

THIRD DIVISION

[G.R. NO. 164375, October 12, 2006]

**RODOLFO PAREDES, TITO ALAGO AND AGRIPINO BAYBAY, SR.,
PETITIONERS, VS. ERNESTO VERANO AND COSME HINUNANGAN,
RESPONDENT.**

D E C I S I O N

TINGA, J.:

The central issue in this case is whether the absence of the counsel for defendants at the pre-trial, with all defendants themselves present, is a ground to declare defendants in default and to authorize plaintiffs to present evidence *ex parte*.

The relevant facts are uncomplicated.

The protracted legal battle between the parties began with a complaint for the establishment of a right of way filed by petitioners herein as plaintiffs against respondents as defendants.^[1] The complaint, docketed as Civil Case No. 2767 of the Regional Trial Court (RTC) of Maasin City, Southern Leyte, Branch 24, culminated in a judgment by compromise dated 26 April 1994.^[2] In the Compromise Agreement, respondent Cosme Hinunangan granted a two (2) meter-wide right of way in favor of petitioners in consideration of the amount of P6,000.00 which petitioners agreed to pay.^[3]

Alleging that petitioners had blocked the passage way in violation of the Compromise Agreement, on 28 September 1999, respondents filed a complaint for specific performance with damages against petitioners. It was docketed as Civil Case No. R-3 11 1 also of the RTC of Maasin City, Southern Leyte, Branch 24.^[4]

In their answer, petitioners denied having violated the Compromise Agreement. They alleged that like them, respondents were not actual residents of Barangay Tagnipa where the "road right of way" was established and that respondent Cosme Hinunangan had already sold his only remaining lot in the vicinity to petitioner Rodolfo Paderes.^[5]

Subsequent to the answer, petitioners filed a motion to dismiss on the ground of lack of cause of action.^[6] The trial court, presided by Judge Bethany G. Kapili, denied the motion to dismiss^[7]. Petitioners elevated the order of denial to the Court of Appeals and thereafter to this Court, both to no avail.^[8]

Petitioners asked Judge Kapili to inhibit himself from the case.^[9] The judge denied the motion.

Pre-trial was initially set for 24 April 2003, but this was reset to 3 June 2003 on

motion of respondents' counsel. But the pre-trial set on 3 June 2003 did not push through either because none of the parties appeared.

So, pre-trial was reset to 11 November 2003. Petitioner Baybay's counsel moved to reset it to another date on account of a conflicting hearing. However, petitioner Baybay, who is the father of the counsel for petitioners, was present in court along with the other defendants, when the case was called on 11 November 2003. The RTC was informed then of a proposed settlement between the parties, although respondent Baybay qualified his reaction by telling the court that he would first have to inform his lawyer and the co-defendants of said proposal. The RTC then commented unfavorably on the sence of petitioners' counsel, expressing disappointment towards attitude, even making note of the fact that not once had the counsel peared before the RTC, even though the case had already reached Supreme Court over the denial of the motion to dismiss.^[10] At the me time, the RTC acceded and reset the pre-trial for 23 January 2004.^[11]

Shortly before the new pre-trial date, counsel for petitioners ed a Manifestation of Willingness to Settle With Request for incellation dated 5 January 2004.^[12] Apart from manifesting his illingness to settle the complaint, petitioners' counsel through the anifestation suggested to the opposing counsel that he be informed 'the terms of the proposed settlement. Correspondingly, petitioners' mnsel requested the cancellation of the 23 January 2004 hearing.

However, the hearing did push through on 23 January 2004. The private respondents and their counsel were present. So were petitioners aybay and Paderes, and co-defendant Alago, but not their counsel.

An order of even date formalized what had transpired during le hearing. The RTC allowed respondents to present their evidence *ex parte*, "for failure of the defendants['] counsel to appear before [the RTC]".^[13] Petitioners filed a motion for reconsideration, but this was denied by the RTC.^[14]

Thus, petitioners filed a petition for certiorari with the Court of Appeals, assailing the orders of the RTC. However, on 28 April 2004, the Court of Appeals dismissed the petition outright,^[15] for failure to attach duplicate original copies of the annexes to the petition other than the RTC Orders dated 23 January 2004 and 17 February 2004 (attaching photocopies instead), as well as for failure to submit such other pleadings relevant and pertinent to the petition. Petitioners filed a Motion for Reconsideration with Motion to Admit Additional Exhibits, adverting to the documents previously missing from the petition but attached to the motion.

On 13 July 2004, the Court of Appeals issued a Resolution denying the motion for reconsideration. In doing so, the Court of Appeals resolved the petition on its merits, as it ruled that "even with the submission by petitioners of the required pleadings and documents, the instant petition must nevertheless fail."^[16] The appellate court quoted extensively from the transcripts of the hearings of 11 November 2003 and 23 January 2004. It conceded that under Section 5, Rule 18 of the 1997 Rules of Civil Procedure, it is the failure of the defendant, and not defendant's counsel, to appear at the pre-trial that would serve cause to allow plaintiff to present evidence *ex parte*. Nevertheless, the Court of Appeals noted that petitioner Baybay had made

it clear that he would never enter into any amicable settlement without the advice of his counsel. Thus, the Court of Appeals concluded that Judge Kapili's "hands were lied," explaining, thus: "He was held hostage by the blatant display of arrogance exhibited by petitioner's counsel in assiduously failing to appear before the trial court. Were he to close his eyes to the reprehensible scheme of Atly. Baybay in delaying the disposition of the main case, the resulting impasse would only strain further the meager resources of the court and prejudice the rights of private respondents."^[17]

The Court of Appeals then cited *Sps. Ampeloquio, Sr. v. Court of Appeals*,^[18] wherein the Court held that if every error committed by the trial court were to be a proper object of review by certiorari, then trial would never come to an end and the appellate court dockets would be clogged with petitions challenging every interlocutory order of the trial court. It concluded that the acts of Judge Kapili did not constitute grave abuse of discretion equivalent to lack of jurisdiction.

Finally, the trial court admonished petitioners' counsel to "bear in mind that as an officer of the court, he is tasked to observe the rules of procedure, not to unduly delay a case and defeat the ends of justice but to promote respect for the law and legal processes."^[19]

We reverse the trial court and the Court of Appeals.

A preliminary observation. The Court of Appeals had initially dismissed the petition lodged by petitioners on account of their failure to attach several relevant pleadings, citing Section 3, Rule 46 of the 1997 Rules of Civil Procedure. Before this Court, petitioners devote some effort in arguing that the Court of Appeals erred in dismissing the petition on that procedural ground, while respondents in their comment similarly undertook to defend the appellate court's action on that point. We do not doubt that under Section 3, Rule 46 of the 1997 Rules of Civil Procedure, the Court of Appeals has sufficient discretion to dismiss the petition for failure of petitioner to comply with the requirements enumerated in the section, including "such material portions of the record as are referred to [in the petition], and other documents relevant or pertinent thereto."^[20] At the same time, "[dismissal of appeals purely on technical grounds is frowned upon and the rules of procedure ought not to be applied in a very rigid, technical sense, for they are adopted to help secure, not override, substantial justice, and thereby defeat their very aims."^[21] Thus, the Court has not hesitated to view Section 3 of Rule 46 with a liberal outlook, ruling for example that it was not necessary to attach certified true copies of such material portions of the record as referred to therein.^[22]

The situation in this case bears similarity to that which transpired in *Cortez-Estrada v. Heirs of Samut*^[23] Therein, the petitioner had failed to attach material documents to her petition before the Court of Appeals. The Court of Appeals held the petition was dismissible for such procedural infirmities, yet it nonetheless proceeded to rule against the petitioner on the merits. The Supreme Court agreed with the appellate court that the petition was procedurally infirm, yet found partial merit in its arguments and consequently granted partial relief in favor of the petitioner. In this case, the Court of Appeals, in resolving the motion for reconsideration, proceeded to make a judgment on the merits. Similarly, this Court finds ample basis to review the

decision of the trial court as affirmed by the appellate court, notwithstanding the procedural flaw that originally accompanied the petition—a flaw which petitioners did seek to remedy when they belatedly attached the relevant documents to their motion for reconsideration.

Ultimately, there are important reasons to consider the case on the merits. This case affords the Court the opportunity to clarify the authority granted to a trial judge in relation to pre-trial proceedings.

The order of the RTC allowing respondents to present evidence *ex parte* was undoubtedly to the detriment of petitioners. Since the RTC would only consider the evidence presented by respondents, and not that of petitioners, the order strikes at the heart of the case, disallowing as it does any meaningful defense petitioners could have posed. A judgment of default against a defendant who failed to attend pre-trial, or even any defendant who failed to file an answer, implies a waiver only of their right to be heard and to present evidence to support their allegations but not all their other rights.^[24]

The Constitution guarantees that no person shall be deprived of property without due process of law. One manner by which due process is assured is through the faithful adherence to the procedural rules that govern the behavior of the party-litigants. The Rules of Court do sanction, on several instances, penalties for violation of the Rules that causes the termination of an action without a ruling on the merits, or bars one party from litigating the same while permitting the other to do so. We noted earlier that Section 3, Rule 46 authorizes the dismissal of an original petition before the Court of Appeals for failure to append material portions of the record. Pursuant to Section 5, Rule 17, the failure of the plaintiff to appear on the date of the presentation of his/her evidence in chief on the complaint is ground for the court to dismiss the complaint, without prejudice to the right of the defendant to prosecute the counterclaim in the same or in a separate action. And under Section 5, Rule 18, the failure of the plaintiff or defendant to appear during pre-trial authorizes the court to either dismiss the complaint, if the plaintiff were absent; or to allow the plaintiff to present evidence *ex parte*, if the defendant were absent.

The operation of the above-cited provisions may defeat the cause of action or the defense of the party who violated the procedural rule. Yet it could not be said that any resultant adverse judgment would contravene the due process clause, as the parties are presumed to have known the governing rules and the consequences for the violation of such rules. In contrast, the same presumption could not attach if a party were condemned to the same outcome even if the party did not violate a prescribed rule of procedure. Any ruling that disposes of an action or precludes a party from presenting evidence in support or against thereof must have basis in law,^[25] and any ruling so intentioned without legal basis is deemed as issued with grave abuse of discretion.^[26] In the end, a person who is condemned to suffer loss of property without justifying legal basis is denied due process of law.

Simply put, nothing, in the Rules of Court authorizes a trial judge to allow the plaintiff to present evidence *ex parte* on account of the absence during pre-trial of the counsel for defendant.

Sections 4 and 5 of Rule 18 warrant examination:

SEC. 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.

SEC. 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 otherwise 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.

Section 4 imposes the duty on litigating parties and their respective counsel during pre-trial. The provision also provides for the instances where the non-appearance of a party may be excused. Nothing, however, in Section 4 provides for a sanction should the parties or their respective counsel be absent during pre-trial. Instead, the penalty is provided for in Section 5. Notably, what Section 5 penalizes is the failure to appear of either the plaintiff or the defendant, and not their respective counsel.

Indeed, the Court has not hesitated to affirm the dismissals of complaints or the allowance of plaintiffs to present evidence *ex parte* on account of the absence of a party during pre-trial. In *United Coconut Planters Bank v. Magpayo*,^[27] the complaint was dismissed because although the counsel for complainant was present during the pre-trial hearing, the Court affirmed such dismissal on account of said counsel's failure to present any special power of attorney authorizing him to represent the complainant during pre-trial.^[28] In *Jonathan Landoil International Co. v. Mangudadatu*,^[29] the defendant and its counsel failed to appear during pre-trial, and the complainants were allowed to present evidence *ex parte*. After an adverse decision was rendered against the defendant, it filed a motion for new trial in which it cited the illness of defendant's counsel as the reason for his non-appearance during pre-trial. While the Court acknowledged that such argument was not a proper ground for a motion for new trial, it also noted that the appearance of the defendant during pre-trial was also mandatory, and that the defendant failed to justify its own absence during pre-trial.^[30]

There are two cases which, at first blush, may seem to affirm the action of the RTC. In the disbarment case of *Miwa v. Medina*,^[31] a lawyer was suspended from the practice for one (1) month for, among others, failing to appear during pre-trial, thus leading to the declaration of his client, the defendant, in default. At the same time, the Court in *Miwa* did take the defendant herself to task for also failing to appear during pre-trial, observing that "the failure of a party to appear at pre-trial, given its mandatory character, may cause her to be non-suited or considered as in default."^[32]

In *Social Security System v. Chaves*,^[33] the Social Security System (SSS) itself was named as the defendant in a complaint filed with the RTC of Cagayan de Oro City. The pre-trial brief was filed by the acting assistant branch manager of the SSS in Cagayan de Oro City, who happened to be a lawyer and who also entered his