

RICO ROMMEL ATIENZA, PETITIONER, VS. BOARD OF MEDICINE AND EDITHA SIOSON, RESPONDENTS.

G.R. No. 177407. February 09, 2011

Ponente: NACHURA, J.

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NACHURA, J.:

Before us is a petition for review on certiorari under Rule 45 of the Rules of Court, assailing the Decision[1] dated September 22, 2006 of the Court of Appeals (CA) in CA-G.R. SP No. 87755. The CA dismissed the petition for certiorari filed by petitioner Rico Rommel Atienza (Atienza), which, in turn, assailed the Orders[2] issued by public respondent Board of Medicine (BOM) in Administrative Case No. 1882.

The facts, fairly summarized by the appellate court, follow.

Due to her lumbar pains, private respondent Editha Sioson went to Rizal Medical Center (RMC) for check-up on February 4, 1995. Sometime in 1999, due to the same problem, she was referred to Dr. Pedro Lantin III of RMC who, accordingly, ordered several diagnostic laboratory tests. The tests revealed that her right kidney is normal. It was ascertained, however, that her left kidney is non-functioning and non-visualizing. Thus, she underwent kidney operation in September, 1999.

On February 18, 2000, private respondent's husband, Romeo Sioson (as complainant), filed a complaint for gross negligence and/or incompetence before the [BOM] against the doctors who allegedly participated in the fateful kidney operation, namely: Dr. Judd dela Vega, Dr. Pedro Lantin, III, Dr. Gerardo Antonio Florendo and petitioner Rico Rommel Atienza.

It was alleged in the complaint that the gross negligence and/or incompetence committed by the said doctors, including petitioner, consists of the removal of private respondent's fully functional right kidney, instead of the left non-functioning and non-visualizing kidney.

The complaint was heard by the [BOM]. After complainant Romeo Sioson presented his evidence, private respondent Editha Sioson, also named as complainant there, filed her formal offer of documentary evidence. Attached to the formal offer of documentary evidence are her Exhibits "A" to "D," which she offered for the purpose of proving that her kidneys were both in their proper anatomical locations at the time she was operated. She described her exhibits, as follows:

"EXHIBIT `A' - the certified photocopy of the X-ray Request form dated December 12, 1996, which is also marked as Annex `2' as it was actually originally the Annex to x x x Dr. Pedro Lantin, III's counter affidavit filed with the City Prosecutor of Pasig City in connection with the criminal complaint filed by [Romeo Sioson] with the said office, on which are handwritten entries which are the interpretation of the results of the ultrasound examination. Incidentally, this exhibit happens to be the same as or identical to the certified photocopy of the document marked as Annex `2' to the Counter-Affidavit dated March 15, 2000, filed by x x x Dr. Pedro Lantin, III, on May 4, 2000, with this Honorable Board in answer to this complaint;

"EXHIBIT `B' - the certified photo copy of the X-ray request form dated January 30, 1997, which is also marked as Annex `3' as it was actually likewise originally an Annex to x x x Dr. Pedro Lantin, III's

counter-affidavit filed with the Office of the City Prosecutor of Pasig City in connection with the criminal complaint filed by the herein complainant with the said office, on which are handwritten entries which are the interpretation of the results of the examination. Incidentally, this exhibit happens to be also the same as or identical to the certified photo copy of the document marked as Annex `3' which is likewise dated January 30, 1997, which is appended as such Annex `3' to the counter-affidavit dated March 15, 2000, filed by x x x Dr. Pedro Lantin, III on May 4, 2000, with this Honorable Board in answer to this complaint.

"EXHIBIT `C' - the certified photocopy of the X-ray request form dated March 16, 1996, which is also marked as Annex `4,' on which are handwritten entries which are the interpretation of the results of the examination.

"EXHIBIT `D' - the certified photocopy of the X-ray request form dated May 20, 1999, which is also marked as Annex `16,' on which are handwritten entries which are the interpretation of the results of the examination. Incidentally, this exhibit appears to be the draft of the typewritten final report of the same examination which is the document appended as Annexes `4' and `1' respectively to the counter-affidavits filed by x x x Dr. Judd dela Vega and Dr. Pedro Lantin, III in answer to the complaint. In the case of Dr. dela Vega however, the document which is marked as Annex `4' is not a certified photocopy, while in the case of Dr. Lantin, the document marked as Annex `1' is a certified photocopy. Both documents are of the same date and typewritten contents are the same as that which are written on Exhibit `D.'

Petitioner filed his comments/objections to private respondent's [Editha Sioson's] formal offer of exhibits. He alleged that said exhibits are inadmissible because the same are mere photocopies, not properly identified and authenticated, and intended to establish matters which are hearsay. He added that the exhibits are incompetent to prove the purpose for which they are offered.

Dispositions of the Board of Medicine

The formal offer of documentary exhibits of private respondent [Editha Sioson] was admitted by the [BOM] per its Order dated May 26, 2004. It reads:

"The Formal Offer of Documentary Evidence of [Romeo Sioson], the Comments/Objections of [herein petitioner] Atienza, [therein respondents] De la Vega and Lantin, and the Manifestation of [therein] respondent Florendo are hereby ADMITTED by the [BOM] for whatever purpose they may serve in the resolution of this case.

"Let the hearing be set on July 19, 2004 all at 1:30 p.m. for the reception of the evidence of the respondents.

"SO ORDERED."

Petitioner moved for reconsideration of the abovementioned Order basically on the same reasons stated in his comment/objections to the formal offer of exhibits.

The [BOM] denied the motion for reconsideration of petitioner in its Order dated October 8, 2004. It concluded that it should first admit the evidence being offered so that it can determine its probative value when it decides the case. According to the Board, it can determine whether the evidence is relevant or not if it will take a look at it through the process of admission. x x x.[3]

Disagreeing with the BOM, and as previously adverted to, Atienza filed a petition for certiorari with the CA, assailing the BOM's Orders which admitted Editha Sioson's (Editha's) Formal Offer of Documentary Evidence. The CA dismissed the petition for certiorari for lack of merit.

Hence, this recourse positing the following issues:

- PROCEDURAL ISSUE:

WHETHER PETITIONER ATIENZA AVAILED OF THE PROPER REMEDY WHEN HE FILED THE PETITION FOR CERTIORARI DATED 06 DECEMBER 2004 WITH THE COURT OF APPEALS UNDER RULE 65 OF THE RULES OF COURT TO ASSAIL THE ORDERS DATED 26 MAY 2004 AND 08 OCTOBER 2004 OF RESPONDENT BOARD.

- SUBSTANTIVE ISSUE:

WHETHER THE COURT OF APPEALS COMMITTED GRAVE REVERSIBLE ERROR AND DECIDED A QUESTION OF SUBSTANCE IN A WAY NOT IN ACCORDANCE WITH LAW AND THE APPLICABLE DECISIONS OF THE HONORABLE COURT WHEN IT UPHELD THE ADMISSION OF INCOMPETENT AND INADMISSIBLE EVIDENCE BY RESPONDENT BOARD, WHICH CAN RESULT IN THE DEPRIVATION OF PROFESSIONAL LICENSE - A PROPERTY RIGHT OR ONE'S LIVELIHOOD.[4]

We find no reason to depart from the ruling of the CA.

Petitioner is correct when he asserts that a petition for certiorari is the proper remedy to assail the Orders of the BOM, admitting in evidence the exhibits of Editha. As the assailed Orders were interlocutory, these cannot be the subject of an appeal separate from the judgment that completely or finally disposes of the case.[5] At that stage, where there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, the only and remaining remedy left to petitioner is a petition for certiorari under Rule 65 of the Rules of Court on the ground of grave abuse of discretion amounting to lack or excess of jurisdiction.

However, the writ of certiorari will not issue absent a showing that the BOM has acted without or in excess of jurisdiction or with grave abuse of discretion. Embedded in the CA's finding that the BOM did not exceed its jurisdiction or act in grave abuse of discretion is the issue of whether the exhibits of Editha contained in her Formal Offer of Documentary Evidence are inadmissible.

Petitioner argues that the exhibits formally offered in evidence by Editha: (1) violate the best evidence rule; (2) have not been properly identified and authenticated; (3) are completely hearsay; and (4) are incompetent to prove their purpose. Thus, petitioner contends that the exhibits are inadmissible evidence.

We disagree.

To begin with, it is well-settled that the rules of evidence are not strictly applied in proceedings before administrative bodies such as the BOM.[6] Although trial courts are enjoined to observe strict enforcement of the rules of evidence,[7] in connection with evidence which may appear to be of doubtful relevancy, incompetency, or admissibility, we have held that:

[I]t is the safest policy to be liberal, not rejecting them on doubtful or technical grounds, but admitting them unless plainly irrelevant, immaterial or incompetent, for the reason that their rejection places them beyond the consideration of the court, if they are thereafter found relevant or competent; on the other hand, their admission, if they turn out later to be irrelevant or incompetent, can easily be remedied by completely discarding them or ignoring them.[8]

From the foregoing, we emphasize the distinction between the admissibility of evidence and the probative weight to be accorded the same pieces of evidence. *PNOC Shipping and Transport Corporation v. Court of Appeals*[9] teaches:

Admissibility of evidence refers to the question of whether or not the circumstance (or evidence) is to be considered at all. On the other hand, the probative value of evidence refers to the question of whether or not it proves an issue.

Second, petitioner's insistence that the admission of Editha's exhibits violated his substantive rights leading to the loss of his medical license is misplaced. Petitioner mistakenly relies on Section 20, Article I of the Professional Regulation Commission Rules of Procedure, which reads:

Section 20. Administrative investigation shall be conducted in accordance with these Rules. The Rules of Court shall only apply in these proceedings by analogy or on a suppletory character and whenever practicable and convenient. Technical errors in the admission of evidence which do not prejudice the substantive rights of either party shall not vitiate the proceedings.[10]

As pointed out by the appellate court, the admission of the exhibits did not prejudice the substantive rights of petitioner because, at any rate, the fact sought to be proved thereby, that the two kidneys of Editha were in their proper anatomical locations at the time she was operated on, is presumed under Section 3, Rule 131 of the Rules of Court:

Sec. 3. Disputable presumptions. - The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence:

x x x x

(y) That things have happened according to the ordinary course of nature and the ordinary habits of life.

The exhibits are certified photocopies of X-ray Request Forms dated December 12, 1996, January 30, 1997, March 16, 1996, and May 20, 1999, filed in connection with Editha's medical case. The documents contain handwritten entries interpreting the results of the examination. These exhibits were actually attached as annexes to Dr. Pedro Lantin III's counter affidavit filed with the Office of the City Prosecutor of Pasig City, which was investigating the criminal complaint for negligence filed by Editha against the doctors of Rizal Medical Center (RMC) who handled her surgical procedure. To lay the predicate for her case, Editha offered the exhibits in evidence to prove that her "kidneys were both in their proper anatomical locations at the time" of her operation.

The fact sought to be established by the admission of Editha's exhibits, that her "kidneys were both in their proper anatomical locations at the time" of her operation, need not be proved as it is covered by mandatory judicial notice.[11]

Unquestionably, the rules of evidence are merely the means for ascertaining the truth respecting a matter of fact.[12] Thus, they likewise provide for some facts which are established and need not be proved, such as those covered by judicial notice, both mandatory and discretionary.[13] Laws of nature involving the physical sciences, specifically biology,[14] include the structural make-up and composition of living things such as human beings. In this case, we may take judicial notice that Editha's kidneys before, and at the time of, her operation, as with most human beings, were in their proper anatomical locations.

Third, contrary to the assertion of petitioner, the best evidence rule is inapplicable. Section 3 of Rule 130 provides:

1. Best Evidence Rule

Sec. 3. Original document must be produced; exceptions. - When the subject of inquiry is the contents of a document, no evidence shall be admissible other than the original document itself, except in the following cases:

(a) When the original has been lost or destroyed, or cannot be produced in court, without bad faith on the part of the offeror;

(b) When the original is in the custody or under the control of the party against whom the evidence is offered,

and the latter fails to produce it after reasonable notice;

(c) When the original consists of numerous accounts or other documents which cannot be examined in court without great loss of time and the fact sought to be established from them is only the general result of the whole; and

(d) When the original is a public record in the custody of a public officer or is recorded in a public office.

The subject of inquiry in this case is whether respondent doctors before the BOM are liable for gross negligence in removing the right functioning kidney of Editha instead of the left non-functioning kidney, not the proper anatomical locations of Editha's kidneys. As previously discussed, the proper anatomical locations of Editha's kidneys at the time of her operation at the RMC may be established not only through the exhibits offered in evidence.

Finally, these exhibits do not constitute hearsay evidence of the anatomical locations of Editha's kidneys. To further drive home the point, the anatomical positions, whether left or right, of Editha's kidneys, and the removal of one or both, may still be established through a belated ultrasound or x-ray of her abdominal area.

In fact, the introduction of secondary evidence, such as copies of the exhibits, is allowed.[15] Witness Dr. Nancy Aquino testified that the Records Office of RMC no longer had the originals of the exhibits "because [it] transferred from the previous building, x x x to the new building." [16] Ultimately, since the originals cannot be produced, the BOM properly admitted Editha's formal offer of evidence and, thereafter, the BOM shall determine the probative value thereof when it decides the case.

WHEREFORE, the petition is DENIED. The Decision of the Court of Appeals in CA-G.R. SP No. 87755 is AFFIRMED. Costs against petitioner.

SO ORDERED.

Peralta, Del Castillo,[*] Villarama, Jr.,[**] and Mendoza, JJ., concur.

[*] Additional member in lieu of Associate Justice Antonio T. Carpio per Raffle dated August 2, 2010.

[**] Additional member in lieu of Associate Justice Roberto A. Abad per Raffle dated August 2, 2010.

[1] Penned by Presiding Justice Ruben T. Reyes (a retired member of this Court), with Associate Justices Juan Q. Enrique, Jr. and Vicente S.E. Veloso, concurring; rollo, pp. 95-106.

[2] Dated May 26, 2004 and October 8, 2004, respectively; id. at 408-411.

[3] Id. at 95-99.

[4] Id. at 677-678.

[5] *Raymundo v. Isagon Vda. de Suarez*, G.R. No. 149017, November 28, 2008, 572 SCRA 384, 403-404.

[6] *Bantolino v. Coca-Cola Bottlers Phils., Inc.*, 451 Phil. 839, 845-846 (2003).

[7] Francisco, *EVIDENCE RULES* 128-134 (3[rd] ed. 1996), p. 9.

[8] Id., citing *People v. Jaca, et al.*, 106 Phil. 572, 575 (1959).

[9] 358 Phil. 38, 59 (1998).

[10] Rollo, p. 101.

[11] RULES OF COURT, Rule 129, Sec. 1.

SECTION 1. Judicial notice, when mandatory. - A court shall take judicial notice, without the introduction of evidence, of the existence and territorial extent of states, their political history, forms of government and symbols of nationality, the law of nations, the admiralty and maritime courts of the world and their seals, the political constitution and history of the Philippines, the official acts of the legislative, executive and judicial departments of the Philippines, the laws of nature, the measure of time, and the geographical divisions.

[12] RULES OF COURT, Rule 128, Sec. 1.

[13] RULES OF COURT, Rule 129, Sec. 2.

SEC. 2. Judicial notice, when discretionary. - A court may take judicial notice of matters which are of public knowledge, or are capable of unquestionable demonstration, or ought to be known to judges because of their judicial functions.

[14] Science of life, definition of Webster's Third New International Dictionary.

[15] RULES OF COURT, Rule 130, Sec. 5.

[16] TSN, July 17, 2003; rollo, pp. 347-348.

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