

**ANNALYN S. MANALO AND BABYLYN V. BELLO, PLAINTIFFS,
ANNALYN S. MANALO, PLAINTIFF-APPELLANT, VS. JOCELYN B.
MITCHELL, DEFENDANT-APPELLEE. D E C I S I O N**

Ponente: REYES, JR., J.C., J.

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REYES, JR., J.C., J.:

This resolves the appeal filed by plaintiff-appellant Annalyn S. Manalo seeking to set aside the February 7, 2013 (Rollo, p. 7) and the May 17, 2013 (Records, 334-336) Orders issued by the Regional Trial Court (RTC) of Parañaque City, Branch 196, which dismissed the instant case and which denied the Motion for Reconsideration, respectively, in Civil Case No. 11-0366.

The instant case arose from a Complaint for Injunction, Specific Performance, Quieting of Title and Enforcement of Implied Trust, with prayer for Consignation of Payments and Damages (Records, pp. 4-16) filed by plaintiff-appellant Annalyn S. Manalo (Manalo), together with her co-plaintiff Babylyn V. Bello (Bello) against defendant-appellee Jocelyn B. Mitchell (Mitchell).

On December 14, 2011, defendant-appellee Mitchell filed an Answer with Counterclaim (Records, pp. 160-169). Plaintiff-appellant Manalo and her co-plaintiff Bello moved to dismiss the counterclaim for lack of jurisdiction and later on, they also filed a Reply Ad Cautelam to the Answer.

In February 2012, both parties submitted their respective Pre-Trial Brief. Meanwhile, plaintiffs' Motion to Dismiss the Counterclaim was denied for lack of merit in an Order dated February 28, 2012.

Mediation efforts having failed, pre-trial conference was conducted on April 12, 2012 wherein the parties entered into Stipulation of Facts. The continuation of the pre-trial conference was held on May 15, 2012 where both parties were present. However, during the pre-trial conference held on September 6, 2012, plaintiff-appellant Manalo and her co-plaintiff Bello as well as their counsel failed to appear. Upon manifestation of defendant-appellee's counsel, the continuation of the pre-trial conference was set on October 25, 2012.

Considering the withdrawal of plaintiffs' counsel (as per his Notice of Withdrawal of Appearance dated July 30, 2012), the RTC on October 25, 2012 issued an Order setting the continuation of pre-trial conference on November 29, 2012. On November 29, 2012, plaintiff-appellant Manalo failed to appear despite notice while her co-plaintiff Bello appeared (without counsel) and manifested that she has yet to secure the counsel of her own choice over the objection of defendant-appellee's counsel. As such, the RTC issued an Order dated November 29, 2012 setting anew the pre-trial conference on February 7, 2013.

On February 7, 2013, plaintiff-appellant Manalo and her co-plaintiff Bello, as well as their respective counsels again failed to appear. For this reason, defendant-appellee's counsel moved to dismiss the instant complaint. The RTC, in the appealed Order dated February 7, 2013 granted defendant-appellee's Motion to Dismiss, pertinent portion of the said Order reads as follows:

“WHEREFORE, premises considered, the complaint dated July 22, 2011 by Annalyn S. Manalo and Babylyn

V. Bello is herewith DISMISSED for lack of interest to pursue a cause and for failure to comply with an order of this Court.”

X X X X X X X X

SO ORDERED” (Rollo, p. 7).

On March 14, 2013, plaintiff-appellant Manalo filed a Motion for Reconsideration (Records, pp. 314-319) of the aforesaid February 7, 2013 Order arguing that even prior to February 7, 2013, she was already beset by depression and she was advised by her doctor to take a rest. A medical certificate to that effect was issued but she has misplaced it and she can no longer find it despite diligent efforts exerted to locate it. She added that since she was physically and emotionally indisposed, she was unable to engage the services of a new lawyer.

An Opposition (Records, pp. 322-324) to the said Motion for Reconsideration was filed by defendant-appellee Mitchell pointing-out the absence of medical certificate as well as the flimsiness of the reason offered. According to defendant-appellee Mitchell, such condition does not excuse her from attending hearings otherwise the parties would just absent themselves on hearings on the pre-text of state of low mood, sadness, anxiety, depression, etc.

On May 16, 2013, plaintiff-appellant Manalo, through counsel, filed a Reply to defendant-appellee Mitchell's Opposition stating that depression is not a flimsy reason as it can cause a person to have problems concentrating, remembering details and making decisions or may even cause suicidal tendencies. She again invoked the liberality of this Court to give both parties a chance to litigate their cause fairly. She also stressed that from the pleadings submitted, she has a very good and meritorious claim against defendant-appellee Mitchell.

On May 17, 2013, the RTC of Parañaque City, Branch 196 issued the now appealed Order (Records, pp. 334-336) denying for lack of merit plaintiff-appellant Manalo's Motion for Reconsideration, thereby affirming its earlier ruling dismissing the instant case for lack of interest to pursue a cause and for failure to comply with an order of this Court.

Dissatisfied with the Orders of the RTC, plaintiff-appellant filed an appeal with this Court, raising the following errors to have been committed by the RTC, to wit:

I.

THE LOWER COURT ERRED IN DISMISSING THE COMPLAINT AT THE STAGE OF PRE-TRIAL FOR FAILURE OF THE COMPLAINANT AND HIS (SIC) COUNSEL TO APPEAR DESPITE NOTICE NOTWITHSTANDING THE VALID REASON WHY PLAINTIFF WAS NOT ABLE TO APPEAR BEFORE THE COURT.

II.

THE LOWER COURT ERRED IN DENYING ITS MOTION FOR RECONSIDERATION (Rollo, p. 14).

Section 4, Rule 18 of the 1997 Rules of Civil Procedure explicitly states that it shall be the duty of the parties and their counsel to appear at the pre-trial. The effect of their failure to appear is provided in the subsequent section of the same rule, thus:

“Sec. 5. Effect of failure to appear. — The failure of the plaintiff to appear when so required pursuant to the next preceding section shall be cause for dismissal of the action. The dismissal shall be with prejudice, unless otherwise ordered by the court. A similar failure on the part of the defendant shall be cause to allow the plaintiff to present his evidence ex parte and the court to render judgment on the basis thereof.”

It is clear from the foregoing that if the plaintiff and his/her counsel fails to appear at the pre-trial, then his/her

case will be dismissed. The harshness of the rule is tempered by the second sentence of Section 4, Rule 18 of the 1997 Rules of Civil Procedure where it was provided:

“Sec. 4. x x x. The non-appearance of a party may be excused only if a valid cause is shown therefor or if a representative shall appear in his behalf fully authorized in writing... x x x”.

What constitutes a valid ground to excuse litigants and their counsels from appearing at the pre-trial under Section 4, Rule 18 of the Rules of Court is subject to the sound discretion of a judge (*Spouses Sy vs. Andok's Litson Corp.*, 686 SCRA 188, 194 [2012]). In this case, the RTC exercised its discretion when it finally dismissed the case for plaintiff's lack of interest to pursue her case and for non-compliance with the rules. A careful perusal of the records would show that the RTC has sufficient basis for ruling in this wise. It was reflected on records that the pre-trial conference was reset for several times due to varied reasons. First, it was reset to September 6, 2012, but plaintiff-appellant failed to appear. As her counsel has withdrawn, the pre-trial was reset to October 25, 2012. Again, there was no appearance from plaintiff-appellant nor her counsel. It was reset again to November 29, 2012, plaintiff-appellant and her counsel failed to appear. But because her co-plaintiff Bello appeared (without counsel), the case was again reset to February 7, 2013 but again neither plaintiff-appellant nor her counsel appeared. Despite the several resettings and opportunities given by the RTC, plaintiff-appellant did not accord much importance to the pre-trial conference. In other words, plaintiff-appellant neglected her duty to attend the scheduled pre-trial conferences.

As a last-ditch effort to revive her case, plaintiff-appellant Manalo justified her non-appearance to the pre-trial conference by citing her emotional depression, such that she was not able to engage the services of a lawyer. While emotional illness such as this must not be taken lightly, it is however imperative that it must at least be proven by clear and convincing evidence. Proof is absolutely essential. As can be gleaned from records, no evidence whatsoever was presented to prove her lingering condition. Plaintiff-appellant Manalo claimed that there was a medical certificate issued by her physician but the same was misplaced despite diligent effort to locate the same. Even to date, no effort was made to secure at least a copy of the said medical certificate to prove the severity of her illness. As provided by law, there must be valid cause for not appearing in the pre-trial and a bare allegation of emotional instability is not one of them.

What was indeed apparent from the records are the total showing of lack of interest on the part of plaintiff-appellant and her co-plaintiff to pursue their case. Even co-plaintiff Bello has not done anything to resuscitate their case. Up until now, nothing was heard from her. Despite ample opportunity given by the court (through several resettings), plaintiff-appellant never give importance to the said orders issued by the court. As observed by the RTC, plaintiff-appellant never appeared in any of the said resettings nor manifested in Court that she is in the process of obtaining the services of a lawyer. She could authorize a representative to appear in her behalf but she opted not to do it. This utter neglect of her duty to attend the scheduled pre-trial conferences is what led the RTC to finally dismiss the case.

Thus, We find no cogent reason to set aside the ruling of the RTC considering that plaintiff-appellant Manalo had not offered sufficient justification for her repeated failure to appear in a pre-trial conference. Pre-trial, to stress, should not be ignored or taken for granted. It is not a mere technicality in court proceedings for it serves a vital objective: the simplification, abbreviation and expedition of the trial, if not indeed its dispensation (See: *Chingkoe vs. Republic*, G.R. 183608, July 31, 2013). Indeed, a parties' repeated failure to appear at the pre-trial amounted to a failure to comply with the Rules (*Tolentino vs. Laurel*, 666 SCRA 561, 571 [2012]). As held by the Supreme Court:

“x x x concomitant to a liberal application of the rules of procedure should be an effort on the part of the party invoking liberality to at least explain its failure to comply with the rules. Members of the bar are reminded that

their first duty is to comply with the rules of procedure, rather than seek exceptions as loopholes. Technical rules of procedure are not designed to frustrate the ends of justice. These are provided to effect the prompt, proper and orderly disposition of cases and thus effectively prevent the clogging of court dockets. Utter disregard of these rules cannot justly be rationalized by harking on the policy of liberal construction (*Suico Industrial Corp vs. Lagura-Yap*, 680 SCRA 145, 162, [2012]; citing *Lapid vs. Laurea*, 391 SCRA 277, 285-286 [2002]).

WHEREFORE, the instant appeal is DISMISSED. The appealed Orders dated February 7, 2013 and May 17, 2013 of the Regional Trial Court of Parañaque City, Branch 196, in Civil Case No. 11-0366 are hereby AFFIRMED.

SO ORDERED.

Lopez and Inting, JJ., concur.

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