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WHEREFORE, in view of the foregoing, the orders appealed from are hereby set aside and the court *a quo* is hereby directed to continue with the proceedings and act accordingly. Without costs.

Petition granted.

SO ORDERED.

Teehankee (Chairman), Makasiar, Fernandez, De Castro, and *Melencio Herrera, JJ.,* concur.

SECOND DIVISION

[A.C. No. 1664 March 30, 1979]

DOMINGA ROQUE and JOSE G. ZAPLAN, *complainants, vs.* **MAGTANGGOL C. GUNIGUNDO,** *respondent.*

SYLLABUS

1. **LEGAL ETHICS; LAWYERS; DUTIES; INCLUDES DILIGENCE AND FIDELITY IN THE DISPATCH OF CLIENT'S CASE.** — The lawyer's actuation is filing motions for extension on the last day and sending them by registered mail (thus giving the court insufficient time to act before the extension sought had expired) and his omission to verify whether his second motion for extension was granted are indicative of lack of competence, diligence and fidelity in the dispatch of his client's business.

2. **ID.; ID.; ID.; LAWYER MUST ACT PROMPTLY TO AVOID LOSS OF CLIENTS' RIGHT TO APPEAL.** — Where a lawyer's clients waver on whether to appeal the order of dismissal, he should in the meantime, but within the thirty-day period, file his motion for reconsideration. He could easily avoid the loss of his clients' right to appeal by filing the motion for reconsideration within the thirty-day period. He could even withdraw from the case

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with his clients' consent and require them to get another lawyer to perfect their appeal.

3. **REMEDIAL LAW; CIVIL PROCEDURE; MOTION FOR RECONSIDERATION; PERIOD TO FILE, NOT EXTENDIBLE.** — A motion to extend the reglementary period for filing the motion for reconsideration is not authorized or is not in order. So, it has been held that "a motion for extension to file a petition for new trial does not stop the running of the reglementary period for perfecting the appeal" which is also the period for filing the motion for new trial or reconsideration. (*Giffs vs. Court of First Instance of Manila*, 80 Phil. 160, 164). The period for filing pleadings and submitting the record on appeal (not notice of appeal and appeal bond) may be extended but the thirty-day period for appealing may not be extended for the purpose of filing the motion for new trial or reconsideration. The reason for not allowing such an extension is that it is assumed that the preparation of a motion for new trial or reconsideration would not consume much time since the case had already tried and the movant is supposed to be familiar with the case. On the other hand, the thirty day period may be extended for the purpose of filing the record on appeal because, where the record is voluminous or the appellant has other pressing matters to attend to, it may not be practicable to submit the record on appeal within the reglementary period.

4. **LEGAL ETHICS; LAWYERS; NEGLIGENCE OF LAWYER, A GROUND FOR CLIENT TO CLAIM DAMAGES.** — Where a judgment become final through the fault of the lawyer who did not appeal therefrom, that fact alone is not a sufficient ground for the losing party to recover damages from his lawyer since the action for damages rests "on the unsubstantiated and arbitrary supposition of the injustice of the decision which became final through the fault and negligence" of the lawyer.

DECISION

AQUINO, *J.*:

Respondent Magtanggol C. Gunigundo (admitted to the bar in 1960 and now forty-three years old) was the counsel of the plaintiffs in Civil Case No. 3826-M of the Court of First Instance

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of Bulacan, entitled "*Dionisio Roque, et al. vs. Julita V. Adriano, et al.*" That case was an action to recover Lot No. 4672 of the Malolos, Bulacan cadastre with an area of around five hectares and for an accounting of the fruits thereof.

On July 23, 1974 respondent Gunigundo received a copy of the order in the said case dismissing it on the grounds of laches and prior judgment. On August 22 or the *last day* of the reglementary period within which to appeal or file a motion for new trial, he filed, through an associate, a motion for an extension of fifteen days or up to September 6 within which to file a motion for reconsideration. The motion was granted but Gunigundo was not able to file the motion for reconsideration.

Instead, on the *last day*, September 6, he sent by registered mail a motion for a second extension of ten days. On September 16, the *last day* of the second extension sought by him, he filed a motion for a third extension of forty-eight hours. The motion for reconsideration was mailed on September 18, 1974, the *last day* of the third extension.

The trial court denied the second and third motions for extension on the ground that the order of dismissal was already final. It also denied Gunigundo's motion for reconsideration of the orders denying his motions for extension.

Gunigundo then filed in the Court of Appeals a petition for *certiorari* and *mandamus* wherein he assailed the orders denying his motions for extension. He prayed that the lower court be directed to resolve his motion for reconsideration. The Court of Appeals dismissed his petition (*Roque vs. Court of First Instance*, CA-G.R. No. SP-04431, November 27, 1975). It applied the ruling that the filing of a motion for extension of the period to file the record on appeal does not suspend the period for appeal (*Philippine Virginia Tobacco Administration vs. De los Angeles*, L-29736, October 31, 1974, 60 SCRA 432).

This Court did not give due course to the appeal of respondent's clients from that decision of the Court of Appeals (Resolution of March 29, 1976 in L-42879, *Roque vs. Court of Appeals*).

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On September 6, 1976, the spouses Dominga Roque and Jose G. Zaplan, two of the eight plaintiffs in Civil Case No. 3826-M, filed in this Court a joint affidavit charging Atty. Gunigundo with gross negligence in not seasonably filing the motion for reconsideration and in not perfecting an appeal from the trial court's order of dismissal.

After the submission of respondent's answer, the case was referred to the Solicitor General for investigation, report and recommendation.

In June, 1978 or during the pendency of the case in the Solicitor General's office, the complaining spouses made a *volte-face*. They executed an affidavit of desistance before Atty. Rosario R. Rapanut, a senior attorney in the Citizens Legal Assistance Office. They alleged that their complaint for disbarment was due to a misunderstanding. They affirmed that respondent Gunigundo was not negligent in handling their case ("*walang pagkukulang at pagpapabaya sa kanyang tungkulin.*")

Explaining why he filed a motion for reconsideration instead of appealing forthwith from the order of dismissal, the respondent testified that there was vacillation among the eight plaintiffs as to whether they would appeal; that there were no available funds to defray the expenses of an appeal since not all of the plaintiffs were inclined to appeal; that some of the plaintiffs wanted to hire another lawyer; that when the period was about to expire, the plaintiffs changed their mind and decided to continue with the respondent's services and that the eldest plaintiff died and plaintiffs' desire to appeal was communicated to the respondent only after the funeral.

The foregoing explanation is not entirely satisfactory. It is not sufficient to exculpate the respondent from the charge of negligence. His filing of motions for extension on the *last day* and sending them by registered mail (thus giving the court insufficient time to act before the extension sought had expired) and his omission to verify whether his second motion for extension was granted are indicative of lack of competence, diligence and fidelity in the dispatch of his clients' business.

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If this clients were wavering on whether to appeal the order of dismissal, he could have in the meantime, but within the thirty-day period, filed his motion for reconsideration.

The truth is that a motion to extend the reglementary period for filing the motion for reconsideration is not authorized or is not in order. So, it has been held that "a motion for extension to file a petition for new trial does not stop the running of the reglementary period for perfecting the appeal" which is also the period for filing the motion for new trial or reconsideration (*Gibbs vs. Court of First Instance of Manila*, 80 Phil. 160, 164).

The period for filing *pleadings* and submitting the record on appeal (not notice of appeal and appeal bond) may be extended but the thirty-day period for appealing may not be extended for the purpose of filing the motion for new trial or reconsideration. The reason for not allowing such an extension is that it is assumed that the preparation of a motion for new trial or reconsideration would not consume much time since the case had already been tried and the movant is supposed to be familiar with the case.

On the other hand, the thirty-day period may be extended for the purpose of filing the record on appeal because, where the record is voluminous or the appellant has other pressing matters to attend to, it may not be practicable to submit the record on appeal within the reglementary period.

In this case, had the respondent been more conscientious or experienced, he could have easily avoided the loss of his clients' right to appeal by filing the motion for reconsideration within the thirty-day period. He could have even withdrawn from the case with his clients' consent and required them to get another lawyer to perfect their appeal.

However, the fact that the complainants and their six co-plaintiffs lost the right to appeal would not necessarily mean that they were damaged. The lower court's order of dismissal has in its favor the presumption of validity or correctness. Indeed, an examination of that order discloses that the trial court painstakingly studied the motion to dismiss and carefully

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rationalized its order. It found that the action was filed *more than forty years* after the disputed land was registered in the name of defendants' predecessor-in-interest.

Where a judgment became final through the fault of the lawyer who did not appeal therefrom, that fact alone is not a sufficient ground for the losing party to recover damages from his lawyer since the action for damages rests "on the unsubstantiated and arbitrary supposition of the injustice of the decision which became final through the fault and negligence" of the lawyer (*Heridia vs. Salinas*, 10 Phil. 157, 162. See *Ventanilla vs. Centeno*, 110 Phil. 811, where the lawyer who failed to perfect an appeal was ordered to pay his client two hundred pesos as nominal damages).

In view of the foregoing and considering complainants' affidavit of desistance in this case, drastic disciplinary action against the respondent is not warranted. But he is admonished to exercise care and circumspection in attending to the affairs of his clients. A repetition of the same irregularity will be treated with more severity. A copy of this decision should be attached to respondent's personal record.

SO ORDERED.

Fernando (Chairman), Antonio, Concepcion Jr., and *Santos, JJ.*, concur.

Barredo, J., did not take part because a lawyers of the Justice is the opponent of Atty. Gunigundo in one case in Bulacan

Abad Santos, J., is abroad.