

THIRD DIVISION

[G.R. No. 165622, October 17, 2008]

**MERCURY DRUG CORPORATION AND AURMELA GANZON,
PETITIONERS, VS. RAUL DE LEON, RESPONDENT.**

DECISION

REYES, R.T., J.:

IN REALITY, for the druggist, mistake is negligence and care is no defense.^[1] ***Sa isang parmasyutika, ang pagkakamali ay kapabayaan at ang pagkalinga ay hindi angkop na dipensa.***

This is a petition for review on *certiorari*^[2] of two Resolutions^[3] of the Court of Appeals (CA). The first Resolution granted respondent's motion to dismiss while the second denied petitioner's motion for reconsideration.

The Facts

Respondent Raul T. De Leon was the presiding judge of Branch 258, Regional Trial Court (RTC) in Parañaque.^[4] On October 17, 1999, he noticed that his left eye was reddish. He also had difficulty reading.^[5] On the same evening, he met a friend for dinner at the Foohyui Restaurant. The same friend happened to be a doctor, Dr. Charles Milla, and had just arrived from abroad.^[6]

Aside from exchanging pleasantries, De Leon consulted Dr. Milla about his irritated left eye.^[7] The latter prescribed the drugs "Cortisporin Ophthalmic" and "Ceftin" to relieve his eye problems.^[8] Before heading to work the following morning, De Leon went to the Betterliving, Parañaque, branch of Mercury Drug Store Corporation to buy the prescribed medicines.^[9] He showed his prescription to petitioner Aurmela Ganzon, a pharmacist assistant.^[10] Subsequently, he paid for and took the medicine handed over by Ganzon.^[11]

At his chambers, De Leon requested his sheriff to assist him in using the eye drops.^[12] As instructed, the sheriff applied 2-3 drops on respondent's left eye.^[13] Instead of relieving his irritation, respondent felt searing pain.^[14] He immediately rinsed the affected eye with water, but the pain did not subside.^[15] Only then did he discover that he was given the wrong medicine, "Cortisporin Otic Solution."^[16]

De Leon returned to the same Mercury Drug branch, with his left eye still red and teary.^[17] When he confronted Ganzon why he was given ear drops, instead of the prescribed eye drops,^[18] she did not apologize and instead brazenly replied that she was unable to fully read the prescription.^[19] In fact, it was her supervisor who

apologized and informed De Leon that they do not have stock of the needed Cortisporin Ophthalmic.^[20]

De Leon wrote Mercury Drug, through its president, Ms. Vivian K. Askuna, about the day's incident.^[21] It did not merit any response.^[22] Instead, two sales persons went to his office and informed him that their supervisor was busy with other matters.^[23] Having been denied his simple desire for a written apology and explanation,^[24] De Leon filed a complaint for damages against Mercury Drug.^[25]

Mercury Drug denied that it was negligent and therefore liable for damages.^[26] It pointed out that the proximate cause of De Leon's unfortunate experience was his own negligence.^[27] He should have first read and checked to see if he had the right eye solution before he used any on his eye.^[28] He could have also requested his sheriff to do the same before the latter applied the medicine on such a delicate part of his body.^[29]

Also, Mercury Drug explained that there is no available medicine known as "Cortisporin Ophthalmic" in the Philippine market.^[30] Furthermore, what was written on the piece of paper De Leon presented to Ganzon was "Cortisporin Solution."^[31] Accordingly, she gave him the only available "Cortisporin Solution" in the market.

Moreover, even the piece of paper De Leon presented upon buying the medicine can not be considered as proper prescription.^[32] It lacked the required information concerning the attending doctor's name and license number.^[33] According to Ganzon, she entertained De Leon's purchase request only because he was a regular customer of their branch.^[34]

RTC Disposition

On April 30, 2003, the RTC rendered judgment in favor of respondent, the dispositive portion of which reads:

WHEREFORE, the court finds for the plaintiff.

For pecuniary loss suffered, Mercury Drug Store is to pay ONE HUNDRED FIFTY-THREE PESOS AND TWENTY-FIVE CENTAVOS (Php 153.25), the value of the medicine.

As moral damages defendants is (*sic*) ordered to pay ONE HUNDRED THOUSAND PESOS (Php 100,000.00).

To serve as a warning to those in the field of dispensing medicinal drugs discretion of the highest degree is expected of them, Mercury Drug Store and defendant Aurmila (*sic*) Ganzon are ordered to pay plaintiff the amount of THREE HUNDRED THOUSAND PESOS (Php 300,000.00) as exemplary damages.

Due to defendants callous reaction to the mistake done by their employee which forced plaintiff to litigate, Defendant (*sic*) Mercury Drug

Store is to pay plaintiff attorney's fees of P50,000.00 plus litigation expenses.

SO ORDERED.^[35]

In ruling in favor of De Leon, the RTC ratiocinated:

The proximate cause of the ill fate of plaintiff was defendant Aurmila (*sic*) Ganzon's negligent exercise of said discretion. She gave a prescription drug to a customer who did not have the proper form of prescription, she did not take a good look at said prescription, she merely presumed plaintiff was looking for Cortisporin Otic Solution because it was the only one available in the market and she further presumed that by merely putting the drug by the counter wherein plaintiff looked at it, paid and took the drug without any objection meant he understood what he was buying.^[36]

The RTC ruled that although De Leon may have been negligent by failing to read the medicine's label or to instruct his sheriff to do so, Mercury Drug was first to be negligent.^[37] Ganzon dispensed a drug without the requisite prescription.^[38] Moreover, she did so without fully reading what medicine was exactly being bought.^[39] In fact, she presumed that since what was available was the drug Cortisporin Otic Solution, it was what De Leon was attempting to buy.^[40] Said the court:

When the injury is caused by the negligence of a servant or employee, there instantly arises a presumption of law that there was negligence on the part of the employer or employer either in the selection of the servant or employee, or in the supervision over him after the selection or both.

x x x x

The theory bases the responsibility of the master ultimately on his own negligence and not on that of his servant.^[41]

Dissatisfied with the RTC ruling, Mercury Drug and Ganzon elevated the matter to the CA. Accordingly, they filed their respective briefs. Raising technical grounds, De Leon moved for the appeal's dismissal.

CA Disposition

On July 4, 2008, the CA issued a resolution which granted De Leon's motion and dismissed the appeal. Said the appellate court:

As pointed out by the plaintiff-appellee, the Statement of Facts, Statement of the Case, Assignment of Errors/issues, Arguments/Discussions in the Brief make no references to the pages of the records. We find this procedural lapse justify the dismissal of the appeal, pursuant to Section 1(f), Rule 50 of the 1997 Rules of Civil Procedure x x x.^[42]

x x x x

"The premise that underlies all appeals is that they are merely rights which arise from a statute; therefore, they must be exercised in the manner prescribed by law. It is to this end that rules governing pleadings and practice before the appellate court were imposed. These rules were designed to assist the appellate court in the accomplishment of its tasks, and overall, to enhance the orderly administration of justice."

x x x x

x x x If the statement of fact is unaccompanied by a page reference to the record, it may be stricken or disregarded all together.^[43]

On October 5, 2004, the CA denied Mercury Drug's and Ganzon's joint motion for reconsideration. Although mindful that litigation is not a game of technicalities,^[44] the CA found no persuasive reasons to relax procedural rules in favor of Mercury Drug and Ganzon.^[45] The CA opined:

In the case under consideration, We find no faithful compliance on the part of the movants that will call for the liberal application of the Rules. Section 1(f) of Rule 50 of the 1997 Rules of Civil Procedure explicitly provides that an appeal may be dismissed by the Court of Appeals, on its own motion or on that of the appellee, for want of page references to the records as required in Section 13 of Rule 44 of the same rules^[46]

Issues

Petitioner has resorted to the present recourse and assigns to the CA the following errors:

I

THE HONORABLE COURT OF APPEALS ERRED IN DISMISSING PETITIONER'S APPEAL BASED ON THE CASES OF *DE LIANA VS. CA* (370 SCRA 349) AND *HEIRS OF PALOMINIQUE VS. CA* (134 SCRA 331).

II

THE HONORABLE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION IN DISMISSING PETITIONER'S APPEAL DESPITE SUBSTANTIAL COMPLIANCE WITH SECTION 1(E), RULE 60 AND SECTION 13, RULE 44 OF THE RULES OF COURT.

III

THE HONORABLE COURT OF APPEALS ERRED WHEN IT FAVORED MERE TECHNICALITY OVER SUBSTANTIAL JUSTICE WHICH WILL CERTAINLY CAUSE GRAVE INJUSTICE AND GREAT PREJUDICE TO PETITIONER CONSIDERING THAT THE ASSAILED DECISION ON APPEAL IS CLUSTERED WITH ERRORS AND IN CONTRAST WITH THE DECISIONS OF THIS HONORABLE SUPREME COURT.^[47] (UNDERSCORING SUPPLIED)

Our Ruling

The appeal succeeds in part.

Dismissal of an appeal under Rule 50 is discretionary.

In several cases,^[48] this Court stressed that the grounds for dismissal of an appeal under Section 1 of Rule 50^[49] are discretionary upon the appellate court. The very wording of the rule uses the word "may" instead of "shall." This indicates that it is only directory and not mandatory.^[50] Sound discretion must be exercised in consonance with the tenets of justice and fair play, keeping in mind the circumstances obtaining in each case.^[51]

The importance of an appellant's brief cannot be gainsaid. Its purpose is two-fold: (1) to present to the court in coherent and concise form the point and questions in controversy; and (2) to assist the court in arriving at a just and proper conclusion.^[52] It is considered a vehicle of counsel to convey to the court the essential facts of a client's case, a statement of the questions of law involved, the law to be applied, and the application one desires of it by the court.^[53]

The absence of page reference to the record is a ground for dismissal. It is a requirement intended to ultimately aid the appellate court in arriving at a just and proper conclusion of the case.^[54] However, as earlier discussed, such dismissal is not mandatory, but discretionary on the part of the appellate court.

This Court has held that the failure to properly cite reference to the original records is not a fatal procedural lapse.^[55] When citations found in the appellant's brief enable the court to expeditiously locate the portions of the record referred to, there is substantial compliance with the requirements of Section 13(c), (d), and (f) of Rule 44.^[56]

In *De Leon v. CA*,^[57] this Court ruled that the citations contained in the appellant's brief sufficiently enabled the appellate court to expeditiously locate the portions of the record referred to. They were in substantial compliance with the rules. The Court said:

Nothing in the records indicate that it was exercised capriciously, whimsically, or with a view of permitting injury upon a party litigant. For the same reasons, we hold that the respondent Court of Appeals did not err when it did not dismiss the appeal based on the allegation that appellant's brief failed to comply with the internal rules of said court.^[58]

Similar to the instant case, the appellant's brief in *Yuchengco v. Court of Appeals*^[59] contained references to Exhibits and Transcript of Stenographic Notes and attachments. These were found to have substantially complied with the requirements of Section 13(c) and (d) of Rule 44.

x x x The Appellant's brief may not have referred to the exact pages of the records, however, the same is not fatal to their cause since the