Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

JULIET VITUG MADARANG and ROMEO BARTOLOME, represented by his attorneys-in-fact and acting in their personal capacities, RODOLFO and RUBY BARTOLOME, Petitioners,	**G.R. No. 199283** Present: VELASCO, JR., *J., Chairperson,* PERALTA, VILLARAMA, Jr.,* MENDOZA, and LEONEN, *JJ.*
-versus-	
SPOUSES JESUS D. MORALES and CAROLINA N. MORALES, Respondents.	**Promulgated:** June 9, 2014

x----------x

DECISION

LEONEN, *J.*:

A petition for relief from judgment is an equitable relief granted only under exceptional circumstances.[1] To set aside a judgment through a petition for relief, parties must file the petition within 60 days from notice of the judgment and within six (6) months after the judgment or final order was entered; otherwise, the petition shall be dismissed outright.

---

* Villarama, Jr., *J.*, designated as Acting Member per Special Order No. 1691 dated May 22, 2014 in view of the vacancy in the Third Division.

1 *Insular Life Savings and Trust Company v. Spouses Runes,* 479 Phil. 995, 1006 (2004) [Per J. Callejo, Sr., Second Division].

If the petition for relief is filed on the ground of excusable negligence of counsel, parties must show that their counsel's negligence could not have been prevented using ordinary diligence and prudence.[2] The mere allegation that there is excusable negligence simply because counsel was 80 years old is a prejudicial slur to senior citizens. It is based on an unwarranted stereotype of people in their advanced years. It is as empty as the bigotry that supports it.

This is a petition[3] for review on certiorari of the Court of Appeals' resolutions dated July 27, 2011[4] and November 10, 2011[5] in CA-G.R. SP No. 120251. The Court of Appeals dismissed petitioners Juliet Vitug Madarang, Romeo Bartolome, Rodolfo Bartolome, and Ruby Anne Bartolome's[6] petition for certiorari for failure to file a motion for reconsideration of the order[7] denying their petition for relief from judgment.

The facts as established by the pleadings of the parties are as follows:

On January 9, 2001, Spouses Jesus D. Morales and Carolina N. Morales filed with the Regional Trial Court of Quezon City a complaint[8] for judicial foreclosure of a house and lot located in Bago Bantay, Quezon City.

The Spouses Morales alleged that on March 23, 1993, Spouses Nicanor and Luciana Bartolome loaned □500,000.00 from them. The Spouses Bartolome agreed to pay within two months with interest of five percent (5%) per month. To secure their loan, the Spouses Bartolome mortgaged[9] the Bago Bantay property to the Spouses Morales.

The period to pay lapsed without the Spouses Bartolome having paid their loan. After demand, the Spouses Bartolome only paid part of the loaned amount.

In the meantime, the Spouses Bartolome died. The Spouses Morales, thus, filed a complaint for judicial foreclosure of the Bago Bantay property against Juliet Vitug Madarang, Romeo Bartolome, and the Spouses Rodolfo and Ruby Anne Bartolome.

---

2 *Guevarra v. Spouses Bautista*, 593 Phil. 20, 26 (2008) [Per J. Nachura, Third Division].
3 *Rollo,* pp. 17-27.
4 Id. at 32-35. This resolution was penned by Associate Justice Celia C. Librea-Leagogo with Associate Justices Remedios A. Salazar-Fernando and Michael P. Elbinias, concurring.
5 Id. at 37-40.
6 Romeo Bartolome is represented by Rodolfo Bartolome and Ruby Anne Bartolome as evidenced by the General Power of Attorney dated December 11, 1997, *rollo*, pp. 63-64.
7 This order was issued by the Regional Trial Court, Branch 222, Quezon City.
8 *Rollo*, pp. 58-62.
9 Id. at 65-67.

.

The Spouses Morales sued Madarang as the latter allegedly represented herself as Lita Bartolome and convinced the Spouses Morales to lend money to the Spouses Bartolome.[10] Romeo and Rodolfo Bartolome were sued in their capacities as legitimate heirs of the Spouses Bartolome. Ruby Anne Bartolome is Rodolfo Bartolome's wife.

In their answer,[11] defendants assailed the authenticity of the deed of real estate mortgage covering the Bago Bantay property, specifically, the Spouses Bartolome's signatures on the instrument. They added that the complaint was already barred since it had been dismissed in another branch of the Regional Trial Court of Quezon City for failure to comply with an order of the trial court.

In its decision[12] dated December 22, 2009, the trial court ordered defendants to pay the Spouses Morales □500,000.00 plus 7% interest per month and costs of suit within 90 days but not more than 120 days from entry of judgment. Should defendants fail to pay, the Bago Bantay property shall be sold at public auction to satisfy the judgment.

Defendants received a copy of the trial court's decision on January 29, 2010.

On February 8, 2010, defendants filed their motion for reconsideration of the trial court's decision. They amended their motion for reconsideration and filed a request for a Philippine National Police handwriting expert to examine the authenticity of the Spouses Bartolome's alleged signatures on the deed of real estate mortgage.

According to the trial court, the motion for reconsideration and its amendment were pro forma as defendants failed to specify the findings and conclusions in the decision that were not supported by the evidence or contrary to law.

As to the request for a handwriting expert, the trial court ruled that the "reasons given therein [were] not well taken."[13]

Thus, in its order[14] dated May 25, 2010, the trial court denied the motion for reconsideration, its amendment, and the request for a handwriting expert.

---

10 Id. at 77.
11 Id. at 68-70.
12 Id. at 77-82. This decision was penned by Presiding Judge Edgar Dalmacio Santos.
13 Id. at 83.
14 Id.

.

Defendants received a copy of the May 25, 2010 order on June 24, 2010.

On August 11, 2010, defendants filed a notice of appeal. In its order[15] dated August 13, 2010, the trial court denied due course the notice of appeal for having been filed out of time. According to the trial court, defendants, through their counsel, Atty. Arturo F. Tugonon, received a copy of the order denying the motion for reconsideration on June 24, 2010. This is evidenced by the registry return receipt on file with the court. Consequently, they had 15 days from June 24, 2010, or until July 9, 2010, to appeal the trial court's decision. However, they filed their notice of appeal only on August 11, 2010, which was beyond the 15-day period to appeal.

On September 24, 2010, defendants filed a petition for relief from judgment,[16] blaming their 80-year-old lawyer who failed to file the notice of appeal within the reglementary period. They argued that Atty. Tugonon's failure to appeal within the reglementary period was a mistake and an excusable negligence due to their former lawyer's old age:

> 15. Undersigned Petitioner's counsel is already eighty (80) years of age and the lapses and failure of their counsel to take appropriate steps immediately for the protection of his client is a mistake and an excusable negligence due to the latter's age and should not be attributable to undersigned defendants.[17]

In its order[18] dated April 27, 2011, the trial court denied the petition for relief from judgment. The trial court held that the petition for relief was filed beyond 60 days from the finality of the trial court's decision, contrary to Section 3, Rule 38 of the 1997 Rules of Civil Procedure.

On July 13, 2011, Madarang, Romeo, and Rodolfo and Ruby Anne Bartolome filed the petition for certiorari[19] with the Court of Appeals. In its resolution[20] dated July 27, 2011, the appellate court denied outright the petition for certiorari. The Court of Appeals found that petitioners did not file a motion for reconsideration of the order denying the petition for relief from judgment, a prerequisite for filing a petition for certiorari.

Petitioners filed a motion for reconsideration that the Court of Appeals denied in its resolution[21] dated November 10, 2011.

---

15 Id. at 85.
16 Id. at 86-92.
17 Id. at 89.
18 Id. at 57.
19 Id. at 41-56.
20 Id. at 32-35.
21 Id. at 37-40.

.

Petitioners filed the petition[22] for review on certiorari with this court. They argue that they need not file a motion for reconsideration of the order denying their petition for relief from judgment because the questions they raised in the petition for relief were pure questions of law. They cite *Progressive Development Corporation, Inc. v. Court of Appeals*[23] as authority.

Petitioners add that the trial court erred in denying their notice of appeal. They personally received a copy of the decision only on August 11, 2011. They argue that the period to file on appeal must be counted from August 11, 2011, not on the day their "ailing counsel"[24] received a copy of the decision.

A comment[25] was filed on the petition for review on certiorari by respondents Spouses Morales. They argue that the trial court did not err in declaring pro forma petitioners' motion for reconsideration of the trial court's decision.

Respondents contend that the Court of Appeals did not err in denying the petition for certiorari since petitioners failed to file a motion for reconsideration of the order denying their petition for relief from judgment.

The issues for our resolution are the following:

I. Whether the failure of petitioners' former counsel to file the notice of appeal within the reglementary period is excusable negligence; and

II. Whether the Court of Appeals erred in dismissing outright petitioners' petition for certiorari for failure to file a motion for reconsideration of the order denying the petition for relief from judgment.

The petition lacks merit.

I

A petition for relief from judgment must be filed within 60 days after petitioner learns of the judgment, final order, or

---

22 Id. at 17-27.
23 361 Phil. 566, 576 (1999) [Per J. Bellosillo, Second Division].
24 *Rollo*, p. 23.
25 Id. at 100-111.

.

proceeding and within six (6) months from entry of judgment or final order

This court agrees that the petition for relief from judgment was filed out of time. However, the trial court erred in counting the 60-day period to file a petition for relief from the date of finality of the trial court's decision. Rule 38, Section 3 of the 1997 Rules of Civil Procedure is clear that the 60-day period must be counted after petitioner learns of the judgment or final order. The period counted from the finality of judgment or final order is the six-month period. Section 3, Rule 38 of the 1997 Rules of Civil Procedure states:

> Sec. 3. *Time for filing petition; contents and verification.* – A petition provided for in either of the preceding sections of this Rule must be verified, filed **within sixty (60) days after petitioner learns of the judgment, final order, or other proceeding to be set aside, and not more than six (6) months after such judgment or final order was entered, or such proceeding was taken**; and must be accompanied with affidavits, showing the fraud, accident, mistake or excusable negligence relied upon and the facts constituting the petitioner's good and substantial cause of action or defense, as the case may be. (Emphasis supplied)

The double period required under Section 3, Rule 38 is jurisdictional and should be strictly complied with.[26] A petition for relief from judgment filed beyond the reglementary period is dismissed outright. This is because a petition for relief from judgment is an exception to the public policy of immutability of final judgments.[27]

In *Gesulgon v. National Labor Relations Commission,*[28] the Labor Arbiter ordered Mariscor Corporation to reinstate Edwin Gesulgon as chief cook on board one of its vessels. Mariscor Corporation had notice of the decision on March 27, 1987, but it did not appeal the Labor Arbiter's decision. Since decisions of Labor Arbiters become final 10 calendar days from receipt of the decision, the decision became final on April 6, 1987.

On February 28, 1989, Mariscor Corporation filed a motion to set aside judgment with the National Labor Relations Commission. The Commission treated the motion as a petition for relief from judgment and granted the petition for relief from judgment. It remanded the case to the Labor Arbiter for further proceedings.

---

26 *Spouses Reyes v. Court of Appeals,* 557 Phil. 241, 248 (2007) [Per J. Garcia, First Division].

27 *Gesulgon v. National Labor Relations Commission,* G.R. No. 90349, March 5, 1993, 219 SCRA 561, 567-568 [Per J. Feliciano, Third Division], *citing Turqueza v. Hernando,* 186 Phil. 333 (1980) [Per J. Teehankee, First Division].

28 G.R. No. 90349, March 5, 1993, 219 SCRA 561 [Per J. Feliciano, Third Division].

.

This court set aside the order granting the petition for relief from judgment for having been filed beyond the double period required under Section 3, Rule 38 of the 1997 Rules of Civil Procedure. This court explained:

> A party filing a petition for relief from judgment must strictly comply with two (2) reglementary periods: (a) the petition must be filed within sixty (60) days from knowledge of the judgment, order or other proceeding to be set aside; and (b) within a fixed period of six (6) months from entry of such judgment, order or other proceeding. Strict compliance with these periods is required because provision for a petition for relief from judgment is a *final* act of liberality on the part of the State, which remedy cannot be allowed to erode any further the fundamental principle that a judgment, order or proceeding must, at some definite time, attain finality in order at last to put an end to litigation. In *Turqueza v. Hernando*, this Court stressed once more that:
>
> > . . . the doctrine of finality of judgments is grounded on fundamental considerations of public policy and sound practice that at the risk of occasional error, the judgments of courts must become final at some definite date fixed by law. The law gives an exception or 'last chance' of a timely petition for relief from judgment within the reglementary period (within 60 days from knowledge and 6 months from entry of judgment) under Rule 38, *supra,* but such grave period must be taken as 'absolutely *fixed*, *inextendible*, *never interrupted* and *cannot* be subjected to any condition or contingency. Because the period fixed is itself devised to meet a condition or contingency (fraud, accident, mistake or excusable neglect), the equitable remedy is an act of *grace*, as it were, designed to give the aggrieved party another and *last chance*' and failure to avail of such *last chance* within the grace period fixed by the statute or Rules of Court is *fatal* . . . .[29] (Emphasis in the original)

In *Spouses Reyes v. Court of Appeals and Voluntad,*[30] the Regional Trial Court of Bulacan rendered a decision against the Spouses Reyes' predecessors-in-interest. The decision became final on December 8, 1995. The Spouses Reyes had notice of the decision on May 30, 1997 when they received a Court of Appeals order directing them to comment on the petition for certiorari filed by respondents heirs of Voluntad. Attached to the Court of Appeals' order was a copy of the trial court's decision.

On June 21, 2000, the Spouses Reyes filed a petition for relief from judgment against the Regional Trial Court of Bulacan's decision. This court affirmed the dismissal of the petition for relief from judgment for having been filed out of time and said:

---

29 Id. at 567-568.

30 557 Phil. 241 (2007) [Per J. Garcia, First Division].

.

> It should be noted that the 60-day period from knowledge of the decision, and the 6-month period from entry of judgment, are **both inextendible** and **uninterruptible**. We have also time and again held that because relief from a final and executory judgment is really more of an exception than a rule due to its equitable character and nature, strict compliance with these periods, which are definitely jurisdictional, must always be observed.[31] (Emphasis in the original)

In this case, petitioners, through counsel, received a copy of the trial court's decision on January 29, 2010. They filed a motion for reconsideration and an amended motion for reconsideration, which similarly alleged the following:

> The defendants, by the undersigned counsel, to this Honorable Court, respectfully allege:
>
> 1. That on January 29, 2010, they received the decision in the above entitled case rendered by this Honorable Court, dated December 22, 2009;
>
> 2. That with due respect to the Honorable Court, the decision is contrary to law & to the defendants[']evidence presented in court. Hence, this urgent motion.
>
> WHEREFORE, it is most respectfully prayed of this Honorable Court, that the decision sought to be reversed be reconsidered and another one be rendered in favor of the defendants.[32]

Although petitioners filed a motion for reconsideration and amended motion for reconsideration, these motions were pro forma for not specifying the findings or conclusions in the decision that were not supported by the evidence or contrary to law.[33] Their motion for reconsideration did not toll the 15-day period to appeal.[34]

Petitioners cannot argue that the period to appeal should be counted from August 11, 2011, the day petitioners personally received a copy of the trial court's decision. Notice of judgment on the counsel of record is notice to the client.[35] Since petitioners' counsel received a copy of the decision on January 29, 2010, the period to appeal shall be counted from that date.

Thus, the decision became final 15 days after January 29, 2010, or on February 13, 2010. Petitioners had six (6) months from February 13, 2010, or until August 12, 2010, to file a petition for relief from judgment.

---

31 Id. at 248.
32 *Rollo*, pp. 107-108.
33 RULES OF COURT, Rule 37, sec. 2.
34 RULES OF COURT, Rule 37, sec. 2.
35 *Torres v. China Banking Corporation,* G.R. No. 165408, January 15, 2010, 610 SCRA 134, 149 [Per J. Peralta, Third Division].

.

Since petitioners filed their petition for relief from judgment on September 24, 2010, the petition for relief from judgment was filed beyond six (6) months from finality of judgment. The trial court should have denied the petition for relief from judgment on this ground.

II

Failure of petitioners' former counsel to file the notice of appeal within the reglementary period is not excusable negligence

Even if we assume that petitioners filed their petition for relief from judgment within the reglementary period, petitioners failed to prove that their former counsel's failure to file a timely notice of appeal was due to a mistake or excusable negligence.

Under Section 1, Rule 38 of the 1997 Rules of Civil Procedure, a petition for relief from judgment may be filed on the ground of fraud, accident, mistake, or excusable negligence:

> Section 1. *Petition for relief from judgment, order, or other proceedings*.
>
> When a judgment or final order is entered, or any other proceeding is thereafter taken against a party in any court through fraud, accident, mistake, or excusable negligence, he may file a petition in such court and in the same case praying that the judgment, order or proceeding be set aside.

A petition for relief from judgment is an equitable remedy and is allowed only in exceptional cases.[36] It is not available if other remedies exist, such as a motion for new trial or appeal.[37]

To set aside a judgment through a petition for relief, the negligence must be so gross "that ordinary diligence and prudence could not have guarded against."[38] This is to prevent parties from "reviv[ing] the right to appeal [already] lost through inexcusable negligence."[39]

---

36 *Insular Life Savings and Trust Company v. Spouses Runes,* 479 Phil. 995, 1006 (2004) [Per J. Callejo, Sr., Second Division].

37 Id.

38 *Guevarra v. Bautista*, 593 Phil. 20, 26 (2008) [Per J. Nachura, Third Division].

39 Id. at 27.

.

Petitioners argue that their former counsel's failure to file a notice of appeal within the reglementary period was "a mistake and an excusable negligence due to [their former counsel's] age."[40] This argument stereotypes and demeans senior citizens. It asks this court to assume that a person with advanced age is prone to incompetence. This cannot be done.

There is also no showing that the negligence could have been prevented through ordinary diligence and prudence. As such, petitioners are bound by their counsel's negligence.[41]

Petitioners had until July 9, 2010 to file a notice of appeal, considering that their former counsel received a copy of the order denying their motion for reconsideration of the trial court's decision on June 24, 2010.[42] Since petitioners filed their notice of appeal only on August 11, 2010,[43] the trial court correctly denied the notice of appeal for having been filed out of time.

III

The Court of Appeals correctly denied the petition for certiorari for petitioners' failure to file a motion for reconsideration of the order denying the petition for relief from judgment

In its resolution dated July 27, 2011, the Court of Appeals denied petitioners' petition for certiorari for failure to file a motion for reconsideration of the order denying the petition for relief from judgment. We agree with the appellate court.

Section 1, Rule 65 of the 1997 Rules of Civil Procedure requires that no appeal or any plain, speedy, and adequate remedy in the ordinary course of law is available to a party before a petition for certiorari is filed. This section provides:

> Section 1. *Petition for certiorari*.
>
> When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or **any plain, speedy, and adequate remedy in the ordinary course of law**, a person aggrieved thereby may

---

40 *Rollo*, p. 22.
41 *Guevarra v. Bautista*, 593 Phil. 20, 26 (2008) [Per J. Nachura, Third Division].
42 *Rollo*, p. 85.
43 Id. at 84.

.

> file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require. (Emphasis supplied)

In *Metro Transit Organization, Inc. v. PIGLAS NFWU-KMU*,[44] this court ruled that a motion for reconsideration is the plain, speedy, and adequate remedy in the ordinary course of law alluded to in Section 1, Rule 65 of the 1997 Rules of Civil Procedure.[45] A motion for reconsideration is required before a petition for certiorari is filed "to grant [the court which rendered the assailed judgment or order] an opportunity . . . to correct any actual or perceived error attributed to it by the re-examination of the legal and factual circumstances of the case."[46]

In this case, a motion for reconsideration of the order denying the petition for relief from judgment is the plain, speedy, and adequate remedy in the ordinary course of law. Petitioners failed to avail themselves of this remedy. Thus, the Court of Appeals correctly dismissed petitioners' petition for certiorari.

Contrary to petitioners' claim, the questions they raised in their petition for relief from judgment were not pure questions of law. They raise the authenticity of the Spouses Bartolome's signatures on the deed of real estate mortgage and the allegedly excusable negligence of their counsel. These are questions of fact which put at issue the truth of the facts alleged in the petition for relief from judgment.[47] Petitioners cannot cite *Progressive Development Corporation, Inc. v. Court of Appeals*[48] where this court held that "[t]he filing of the motion for reconsideration before availing of the remedy of certiorari is not *sine qua non* when the issues raised is one purely of law."[49]

All told, the Court of Appeals committed no reversible error in denying petitioners' petition for certiorari. The Regional Trial Court's decision dated December 22, 2009 is final and executory.

WHEREFORE, the petition for review on certiorari is **DENIED**. The Court of Appeals' resolutions dated July 27, 2011 and November 10, 2011 in CA-G.R. SP No. 120251 are **AFFIRMED.**

---

44 574 Phil. 481 (2008) [Per J. Chico-Nazario, Third Division].
45 Id. at 491.
46 Id.
47 *Bentulan v. Bentulan-Mercado,* 487 Phil. 364, 376 (2004) [Per J. Chico-Nazario, Second Division], *citing Ramos, et al. v. Pepsi-Cola Bottling Co. of the P.I., et al.,* 125 Phil. 701 (1967) [Per J. Bengzon, J.P., En Banc].
48 361 Phil. 566 (1999) [Per J. Bellosillo, Second Division].
49 Id. at 576.

.

SO ORDERED.

MARVIC MARIO VICTOR F. LEONEN
Associate Justice

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

DIOSDADO M. PERALTA
Associate Justice

MARTIN S. VILLARAMA, JR.
Associate Justice

JOSE CATRAL MENDOZA
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARIA LOURDES P. A. SERENO
Chief Justice