

**FLORENTINA STO. DOMINGO-DAVID, HELEN SD.
DAVID-EVANGELISTA, LOURDES SD. DAVID AND EDGARDO SD.
DAVID, PETITIONERS, VS. HON. LEUTERIO F. GUERRERO, PRESIDING
JUDGE RTC TAGAYTAY, BR...**

G.R. No. 120965. September 25, 1998

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

This is a special civil action under Rule 65 filed by petitioners Florentina Sto. Domingo-David, Helen SD. David-Evangelista, Lourdes SD. David and Edgardo SD. David, to annul and set aside the Order dated June 15, 1995, of respondent Judge Eleuterio Guerrero in Civil Case No. TG-1440 (Florentina Sto. Domingo-David et. al., vs. Philippine National Construction Corporation, et. al.)

Civil Case No. TG-1440[1] stemmed from another Civil Case docketed as TG-1428[2] earlier filed by petitioners against private respondents involving the same cause of action which was for annulment of title, recovery of possession and damages. The first case (TG-1428) was dismissed[3] by respondent Judge on the basis of a motion to dismiss filed by private respondent that petitioners failed to comply with Administrative Circular No. 04-94. This circular requires the filing of a Certificate of Non-Forum Shopping in the filing of complaints, petitions and other initiatory pleadings. No motion for reconsideration was filed with regard to the dismissal of the first complaint. On October 19, 1994, the second case (TG-1440) was filed with the same court and in opposition to such filing, private respondent once again filed a motion to dismiss in view of the previous dismissal of the first case (TG-1428). Private respondent alleged that two main reasons should account for the court's dismissal of Case TG-1440: one is that, there was no indication that the first dismissal is without prejudice, thus the refiling of the case can no longer be given due course; second, petitioners did not even bother to file a motion for reconsideration as to the dismissal of Case TG-1428, thereby making the dismissal final and executory.[4] In an Order dated December 1, 1994,[5] respondent Judge once again granted private respondent's motion and dismissed petitioners' complaint reasoning that the principle of res judicata applies thereby making Case TG-1440 barred by prior judgment. Petitioners then filed their motion for reconsideration, and in an Order dated February 6, 1995, respondent Judge granted the motion, changed his previous ruling, and reinstated the complaint. He ruled that the failure of petitioners to comply with Administrative Circular 04-94 was due to inadvertence and oversight.[6]

This time, it was private respondent, which filed a motion for reconsideration reiterating its previous arguments contained in its prior motions for dismissal. In an Order dated June 15, 1995,[7] respondent Judge reverted to his previous ruling by granting the motion for reconsideration of private respondent, thereby, dismissing the complaint. In support of the order, jurisprudence was cited to impress upon the parties that "a dismissal on a technicality is no different in effect and consequences from a dismissal on the merits." [8] Furthermore, respondent Judge cited jurisprudence which made reference to Sections 1, 2 and 3 of Rule 17 of the Rules of Court which are provisions relating to dismissal of actions. However, upon our perusal, it is only Section 3 of Rule 17[9] which is

pertinent in the resolution of the case. Parenthetically, Section 3 Rule 17 of the Rules of Court is still in essence the same as Section 3 Rule 17 of the 1997 Rules of Civil Procedure.

The order dated June 15, 1995 is now questioned before us for having been issued with grave abuse of discretion.

Petitioners' main argument is that the failure to comply with Administrative Circular 04-94 does not predicate a dismissal with prejudice. Their interpretation regarding the dismissal of the first case (TG-1428) is that since it did not expressly indicate that it is a dismissal with prejudice, it could be presumed that it is one without prejudice and that the same can be refiled. Following this premise, petitioners believed that since the dismissal is likewise not an adjudication on the merits then it dispenses with the necessity of filing a motion for reconsideration and that their remedy would be to refile the complaint.[10]

Respondents' maintain that the dismissal of case TG-1428 for failure to comply with Administrative Circular 04-94, was tantamount to a judgment based on the merits. Thus, when no motion for its reconsideration was filed the order became final and executory. Furthermore, they argued that the second complaint should no longer be allowed for being barred under the principle of *res judicata*. As to the nature of the dismissal, respondents interpret it to be a dismissal with prejudice since there was no indication that the court reserved to petitioners the right to refile the complaint.[11]

We find the petition meritorious. Respondents' legal contentions are untenable in view of the proper interpretation of Administrative Circular 04-94.

Administrative Circular 04-94 has been incorporated in the 1997 Rules of Civil Procedure under Section 5 Rule 7. The second paragraph pertinent to our discussion is quoted below as follows:

"Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing. The submission of a false certification or non-compliance with any of the undertakings therein shall constitute indirect contempt of court, without prejudice to the corresponding administrative and criminal actions. If the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions." (Emphasis Supplied)

There was no error in the first order of respondent Judge dismissing Case TG-1428 for failure to comply with the circular, but there was a misapplication of the law when he considered the dismissal as a final disposition of the case on the merits. The general intent of Administrative Circular 04-94 is a dismissal without prejudice to refiling the complaint. However, the court may specifically provide that the dismissal is with prejudice.[12] If respondent Judge intended that the first order is that the dismissal is with prejudice[13] then he should have categorically specified so in the dispositive portion of said first order.

We likewise disagree with private respondent's allegation in its Comment that petitioners failure to file a motion for the reconsideration of the Order of respondent Judge's order dated 15 June 1995, before elevating the case to us, has among other reasons, made the judgment final and executory. It is settled in jurisprudence that a motion for reconsideration as a prerequisite for the filing of an action under Rule 65, Rules of Court, may be dispensed with where the issue involved is purely one of law, as in the present case.[14]

WHEREFORE, the petition is hereby GRANTED. The challenged Order dated June 15, 1995 in case TG-1440 is hereby SET ASIDE and the complaint therein REINSTATED. The respondent Judge is ordered to proceed therein accordingly.

SO ORDERED.

Davide, Jr., (Chairman), Bellosillo, Vitug and Panganiban, JJ., concur.

[1] Annex "E", COMPLAINT, Rollo, p. 25.

[2] Annex "B", COMPLAINT, Rollo, p. 12.

[3] ORDER, Rollo, p. 39.

[4] Annex "F", MOTION TO DISMISS, Rollo, pp. 33-38.

[5] Annex "G", ORDER, Rollo, p. 41.

[6] Annex "J", ORDER, Rollo, p. 51.

[7] Annex "A", ORDER, Rollo, p. 10.

[8] General Offset Press, Inc. vs. Anatalio, July 26, 1966, 17 SCRA 688, 691.

[9] SEC. 3. Failure to prosecute. -- If plaintiff fails to appear at the time of the trial, or to prosecute his action for an unreasonable length of time, or to comply with these rules or any order of the court, the action may be dismissed upon motion of the defendant or upon the court's own motion. This dismissal shall have the effect of an adjudication upon the merits, unless otherwise provided by the court. (Emphasis supplied.)

[10] PETITION; Rollo, pp. 5-7.

[11] COMMENT; Rollo, pp. 70-73.

[12] Emphasis Supplied.

[13] Emphasis Supplied.

[14] Samson vs. National Labor Relations Commission and Atlantic and Pacific Co., Manila, Inc. 253 SCRA 112, 124 citing Philippine Airlines Employees Association vs. Philippine Airlines, Inc. 111 SCRA 215.

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