

SILVESTRE TIU, PETITIONER, VS. DANIEL MIDDLETON AND REMEDIOS P. MIDDLETON, RESPONDENTS.

G.R. No. 134998. July 19, 1999

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

Pre-trial* is an essential device for the speedy disposition of disputes. Hence, parties cannot brush it aside as a mere technicality. Where the pre-trial brief does not contain the names of witnesses and the synopses of their testimonies as required by the Rules of Court, the trial court, through its pre-trial order, may bar the witnesses from testifying. However, an order allowing the presentation of unnamed witnesses may no longer be modified during the trial, without the consent of the parties affected.

The Case

Silvestre Tiu assails two Orders, both dated August 3, 1998,[1] rendered by the Regional Trial Court of Oroquieta City (Branch 14)[2] in Civil Case No. 4516-14-28. The first Order, which was issued in open court, reads:

"Considering the written arguments of both parties herein, the Court finds that the witness of defendant Silvestre Tiu, Ms. Antonia Tiu, who is the aunt of the defendant, whose name was not disclosed in the pre-trial brief is ordered excluded pursuant to the provisions of the 1997 Rules of Civil Procedure wherein it is required that all names of witnesses must be stated in the Pre-Trial Brief."[3]

The second Order denied reconsideration.

The Facts

The facts are undisputed. The present Petition arose from a Complaint for recovery of ownership and possession of real property, accounting and damages filed against herein petitioner before the Regional Trial Court of Oroquieta City.

Before the commencement of trial, the court a quo sent a Notice of Pre-trial Conference, stating in part: "The parties are WARNED that witnesses whose names and addresses are not submitted at the pre-trial may not be allowed to testify at the trial, and documents not marked as exhibits at the pre-trial, except those not then available or existing, may be barred admission in evidence."[4] (*Italics supplied.*)

In his Pre-trial Brief, petitioner averred that he would be presenting six witnesses, but he did not name them. After the pre-trial conference, the court a quo issued a Pre-trial Order stating that the petitioner would present six witnesses and specifying the hearing dates for the said purpose.[5]

Trial ensued, and herein respondents, as plaintiffs in the case below, presented their witnesses in due course. When his turn came, petitioner called Antonia Tiu as his first witness. Citing Section 6, Rule 18 of the 1997 Rules of Court, respondents objected, arguing that the witness could not be allowed to testify because petitioner had failed to name her in his Pre-trial Brief. Sustaining respondents, the lower court then issued its assailed Orders.

Hence, this recourse to this Court on pure questions of law.[6] On petitioner's Motion, this Court issued a

Temporary Restraining Order enjoining the lower court from proceeding with the case until further notice.[7]

Ruling of the Trial Court

In ruling that Antonia Tiu could not be presented as a witness, the trial court ratiocinated:

"x x x [T]he plaintiff's counsels, Atty. Ricardo Lumantas and Atty. Benjamin Galindo, had cited authorities that said witness, Ms. Antonia Tiu, must be barred as a witness because her name was not included in the pre-trial brief. The plaintiffs cited Sec. 6 of Rule 18, of the 1997 Rules of Civil Procedure x x x

"Said provision is supported by corresponding jurisprudence taken by plaintiff's counsel from the book, *Effective Pre-Trial Technique*, of Hon. Justice Josue N. Bellosillo, 1990 ed., p 134) which states that 'this requirement that if a party does not place the name of a witness on such a list of witnesses, the court may refuse to permit him to place the witness on the witness stand (*Globe Cereal Mills v. Scrivener*, 240 F. 2nd 330 (1956); *Tuggart v. Vesmont Transportation Co.*, 32 F.R.D. 587 (1063). 'Where both parties agreed to a pre-trial order requiring each to give the other the names of witnesses to be called at the trial, and no request was made to amend that order, the trial court did not err in refusing to allow the defendant to call on witness' 2 (*King v. Partridge*, 9 Mich. App. 540, 157, NW., 2nd 417 (1969), OP. cit. p. 135)." [8]

Issues

In his Memorandum,[9] petitioner raised the following issues:

"1. Whether or not it is still proper to question the deficiency of one's pre-trial brief on a technical matter after the pre-trial conference ha[s] long been terminated, the Pre-Trial Order issued, and the question interposed for the first time in the middle of a trial on the merits[.]

"2. Whether or not the trial court could with propriety inhibit a witness from assuming the witness stand purely on the basis that his name is not listed where there is neither warning nor injunction in its Pre-Trial Order[.]

"3. Whether or not the trial court may ban with propriety an unlisted witness in the absence of a specific law supporting such order[.]

"4. Whether or not the higher consideration of due process should yield to a procedural technicality[.]" [10]

Respondents, on the other hand, formulated only one issue as follows:[11]

"The issue in this petition is whether the Honorable Lower Court committed xxx grave abuse of discretion in barring and disqualifying petitioner's witness, Antonia Tiu, as well as his other witnesses for that matter, from testifying in court on the particular ground that her name and the substance of her testimony were not disclosed in petitioner's (defendant therein) pre-trial brief."

In the main, the question before us is whether a judge can exclude a witness whose name and synopsis of testimony were not included in the pre-trial brief.

This Court's Ruling

We rule for petitioner.

Main Issue:

Can Petitioner's Unnamed Witnesses Testify?

Pre-trial is an answer to the clarion call for the speedy disposition of cases. Although it was discretionary under the 1940 Rules of Court, it was made mandatory under the 1964 Rules and the subsequent amendments in 1997. Hailed as "the most important procedural innovation in Anglo-Saxon justice in the nineteenth century," [12] pre-trial seeks to achieve the following:[13]

"(a) The possibility of an amicable settlement or of a submission to alternative modes of dispute resolution;

- (b) The simplification of the issues;
- (c) The necessity or desirability of amendments to the pleadings;
- (d) The possibility of obtaining stipulations or admissions of facts and of documents to avoid unnecessary proof;
- (e) The limitation of the number of witnesses;
- (f) The advisability of a preliminary reference of issues to a commissioner;
- (g) The propriety of rendering judgment on the pleadings, or summary judgment, or of dismissing the action should a valid ground therefor be found to exist;
- (h) The advisability or necessity of suspending the proceedings; and
- (i) Such other matters as may aid in the prompt disposition of the action." (Italics supplied)

In light of these objectives, the parties are also required to submit a pre-trial brief, which must contain the following:[14]

- "(a) A statement of their willingness to enter into amicable settlement or alternative modes of dispute resolution, indicating the desired terms thereof;
- (b) A summary of admitted facts and proposed stipulation of facts;
- (c) The issues to be tried or resolved;
- (d) The documents or exhibits to be presented, stating the purpose thereof;
- (e) A manifestation of their having availed or their intention to avail themselves of discovery procedures or referral to commissioners; and
- (f) The number and names of the witnesses, and the substance of their respective testimonies." (Italics supplied)

Petitioner argues that the Rules of Court merely requires that witnesses be named in the pre-trial brief, but it does not authorize a judge to exclude a witness who was not identified. Furthermore, he maintains that neither the trial court nor the respondents required during the pre-trial that unnamed witnesses be barred from testifying. Finally, he urges this Court to brush "aside as wholly trivial and indecisive all imperfections of form and technicalities of procedure."

Respondent, on the other hand, argues that the assailed Orders were not capricious or whimsical, because the Notice of Pre-trial Conference contained a warning that witnesses whose names were not listed might not be allowed to testify. They also contend that the rule enumerating the contents of a pre-trial brief was not a mere technicality, but "a salutary provision intended to avoid surprise and entrapment of the contending parties."

At the outset, the Court emphasizes that pre-trial and its governing rules are not technicalities which the parties may ignore or trifle with. As earlier stated, pre-trial is essential in the simplification and the speedy disposition of disputes. Thus, the Court has observed:[15]

"Everyone knows that a pre-trial in civil actions is mandatory, and has been so since January 1, 1964. Yet to this day its place in the scheme of things is not fully appreciated, and it receives but perfunctory treatment in many courts. Some courts consider it a mere technicality, serving no useful purpose save perhaps, occasionally to furnish ground for non-suiting the plaintiff, or declaring a defendant in default, or, wistfully, to bring about a compromise. The pre-trial device is not thus put to full use. Hence it has failed in the main to accomplish the

chief objective for it: the simplification, abbreviation and expedition of the trial, if not indeed its dispensation. This is a great pity, because the objective is attainable, and with not much difficulty, if the device were more intelligently and extensively handled."

In a pre-trial, the judge is not a passive arbiter; he is an active participant who constantly seeks avenues through which trial can be expedited, simplified or even avoided by a resort to alternative modes of dispute resolution. The role and the authority of the trial court during pre-trial has been described by the Court in this wise:[16]

"Again, it is unquestionably within the trial court's power to require the parties at the pre-trial to (a) state the number of witnesses intended to be called to the stand, their names addresses, and a brief summary of the evidence each of them is expected to give, as well as to (b) formally disclose the number of the documents and things to be submitted and to furnish copies thereof or a short description of the nature of each. The tenor or character of the testimony of the witnesses and of the writings to be adduced at the trial being thus made known, in addition to the particular issues of fact and law, it becomes reasonably feasible to require the parties to state the number of trial dates that each will need to put on his case, and maybe bring about a further agreement as to some other controverted facts, or an amendment of the pleadings, etc.

"What needs stressing is that the parties as well as the trial court must realize that the parties are obliged not only to make formal identification and specification of the issues and of their proofs, as above described [--] indeed, there is no reason why the Court may not oblige the parties to set these matters down in the separate writings and submit them to the Court prior to the pre-trial, and then to discuss, refine and embody the matters agreed upon in a single document at or shortly after the pre-trial -- but also and equally as peremptorily, to directly address and discuss with sincerity and candor and in entire good faith each of the other subjects enumerated in Section 1, Rule 20, i.e., the 'possibility of an amicable settlement or of a submission to arbitration,' the 'advisability of a preliminary reference of issues to a commissioner,' and 'such other matters as may aid in the prompt disposition of the action,' inclusive of a resort to the modes of discovery."

In light of the objectives of a pre-trial and the role of the trial court therein, it is evident that judges have the discretion to exclude witnesses and other pieces of evidence not listed in the pre-trial brief, provided the parties are given prior notice to this effect.[17]

In the present case, the Notice of Pre-trial Conference warned the parties that "witnesses whose names and addresses are not submitted at the pre-trial may not be allowed to testify at the trial." [18] In his Pre-trial Brief, petitioner merely stated that he intended to present four (6) witnesses "whose direct testimony will be finished in an average of one (1) hour each." He further requested four hearing days to present his evidence.[19] Evidently, he did not comply with the above rules and the Notice of Pre-trial Conference, because he failed to give the names of his witnesses and the synopsis of their testimonies.

In his Pre-trial Order,[20] however, the trial judge did not exercise his discretion to exclude the unlisted or unnamed witnesses. Rather, it simply provided that "[t]he defendant will present six witnesses." It made no mention at all that they would be barred from testifying unless they were named. Significantly, it also stated that "plaintiffs will offer ten witnesses," without however naming them. Since the Order allowed respondents (as plaintiffs before the trial court) to present witnesses, it necessarily follows that it should grant the same right to petitioner.

Indeed, the court and the parties must pay attention not only to the pre-trial briefs, but also to the pre-trial order. Section 7 of the same Rule states:

"SEC. 7. Record of pre-trial. -- The proceedings in the pre-trial shall be recorded. Upon the termination thereof, the court shall issue an order which shall recite in detail the matters taken up in the conference, the action taken thereon, the amendments allowed to the pleadings, and the agreements or admissions made by the

parties as to any of the matters considered. Should the action proceed to trial, the order shall explicitly define and limit the issues to be tried. The contents of the order shall control the subsequent course of action, unless modified before trial to prevent manifest injustice." (*Italics supplied.*)

Hence, the provision in the Pre-trial Order allowing petitioner to present six witnesses "shall control the subsequent course of action." The court a quo proceeded with the trial without modifying the Order. In the same vein, respondents did not challenge it before the trial. Neither did they invoke the power of the trial court to compel the petitioner to submit the names of his witnesses and summaries of their testimonies. By their silence, respondents acquiesced to the Pre-trial Order allowing the presentation of petitioner's unnamed witnesses. Modifying a pre-trial order during the trial or, worse, when the defendant is about to present witnesses will indubitably result in manifest injustice. This could not have been the intention of the Rules.

WHEREFORE, in view of the foregoing, the Petition is hereby GRANTED and the two assailed Orders, dated August 3, 1998, issued by the RTC Branch 14, Oroquieta City, are REVERSED and SET ASIDE. The Temporary Restraining Order issued by this Court is hereby lifted and the trial court is ORDERED to proceed with the hearing and to allow petitioner to present his six witnesses. No pronouncement as to costs.

SO ORDERED.

Romero, (Chairman), Vitug, Purisima, and Gonzaga-Reyes, JJ., concur.

* The Rules of Court spells this word with a hyphen, although Webster's Third New International Dictionary spells it as one word. We shall, in this Decision, follow the spelling in the Rules.

[1] Rollo, pp. 20-23.

[2] Presided by Judge Vicente T. Baz, Jr.

[3] Rollo, p. 20.

[4] Rollo, pp. 50-51.

[5] Pre-trial Order, p. 2; Rollo, p. 30.

[6] This Petition for Review seasonably filed pursuant to Rule 45 of the Rules of Court (Petitioner's Memorandum, p. 2; rollo, p. 69) is not the proper remedy, considering that the assailed Orders are interlocutory. In the interest of justice, however, the Court treated it as a petition for certiorari under Rule 65.

[7] The case was deemed submitted for resolution on May 6, 1999 upon receipt by this Court of petitioner's Memorandum.

[8] Rollo, p. 22.

[9] Rollo, pp. 66-78.

[10] Petitioner's Memorandum, p. 6; rollo, p. 74.

[11] Memorandum for Respondents, p. 2; rollo, p. 61.

[12] Guillermo Santos, *The Fernan Court and the New Era of Judicial Adjudication/ Administration*, 169 SCRA 419.

[13] Section 2, Rule 18 of the 1997 Rules of Court.

[14]Section 6 of the same Rules. Although this provision did not appear in the 1964 Rules, a similar one is found in Circular No. 1-89, which became effective on February 1, 1989.

[15] Development Bank of the Philippines. v. Court of Appeals, 169 SCRA 409, 411-412, January 26, 1989, per Narvasa, CJ.

[16] Ibid.

[17] Bellosillo, Effective Pre-trial Technique (1990), p. 135; citing Bertram v. Harris, 423 P. 2d 909 (1967).

[18] Rollo, p. 50.

[19] Petitioner's Pre-trial Brief, p. 2; rollo, p. 27.

[20] Rollo, p. 30.

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