

FIRST DIVISION

[G.R. NO. 126297, January 31, 2007]

**PROFESSIONAL SERVICES, INC., PETITIONER, VS. 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. JUAN FUENTES, RESPONDENT.**

[G.R. NO. 127590]

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

D E C I S I O N

SANDOVAL-GUTIERREZ, J.:

Hospitals, having undertaken one of mankind's most important and delicate endeavors, must assume the grave responsibility of pursuing it with appropriate care. The care and service dispensed through this high trust, however technical, complex and esoteric its character may be, must meet standards of responsibility commensurate with the undertaking to preserve and protect the health, and indeed, the very lives of those placed in the hospital's keeping.^[1]

Assailed in these three consolidated petitions for review on certiorari is the Court of Appeals' Decision^[2] dated September 6, 1996 in CA-G.R. CV No. 42062 and CA-G.R. SP No. 32198 affirming with modification the Decision^[3] dated March 17, 1993 of the Regional Trial Court (RTC), Branch 96, Quezon City in Civil Case No. Q-43322 and nullifying its Order dated September 21, 1993.

The facts, as culled from the records, are:

On April 4, 1984, Natividad Agana was rushed to the Medical City General Hospital (Medical City Hospital) because of difficulty of bowel movement and bloody anal discharge. After a series of medical examinations, Dr. Miguel Ampil, petitioner in G.R. No. 127590, diagnosed her to be suffering from "cancer of the sigmoid."

On April 11, 1984, Dr. Ampil, assisted by the medical staff^[4] of the Medical City Hospital, performed an anterior resection surgery on Natividad. He found that the malignancy in her sigmoid area had spread on her left ovary, necessitating the removal of certain portions of it. Thus, Dr. Ampil obtained the consent of Natividad's husband, Enrique Agana, to permit Dr. Juan Fuentes, respondent in G.R. No.

126467, to perform hysterectomy on her.

After Dr. Fuentes had completed the hysterectomy, 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 (sic) done but to no avail
continue for closure."**

On April 24, 1984, Natividad was released from the hospital. Her hospital and medical bills, including the doctors' fees, amounted to P60,000.00.

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 surgery. Dr. Ampil then recommended that she consult an oncologist to examine 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 months of consultations and laboratory examinations, Natividad was told 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 weeks thereafter, her daughter found a piece of gauze protruding from her vagina. Upon being informed about it, Dr. Ampil proceeded to her house where he managed to extract by hand a piece of gauze measuring 1.5 inches in width. He then assured her that the pains would soon vanish.

Dr. Ampil's assurance did not come true. Instead, the pains intensified, prompting Natividad to seek treatment at the Polymedic General Hospital. While confined there, Dr. Ramon Gutierrez detected the presence of another foreign object in her vagina -- a foul-smelling gauze measuring 1.5 inches in width which badly infected her vaginal vault. A recto-vaginal fistula had formed in her reproductive organs which forced stool to excrete through the vagina. Another surgical operation was needed to remedy the damage. Thus, in October 1984, Natividad underwent another surgery.

On November 12, 1984, Natividad and her husband filed with the RTC, Branch 96, Quezon City a complaint for damages against the Professional Services, Inc. (PSI), owner of the Medical City Hospital, Dr. Ampil, and Dr. Fuentes, docketed as Civil Case No. Q-43322. They alleged that the latter are liable for **negligence** for leaving two pieces of gauze inside Natividad's body and **malpractice** for concealing their acts of negligence.

Meanwhile, Enrique Agana also filed with the Professional Regulation Commission (PRC) an administrative complaint for gross negligence and malpractice against Dr. Ampil and Dr. Fuentes, docketed as Administrative Case No. 1690. The PRC Board of Medicine heard the case only with respect to Dr. Fuentes because it failed to acquire

jurisdiction over Dr. Ampil who was then in the United States.

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

On March 17, 1993, the RTC rendered its Decision in favor of the Aganas, finding PSI, Dr. Ampil and Dr. Fuentes liable for negligence and malpractice, the decretal part of which reads:

WHEREFORE, judgment is hereby rendered for the plaintiffs ordering the defendants **PROFESSIONAL SERVICES, INC., DR. MIGUEL AMPIL and DR. JUAN FUENTES** to pay to the plaintiffs, jointly and severally, except in respect of the award for exemplary damages and the interest thereon which are the liabilities of defendants Dr. Ampil and Dr. Fuentes only, as follows:

1. As actual damages, the following amounts:
 - a. The equivalent in Philippine Currency of the total of US\$19,900.00 at the rate of P21.60-US\$1.00, as reimbursement of actual expenses incurred in the United States of America;
 - b. The sum of P4,800.00 as travel taxes of plaintiffs and their physician daughter;
 - c. The total sum of P45,802.50, representing the cost of hospitalization at Polymedic Hospital, medical fees, and cost of the saline solution;
2. As moral damages, the sum of P2,000,000.00;
3. As exemplary damages, the sum of P300,000.00;
4. As attorney's fees, the sum of P250,000.00;
5. Legal interest on items 1 (a), (b), and (c); 2; and 3 hereinabove, from date of filing of the complaint until full payment; and
6. Costs of suit.

SO ORDERED.

Aggrieved, PSI, Dr. Fuentes and Dr. Ampil interposed an appeal to the Court of Appeals, docketed as CA-G.R. CV No. 42062.

Incidentally, on April 3, 1993, the Aganas filed with the RTC a motion for a partial execution of its Decision, which was granted in an Order dated May 11, 1993.

Thereafter, the sheriff levied upon certain properties of Dr. Ampil and sold them for P451,275.00 and delivered the amount to the Aganas.

Following their receipt of the money, the Aganas entered into an agreement with PSI and Dr. Fuentes to indefinitely suspend any further execution of the RTC Decision.

However, not long thereafter, the Aganas again filed a motion for an *alias* writ of

execution against the properties of PSI and Dr. Fuentes. On **September 21, 1993**, the RTC granted the motion and issued the corresponding writ, prompting Dr. Fuentes to file with the Court of Appeals a petition for certiorari and prohibition, with prayer for preliminary injunction, docketed as CA-G.R. SP No. 32198. During its pendency, the Court of Appeals issued a Resolution^[5] dated October 29, 1993 granting Dr. Fuentes' prayer for injunctive relief.

On January 24, 1994, CA-G.R. SP No. 32198 was consolidated with CA-G.R. CV No. 42062.

Meanwhile, on January 23, 1995, the PRC Board of Medicine rendered its Decision^[6] in Administrative Case No. 1690 dismissing the case against Dr. Fuentes. The Board held that the prosecution failed to show that Dr. Fuentes was the one who left the two pieces of gauze inside Natividad's body; and that he concealed such fact from Natividad.

On September 6, 1996, the Court of Appeals rendered its Decision jointly disposing of CA-G.R. CV No. 42062 and CA-G.R. SP No. 32198, thus:

WHEREFORE, except for the modification that the case against defendant-appellant Dr. Juan Fuentes is hereby **DISMISSED**, and with the pronouncement that defendant-appellant Dr. Miguel Ampil is liable to reimburse defendant-appellant **Professional Services, Inc.**, whatever amount the latter will pay or had paid to the plaintiffs-appellees, the decision appealed from is hereby **AFFIRMED** and the instant appeal **DISMISSED**.

Concomitant with the above, the petition for certiorari and prohibition filed by herein defendant-appellant Dr. Juan Fuentes in CA-G.R. SP No. 32198 is hereby **GRANTED** and the challenged order of the respondent judge dated September 21, 1993, as well as the alias writ of execution issued pursuant thereto are hereby **NULLIFIED** and **SET ASIDE**. The bond posted by the petitioner in connection with the writ of preliminary injunction issued by this Court on November 29, 1993 is hereby cancelled.

Costs against defendants-appellants **Dr. Miguel Ampil** and **Professional Services, Inc.**

SO ORDERED.

Only Dr. Ampil filed a motion for reconsideration, but it was denied in a Resolution^[7] dated December 19, 1996.

Hence, the instant consolidated petitions.

In *G.R. No. 126297*, PSI alleged in its petition that the Court of Appeals erred in holding that: **(1)** it is estopped from raising the defense that Dr. Ampil is not its employee; **(2)** it is solidarily liable with Dr. Ampil; and **(3)** it is not entitled to its counterclaim against the Aganas. PSI contends that Dr. Ampil is not its employee, but a mere consultant or independent contractor. As such, he alone should answer for his negligence.

In *G.R. No. 126467*, the Aganas maintain that the Court of Appeals erred in finding that Dr. Fuentes is not guilty of negligence or medical malpractice, invoking the doctrine of *res ipsa loquitur*. They contend that the pieces of gauze are *prima facie* proofs that the operating surgeons have been negligent.

Finally, in *G.R. No. 127590*, Dr. Ampil asserts that the Court of Appeals erred in finding him liable for negligence and malpractice sans evidence that he left the two pieces of gauze in Natividad's vagina. He pointed to other probable causes, such as: **(1)** it was Dr. Fuentes who used gauzes in performing the hysterectomy; **(2)** the attending nurses' failure to properly count the gauzes used during surgery; and **(3)** the medical intervention of the American doctors who examined Natividad in the United States of America.

For our resolution are these three vital issues: *first*, whether the Court of Appeals erred in holding Dr. Ampil liable for negligence and malpractice; *second*, whether the Court of Appeals erred in absolving Dr. Fuentes of any liability; and *third*, whether PSI may be held solidarily liable for the negligence of Dr. Ampil.

I - G.R. No. 127590
Whether the Court of Appeals Erred in Holding Dr. Ampil
Liable for Negligence and Malpractice.

Dr. Ampil, in an attempt to absolve himself, gears the Court's attention to other possible causes of Natividad's detriment. He argues that the Court should not discount either of the following possibilities: *first*, Dr. Fuentes left the gauzes in Natividad's body after performing hysterectomy; *second*, the attending nurses erred in counting the gauzes; and *third*, the American doctors were the ones who placed the gauzes in Natividad's body.

Dr. Ampil's arguments are purely conjectural and without basis. Records show that he did not present any evidence to prove that the American doctors were the ones who put or left the gauzes in Natividad's body. Neither did he submit evidence to rebut the correctness of the record of operation, particularly the number of gauzes used. As to the alleged negligence of Dr. Fuentes, we are mindful that Dr. Ampil examined his (Dr. Fuentes') work and found it in order.

The glaring truth is that all the major circumstances, taken together, as specified by the Court of Appeals, directly point to Dr. Ampil as the negligent party, thus:

First, it is not disputed that the surgeons used gauzes as sponges to control the bleeding of the patient during the surgical operation.

Second, immediately after the operation, the nurses who assisted in the surgery noted in their report that the 'sponge count (was) lacking 2'; **that such anomaly was 'announced to surgeon' and that a 'search was done but to no avail' prompting Dr. Ampil to 'continue for closure'** x x x.

Third, after the operation, two (2) gauzes were extracted from the same spot of the body of Mrs. Agana where the surgery was performed.