

FIRST DIVISION

[CA–G.R. CV No. 97756, March 17, 2015]

MARIANO SAN JUAN, PLAINTIFF-APPELLANT, VS. ARNULFO GRAJO AND BENITO ORCINE, DEFENDANTS-APPELLEES.

DECISION

SORONGON, E.D., J.

This is an Appeal^[1] from the Order^[2] dated May 11, 2011 of the Regional Trial Court of Naga City, Branch 21 in *Civil Case No. RTC 2010-0037* which dismissed plaintiff-appellant Mariano San Juan's (plaintiff-appellant) complaint against defendants-appellees Arnulfo Grajo and Benito Orcine (defendants-appellees).

The Facts

A Verified Complaint^[3] with the RTC of Naga City for Damages was filed on March 25, 2010 by plaintiff-appellant against defendants-appellees for reparation of the damages he suffered occasioned by the sleepless nights, mental anguish and fear for his family's safety on account of the harassment instigated by defendants-appellees upon them which started just before he left for the United States. He was thus forced to seek barangay protection and the government's prosecutorial arm. While in the United States, he still received reports about defendants-appellees' continued harassment of his family. In fact, he had to send money to the Philippines for his son to defray the cost of litigation of the criminal charges filed against him. He was also prosecuted which made him returned to the country to face the charges thereby abandoning his monthly US Veteran's supplemental social security allotment amounting to US\$570.35. After being acquitted of these charges, he returned to the United States but already with depleted income.

After summons have been served upon them, defendants-appellees filed their respective answers^[4] disputing the allegations of plaintiff-appellant that they caused undue harassment to him. The truth being that it was plaintiff-appellant who had been filing baseless complaints against them, however, these actions were subsequently dismissed. They asserted that the alleged damage suffered by him was brought about by his own family's actuations in violating the laws. Thus, they prayed for the dismissal of the complaint.

On February 4, 2011, plaintiff-appellant, thru a collaborating counsel in the person of Atty. Joselito Fandiño, filed his Answer^[5] to defendants-appellees' counterclaim.

On March 2, 2011, the trial court issued an Order^[6] setting the case for pre-trial conference on May 4, 2011. In the meantime, the case was referred to the Philippine Mediation Center of Naga City where no amicable settlement was reached. Thus, the case was reverted to pre-trial stage but at its scheduled setting, the same

was moved anew to May 11, 2011 at 8:30 o'clock in the morning^[7] because plaintiff-appellant and his counsel were not duly notified thereof. Plaintiff-appellant and his counsel appeared at the re-scheduled pre-trial sans the required pre-trial brief. His counsel, Atty. Gumba, explained that she just received the notice of pre-trial only on that day. She also manifested that she had already withdrawn from the case and its new handling lawyer is Atty. Fandiño. Notwithstanding, Atty. Gumba prayed for a resetting which defendants-appellees objected and consequently prayed for the dismissal of the case. Finding her explanation to be unmeritorious, the trial court per its assailed order dismissed the case in open court.^[8]

Plaintiff-appellant moved for reconsideration arguing that Atty. Gumba did not receive any notice of pre-trial. In fact, she had just received it on the date of pre-trial itself upon being handed a copy thereof by the process server of the court. Atty. Gumba also reiterated her withdrawal from the case stressing that it was Atty. Fandiño who took over from her and filed the Answer to defendants-appellees' counterclaim. Moreover, her presence at the pre-trial date was not for the instant case but to represent a different client in another scheduled case.

Commenting^[9] on the motion for reconsideration, defendants-appellees averred that the claim of Atty. Gumba that she had withdrawn from the case is unfounded, there being no motion for withdrawal on record. Besides, as a party to the case, plaintiff-appellant who also received a copy of the notice, should have conferred with her on what should be done or ought to be done, which he failed to do.

Plaintiff-appellant's motion for reconsideration was denied by the trial court under this tenor: a) there is no compelling reason to reverse the order of dismissal; b) the claim of Atty. Gumba that she had withdrawn from the case is not supported by evidence. Besides, when asked in open court who his counsel is, plaintiff-appellant pointed to Atty. Gumba who was in the courtroom at that time; c) the claim of Atty. Gumba that she did not receive any notice of pre-trial was belied by the registry return slip showing that she received the same thru a certain Johnbe Mato on May 6, 2011, five (5) days prior to the scheduled pre-trial proceedings.^[10]

Unfettered, plaintiff-appellant via this appeal seeks the reversal of the order dismissing his complaint.

Assignment of Errors

THE TRIAL COURT ERRED IN DISMISSING THE CASES BASED SOLELY ON A TECHNICAL GROUND WHICH IS THE ALLEGED FAILURE OF APPELLANT TO FILE PRE TRIAL BRIEF DESPITE ABSENCE OF NOTICE TO APPELLANT.

THE TRIAL COURT ERRED IN TAKING COGNIZANCE OF AN ALLEGED SERVICE OF NOTICE TO APPELLANT THRU A CERTAIN "JOHNBE MATO" WHO WAS NEVER MENTIONED IN THE ORDER OF DISMISSAL BUT ONLY CAME OUT IN THE RESOLUTION OF THE MOTION FOR RECONSIDERATION DEPRIVING THEREFORE APPELANT TO MEET THE ISSUE PRIOR TO ELEVATION OF CASE ON APPEAL.

Our Ruling

Synthesizing the foregoing assignment of errors, the central issue to be resolved is whether or not the trial court correctly dismissed the complaint for failure of plaintiff-appellant to file his pre-trial brief within the period required by the rules.

Preliminarily, we find that plaintiff-appellant merely attached the Order dated August 3, 2011 giving us the impression that what he is appealing from is the order denying his motion for reconsideration of the May 11, 2011 Order dismissing his complaint. This is plainly wrong. What should be appealed is the Order dated May 11, 2011 which dismissed his verified complaint. At any rate, in the broader interest of justice, we disregard this procedural lapse if only to give way to the merits of the case.

The pertinent provisions of Rule 18 of the Revised Rules of Court provides that:

Section 3. Notice of pre-trial. — The notice of pre-trial shall be served on counsel, or on the party who has no counsel. The counsel served with such notice is charged with the duty of notifying the party represented by him.

Section 4. Appearance of parties. — It shall be the duty of the parties and their counsel to appear at the pre-trial. The non-appearance of a party may be excused only if a valid cause is shown therefor or if a representative shall appear in his behalf fully authorized in writing to enter into an amicable settlement, to submit to alternative modes of dispute resolution, and to enter into stipulations or admissions of facts and of documents.

Section 5. Effect of failure to appear. — The failure of the plaintiff to appear when so required pursuant to the next preceding section shall be cause for dismissal of the action. The dismissal shall be with prejudice, unless other-wise ordered by the court. A similar failure on the part of the defendant shall be cause to allow the plaintiff to present his evidence *ex parte* and the court to render judgment on the basis thereof. (2a, R20)

Section 6. Pre-trial brief. — The parties shall file with the court and serve on the adverse party, in such manner as shall ensure their receipt thereof at least three (3) days before the date of the pre-trial, their respective pre-trial briefs which shall contain, among others:

x x x x

Failure to file the pre-trial brief shall have the same effect as failure to appear at the pre-trial.

Jurisprudence^[11] teaches that it is mandatory for the trial court to conduct pre-trial in civil cases in order to realize the paramount objective of simplifying, abbreviating, and expediting trial. In light of these objectives, the parties are mandatorily required to submit their respective pre-trial briefs. Failure of the parties to do so is a ground for dismissal of the action with prejudice, unless otherwise ordered by the court. As a rule of procedure, the rules on pre-trial mandates religious adherence