

Republic of the Philippines  
**COURT OF APPEALS**  
MANILA

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**SEVENTH DIVISION**

**ROY LEONARD  
ANDERSON, GREGORY  
IAN ANDERSON, PEILING  
XIONG, AIFENG FAN** as  
represented herein by  
**ROY LEONARD  
ANDERSON and MY  
CYBERSTAFF, INC.,**  
*Petitioners-Appellants,*

- versus -

**MURTO NEL, BASTIAAN  
JOHANNES ARNOLDUS  
DERKSEN, LAURA JANE  
NEL, SALVACION T.  
VILLALOBOS, and  
CORNELIS RONALD  
BOSMAN,**  
*Respondents-Appellants.*

CA-G.R. CV No. 109634

Members:

**DIMAAMPAO,**  
*Chairperson,*  
**BARRIOS, and  
LOPEZ, JJ.**

**Promulgated:**

FEB 20 2018

*Felipe Cruz*

X - - - - - X

**RESOLUTION**

**BARRIOS, M. M., J:**

Before Us are the following: (1) Motion to Admit Appellants' Brief and Appellants' Brief filed by respondents-appellants Salvacion Villalobos and Cornelis Ronald Bosman; and, (2) Motion to Dismiss Respondents' Motion to Admit Appellants' Brief and Motion to Dismiss Appeal by Respondents filed by petitioners-appellants.

*X*

In the Motion to Admit Appellants' Brief of respondents-appellants, their counsel, Atty. Maria Soledad Santos, admitted that she failed to file the Appellants' Brief within the 45-day period that lapsed on 21 December 2017. She was able to file the same only on 03 January 2018, or 13 days after the deadline. She reasoned that her child is suffering from Acute Lymphoblastic Leukemia and needs to be treated for three and a half years.


Reacting thereto, petitioners-appellants, moved for the denial of the said motion and the dismissal of respondents-appellants' appeal. They argued that respondents-appellants have the habit of belatedly filing their pleadings. Moreover, it is noted that Atty. Santos became aware of the medical condition of her child in April 2017, yet the hospital treatments are not required on a daily basis. Thus, she had ample time to prepare the Appellants' Brief. It is also noted that Atty. Santos failed to submit documents proving that the medical condition of her child prevented her from attending to her duties as a counsel.

In addition, petitioners-appellants likewise pointed out that the appeal filed by Atty. Santos was not made with the authority and consent of respondents-appellants Villalobos and Bosman; that the Motion to Admit Appellants' Brief is a prohibited pleading; and that the Appellants' Brief did not follow the order of the contents as laid out in Section 13, Rule 44 of the 1997 Rules of Civil Procedure.

The situation before Us is not a novel issue. In a plethora of cases, the Supreme Court has held that the dismissal of an appeal for belated service and filing of the appellant's brief is not mandatory, but merely discretionary.<sup>1</sup> However, this discretion must be exercised within these parameters:

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1 Patricia Sibayan v. Emilio Costales, et al., G.R. No. 191492, 04 July 2016.



"x x x

(1) *The general rule is for the Court of Appeals to dismiss an appeal when no appellant's brief is filed within the reglementary period prescribed by the rules;*

(2) *The power conferred upon the Court of Appeals to dismiss an appeal is discretionary and directory and not ministerial or mandatory;*

(3) *The failure of an appellant to file his brief within the reglementary period does not have the effect of causing the automatic dismissal of the appeal;*

(4) *In case of late filing, the appellate court has the power to still allow the appeal; however, for the proper exercise of the court's leniency it is imperative that:*

*(a) the circumstances obtaining warrant the court's liberality;*

*(b) that strong considerations of equity justify an exception to the procedural rule in the interest of substantial justice;*

*(c) no material injury has been suffered by the appellee by the delay;*

*(d) there is no contention that the appellee's cause was prejudiced;*

*(e) at least there is no motion to dismiss filed.*

(5) *In case of delay, the lapse must be for a reasonable period; and*

(6) *Inadvertence of counsel cannot be considered as an adequate exercise as to call for the appellate court's indulgence except:*

*(a) where the reckless or gross negligence of counsel deprives the client of due process of law;*

*(b) when application of the rule will result in outright deprivation of the client's liberty or property; or*

*(c) where the interests of justice so require."<sup>2</sup>*

Gauged from these standards, this Court is hard-pressed to dismiss the appeal filed by respondents-appellants Villalobos and Bosman for their belated filing of

<sup>2</sup> The Government of the Kingdom of Belgium v. Hon. Court of Appeals, et al., G.R. No. 164150, 14 April 2008.

their Appellants' Brief which, incidentally, failed to present a meritorious ground. In fact, a review of the said Appellants' Brief reveals that they only presented a very short one-paragraph discussion on their argument that the transfer of 100 shares to them should not have been declared null and void. No legal basis was even offered, and in sum, respondents-appellants Villalobos and Bosman merely state that since the transfer of the shares to respondent-appellant Bastiaan was declared valid, theirs should have been deemed valid as well.

This Court commiserates with the plight of Atty. Santos. However, the medical condition of her child should not be utilized as an excuse. An attorney is bound to protect the interest of his or her client to the best of his or her ability and with utmost diligence. Every case a lawyer accepts deserves his or her full attention, diligence, skill, and competence.<sup>3</sup> As Atty. Santos found out early on that she may not be able to fully concentrate on her cases, she should have had the good sense to delegate the task or, at best, endorse the instant case to another lawyer who has the time needed to handle the same. Sad to say, her negligence is binding upon respondents-appellants.

Moreover, procedural rules may only be relaxed for the furtherance of justice and to benefit the deserving. These rules must be complied with, save only for the most persuasive of reasons when they may be relaxed to relieve a litigant of an injustice not commensurate with the degree of his or her thoughtlessness in not complying with the procedure prescribed.<sup>4</sup>

This Court likewise takes this opportunity to note that the subject motion of Atty. Santos was filed only on behalf of respondents-appellants Villalobos and Bosman. Hence, respondents-appellants Murto Nel, Laura Jane Nel, and Bastiaan Johannes Arnoldus Derksen clearly failed to file any brief or pleading notifying Us of any

<sup>3</sup> Dolorita Beatingo v. Lilia Bu Gasis, G.R. No. 179641, 09 February 2011.

<sup>4</sup> Spouses David Bergonia and Luzviminda Castillo v. Court of Appeals and Amado Bravo, Jr., G.R. No. 189151, 25 January 2012.

exigent circumstance that might excuse them from their inaction.

**WHEREFORE**, in view of the foregoing, the Motion to Dismiss Respondents' Motion to Admit Appellants' Brief and Motion to Dismiss Appeal by Respondents filed by petitioners-appellants is **GRANTED**. Accordingly, the Motion to Admit Appellants' Brief filed by respondents-appellants Salvacion T. Villalobos and Cornelis Ronald Bosman is **DENIED**, and their Appellants' Brief attached to the said motion is **EXPUNGED** from the records.

For failure of respondents-appellants Murto Nel, Bastiaan Johannes Arnoldus Derksen, Laura Jane Nel, Salvacion T. Villalobos, and Cornelis Ronald Bosman to file their Appellants' Brief within the reglementary period, their appeal from the Decision dated 30 June 2017 of the Regional Trial Court (Branch 72, Olongapo City) in SEC Case No. 15-006 is **DISMISSED**.

Only the appeal filed by petitioners-appellants shall henceforth be considered.

**SO ORDERED.**

  
**MANUEL M. BARRIOS**  
Associate Justice

**WE CONCUR:**

  
**JAPAR B. DIMAAMPAO**  
Associate Justice

  
**JHOSEP V. LOPEZ**  
Associate Justice