760 PHIL. 779

THIRD DIVISION

[G.R. No. 189255, June 17, 2015]

JESUS G. REYES, PETITIONER, VS. GLAUCOMA RESEARCH FOUNDATION, INC., EYE REFERRAL CENTER AND MANUEL B. AGULTO, RESPONDENTS.

D E C I S I O N

PERALTA, J.:

Before the Court is a petition for review on *certiorari* seeking to reverse and set aside the Decision[1] and Resolution[2] of the Court of Appeals (*CA*), dated April 20, 2009 and August 25, 2009, respectively, in CA-G.R. SP No. 104261. The assailed CA Decision annulled the Decision of the National Labor Relations Commission (*NLRC*) in NLRC NCR Case No. 05-0441-05 and reinstated the Decision of the Labor Arbiter (*LA*) in the same case, while the CA Resolution denied petitioner's motion for reconsideration.

The instant petition arose from a complaint for illegal dismissal filed by petitioner against respondents with the NLRC, National Capital Region, Quezon City. Petitioner alleged that: on August 1, 2003, he was hired by respondent corporation as administrator of the latter's Eye Referral Center (ERC); he performed his duties as administrator and continuously received his monthly salary of P20,000.00 until the end of January 2005; beginning February 2005, respondent withheld petitioner's salary without notice but he still continued to report for work; on April 11, 2005, petitioner wrote a letter to respondent Manuel Agulto (*Agulto*), who is the Executive Director of respondent corporation, informing the latter that he has not been receiving his salaries since February 2005 as well as his 14th month pay for 2004; petitioner did not receive any response from Agulto; on April 21, 2005, petitioner was informed by the Assistant to the Executive Director as well as the Assistant Administrative Officer, that he is no longer the Administrator of the ERC; subsequently, petitioner's office was padlocked and closed without notice; he still continued to report for work but on April 29, 2005 he was no longer allowed by the security guard on duty to enter the premises of the ERC.

On their part, respondents contended that: upon petitioner's representation that he is an expert in corporate organizational structure and management affairs, they engaged his services as a consultant or adviser in the formulation of an updated organizational set-up and employees' manual which is compatible with their present condition; based on his claim that there is a need for an administrator for the ERC, he later designated himself as such on a trial basis; there is no employer-employee relationship between them because respondents had no control over petitioner in terms of working hours as he reports for work at anytime of the day and leaves as he pleases; respondents also had no control as to the manner in which he performs his alleged duties as consultant; he became overbearing and his relationship with the employees and officers of the company soured leading to the filing of three

complaints against him; petitioner was not dismissed as he was the one who voluntarily severed his relations with respondents.

On January 20, 2006, the LA assigned to the case rendered a Decision[3] dismissing petitioner's complaint. The LA held, among others, that petitioner failed to establish that the elements of an employer-employee relationship existed between him and respondents because he was unable to show that he was, in fact, appointed as administrator of the ERC and received salaries as such; he also failed to deny that during his stint with respondents, he was, at the same time, a consultant of various government agencies such as the Manila International Airport Authority, Manila Intercontinental Port Authority, Anti-Terrorist Task Force for Aviation and Air Transportation Sector; his actions were neither supervised nor controlled by the management of the ERC; petitioner, likewise, did not observe working hours by reporting for work and leaving therefrom as he pleased; and, he was receiving allowances, not salaries, as a consultant.

On appeal, the NLRC reversed and set aside the Decision of the LA. The NLRC declared petitioner as respondents' employee, that he was illegally dismissed and ordered respondents to reinstate him to his former position without loss of seniority rights and privileges with full backwages. The NLRC held that the basis upon which the conclusion of the LA was drawn lacked support; that it was incumbent for respondents to discharge the burden of proving that petitioner's dismissal was for cause and effected after due process was observed; and, that respondents failed to discharge this burden.[4]

Respondents filed a motion for reconsideration, but it was denied by the NLRC in its Resolution[5] dated May 30, 2008.

Respondents then filed a Petition for *Certiorari*[6] with the CA.

In its assailed Decision, the CA annulled and set aside the judgment of the NLRC and reinstated the Decision of the LA. The CA held that the LA was correct in ruling that, under the control test and the economic reality test, no employer-employee relationship existed between respondents and petitioner.

Petitioner filed a motion for reconsideration, but the CA denied it in its Resolution dated August 25, 2009.

Hence, the present petition for review on *certiorari* based on the following grounds:

I

THE HONORABLE COURT OF APPEALS ERRED AND ABUSED ITS DISCRETION IN NOT DISMISSING RESPONDENTS' PETITION FOR CERTIORARI ON THE GROUND THAT RESPONDENTS SUBMITTED A VERIFICATION THAT FAILS TO COMPLY WITH THE 2004 RULES ON NOTARIAL PRACTICE.

II

THE HONORABLE COURT OF APPEALS ERRED AND ABUSED ITS

DISCRETION IN RULING THAT NO EMPLOYER-EMPLOYEE RELATIONSHIP EXISTS BETWEEN RESPONDENTS AND PETITIONER.[7]

As to the first ground, petitioner contends that respondents' petition for *certiorari* filed with the CA should have been dismissed on the ground that it was improperly verified because the *jurat* portion of the verification states only the community tax certificate number of the affiant as evidence of her identity. Petitioner argues that under the 2004 Rules on Notarial Practice, as amended by a Resolution[8] of this Court, dated February 19, 2008, a community tax certificate is not among those considered as competent evidence of identity.

The Court does not agree.

This Court has already ruled that competent evidence of identity is not required in cases where the affiant is personally known to the notary public.[9]

Thus, in *Jandoquile v. Revilla, Jr.*,[10] this Court held that:

> **If the notary public knows the affiants personally, he need not require them to show their valid identification cards.** This rule is supported by the definition of a "jurat" under Section 6, Rule II of the 2004 Rules on Notarial Practice. A "jurat" refers to an act in which an individual on a single occasion: (a) appears in person before the notary public and presents an instrument or document; (b) is personally known to the notary public **or** identified by the notary public through competent evidence of identity; (c) signs the instrument or document in the presence of the notary; and (d) takes an oath or affirmation before the notary public as to such instrument or document.[11]

Also, Section 2(b), Rule IV of the 2004 Rules on Notarial Practice provides as follows:

> SEC. 2. Prohibitions -
>
> (a) x x x
>
> (b) A person shall not perform a notarial act if the person involved as signatory to the instrument or document -
>
> > (1) is not in the notary's presence personally at the time of the notarization; and
> >
> > (2) is not personally known to the notary public **or** otherwise identified by the notary public through competent evidence of identity as defined by these Rules.

Moreover, Rule II, Section 6 of the same Rules states that:

> SEC 6. Jurat. - "Jurat" refers to an act in which an individual on a single occasion:
>
> > (a) appears in person before the notary public and presents an instrument or document;

> (b) is personally known to the notary public **or** identified by the notary public through competent evidence of identity as defined by these Rules;
>
> (c) signs the instrument or document in the presence of the notary; and
>
> (d) takes an oath or affirmation before the notary public as to such instrument or document.

In legal hermeneutics, "or" is a disjunctive that expresses an alternative or gives a choice of one among two or more things.[12] The word signifies disassociation and independence of one thing from another thing in an enumeration.[13]

Thus, as earlier stated, if the affiant is personally known to the notary public, the latter need not require the former to show evidence of identity as required under the 2004 Rules on Notarial Practice, as amended.

Applying the above rule to the instant case, it is undisputed that the attorney-in-fact of respondents who executed the verification and certificate against forum shopping, which was attached to respondents' petition filed with the CA, is personally known to the notary public before whom the documents were acknowledged. Both attorney-in-fact and the notary public hold office at respondents' place of business and the latter is also the legal counsel of respondents.

In any event, this Court's disquisition in the fairly recent case of *Heirs of Amada Zaulda v. Isaac Zaulda*[14] regarding the import of procedural rules vis-a-vis the substantive rights of the parties, is instructive, to wit:

> [G]ranting, *arguendo*, that there was non-compliance with the verification requirement, the rule is that courts should not be so strict about procedural lapses which do not really impair the proper administration of justice. After all, the higher objective of procedural rule is to ensure that the substantive rights of the parties are protected. Litigations should, as much as possible, be decided on the merits and not on technicalities. Every party-litigant must be afforded ample opportunity for the proper and just determination of his case, free from the unacceptable plea of technicalities.
>
> In *Coca-Cola Bottlers v. De la Cruz*, where the verification was marred only by a glitch in the evidence of the identity of the affiant, the Court was of the considered view that, in the interest of justice, the minor defect can be overlooked and should not defeat the petition.
>
> The reduction in the number of pending cases is laudable, but if it would be attained by precipitate, if not preposterous, application of technicalities, justice would not be served. The law abhors technicalities that impede the cause of justice. The court's primary duty is to render or dispense justice. "It is a more prudent course of action for the court to excuse a technical lapse and afford the parties a review of the case on appeal rather than dispose of the case on technicality and cause a grave

> injustice to the parties, giving a false impression of speedy disposal of cases while actually resulting in more delay, if not miscarriage of justice."
>
> What should guide judicial action is the principle that a party-litigant should be given the fullest opportunity to establish the merits of his complaint or defense rather than for him to lose life, liberty, honor, or property on technicalities. The rules of procedure should be viewed as mere tools designed to facilitate the attainment of justice. Their strict and rigid application, which would result in technicalities that tend to frustrate rather than promote substantial justice, must always be eschewed. At this juncture, the Court reminds all members of the bench and bar of the admonition in the often-cited case of *Alonso v. Villamor*:
>
> > Lawsuits, unlike duels, are not to be won by a rapier's thrust. Technicality, when it deserts its proper office as an aid to justice and becomes its great hindrance and chief enemy, deserves scant consideration from courts. There should be no vested rights in technicalities.[15]

Anent the second ground, petitioner insists that, based on evidence on record, an employer-employee relationship exists between him and respondents.

The Court is not persuaded.

It is a basic rule of evidence that each party must prove his affirmative allegation.[16] If he claims a right granted by law, he must prove his claim by competent evidence, relying on the strength of his own evidence and not upon the weakness of that of his opponent.[17] The test for determining on whom the burden of proof lies is found in the result of an inquiry as to which party would be successful if no evidence of such matters were given.[18] In an illegal dismissal case, the *onus probandi* rests on the employer to prove that its dismissal of an employee was for a valid cause.[19] However, before a case for illegal dismissal can prosper, an employer-employee relationship must first be established.[20] Thus, in filing a complaint before the LA for illegal dismissal, based on the premise that he was an employee of respondents, it is incumbent upon petitioner to prove the employer-employee relationship by substantial evidence.[21]

In regard to the above discussion, the issue of whether or not an employer-employee relationship existed between petitioner and respondents is essentially a question of fact.[22] The factors that determine the issue include who has the power to select the employee, who pays the employee's wages, who has the power to dismiss the employee, and who exercises control of the methods and results by which the work of the employee is accomplished.[23] Although no particular form of evidence is required to prove the existence of the relationship, and any competent and relevant evidence to prove the relationship may be admitted, a finding that the relationship exists must nonetheless rest on substantial evidence, which is that amount of relevant evidence that a reasonable mind might accept as adequate to justify a conclusion.[24]

Generally, the Court does not review factual questions, primarily because the Court