

## FIRST DIVISION

[ G.R. No. 137672, May 31, 2000 ]

**PAZ REYES AGUAM, PETITIONER, VS. COURT OF APPEALS AND  
BONIFACIO RONSAYRO, RESPONDENTS.**

### D E C I S I O N

**PARDO, J.:**

The case is an appeal *via* certiorari seeking to set aside the resolution of the Court of Appeals<sup>[1]</sup> dismissing petitioner's appeal because petitioner's motion for extension to file appellant's brief was filed late by nine (9) days due to counsel's mistake in counting the period for filing the same. The court also denied petitioner's motion for reconsideration.<sup>[2]</sup>

The facts are as follows:

On January 8, 1998, the Regional Trial Court, Pasig City, in an action for sum of money and damages arising from malicious mischief filed by petitioner Paz Reyes Aguam against respondent Bonifacio Ronsayro,<sup>[3]</sup> rendered decision, the dispositive portion of which reads as follows:

"WHEREFORE, in view of the foregoing, judgment is rendered in favor of the defendant dismissing the complaint and ordering the plaintiff to pay the defendant the following:

- a) P595,500.00 representing the share of the defendant from the lot plaintiff sold, plus legal interest until the amount is paid from date of demand;
- b) The amount of P100,000.00 as moral damages;
- c) P50,000.00 as and for attorney's fees; and,
- d) Cost of suit."<sup>[4]</sup>

In due time, petitioner filed an appeal to the Court of Appeals.<sup>[5]</sup>

On September 25, 1998, the Court Appeals, through the Clerk of Court, issued a notice addressed to Atty. Carlos G. Nery, Jr., petitioner's counsel, requiring her as plaintiff-appellant to file within forty-five (45) days from receipt an appellant's brief, furnishing a copy of the notice to Atty. Eladio P. Samson, respondent's counsel.<sup>[6]</sup>

The notice was sent by registered mail to petitioner's counsel, Atty. Carlos G. Nery at the latter's address of record, 26 Masbate St., West Ave., 1100 Quezon City.<sup>[7]</sup> The notice was received by an office clerk of a realty firm with which Atty. Nery was sharing office. She was not an employee of petitioner's counsel and she did not note

down the date of receipt.<sup>[8]</sup>

On November 25, 1998, petitioner filed with the Court of Appeals a motion for extension of time to file appellant's brief, asking for ninety (90) days from the expiry date within which to do so.<sup>[9]</sup>

On December 11, 1998, the Court of Appeals denied the motion for extension and accordingly dismissed the appeal for failure of the appellant to file brief within the reglementary period.<sup>[10]</sup>

On December 14, 1998, petitioner filed with the Court of Appeals her appellant's brief.<sup>[11]</sup> On December 22, 1998, petitioner filed with the Court of Appeals a motion for reconsideration of the denial and to admit appellant's brief.<sup>[12]</sup>

On January 21, 1999, respondent filed an opposition to the motion for reconsideration.<sup>[13]</sup>

On February 23, 1999, the Court of Appeals denied petitioner's motion for reconsideration.<sup>[14]</sup>

Hence, this appeal.<sup>[15]</sup>

The issue raised is whether or not the Court of Appeals acted with grave abuse of discretion in dismissing petitioner's appeal because of the late filing of appellant's brief due to counsel's mistake in the counting of the reglementary period from notice to file appellant's brief.

Technically, the Court of Appeals may dismiss an appeal for failure to file appellant's brief on time.<sup>[16]</sup> However, the dismissal is *directory*, not *mandatory*.<sup>[17]</sup> It is not the ministerial duty of the court to dismiss the appeal. "The failure of an appellant to file his brief within the time prescribed does not have the effect of dismissing the appeal automatically."<sup>[18]</sup> The court has discretion to dismiss or not to dismiss an appellant's appeal. It is a power conferred on the court, not a duty.<sup>[19]</sup> The "discretion must be a sound one, to be exercised in accordance with the tenets of justice and fair play, having in mind the circumstances obtaining in each case."<sup>[20]</sup> Technicalities, however, must be avoided. The law abhors technicalities that impede the cause of justice. The court's primary duty is to render or dispense justice.<sup>[21]</sup> "A litigation is not a game of technicalities."<sup>[22]</sup> "Law suits, unlike duels, are not to be won by a rapier's thrust. Technicality, when it deserts its proper office as an aid to justice and becomes its great hindrance and chief enemy, deserves scant consideration from courts."<sup>[23]</sup> Litigations must be decided on their merits and not on technicality.<sup>[24]</sup> Every party litigant must be afforded the amplest opportunity for the proper and just determination of his cause, free from the unacceptable plea of technicalities.<sup>[25]</sup> Thus, dismissal of appeals purely on technical grounds is frowned upon where the policy of the court is to encourage hearings of appeals on their merits and the rules of procedure ought not to be applied in a very rigid, technical sense; rules of procedure are used only to help secure, not override substantial justice.<sup>[26]</sup> It is a far better and more prudent course of action for the court to