

NINTH DIVISION

[G.R. CV NO. 83632, August 08, 2006]

**SPS. GERRY AND ANNALYN FERNANDEZ, FOR THEMSELVES AND
IN THEIR CAPACITY AS PARENTS/NATURAL GUARDIAN OF THE
MINOR JERRAH KLOE FERNANDEZ, PLAINTIFFS-APPELLANTS,
VS. MERCURY DRUG CORPORATION, CATHERINE DELA CRUZ
AND MICHELLE NASTOR, DEFENDANTS-APPELLANTS.**

D E C I S I O N

DACUDAO, J.:

Appeal from the Decision^[1] of the Regional Trial Court of Cavite, Branch 16, in Civil Case No. N-7233, the dispositive portion of which reads:

"WHEREFORE, premises considered, defendants Michelle Nastor and Mercury Drug Corporation are hereby ordered to pay plaintiff, jointly and severally, the following:

- "1. Actual damages in the amount of P449,967.55;
- "2. Moral damages in the amount of P50,000;
- "3. Exemplary damages in the amount of P50,000.00;
- "4. Attorney's fees in the amount of P10,000.00; and Costs.

"SO ORDERED.

"Given at Cavite City, this 6th day of May 2004.

"(SGD)MANUEL A. MAYO
"Judge"

Gleaned from the records of the case are these material operative facts:

On March 7, 2002, the spouses Gerry and Annalyn Fernandez filed a complaint for Damages^[2] against the Mercury Drug Corporation, Catherine De la Cruz and Michelle Nastor. The complaint alleged, amongst others, that on December 10, 2001, the plaintiff Annalyn C. Fernandez ordered for and purchased 10 vitamin tablets (Thiamine) from the defendant Mercury Drug Corporation, at Rosario, Cavite by delivering to the latter's employees the prescription issued by a dermatologist for her 2-year old daughter, Jerrah Kloe; that the employees of the defendant Mercury Drug, who were later identified as the defendants Michelle Nastor and Catherine de la Cruz, delivered and sold to the plaintiff Annalyn 10 tablets; that believing the medicine to be the vitamin stated in the prescription, the plaintiff Annalyn paid the amount asked of her and was issued a printed official receipt therefor; that not being familiar with the names of drugs, and having relied on the reputed reliability of the defendant Mercury Drug as seller/dispenser of genuine medicine and other

pharmaceutical products, the plaintiff Annalyn did not check anymore the name of the tablets sold and delivered to her by the defendant employees; that on December 12, 2001, after her very young daughter Jerrah Kloe had taken in and ingested one of the tablets sold to the plaintiff Annalyn by defendants, said child cried continuously, complaining of burning sensation in her mouth; that, after a few minutes, the child lapsed into "sleep" with saliva coming out of her mouth; that it was only when they saw the foregoing condition of their child that the plaintiff spouses checked the receipt covering such purchase, and they found out that what was sold to them were Thorazine tablets, 200 mg, classified as an anti-psychotic drug, and not Thiamine (Vitamin B) tablets called for in the doctor's prescription; that the child Jerrah Kloe was immediately brought to the De La Salle University Medical Center in Dasmariñas, Cavite, where she was admitted as an emergency case, and was subjected to a series of tests to determine the effect on the said 2-year old child of the Thorazine 200 mg that she ingested; that the result of the test on the urine-sample of the said child, conducted by the U.P. College of Medicine, Department of Pharmacology, confirmed the child's ingestion of the anti-psychotic drug, Thorazine; that the child stayed in the De La Salle University Medical Center from December 12 to December 15, 2001; that when the child was discharged, her attending physician advised the plaintiff spouses to bring her for regular weekly, and later monthly check-ups, to monitor possible complications in her case; that the plaintiff spouses demanded indemnification from the defendant Mercury Drug for the damages they suffered due to the recklessness or negligence of its employees; that despite receipt of the letter of the plaintiff spouses' counsel, the defendants failed to make a reply thereto; that the reckless negligence of the defendant employees of the defendant Mercury Drug, in selling and delivering to the plaintiff Annalyn "Thorazine 200 mg" tablets instead of "Thiamine 200 mg" tablets as stated in the prescription sheet presented to them, has caused and is causing physical pain and injury to said 2-year old child; that for the hospital confinement and treatment of Jerrah Kloe Fernandez from December 12 to December 15, 2001, and her required regular medical check-up up to the present, the plaintiff spouses incurred expenses, and were compelled to forego their usual work and occupation just to be with their said child, thereby causing them to suffer actual damages; that the foregoing recklessness and negligence of defendant employees in delivering an anti-psychotic medicine to the plaintiff Annalyn, instead of the vitamin tablets prescribed by the physician, had endangered and almost cost the life of the 2-year old child; that the uncertainty of the effect of the ingestion of Thorazine on the health of their said child, had caused and are causing the plaintiff spouses mental anguish, serious anxiety, and distress, for which physical pain and emotional suffering the plaintiff spouses' child and her parents should be entitled to moral damages that can be quantified at no less than P500,000.00; that in view of the defendants' failure to exercise the degree of care and diligence required of them by the nature of their occupation and business, which directly affect the lives and health of their customers, they should also be held jointly and severally liable to pay to the plaintiffs exemplary damages, to serve as example for the public good; and that due to defendants' cavalier attitude and unjustified refusal, amounting to bad faith and malice, to heed plaintiffs request for relief for the damage and injury caused by their reckless negligence, plaintiffs were compelled to engage the services of a lawyer to enforce their rights and protect their interest, and thereby incur necessary litigation expenses and costs. The plaintiffs concluded their complaint with a prayer that, after due proceedings, the Court render judgment sentencing the defendants jointly and severally to pay them actual damages in the sum of at least P80,000.00; moral and exemplary damages of not less than P500,000.00; attorney's fees of P100,000.00,

plus appearance fee of P3,000.00 per hearing; and litigation expenses of at least P20,000.00.

Whereupon the defendants filed a Motion to Dismiss,^[3] while the plaintiff spouses filed a motion to declare defendants in default,^[4] both of which were by the trial court denied in its Order of May 28, 2002.^[5]

On June 7, 2002, defendants filed their answer⁶ raising as special and affirmative defenses the following:

"1. Defendants did not sell Plaintiffs a wrong medicine.

"2. Defendant corporation has implemented rules and procedure for its staff's strict compliance in order to avoid dispensing of wrong medicine and/or similar errors.

"3. Plaintiffs were negligent for not checking the medicines allegedly purchased from defendants before taking them, which negligence is the proximate cause of his alleged suffering;

"4. Defendant Corporation exercised due care in the selection and supervision of its employees. It exercised the diligence required of a drug retailer and did not act with reckless, imprudent or wanton attitude nor in violation of provisions of the Civil Code."

Both parties were thereafter ordered to submit their respective pre-trial briefs.^[7] At the pre-trial conference, it was agreed that the issues to be resolved were:

"a) Whether or not defendant committed gross and reckless negligence in selling and delivering anti-psychotic drug to the plaintiff.

"b) Whether or not defendant are liable to pay damages as claimed by the plaintiff.

"c) Whether or not defendant corporation exercised due care and have direct supervision to (sic) their employee."^[8]

In amplification of the complaint, the plaintiffs offered in evidence the testimony of the plaintiff wife and those of the witnesses Dr. Wilhelmina Maniquis and Dr. Antonio Rebosa. The trial court's summary of their testimonies:

"Annalyn Fernandez is the mother of minor Jerrah Kloe Fernandez who, at the time of the incident under consideration, was two (2) years old. On December 10, 2001, Annalyn brought Jerrah Kloe to Dr. Wilhelmina Maniquis, a dermatologist because her baby was suffering from an allergy on her body. The doctor gave medicine to be applied to her skin and prescribed vitamins (Exhibit 'A'). (TSN, September 30, 2002, pp. 5 – 9).

"The next day, on December 11, 2001, plaintiff Annalyn Fernandez went to Mercury Druz- Rosario, Cavite branch and presented the prescription issued by Dr. Wilhemina Maniquis. (Ibid., p. 10) Said prescription was

handed by said plaintiff to defendant Catherine De la Cruz. Because Defendant De la Cruz could not understand the handwriting of Dr. Maniquis she went to the prescription Section of the store and handed the same to defendant Michelle Nastor, who was the Pharmacist on duty. (TSN, June 9, 2003, pp. 41 – 42) Upon receipt of the said prescription defendant Nastor read the medicine written on it as 'Thorazine 200 mg.' But, since defendant De la Cruz could not understand the handwriting, defendant Nastor tried to contact through the phone Dr. Maniquis but to no avail. Using her knowledge and understanding about medicines and its preparation, defendant Nastor dispensed ten (10) Thorazine 200 mg. Tablets. (TSN, June 23, 2003, p. 12) Defendant De la Cruz then forwarded the money and said medicines to the cashier and gave the same to plaintiff Annalyn Fernandez. The latter, on the other hand, counted the change and immediately put the medicines in her bag and left the drugstore. (TSN, September 30, 2002, p. 15; June 9, 2003, p.43)

"The following day, December 12, 2001, plaintiff Annalyn Fernandez dissolved one tablet in water and, with the assistance of plaintiff Gerry Fernandez, made her child, Jerrah Kloe Fernandez drink the preparation. After drinking the medicine, her child cried continuously. Worried about what caused her child to cry indifferently, plaintiff called Dr. Maniquis. The latter asked what was given to plaintiff's child. Plaintiff looked again on the box of medicine and answered 'Thorazine'. Since Dr. Maniquis was unfamiliar of said medicine, she requested plaintiff to call Mercury Drug-Rosario, Cavite branch. When she called, she learned from the one who answered the phone that the drug was anti-hiccup and she was told to proceed to the drugstore for the refund of her money and to bring with her the receipt. Upon reaching defendant drugstore and presenting the receipt, the latter told plaintiff to bring her child to a hospital. (TSN, September 30, 2002, pp. 15 – 21)

"Annalyn then immediately went home and brought her child to the Our Savior Hospital in Rosario, Cavite, where she was advised to bring her to the De la Salle Medical Center. Jerrah Kloe, who was then asleep with saliva coming out of her mouth and snoring loudly, was admitted at the said medical center and was confined there from December 12 to December 15. Upon advice, the urine of Jerrah Kloe was tested at the Philippine General Hospital and the result was positive for Thorazine in her body (Exhibit 'C'). Annalyn was also advised to bring her daughter for a regular monthly check-up upon her discharge. The plaintiffs spent P128,000.00 for the hospitalization and have incurred around P20,000.00 additional expenses for monthly check-up spent for consultation, medicines and transportation. According to the doctor there is no definite time as to when the continuous check-up would last and since Jerrah Kloe is only three (3) years old there is no way of knowing the side effect of the medicine she had ingested until she grows old. Annalyn could not work in their family corporation where she earns P30,000.00 a month because of what happened. The lawyer whom they engaged for P100,000.00 and appearance fee of P3,000.00 per hearing, sent an indemnification letter to the drugstore but there was no answer. (Ibid., pp. 22 – 35)

"Dr. Wilhelmina Maniquis is a Fellow of the Philippine Dermatological Society and a NR Fellow of the American Academy of Dermatology. She has been in the practice of dermatology since completing her training in 1988. In December of 2001, Jerrah Kloe was her patient for rashes and allergic insect bites reaction with secondary bacterial infection. Aside from giving her the usual medicine for skin disorder, she also gave her vitamin B-1 which is Thiamine and is usually given to kids with insect bite reaction. The prescription was in writing and done on her prescription pad dated December 10, 2001 (Exhibit 'A'). (TSN, December 2, 2002, pp. 6 – 9)"^[9]

In addition to these testimonies, the plaintiffs submitted the following documentary evidence: prescription slip dated 12/10/01 of Dr. Wilhelmina Asuncion-Maniquis; Official Receipt dated 12/10/01 of WM Skin Clinic; machine-printed official receipt of the Mercury Drug Corporation, Rosario Cavite Branch, dated 12/11/01; result of test conducted by the Department of Pharmacology, U.P. College of Medicine, on the urine sample of Jerrah Fernandez; Certificate of Live Birth of Jerrah Kloe Fernandez; demand letter dated February 4, 2002; Medico Legal Report issued by Dr. Antonio Rebosa; Hospital and Medical Receipts dated December 13, 2001 to October 26, 2002; and receipts for legal services.

The defendants on the other hand presented the following evidence: the testimonies of Michelle Nastor, Katherine Ramos and Dante Yulo; a portion of Mercury Drug Corporation's Employees Manual; Memorandum dated December 29, 2001; portions of the Book Better Pharmacy; and several memorandums issued by the Dangerous Drugs Board.

The trial court summed up the testimonies of the defendants' witnesses, thus--

"On the same date, December 12, 2001, the incident was relayed to Mr. Dante Yulo, Branch Manager of Mercury Drug-Rosario, Cavite branch. Mr. Yulo, together with defendants De la Cruz and Nastor tried locating plaintiffs' whereabouts to clarify some matters and to offer assistance. Defendants called Mr. Maniquis and asked for plaintiffs' address, which was divulged to them to be residing at Iglesia ni Kristo Compound, Rosario, Cavite. Defendants immediately went to said place but they only found the caretaker of the house and they were told that plaintiffs do not want to talk to them. Hence, defendants sought the help of an Iglesia ni Kristo Minister named Ka Edwin who resides in Kawit, Cavite. There Ka Edwin advised defendants to first cool thing and wait for the right time. Thereafter, the next day, defendants went to plaintiffs' parents, Ka Popoy and Ka Linda, at Aguinaldo Highway, Bacoar, Cavite but defendants were not able to talk with them properly because they were in a hurry and did not allow them to visit plaintiffs in the hospital. Hence, the following day, defendants went to the residence of plaintiff wherein they were able to talk to plaintiff Gerry Fernandez. Defendants offered their apologies. However, plaintiffs merely told defendants that they will file a case against them. (TSN, June 9, 2003, pp. 11 – 22)

"Defendant Mercury Drug Corporation conducted an investigation on the incident. Defendant Nastor explained that she dispensed Thorazine 200 mg. instead of Thiamine 200 mg because it could be readily seen on the