

**ROLANDO AGULTO, MAXIMA AGULTO AND CECILLE TENORIO,
PETITIONERS, PRESENT: VS. WILLIAM Z. TECSON, RESPONDENT.**

G.R. No. 145276. November 29, 2005

Ponente: CORONA, J.

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CORONA, J.:

Before us is a petition for review on certiorari under Rule 45 of the Rules of Court assailing the September 27, 2000 decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 55955 which dismissed the petition for certiorari questioning the September 24, 1999 order of the Regional Trial Court (RTC) of Quezon City, Branch 79 in Civil Case No. Q-97-31977.

On August 25, 1997, the respondent William Z. Tecson filed an action for damages against petitioners Rolando Agulto, Maxima Agulto, Cecille Tenoria and a certain Maribel Mallari in the RTC of Quezon City, Branch 79. It was docketed as Civil Case No. Q-97-31977.

The petitioners and Mallari filed their answer on October 29, 1997. They claimed that the respondent had no cause of action against them, alleging malicious prosecution. They then prayed for the dismissal of the complaint.

On November 19, 1998, the RTC dismissed the complaint for failure to prosecute for an unreasonable length of time. Respondent filed an urgent motion for reconsideration of the order of dismissal. On December 2, 1998, the RTC ordered the revival of the complaint and required the parties to appear during the pre-trial conference scheduled on January 21, 1999. The pre-trial was, however, reset to April 29, 1999.

During the scheduled pre-trial on April 29, 1999, petitioner Rolando Agulto and his counsel were informed by an employee of the RTC that the presiding judge was on leave. The counsel for petitioners suggested that the pre-trial be reset to June 17, 1999. The RTC employee advised petitioner's counsel that the suggested setting was not yet official as it would depend on the calendar of the court and the counsel of respondent.

The pre-trial proceeded on June 17, 1999. For failure of petitioners to appear at the pre-trial and to submit their pre-trial brief, the RTC issued an order allowing the respondent to present his evidence *ex parte*.

Petitioners filed a motion for reconsideration of the June 17, 1999 order of the RTC. They claimed that they were not notified of the pre-trial held on June 17, 1999. Before the motion could be heard, however, the court rendered its July 12, 1999 decision in favor of respondent. Petitioners were ordered to pay respondent moral damages, exemplary damages and attorney's fees in the aggregate amount of P170,000.

After receiving a copy of the decision on July 21, 1999, petitioners filed their July 28, 1999 motions to cite respondent's counsel in contempt of court and to set the decision aside. On September 24, 1999, the RTC denied petitioners' motion for reconsideration of the June 17, 1999 order and the motions to cite counsel in contempt of court and to set its decision aside.

Petitioners filed a petition for certiorari under Rule 65 of the 1997 Rules of Civil Procedure with the CA on

November 24, 1999. They claimed that the RTC gravely abused its discretion when it issued the September 24, 1999 order. They also asserted that the RTC violated their constitutional right to due process when it decided the case not on the merits but on mere technicalities.

On September 27, 2000, the CA dismissed the petition. It ruled that the proper remedy was appeal by writ of error, i.e., ordinary appeal, under Rule 41 of the 1997 Rules of Civil Procedure, not a petition for certiorari under Rule 65. The CA also held that the petitioners failed to show that their absence during the scheduled pre-trial was for a valid cause. Hence, there was no abuse of discretion on the part of the RTC when it denied the petitioners' motion for reconsideration of the June 17, 1999 order, as well as their motions to cite counsel in contempt of court and to set the decision aside.

Hence, this petition with the following assignment of errors:

1.

[THE HONORABLE COURT OF APPEALS] ERRED IN RULING THAT THE REGIONAL TRIAL COURT OF QUEZON CITY, BRANCH 79 THEREOF DID NOT GRAVELY ABUSE ITS DISCRETION AMOUNTING TO LACK OF JURISDICTION WHEN IT REJECTED OR DENIED PETITIONERS' MOTION FOR RECONSIDERATION DATED JULY 1, 1999 AND MOTIONS TO CITE COUNSEL IN CONTEMPT AND TO SET ASIDE DECISION DATED JULY 28, 1999, PURSUANT TO ITS ORDER DATED SEPTEMBER 24, 1999.

2.

THE HONORABLE COURT OF APPEALS ERRED IN UPHOLDING THE DECISION OF THE COURT A QUO WHICH WAS BASED NOT ON THE MERITS OF THE CASE BUT ON MERE TECHNICALITIES.

3.

THE HONORABLE COURT OF APPEALS ERRED IN RULING THAT THE PROPER REMEDY THAT SHOULD HAVE BEEN TAKEN BY THE PETITIONERS WAS TO APPEAL FROM THE JUDGMENT BY DEFAULT AND NOT CERTIORARI UNDER RULE 65 OF THE RULES OF COURT.[2]

We agree.

Prior to Section 3, Rule 18 of the 1997 Rules of Civil Procedure, the rule was that a notice of pre-trial had to be served on the party affected separately from his counsel,[3] and the same could be served directly on him or through his counsel.[4] Otherwise, the proceedings were null and void.[5]

Under the present Section 3, Rule 18 of the 1997 Rules of Civil Procedure, the notice of pre-trial should be served on counsel. The counsel served with notice is charged with the duty of notifying the party he represents. It is only when a party has no counsel that the notice of pre-trial is required to be served personally on him.

Thus, the present rule simplifies the procedure in the sense that notice of pre-trial is served on counsel, and service is made on a party only if he has no counsel.[6] It does not, however, dispense with notice of pre-trial.

The failure of a party to appear at the pre-trial has adverse consequences. If the absent party is the plaintiff, then he may be declared non-suited and his case dismissed. If it is the defendant who fails to appear, then the plaintiff may be allowed to present his evidence ex parte and the court to render judgment on the basis thereof.[7]

Thus, sending a notice of pre-trial stating the date, time and place of pre-trial is mandatory. Its absence will render the pre-trial and subsequent proceedings void. This must be so as part of a party's right to due process.

With due notice of the proceedings, the fate of a party adversely affected will not be judged ex parte and he will

have the opportunity to confront the opposing party. The paramount public interest which calls for a proper examination of the issues in any justiciable controversy will be subserved.[8] Should an order declaring the plaintiff non-suited or allowing the plaintiff to present his evidence ex parte be issued despite the failure to serve the required notice of pre-trial on counsel or party (if he has no counsel), the plaintiff declared non-suited or the defendant against whom an order for the presentation of evidence ex parte is issued will be effectively denied his constitutional right to due process.[9] Thus, the trial court's order allowing the plaintiff to present his evidence ex parte without due notice of pre-trial to the defendant constitutes grave abuse of discretion.[10]

Here, no notice of pre-trial was served on counsel of petitioners in connection with the pre-trial held on June 17, 1999. Hence, the RTC committed a grave abuse of discretion when it issued its June 17, 1999 order allowing respondent to present his evidence ex parte. The grave abuse of discretion was perpetuated in the September 24, 1999 order denying petitioners' motion for reconsideration of the June 17, 1999 order and motions to cite counsel in contempt of court and to set the decision aside.

Considering that the RTC gravely abused its discretion, petitioners availed of the proper remedy when they filed a petition for certiorari with the CA.

Even assuming that ordinary appeal is the proper remedy, we have in certain instances allowed a writ of certiorari where the order of the court is a patent nullity.[11] In these exceptional cases, we entertained a petition for certiorari despite the availability of the remedy of appeal.[12]

If no notice of pre-trial is served, all the proceedings at the pre-trial et seq. are null and void.[13] Hence, the absence of the requisite notice of pre-trial to the defendant's counsel (or to the defendant himself, in case he has no counsel) nullifies the order allowing the plaintiff to present his evidence ex parte.

Given the foregoing considerations, the June 17, 1999 and September 24, 1999 orders were evidently void and patent nullities for lack of notice of pre-trial. Thus, the CA erred when it dismissed the petition for certiorari on the ground that it was not the proper remedy.

The fact that the respondent was allowed to present his evidence ex parte not only because the petitioners failed to appear at the pre-trial but also because they failed to file their pre-trial brief is of no moment.

Although the failure of the defendant to file a pre-trial brief has the same effect as his failure to appear at the pre-trial (this is, the plaintiff may be allowed to present his evidence ex parte and the court shall render judgment on the basis thereof[14]), a condition precedent is the service of notice of pre-trial. Otherwise, the defendant will be groping in the dark as to when exactly he is supposed to file his pre-trial brief.

More specifically, under Section 6, Rule 18 of the 1997 Rules of Civil Procedure, the parties are required to file with the court and serve on the adverse party, in such manner as shall ensure their receipt thereof at least three days before the date of the pre-trial, their respective pre-trial briefs. Clearly, the date of the pre-trial is the reckoning point for the filing of the pre-trial brief. But without prior notice of pre-trial, the parties cannot reasonably be expected to know the date of the pre-trial.

Therefore, it is imperative for the trial court to serve notice of pre-trial on counsel. It is only after being notified of the pre-trial that the twin duties to file the pre-trial brief and to appear at the pre-trial arise. Without such notice, a party cannot be faulted for and made to suffer the adverse consequences of his failure either to file the pre-trial brief or to appear at the pre-trial.

The relevant portions of the September 24, 1999 order of the RTC denying petitioners' motion for reconsideration and motions to cite counsel in contempt of court and to set aside its decision, as quoted by the CA in its

September 27, 2000 decision, curiously read:

....It must be noted that the defendants were declared as in default not only because they failed to appear at the pre-trial on June 17, 1999 but due to their failure to file their pre-trial brief which has the same effect as failure to appear at the pre-trial.

xxx xxx xxx

Furthermore, the Court finds the explanation of Atty. Mapalad, counsel for the defendants, [on] why they failed to appear at the pre-trial to be untenable. Admittedly, the pre-trial on June 17, 1999 was suggested by Atty. Mapalad herself. Such being the case, said counsel is deemed already notified of the setting and it is no longer necessary to send a notice to her. At any rate, it is more prudent or incumbent upon Atty. Mapalad to inquire from the Court whether or not the pre-trial was scheduled on the date chosen by her instead of presuming that said date was not approved since she received no official notice from the Court.[15] (Emphasis supplied)

Thus, the RTC categorically stated that it did not serve a notice of pre-trial on petitioners' counsel. However, the RTC deemed counsel of petitioners as already notified of the pre-trial and the sending of a notice of pre-trial no longer necessary, by the mere fact that she suggested the date of pre-trial. The ruling of the RTC, however, had no legal basis.

What counsel of petitioners made was a mere suggestion. As a proposal, it was only provisional and subject to the schedule of the court. The RTC could have adopted her proposal (as it did) or it could have scheduled another date for the pre-trial. In any event, the RTC should have served a notice of pre-trial on petitioners' counsel in accordance with the mandatory nature of such notice.

It is noteworthy that the September 24, 1999 decision of the RTC did not refute the allegation of petitioners that the court employee to whom counsel for petitioners suggested June 17, 1999 as the date of pre-trial was not the clerk of court. Under Section 1, Rule 20 of the 1997 Rules of Civil Procedure, it is the clerk of court, under the direct supervision of the judge, who has the duty to keep the calendar of cases for pre-trial. On entry in the calendar of cases for pre-trial, the notice of pre-trial should then be served on the counsels of the parties or, if they have no counsel, on the parties themselves.

Here, the date suggested by counsel of petitioners was not yet final until the case was calendared by the clerk of court. Petitioners' counsel was not notified that the case was finally calendared on the date that she proposed. No notice of pre-trial was served on petitioners' counsel. Furthermore, only respondent signed the minutes of the April 29, 1999 pre-trial conference stating that the pre-trial conference was reset to June 17, 1999.[16]

While it would have been more prudent for counsel of petitioners to inquire from the RTC whether or not the pre-trial had in fact been scheduled on the date suggested by her, the duty of the court to serve notice of pre-trial should not be shifted to the counsels of the parties (or to the parties themselves). Otherwise, the mandatory character of the notice of pre-trial will be for naught.

The desideratum of a speedy disposition of cases should not, if at all possible, result in the precipitate loss of a party's right to present evidence and either the plaintiff's being non-suited or the defendant's being held liable under an ex parte judgment.[17] It is a far better and more prudent course of action for a court to excuse a technical lapse and afford the parties a review of the case on the merits rather than dispose of the case on technicality and cause a grave injustice to the parties. This gives a false impression of speedy disposition of cases while actually resulting in more delay, if not miscarriage of justice.[18]

Hence, as in the issuance of orders of default, courts should guard against the precipitate rendition of orders

allowing the plaintiff to present his evidence ex parte in case the defendant fails to file the pre-trial brief or to appear at pre-trial. Such an order has the effect of denying a litigant the chance to be heard. It tends to unduly restrict the fundamental purpose of procedural rules: to afford each litigant every opportunity to present evidence on his behalf in order that substantial justice may be achieved.[19]

WHEREFORE, the petition is hereby GRANTED and the September 27, 2000 decision of the Court of Appeals in CA-G.R. SP No. 55955 is REVERSED and SET ASIDE. The June 17, 1999 order, as well as all subsequent proceedings and orders, including the July 12, 1999 decision and September 24, 1999 order, of the RTC of Quezon City, Branch 79 in Civil Case No. Q-97-31977 are likewise SET ASIDE.

The RTC of Quezon City, Branch 79 is hereby ORDERED to direct the parties and their counsels of record in Civil Case No. Q-97-31977 to appear before it for a pre-trial conference in strict compliance with the rules and thereafter, to proceed to trial as necessary.

SO ORDERED.

Panganiban, (Chairman), Sandoval-Gutierrez, Carpio Morales, and Garcia, JJ., concur.

[1] Penned by Associate Justice Mariano M. Umali and concurred in by Associate Justices Ruben T. Reyes and Rebecca de Guia-Salvador of the Fifteenth Division of the Court of Appeals.

[2] Rollo, p. 25; Petition dated November 17, 2000, p. 6.

[3] *Heirs of Fuentes v. Macandog*, G.R. No. L-45445, 16 June 1978, 83 SCRA 648.

[4] *Lim v. Animas*, G.R. No. L-390094, 18 April 1975, 63 SCRA 408.

[5] *Sagarino v. Pelayo*, G.R. No. L-27927, 20 June 1977, 77 SCRA 402.

[6] Regalado, Florenz, *Remedial Law Compendium*, Vol. I, 6[th] revised edition, 1997, p. 281.

[7] Section 5, Rule 18, 1997 Rules of Civil Procedure.

[8] *Pineda v. Court of Appeals*, G.R. No. L-35583, 30 September 1975, 67 SCRA 228.

[9] Cf. *Golden Flame Sawmill v. Court of Appeals*, 313 Phil. 84 (1995) citing *Pineda v. Court of Appeals*, G.R. No. L-35583, 30 September 1975, 67 SCRA 228.

[10] *Id.*, citing *Zenith Insurance Corporation v. Purisima*, 199 Phil. 291 (1982); See also *Raymundo v. Court of Appeals*, 374 Phil. 95 (1999).

[11] *Pearson v. Intermediate Appellate Court*, 356 Phil. 341 (1998); *Marcelo v. de Guzman*, 200 Phil. 137 (1982).

[12] *Yutingco v. Court of Appeals*, 435 Phil. 83 (2002); *Gelindon v. de la Rama*, G.R. No. 105072, 9 December 1993, 228 SCRA 322.

[13] Cf. *Golden Flame Sawmill v. Court of Appeals*, *supra*; *Barde v. Posiquit*, G.R. No. L-29445, 15 August 1988, 164 SCRA 304.

[14] Section 6 in connection with Section 5, Rule 18, 1997 Rules of Civil Procedure.

[15] Rollo, pp. 38-39, 66-67.

[16] Comment/Opposition to Petition, p. 2; CA Records, p. 67.

[17] Padua v. Ericta, G.R. No. L-38570, 24 May 1988, 161 SCRA 458.

[18] Go v. Tan, G.R. No. 130330, September 26, 2003, 412 SCRA 123.

[19] Id.

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