

FIRST DIVISION

[G.R. No. 141538, March 23, 2004]

**HERMANA R. CEREZO, PETITIONER, VS. DAVID TUAZON,
RESPONDENT.**

D E C I S I O N

CARPIO, J.:

This is a petition for review on *certiorari*^[1] to annul the Resolution^[2] dated 21 October 1999 of the Court of Appeals in CA-G.R. SP No. 53572, as well as its Resolution dated 20 January 2000 denying the motion for reconsideration. The Court of Appeals denied the petition for annulment of the Decision^[3] dated 30 May 1995 rendered by the Regional Trial Court of Angeles City, Branch 56 ("trial court"), in Civil Case No. 7415. The trial court ordered petitioner Hermana R. Cerezo ("Mrs. Cerezo") to pay respondent David Tuazon ("Tuazon") actual damages, loss of earnings, moral damages, and costs of suit.

Antecedent Facts

Around noontime of 26 June 1993, a Country Bus Lines passenger bus with plate number NYA 241 collided with a tricycle bearing plate number TC RV 126 along Captain M. Palo Street, Sta. Ines, Mabalacat, Pampanga. On 1 October 1993, tricycle driver Tuazon filed a complaint for damages against Mrs. Cerezo, as owner of the bus line, her husband Attorney Juan Cerezo ("Atty. Cerezo"), and bus driver Danilo A. Foronda ("Foronda"). The complaint alleged that:

7. At the time of the incident, plaintiff [Tuazon] was in his proper lane when the second-named defendant [Foronda], being then the driver and person in charge of the Country Bus with plate number NYA 241, did then and there willfully, unlawfully, and feloniously operate the said motor vehicle in a negligent, careless, and imprudent manner without due regard to traffic rules and regulations, there being a "Slow Down" sign near the scene of the incident, and without taking the necessary precaution to prevent loss of lives or injuries, his negligence, carelessness and imprudence resulted to severe damage to the tricycle and serious physical injuries to plaintiff thus making him unable to walk and becoming disabled, with his thumb and middle finger on the left hand being cut[.]^[4]

On 1 October 1993, Tuazon filed a motion to litigate as a pauper. Subsequently, the trial court issued summons against Atty. Cerezo and Mrs. Cerezo ("the Cerezo spouses") at the Makati address stated in the complaint. However, the summons was returned unserved on 10 November 1993 as the Cerezo spouses no longer held office nor resided in Makati. On 18 April 1994, the trial court issued *alias* summons against the Cerezo spouses at their address in Barangay Sta. Maria, Camiling, Tarlac. The *alias* summons and a copy of the complaint were finally served on 20

April 1994 at the office of Atty. Cerezo, who was then working as Tarlac Provincial Prosecutor. Atty. Cerezo reacted angrily on learning of the service of summons upon his person. Atty. Cerezo allegedly told Sheriff William Canlas: "*Punyeta, ano ang gusto mong mangyari? Gusto mong hindi ka makalabas ng buhay dito? Teritoryo ko ito. Wala ka sa teritoryo mo.*"^[5]

The records show that the Cerezo spouses participated in the proceedings before the trial court. The Cerezo spouses filed a comment with motion for bill of particulars dated 29 April 1994 and a reply to opposition to comment with motion dated 13 June 1994.^[6] On 1 August 1994, the trial court issued an order directing the Cerezo spouses to file a comment to the opposition to the bill of particulars. Atty. Elpidio B. Valera ("Atty. Valera") of Valera and Valera Law Offices appeared on behalf of the Cerezo spouses. On 29 August 1994, Atty. Valera filed an urgent *ex-parte* motion praying for the resolution of Tuazon's motion to litigate as a pauper and for the issuance of new summons on the Cerezo spouses to satisfy proper service in accordance with the Rules of Court.^[7]

On 30 August 1994, the trial court issued an order resolving Tuazon's motion to litigate as a pauper and the Cerezo spouses' urgent *ex-parte* motion. The order reads:

At the hearing on August 30, 1994, the plaintiff [Tuazon] testified that he is presently jobless; that at the time of the filing of this case, his son who is working in Malaysia helps him and sends him once in a while P300.00 a month, and that he does not have any real property. Attached to the Motion to Litigate as Pauper are his Affidavit that he is unemployed; a Certification by the Barangay Captain of his poblacion that his income is not enough for his family's subsistence; and a Certification by the Office of the Municipal Assessor that he has no landholding in the Municipality of Mabalacat, Province of Pampanga.

The Court is satisfied from the un rebutted testimony of the plaintiff that he is entitled to prosecute his complaint in this case as a pauper under existing rules.

On the other hand, the Court denies the prayer in the Appearance and Urgent *Ex-Parte* Motion requiring new summons to be served to the defendants. The Court is of the opinion that any infirmity in the service of the summons to the defendant before plaintiff was allowed to prosecute his complaint in this case as a pauper has been cured by this Order.

If within 15 days from receipt of this Order, the defendants do not question on appeal this Order of this Court, the Court shall proceed to resolve the Motion for Bill of Particulars.^[8]

On 27 September 1994, the Cerezo spouses filed an urgent *ex-parte* motion for reconsideration. The trial court denied the motion for reconsideration.

On 14 November 1994, the trial court issued an order directing the Cerezo spouses to file their answer within fifteen days from receipt of the order. The Cerezo spouses did not file an answer. On 27 January 1995, Tuazon filed a motion to declare the Cerezo spouses in default. On 6 February 1995, the trial court issued an order declaring the Cerezo spouses in default and authorizing Tuazon to present his evidence. ^[9]

On 30 May 1995, after considering Tuazon's testimonial and documentary evidence, the trial court ruled in Tuazon's favor. The trial court made no pronouncement on Foronda's liability because there was no service of summons on him. The trial court did not hold Atty. Cerezo liable as Tuazon failed to show that Mrs. Cerezo's business benefited the family, pursuant to Article 121(3) of the Family Code. The trial court held Mrs. Cerezo solely liable for the damages sustained by Tuazon arising from the negligence of Mrs. Cerezo's employee, pursuant to Article 2180 of the Civil Code. The dispositive portion of the trial court's decision reads:

WHEREFORE, judgment is hereby rendered ordering the defendant Hermana Cerezo to pay the plaintiff:

- | | |
|---|------------|
| a) For Actual Damages | |
| 1) Expenses for operation and medical treatment | - |
| - | P69,485.35 |
| 2) Cost of repair of the tricycle | - |
| | 39,921.00 |
| b) For loss of earnings | - |
| | 43,300.00 |
| c) For moral damages | - |
| | 20,000.00 |
| d) And to pay the cost of the suit. | |

The docket fees and other expenses in the filing of this suit shall be *lien* on whatever judgment may be rendered in favor of the plaintiff.

SO ORDERED.^[10]

Mrs. Cerezo received a copy of the decision on 25 June 1995. On 10 July 1995, Mrs. Cerezo filed before the trial court a petition for relief from judgment on the grounds of "fraud, mistake or excusable negligence." Testifying before the trial court, both Mrs. Cerezo and Atty. Valera denied receipt of notices of hearings and of orders of the court. Atty. Valera added that he received no notice before or during the 8 May 1995 elections, "when he was a senatorial candidate for the KBL Party, and very busy, using his office and residence as Party National Headquarters." Atty. Valera claimed that he was able to read the decision of the trial court only after Mrs. Cerezo sent him a copy.^[11]

Tuazon did not testify but presented documentary evidence to prove the participation of the Cerezo spouses in the case. Tuazon presented the following exhibits:

Exhibit Sheriff's return
1 - and summons;

Exhibit *Alias* summons
1-A - dated April 20,
1994;

Exhibit Comment with
2 - Motion;

Exhibit Minutes of the
3 - hearing held on
August 1,
1994;

Exhibit Signature of
3-A - defendant's
counsel;

Exhibit Minutes of the
4 - hearing held on
August 30,
1994;

Exhibit Signature of
4-A - the defendant's
counsel;

Exhibit Appearance and
5 - Urgent Ex-Parte
Motion;

Exhibit Order dated
6 - November 14,
1994;

Exhibit Postal
6-A - certification
dated January
13, 1995;

Exhibit Order dated
7 - February
[illegible];

Exhibit Court's return
7-A - slip addressed
to Atty. Elpidio
Valera;

Exhibit Court's return

7-B - slip addressed
to Spouses
Juan
and Hermana
Cerezo;

ExhibitDecision dated
8 - May [30], 1995

ExhibitCourt's return
8-A - slip addressed
to defendant
Hermana
Cerezo;

ExhibitCourt's return
8-B - slip addressed
to defendant's
counsel, Atty.
Elpidio Valera;

ExhibitOrder dated
9 - September 21,
1995;

ExhibitSecond Page of
9-A - Exhibit 9;

ExhibitThird page of
9-B - Exhibit 9;

ExhibitFourth page of
9-C - Exhibit 9;

ExhibitCourt's return
9-D - slip addressed
to Atty. Elpidio

Valera; and

ExhibitCourt's return
9-E - slip addressed
to plaintiff's
counsel, Atty.
Norman Dick de
Guzman.^[12]

On 4 March 1998, the trial court issued an order^[13] denying the petition for relief from judgment. The trial court stated that having received the decision on 25 June 1995, the Cerezo spouses should have filed a notice of appeal instead of resorting to a petition for relief from judgment. The trial court refused to grant relief from