

**ENGRACIA B. AMBERTI AND MINOR MARIA TERESA AMBERTI,
REPRESENTED BY HER MOTHER, PETITIONERS, VS. HON. COURT OF
APPEALS (NINTH DIVISION), ROMEO D. ZAMORA AND ESTELA
LLENADO ZAMORA...**

G.R. No. L-41808. March 18, 1979

Ponente: TEEHANKEE, J.

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TEEHANKEE, J.:

The Court upholds respondent appellate court's decision setting aside the lower court's decision and remanding the case to allow respondents-defendants to adduce their evidence and reiterates once more that hasty disposal of cases to the extent of denying an urgent and justified motion for cancellation of a scheduled hearing date and for the early resetting thereof (based on defendants' counsel's physical disability to attend the hearing duly certified under oath by his physician and on both counsels' agreement) are not a panacea nor solution to the congestion of court dockets. Judicial discretion must be exercised wisely and not capriciously and it is sound judicial discretion to allow a reasonable transfer of hearing when no substantial rights are affected and the intention to delay is not manifest.

Petitioners as plaintiffs filed on August 17, 1970 with the court of first instance of Rizal at Makati^[1] their complaint against private respondents, the spouses Romeo D. Zamora and Estela Llenado Zamora, for recovery of actual, moral and exemplary damages and attorney's fees from said respondents for alleged criminal and libelous intrigue and conspiracy to take over the marble business and hasten the death on June 11, 1970 of the late Piero Amberti, husband and father of petitioners Engracia and Maria Teresa, respectively.

Respondents as defendants filed their answer on August 31, 1970 traversing the allegations of the complaint as "absolutely false and malicious" and averring that respondent as Piero's physician "was mainly responsible for prolonging [his] life and bringing him along the road to recovery by correct diagnosis and treatment of his lung cancer" and that respondent Estela L. Zamora's alleged libelous letters (which allegedly enraged Piero when he opened and read them and caused his collapse into unconsciousness and death) were private, and privileged communications addressed to her husband and intended for him only. Respondents spouses, as a well-known thoracic surgeon, and doctor of science in chemistry and dean of the Graduate School of the University of Santo Tomas, respectively, filed a counterclaim for respondent Dr. Zamora's medical fees in the total amount of P86,400.00 and for moral and exemplary damages and attorney's fees which was answered and traversed in due course by petitioners.

Pre-trial proceedings were held and thereafter the case was set for trial on the merits which commenced on June 14, 1971 with petitioner Maria Teresa and her "yaya" Yolanda Salgan testifying as witnesses for petitioners-plaintiffs. Hearings continued on July 26 and July 28, 1971 with petitioner Engracia testifying on direct examination and on August 17, 1971 respondents' counsel, Atty. Ricardo J. Francisco, commenced his cross-examination, which he continued on September 14, 1971 until he was "exhausted" and asked for

con- tinuance and the trial court reset the continuation thereof on September 23, 1971, as previously scheduled, remarking that there were many other cases set for that day anyway with a witness from Hong-kong scheduled to testify on the same day. There were also a number of scheduled hearing dates in June, July and August, 1971 that were cancelled for apparently valid reasons either at respondents' counsel's instance without objection of petitioners' counsel or by agreement of both parties' counsels.

On September 22, 1971 or one day before the scheduled date, Atty. Francisco filed an urgent motion for postponement and resetting of the hearings to October 7 and 14, 1971 on the ground that he was "presently suffering from hypertension accompanied with dizzy spells and has been advised by his physician to rest for at least two (2) weeks" and stating that he had communicated with petitioners' counsel who had "sportingly agreed" to the postponement and the resettings. The trial court nevertheless denied the postponement, directed petitioners to proceed with the presentation and termination of their evidence ex parte and rendered its decision and judgment dated October 6, 1971, as follows:

"WHEREFORE, judgment is hereby render-ed in favor of the plaintiffs and against defendants, ordering the latter, jointly and severally, to pay the former the sum of TWELVE THOUSAND PESOS (P12, 000. 00) for death indemnity, ONE HUNDRED THOUSAND PESOS (P100,000.00) for compensatory damages and lost earnings, FIFTY THOUSAND PESOS (P50,000,00) for moral damages, TWENTY THOUSAND PESOS (P20,000,00) for attorney's fees. With costs.

"Defendants' counterclaim is hereby dismissed for lack of merit."

On appeal, reconsideration having been denied by the trial court, respondent Court of Appeals rendered its decision of August 21, 1975, wherein it set aside the appealed decision and remanded the case to the trial court "with instructions to allow the defendants [res-pondents herein] to adduce their evidence," as follows:

"According to the transcript, on September 23, 1971 the following proceedings took place:

'ATTY. DE LOS REYES:

For the plaintiffs, your Honor please.

'ATTY. GONZALEZ:

There is an urgent motion for postponement your Honor please.

'ATTY. DE LOS REYES:

I would like to make a record that this is the fourth postponement it the con-tinuation of the cross examination of my client Mrs. Amberti. While he truth-fully called me up asking me for post-ponement on the ground that he has hyper-tension and sick of kidney trouble, I would like to request, your Honor, in order to meet any technicality he may later on make, that the two dates being asked be intransferrable in character and the cross-examination of the witness be considered ter-minated.

'COURT:

Call the defendants.

'ATTY. GONZALEZ:

Dr. Romeo D. Mendoza, Mrs. Estela Mendoza. (nobody answered the call) [sic] They are not around, your Honor.

'COURT:

At what stage are we now?

'ATTY. DE LOS REYES:

My witness, Mrs. Amberti, is still in cross, your Honor.

'COURT:

Are you ready to rest your evidence?

"ATTY. DE LOS REYES:

I still have another witness, your Honor, please,

'COURT:

All right, considering that this is the fourth postponement filed by counsel for the defendant always at eleventh hour and taking into account that there is no medical certificate attached to the motion for postponement, the same is hereby denied. Ready with your evidence?

'ATTY. DE LOS REYES:

Yes, your Honor. May we make of record that the defendants have been represented by the three (3) counsels Atty. Francisco, Atty. Acuña and Ex-Judge Francisco Geronimo who were supposed to represent them also in the other case and have not appeared in today's hearing.' (t.s. n., pp. 2-5, Sept. 23, 1971)

"It is thus seen that the counsel for the plain-tiffs did not oppose the urgent motion for postponement. In fact, he asked that 'in order to meet any technicality he may later on make, that the two dates being asked be intransferrable in character x x x.'

"It was shown later by a medical certificate attached to the motion for reconsideration that the counsel for defendants, Atty. Ricardo J. Francisco, was suffering from hypertension and he could not have appeared in court on September 23, 1971 without endangering his health. The motion for postponement, therefore, was not for the purpose of delay. The effect of the denial of the motion for postponement was to deprive the defendants of their day in court inasmuch as they were not able to adduce their evidence.

"Considering all the circumstances of the case and the fact that large sums of money are involved, it is in the interest of substantial justice that the decision be set aside and that the defendants be allowed to adduce their evidence. However, the evidence of the plaintiffs already on record shall remain without the necessity of recalling the witnesses for purposes of cross-examination by defendants."

Petitioners' motion for reconsideration having been denied by respondent appellate court per its Resolution of October 15, 1975, petitioners filed on November 4, 1975 the petition at bar. The Court per its Resolution of January 19, 1976, after receiving the parties' pleadings, granted due course and resolved to treat the petition as a special civil action and to require concise memoranda strictly confined to the issues from the parties.

The Court finds no error nor grave abuse of discretion in respondent court's decision setting aside the trial court's decision and remanding the case for the reception of respondents' evidence in support of their defenses to the action and their counterclaim.

1. Although left unsaid by respondent court, the crucial issue that it resolved was that raised by respondents in their first assignment of error, to wit, that they had been denied of their day in court with the trial court's denial of their counsel's urgent motion for postponement or cancellation of the September 23, 1971 hearing and its resetting for October 7 and 14, 1971 as agreed upon with petitioners' counsel. This hinges on whether the trial judge acted with grave abuse of discretion in denying the postponement and reconsideration notwithstanding its having called

counsel's physician who testified to counsel's physical dis-ability to appear at the scheduled hearing. The facts of record so in-dicate, as may be seen from the following:

(a) The undisputed transcript of the proceedings on September 23, 1971 as reproduced in respondent court's deci-sion (and also in petitioners' opposition[2] to respondents' motion for reconsideration dated October 7, 1971 of the trial court's Order of September 23, 1971 denying respondents' urgent motion for post-ponement of the scheduled hearing on said date which order was re-ceived by Atty. Francisco on October 6, 1971) shows quite clearly, contrary to the pretensions of petitioners' counsel now, that he made no objection to the postponement but confirmed to the trial court that he had in effect acceded to the postponement requested by Atty. Fran-cisco "on the ground that he has hypertension and (is) sick of kidney trouble" and agreed with him on the resetting thereof to October 7 and 14, 1971 and expressly requested of the trial court "that the two dates being asked be intransferrable in character and the cross-examination of the witness be considered terminated;"

(b) The same transcript records no objection on petitioners' counsel's part nor mention thereof by the trial court in denying the postponement, but its formal Order of denial served of September 23, 1971 as served on Atty. Francisco on October 6, 1971 recites that the court "(took) into account the vehement objections made by counsel for the plaintiffs in open hearing this morning" which not even petitioner's' counsel now claims to have made occassion. What appears quite clearly is that it was after such denial by the trial court of the postponement of the September 23, 1971 hearing and its rendition of the October 6, 1971 decision against respondents that petitioners' counsel then "vehemently" opposed respondents' motions for reconsideration of the denial order and of the decision itself in an obvious effort to uphold the decision which abruptly cut off respondents' right to present their evidence;

(c) The trial judge's actions were erratic in this regard. When Atty. Francisco attached to his motion for reconsi-deration of the denial order the supporting medical certificate, of his physician, Dr. Benjamin M. Limson, the trial judge required Dr. Limson to appear before him, thus making it understood that Dr. Limson's testimony as to physical condition of Atty. Francisco was vital to his action on the pending motion for reconsideration. Dr. Limson did appear on October 22, 1971 before the trial judge who examined him under oath and he affirmed under oath that Atty. Francisco was in his clinic on September 21, 1971 because of dizzy spells and with very high blood pressure (160/105). Despite his having received the doctor's undisputed assurance under oath that Atty. Francisco was really physically unable to appear at the September 23, 1971 hearing, the trial judge nevertheless by order of November 13, 1971 denied reconsideration of the denial order "for lack of merit, it appearing that a decision had already been rendered in this case on October 6, 1971;" and

(d) The trial court's adverse decision dated Octo-ber 6, 1971 was served on Atty. Francisco on November 2, 1971 and he filed on November 26, 1971 a Motion for Reconsideration of the Decision and for New Trial. The motion for reconsideration assailed point by point the conclusions of fact as "baseless and unfounded", arguing inter alia that there was no competent evidence to justify the trial court's conclusion that Piero Amberti died of heart disease by reason of "extreme anger" and that the alleged libelous letters were written by respondent Estela L. Zamora to her husband and that Piero had no right to open and read them and further submitted an affidavit of merits that respondents "have a good and meritorious defense con-sisting of oral and documentary evidence showing that they are not responsible for the death of plaintiff Piero Amberti, and that the let-ter alluded to in the complaint is not libelous and otherwise is not ac-tionable, as averred in defendants' answer to the complaint. "

The trial judge issued under date of January 12, 1972 his Order denying reconsideration (copy whereof was received by Atty. Francisco on January 18, 1972) on the ground "that the reasons alleged in said motion are a mere reiteration of the grounds averred in defendants' Motion or Reconsideration dated October 7, 1971, and, it appearing that no new matters have been raised therein other than those which have already been taken up and

considered by the court in its order of November 13, 1971." This was patent error on the trial judge's part, because the grounds in respondents' first motion of October 7, 1971 dealt exclusively with asking for reconsideration of the court's order of September 23, 1971 denying postponement of the hearing scheduled on said date and submitted the medical certificate supporting his physical inability to attend the scheduled hearing. On the other hand, the grounds in respondents' second motion of November 26, 1971 dealt mainly with seeking reconsideration of the trial court's decision of October 6, 1971 and presented completely different grounds to obtain the reconsideration of the decision, viz, that it had no factual basis and/or was contrary to law, while praying for a new trial and opportunity to cross-examine petitioners' witnesses and present respondents' evidence and for a new decision dismissing the complaint. Contrary to the statement in the January 12, 1972 Order, these were entirely new matters which had not been taken up in the November 13, 1971 Order which had peremptorily denied re-consideration of the September 23, 1971 Order denying postponement of the September 23, 1971 hearing on the bare ground "that a decision rendered had already been rendered in this case on October 6, 1971".

2. The above facts fully support respondent court's conclusions that opposing counsels had agreed on transferring the scheduled September 23, 1971 hearing to two early dates in the following month which petitioners' counsel requested that the trial court set with an "intransferrable character", that the motion for postponement was not dilatory but due to Atty. Francisco's serious ailment and that the trial court therefore wrongfully deprived respondents of their day in court in denying the postponement and instead terminating the case. Petitioners' counsel is as much to blame, for had he but maintained his "sporting" posture in agreeing to the postponement and asked that the next two hearing dates be intransferrable in character, respondents would have had to adduce their evidence on said dates and if they failed or asked for further postponement, then they would no longer be able to complain of not being afforded their day in court - and in any case, this case would have been adjudicated much earlier. After all, the case was but a year old and the hearings had progressed quite satisfactorily and at a pace beyond the average case.

After respondent court per its decision of August 21, 1975 Ordered the setting aside of the lower court's decision and the remand of the case for the reception of respondents' evidence, petitioners still insisted on coming to this Court and delaying the remand and presentation of evidence in the lower court with averments that respondents had no valid defense and "resorted to dilatory post-ponements" and that respondent court had "ignored the facts, law and jurisprudence to favor the private respondents for no cogent, legal reasons" and "disregarded and skipped decisive issue of decisive importance, like the issue of finality of the judgment appealed from which would render unnecessary resolution of all other issues,"[3] which after the Court's scrutiny have been found to be without basis.

3. The Court has consistently maintained that although a speedy determination of an action implies a speedy trial, speed is not the chief objective of a trial. Careful and deliberate consideration for the administration of justice, a genuine respect for the rights of all parties and the requirements of procedural due process and an adherence to the Court's standing admonition that the discretion granted judges in the granting or denial of motions for postponement and the setting aside of denial orders previously issued "should always be predicated on the consideration that more than the mere convenience of the courts or of the parties in the case, the ends of justice and fairness would be served thereby"[4] are more important than a race to end the trial.

The Court thus stressed in *Macasa vs. Herrera*[5] that "(I)nconsiderate dismissals, even if without prejudice, do not constitute a panacea nor a solution to the congestion of court dockets; while they lend a deceptive aura of efficiency to records of individual judges, they merely postpone the ultimate reckoning between the parties. In the absence of a clear lack of merit or intention to delay, justice is better served by a brief continuance, trial on the merits, and final disposition of the cases before the court." As reiterated in *Cucio*[6] "it is sound judicial discretion

to allow a reasonable transfer of hearing 'when no substantial rights are affected and the intention to delay is not manifest'" in line with the es-tablished rule that "the discretion of trial courts (and of all courts for that matter) 'must be exercised wisely and prudently, never capriciously, with a view to substantial justice.

4. Petitioners' claim that the lower court's judgment had already become final - which was not passed upon by respondent court - is manifestly untenable. The Record on Appeal shows that: Respondents through counsel received a copy of the decision dated October 6, 1971 on November 2, 1971. They filed their motion for reconsideration and new trial on the 24th day, i. e. November 26, 1971. The lower court denied the motion for reconsideration and new trial in its order dated January 12, 1972, a copy whereof was received by respondents on January 18, 1972. Upon receipt of the order denying their motion for reconsideration and new trial on January 18, 1972, they perfected their appeal on the same date January 18, 1972, when there were yet six (6) days remaining of the reglementary 30-day period to appeal.

Petitioners' premise for its claim that respondents motion for reconsideration and new trial was a pro forma motion which did not toll the period for appeal is just as manifestly untenable as shown hereinabove.[7]

ACCORDINGLY, judgment is hereby rendered dismissing the petition. As directed in respondent court's decision, the case shall be forthwith re-manded to the trial court for the reception of respondents' evidence in the case below and for con-tinuation of the trial therein as provided in the Rules of Court.[8] No costs.

Makasiar, Guerrero, De Castro, and Melencio-Herrera, JJ., concur.

* Composed of Ramon C. Fernandez, ponente, Efren I. Plana and Venicio Escolin, JJ.

[1] Then presided by Judge V. M. Ruiz as trial judge; now retired.

[2] Annex DD, Rec. on Appeal, pp. 133-141.

[3] Petition, pp. 25-26.

[4] Cucio vs. Court of Appeals, 57 SCRA 64, 68 (1974) citing Limon vs. Candido, 27 SCRA 1166 (1969) and Piedad vs. Batuyong, 55 SCRA 763 (1974). See also Gapoy vs. Adil, 81 SCRA 739 (Feb. 28, 1978).

[5] 101 Phil. 44 (1957), per Reyes, J.B.L., J.

[6] See footnote 4.

[7] Supra, Paragraph 1, sub-par. (d) hereof.

[8] Rule 30, section 1.

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