FERNANDO CO (FORMERLY DOING BUSINESS UNDER THE NAME "NATHANIEL MAMI HOUSE"), PETITIONER, VS. LINA B. VARGAS, RESPONDENT.

G.R. No. 195167. November 16, 2011

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

This petition for review[1] assails the 29 June 2010 Decision[2] and the 5 January 2011 Resolution[3] of the Court of Appeals in CA-G.R. SP No. 110728. The Court of Appeals set aside the 11 June 2008 Decision[4] of the National Labor Relations Commission (NLRC) and reinstated the 30 October 2004 Decision[5] of the Labor Arbiter.

The Facts

On 22 April 2003, respondent Lina B. Vargas (respondent) filed against Nathaniel Bakeshop and its owner Fernando Co a complaint for underpayment or non-payment of wages and holiday pay.[6] The complaint was later amended to include illegal dismissal as a cause of action and the non-payment of service incentive leave.[7]

Respondent alleged that she started working at the bakeshop in October 1994 as a baker and worked from 8:00 a.m. until 8:30 p.m., Monday to Saturday. Aside from baking, respondent also served the customers and supervised the other workers in the absence of the owner. Furthermore, respondent claimed that she sometimes cooked and did the chores of a housemaid whenever the latter was not available. Respondent had a salary of P220 per day, which she received every Saturday afternoon. During the period of her employment, respondent was not given a payslip and she was never asked to sign a payroll.

On 6 April 2003, petitioner Co's wife, Nely Co, told respondent to cook their lunch because the housemaid was ironing clothes. Since respondent was busy preparing customers' orders, she lost track of time and was unable to cook lunch as instructed. Irate at respondent's failure to cook, Nely Co cussed respondent and told her to leave and never to return because she was not needed anymore. Respondent was so humiliated and could no longer bear the treatment she received from her employers that she decided to take her salary and leave that same day. Respondent later filed the complaint against Nathaniel Bakeshop and its owner Fernando Co.

Petitioner denies respondent's claim that she was employed as a baker in their business. Petitioner alleges that they hired respondent to work as a housemaid. Petitioner refutes respondent's version of the events which allegedly happened on 6 April 2003. Petitioner alleges that in April 2003, his wife, Nely Co, reprimanded respondent for her failure to cook lunch on time. Angered at being reprimanded, respondent then demanded her salary and walked out of petitioner's residence and has never reported for work again. Petitioner further avers that respondent badmouthed petitioner's daughter and displayed defiance, disrespect and insubordination toward them.

On 30 October 2004, the Labor Arbiter rendered a Decision, the dispositive portion of which reads:

> WHEREFORE, premises considered, judgment is hereby rendered finding illegal complainant's dismissal. Consequently, respondents are hereby held liable and ordered to reinstate complainant to her former position without loss of seniority rights and other privileges with full backwages initially computed at this time at P110,436.04.
>
> IN CASE REINSTATEMENT BECOMES IMPOSSIBLE DUE TO SOME SUPERVENING EVENT, RESPONDENTS ARE ALSO ORDERED TO PAY COMPLAINANT'S SEPARATION PAY COMPUTED at one month's pay for every year of service.
>
> Respondents are likewise ordered to pay complainant's service incentive leave of P3,332.50, 13th month pay (pro-rata) of P1,551.66 and salary differential of P1,723.41.
>
> All other claims are hereby dismissed for lack of merit.
>
> SO ORDERED.[8]

The Labor Arbiter found that the place of business of petitioner is the same as his place of residence and that respondent works for petitioner as well as for his business which is based in his home. Thus, the Labor Arbiter concluded that "while complainant may have started her employ doing chores for the [petitioner's] family, she also fulfilled tasks connected with the [petitioner's] business such as cooking, filling orders, baking orders, and other clerical work, all of which are usually necessary and desirable in the usual trade or business of the respondent. Inescapably, complainant is a regular employee and thus, entitled to security of tenure."[9]

On appeal, the NLRC reversed and set aside the Labor Arbiter's Decision. The NLRC concluded that respondent was not employed as a baker at petitioner's bakeshop but was merely petitioner's housemaid who left her employ voluntarily. The NLRC found petitioner not guilty of illegal dismissal.

Respondent filed a petition for certiorari with the Court of Appeals.

The Ruling of the Court of Appeals

On 29 June 2010, the Court of Appeals promulgated its Decision in favor of respondent. The Court of Appeals annulled the NLRC Decision and reinstated the 30 October 2004 Decision of the Labor Arbiter. The Court of Appeals ruled:

> [I]t is clear that petitioner [Lina B. Vargas] is not a househelper or domestic servant of private respondents [Nathaniel Bakeshop and Fernando Co]. The evidence shows that petitioner is working within the premises of the business of private respondent Co and in relation to or in connection with such business. In the Memorandum of Appeal filed by private respondents before the NLRC, the place of business of respondent Co and his residence is located in the same place, Brgy. Juliana, San Fernando, Pampanga. Thus, respondent Co exercised control and supervision over petitioner's functions. Respondent Co's averment that petitioner had the simple task of cleaning the house and cooking at times and was not involved in the business was negated by the fact that petitioner likewise takes the orders of private respondents' customers. Even if petitioner was actually working as domestic servant in private respondent's residence, her act of taking orders, which was ratiocinated by the NLRC as not leading to the conclusion that petitioner in fact took the orders, would warrant the conclusion that petitioner should be considered as a regular employee and not as a mere family househelper or domestic servant of respondent Co.
>
> Private respondents relied heavily on the recantation (through an Affidavit of Recantation) by Joseph Baybayon of his Affidavit stating that petitioner was an employee, to boast [sic] their theory that petitioner is a mere domestic helper. Nonetheless, this Court is convinced that the allegations in the first affidavit are

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sufficient to establish that petitioner is an employee of private respondent and not a housemaid. Granting arguendo, that the second affidavit validly repudiated the first one, courts generally do not look with favor on any retraction or recanted testimony, for it could have been secured by considerations other than to tell the truth and would make solemn trials a mockery and place the investigation of the truth at the mercy of unscrupulous witnesses. A recantation does not necessarily cancel an earlier declaration, but like any other testimony, the same is subject to the test of credibility and should be received with caution.

Having resolved the issue that petitioner was an employee of private respondents and not a housemaid, was petitioner illegally dismissed? The answer is in the affirmative. Since petitioner is an employee of private respondents, she is entitled to security of tenure. The NLRC observed that it was petitioner who left private respondents on April 6, 2003 when petitioner was allegedly driven away from work by Nely Co. Private respondents' witnesses, Jay dela Cruz and Maria Fe Reniva, averred that it was petitioner who abandoned her job by not reporting for work. But their affidavits did state that the two were employees of private respondent. The other two documents considered by the NLRC were the affidavits of Felisa Borason San Andres (who allegedly helped petitioner to be employed as housemaid of Nely Co) and Alma P. Agorita (an alleged co-housemaid of petitioner in the Co residence). Surprisingly, the affidavit of Felisa Borason San Andres was written in English, considering the statement that she was employed as househelper of Nely Co. The question is whether the said househelper understood what was written in her affidavit or if the same was explained to her in her native language, for she was a resident of San Felipe, Naga City, where she allegedly executed her affidavit. All told, the said affidavits cannot be given credence to refute the fact that petitioner was an employee of private respondent Co doing work in relation to private respondent's business, which is that of a bakeshop.

Assuming further that petitioner abandoned her job, the Supreme Court held in Ultra Villa Food Haus and/or Rosie Tio vs. NLRC that to constitute abandonment, two requisites must concur: (1) the failure to report to work or absence without valid or justifiable reason, and (2) a clear intention to sever the employer-employee relationship as manifested by some overt acts, with the second requisite as the more determinative factor. The burden of proving abandonment as a just cause for dismissal is on the employer. Private respondents failed to discharge this burden. The only evidence adduced by private respondents to prove abandonment were the affidavits of their househelpers and employees.

WHEREFORE, premises considered, the petition is GRANTED. The Decision of the National Labor Relations Commission, Second Division dated June 11, 2008 is hereby ANNULLED and SET ASIDE and the Decision of the Labor Arbiter dated October 30, 2004 is REINSTATED.

SO ORDERED.[10] (Boldfacing supplied)

Petitioner filed a Motion for Reconsideration, which the Court of Appeals denied in its Resolution dated 5 January 2011. Hence, this petition.

The Issue

Petitioner raises the sole issue of whether the "Court of Appeals erred in ruling that at the time Respondent was working with the Co family, the business was being conducted at the residence."[11]

The Ruling of the Court

We find the petition without merit.

In this case, it was only in petitioner's Supplement to the Motion for Reconsideration of the Court of Appeals' Decision that petitioner raised the issue that contrary to the findings of the Labor Arbiter, NLRC, and the Court of Appeals, the bakery was not located at his residence at the time respondent was in their employ. Furthermore, petitioner would even have this Court evaluate additional documentary evidence which were not offered during

the proceedings in the Labor Arbiter, NLRC, and the Court of Appeals. The additional evidence were only submitted after the Court of Appeals promulgated its Decision, when petitioner attached the additional evidence in his Supplement to the Motion for Reconsideration.[12]

The issue raised by petitioner is clearly a question of fact which requires a review of the evidence presented. The Supreme Court is not a trier of facts.[13] It is not the function of this Court to examine, review or evaluate the evidence all over again,[14] specially on evidence raised for the first time on appeal.[15]

A petition for review under Rule 45 of the Rules of Court should cover only questions of law, thus:

> Section 1. Filing of petition with Supreme Court. – A party desiring to appeal by certiorari from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on certiorari. The petition shall raise only questions of law which must be distinctly set forth. (Emphasis supplied)

As a rule, the findings of fact of the Court of Appeals are final and conclusive and this Court will not review them on appeal,[16] subject to exceptions such as those enumerated by this Court in Development Bank of the Philippines v. Traders Royal Bank:[17]

> The jurisdiction of the Court in cases brought before it from the appellate court is limited to reviewing errors of law, and findings of fact of the Court of Appeals are conclusive upon the Court since it is not the Court's function to analyze and weigh the evidence all over again. Nevertheless, in several cases, the Court enumerated the exceptions to the rule that factual findings of the Court of Appeals are binding on the Court: (1) when the findings are grounded entirely on speculations, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of fact are conflicting; (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to that of the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; or (11) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.[18]

Petitioner failed to show that this case falls under any of the exceptions. The finding of the Labor Arbiter that petitioner's bakery and his residence are located at the same place was not reversed by the NLRC.[19] Furthermore, the Court of Appeals upheld this finding of the Labor Arbiter. We find no justifiable reason to deviate from the findings and ruling of the Court of Appeals.

WHEREFORE, we DENY the petition. We AFFIRM the 29 June 2010 Decision and the 5 January 2011 Resolution of the Court of Appeals in CA-G.R. SP No. 110728.

SO ORDERED.

Brion, Perez, Sereno, and Reyes, JJ., concur.

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[*] Also known as "Nathaniel's Bakeshop."

[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] Rollo, pp. 12-25. Penned by Associate Justice Magdangal M. De Leon, with Associate Justices Mario V.

Lopez and Amy C. Lazaro-Javier, concurring.

[3] Id. at 86-87.

[4] CA rollo, pp. 245-264.

[5] Id. at 110-125.

[6] Id. at 28-29.

[7] Id. at 30-31.

[8] Id. at 124-125.

[9] Id. at 121.

[10] Rollo, pp. 22-24.

[11] Petition for Review, p. 24.

[12] Rollo, pp. 88-145.

[13] Aliño v. Heirs of Angelica A. Lorenzo, G.R. No. 159550, 27 June 2008, 556 SCRA 139; Diesel Construction Co., Inc. v. UPSI Property Holdings, Inc., G.R. Nos. 154885 & 154937, 24 March 2008, 549 SCRA 12.

[14] Alicer v. Compas, G.R. No. 187720, 30 May 2011.

[15] China Banking Corporation v. Asian Construction and Development Corporation, G.R. No. 158271, 8 April 2008, 550 SCRA 585.

[16] Sps. Andrada v. Pilhino Sales Corporation, G.R. No. 156448, 23 February 2011; Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue, G.R. No. 159490, 18 February 2008, 546 SCRA 150; Microsoft Corporation v. Maxicorp, Inc., 481 Phil. 550 (2004).

[17] G.R. No. 171982, 18 August 2010, 628 SCRA 404.

[18] Id. at 413-414.

[19] Although the NLRC reversed the Labor Arbiter’s Decision and held that respondent was not employed as a baker at petitioner’s bakeshop but was merely petitioner’s housemaid, the NLRC did not reverse the Labor Arbiter’s finding that the bakery is located at petitioner’s residence.

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