

THIRD DIVISION

[G.R. No. 183398, June 22, 2015]

CLODUALDA D. DAACO, PETITIONER, VS. VALERIANA ROSALDO YU, RESPONDENT.

D E C I S I O N

PERALTA, J.:

Before the Court is a petition for review on *certiorari* under Section 2(c), Rule 41, in relation to Rule 45 of the Rules of Court, seeking to reverse and set aside the Order^[1] dated October 4, 2007 of the Regional Trial Court (RTC), Branch 6, of Tacloban City in Civil Case No. 2006-12-16 dismissing the case for annulment of title, recovery of property under Transfer Certificate (TCT) No. T-28120 and damages due to the absence or failure of petitioner to appear at the pre-trial conference.

The antecedent facts are as follows:

The instant petition stems from a complaint filed by petitioner Clodualda D. Daaco against respondent Valeriana Rosaldo Yu, Faustina Daaco, and the Register of Deeds of Tacloban City docketed before the RTC, Branch 6, Tacloban City as Civil Case No. 2006-02-16 for Annulment of Title, Recoveiy of Property under TCT No. T-28120 and Damages.

After the answer had been filed and preliminary matters disposed of, the RTC, on September 5, 2007, set the pre-trial conference on October 4, 2007. However, upon motion, the trial court dismissed the case as against respondent Yu in its assailed Order for petitioner's failure to appear thereat.

Subsequently, petitioner filed a Motion for Reconsideration alleging the following grounds: (1) that she was not properly notified of the pre-trial conference scheduled at 8:30 a.m. on October 4, 2007 as she received notice thereof only at 5:30 p.m. of October 3, 2007, or merely 15 hours before the scheduled conference, and thus, the order of dismissal was invalid; and (2) that there is still an unresolved Motion to Consider the Answer of Respondent as Not Filed, which she had previously filed on October 4, 2006.

On December 27, 2007, the RTC issued an Order^[2] denying the Motion for Reconsideration in the following wise:

It is not disputed, in fact admitted, that plaintiff herself and his non-licensed lawyer son, received the notice of pre-trial on October 3, 2007. Their failure, therefore, to appear in the pre-trial conference set on October 4, 2007 at 8:30A.M. is good reason for defendant Valeria Rosaldo Yu to move and to pray the court for

dismissal of the complaint.

It is no good reason to excuse the absence of plaintiff in the pre-trial conference on October 4, 2007 simply because plaintiff and her counsel received the notice of pre-trial short of twenty-four (24) hours before the pre-trial conference was conducted. **Vital, plaintiff and her counsel have had notice of the pre-trial conference that if prudence, diligence and respect for the court had been observed there was sufficient time still for both to come to court on October 4, 2007 at 8:30 A.M.** That they didn't appear despite notice, rightly, upon motion by defendant, the court has to order the dismissal of the complaint.

San. Jose District, Tacloban City where plaintiff and her counsel resides is just fifteen (15) to twenty (20) minutes ride to the court thru public utility vehicle. Veritably, under the circumstance, plaintiff's not going to court to appear in the pre-trial conference despite notice showed nothing more but abandonment of their cause not to mention their deliberate defiance to the notice of the court for them to appear in the scheduled pre-trial conference. Under Rule 17 of the Rules of Court, failure to comply the order of the court is a ground 1 dismiss plaintiffs complaint.

It is not correct to claim that there is still a pending motion filed by plaintiff which this court failed to resolve. The motion to consider the answer to the complaint of defendant Valeria Ronaldo Yu as not filed was filed by plaintiff on October 4, 2006. Yet, as early as of May 26, 2006, and after Valeria Ronaldo Yu had filed her Answer to the complaint, plaintiff had filed a motion for judgment on the pleadings. This motion for judgment on the pleadings was denied by the court in the order issued on June 9, 2006. On June 19, 2006, plaintiff filed a motion for reconsideration to the order denying the motion for judgment on the pleadings. On July 18, 2006, the motion for reconsideration to the order of the court, dated June 9, 2006 was denied. With the facts obtaining, obviously, the motion filed by plaintiff on October 4, 2006 is a motion which this court must not take cognizance of. **When a party to a case files a motion for judgment on the pleadings, by it, necessarily he admits the propriety of the answer to the complaint as filed. Hence, after admitting the propriety of the pleadings which in this case, is the answer to the complaint, obedience to ethical precepts requires abstention from further wasting unnecessarily the time of the court by filing another motion of similar import.** The motion filed on October 4, 2006 in effect a second motion for reconsideration to the order issued on June 9, 2006.

On February 1, 2008, petitioner sought recourse from the Court by filing the instant petition essentially invoking the following question of law:

I.

WHETHER OR NOT THE REGIONAL TRIAL COURT'S DISMISSAL OF THE

CASE FOR PETITIONER'S FAILURE TO APPEAR IN THE PRE-TRIAL CONFERENCE IS CONTRARY TO LAW, RULES, AND EXISTING JURISPRUDENCE.

Petitioner assails the RTC's October 4, 2007 Order dismissing her case on the ground of an alleged irregularity in the notice of pre-trial conference, which she received only at 5:30 p.m. of October 3, 2007, or merely 15 hours before the conference scheduled at 8:30 a.m. on October 4, 2007. She maintains that since she was belatedly notified of the pre-trial conference, she was unable to appear thereat for she had yet to secure counsel to represent her as well as prepare the necessary documents therefor. Considering the sheer impossibility for her to prepare for the scheduled conference, the 15-hour notice is deemed as if no notice was given at all, and hence, the impropriety of the trial court's dismissal. In support of this, she invokes our ruling in *Leobrera v. Court of Appeals*,^[3] which provides that "observance of notice requirement is a mandatory requirement which cannot be dispensed with as this is the minimum requirement of procedural due process."^[4]

Petitioner further faults the RTC for repeatedly stating that petitioner "and her counsel" failed to appear during the pre-trail conference when it is clear from the records of the case that she is not represented by any counsel. Because of this, she claims that the lower court's order dismissing her case has no legal basis and is, therefore, patently void.

The petition is devoid of merit.

At the outset, it must be noted that petitioner's reliance on our ruling in *Leobrera v. Court of Appeals* is misplaced. In said case, the issue was the propriety of an order of the trial court granting a Motion to File Supplemental Complaint, when notice thereof was received by the other party only a day *after* the issuance of the said order, when it was already too late to contest the same. In addition, it was also observed that the notice did not even indicate the time and place of the scheduled hearing. As such, the order of the trial court granting the admission of the supplemental complaint was nullified for non-compliance with Sections 4,^[5] 5,^[6] and 6^[7] of Rule 15 of the Rules of Court. Here, it is undisputed that notice of the pre-trial conference was received by petitioner a day *before* the same. Said notice sufficiently indicated the time and place of the scheduled pre-trial. Thus, petitioner cannot invoke our ruling in the aforementioned case in view of the dissimilar factual circumstances herein.

To repeat, the issue in this case is the propriety of the trial court's order dismissing the case for petitioner's failure to appear at the pre-trial conference. In relation to this, Sections 4 and 5 of Rule 18 of the Rules of Court provides:

Section 4. *Appearance of parties.* — **It shall be the duty of the parties and their counsel to appear at the pre-trial. The non-appearance of a party may be excused only if a valid cause is shown therefor** or if a representative shall appear in his behalf fully authorized in writing to enter into an amicable settlement, to submit to alternative modes of dispute resolution, and to enter into stipulations or admissions of facts and of documents, (n)

Section 5. *Effect of failure to appear.* — **The failure of the plaintiff to**

appear when so required pursuant to the next preceding section shall be cause for dismissal of the action. The dismissal shall be with prejudice, unless other-wise ordered by the court. A similar failure on the part of the defendant shall be cause to allow the plaintiff to present his evidence *ex parte* and the court to render judgment on the basis thereof. (2a, R20)

Thus, 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.^[8]

In certain instances, however, the non-appearance of a party may be excused if a valid cause is shown. What constitutes a valid ground to excuse litigants and their counsels at the pre-trial is subject to the sound discretion of a judge.^[9] Unless and until a clear and manifest abuse of discretion is committed by the judge, his appreciation of a party's reasons for his non-appearance will not be disturbed.

In this case, petitioner harps on the fact that the notice of pre-trial was sent to her 15 hours before the scheduled conference. She maintained that said amount of time rendered it impossible for her to appear thereat since she had yet to secure counsel to represent her as well as prepare documents necessary for the case. Thus, the 15-hour notice is deemed no notice at all, resulting in the invalidity of the trial court's dismissal of the case.

Petitioner's argument is untenable. *First*, this Court finds petitioner's reasoning that she had yet to secure the services of a counsel rather specious. Had this been the case, she should already be represented by one at this stage in the proceedings. Yet, as the records bear, petitioner comes to this Court by herself, via Petition for *Certiorari*, unrepresented by any counsel. In fact, in her petition, she even faults the trial court for repeatedly referring to her counsel when it is clear that no such counsel exists. Thus, contrary to her allegation, this Court is under the impression that petitioner never really intended on securing the services of counsel.

Second, while it cannot be denied that every party to a case must be given the chance to come to court prepared, they must do so within the parameters set by the rules. In this case, it must be noted that petitioner had more than a year from the filing of respondent's Answer before the month of May 2006 to prepare for the pre-trial conference scheduled by the trial court in October 2007. Note that during said period when she was supposedly preparing for the conference, petitioner was able to file 3 motions in a span of 6 months.^[10] First, she filed a Motion for Judgment on the Pleadings on May 26, 2006, after respondent had filed her Answer to the Complaint. Second, was a Motion to Declare Defendant in Default for Failure to File Pre-Trial Brief filed on September 6, 2006, which was denied by the trial court for being premature. Third, she filed a Motion to Consider the Answer to the Complaint as Not Filed on October 4, 2006, which was likewise denied by the trial court for being inconsistent with her first motion.

In addition, petitioner even filed a Petition for *Certiorari* and Mandamus with Prayer for the Issuance of a Temporary Restraining Order and/or Preliminary Injunction