

SECOND DIVISION

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

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

D E C I S I O N

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:

I. 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.

II. 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]