

MARIANO B. ARROYO, PLAINTIFF AND APPELLEE, VS. HOSPITAL DE SAN PABLO, DEFENDANT AND APPELLANT.

G.R. No. L-659. September 30, 1946

Ponente: PERFECTO, J.

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PERFECTO, J.:

On August 19, 1946, defendant and appellant filed a motion for new trial for the purpose of presenting the entire transcript of the testimony in the case of Dolores Vasquez toroyo vs.

Mariano B. Arroyo, No. 9031 of the Court of First Instance of Iloilo, or so much thereof as is pertinent, alleging that it is a newly discovered evidence on the existence of which appellant was notsware prior to the trial in the lower court, and that said evidence contradicts plaintiff and appellee's claim for salaries from May, 1911, to May, 1945, in the amount of P241,600, and which is of such a character as probably will change the result. Plaintiff-appellee opposed the motion.

Section 2 of Rule 55 indicates the procedure that may be followed in disposing of the motion.

"SEC. 2. Hearing and Order.— The motion, with the evidence, shall be heard with the record on appeal. The Court of Appeals shall consider the new evidence together with that adduced on the trial below, and may grant or refuse a new trial, or may make such order, with notice to both parties, as to taking further testimony, either orally in court, or by depositions, or render such other Judgment as ought, in view of the whole case, to be rendered, to be rendered, upon stich terms as it may deem just."

Upon deliberation on the allegations and arguments of both parties, and on the nature of the new evidence that defendant-appellant proposes to present, the Court arrived at the conclusion that, to better serve the interest of justice without any unnecessary delay, the defendant-appellant be granted the opportunity to present said evidence, so the same may be taken into consideration when this appeal is submitted for our decision, without the necessity of setting aside in the meantime the appealed decision.

It is resolved to order the lower court to set this oase for hearing as soon as practicable in order that defendant and appellant may present the transcript of the testimony in Civil Case No. 9031 of the Court of First Instance of Iloilo, entitled Dolores Vasquez Arroyo vs. Mariano B. Arroyo, or so much thereof as is pertinent to this case, with the right of plaintiff-appellee to present such rebuttal evidence is pertinent, and as soon as possible to transmit said evidence to this Gourt, The time within which appellant must submit his brief is suspended pending receipt by this Court of said evidence.

Moran, C.J., Feria, Pablo, Hilado, Bengzon, Briones, Padilla, and Tuason, JJ., concur.

PARAS, J.:

I vote to consider the motion for a new trial when the case is decided on the merits.

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