

THIRD DIVISION

[G.R. No. 139008, March 13, 2002]

**ROBERT DEL MAR, PETITIONER, VS. COURT OF APPEALS AND
NORMA EBERSOLE DEL MAR, RESPONDENTS.**

DECISION

PANGANIBAN, J.:

The Court of Appeals cannot be faulted with reversible error, much less grave abuse of discretion, for dismissing a petition because petitioner's brief was not filed on time. Indeed, in so doing, the appellate court is merely abiding by the Rules of Court.

The Case

Before us is a Petition for Certiorari and Mandamus under Rule 65 of the Rules of Court, praying for the setting aside of the January 13, 1999^[1] and the April 26, 1999^[2] Resolutions of the Court of Appeals (CA) in CA-GR CV No. 58804. The first Resolution is worded as follows:

"Upon consideration of the motion to dismiss appeal filed by plaintiff-appellee and the Judicial Records Division's Report that no appellant's brief has been filed as of December 9, 1998, the appeal is hereby ordered DISMISSED pursuant to Section 1 (e), Rule 50, 1997 Rules of Civil Procedure."^[3]

The second Resolution denied petitioner's "Motion for Reconsideration/Petition for Relief & Motion to Admit Appellant's Brief."^[4]

The Facts

In his Memorandum, Petitioner Robert del Mar alleges as follows:

"1. The private respondent, Norma Ebersole Del Mar, and her sister, Florence Ebersole Finch, inherited three (3) parcels of land covered by TCT Nos. T-58397, T-58398 and T-58402, situated in Mabini, Santiago City, with a total area of 29,736 square meters, more or less. On December 6, 1974, Florence Ebersole Finch, a resident of New York, USA, executed a general power of attorney naming and constituting private respondent as her attorney-in-fact with regard to the subject property.

"2. On January 29, 1975, private respondent, acting for herself and as attorney-in-fact of Florence Ebersole Finch, executed Deeds of Absolute Sale in favor of petitioner covering the three aforementioned parcels of land. The private respondent is the mother of herein petitioner.

"3. On March 25, 1976, Florence Ebersole Finch executed a Deed of Confirmation in New York, USA, confirming and ratifying all the acts and deeds executed by Norma Ebersole del Mar, in conveying properties to Robert E. del Mar, 'as appearing in Document Nos. 1780, Page 57, Book No. 14, Series of 1975; 1781, Page 58, Book No. 14, Series of 1975; and 1782, Page 58, Book No. 14, Series of 1975, of the Notarial Registry of Paulo Pascua, a notary public for and in the Province of Isabela, Philippines'. This document was authenticated by Wenceslao J.O. Quirolgico, Vice-Consul of the Philippine Consulate Office in New York, USA.

"4. After x x x said parcels of land were sub-divided into several lots, x x x petitioner obtained the following Certificates of Title in his name: TCT Nos. T-32251, T-82257, T-282260, and T-82263, all on April 18, 1975; T-116117 on January 11, 1979; T-17549 on March 16, 1979; and T-13664 on October 15, 1981.

"5. After the peaceful and continuous possession by petitioner of the subject properties for more than twenty-two (22) years, a complaint for reconveyance was filed by x x x private respondent against x x x petitioner on May 15, 1997, alleging, *inter-alia*, that x x x petitioner obtained the aforementioned Certificates of Title through fraud and deceit. Private respondent claimed that x x x said properties were left by her under the administration of petitioner, who allegedly transferred the ownership of x x x said realty in his name by causing the issuance of Certificates of Title in his name without her knowledge and consent. However, records show that before she left for the United States, private respondent executed the corresponding Deeds of Absolute Sale in favor of petitioner. This case, entitled '*Norma Ebersole del Mar represented by Gerald del Mar vs. Roberto del Mar and the Register of Deeds, Province of Isabela*' was filed before the Regional Trial Court of Santiago City, Branch 35 and docketed as Civil Case No. 2373.

"6. In his Answer, x x x petitioner claimed that x x x private respondent and her co-owner, Florence Ebersole Finch, sold x x x said properties to him before the former left for the United States. Moreover, the properties were transferred for good, sufficient and valuable consideration, hence the sale was lawful and valid.

"7. During the pre-trial conference, neither x x x petitioner nor his counsel, Atty. Federico Abuan, appeared, by reason of which the trial court issued an order declaring petitioner as *in default*. The non-appearance was due to the failure of Atty. Abuan, Jr. to inform petitioner's attorney-in-fact, Angelita Austria, of the scheduled hearing. Said petitioner filed a motion for reconsideration but the same was denied, and x x x private respondent was allowed to adduce her evidence ex-parte. On the same day that x x x said motion was denied, the trial court rendered its October 21, 1997 [D]ecision in favor of x x x private respondent and against x x x petitioner, the dispositive portion of which reads:

‘WHEREFORE, judgment is rendered against [petitioner] and in favor of [private respondent], as follows:

1. Ordering the Register of Deeds of Ilagan, Isabela to cancel Titles Nos. T-82257; T-82261, T-82260, T-82263, T-82264, T-234664, T-116117 and T-822659;
2. Ordering Robert E. del Mar to reconvey the ownership of properties to [private respondent] and in case of failure on the part of [petitioner], the Register of Deeds is directed to execute the necessary deed of reconveyance in favor of [private respondent];
3. Enjoining permanently [petitioner] or any person acting for and in [his] behalf from committing or doing any act of disposition or alienation of the properties;
4. Ordering [petitioner] to pay the amount of FIVE HUNDRED THOUSAND (P500,000.00) as moral damages to [private respondent];
5. Ordering [petitioner] to pay the amount of TWO HUNDRED FIFTY THOUSAND PESOS ([P]250,000.00) as attorney’s fees.
6. Cost of the suit.”^[5]

On the other hand, private respondent counters with the following allegations in her Memorandum:

“The parcels of land covered by the land titles that are sought to be nullified x x x are all owned by [private] respondent NORMA EBERSOLE DEL MAR by way of inheritance from her lawful [ascendants]. The original titles were all issued in her name and favor.

“In the early 1970’s [private] respondent x x x together with her two children, GERALD and FLORENCE went to the United States with the intent of obtaining domicile there[i]n and leaving behind the other son x x x petitioner x x x, and entrusting [to] his [administration] x x x their properties.

“In 1974, [private respondent] came back to the Philippines and stayed up until 1978 and thereafter went back to the US. During her stay, the properties were intact.

“Sometime in 1996, [private respondent] discovered that the properties were already in the name of [petitioner]. [Private respondent] protested because she never had done any act of transfer of the properties in favor of [petitioner], because her intent was to have these properties to be eventually x x x divided into THREE (3) equal parts for her THREE (3) children x x x. The transfer was [without] the knowledge of [private respondent]. It was fraudulent and unlawful x x x.”

Private respondent also claims that petitioner had been duly served summons, but neither he nor his counsel appeared for pretrial. Hence, petitioner was declared in default. While he did receive the Order of Default, he never bothered to have it lifted. So, trial proceeded and evidence *ex parte* for private respondent was received by the trial court.^[6]

Petitioner filed a Notice of Appeal. On January 7, 1998, Noel T. Tomas, legal researcher and officer in charge of the Regional Trial Court (RTC) of Santiago City (Branch 35), forwarded to the CA the records of Civil Case No. 35-2373.^[7] Buenaventura B. Miguel, chief of the Judicial Records Division of the appellate court, thereafter wrote a letter^[8] dated August 13, 1998, addressed to Atty. Federico Abuan Jr., counsel for petitioner, stating the following:

"Pursuant to the resolution en banc of the Supreme Court, dated February 23, 1984, you are hereby required to file with this court SEVEN (7) printed copies of the brief, or SEVEN (7) eleven inches in length by eight and a half inches in width - commonly known letter size[,] written double space, copies of said brief together with the proof of service of TWO (2) printed typewritten or mimeographed copies hereof upon the appellee. The decision of Trial Court shall be appended to the brief."^[9]

On December 8, 1998, Atty. Amado C. Vallejo Jr., counsel for private respondent, moved to dismiss^[10] the appeal on the ground that petitioner had failed to file the required brief within the reglementary period.

Ruling of the Court of Appeals

As already stated, the CA granted the Motion to Dismiss via the first assailed Resolution.

As regards petitioner's "Motion for Reconsideration/Petition for Relief & Motion to Admit Appellant's Brief," the appellate court's denial is justified by the following reasons:

"Clearly, the subject motion/petition can not be in the nature of a *Petition for Relief for Denial of Appeal* under Rule 38 of the Rules of Court. Section 2 of Rule 38 provides that -

'When a judgment or final order is rendered by any court in a case, and a party thereto, by fraud, accident, or excusable negligence, has been *prevented from taking an appeal*, he may file a petition in such court and in the same case praying that the appeal be given due course.'

"In the present case, the appellant was not prevented from taking an appeal as in fact, notice of appeal was timely filed by the appellant on 11 November 1997 from the challenged decision. The instant motion/petition, though denominated as such will be properly treated simply as a motion for reconsideration [of] the order of dismissal.

"From the allegations in the subject motion for reconsideration, this Court finds no cogent reason to disturb the dismissal of the appellant. The