

**VIRGIE R. PINILI, JOINED BY HER HUSBAND RODOLFO PINILI,
PETITIONERS, VS. CHRISTIAN DURANA AND/OR MEDIYA DURANA IN
REPRESENTATION OF HER SON WHO IS A MINOR, RESPONDENTS.**

Ponente: GARCIA, R. R. J.

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GARCIA, R. R. J.:

Before Us is a Petition for Review[1] under Rule 42 of the Rules of Court assailing the Decision[2] dated August 29, 2013 of the Regional Trial Court (RTC), Branch 41, Manila which affirmed the Decision[3] dated April 15, 2013 of the Metropolitan Trial Court (MeTC), Branch 29, Manila dismissing herein petitioners' complaint for damages on the ground of failure to prove the cause of action.

THE FACTS

The case stemmed from a complaint for Damages[4] filed by herein petitioners Virgie R. Pinili, joined by her husband Rodolfo Pinili against respondents Christian Durana and/or Mediya Durana in representation of her son who is a minor. The complaint alleged that on June 28, 2011 at around 1:30 o'clock in the afternoon, petitioners noticed a little girl who is about three (3) years old running back and forth in the hallway of the 4th floor of Domus Marie Building A where they are residing. The little girl was repeatedly shouting "mommy" and no one seemed to be looking after her. At around 2:20 o'clock in the afternoon, the little girl was still running and shouting in the hallway and petitioners became worried that something bad might happen to her since it appeared that she was unsupervised. Petitioner Virgie Pinili then opened the gate of her unit and inquired by saying "sino ba ang nagbabantay sa batang ito at hinahayaang tatakbo ng tatakbo at sumigaw. Nakakaistorbo sa mga taong nakatira dito". Respondent Mediya Durana went outside of her unit and shouted at her "walang nagbabantay niyan, magreklamo ka sa magulang niya". Then a certain Cora who was also a neighbor took the child and brought her to respondent Mediya. Suddenly, respondent Christian Durana, son of respondent Mediya, went in front of petitioner Virgie Pinili's gate and angrily kicked the water drum which was outside the gate. Petitioner Virgie Pinili tried to talk to respondents Mediya and her son Christian but they kept shouting at her "matulog ka na lang" and "mag-ingat ka Pinili. Matandang gaga ka". The President of the Homeowners' Association then came out of his unit and stopped the commotion.

After the incident, petitioners claimed that they immediately went to the Office of the Barangay to file a complaint against respondents. The case was also referred to the President of the Homeowners' Association. However, no settlement among the parties was reached before the Barangay and the Homeowners' Association. Petitioners thus filed a complaint for Grave Threats, Grave Oral Defamation and Unjust Vexation against respondents before the City Prosecutor's Office of Manila but the same was dismissed by Assistant City Prosecutor John Erick R. Flordeliza.

Petitioners are now seeking civil damages to vindicate their rights. The acts of respondents in ill-treating and foul-mouthing petitioner Virgie Pinili allegedly violated the Human Relations provisions of the Civil Code particularly Articles 19, 20 and 21 thereof. Petitioners have the right to be respected and respondents have the correlative obligation to respect the said right.

In their traverse[5], respondents alleged that on June 28, 2011, they were requested by a certain Ma. Lourdes Lobo to take care of her three (3)-year old daughter Tintin because she would attend to a very important matter. Respondent Mediya requested her son Christian to take care of Tintin while she was helping a certain Arlene Molina in cooking food for the latter's birthday celebration. Respondent Christian thereafter brought his niece and Tintin outside of their Unit 401 and went in the hallway in front of Unit 405. Respondent Mediya also requested a certain Revilina Molina, Arlene Molina's househelper, to assist respondent Christian in taking care of the two (2) children. Tintin thereafter asked for water and so Revilina Molina brought Tintin back to Unit 401 to drink. After drinking, Tintin went back to the direction of respondent Christian and while passing in front of petitioners' Unit 403, petitioners' dogs suddenly barked at her. She was frightened and so she shouted "mommy". Respondent Christian attempted to get Tintin but petitioner Virgie Pinili suddenly went out of her unit and shouted to the child "Letse kang bata ka, may natutulog dito. Natutulog yung asawa ko. Pinababayaan ka ng yaya mo". Tintin cried but petitioner Virgie Pinili, turning his attention towards Revilina Molina, shouted "Hoy yong batang alaga mo, pinababayaan mo". Revilina Molina was shocked and she said to petitioner Virgie Pinili "Pasensiya na po kayo ma'am kasi may ginagawa kami" and then carried Tintin back to Unit 401. Instead of accepting the apology, petitioner Virgie Pinili allegedly retorted "Yong alaga mo pinababayaan mo, may natutulog dito, kayo lang ang maingay sa fourth floor". It was at this point that Christian followed Revilina Molina and Tintin in going back to Unit 401 and upon passing in front of petitioners' Unit 403, he said "Huwag nyo po kasing ilagay sa may pinto ang mga aso nyo para hindi maingay kapag may dumadaan". Christian was in a hurry and due to the narrow hallway, he accidentally bumped petitioners' large water drum which was placed outside of their door and along the hallway. Petitioner Virgie Pinili got mad and shouted "Tarantado ka Christian, wala kang respeto. Sino ka na magsasabi sa akin na wag kong ilagay sa may pinto ang aso ko. Gago ka". Out of fear, respondent Christian proceeded to their unit and went inside.

Respondents further averred that petitioner Virgie Pinili continued shouting and bad-mouthing the children and so respondent Mediya went out of their unit and confronted petitioner Virgie Pinili. Respondent Mediya allegedly told petitioner Virgie Pinili not to tie her dogs near the door so that they would not bark whenever children are passing in the hallway. She also told her not to bad-mouth the children and to talk to them in a proper way. After asking petitioner Virgie Pinili "Ba't mo pinapatulan and mga bata?", the latter suddenly grabbed her and hit her left shoulder so she stepped back and shouted "Sige saktan mo na naman ako. Sige saktan mo ako". Thereafter, the President of the Homeowners' Association, Manuel Laureta, went out of his unit and pacified the parties.

Respondents also alleged that there were previous incidents wherein petitioners got mad at the children whenever the latter would pass by the hallway causing their dogs to bark. There was also an instance wherein respondent Christian was maltreated by petitioners' son who is a Police Officer. Respondents and some of their neighbors have also previously filed a complaint before the National Housing Authority against petitioner Virgie Pinili and her son for maltreating minors and bad-mouthing neighbors. Verily, there is no basis for petitioners' claim for damages against them considering that the charges of grave threats, grave oral defamation and unlawful detainer filed by petitioners were dismissed by the Manila Prosecutor's Office. They are also entitled to their counterclaim because of the malicious and fabricated complaints filed against them by petitioners.

In a Decision[6] dated April 15, 2013, the MeTC, Branch 29, Manila dismissed petitioners' complaint for damages on the ground of failure to prove their cause of action. The MeTC ratiocinated that petitioners failed to prove by preponderance of evidence their allegations that respondents ill-treated them or uttered defamatory statements against them. While an altercation may have occurred, there is no clear evidence to show that respondents were impelled by evil motive and with sole intent to injure petitioner Virgie Pinili's feelings. The pertinent portions of the Decision read:

In this case, plaintiff's right to be respected and defendants' duty to respect her is a non-issue. However, it does not clearly appear that defendants acted in bad faith or intended to injure plaintiff during that fateful day. The Court cannot be oblivious of the Resolution promulgated by the Office of the City Prosecutor dismissing the cases for Grave Threat, Grave Oral Defamation and Unjust Vexation filed by Mrs. Pinili against herein defendants. Here, the Investigating Prosecutor found the evidence adduced by Mrs. Pinili to be self-serving.

Verily, plaintiff failed to preponderantly prove that defendants ill-treated or uttered unsavoury words to her detriment. Plaintiff's witness, Elsie Canete Tequin, failed to declare in her Judicial Affidavit the "exact" defamatory statements uttered by defendants against plaintiff. Rodolfo Pinili, plaintiff's husband, appears to be a biased witness. Their credibility to tell the truth is quite doubtful. Likewise, the Judicial Affidavits of Alejandra Arintoc could not shed light on the issue because she has no personal knowledge of the altercation between the parties.

x x x

WHEREFORE, the instant complaint is hereby DISMISSED for failure to prove a cause of action.

SO ORDERED.[7]

The appeal filed by petitioners before RTC, Branch 41, Manila was likewise dismissed in a Decision[8] dated August 29, 2013. The RTC held that respondents' version of what actually transpired during the incident was more convincing than that of petitioners. The same was corroborated by the President of the Homeowners' Association who was present during the said incident. Another witness for respondents, Revilina Molina, claimed that no offensive remarks were made towards petitioner Virgie Pinili but it was the latter who hurled invectives against respondents and Tintin. Even on the assumption that respondents actually made such utterances, the same do not indicate a malicious and conscious effort to malign her. No bad faith on the part of respondents was thus established. The pertinent portions of the Decision read:

An analysis of the evidence at hand would suggest that defendants' version of the story is more probable and convincing.

x x x

This fact was ably corroborated by the President of the Domus Mariae Neighborhood Association, Inc., in the person of Mr. Manuel R. Laureta. Both parties noted his presence in the midst of the incident, as he even interceded to pacify them.

Likewise, Revilina Raboy Molina, the housekeeper of Arlene Molina [whom the spouses Pinili referred to as "Cora"] executed a sworn statement to the same end, i.e., no offensive remarks were hurled towards Virgie but it was the latter who bombarded Mediya, Christian and Tin-tin with such kind statements.

And even on the assumption that defendants actually made such utterances against Virgie, the same do not indicate a conscious effort to malign her. As it is, bad faith has not been established.

Upon the other hand, while plaintiff may have the right to call her neighbor's attention as to any matter of concern affecting her and her husband, the same must not also exceed the bounds of propriety.

x x x

Wherefore, the instant appeal is hereby ordered DISMISSED.

SO ORDERED.[9]

Hence, petitioners are now on this recourse raising the following assignment of errors, to wit:

THE RTC, BRANCH 41, MANILA COMMITTED ERRORS WHEN IT DISMISSED THE APPEAL AND FAILED TO CONSIDER THE FOLLOWING MATTERS:

- WHEN IT FAILED TO CORRECTLY FIND AND APPRECIATE IMPORTANT MATERIAL FACTS PREVAILING IN THIS CASE, RESULTING IN ITS FAILURE TO APPLY PROPERLY THE PREVAILING LAW OR PROVISION OF LAW WHICH ENTITLES HEREIN PETITIONERS TO RELIEF AND DAMAGES.
- IN IMPLYING BY WAY OF CONCLUSION THAT THERE WAS NO LEGAL RIGHT OF HEREIN PETITIONERS THAT WAS VIOLATED BY RESPONDENTS AND THAT PETITIONERS WERE NOT ABLE TO PRESENT PREPONDERANCE OF EVIDENCE TO SUPPORT THEIR COMPLAINT.
- IN HOLDING THAT BY INVOKING ARTICLE 26 OF THE CIVIL CODE, PETITIONERS WERE CHANGING THEIR THEORY ON APPEAL, HENCE, CANNOT BE PERMITTED.[10]

THE ISSUE

The pivotal issue is whether or not the RTC erred in affirming the Decision of the MeTC dismissing petitioners' complaint for failure to prove by preponderance of evidence their claim for damages under Article 19, 20 and 21 of the Civil Code.

THE COURT'S RULING

We deny the petition.

Petitioners essentially contend that their cause of action is based on Article 19, in relation to Articles 20 and 21, of the Civil Code warranting the award of damages in their favor. They assert that they were able to prove by preponderance of evidence and through their witnesses that respondents ill-treated and foul-mouthed petitioner Virgie Pinili and even threatened her. Respondent Mediya's act was also impelled by ill motive as she was harboring a grudge against petitioner Virgie Pinili and that there was an existing animosity between them on account of the numerous complaints which petitioner Virgie Pinili filed against respondent Mediya for violation of several house rules implemented by the Homeowners' Association.

We are not persuaded.

The principle of abuse of rights as enshrined in Article 19 of the Civil Code provides:

Art. 19. Every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith.

Corollarily, Articles 20 and 21 of the Civil Code provide:

Art. 20. Every person who, contrary to law, willfully or negligently causes damage to another, shall indemnify the latter for the same.

Art. 21. Any person who willfully causes loss or injury to another in a manner that is contrary to morals, good customs or public policy shall compensate the latter for the damage.

In the case of *Mata v. Agravante, et al.*[11], the Supreme Court held that Article 19 of the Civil Code is not a panacea for all human hurts and social grievances. The common element under Articles 19 and 21 is that the act complained of must be intentional and attended with malice and bad faith. There is no hard and fast rule which can be applied to determine whether or not the principle of abuse of rights may be invoked. The question of whether or not this principle has been violated, resulting in damages under Articles 20 and 21 or other applicable provision of law, depends on the circumstances of each case. We quote:

It has been held that Article 19, known to contain what is commonly referred to as the principle of abuse of rights, is not a panacea for all human hurts and social grievances. The object of this article is to set certain standards which must be observed not only in the exercise of one's rights but also in the performance of one's

duties. These standards are the following: act with justice, give everyone his due, and observe honesty and good faith. Its antithesis is any act evincing bad faith or intent to injure. Article 21 refers to acts contra bonos mores and has the following elements: (1) an act which is legal; (2) but which is contrary to morals, good custom, public order or public policy; and (3) is done with intent to injure. The common element under Articles 19 and 21 is that the act complained of must be intentional, and attended with malice or bad faith. There is no hard and fast rule which can be applied to determine whether or not the principle of abuse of rights may be invoked. The question of whether or not this principle has been violated, resulting in damages under Articles 20 and 21, or other applicable provision of law, depends on the circumstances of each case. x x x

Applying the foregoing in the case at hand, We find no sufficient proof of malice or bad faith or a sinister design on the part of respondents to intentionally vex or humiliate petitioner Virgie Pinili. As consistently held by the MeTC and the RTC, the version of respondents was more credible and worthy of belief than that of petitioners. The affidavits of respondents' witnesses who actually saw what transpired during the incident clearly show that it was petitioner Virgie Pinili who shouted and hurled invectives at respondents. Manuel Laureta, the President of the Homeowners' Association claimed that he was inside unit 404 when he heard the commotion. He narrated that it was petitioner Virgie Pinili who was shouting and hurling offensive remarks at respondents. The same was corroborated by Revilina Molina who was also present during the incident. While respondents might have answered her back, the same does not amount to abusive conduct or impelled by ill motive but was done in defense of themselves and of the child Tintin who was under their care.

Moreover, petitioners failed to support their version of the story with sufficient evidence. It is a basic rule in civil cases that the party having the burden of proof must establish his case by a preponderance of evidence, which simply means evidence which is of greater weight, or more convincing than that which is offered in opposition to it.[12] As correctly observed by both the MeTC and the RTC, petitioners' witnesses failed to corroborate petitioners' asseverations. In fact, Elsie Tequin failed to specify the actual defamatory statements made by respondents against petitioner Virgie Pinili, while Alejandra Arintoc had no personal knowledge of the incident which transpired.

In all, the circumstances do not warrant an award of damages in favor of petitioners. We reiterate the basic postulate that in the absence of proof that there was malice or bad faith on the part of the respondents, no damages can be awarded.

Else, petitioners asseverate that the RTC erred in holding that petitioners cannot change their theory on appeal when they invoked Article 26 of the Civil Code in addition to Articles 19, 20 and 21 in claiming damages against respondents. Suffice it to state that a party who deliberately adopts a certain theory upon which the case is tried and decided by the lower court will not be permitted to change the theory on appeal.[13] Points of law, theories, issues and arguments not brought out in the proceedings below will ordinarily not be considered by the reviewing court as they cannot be raised for the first time on appeal because this would be offensive to the basic rules of fair play, justice and due process.[14] Hence, We find no error on the part of the RTC when it did not allow petitioners to pursue a new theory on appeal.

WHEREFORE, premises considered, the instant Petition for Review is hereby DENIED. The Decision dated August 29, 2013 of the Regional Trial Court, Branch 41, Manila is AFFIRMED.

SO ORDERED.

De Guia-Salvador, R., (Chairperson), and Bueser, D. Q., JJ.,

[1] Rollo, pp. 9-65

- [2] Rollo, pp. 307-321, penned by Presiding Judge Rosalyn D. Mislos-Loja
- [3] Rollo, pp. 301-305, penned by Presiding Judge Rosalia I. Hipolito-Bunagan
- [4] Rollo, pp. 75-78
- [5] Answer with [Counterclaim] (with Special and Negative Defenses), Rollo, pp. 104-116
- [6] Supra at Note 3
- [7] Rollo, pp. 304-305
- [8] Supra at Note 2
- [9] Rollo, pp. 320-321
- [10] Vide: Assignment of Errors, pp. 10-11
- [11] G.R. No. 147597, August 6, 2008
- [12] Heirs of Cruz-Zamora v. Multiwood International, Inc., G.R. No. 146428, January 19, 2009; Dutch Boy Phil. v. Seniel, G.R. No. 170008, January 19, 2009
- [13] Sps. Topacio v. Banco Filipino Savings, G.R. No. 157644, November 17, 2010
- [14] Romago Electric Co. v. Court of Appeals, G.R. No. 125947, June 8, 2000

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