

THIRD DIVISION

[G.R. NO. 168512, March 20, 2007]

**ORLANDO D. GARCIA, JR., DOING BUSINESS UNDER THE NAME
AND STYLE COMMUNITY DIAGNOSTIC CENTER AND BU CASTRO,
[1] PETITIONERS, VS. RANIDA D. SALVADOR AND RAMON
SALVADOR, RESPONDENTS.**

DECISION

YNARES-SANTIAGO, J.:

This is a petition for review^[2] under Rule 45 of the Rules of Court assailing the February 27, 2004 Decision^[3] of the Court of Appeals in CA-G.R. CV No. 58668 finding petitioner Orlando D. Garcia liable for gross negligence; and its June 16, 2005 Resolution^[4] denying petitioner's motion for reconsideration.

On October 1, 1993, respondent Ranida D. Salvador started working as a trainee in the Accounting Department of Limay Bulk Handling Terminal, Inc. (the Company). As a prerequisite for regular employment, she underwent a medical examination at the Community Diagnostic Center (CDC). Garcia who is a medical technologist, conducted the HBs Ag (Hepatitis B Surface Antigen) test and on October 22, 1993, CDC issued the test result^[5] indicating that Ranida was "HBs Ag: Reactive." The result bore the name and signature of Garcia as examiner and the rubber stamp signature of Castro as pathologist.

When Ranida submitted the test result to Dr. Sto. Domingo, the Company physician, the latter apprised her that the findings indicated that she is suffering from Hepatitis B, a liver disease. Thus, based on the medical report^[6] submitted by Sto. Domingo, the Company terminated Ranida's employment for failing the physical examination.
^[7]

When Ranida informed her father, Ramon, about her ailment, the latter suffered a heart attack and was confined at the Bataan Doctors Hospital. During Ramon's confinement, Ranida underwent another HBs Ag test at the said hospital and the result^[8] indicated that she is non-reactive. She informed Sto. Domingo of this development but was told that the test conducted by CDC was more reliable because it used the Micro-Elisa Method.

Thus, Ranida went back to CDC for confirmatory testing, and this time, the Anti-HBs test conducted on her indicated a "Negative" result.^[9]

Ranida also underwent another HBs Ag test at the Bataan Doctors Hospital using the Micro-Elisa Method. The result indicated that she was non-reactive.^[10]

Ranida submitted the test results from Bataan Doctors Hospital and CDC to the Executive Officer of the Company who requested her to undergo another similar test before her re-employment would be considered. Thus, CDC conducted another HBs Ag test on Ranida which indicated a "Negative" result.^[11] Ma. Ruby G. Calderon, Med-Tech Officer-in-Charge of CDC, issued a Certification correcting the initial result and explaining that the examining medical technologist (Garcia) interpreted the delayed reaction as positive or reactive.^[12]

Thereafter, the Company rehired Ranida.

On July 25, 1994, Ranida and Ramon filed a complaint^[13] for damages against petitioner Garcia and a purportedly unknown pathologist of CDC, claiming that, by reason of the erroneous interpretation of the results of Ranida's examination, she lost her job and suffered serious mental anxiety, trauma and sleepless nights, while Ramon was hospitalized and lost business opportunities.

On September 26, 1994, respondents amended their complaint^[14] by naming Castro as the "unknown pathologist."

Garcia denied the allegations of gross negligence and incompetence and reiterated the scientific explanation for the "false positive" result of the first HBs Ag test in his December 7, 1993 letter to the respondents.^[15]

For his part, Castro claimed that as pathologist, he rarely went to CDC and only when a case was referred to him; that he did not examine Ranida; and that the test results bore only his rubber-stamp signature.

On September 1, 1997,^[16] the trial court dismissed the complaint for failure of the respondents to present sufficient evidence to prove the liability of Garcia and Castro. It held that respondents should have presented Sto. Domingo because he was the one who interpreted the test result issued by CDC. Likewise, respondents should have presented a medical expert to refute the testimonies of Garcia and Castro regarding the medical explanation behind the conflicting test results on Ranida.^[17]

Respondents appealed to the Court of Appeals which reversed the trial court's findings, the dispositive portion of which states:

WHEREFORE, the decision appealed from is REVERSED and SET ASIDE and another one entered ORDERING defendant-appellee Orlando D. Garcia, Jr. to pay plaintiff-appellant Ranida D. Salvador moral damages in the amount of P50,000.00, exemplary damages in the amount of P50,000.00 and attorney's fees in the amount of P25,000.00.

SO ORDERED.^[18]

The appellate court found Garcia liable for damages for negligently issuing an erroneous HBs Ag result. On the other hand, it exonerated Castro for lack of participation in the issuance of the results.

After the denial of his motion for reconsideration, Garcia filed the instant petition.

The main issue for resolution is whether the Court of Appeals, in reversing the decision of the trial court, correctly found petitioner liable for damages to the respondents for issuing an incorrect HBsAG test result.

Garcia maintains he is not negligent, thus not liable for damages, because he followed the appropriate laboratory measures and procedures as dictated by his training and experience; and that he did everything within his professional competence to arrive at an objective, impartial and impersonal result.

At the outset, we note that the issues raised are factual in nature. Whether a person is negligent or not is a question of fact which we cannot pass upon in a petition for review on *certiorari* which is limited to reviewing errors of law.^[19]

Negligence is the failure to observe for the protection of the interest of another person that degree of care, precaution and vigilance which the circumstances justly demand,^[20] whereby such other person suffers injury. For health care providers, the test of the existence of negligence is: did the health care provider either fail to do something which a reasonably prudent health care provider would have done, or that he or she did something that a reasonably prudent health care provider would not have done; and that failure or action caused injury to the patient;^[21] if yes, then he is guilty of negligence.

Thus, the elements of an actionable conduct are: 1) duty, 2) breach, 3) injury, and 4) proximate causation.

All the elements are present in the case at bar.

Owners and operators of clinical laboratories have the duty to comply with statutes, as well as rules and regulations, purposely promulgated to protect and promote the health of the people by preventing the operation of substandard, improperly managed and inadequately supported clinical laboratories and by improving the quality of performance of clinical laboratory examinations.^[22] Their business is impressed with public interest, as such, high standards of performance are expected from them.

In *F.F. Cruz and Co., Inc. v. Court of Appeals*, we found the owner of a furniture shop liable for the destruction of the plaintiff's house in a fire which started in his establishment in view of his failure to comply with an ordinance which required the construction of a firewall. In *Teague v. Fernandez*, we stated that where the very injury which was intended to be prevented by the ordinance has happened, non-compliance with the ordinance was not only an act of negligence, but also the proximate cause of the death.^[23]

In fine, violation of a statutory duty is negligence. Where the law imposes upon a person the duty to do something, his omission or non-performance will render him liable to whoever may be injured thereby.

Section 2 of Republic Act (R.A.) No. 4688, otherwise known as *The Clinical Laboratory Law*, provides:

Sec. 2. It shall be unlawful for any person to be professionally in-charge of a registered clinical laboratory unless he is a licensed physician duly qualified in laboratory medicine and authorized by the Secretary of Health, such authorization to be renewed annually.

No license shall be granted or renewed by the Secretary of Health for the operation and maintenance of a clinical laboratory unless such laboratory is under the administration, direction and supervision of an authorized physician, as provided for in the preceding paragraph.

Corollarily, Sections 9(9.1)(1), 11 and 25(25.1)(1) of the DOH Administrative Order No. 49-B Series of 1988, otherwise known as the *Revised Rules and Regulations Governing the Registration, Operation and Maintenance of Clinical Laboratories in the Philippines*, read:

Sec. 9. Management of the Clinical Laboratory:

9.1 Head of the Clinical Laboratory: The head is that person who assumes technical and administrative supervision and control of the activities in the laboratory.

For all categories of clinical laboratories, the head shall be a licensed physician certified by the Philippine Board of Pathology in either Anatomic or Clinical Pathology or both provided that:

(1) This shall be mandatory for all categories of free-standing clinical laboratories; all tertiary category hospital laboratories and for all secondary category hospital laboratories located in areas with sufficient available pathologist.

x x x x

Sec. 11. Reporting: All laboratory requests shall be considered as consultations between the requesting physician and pathologist of the laboratory. As such all laboratory reports on various examinations of human specimens shall be construed as consultation report and shall bear the name of the pathologist or his associate. No person in clinical laboratory shall issue a report, orally or in writing, whole portions thereof without a directive from the pathologist or his authorized associate and only to the requesting physician or his authorized representative except in emergencies when the results may be released as authorized by the pathologist.

x x x x

Sec. 25. Violations:

25.1 The license to operate a clinical laboratory may be suspended or revoked by the Undersecretary of Health for Standards and Regulation upon violation of R.A. 4688 or the rules and regulations issued in pursuance thereto or the commission of the following acts by the persons