

VIRON TRANSPORTATION CO., INC., PETITIONER, VS. COURT OF APPEALS, PANTRANCO NORTH EXPRESS INC. AND DAMASO V. VENTURA, RESPONDENTS.

G.R. No. 117020. April 04, 2003

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

This is a petition for review of the Decision[1] of the Court of Appeals in CA-G.R. CV No. 39066 reversing the Decision[2] of the Regional Trial Court of Manila, Branch 41, in Civil Case No. 91-58888 and remanding the case to the trial court for further proceedings.

The Antecedent Proceedings

On October 9, 1991, petitioner Viron Transportation Co., Inc., filed a complaint for damages against respondents Pantranco North Express Co., Inc. and Damaso V. Ventura, docketed as Civil Case No. 91-58888, with the Regional Trial Court of Manila, Branch 41. The petitioner alleged, inter alia, in its complaint a quo that:

2. - That plaintiff (herein petitioner) being engaged in a land transportation business is the registered owner of a passenger bus identified as Viron Transit Bus No. 58 with Plate No. AVC-255;
3. - That defendant (respondent) Pantranco, being engaged in transportation business, is the registered owner of Pantranco Bus No. 1104, Plate No. AVH-112 while defendant (respondent) Ventura is the driver and person-in-charge of a northbound Pantranco Bus No. 1104 bearing Plate No. AVH-112 on October 4, 1991;
4. - That on 4 October 1991 at 11:45 A.M. or thereabout, while said Viron Transit Bus No. 58 with Plate No. AVC-255 driven prudently and slowly by plaintiff's regular driver-employee Alberto Casino, then proceeding slowly towards the north direction from the right shoulder (eastern shoulder) of the National Highway with its left signal lights on at Brgy. Legaspi, San Manuel, Tarlac, said defendant while driving said Pantranco Bus No. 1104 in a reckless and imprudent manner hit and bumped from behind the rear left portion of said Viron Transit Bus No. 58, thereby causing actual damage to herein plaintiff in the amount of P34,900.00 representing costs of repair and/or replacement of parts, plus labor as well as loss of expected income;
5. - That by reason of the recklessness, imprudence and negligence of defendants and for their failure to pay plaintiff the damages which the latter sustained despite repeated demands, herein plaintiff was forced to engaged (sic) the services of counsel to file the instant complaint at an agreed honorarium of 25% of the total claim hereof as and for attorney's fees;
6. - That to set an example for public good so that others who are similarly situated or minded must, in the exercise of their right and performance of their duties, act with outmost caution and extra care in handling his assigned vehicle, said defendant should be made to pay plaintiff an amount of no less than P50,000.00 as exemplary damages;
7. - That the incident would have not ensued had defendant Pantranco North Express, Inc. exercised due diligence of a good father of a family in selecting and supervising its driver, herein defendant Damaso

Ventura.[3]

The petitioner prayed therein as follows:

WHEREFORE, it is respectfully prayed of this Honorable Court that after due hearing a judgment be rendered in favor of plaintiff and against defendants, ordering the defendants to pay jointly and severally plaintiff the following:

- P34,900.00, representing cost of materials, replacement of parts, labor and unearned income of plaintiff;
- P50,000.00 as exemplary damages;
- 25% of the total claim hereof as and for attorney's fees; and
- Cost of litigation.

General relief is prayed therefor.[4]

The respondents, through counsel, Atty. Ricardo L. Saclayan, interposed special and affirmative defenses in their answer to the complaint, thus:

SPECIAL and/or AFFIRMATIVE DEFENSES

5. Plaintiff has no cause of action against defendants;

6. The direct and proximate cause of the subject accident was due to the recklessness, imprudence and negligence of the plaintiff's driver-employee – Alberto Casino and of plaintiff itself, for failure to exercise the required diligence in the selection, supervision and control of its employees including and particularly said driver A. Casino;

7. Defendant – Damaso Ventura is a professional, experienced and skilled driver. He has been very careful and prudent, both before and during the subject accident;

8. Defendant – Pantranco North Express, Inc. has always exercised the due diligence of a good father of the family in the selection, supervision and control of all its employees including its driver, Damaso Ventura;

9. Plaintiff's claim is baseless, excessive, imaginary and speculative and filed for the purpose of harassment;[5]

The respondents also incorporated in their answer compulsory counterclaims for the amount of P20,000.00.

On December 9, 1991, the trial court issued a notice of pre-trial conference on January 10, 1992.[6] However, the pre-trial was reset to February 7, 1992 at 8:30 a.m. on joint motion of the parties on the ground that they were negotiating for the amicable settlement of the case.[7]

During the pre-trial on February 7, 1992, Ma. Josefina T. Payongayong appeared and informed the court that she was representing Atty. Antonio P. Pekas, the counsel of the respondents, and prayed for a resetting on the ground that said lawyer was not available for the pre-trial. However, the court denied the motion upon finding that the counsel of record of the respondents was Atty. Saclayan, not Atty. Pekas.

The court issued an order on said date declaring the respondents as in default and setting the reception, ex parte, of the evidence of the petitioner on March 13, 1992.[8] During the hearing, the petitioner presented Alberto Casino and marked its documentary evidence. However, the petitioner failed to complete its evidence and thus prayed for a continuance. The court granted the motion and set the case for hearing for the continuation of the presentation of petitioner's evidence on March 26, 1992.[9] However, on March 24, 1992, respondent Pantranco Co., Inc., through Atty. Pekas, filed a motion to lift order of default. Appended to the motion was the Secretary's

Certificate that said counsel was authorized by the respondent company to

... represent the corporation in the pre-trial proceedings of the said case, to negotiate or enter into any compromise agreement pertaining to the same, and to execute any document pertinent thereto, in accordance with Section 1, Rule 20 of the Revised Rules of Court. They are also authorized to represent the corporation during the trial of the said case.[10]

On April 10, 1992, the court issued an order granting the motion and lifting its order of default against the respondents.[11] On April 27, 1992, the branch clerk of court issued a mimeographed notice of hearing on May 22, 1992. However, typewritten on the notice were the words "Pre-Trial Conference." [12] The respondents and Atty. Saclayan, counsel of respondent Ventura, received on May 5, 1992 their respective copies of said notice.

During the pre-trial conference on May 22, 1992, only petitioner's counsel appeared. Neither respondent Ventura nor Atty. Saclayan and Atty. Pekas appeared. On petitioner's motion, the court issued an order declaring the respondents as in default and allowing the petitioner to continue presenting its evidence, ex parte, on June 19, 1992.[13] The petitioner presented Atty. Orlando N. Asuncion and Maximo Candaño, its manager, as witnesses. The petitioner forthwith offered its documentary evidence and rested its case. The court issued an order on the same day declaring that the case was submitted for decision as of said date.[14]

On July 13, 1992, the Office of the Government Corporate Counsel (OGCC) entered its appearance as counsel for the respondents.[15] On July 16, 1992, the court rendered judgment in favor of the petitioner, the decretal portion of which reads:

WHEREFORE, judgment is hereby rendered in favor of the plaintiff and against the defendants ordering the defendants to pay plaintiff the sum of P25,900.00 as and by way of actual damage and the further sum of P5,000.00 as and by way of attorney's fees and expenses of litigation.

Costs against the defendants.

SO ORDERED.[16]

On July 24, 1992, the respondents, through the OGCC, filed a motion to lift and/or set aside the trial court's Order of Default, dated May 22, 1992, alleging, inter alia, that:

1. Defendant is now a government-owned and controlled corporation and as such it is represented by the Office of the Government Corporate Counsel, the statutory counsel of all government-owned and controlled corporations;
2. Prior to the appearance of the OGCC, Defendants were represented by a private counsel in the person of Atty. Ricardo L. Saclayan, the counsel of record;
3. Because of the COA and statutory requirements that government-owned and controlled corporations must be represented by the OGCC, Defendant Pantranco recently endorsed all its cases to the OGCC;
4. Because of the numerous cases involved in the turn over, the previous counsel of record failed to move for a reconsideration of the default order. Thus, when the instant case reached the OGCC, the undersigned counsel made the discovery and is thus filing the instant motion. The failure of the previous counsel may be considered as excusable negligence;[17]

The respondents prayed in their motion that:

WHEREFORE, premises considered, it is respectfully prayed that the order of default issued by this Honorable Court be reconsidered and set aside and in lieu thereof Defendants' rights be restored and that, subsequently, Defendants be allowed to cross-examine the witnesses of the plaintiff and to present their evidence in support

of their defense.

Further relief and remedies which may be deemed just and equitable under the premises are likewise prayed for.[18]

The respondents set the motion for hearing on August 7, 1992 at 8:30 a.m. appending thereto an affidavit of merit reiterating their special and affirmative defenses in their answer to the complaint.[19]

On July 27, 1992, the trial court issued an order merely noting the said motion considering that it had already rendered a judgment against respondents.[20] The respondents received a copy of the trial court's decision on July 31, 1992 and on August 10, 1992, they filed their notice of appeal therefrom to the Court of Appeals.[21]

In their petition filed with the Court of Appeals, the respondents assailed the decision of the trial court contending that:

I

THE LOWER COURT ERRED IN DECLARING THE DEFENDANTS AS IN DEFAULT AND IN NOT LIFTING THE ORDER DECLARING DEFENDANT AS IN DEFAULT.

II

THE LOWER COURT ERRED IN FINDING THE DEFENDANTS LIABLE FOR DAMAGES[22]

On the first assignment of error, the respondents averred that they had meritorious defenses and it behooved the trial court to liberally apply the Rules of Court in their favor and to lift its Order of Default dated May 22, 1992 and set aside its judgment so that the respondents could cross-examine petitioner's witnesses and adduce evidence on their defenses. On the second assignment of error, the respondents averred that the proximate cause of the collision was the negligence of respondent company's driver, Alberto Casino; hence, the petitioner was not entitled to damages. The respondents prayed that, after due proceedings, judgment be rendered in their favor as follows:

P R A Y E R

WHEREFORE, it is respectfully prayed of this Honorable Court that judgment be rendered reversing the decision of the lower court dated July 16, 1992, issued in favor of the defendant-appellant as follows –

- a) Ordering the court a quo to lift the order declaring defendant as in default.
- b) Allowing the defendant-appellant to present its evidence.
- c) Ordering the plaintiff-appellee to pay the defendant-appellant the amount of twenty thousand pesos (P20,000.00) by way of attorney's fees and expenses of litigation.

Such other reliefs and remedies as may be deemed just and equitable are likewise prayed for.[23]

On the other hand, the petitioner averred in its brief that the proper remedy of the respondents, after service of the trial court's decision, was to file a motion for a new trial under Rule 37 of the Rules of Court and not a motion to lift the May 22, 1992 Order of Default conformably with the decision of this Court in *Circle Finance Corporation v. Court of Appeals*. [24] The petitioner further asserted that the respondents were not entitled to a liberal application of the Rules of Court because their motion to lift order of default was merely dilatory.

On the second assignment of error, the petitioner posited that the respondents could not obtain relief from the Court of Appeals conformably with the decision of this Court in *Construction Service of Australia (Philippines) v. Court of Appeals*, [25] the respondents having been declared as in default.

On June 26, 1994, the Court of Appeals rendered a decision reversing the decision of the trial court and its Order dated May 22, 1992 declaring the respondents as in default. The appellate court ordered the remand of the case to the trial court for further proceedings:

“WHEREFORE, PREMISES CONSIDERED, the decision appealed from is hereby REVERSED and the order declaring defendant-appellant as in default is hereby set aside. Let the records of this case be remanded to the trial court for further proceedings.

SO ORDERED.”[26]

The Court of Appeals declared that the trial court committed reversible error in setting the case for a second pre-trial conference on May 22, 1992 after lifting its Order dated February 7, 1992. Citing the decision of this Court in *Development Bank of the Philippines v. Court of Appeals*,^[27] the Court of Appeals declared that a second pre-trial conference after an order of default had been lifted was not sanctioned by the Rules of Court and case law. What the trial court should have done after lifting its Order of Default dated February 7, 1992 was to set the case for hearing on the merits with due notice to the parties.

The petitioner moved for a reconsideration of the decision of the Court of Appeals contending that the motion to lift order of default of the respondents was filed only after the trial court had rendered its decision.^[28] The proper remedy of the respondents was allegedly to file a motion for new trial under Rule 37 of the Rules of Court. The Court of Appeals denied the motion in its Resolution dated August 30, 1994.^[29]

The petitioner forthwith filed with this Court a petition for review of the decision and resolution of the Court of Appeals under Rule 45 of the Rules of Court.

The petitioner avers that the Court of Appeals committed reversible error in (a) resolving an issue which was not assigned by respondents as error in their brief; (b) not finding that the pre-trial on May 22, 1992 was merely a continuation of the aborted pre-trial on February 7, 1992; and (c) setting aside the proceedings including the trial court’s Order dated May 22, 1992 and its Decision dated July 24, 1992.

For their part, the respondents argue that the Court of Appeals did not commit any grave abuse of its discretion in setting aside the pre-trial conference on May 22, 1992 and the order of the trial court on said date and its decision in light of the finding of the Court of Appeals that the pre-trial conference on May 22, 1992 was the second pre-trial and, hence, was not sanctioned by the Rules of Court and case law.

The petition is barren of merit.

On the first issue, the petitioner avers that the respondents in their brief with the Court of Appeals did not assail the propriety or validity of the pre-trial conference set on May 22, 1992. The Court of Appeals was allegedly precluded from considering and resolving an issue not assigned as error by the respondents in their brief. The Court of Appeals nevertheless set aside the pre-trial conference set on May 22, 1992 and the order of default of the trial court on said date and its decision on the ground that the pre-trial on May 22, 1992 was not sanctioned by the Rules of Court and case law. The petitioner submits that in so doing the Court of Appeals committed reversible error.

We do not agree with the petitioner. While it may be true that in their brief with the Court of Appeals the respondents did not assign as error the propriety of the pre-trial conference on May 22, 1992, however, the Court of Appeals was not proscribed from delving into and resolving the said issue. In *Catholic Bishop of Balanga v. Court of Appeals*,^[30] we held that:

Guided by the foregoing precepts, we have ruled in a number of cases that the appellate court is accorded a

broad discretionary power to waive the lack of proper assignment of errors and to consider errors not assigned. It is clothed with ample authority to review rulings even if they are not assigned as errors in the appeal. Inasmuch as the Court of Appeals may consider grounds other than those touched upon in the decision of the trial court and uphold the same on the basis of such other grounds, the Court of Appeals may, with no less authority, reverse the decision of the trial court on the basis of grounds other than those raised as errors on appeal. We have applied this rule, as a matter of exception, in the following instances:

- (1) Grounds not assigned as errors but affecting jurisdiction over the subject matter;
- (2) Matters not assigned as errors on appeal but are evidently plain or clerical errors within contemplation of law;
- (3) Matters not assigned as errors on appeal but consideration of which is necessary in arriving at a just decision and complete resolution of the case or to serve the interests of justice or to avoid dispensing piecemeal justice;
- (4) Matters not specifically assigned as errors on appeal but raised in the trial court and are matters of record having some bearing on the issue submitted which the parties failed to raise or which the lower court ignored;
- (5) Matters not assigned as errors on appeal but closely related to an error assigned; and
- (6) Matters not assigned as errors on appeal but upon which the determination of a question properly assigned, is dependent.

In this case, the respondents assailed the order of the trial court dated May 22, 1992 declaring them as in default and prayed that the order and decision of the trial court be set aside and the case remanded to the trial court to enable them to cross-examine petitioner's witnesses as well as to adduce their evidence. The issue of the propriety of a second pre-trial conference on May 22, 1992 after the trial court lifted its February 7, 1992 Order of Default was intertwined with the issues posed by the respondents in their brief.

It was proper for the Court of Appeals to resolve the issue on the propriety of the pre-trial conference on May 22, 1992 to enable said court to arrive at a just and complete resolution of the appeal and serve the interests of justice. Besides, the petitioner did not assail in its motion for reconsideration filed with the Court of Appeals the actuation of said court of delving into and resolving the issue of the propriety of the trial court setting a second pre-trial conference after lifting its February 7, 1992 Order. The petitioner merely alleged in its motion for reconsideration that the proper remedy of the respondents was to file a motion for new trial under Rule 37 of the Rules of Court and not to file a motion to lift the May 22, 1992 Order of the trial court.

On the second issue, we do not agree with the petitioner's contention that the pre-trial on May 22, 1992 was only a continuation of the aborted pre-trial conference on February 7, 1992. Nor do we agree with the petitioner's assertion that the respondents agreed to a pre-trial conference on May 22, 1992. When the trial court issued its February 7, 1992 Order declaring the respondents as in default and allowed the petitioners to adduce its evidence, *ex parte*, the court terminated the pre-trial. Indeed, the petitioner commenced presenting its evidence on March 13, 1992 although it failed to complete its evidence and rest its case on said date.^[31] When the trial court lifted on April 10, 1992 its February 7, 1992 Order and set the case for a pre-trial conference on May 22, 1992, the said pre-trial conference was the second set by the trial court and not merely a continuation of the pre-trial terminated on February 7, 1992. The lifting on April 10, 1992 of the February 7, 1992 Order of the court had the effect of restoring to the respondents their right to notice of subsequent proceedings and to take part in the trial. The April 10, 1992 Order of the trial court did not revert the action to the pre-trial stage or authorize much less render mandatory a second pre-trial:

The defendant Pioneer Insurance & Surety Corp, having complied with the order of the Court to appear and

attend this pre-trial, and had manifested its opposition to settling the case amicably, said party may no longer be compelled to attend a second pre-trial hearing, and neither may it be punished by the court by its order declaring said defendant as in default. The mandatory character of a pre-trial and the serious consequences confronting the parties in the event that each party fails to attend the same must impose a strict application of the Rule such that where we find no authority for the Court to call another pre-trial hearing, as in fact there is none in said Rule, the conclusion is inescapable that the respondent Judge committed a grave and serious abuse of discretion and acted in excess of jurisdiction in declaring defendant Pioneer Insurance & Surety Corp. as in default for failure to attend the second pre-trial called by the Judge on February 29, 1972. In other words, there is nothing in the Rules that empowers or authorizes the court to call a second pre-trial hearing after it has called a first pre-trial duly attended by the parties, and lacking such authority, the court perforce lacks the authority to declare a failure to prosecute on the part of plaintiff for failing to attend such second pre-trial; it also lacks the authority to declare the defendant 'as in default' by reason of the latter's failure to be present at the said second pre-trial.[32]

Instead of setting the case for a second pre-trial on May 22, 1992, the trial court should have set the case for hearing for the cross-examination by the respondents of the petitioner's first witness and for it (petitioner) to present other witnesses and thereafter rest its case. By setting the case for a second pre-trial, the trial court acted without authority; hence, the notice of pre-trial conference issued by the branch clerk of court on April 25, 1992 setting the pre-trial on May 22, 1992 and the trial court's order of even date declaring the respondents as in default for their failure to appear therein are null and void. Consequently, the judgment of the trial court is likewise null and void. While it may be true that in *Young v. Court of Appeals*,^[33] this Court held that the parties may agree to hold a second pre-trial after the first pre-trial was aborted and the order of default of the court lifted, however, said ruling is not applicable in this case because there is no proof on record that the respondents agreed to a second pre-trial. Although the respondents received the April 27, 1992 Notice of Pre-Trial Conference but did not file any motion to set aside the same, however, the omission did not constitute consent to the second pre-trial. For if the respondents consented to a second pre-trial, they should have appeared during the pre-trial conference set on May 22, 1992. The respondents and their counsel did not.

In *Circle Financial Corporation v. Court of Appeals*,^[34] we held that upon service of a judgment by default, the remedy of the losing party was to file a motion for a new trial under Rule 37 of the old Rules of Court within the period for appeal in relation to Section 2 of Rule 41 of the same rules. However, said party is not precluded from appealing the judgment and assailing the same for being contrary to the evidence or to the law even without first filing a motion for new trial.^[35]

In this case, the respondents interposed their appeal from the decision of the trial court to the Court of Appeals and assailed therein the trial court's judgment as contrary to the evidence and law.

In fine, the Court of Appeals correctly held that the trial court acted without authority when it set a second pre-trial conference on May 22, 1992, declared anew the respondents as in default, received ex parte petitioner's evidence and rendered judgment based thereon. The Court of Appeals likewise correctly ruled that the respondents were deprived of their right to cross-examine the petitioner's witnesses and adduce evidence in their behalf. Consequently, the nullification of the trial court's May 22, 1992 Order and decision is proper.

IN LIGHT OF ALL THE FOREGOING, the petition is DENIED. The Decision, dated June 26, 1994, of the Court of Appeals in CA-G.R. CV No. 39066 is AFFIRMED. Costs against the petitioner.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Quisumbing, and Austria-Martinez, JJ., concur.

[1] Penned by Associate Justice Eugenio S. Labitoria with Associate Justices Emeterio C. Cui and Fermin A. Martin, Jr. concurring.

[2] Penned by Judge Domingo D. Panis.

[3] Records, pp. 1-3.

[4] Id. at 3.

[5] Id. at 12.

[6] Id. at 14.

[7] Id. at 31.

[8] Id. at 36.

[9] Id. at 40.

[10] Id. at 46.

[11] Id. at 53.

[12] Id. at 62.

[13] Id. at 64.

[14] Id. at 69.

[15] Id. at 71.

[16] Id. at 73.

[17] Id. at 90-91.

[18] Id. at 92.

[19] Id. at 93-94.

[20] Id. at 97.

[21] Id. at 101.

[22] CA Rollo, p. 20.

[23] Id. at 23-24.

[24] 196 SCRA 166 (1991).

[25] 173 SCRA 344 (1989).

[26] CA Rollo, p. 64.

[27] 169 SCRA 409 (1989).

[28] CA Rollo, pp. 102-105.

[29] Id. at 107.

[30] 264 SCRA 181 (1996).

[31] Development Bank of the Philippines v. Court of Appeals, supra; Young v. Court of Appeals, 204 SCRA 584 (1991).

[32] Development Bank of the Philippines v. Court of Appeals, supra.

[33] Supra note 20.

[34] Supra note 22.

[35] Sec. 2. Judgments or orders subject to appeal. – Only final judgments or orders shall be subject to appeal. No interlocutory or incidental judgment or order shall stay the progress of an action, nor shall it be the subject of appeal until final judgment or order is rendered for one party or the other.

A judgment denying relief under Rule 38 is subject to appeal, and in the course thereof, a party may also assail the judgment on the merits, upon the ground that it is not supported by the evidence or it is contrary to law.

A party who has been declared in default may likewise appeal from the judgment rendered against him as contrary to the evidence or to the law, even if no petition for relief to set aside the order of default has been presented by him in accordance with Rule 38.

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