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EN BANC

[G.R. No. 126297, February 02, 2010]

PROFESSIONAL SERVICES, INC., PETITIONER, VS. THE COURT OF APPEALS AND NATIVIDAD AND ENRIQUE AGANA, RESPONDENTS.

[G.R. NO. 126467]

NATIVIDAD [SUBSTITUTED BY HER CHILDREN MARCELINO AGANA III, ENRIQUE AGANA, JR., EMMA AGANA-ANDAYA, JESUS AGANA AND RAYMUND AGANA] AND ENRIQUE AGANA, PETITIONERS, VS. THE COURT OF APPEALS AND JUAN FUENTES, RESPONDENTS.

[G.R. NO. 127590]

MIGUEL AMPIL, PETITIONER, VS. NATIVIDAD AND ENRIQUE AGANA, RESPONDENTS.

R E S O L U T I O N

CORONA, J.:

With prior leave of court,[1] petitioner Professional Services, Inc. (PSI) filed a second motion for reconsideration[2] urging referral thereof to the Court *en banc* and seeking modification of the decision dated January 31, 2007 and resolution dated February 11, 2008 which affirmed its vicarious and direct liability for damages to respondents Enrique Agana and the heirs of Natividad Agana (Aganas).

Manila Medical Services, Inc. (MMSI),[3] Asian Hospital, Inc. (AHI),[4] and Private Hospital Association of the Philippines (PHAP)[5] all sought to intervene in these cases invoking the common ground that, unless modified, the assailed decision and resolution will jeopardize the financial viability of private hospitals and jack up the cost of health care.

The Special First Division of the Court granted the motions for intervention of MMSI, AHI and PHAP (hereafter intervenors),[6] and referred *en consulta* to the Court *en banc* the motion for prior leave of court and the second motion for reconsideration of PSI.[7]

Due to paramount public interest, the Court *en banc* accepted the referral[8] and heard the parties on oral arguments on one particular issue: whether a hospital may be held liable for the negligence of physicians-consultants allowed to practice in its premises.[9]

To recall the salient facts, PSI, together with Dr. Miguel Ampil (Dr. Ampil) and Dr. Juan Fuentes (Dr. Fuentes), was impleaded by Enrique Agana and Natividad Agana (later substituted by her heirs), in a complaint[10] for damages filed in the Regional Trial Court (RTC) of Quezon City, Branch 96, for the injuries suffered by Natividad when Dr. Ampil and Dr. Fuentes neglected to remove from her body two gauzes[11] which were used in the surgery they performed on her on April 11, 1984 at the Medical City General Hospital. PSI was impleaded as owner, operator and manager of the hospital.

In a decision[12] dated March 17, 1993, the RTC held PSI solidarily liable with Dr. Ampil and Dr. Fuentes for damages.[13] On appeal, the Court of Appeals (CA), absolved Dr. Fuentes but affirmed the liability of Dr. Ampil and PSI, subject to the right of PSI to claim reimbursement from Dr. Ampil.[14]

On petition for review, this Court, in its January 31, 2007 decision, affirmed the CA decision.[15] PSI filed a motion for reconsideration[16] but the Court denied it in a resolution dated February 11, 2008.[17]

The Court premised the direct liability of PSI to the Aganas on the following facts and law:

First, there existed between PSI and Dr. Ampil an employer-employee relationship as contemplated in the December 29, 1999 decision in *Ramos v. Court of Appeals*[18] that "for purposes of allocating responsibility in medical negligence cases, an employer-employee relationship exists between hospitals and their consultants."[19] Although the Court in *Ramos* later issued a Resolution dated April 11, 2002[20] reversing its earlier finding on the existence of an employment relationship between hospital and doctor, a similar reversal was not warranted in the present case because the defense raised by PSI consisted of a mere general denial of control or responsibility over the actions of Dr. Ampil.[21]

Second, by accrediting Dr. Ampil and advertising his qualifications, PSI created the public impression that he was its agent.[22] Enrique testified that it was on account of Dr. Ampil's accreditation with PSI that he conferred with said doctor about his wife's (Natividad's) condition.[23] After his meeting with Dr. Ampil, Enrique asked Natividad to personally consult Dr. Ampil.[24] In effect, when Enrigue and Natividad engaged the services of Dr. Ampil, at the back of their minds was that the latter was a staff member of a prestigious hospital. Thus, under the doctrine of apparent authority applied in *Nogales, et al. v. Capitol Medical Center, et al.*,[25] PSI was liable for the negligence of Dr. Ampil.

Finally, as owner and operator of Medical City General Hospital, PSI was bound by its duty to provide comprehensive medical services to Natividad Agana, to exercise reasonable care to protect her from harm,[26] to oversee or supervise all persons who practiced medicine within its walls, and to take active steps in fixing any form of negligence committed within its premises.[27] PSI committed a serious breach of its corporate duty when it failed to conduct an immediate investigation into the reported missing gauzes.[28]

PSI is now asking this Court to reconsider the foregoing rulings for these reasons:

I

> The declaration in the 31 January 2007 Decision vis-a-vis the 11 February 2009 Resolution that the ruling in Ramos vs. Court of Appeals (G.R. No. 134354, December 29, 1999) that "an employer-employee relations exists between hospital and their consultants" stays should be set aside for being inconsistent with or contrary to the import of the resolution granting the hospital's motion for reconsideration in Ramos vs. Court of Appeals (G.R. No. 134354, April 11, 2002), which is applicable to PSI since the Aganas failed to prove an employer-employee relationship between PSI and Dr. Ampil and PSI proved that it has no control over Dr. Ampil. In fact, the trial court has found that there is no employer-employee relationship in this case and that the doctor's are independent contractors.

II

> Respondents Aganas engaged Dr. Miguel Ampil as their doctor and did not primarily and specifically look to the Medical City Hospital (PSI) for medical care and support; otherwise stated, respondents Aganas did not select Medical City Hospital (PSI) to provide medical care because of any apparent authority of Dr. Miguel Ampil as its agent since the latter was chosen primarily and specifically based on his qualifications and being friend and neighbor.

III

> PSI cannot be liable under doctrine of corporate negligence since the proximate cause of Mrs. Agana's injury was the negligence of Dr. Ampil, which is an element of the principle of corporate negligence.[29]

In their respective memoranda, intervenors raise parallel arguments that the Court's ruling on the existence of an employer-employee relationship between private hospitals and consultants will force a drastic and complex alteration in the long-established and currently prevailing relationships among patient, physician and hospital, with burdensome operational and financial consequences and adverse effects on all three parties.[30]

The Aganas comment that the arguments of PSI need no longer be entertained for they have all been traversed in the assailed decision and resolution.[31]

After gathering its thoughts on the issues, this Court holds that PSI is liable to the Aganas, not under the principle of *respondeat superior* for lack of evidence of an employment relationship with Dr. Ampil but under the principle of ostensible agency for the negligence of Dr. Ampil and, *pro hac vice,* under the principle of corporate negligence for its failure to perform its duties as a hospital.

While in theory a hospital as a juridical entity cannot practice medicine,[32] in reality it utilizes doctors, surgeons and medical practitioners in the conduct of its business of facilitating medical and surgical treatment.[33] Within that reality, three legal relationships crisscross: (1) between the hospital and the doctor practicing within its premises; (2) between the hospital and the patient being treated or examined within its premises and (3) between the patient and the doctor. The exact nature of each relationship determines the basis and extent of the liability of the hospital for the negligence of the doctor.

Where an employment relationship exists, the hospital may be held vicariously liable under Article 2176[34] in relation to Article 2180[35] of the Civil Code or the principle of *respondeat superior.* Even when no employment relationship exists but it is shown that the hospital holds out to the patient that the doctor is its agent, the hospital may still be vicariously liable under Article 2176 in relation to Article 1431[36] and Article 1869[37] of the Civil Code or the principle of apparent authority.[38] Moreover, regardless of its relationship with the doctor, the hospital may be held directly liable to the patient for its own negligence or failure to follow established standard of conduct to which it should conform as a corporation.[39]

This Court still employs the "control test" to determine the existence of an employer-employee relationship between hospital and doctor. In *Calamba Medical Center, Inc. v. National Labor Relations Commission, et al.*[40] it held:

> Under the "control test", an employment relationship exists between a physician and a hospital if the hospital controls both the means and the details of the process by which the physician is to accomplish his task.
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> As priorly stated, private respondents maintained specific work-schedules, as determined by petitioner through its medical director, which consisted of 24-hour shifts totaling forty-eight hours each week and which were strictly to be observed under pain of administrative sanctions.
>
> **That petitioner exercised control over respondents gains light from the undisputed fact that in the emergency room, the operating room, or any department or ward for that matter, respondents' work is monitored through its nursing supervisors, charge nurses and orderlies. Without the approval or consent of petitioner or its medical director, no operations can be undertaken in those areas. For control test to apply, it is not essential for the employer to actually supervise the performance of duties of the employee, it being enough that it has the right to wield the power.** (emphasis supplied)

Even in its December 29, 1999 decision[41] and April 11, 2002 resolution[42] in *Ramos,* the Court found the control test decisive.

In the present case, it appears to have escaped the Court's attention that both the RTC and the CA found no employment relationship between PSI and Dr. Ampil, and that **the Aganas did not question such finding**. In its March 17, 1993 decision, the RTC found "that defendant doctors were not employees of PSI in its hospital, they being merely consultants without any employer-employee relationship and in the capacity of independent contractors."[43] The Aganas never questioned such finding.

PSI, Dr. Ampil and Dr. Fuentes appealed[44] from the RTC decision but only on the issues of negligence, agency and corporate liability. In its September 6, 1996 decision, the CA mistakenly referred to PSI and Dr. Ampil as employer-employee, but it was clear in its discussion on the matter that it viewed their relationship as one of mere apparent agency.[45]

The Aganas appealed from the CA decision, but only to question the exoneration of Dr. Fuentes.[46] PSI also appealed from the CA decision, and it was then that the issue of employment, though long settled, was unwittingly resurrected.

In fine, as there was no dispute over the RTC finding that PSI and Dr. Ampil had no employer-employee relationship, such finding became final and conclusive even to this Court.[47] There was no reason for PSI to have raised it as an issue in its petition. Thus, whatever discussion on the matter that may have ensued was purely academic.

Nonetheless, to allay the anxiety of the intervenors, the Court holds that, in this particular instance, the concurrent finding of the RTC and the CA that PSI was not the employer of Dr. Ampil is correct. Control as a determinative factor in testing the employer-employee relationship between doctor and hospital under which the hospital could be held vicariously liable to a patient in medical negligence cases is a requisite fact to be established by preponderance of evidence. Here, there was insufficient evidence that PSI exercised the power of control or wielded such power over the means and the details of the specific process by which Dr. Ampil applied his skills in the treatment of Natividad. Consequently, PSI cannot be held vicariously liable for the negligence of Dr. Ampil under the principle of *respondeat superior*.

There is, however, ample evidence that the hospital (PSI) held out to the patient (Natividad)[48] that the doctor (Dr. Ampil) was its agent. Present are the two factors that determine apparent authority: first, the hospital's implied manifestation to the patient which led the latter to conclude that the doctor was the hospital's agent; and second, the patient's reliance upon the conduct of the hospital and the doctor, consistent with ordinary care and prudence.[49]

Enrique testified that on April 2, 1984, he consulted Dr. Ampil regarding the condition of his wife; that after the meeting and as advised by Dr. Ampil, he "***asked*** [his] wife to go to Medical City to be examined by [Dr. Ampil]"; and that the next day, April 3, he told his daughter to take her mother to Dr. Ampil.[50] This timeline indicates that it was Enrique who actually made the decision on whom Natividad should consult and where, and that the latter merely acceded to it. It explains the testimony of Natividad that she consulted Dr. Ampil at the instigation of her daughter.[51]