

ROGELIO P. NOGALES, FOR HIMSELF AND ON BEHALF OF THE MINORS, ROGER ANTHONY, ANGELICA, NANCY, AND MICHAEL CHRISTOPHER, ALL SURNAMED NOGALES, PETITIONERS, VS. CAPITOL MEDICAL CENT...

G.R. No. 142625. December 19, 2006

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

This petition for review[1] assails the 6 February 1998 Decision[2] and 21 March 2000 Resolution[3] of the Court of Appeals in CA-G.R. CV No. 45641. The Court of Appeals affirmed in toto the 22 November 1993 Decision[4] of the Regional Trial Court of Manila, Branch 33, finding Dr. Oscar Estrada solely liable for damages for the death of his patient, Corazon Nogales, while absolving the remaining respondents of any liability. The Court of Appeals denied petitioners' motion for reconsideration.

The Facts

Pregnant with her fourth child, Corazon Nogales ("Corazon"), who was then 37 years old, was under the exclusive prenatal care of Dr. Oscar Estrada ("Dr. Estrada") beginning on her fourth month of pregnancy or as early as December 1975. While Corazon was on her last trimester of pregnancy, Dr. Estrada noted an increase in her blood pressure and development of leg edema[5] indicating preeclampsia,[6] which is a dangerous complication of pregnancy.[7]

Around midnight of 25 May 1976, Corazon started to experience mild labor pains prompting Corazon and Rogelio Nogales ("Spouses Nogales") to see Dr. Estrada at his home. After examining Corazon, Dr. Estrada advised her immediate admission to the Capitol Medical Center ("CMC").

On 26 May 1976, Corazon was admitted at 2:30 a.m. at the CMC after the staff nurse noted the written admission request[8] of Dr. Estrada. Upon Corazon's admission at the CMC, Rogelio Nogales ("Rogelio") executed and signed the "Consent on Admission and Agreement"[9] and "Admission Agreement." [10] Corazon was then brought to the labor room of the CMC.

Dr. Rosa Uy ("Dr. Uy"), who was then a resident physician of CMC, conducted an internal examination of Corazon. Dr. Uy then called up Dr. Estrada to notify him of her findings.

Based on the Doctor's Order Sheet,[11] around 3:00 a.m., Dr. Estrada ordered for 10 mg. of valium to be administered immediately by intramuscular injection. Dr. Estrada later ordered the start of intravenous administration of syntocinon admixed with dextrose, 5%, in lactated Ringers' solution, at the rate of eight to ten micro-drops per minute.

According to the Nurse's Observation Notes,[12] Dr. Joel Enriquez ("Dr. Enriquez"), an anesthesiologist at CMC,

was notified at 4:15 a.m. of Corazon's admission. Subsequently, when asked if he needed the services of an anesthesiologist, Dr. Estrada refused. Despite Dr. Estrada's refusal, Dr. Enriquez stayed to observe Corazon's condition.

At 6:00 a.m., Corazon was transferred to Delivery Room No. 1 of the CMC. At 6:10 a.m., Corazon's bag of water ruptured spontaneously. At 6:12 a.m., Corazon's cervix was fully dilated. At 6:13 a.m., Corazon started to experience convulsions.

At 6:15 a.m., Dr. Estrada ordered the injection of ten grams of magnesium sulfate. However, Dr. Ely Villaflor ("Dr. Villaflor"), who was assisting Dr. Estrada, administered only 2.5 grams of magnesium sulfate.

At 6:22 a.m., Dr. Estrada, assisted by Dr. Villaflor, applied low forceps to extract Corazon's baby. In the process, a 1.0 x 2.5 cm. piece of cervical tissue was allegedly torn. The baby came out in an apnic, cyanotic, weak and injured condition. Consequently, the baby had to be intubated and resuscitated by Dr. Enriquez and Dr. Payumo.

At 6:27 a.m., Corazon began to manifest moderate vaginal bleeding which rapidly became profuse. Corazon's blood pressure dropped from 130/80 to 60/40 within five minutes. There was continuous profuse vaginal bleeding. The assisting nurse administered hemacel through a gauge 19 needle as a side drip to the ongoing intravenous injection of dextrose.

At 7:45 a.m., Dr. Estrada ordered blood typing and cross matching with bottled blood. It took approximately 30 minutes for the CMC laboratory, headed by Dr. Perpetua Lacson ("Dr. Lacson"), to comply with Dr. Estrada's order and deliver the blood.

At 8:00 a.m., Dr. Noe Espinola ("Dr. Espinola"), head of the Obstetrics-Gynecology Department of the CMC, was apprised of Corazon's condition by telephone. Upon being informed that Corazon was bleeding profusely, Dr. Espinola ordered immediate hysterectomy. Rogelio was made to sign a "Consent to Operation." [13]

Due to the inclement weather then, Dr. Espinola, who was fetched from his residence by an ambulance, arrived at the CMC about an hour later or at 9:00 a.m. He examined the patient and ordered some resuscitative measures to be administered. Despite Dr. Espinola's efforts, Corazon died at 9:15 a.m. The cause of death was "hemorrhage, post partum." [14]

On 14 May 1980, petitioners filed a complaint for damages [15] with the Regional Trial Court [16] of Manila against CMC, Dr. Estrada, Dr. Villaflor, Dr. Uy, Dr. Enriquez, Dr. Lacson, Dr. Espinola, and a certain Nurse J. Dumlao for the death of Corazon. Petitioners mainly contended that defendant physicians and CMC personnel were negligent in the treatment and management of Corazon's condition. Petitioners charged CMC with negligence in the selection and supervision of defendant physicians and hospital staff.

For failing to file their answer to the complaint despite service of summons, the trial court declared Dr. Estrada, Dr. Enriquez, and Nurse Dumlao in default. [17] CMC, Dr. Villaflor, Dr. Uy, Dr. Espinola, and Dr. Lacson filed their respective answers denying and opposing the allegations in the complaint. Subsequently, trial ensued.

After more than 11 years of trial, the trial court rendered judgment on 22 November 1993 finding Dr. Estrada solely liable for damages. The trial court ruled as follows:

The victim was under his pre-natal care, apparently, his fault began from his incorrect and inadequate management and lack of treatment of the pre-eclamptic condition of his patient. It is not disputed that he misapplied the forceps in causing the delivery because it resulted in a large cervical tear which had caused the profuse bleeding which he also failed to control with the application of inadequate injection of magnesium sulfate by his assistant Dra. Ely Villaflor. Dr. Estrada even failed to notice the erroneous administration by nurse Dumlao of hemacel by way of side drip, instead of direct intravenous injection, and his failure to consult

a senior obstetrician at an early stage of the problem.

On the part however of Dra. Ely Villaflor, Dra. Rosa Uy, Dr. Joel Enriquez, Dr. Lacson, Dr. Espinola, nurse J. Dumlao and CMC, the Court finds no legal justification to find them civilly liable.

On the part of Dra. Ely Villaflor, she was only taking orders from Dr. Estrada, the principal physician of Corazon Nogales. She can only make suggestions in the manner the patient maybe treated but she cannot impose her will as to do so would be to substitute her good judgment to that of Dr. Estrada. If she failed to correctly diagnose the true cause of the bleeding which in this case appears to be a cervical laceration, it cannot be safely concluded by the Court that Dra. Villaflor had the correct diagnosis and she failed to inform Dr. Estrada. No evidence was introduced to show that indeed Dra. Villaflor had discovered that there was laceration at the cervical area of the patient's internal organ.

On the part of nurse Dumlao, there is no showing that when she administered the hemacel as a side drip, she did it on her own. If the correct procedure was directly thru the veins, it could only be because this was what was probably the orders of Dr. Estrada.

While the evidence of the plaintiffs shows that Dr. Noe Espinola, who was the Chief of the Department of Obstetrics and Gynecology who attended to the patient Mrs. Nogales, it was only at 9:00 a.m. That he was able to reach the hospital because of typhoon Didang (Exhibit 2). While he was able to give prescription in the manner Corazon Nogales may be treated, the prescription was based on the information given to him by phone and he acted on the basis of facts as presented to him, believing in good faith that such is the correct remedy. He was not with Dr. Estrada when the patient was brought to the hospital at 2:30 o'clock a.m. So, whatever errors that Dr. Estrada committed on the patient before 9:00 o'clock a.m. are certainly the errors of Dr. Estrada and cannot be the mistake of Dr. Noe Espinola. His failure to come to the hospital on time was due to fortuitous event.

On the part of Dr. Joel Enriquez, while he was present in the delivery room, it is not incumbent upon him to call the attention of Dr. Estrada, Dra. Villaflor and also of Nurse Dumlao on the alleged errors committed by them. Besides, as anesthesiologist, he has no authority to control the actuaciones of Dr. Estrada and Dra. Villaflor. For the Court to assume that there were errors being committed in the presence of Dr. Enriquez would be to dwell on conjectures and speculations.

On the civil liability of Dr. Perpetua Lacson, [s]he is a hematologist and in-charge of the blood bank of the CMC. The Court cannot accept the theory of the plaintiffs that there was delay in delivering the blood needed by the patient. It was testified, that in order that this blood will be made available, a laboratory test has to be conducted to determine the type of blood, cross matching and other matters consistent with medical science so, the lapse of 30 minutes maybe considered a reasonable time to do all of these things, and not a delay as the plaintiffs would want the Court to believe.

Admittedly, Dra. Rosa Uy is a resident physician of the Capitol Medical Center. She was sued because of her alleged failure to notice the incompetence and negligence of Dr. Estrada. However, there is no evidence to support such theory. No evidence was adduced to show that Dra. Rosa Uy as a resident physician of Capitol Medical Center, had knowledge of the mismanagement of the patient Corazon Nogales, and that notwithstanding such knowledge, she tolerated the same to happen.

In the pre-trial order, plaintiffs and CMC agreed that defendant CMC did not have any hand or participation in the selection or hiring of Dr. Estrada or his assistant Dra. Ely Villaflor as attending physician[s] of the deceased. In other words, the two (2) doctors were not employees of the hospital and therefore the hospital did not have control over their professional conduct. When Mrs. Nogales was brought to the hospital, it was an emergency case and defendant CMC had no choice but to admit her. Such being the case, there is therefore no legal ground to apply the provisions of Article 2176 and 2180 of the New Civil Code referring to the vicarious liability of an employer for the negligence of its employees. If ever in this case there is fault or negligence in

the treatment of the deceased on the part of the attending physicians who were employed by the family of the deceased, such civil liability should be borne by the attending physicians under the principle of "respondeat superior".

WHEREFORE, premises considered, judgment is hereby rendered finding defendant Dr. Estrada of Number 13 Pitimini St. San Francisco del Monte, Quezon City civilly liable to pay plaintiffs: 1) By way of actual damages in the amount of P105,000.00; 2) By way of moral damages in the amount of P700,000.00; 3) Attorney's fees in the amount of P100,000.00 and to pay the costs of suit.

For failure of the plaintiffs to adduce evidence to support its [sic] allegations against the other defendants, the complaint is hereby ordered dismissed. While the Court looks with disfavor the filing of the present complaint against the other defendants by the herein plaintiffs, as in a way it has caused them personal inconvenience and slight damage on their name and reputation, the Court cannot accept [sic] however, the theory of the remaining defendants that plaintiffs were motivated in bad faith in the filing of this complaint. For this reason defendants' counterclaims are hereby ordered dismissed.

SO ORDERED.[18]

Petitioners appealed the trial court's decision. Petitioners claimed that aside from Dr. Estrada, the remaining respondents should be held equally liable for negligence. Petitioners pointed out the extent of each respondent's alleged liability.

On 6 February 1998, the Court of Appeals affirmed the decision of the trial court.[19] Petitioners filed a motion for reconsideration which the Court of Appeals denied in its Resolution of 21 March 2000.[20]

Hence, this petition.

Meanwhile, petitioners filed a Manifestation dated 12 April 2002[21] stating that respondents Dr. Estrada, Dr. Enriquez, Dr. Villaflor, and Nurse Dumlao "need no longer be notified of the petition because they are absolutely not involved in the issue raised before the [Court], regarding the liability of [CMC]."[22] Petitioners stressed that the subject matter of this petition is the liability of CMC for the negligence of Dr. Estrada.[23]

The Court issued a Resolution dated 9 September 2002[24] dispensing with the requirement to submit the correct and present addresses of respondents Dr. Estrada, Dr. Enriquez, Dr. Villaflor, and Nurse Dumlao. The Court stated that with the filing of petitioners' Manifestation, it should be understood that they are claiming only against respondents CMC, Dr. Espinola, Dr. Lacson, and Dr. Uy who have filed their respective comments. Petitioners are foregoing further claims against respondents Dr. Estrada, Dr. Enriquez, Dr. Villaflor, and Nurse Dumlao.

The Court noted that Dr. Estrada did not appeal the decision of the Court of Appeals affirming the decision of the Regional Trial Court. Accordingly, the decision of the Court of Appeals, affirming the trial court's judgment, is already final as against Dr. Oscar Estrada.

Petitioners filed a motion for reconsideration[25] of the Court's 9 September 2002 Resolution claiming that Dr. Enriquez, Dr. Villaflor and Nurse Dumlao were notified of the petition at their counsels' last known addresses. Petitioners reiterated their imputation of negligence on these respondents. The Court denied petitioners' Motion for Reconsideration in its 18 February 2004 Resolution.[26]

The Court of Appeals' Ruling

In its Decision of 6 February 1998, the Court of Appeals upheld the trial court's ruling. The Court of Appeals rejected petitioners' view that the doctrine in *Darling v. Charleston Community Memorial Hospital*[27] applies to this case. According to the Court of Appeals, the present case differs from the *Darling* case since Dr. Estrada is an

independent contractor-physician whereas the Darling case involved a physician and a nurse who were employees of the hospital.

Citing other American cases, the Court of Appeals further held that the mere fact that a hospital permitted a physician to practice medicine and use its facilities is not sufficient to render the hospital liable for the physician's negligence.[28] A hospital is not responsible for the negligence of a physician who is an independent contractor.[29]

The Court of Appeals found the cases of Davidson v. Conole[30] and Campbell v. Emma Laing Stevens Hospital[31] applicable to this case. Quoting Campbell, the Court of Appeals stated that where there is no proof that defendant physician was an employee of defendant hospital or that defendant hospital had reason to know that any acts of malpractice would take place, defendant hospital could not be held liable for its failure to intervene in the relationship of physician-patient between defendant physician and plaintiff.

On the liability of the other respondents, the Court of Appeals applied the "borrowed servant" doctrine considering that Dr. Estrada was an independent contractor who was merely exercising hospital privileges. This doctrine provides that once the surgeon enters the operating room and takes charge of the proceedings, the acts or omissions of operating room personnel, and any negligence associated with such acts or omissions, are imputable to the surgeon.[32] While the assisting physicians and nurses may be employed by the hospital, or engaged by the patient, they normally become the temporary servants or agents of the surgeon in charge while the operation is in progress, and liability may be imposed upon the surgeon for their negligent acts under the doctrine of respondeat superior.[33]

The Court of Appeals concluded that since Rogelio engaged Dr. Estrada as the attending physician of his wife, any liability for malpractice must be Dr. Estrada's sole responsibility.

While it found the amount of damages fair and reasonable, the Court of Appeals held that no interest could be imposed on unliquidated claims or damages.

The Issue

Basically, the issue in this case is whether CMC is vicariously liable for the negligence of Dr. Estrada. The resolution of this issue rests, on the other hand, on the ascertainment of the relationship between Dr. Estrada and CMC. The Court also believes that a determination of the extent of liability of the other respondents is inevitable to finally and completely dispose of the present controversy.

The Ruling of the Court

The petition is partly meritorious.

On the Liability of CMC

Dr. Estrada's negligence in handling the treatment and management of Corazon's condition which ultimately resulted in Corazon's death is no longer in issue. Dr. Estrada did not appeal the decision of the Court of Appeals which affirmed the ruling of the trial court finding Dr. Estrada solely liable for damages. Accordingly, the finding of the trial court on Dr. Estrada's negligence is already final.

Petitioners maintain that CMC is vicariously liable for Dr. Estrada's negligence based on Article 2180 in relation to Article 2176 of the Civil Code. These provisions pertinently state:

Art. 2180. The obligation imposed by article 2176 is demandable not only for one's own acts or omissions, but also for those of persons for whom one is responsible.

x x x x

Employers shall be liable for the damages caused by their employees and household helpers acting within the scope of their assigned tasks, even though the former are not engaged in any business or industry.

x x x x

The responsibility treated of in this article shall cease when the persons herein mentioned prove that they observed all the diligence of a good father of a family to prevent damage.

Art. 2176. Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence, if there is no pre-existing contractual relation between the parties, is called a quasi-delict and is governed by the provisions of this Chapter.

Similarly, in the United States, a hospital which is the employer, master, or principal of a physician employee, servant, or agent, may be held liable for the physician's negligence under the doctrine of respondeat superior.[34]

In the present case, petitioners maintain that CMC, in allowing Dr. Estrada to practice and admit patients at CMC, should be liable for Dr. Estrada's malpractice. Rogelio claims that he knew Dr. Estrada as an accredited physician of CMC, though he discovered later that Dr. Estrada was not a salaried employee of the CMC.[35] Rogelio further claims that he was dealing with CMC, whose primary concern was the treatment and management of his wife's condition. Dr. Estrada just happened to be the specific person he talked to representing CMC.[36] Moreover, the fact that CMC made Rogelio sign a Consent on Admission and Admission Agreement[37] and a Consent to Operation printed on the letterhead of CMC indicates that CMC considered Dr. Estrada as a member of its medical staff.

On the other hand, CMC disclaims liability by asserting that Dr. Estrada was a mere visiting physician and that it admitted Corazon because her physical condition then was classified an emergency obstetrics case.[38]

CMC alleges that Dr. Estrada is an independent contractor "for whose actuations CMC would be a total stranger." CMC maintains that it had no control or supervision over Dr. Estrada in the exercise of his medical profession.

The Court had the occasion to determine the relationship between a hospital and a consultant or visiting physician and the liability of such hospital for that physician's negligence in *Ramos v. Court of Appeals*,[39] to wit:

In the first place, hospitals exercise significant control in the hiring and firing of consultants and in the conduct of their work within the hospital premises. Doctors who apply for "consultant" slots, visiting or attending, are required to submit proof of completion of residency, their educational qualifications; generally, evidence of accreditation by the appropriate board (diplomate), evidence of fellowship in most cases, and references. These requirements are carefully scrutinized by members of the hospital administration or by a review committee set up by the hospital who either accept or reject the application. This is particularly true with respondent hospital.

After a physician is accepted, either as a visiting or attending consultant, he is normally required to attend clinico-pathological conferences, conduct bedside rounds for clerks, interns and residents, moderate grand rounds and patient audits and perform other tasks and responsibilities, for the privilege of being able to maintain a clinic in the hospital, and/or for the privilege of admitting patients into the hospital. In addition to these, the physician's performance as a specialist is generally evaluated by a peer review committee on the basis of mortality and morbidity statistics, and feedback from patients, nurses, interns and residents. A consultant remiss in his duties, or a consultant who regularly falls short of the minimum standards acceptable to the hospital or its peer review committee, is normally politely terminated.

In other words, private hospitals, hire, fire and exercise real control over their attending and visiting "consultant" staff. While "consultants" are not, technically employees, a point which respondent hospital

asserts in denying all responsibility for the patient's condition, the control exercised, the hiring, and the right to terminate consultants all fulfill the important hallmarks of an employer-employee relationship, with the exception of the payment of wages. In assessing whether such a relationship in fact exists, the control test is determining. Accordingly, on the basis of the foregoing, we rule that for the purpose of allocating responsibility in medical negligence cases, an employer-employee relationship in effect exists between hospitals and their attending and visiting physicians. This being the case, the question now arises as to whether or not respondent hospital is solidarily liable with respondent doctors for petitioner's condition.

The basis for holding an employer solidarily responsible for the negligence of its employee is found in Article 2180 of the Civil Code which considers a person accountable not only for his own acts but also for those of others based on the former's responsibility under a relationship of patria potestas. x x x[40] (Emphasis supplied)

While the Court in Ramos did not expound on the control test, such test essentially determines whether an employment relationship exists between a physician and a hospital based on the exercise of control over the physician as to details. Specifically, the employer (or the hospital) must have the right to control both the means and the details of the process by which the employee (or the physician) is to accomplish his task.[41]

After a thorough examination of the voluminous records of this case, the Court finds no single evidence pointing to CMC's exercise of control over Dr. Estrada's treatment and management of Corazon's condition. It is undisputed that throughout Corazon's pregnancy, she was under the exclusive prenatal care of Dr. Estrada. At the time of Corazon's admission at CMC and during her delivery, it was Dr. Estrada, assisted by Dr. Villaflor, who attended to Corazon. There was no showing that CMC had a part in diagnosing Corazon's condition. While Dr. Estrada enjoyed staff privileges at CMC, such fact alone did not make him an employee of CMC.[42] CMC merely allowed Dr. Estrada to use its facilities[43] when Corazon was about to give birth, which CMC considered an emergency. Considering these circumstances, Dr. Estrada is not an employee of CMC, but an independent contractor.

The question now is whether CMC is automatically exempt from liability considering that Dr. Estrada is an independent contractor-physician.

In general, a hospital is not liable for the negligence of an independent contractor-physician. There is, however, an exception to this principle. The hospital may be liable if the physician is the "ostensible" agent of the hospital.[44] This exception is also known as the "doctrine of apparent authority." [45] In *Gilbert v. Sycamore Municipal Hospital*, [46] the Illinois Supreme Court explained the doctrine of apparent authority in this wise:

[U]nder the doctrine of apparent authority a hospital can be held vicariously liable for the negligent acts of a physician providing care at the hospital, regardless of whether the physician is an independent contractor, unless the patient knows, or should have known, that the physician is an independent contractor. The elements of the action have been set out as follows:

"For a hospital to be liable under the doctrine of apparent authority, a plaintiff must show that: (1) the hospital, or its agent, acted in a manner that would lead a reasonable person to conclude that the individual who was alleged to be negligent was an employee or agent of the hospital; (2) where the acts of the agent create the appearance of authority, the plaintiff must also prove that the hospital had knowledge of and acquiesced in them; and (3) the plaintiff acted in reliance upon the conduct of the hospital or its agent, consistent with ordinary care and prudence."

The element of "holding out" on the part of the hospital does not require an express representation by the hospital that the person alleged to be negligent is an employee. Rather, the element is satisfied if the hospital holds itself out as a provider of emergency room care without informing the patient that the care is provided by

independent contractors.

The element of justifiable reliance on the part of the plaintiff is satisfied if the plaintiff relies upon the hospital to provide complete emergency room care, rather than upon a specific physician.

The doctrine of apparent authority essentially involves two factors to determine the liability of an independent-contractor physician.

The first factor focuses on the hospital's manifestations and is sometimes described as an inquiry whether the hospital acted in a manner which would lead a reasonable person to conclude that the individual who was alleged to be negligent was an employee or agent of the hospital.[47] In this regard, the hospital need not make express representations to the patient that the treating physician is an employee of the hospital; rather a representation may be general and implied.[48]

The doctrine of apparent authority is a species of the doctrine of estoppel. Article 1431 of the Civil Code provides that "[t]hrough estoppel, an admission or representation is rendered conclusive upon the person making it, and cannot be denied or disproved as against the person relying thereon." Estoppel rests on this rule: "Whenever a party has, by his own declaration, act, or omission, intentionally and deliberately led another to believe a particular thing true, and to act upon such belief, he cannot, in any litigation arising out of such declaration, act or omission, be permitted to falsify it." [49]

In the instant case, CMC impliedly held out Dr. Estrada as a member of its medical staff. Through CMC's acts, CMC clothed Dr. Estrada with apparent authority thereby leading the Spouses Nogales to believe that Dr. Estrada was an employee or agent of CMC. CMC cannot now repudiate such authority.

First, CMC granted staff privileges to Dr. Estrada. CMC extended its medical staff and facilities to Dr. Estrada. Upon Dr. Estrada's request for Corazon's admission, CMC, through its personnel, readily accommodated Corazon and updated Dr. Estrada of her condition.

Second, CMC made Rogelio sign consent forms printed on CMC letterhead. Prior to Corazon's admission and supposed hysterectomy, CMC asked Rogelio to sign release forms, the contents of which reinforced Rogelio's belief that Dr. Estrada was a member of CMC's medical staff.[50] The Consent on Admission and Agreement explicitly provides:

KNOW ALL MEN BY THESE PRESENTS:

I, Rogelio Nogales, of legal age, a resident of 1974 M. H. Del Pilar St., Malate Mla., being the father/mother/brother/sister/spouse/relative/ guardian/or person in custody of Ma. Corazon, and representing his/her family, of my own volition and free will, do consent and submit said Ma. Corazon to Dr. Oscar Estrada (hereinafter referred to as Physician) for cure, treatment, retreatment, or emergency measures, that the Physician, personally or by and through the Capitol Medical Center and/or its staff, may use, adapt, or employ such means, forms or methods of cure, treatment, retreatment, or emergency measures as he may see best and most expedient; that Ma. Corazon and I will comply with any and all rules, regulations, directions, and instructions of the Physician, the Capitol Medical Center and/or its staff; and, that I will not hold liable or responsible and hereby waive and forever discharge and hold free the Physician, the Capitol Medical Center and/or its staff, from any and all claims of whatever kind of nature, arising from directly or indirectly, or by reason of said cure, treatment, or retreatment, or emergency measures or intervention of said physician, the Capitol Medical Center and/or its staff.

x x x x[51] (Emphasis supplied)

While the Consent to Operation pertinently reads, thus:

I, ROGELIO NOGALES, x x x, of my own volition and free will, do consent and submit said CORAZON NOGALES to Hysterectomy, by the Surgical Staff and Anesthesiologists of Capitol Medical Center and/or whatever succeeding operations, treatment, or emergency measures as may be necessary and most expedient; and, that I will not hold liable or responsible and hereby waive and forever discharge and hold free the Surgeon, his assistants, anesthesiologists, the Capitol Medical Center and/or its staff, from any and all claims of whatever kind of nature, arising from directly or indirectly, or by reason of said operation or operations, treatment, or emergency measures, or intervention of the Surgeon, his assistants, anesthesiologists, the Capitol Medical Center and/or its staff.[52] (Emphasis supplied)

Without any indication in these consent forms that Dr. Estrada was an independent contractor-physician, the Spouses Nogales could not have known that Dr. Estrada was an independent contractor. Significantly, no one from CMC informed the Spouses Nogales that Dr. Estrada was an independent contractor. On the contrary, Dr. Atencio, who was then a member of CMC Board of Directors, testified that Dr. Estrada was part of CMC's surgical staff.[53]

Third, Dr. Estrada's referral of Corazon's profuse vaginal bleeding to Dr. Espinola, who was then the Head of the Obstetrics and Gynecology Department of CMC, gave the impression that Dr. Estrada as a member of CMC's medical staff was collaborating with other CMC-employed specialists in treating Corazon.

The second factor focuses on the patient's reliance. It is sometimes characterized as an inquiry on whether the plaintiff acted in reliance upon the conduct of the hospital or its agent, consistent with ordinary care and prudence.[54]

The records show that the Spouses Nogales relied upon a perceived employment relationship with CMC in accepting Dr. Estrada's services. Rogelio testified that he and his wife specifically chose Dr. Estrada to handle Corazon's delivery not only because of their friend's recommendation, but more importantly because of Dr. Estrada's "connection with a reputable hospital, the [CMC]."[55] In other words, Dr. Estrada's relationship with CMC played a significant role in the Spouses Nogales' decision in accepting Dr. Estrada's services as the obstetrician-gynecologist for Corazon's delivery. Moreover, as earlier stated, there is no showing that before and during Corazon's confinement at CMC, the Spouses Nogales knew or should have known that Dr. Estrada was not an employee of CMC.

Further, the Spouses Nogales looked to CMC to provide the best medical care and support services for Corazon's delivery. The Court notes that prior to Corazon's fourth pregnancy, she used to give birth inside a clinic. Considering Corazon's age then, the Spouses Nogales decided to have their fourth child delivered at CMC, which Rogelio regarded one of the best hospitals at the time.[56] This is precisely because the Spouses Nogales feared that Corazon might experience complications during her delivery which would be better addressed and treated in a modern and big hospital such as CMC. Moreover, Rogelio's consent in Corazon's hysterectomy to be performed by a different physician, namely Dr. Espinola, is a clear indication of Rogelio's confidence in CMC's surgical staff.

CMC's defense that all it did was "to extend to [Corazon] its facilities" is untenable. The Court cannot close its eyes to the reality that hospitals, such as CMC, are in the business of treatment. In this regard, the Court agrees with the observation made by the Court of Appeals of North Carolina in *Diggs v. Novant Health, Inc.*,[57]to wit:

"The conception that the hospital does not undertake to treat the patient, does not undertake to act through its doctors and nurses, but undertakes instead simply to procure them to act upon their own responsibility, no longer reflects the fact. Present day hospitals, as their manner of operation plainly demonstrates, do far more than furnish facilities for treatment. They regularly employ on a salary basis a large staff of physicians, nurses and internes [sic], as well as administrative and manual workers, and they charge patients for medical care and

treatment, collecting for such services, if necessary, by legal action. Certainly, the person who avails himself of 'hospital facilities' expects that the hospital will attempt to cure him, not that its nurses or other employees will act on their own responsibility." x x x (Emphasis supplied)

Likewise unconvincing is CMC's argument that petitioners are estopped from claiming damages based on the Consent on Admission and Consent to Operation. Both release forms consist of two parts. The first part gave CMC permission to administer to Corazon any form of recognized medical treatment which the CMC medical staff deemed advisable. The second part of the documents, which may properly be described as the releasing part, releases CMC and its employees "from any and all claims" arising from or by reason of the treatment and operation.

The documents do not expressly release CMC from liability for injury to Corazon due to negligence during her treatment or operation. Neither do the consent forms expressly exempt CMC from liability for Corazon's death due to negligence during such treatment or operation. Such release forms, being in the nature of contracts of adhesion, are construed strictly against hospitals. Besides, a blanket release in favor of hospitals "from any and all claims," which includes claims due to bad faith or gross negligence, would be contrary to public policy and thus void.

Even simple negligence is not subject to blanket release in favor of establishments like hospitals but may only mitigate liability depending on the circumstances.[58] When a person needing urgent medical attention rushes to a hospital, he cannot bargain on equal footing with the hospital on the terms of admission and operation. Such a person is literally at the mercy of the hospital. There can be no clearer example of a contract of adhesion than one arising from such a dire situation. Thus, the release forms of CMC cannot relieve CMC from liability for the negligent medical treatment of Corazon.

On the Liability of the Other Respondents

Despite this Court's pronouncement in its 9 September 2002[59] Resolution that the filing of petitioners' Manifestation confined petitioners' claim only against CMC, Dr. Espinola, Dr. Lacson, and Dr. Uy, who have filed their comments, the Court deems it proper to resolve the individual liability of the remaining respondents to put an end finally to this more than two-decade old controversy.

a) Dr. Ely Villaflor

Petitioners blame Dr. Ely Villaflor for failing to diagnose the cause of Corazon's bleeding and to suggest the correct remedy to Dr. Estrada.[60] Petitioners assert that it was Dr. Villaflor's duty to correct the error of Nurse Dumlao in the administration of hemacel.

The Court is not persuaded. Dr. Villaflor admitted administering a lower dosage of magnesium sulfate. However, this was after informing Dr. Estrada that Corazon was no longer in convulsion and that her blood pressure went down to a dangerous level.[61] At that moment, Dr. Estrada instructed Dr. Villaflor to reduce the dosage of magnesium sulfate from 10 to 2.5 grams. Since petitioners did not dispute Dr. Villaflor's allegation, Dr. Villaflor's defense remains uncontroverted. Dr. Villaflor's act of administering a lower dosage of magnesium sulfate was not out of her own volition or was in contravention of Dr. Estrada's order.

b) Dr. Rosa Uy

Dr. Rosa Uy's alleged negligence consisted of her failure (1) to call the attention of Dr. Estrada on the incorrect dosage of magnesium sulfate administered by Dr. Villaflor; (2) to take corrective measures; and (3) to correct Nurse Dumlao's wrong method of hemacel administration.

The Court believes Dr. Uy's claim that as a second year resident physician then at CMC, she was merely authorized to take the clinical history and physical examination of Corazon.[62] However, that routine internal examination did not ipso facto make Dr. Uy liable for the errors committed by Dr. Estrada. Further, petitioners' imputation of negligence rests on their baseless assumption that Dr. Uy was present at the delivery room. Nothing shows that Dr. Uy participated in delivering Corazon's baby. Further, it is unexpected from Dr. Uy, a mere resident physician at that time, to call the attention of a more experienced specialist, if ever she was present at the delivery room.

c) Dr. Joel Enriquez

Petitioners fault Dr. Joel Enriquez also for not calling the attention of Dr. Estrada, Dr. Villaflor, and Nurse Dumlao about their errors.[63] Petitioners insist that Dr. Enriquez should have taken, or at least suggested, corrective measures to rectify such errors.

The Court is not convinced. Dr. Enriquez is an anesthesiologist whose field of expertise is definitely not obstetrics and gynecology. As such, Dr. Enriquez was not expected to correct Dr. Estrada's errors. Besides, there was no evidence of Dr. Enriquez's knowledge of any error committed by Dr. Estrada and his failure to act upon such observation.

d) Dr. Perpetua Lacson

Petitioners fault Dr. Perpetua Lacson for her purported delay in the delivery of blood Corazon needed.[64] Petitioners claim that Dr. Lacson was remiss in her duty of supervising the blood bank staff.

As found by the trial court, there was no unreasonable delay in the delivery of blood from the time of the request until the transfusion to Corazon. Dr. Lacson competently explained the procedure before blood could be given to the patient.[65] Taking into account the bleeding time, clotting time and cross-matching, Dr. Lacson stated that it would take approximately 45-60 minutes before blood could be ready for transfusion.[66] Further, no evidence exists that Dr. Lacson neglected her duties as head of the blood bank.

e) Dr. Noe Espinola

Petitioners argue that Dr. Espinola should not have ordered immediate hysterectomy without determining the underlying cause of Corazon's bleeding. Dr. Espinola should have first considered the possibility of cervical injury, and advised a thorough examination of the cervix, instead of believing outright Dr. Estrada's diagnosis that the cause of bleeding was uterine atony.

Dr. Espinola's order to do hysterectomy which was based on the information he received by phone is not negligence. The Court agrees with the trial court's observation that Dr. Espinola, upon hearing such information about Corazon's condition, believed in good faith that hysterectomy was the correct remedy. At any rate, the hysterectomy did not push through because upon Dr. Espinola's arrival, it was already too late. At the time, Corazon was practically dead.

f) Nurse J. Dumlao

In *Moore v. Guthrie Hospital Inc.*, [67] the US Court of Appeals, Fourth Circuit, held that to recover, a patient complaining of injuries allegedly resulting when the nurse negligently injected medicine to him intravenously instead of intramuscularly had to show that (1) an intravenous injection constituted a lack of reasonable and ordinary care; (2) the nurse injected medicine intravenously; and (3) such injection was the proximate cause of his injury.

In the present case, there is no evidence of Nurse Dumlao's alleged failure to follow Dr. Estrada's specific

instructions. Even assuming Nurse Dumlao defied Dr. Estrada's order, there is no showing that side-drip administration of hemacel proximately caused Corazon's death. No evidence linking Corazon's death and the alleged wrongful hemacel administration was introduced. Therefore, there is no basis to hold Nurse Dumlao liable for negligence.

On the Award of Interest on Damages

The award of interest on damages is proper and allowed under Article 2211 of the Civil Code, which states that in crimes and quasi-delicts, interest as a part of the damages may, in a proper case, be adjudicated in the discretion of the court.[68]

WHEREFORE, the Court PARTLY GRANTS the petition. The Court finds respondent Capitol Medical Center vicariously liable for the negligence of Dr. Oscar Estrada. The amounts of P105,000 as actual damages and P700,000 as moral damages should each earn legal interest at the rate of six percent (6%) per annum computed from the date of the judgment of the trial court. The Court affirms the rest of the Decision dated 6 February 1998 and Resolution dated 21 March 2000 of the Court of Appeals in CA-G.R. CV No. 45641.

SO ORDERED.

Quisumbing, (Chairperson), Carpio-Morales, Tinga, and Velasco, Jr., JJ., concur.

[1] Under Rule 45 of the Rules of Court.

[2] Penned by Associate Justice Artemio G. Tuquero, with Associate Justices Jorge S. Imperial and Eubulo G. Verzola, concurring. Rollo, pp. 42-48.

[3] Penned by Associate Justice Eubulo G. Verzola, with Associate Justices Roberto A. Barrios and Eriberto U. Rosario, Jr., concurring. Id. at 49.

[4] Penned by Judge Rodolfo G. Palattao.

[5] Edema is the accumulation of excess fluid. It is manifested by the swelling of the extremities: (<http://www.preeclampsia.org/symptoms.asp>)

[6] A syndrome occurring in late pregnancy marked by an increase in blood pressure, swelling of the ankles by fluid, and the appearance of albumin in the urine, associated with reduced blood flow to the placenta, therefore putting the fetus at risk of death, or stillbirth, and putting the mother at risk of complications from high blood pressure, convulsions (eclampsia), kidney failure, liver failure and death. Treated with drugs to lower the blood pressure and to prevent convulsions, while expediting the delivery of the baby. (http://www.jansen.com.au/Dictionary_PR.html)

[7] Rollo, p. 42.

[8] Exh. "A-4," Folder of Exhibits.

[9] Exh. "A-1," Folder of Exhibits.

[10] Exh. "A-2," Folder of Exhibits.

[11] Exh. "A-5," Folder of Exhibits.

[12] Exh. "A-8," Folder of Exhibits.

- [13] Exh. "A-20," Folder of Exhibits.
- [14] Rollo, p. 43.
- [15] Docketed as Civil Case No. 131873.
- [16] Then Court of First Instance.
- [17] Records, pp. 92, 93.
- [18] Records, pp. 639-644.
- [19] Rollo, pp. 42-48.
- [20] Id. at 49.
- [21] Id. at 237-240.
- [22] Id. at 238.
- [23] Id. at 207.
- [24] Id. at 258.
- [25] Id. at 283-285.
- [26] Id. at 312.
- [27] 33 Ill.2d 326, 211 N.E.2d 253 (1965).
- [28] Citing *Clary v. Hospital Authority of City of Marietta*, 106 Ga.App. 134, 126 S.E.2d 470 (1962).
- [29] Citing *Cramer v. Hoffman*, 390 F.2d 19, 23 (1968); *Holzberg v. Flower and Fifth Ave. Hospitals*, 39 A.D.2d 526, 330 N.Y.S.2d 682, 684 (1972); *Snelson v. Margaretville Hospital*, 49 A.D.2d 991, 374 N.Y.S.2d 579, 581 (1975).
- [30] 79 A.D.2d 43, 436 N.Y.S.2d 109 (1981).
- [31] 118 A.D.2d 988, 499 N.Y.S.2d 993 (1986).
- [32] Citing *Davis v. Glaze*, 182 Ga.App. 18, 354 S.E.2d 845, 849 (1987).
- [33] Citing *Ybarra v. Spangard*, 25 Cal.2d 486, 154 P.2d 687 (1944).
- [34] 40A Am.Jur.2d Hospitals and Asylums § 46, 40A Am.Jur.2d Hospitals and Asylums § 44.
- [35] TSN, 26 July 1984, pp. 31-32 (Rogelio Nogales).
- [36] Id. at 43-44.
- [37] TSN, 4 April 1983, pp. 48-49 (Rogelio Nogales).
- [38] Records, pp. 43-44.
- [39] 378 Phil. 1198 (1999).
- [40] Id. at 1240-1241.
- [41] See *Diggs v. Novant Health, Inc.*, 628 S.E.2d 851 (2006) citing *Hylton v. Koontz*, 138 N.C.App. 629 (2000).

[42] See *Jones v. Tallahassee Memorial Regional Healthcare, Inc.*, 923 So.2d 1245 (2006).

[43] See *Hale v. Sheikholeslam*, 724 F.2d 1205 (1984) where the US Court of Appeals, Fifth Circuit, found the physician an independent contractor since there is no evidence or pleading that the doctor received compensation from the hospital or that the hospital exercised any control over his treatment of patients. The doctor was merely allowed to use the facilities of the hospital when, in the doctor's judgment, hospital care was necessary.

[44] *Jones v. Philpott*, 702 F.Supp. 1210 (1988).

[45] Sometimes referred to as the apparent, or ostensible, agency theory. (*King v. Mitchell*, 31 A.D.3d 958, 819 N.Y.S.2d 169 [2006]).

[46] 156 Ill.2d 511, 622 N.E.2d 788 (1993).

[47] *Diggs v. Novant Health, Inc.*, supra note 41.

[48] *Id.*

[49] *De Castro v. Ginete*, 137 Phil. 453 (1969), citing Sec. 3, par. a, Rule 131 of the Rules of Court. See also *King v. Mitchell*, 31 A.D.3d 958, 819 N.Y.S.2d 169 (2006) where the New York Supreme Court, Appellate Division, Third Department, stated as follows:

As a general proposition, "[a] hospital may not be held for the acts of an anesthetist who was not an employee of the hospital, but one of a group of independent contractors." Vicarious liability for medical malpractice may be imposed, however, under an apparent, or ostensible, agency theory, "or, as it is sometimes called, agency by estoppel or by holding out." "Essential to the creation of apparent authority are words or conduct of the principal, communicated to a third party, that give rise to the appearance and belief that the agent possesses authority to act on behalf of the principal." Also, the third party must reasonably rely upon the appearance of authority created by the principal. Finally, the third party must accept the services of the agent in reliance upon the perceived relationship between the agent and the principal.(emphasis supplied and internal citations omitted)

[50] In *Gilbert v. Sycamore Municipal Hospital*, supra note 46, cited in *York v. Rush-Presbyterian-St. Luke's Medical Center* (222 Ill.2d 147, 854 N.E.2d 635 [2006]), the Illinois Supreme Court made a similar observation, thus:

x x x the language employed in the hospital's treatment consent form could have led plaintiff to reasonably believe that he would be treated by physicians and employees of the hospital. We concluded that, upon the record before us, the plaintiff adduced sufficient evidence to create a genuine issue of material fact with respect to the reliance element of the plaintiffs apparent agency claim against the hospital.

[51] Exh. "A-1," Folder of Exhibits.

[52] Exh. "A-20," Folder of Exhibits.

[53] TSN, 17 February 1992, p. 69 (Dr. Franklin Atencio).

[54] *Diggs v. Novant Health, Inc.*, supra note 41.

[55] TSN, 26 July 1984, pp. 12-13 (Rogelio Nogales).

[56] *Id.* at 37.

[57] Supra note 41, citing *Rabon v. Rowan Memorial Hospital, Inc.*, 269 N.C.1, 152 S.E.2d 485 (1967).

[58] Article 1172 of the Civil Code provides:

"Responsibility arising from negligence in the performance of every kind of obligation is also demandable, but such liability may be regulated by the courts, according to the circumstances."

[59] Rollo, p. 258.

[60] CA rollo, pp. 78-79.

[61] Records, p. 76.

[62] Id. at 59.

[63] CA rollo, p. 89.

[64] Id. at 90.

[65] TSN, 11 November 1991, pp. 9-12.

[66] Id. at 14.

[67] 403 F.2d 366 (1968).

[68] People v. Ocampo, G.R. No. 171731, 11 August 2006, citing People v. Torellos, 448 Phil. 287, 301 (2003). See also People v. Duban, G.R. No. 141217, 26 September 2003, 412 SCRA 131 and People v. De Vera, 371 Phil. 563 (1999).

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