reconsideration* on the ground that he had not perfected his appeal because of his failure to pay the appellate court docket fees.⁴² Hence, he filed a *Motion to Set Aside Order*, to which he appended the copies of the official receipts of the payment of the appellate court docket fees.⁴³ Nonetheless, on August 13, 1999, the RTC denied the *Motion to Set Aside Order*, and a copy of the order of denial was received by his counsel on August 27, 1999.⁴⁴

In *Lebin v. Mirasol*,⁴⁵ the Court has discussed the justification for requiring the record on appeal in appeals in special proceedings, *viz.*:

The changes and clarifications recognize that appeal is neither a natural nor a constitutional right, but merely statutory, and the implication of its statutory character is that the party who intends to appeal must always comply with the procedures and rules governing appeals, or else the right of appeal may be lost or squandered.

As the foregoing rules further indicate, a judgment or final order in special proceedings is appealed by record on appeal. A judgment or final order determining and terminating a particular part is usually appealable, because it completely disposes of a particular matter in the proceeding, unless otherwise declared by the *Rules of Court*. The ostensible reason for requiring a record on appeal instead of only a notice of appeal is the multi-part nature of nearly all special proceedings, with each part susceptible of being finally determined and terminated independently of the other parts. An appeal by notice of appeal is a mode that envisions the elevation of the original records to the appellate court as to thereby obstruct the trial court in its further proceedings regarding the other parts of the case. In contrast, the record on appeal enables the trial court to continue with the rest of the case because the original records remain with the trial court even as it affords to the appellate court the full opportunity to review and decide the appealed matter.

X X X X

The elimination of the record on appeal under *Batas Pambansa Blg. 129* made feasible the shortening of the period of appeal from the original 30 days to only 15 days from notice of the judgment or final

⁴⁰ Supra note 25 and 26.

⁴¹ Supra note 27.

⁴² Supra note 28.

⁴³ Supra note 29.

⁴⁴ Supra note 30.

⁴⁵ G.R. No. 164255, September 7, 2011, 657 SCRA 35.

order. Section 3, Rule 41 of the *Rules of Court*, retains the original 30 days as the period for perfecting the appeal by record on appeal to take into consideration the need for the trial court to approve the record on appeal. Within that 30-day period a party aggrieved by a judgment or final order issued in special proceedings should perfect an appeal by filing both a notice of appeal *and* a record on appeal in the trial court, serving a copy of the notice of appeal *and* a record on appeal upon the adverse party within the period; in addition, the appealing party shall pay within the period for taking an appeal to the clerk of court that rendered the appealed judgment or final order the full amount of the appellate court docket and other lawful fees. A violation of these requirements for the timely perfection of an appeal by record on appeal, or the non-payment of the full amount of the appellate court docket and other lawful fees to the clerk of the trial court may be a ground for the dismissal of the appeal.⁴⁶

Considering that the petitioner did not submit a record on appeal in accordance with Section 3 of Rule 41, he did not perfect his appeal of the judgment dismissing his intervention. As a result, the dismissal became final and immutable. He now has no one to blame but himself. The right to appeal, being statutory in nature, required strict compliance with the rules regulating the exercise of the right. As such, his perfection of his appeal within the prescribed period was mandatory and jurisdictional, and his failure to perfect the appeal within the prescribed time rendered the judgment final and beyond review on appeal. Indeed, we have fittingly pronounced in *Lebin v. Mirasol*:

In like manner, the perfection of an appeal within the period laid down by law is mandatory and jurisdictional, because the failure to perfect the appeal within the time prescribed by the *Rules of Court* causes the judgment or final order to become final as to preclude the appellate court from acquiring the jurisdiction to review the judgment or final order. The failure of the petitioners and their counsel to file the record on appeal on time rendered the orders of the RTC final and unappealable. Thereby, the appellate court lost the jurisdiction to review the challenged orders, and the petitioners were precluded from assailing the orders.⁴⁷

In view of the foregoing, the petitioner lost his right to appeal through his failure to file the record on appeal, and rendered the dismissal of his intervention final and immutable. With this outcome, we no longer need to dwell on the denial of due course to his notice of appeal because of the late payment of the appellate court docket fees.

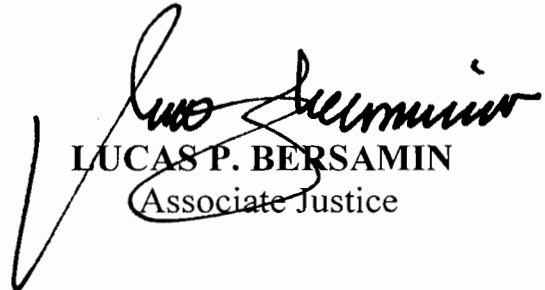
WHEREFORE, the Court **AFFIRMS** the decision of the Court of Appeals promulgated on October 30, 2002 subject to the foregoing clarification on the correct justification for the dismissal of the appeal being

⁴⁶ Id. at 44-46.

⁴⁷ Id. at 49-50.

upon the petitioner's failure to perfect his appeal in accordance with Section 2(a) and Section 3 of Rule 41 of the *Rules of Court*; and **ORDERS** the petitioner to pay the costs of suit.

SO ORDERED.


LUCAS P. BERSAMIN
Associate Justice

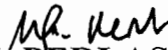
WE CONCUR:



MARIA LOURDES P. A. SERENO
Chief Justice


TERESITA J. LEONARDO-DE CASTRO
Associate Justice

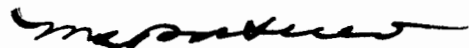

JOSE PORTUGAL PEREZ
Associate Justice



ESTELA M. PERLAS-BERNABE
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARIA LOURDES P. A. SERENO
Chief Justice