

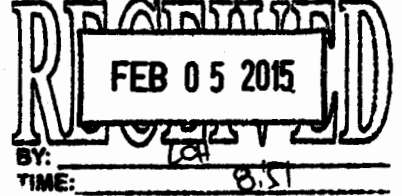


Republic of the Philippines
Supreme Court
 Manila

THIRD DIVISION

NOTICE

SUPREME COURT OF THE PHILIPPINES
 PUBLIC INFORMATION OFFICE



Sirs/Mesdames:

Please take notice that the Court, Third Division, issued a Resolution dated December 10, 2014, which reads as follows:

“G.R. No. 183492 (Edgar Reyes, Eduardo Reyes, Armando Reyes, and Minda Reyes-Andrade vs. Spouses George Gonzaga, Sr. and Evangeline Gonzaga). – Before this Court on petition for review¹ under Rule 45 of the Rules of Court are the Resolutions dated November 13, 2007² and May 29, 2008³ of the Court of Appeals (CA) in CA-G.R. SP No. 02869, which dismissed herein petitioners’ Petition for Review from the Orders dated February 16, 2007⁴ and June 27, 2007⁵ of the Regional Trial Court (RTC) of Kalibo, Aklan, Branch 7, in Civil Case No. 7831. The RTC had ordered the dismissal of their appeal from the decision of the Municipal Trial Court (MTC) for failure to file their appeal memorandum on time.

Antecedent Facts

On November 19, 2004, the spouses George Gonzaga, Sr. and Evangeline Gonzaga (spouses Gonzaga) filed a Complaint⁶ in the MTC of Kalibo, Aklan, docketed as Civil Case No. 2650, against siblings Edgar, Eduardo, Armando, Minda and Winston, all surnamed Reyes (defendants) to recover possession of a house on a residential/commercial lot (Lot 355). On the said lot also stand several market stalls. The spouses Gonzaga claimed that the lot is covered by Transfer Certificate of Title (TCT) No. T-32916 and Tax Declaration No. 04471 in their name; that Lot 355 is a 191-square-meter property located at Pastrana Street, Kalibo, Aklan; that the defendants forcibly took possession of their house on September 3, 2003; that the spouses Gonzaga unsuccessfully brought a complaint before the *Barangay*, and the defendants’ refusal to vacate deprived them of ₱5,000.00 per month in rental income; that they were compelled to engage

¹ *Rollo*, pp. 11-29.

² Penned by Associate Justice Priscilla Baltazar-Padilla, with Associate Justices Isaias P. Dicdican and Franchito N. Diamante, concurring; id. at 126-127.

³ Id. at 135-140.

⁴ Issued by Judge Virgilio Luna Paman; id. at 100-101.

⁵ Id. at 110-111.

⁶ Id. at 31-35.

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the services of a lawyer for ₱20,000.00; and, that they suffered moral damages for which they seek compensation of ₱50,000.00.⁷

In their Answer,⁸ the defendants claimed that the spouses Gonzaga are guilty of forum-shopping because there is a pending action, Civil Case No. 6923, then on appeal to the CA, to annul the sale of Lot 355 to them by their brother, Winston, who allegedly obtained title thereto by forging their mother's signature; that there is also a prior judgment of dismissal in Civil Case No. 2581, for ejectment, which barred the spouses Gonzaga's complaint for recovery of possession; that the spouses Gonzaga were never in possession of the subject house; that the sale did not include the house which was covered by a separate tax declaration; that they are entitled to attorney's fees and actual, moral and exemplary damages.⁹

In their reply, the spouses Gonzaga belied the claim of forum-shopping since Civil Case No. 2650 is for recovery of legal possession whereas Civil Case No. 2581 is for the summary action of ejectment; also, Civil Case No. 6923 is for annulment of the sale.¹⁰

Ruling of the MTC

The MTC of Kalibo, Aklan ruled in its Decision¹¹ dated May 26, 2006 that the complaint is not barred by a prior ejectment case; that Lot 355 was covered formerly by Original Certificate of Title No. RO-479 and was sold by the defendants' parents to Winston who was issued TCT No. 32605 on December 4, 2002; that the spouses Gonzaga bought the property from Winston on April 28, 2003 for ₱500,000.00, and the defendants even executed a Deed of Waiver of their shares in the property; and that the defendants forcibly padlocked several commercial stalls in the property. The MTC ordered defendants to turn over the premises to the spouses Gonzaga, to pay rent as ₱3,000.00 per month, ₱2,032.00 as litigation expenses, and ₱4,800.00 as attorney's fees.

Appeal to the RTC

The defendants appealed to the RTC of Kalibo, Aklan, docketed as Civil Case No. 7831,¹² but the RTC dismissed their appeal in its Order¹³ dated February 16, 2007 for their failure to file their appeal memorandum seasonably despite receipt of notice to file the same. On Motion for Reconsideration¹⁴ (MR), they explained that as soon as their lawyer actually received the said notice on August 8, 2006, the very next day, August 9,

⁷ Id. at 79.

⁸ Id. at 38-42.

⁹ Id. at 80.

¹⁰ Id.

¹¹ Issued by Presiding Judge Paz Esperanza M. Cortes; id. at 79-92.

¹² Id. at 94-99.

¹³ Id. at 100-101.

¹⁴ Id. at 102-105.

2006, he filed the required memorandum with the RTC. But the court belied their claim that the said notice was erroneously received by a clerk assigned to another lawyer in the same law office address, not by the secretary of their lawyer. It found that the said other lawyer was a partner of their counsel of record who held office in the same address, and they often appeared for each other's cases. The MR was likewise denied on June 27, 2007.¹⁵

Petition for Review to the CA

On petition for review¹⁶ under Rule 42 of the Rules of Court to the CA in CA-G.R. SP No. 02869, the appellate court dismissed their petition outright because while it was filed in the names of the defendants, only Edgar signed the verification/certification of non-forum-shopping¹⁷ without attaching an authority from his siblings to file the said petition. The CA also noted that no explanation was given why personal service was not resorted to pursuant to Section 11 of Rule 13,¹⁸ and the petition did not state when the petitioners received the RTC order denying their motion for reconsideration in Civil Case No. 7831.

Petition for Review in the Supreme Court

In this appeal by *certiorari*, signed by Edgar, Eduardo, Armando and Minda (petitioners), the petitioners point out that Edgar has a personal interest in the subject matter below and is not a stranger to the appellate case. Citing *Cavile v. Heirs of Cavile*,¹⁹ they insist that although it has been held that the certificate against forum-shopping must be signed by all the plaintiffs or petitioners, Edgar's signature thereon is already a substantial compliance of Sections 4 and 5 of Rule 7. Besides, the Rules must not be literally interpreted as to defeat its ultimate objective which is substantial justice. Second, as to the lack of an explanation for not resorting to personal service of the pleadings, the petitioners urge the Court to take judicial notice that Aklan is far from CA-Cebu Station and only a registered mail service is reasonable and practical.

On the merits, the petitioners reiterate that the secretary who received the RTC's notice to file memorandum was new and inadvertently did not inform the petitioners' counsel of her receipt of the said notice. Moreover, concerning the action for recovery of possession before the MTC, they argue that the spouses Gonzaga never even had prior possession, and their complaint for ejectment was even dismissed.

¹⁵ Id. at 110-111.

¹⁶ Id. at 112-124.

¹⁷ Id. at 124.

¹⁸ Sec. 11. Priorities in Modes of Service and Filing.

Whenever practicable, the service and filing of pleadings and other papers shall be done personally. Except with respect to papers emanating from the court, a resort to other modes must be accompanied by a written explanation why the service of filing was not done personally. A violation of this Rule may be cause to consider the paper as not filed.

¹⁹ 448 Phil. 302 (2003).

Ruling of the Court**The Court dismisses the petition.**

It is provided under Section 7 of Rule 40 that within 15 days from receipt of notice from the RTC of the complete record from the MTC, the appellant shall submit a memorandum briefly discussing the errors imputed to the lower court. This is a mandatory and compulsory requirement. According to the said section, “[f]ailure of the appellant to file a memorandum shall be a ground for dismissal of the appeal.” Non-compliance with the said provision expressly authorizes the dismissal of the appeal.

In *Enriquez v. Court of Appeals*,²⁰ the Court held that the filing of the appeal memorandum with the RTC from the MTC decision is mandatory, compulsory and jurisdictional:

Rule 40, Section 7 (b) provides that, “it shall be the duty of the appellant to submit a memorandum” and failure to do so “shall be a ground for dismissal of the appeal.” The use of the word “shall” in a statute or rule expresses what is mandatory and compulsory. Further, the Rule imposes upon an appellant the “duty” to submit his memorandum. A duty is a “legal or moral obligation, mandatory act, responsibility, charge, requirement, trust, chore, function, commission, debt, liability, assignment, role, pledge, dictate, office, (and) engagement.” Thus, under the express mandate of said Rule, the appellant is duty-bound to submit his memorandum on appeal. Such submission is not a matter of discretion on his part. His failure to comply with this mandate or to perform said duty will compel the RTC to dismiss his appeal.

In rules of procedure, an act which is jurisdictional, or of the essence of the proceedings, or is prescribed for the protection or benefit of the party affected is mandatory. As private respondent points out, in appeals from inferior courts to the RTC, the 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.

It is true that the Rules should be interpreted so as to give litigants ample opportunity to prove their respective claims and that a possible denial of substantial justice due to legal technicalities should be avoided. But it is equally true that an appeal being a purely statutory right, an appealing party must strictly comply with the requisites laid down in the Rules of Court. In other words, he who seeks to avail of the right to appeal must play by the rules. This the petitioner failed to do when she

²⁰ 444 Phil. 419 (2003).


did not submit her memorandum of appeal in Civil Case No. 12044 as required by Rule 40, Section 7 of the 1997 Rules of Civil Procedure. That she lost her case is not the trial court's fault but her own.²¹ (Citations omitted)

The RTC did not give credence to the factual explanation of the petitioners that it was due to inadvertent neglect or error that their lawyer failed to file a memorandum on appeal. The law office received the notice to file memorandum on July 19, 2006, and their lawyer, Atty. Immanuel Sodusta, had 15 days or until August 3, 2006 to file it, but he was able to do so only on August 9, 2006, after the spouses Gonzaga had filed a motion to dismiss their appeal on August 8, 2006. Section 1 of Rule 9 gives the courts authority to *motu proprio* dismiss an appeal for lack of jurisdiction. *Katon v. Palanca, Jr.*,²² recognized this "residual prerogative" of the courts. The issue below is lack of jurisdiction by the RTC to admit the appeal from the MTC due to failure of the appellants to seasonably file their memorandum on appeal.

While it is true that verification is, under the Rules, not a jurisdictional but merely a formal requirement which the appellate court may *motu proprio* direct a party to comply with or correct,²³ and that the signature of any of the principal petitioners²⁴ or principal parties²⁵ as clearly Edgar is in this case, would constitute a substantial compliance with the rule on verification and certification of non-forum shopping, this is no longer the issue before the Court, but the RTC's lack of jurisdiction to dismiss their appeal.

WHEREFORE, premises considered, the petition for review is **DENIED.**" (Jardeleza, J., on official leave; Mendoza, J., designated as acting member per Special Order No. 1896 dated November 28, 2014.)

Very truly yours,


WILFREDO V. LAPITAN
Division Clerk of Court *WV/L*

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²¹ Id. at 428-429.

²² 481 Phil. 168 (2004).

²³ *Marcos-Araneta, et al. v. Court of Appeals, et al.*, 585 Phil. 38, 52 (2008).

²⁴ *Atty. Calo v. Spouses Villanueva*, 516 Phil. 340, 346 (2006).

²⁵ *Condo Suite Club Travel, Inc. v. NLRC*, 380 Phil. 660, 667 (2000).

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(Civil Case No. 7831)

The Presiding Judge
METROPOLITAN TRIAL COURT
(Civil Case No. 2650)

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