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FIRST DIVISION

[G.R. No. 126297, February 11, 2008]

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. THE COURT OF APPEALS and NATIVIDAD AGANA and ENRIQUE AGANA, Respondents.

RESOLUTION

SANDOVAL-GUTIERREZ, J.:

As the hospital industry changes, so must the laws and jurisprudence governing hospital liability. The immunity from medical malpractice traditionally accorded to hospitals has to be eroded if we are to balance the interest of the patients and hospitals under the present setting.

Before this Court is a motion for reconsideration filed by Professional Services, Inc. (PSI), petitioner in G.R. No. 126297, assailing the Court's First Division Decision dated January 31, 2007, finding PSI and Dr. Miguel Ampil, petitioner in G.R. No. 127590, jointly and severally liable for medical negligence.

A brief revisit of the antecedent facts is imperative.

On April 4, 1984, Natividad Agana was admitted at the Medical City General Hospital (Medical City) because of difficulty of bowel movement and bloody anal discharge. Dr. Ampil diagnosed her to be suffering from "cancer of the sigmoid." Thus, on April 11, 1984, Dr. Ampil, assisted by the medical staff[1] of Medical City, performed an anterior resection surgery upon her. During the surgery, he found that the malignancy in her sigmoid area had spread to her left ovary, necessitating the removal of certain portions of it. Thus, Dr. Ampil obtained the consent of Atty. Enrique Agana, Natividad's husband, to permit Dr. Juan Fuentes, respondent in G.R. No. 126467, to perform hysterectomy upon Natividad.

Dr. Fuentes performed and completed the hysterectomy. Afterwards, Dr. Ampil took over, completed the operation and closed the incision. However, the operation appeared to be flawed. In the corresponding Record of Operation dated April 11,

1984, the attending nurses entered these remarks:

> sponge count lacking 2
>
> announced to surgeon searched done (sic) but to no avail
>
> continue for closure.

After a couple of days, Natividad complained of excruciating pain in her anal region. She consulted both Dr. Ampil and Dr. Fuentes about it. They told her that the pain was the natural consequence of the surgical operation performed upon her. Dr. Ampil recommended that Natividad consult an oncologist to treat the cancerous nodes which were not removed during the operation.

On May 9, 1984, Natividad, accompanied by her husband, went to the United States to seek further treatment. After four (4) months of consultations and laboratory examinations, Natividad was told that she was free of cancer. Hence, she was advised to return to the Philippines.

On August 31, 1984, Natividad flew back to the Philippines, still suffering from pains. Two (2) weeks thereafter, her daughter found a piece of gauze protruding from her vagina. Dr. Ampil was immediately informed. He proceeded to Natividad's house where he managed to extract by hand a piece of gauze measuring 1.5 inches in width. Dr. Ampil then assured Natividad that the pains would soon vanish.

Despite Dr. Ampil's assurance, the pains intensified, prompting Natividad to seek treatment at the Polymedic General Hospital. While confined thereat, Dr. Ramon Gutierrez detected the presence of a foreign object in her vagina -- a foul-smelling gauze measuring 1.5 inches in width. The gauze had badly infected her vaginal vault. A recto-vaginal fistula had formed in her reproductive organ which forced stool to excrete through the vagina. Another surgical operation was needed to remedy the situation. Thus, in October 1984, Natividad underwent another surgery.

On November 12, 1984, Natividad and her husband filed with the Regional Trial Court, Branch 96, Quezon City a complaint for damages against PSI (owner of Medical City), Dr. Ampil and Dr. Fuentes.

On February 16, 1986, pending the outcome of the above case, Natividad died. She was duly substituted by her above-named children (the Aganas).

On March 17, 1993, the trial court rendered judgment in favor of spouses Agana finding PSI, Dr. Ampil and Dr. Fuentes jointly and severally liable. On appeal, the Court of Appeals, in its Decision dated September 6, 1996, affirmed the assailed judgment with modification in the sense that the complaint against Dr. Fuentes was dismissed.

PSI, Dr. Ampil and the Aganas filed with this Court separate petitions for review on *certiorari*. On January 31, 2007, the Court, through its First Division, rendered a Decision holding that PSI is jointly and severally liable with Dr. Ampil for the following reasons: *first*, there is an employer-employee relationship between Medical City and Dr. Ampil. The Court relied on *Ramos v. Court of Appeals*,[2] holding that for the purpose of apportioning responsibility in medical negligence cases, an

employer-employee relationship **in effect exists** between hospitals and their attending and visiting physicians; *second*, PSI's act of publicly displaying in the lobby of the Medical City the names and specializations of its accredited physicians, including Dr. Ampil, estopped it from denying the existence of an employer-employee relationship between them under the **doctrine of ostensible agency or agency by estoppel**; and *third*, PSI's failure to supervise Dr. Ampil and its resident physicians and nurses and to take an active step in order to remedy their negligence rendered it directly liable under the **doctrine of corporate negligence**.

In its motion for reconsideration, PSI contends that the Court erred in finding it liable under Article 2180 of the Civil Code, there being no employer-employee relationship between it and its consultant, Dr. Ampil. PSI stressed that the Court's Decision in *Ramos* holding that "an employer-employee relationship **in effect** exists between hospitals and their attending and visiting physicians for the purpose of apportioning responsibility" had been reversed in a subsequent Resolution.[3] Further, PSI argues that the **doctrine of ostensible agency or agency by estoppel** cannot apply because spouses Agana failed to establish one requisite of the doctrine, i.e., that Natividad relied on the representation of the hospital in engaging the services of Dr. Ampil. And lastly, PSI maintains that the **doctrine of corporate negligence** is misplaced because the proximate cause of Natividad's injury was Dr. Ampil's negligence.

The motion lacks merit.

As earlier mentioned, the First Division, in its assailed Decision, ruled that an employer-employee relationship "**in effect**" exists between the Medical City and Dr. Ampil. Consequently, both are jointly and severally liable to the Aganas. This ruling proceeds from the following ratiocination in *Ramos*:

> We now discuss the responsibility of the hospital in this particular incident. The unique practice (among private hospitals) of filling up specialist staff with attending and visiting "consultants," who are allegedly not hospital employees, presents problems in apportioning responsibility for negligence in medical malpractice cases. **However, the difficulty is only more apparent than real.**
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> In the first place, **hospitals exercise significant control in the hiring and firing of consultants and in the conduct of their work within the hospital premises**. Doctors who apply for "consultant" slots, visiting or attending, are required to submit proof of completion of residency, their educational qualifications; generally, evidence of accreditation by the appropriate board (diplomate), evidence of fellowship in most cases, and references. These requirements are carefully scrutinized by members of the hospital administration or by a review committee set up by the hospital who either accept or reject the application. This is particularly true with respondent hospital.
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> **After a physician is accepted, either as a visiting or attending consultant, he is normally required to attend clinico-pathological conferences, conduct bedside rounds for clerks, interns and residents, moderate grand rounds and patient audits and perform other tasks and responsibilities, for the privilege of being able to**

> **maintain a clinic in the hospital, and/or for the privilege of admitting patients into the hospital.** In addition to these, **the physician's performance as a specialist is generally evaluated by a peer review committee on the basis of mortality and morbidity statistics, and feedback from patients, nurses, interns and residents. A consultant remiss in his duties, or a consultant who regularly falls short of the minimum standards acceptable to the hospital or its peer review committee, is normally politely terminated.**
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> In other words, private hospitals hire, fire and exercise real control over their attending and visiting "consultant" staff. **While "consultants" are not, technically employees, a point which respondent hospital asserts in denying all responsibility for the patient's condition, the control exercised, the hiring, and the right to terminate consultants all fulfill the important hallmarks of an employer-employee relationship, with the exception of the payment of wages. In assessing whether such a relationship in fact exists, the control test is determining. Accordingly, on the basis of the foregoing, we rule that for the purpose of allocating responsibility in medical negligence cases, an employer-employee relationship in effect exists between hospitals and their attending and visiting physicians.** This being the case, the question now arises as to whether or not respondent hospital is solidarily liable with respondent doctors for petitioner's condition.
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> The basis for holding an employer solidarily responsible for the negligence of its employee is found in Article 2180 of the Civil Code which considers a person accountable not only for his own acts but also for those of others based on the former's responsibility under a relationship of *partia ptetas*.

Clearly, in *Ramos*, the Court considered the peculiar relationship between a hospital and its consultants on the bases of certain factors. One such factor is the "control test" wherein the hospital exercises control in the hiring and firing of consultants, like Dr. Ampil, and in the conduct of their work.

Actually, contrary to PSI's contention, the Court did not reverse its ruling in *Ramos*. What it clarified was that the De Los Santos Medical Clinic did not exercise control over its consultant, hence, there is no employer-employee relationship between them. Thus, despite the granting of the said hospital's motion for reconsideration, the doctrine in *Ramos* stays, i.e., for the purpose of allocating responsibility in medical negligence cases, an employer-employee relationship exists between hospitals and their consultants.

In the instant cases, PSI merely offered a **general denial** of responsibility, maintaining that consultants, like Dr. Ampil, are "independent contractors," not employees of the hospital. Even assuming that Dr. Ampil is not an employee of Medical City, but an independent contractor, still the said hospital is liable to the Aganas.