

THIRD DIVISION

[G.R. No. 170172, November 23, 2007]

**ARLYN* PINEDA, PETITIONER, VS. JULIE C. ARCALAS,
RESPONDENT.**

D E C I S I O N

CHICO-NAZARIO, J.:

This is a Special Civil Action for *Certiorari* under Rule 65 of the Rules of Court, assailing the Resolution^[1] dated 25 January 2005, rendered by the Court of Appeals in C.A. G.R. CV No. 82872, dismissing the appeal filed by petitioner Arlyn Pineda (Pineda) for failure to file her appellant's brief. Under the assailed Resolution, the Order^[2] promulgated by Branch 27 of the Regional Trial Court of Santa Cruz, Laguna (Laguna RTC), on 2 February 2004, granting the petition of respondent Julie Arcalas (Arcalas) for the cancellation of the Affidavit of Adverse Claim annotated at the back of Transfer Certificate of Title (TCT) No. T-52319 under Entry No. 324094, became final.

The subject property consists of three parcels of land, which are described as Lot No. 3762-D with an area of 42,958 square meters, Lot No. 3762-E with an area of 4,436 square meters, and Lot No. 3762-F with an area of 2,606 square meters, the total area of which consists of 50,000 square meters. These three lots are portions of Lot No. 3762, registered in the name of Spouses Mauro Lateo and Encarnacion Evangelista (spouses Lateo) under TCT No. T-52319, with a total area of 74,708 square meters, located at Barrios Duhat and Labuin, Santa Cruz, Laguna. A certain Victoria Tolentino bought the said property from the Spouses Lateo. Sometime later, Civil Case No. Q-96-27884, for Sum of Money, was instituted by Arcalas against Victoria Tolentino. This case stemmed from an indebtedness evidenced by a promissory note and four post-dated checks later dishonored, which Victoria Tolentino owed Arcalas.^[3]

On 9 September 1997, Branch 93 of the Quezon City RTC, rendered judgment in favor of Arcalas and against Victoria Tolentino.^[4]

On 15 December 1997, Pineda bought the subject property from Victoria L. Tolentino.^[5] Pineda alleged that upon payment of the purchase price, she took possession of the subject property by allowing a tenant, Rodrigo Bautista to cultivate the same. However, Pineda failed to register the subject property under her name.^[6]

To execute the judgment, the Quezon City RTC levied upon the subject property and the Notice of Levy on Alias Writ of Execution dated 12 January 1999 was annotated as Entry No. 315074, in relation to Entry No. 319362, at the back of TCT No. T-52319.^[7]

Asserting ownership of the subject property, Pineda filed with the Deputy Sheriff of the Quezon City RTC an Affidavit of Title and Third Party Claim. Arcalas filed a motion to set aside Pineda's Affidavit of Title and Third Party Claim, which on 3 November 1999, the Quezon City RTC granted, to wit:

[Arcalas] showed that her levies on the properties were duly registered while the alleged Deed of Absolute Sale between the defendant Victoria L. Tolentino and Analyn G. Pineda was not. The levies being superior to the sale claimed by Ms. Pineda, the court rules to quash and set aside her Affidavit of Title and Third Party Claim.

ACCORDINGLY, the motion is granted. The Affidavit of Title and Third-Party Claim is set aside to allow completion of execution proceedings.^[8]

On 2 February 2000, after the finality^[9] of the Order of the Quezon City RTC quashing Pineda's third-party claim, Pineda filed with the Office of the Register of Deeds of Laguna another Affidavit of Third Party Claim and caused the inscription of a notice of adverse claim at the back of TCT No. T-52319 under Entry No. 324094.^[10]

On 3 February 2000, Arcalas and Leonardo Byron P. Perez, Jr. purchased Lot No. 3762 at an auction sale conducted by the Deputy Sheriff of Quezon City. The sale was evidenced by a Sheriff's Certificate of Sale issued on the same day and registered as Entry No. 324225 at the back of TCT No. T-52319.^[11]

Arcalas then filed an action for the cancellation of the entry of Pineda's adverse claim before the Laguna RTC. The Laguna RTC ordered the cancellation of the Notice of Adverse Claim annotated as Entry No. 324094 at the back of TCT No. 52319 on the ground of res judicata:

The court order emanating from Branch 91 of the Regional Trial Court of Quezon City having become final and executory and no relief therefrom having been filed by [Pineda], the said order granting the [Arcalas's] "Motion to Set Aside Affidavit of Title and 3rd Party Claim" should be given due course and the corresponding annotation at the back of TCT No. T-52319 as Entry No. 324094 dated February 2, 2000 should be expunged accordingly.^[12]

Pineda appealed the Order of the Laguna RTC before the Court of Appeals under Rule 44 of the Rules of Court. In a Resolution dated 25 January 2005,^[13] the appellate court dismissed the appeal and considered it abandoned when Pineda failed to file her appellant's brief.

Pineda filed a Motion for Reconsideration, wherein it was plainly stated that Pineda's counsel overlooked the period within which he should file the appellant's brief.^[14] The said motion was denied in a Resolution dated 26 May 2005. Pineda filed a Second Motion for Reconsideration, which was denied on 7 October 2005.^[15] No appellant's brief was attached to either motion for reconsideration.

Hence, the present Petition raising the following issues:^[16]

I.

WHETHER THE LEVY ON ALIAS WRIT OF EXECUTION ISSUED BY THE REGIONAL TRIAL COURT OF QUEZON CITY IN CIVIL CASE NO. Q-96-27884 MAY EXEMPT THE PORTION BOUGHT BY [PINEDA] FROM VICTORIA TOLENTINO; [and]

II.

WHETHER THE POSSESSION OF [PINEDA] OF THE 5 HECTARES PORTION OF LOT 3762 IS ALREADY EQUIVALENT TO A TITLE DESPITE THE ABSENCE OF REGISTRATION.

This petition must be dismissed.

The Court of Appeals properly dismissed the case for Pineda's failure to file an appellant's brief. This is in accordance with Section 7 of Rule 44 of the Rules of Court, which imposes upon the appellant the duty to file an appellant's brief in ordinary appealed cases before the Court of Appeals, thus:

Section 7. Appellant's brief.—It shall be the duty of the appellant to file with the court, within forty-five (45) days from receipt of the notice of the clerk that all the evidence, oral and documentary, are attached to the record, seven (7) copies of his legibly typewritten, mimeographed or printed brief, with proof of service of two (2) copies thereof upon the appellee.

In special cases appealed to the Court of Appeals, such as *certiorari*, prohibition, *mandamus*, *quo warranto* and *habeas corpus* cases, a memorandum of appeal must be filed in place of an appellant's brief as provided in Section 10 of Rule 44 of the Rules of Court

Section 10. Time of filing memoranda in special cases.—In *certiorari*, prohibition, *mandamus*, *quo warranto* and *habeas corpus* cases, the parties shall file, in lieu of briefs, their respective memoranda within a non-extendible period of thirty (30) days from receipt of the notice issued by the clerk that all the evidence, oral and documentary, is already attached to the record.

The failure of the appellant to file his memorandum within the period therefor may be a ground for dismissal of the appeal.

Non-filing of an appellant's brief or a memorandum of appeal is one of the explicitly recognized grounds of dismissal of the appeal in Section 1 of Rule 50 of the Rules of Court:

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;

This Court provided the rationale for requiring an appellant's brief in *Enriquez v. Court of Appeals*^[17]:

[T]he appellant's brief is mandatory for the assignment of errors is vital to the decision of the appeal on the merits. This is because on appeal only errors specifically assigned and properly argued in the brief or memorandum will be considered, except those affecting jurisdiction over the subject matter as well as plain and clerical errors. Otherwise stated, an appellate court has no power to resolve an unassigned error, which does not affect the court's jurisdiction over the subject matter, save for a plain or clerical error.

Thus, in *Casim v. Flordeliza*,^[18] this Court affirmed the dismissal of an appeal, even when the filing of an appellant's brief was merely attended by delay and fell short of some of the requirements of the Rules of Court. The Court, in *Gonzales v. Gonzales*,^[19] reiterated that it is obligatory on the part of the appellant to submit or file a memorandum of appeal, and that failing such duty, the Rules of Court unmistakably command the dismissal of the appeal.

In this case, Pineda did not even provide a proper justification for her failure to file her appellant's brief. It was merely alleged in her Motion for Reconsideration that her counsel overlooked the period within which to file the appellant's brief. Although Pineda filed no less than two motions for reconsideration, Pineda had not, at any time, made any attempt to file her appellant's brief. Nor did she supply any convincing argument to establish her right to the subject property for which she seeks vindication.

Thus, this Court cannot reverse or fault the appellate court for duly acting in faithful compliance with the rules of procedure and established jurisprudence that it has been mandated to observe, nor turn a blind eye and tolerate the transgressions of these rules and doctrines.^[20] An appealing party must strictly comply with the requisites laid down in the Rules of Court since the right to appeal is a purely statutory right.^[21]

Even when this Court recognized the importance of deciding cases on the merits to better serve the ends of justice, it has stressed that the liberality in the application of rules of procedure may not be invoked if it will result in the wanton disregard of the rules or cause needless delay in the administration of justice.^[22] The Court eyes with disfavor the unjustified delay in the termination of cases; once a judgment has become final, the winning party must not be deprived of the fruits of the verdict, through a mere subterfuge. The time spent by the judiciary, more so of this Court, in taking cognizance and resolving cases is not limitless and cannot be wasted on cases devoid of any right calling for vindication and are merely reprehensible efforts to evade the operation of a decision that is final and executory.^[23]

In the present case, there is a clear intent on the part of Pineda to delay the termination of the case, thereby depriving Arcalas of the fruits of a just verdict. The