

SECOND DIVISION

[G.R. No. 189151, January 25, 2012]

**SPOUSES DAVID BERGONIA AND LUZVIMINDA CASTILLO,
PETITIONERS, VS. COURT OF APPEALS (4TH DIVISION) AND
AMADO BRAVO, JR., RESPONDENTS.**

RESOLUTION

REYES, J.:

This is a petition for *certiorari* under Rule 65 of the Rules of Court filed by the spouses David Bergonia and Luzviminda Castillo (petitioners) assailing the Resolutions issued by the Court of Appeals (CA) on May 18, 2009^[1] and June 29, 2009^[2] in CA-G.R. CV No. 91665.

The petitioners were the plaintiffs in Civil Case No. Br. 23-749-03 entitled "*Spouses David Bergonia and Luzviminda Castillo v. Amado Bravo, Jr.*" in the Regional Trial Court (RTC), Branch 23, Roxas, Isabela. On January 21, 2008, the RTC rendered a decision adverse to the petitioners. The petitioners consequently sought a reconsideration of the said decision but the same was denied by the RTC in an Order dated April 25, 2008 which was received on May 6, 2008. On May 7, 2008, the petitioners filed a Notice of Appeal.^[3]

In January 2009, the Law Firm of Lapeña & Associates filed with the CA its formal entry of appearance as counsel for the petitioners, in view of the withdrawal of the former counsel, Atty. Panfilo Soriano. The substitution of lawyers was noted in the Resolution^[4] dated January 20, 2009. In the same resolution, the CA further directed the appellants therein to remit the deficient amount of P20.00 within 5 days from notice. Thereafter, the CA issued a Resolution on January 30, 2009 requiring the filing of the Appellant's Brief within 45 days from receipt.

On April 8, 2009, respondent Amado Bravo, Jr. (the defendant-appellee therein), filed a Motion to Dismiss Appeal^[5] dated April 2, 2009 stating that the petitioners failed to file their Appellant's Brief within the 45-day period granted to them by the CA in the Resolution dated January 30, 2009. Citing Section 1 (e), Rule 50 of the Rules of Court, respondent prayed for the dismissal of the petitioners' appeal.

In an Opposition/Comment promptly filed on April 8, 2009,^[6] the petitioners alleged that the Motion to Dismiss filed by the respondent had no basis considering that they or their counsel did not receive any resolution from the CA requiring them to file their Appellants' Brief within 45 days.^[7]

On May 18, 2009, the CA issued the assailed resolution^[8] which reads:

For failure of the plaintiffs-appellants to file the required appellant's brief within the reglementary period which expired on 22 March 2009, as per Judicial Records Division Report dated 05 May 2009, the appeal is hereby considered **ABANDONED** and is hereby **DISMISSED** pursuant to Section 1 (e), Rule 50, 1997 Rules of Civil Procedure.

SO ORDERED. (citation omitted)

On May 25, 2009, the CA issued a Resolution^[9] which stated, among others, that the January 30, 2009 notice to file brief addressed to petitioners' counsel was received by a certain Ruel de Tomas on February 5, 2009.

On June 5, 2009, the petitioners filed a Compliance and Motion for Reconsideration^[10] praying that the dismissal of their appeal be set aside in the interest of justice and equity. The petitioners claimed that their failure to file their brief was due to the fact that they were never furnished a copy of the said January 30, 2009 Resolution of the CA directing them to file their brief.

Subsequently, in a Manifestation^[11] filed on June 16, 2009, the petitioners asserted that their counsel - the Law Firm of Lapeña and Associates - has no employee in the name of Ruel de Tomas. However, they explained that Atty. Torenio C. Cabacungan, Jr., an associate of the law firm personally knows a person named "Ruel" who sometimes visits their office and who may have accidentally received the said January 30, 2009 Resolution of the CA. In such a case, the same should not be considered officially served upon them as the latter was not connected with nor authorized to perform any act for and in behalf of counsel.

On June 29, 2009, the CA denied the motion for reconsideration.^[12]

Undaunted, the petitioners instituted the instant petition for *certiorari* before this Court asserting the following arguments: (1) their failure to file their appellants' brief was merely due to the fact that they were never properly served with a copy of the January 30, 2009 Resolution of the CA; (2) Ruel de Tomas, the person who apparently received the copy of the January 30, 2009 Resolution of the CA, was not their employee; and (3) the CA, in the interest of justice and equity, should have decided their appeal on the merits instead of dismissing the same purely on technical grounds.

The sole issue for resolution is the propriety of the dismissal of the petitioners' appeal for their failure to file the appellants' brief within the reglementary period.

The petition is denied.

At the outset, this Court notes that the petitioners' resort to a petition for *certiorari* under Rule 65 of the Rules of Court is not the proper remedy to assail the May 18, 2009 and June 29, 2009 Resolutions issued by the CA. In determining the appropriate remedy or remedies available, a party aggrieved by a court order, resolution or decision must first correctly identify the nature of the order, resolution or decision he intends to assail.^[13]

It bears stressing that the extraordinary remedy of *certiorari* can be availed of only if there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law.^[14] On the other hand, Section 1, Rule 41 of the Rules of Court states that an appeal may be taken from a judgment or final order that completely disposes of the case or a particular matter therein.

Concomitant to the foregoing, the remedy of a party against an adverse disposition of the CA would depend on whether the same is a final order or merely an interlocutory order. If the Order or Resolution issued by the CA is in the nature of a final order, the remedy of the aggrieved party would be to file a petition for review on *certiorari* under Rule 45 of the Rules of Court. Otherwise, the appropriate remedy would be to file a petition for *certiorari* under Rule 65.

In *Republic v. Sandiganbayan (Fourth Division)*,^[15] this Court laid down the following rules to determine whether a court's disposition is already a final order or merely an interlocutory order and the respective remedies that may be availed in each case, thus:

Case law has conveniently demarcated the line between a final judgment or order and an interlocutory one on the basis of the disposition made. A judgment or order is considered final if the order disposes of the action or proceeding completely, or terminates a particular stage of the same action; in such case, the remedy available to an aggrieved party is appeal. If the order or resolution, however, merely resolves incidental matters and leaves something more to be done to resolve the merits of the case, the order is interlocutory and the aggrieved party's remedy is a petition for *certiorari* under Rule 65. Jurisprudence pointedly holds that:

As distinguished from a final order which disposes of the subject matter in its entirety or terminates a particular proceeding or action, leaving nothing else to be done but to enforce by execution what has been determined by the court, an interlocutory order does not dispose of a case completely, but leaves something more to be adjudicated upon. The term "final" judgment or order signifies a judgment or an order which disposes of the case as to all the parties, reserving no further questions or directions for future determination.

On the other hand, a court order is merely interlocutory in character if it leaves substantial proceedings yet to be had in connection with the controversy. It does not end the task of the court in adjudicating the parties' contentions and determining their rights and liabilities as against each other. In this sense, it is basically **provisional in its application**. (citations omitted)

Here, the assailed May 18, 2009 and June 29, 2009 Resolutions issued by the CA had considered the petitioners' appeal below as having been abandoned and, accordingly, dismissed. Thus, the assailed Resolutions are in the nature of a final

order as the same completely disposed of the petitioners' appeal with the CA. Thus, the remedy available to the petitioners is to file a petition for review on *certiorari* under Rule 45 with this court and not a petition for *certiorari* under Rule 65.

Even if we are to assume *arguendo* that the petitioners' resort to the extraordinary remedy of *certiorari* is proper, the instant petition would still be denied. A petition for *certiorari* will prosper only if grave abuse of discretion is alleged and proved to exist.^[16] The abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility.^[17] Here, there was no hint of whimsicality or gross and patent abuse of discretion on the part of the CA when it dismissed the appeal of the petitioners for the failure of the latter to file their appellants' brief.

Section 1 (e), Rule 50 of the Rules of Court succinctly provides that:

Section 1. Grounds for dismissal of appeal. - An appeal may be dismissed by the Court of Appeals, on its own motion or on that of the appellee, on the following grounds:

x x x x

(e) Failure of the appellant to serve and file the required number of copies of his brief or memorandum within the time provided by these Rules; x x x

In a long line of cases, this Court has held that the CA's authority to dismiss an appeal for failure to file the appellant's brief is a matter of judicial discretion. Thus, a dismissal based on this ground is neither mandatory nor ministerial; the fundamentals of justice and fairness must be observed, bearing in mind the background and web of circumstances surrounding the case.^[18]

Having in mind the peculiar circumstances of the instant case, we find that the petitioners' excuse for their failure to file their brief was flimsy and discreditable and, thus, the propriety of the dismissal of their appeal. Indeed, as aptly ruled by the CA, the records of the case clearly showed that the petitioners, through their counsel, received the January 30, 2009 Resolution which required them to file their appellants' brief. Thus:

The records of this case are clear that the Resolution of 30 January 2009 requiring the [petitioners] to file the required brief was received by a certain Ruel de Tomas for [petitioners'] counsel on 05 February 2009. Hence, mere denial by [petitioners'] counsel of the receipt of his copy of the Resolution cannot be given weight in the absence of any proof that the said person is neither an employee at his law office nor someone unknown to him. Likewise, it is highly implausible that any person in the building where [petitioners'] counsel holds office would simply receive a correspondence delivered by a postman.^[19]